Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies

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Abstract

Considerable progress has been made in the field of transitional justice in recent years, signified by such landmarks as a permanent international criminal court. Unaddressed aspects of transition remain, however, which need serious attention if peace is to be sustainable in the long term. Oppressive political arrangements favor particular segments of society while simultaneously disenfranchising and economically and socially excluding the less powerful. To date, transitional justice initiatives have focused on the cessation of violence, establishing order and correcting civil and political injustices. Social and economic factors have taken second or no place at all. Yet, social and economic grievances can be ‘powder kegs’ that, if left unaddressed, threaten to blow up peace initiatives. Zimbabwe provides empirical evidence of the dangers of marginalizing economic and social imperatives in the transition from repression.

Introduction

Oppressive political arrangements favor particular segments of society while simultaneously disenfranchising and economically and socially excluding the less powerful, locking the latter in cycles of poverty that can only be broken through structural reforms. While transitions to democracy have often come with some measure of redress for past injustices and guarantees of civil and political rights protections, neither approach corrects past social and economic exclusions and exploitation. All too often, the poor remain in their pretransition state of deprivation, with negative implications for long-term peace. As David Barash and Charles Webel note,

It is very difficult to be tranquil, calm, or satisfied when denied such basic needs as food, clothing, shelter, education, and medical care... [and when people] perceive that their economic conditions are far inferior to those of others.1

As Archbishop Desmond Tutu has warned, unaddressed social and economic grievances are a powder keg of resentment and frustration that can threaten social order.2 Ending impunity for the perpetration of heinous crimes and instituting

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civil and political rights are critical components of transitional justice, but they cannot by themselves guarantee peace.

Zimbabwe’s transition from a colonial state is illustrative of the failure to address three problematic aspects of economic justice, as identified by Zinaida Miller: (1) the economic roots and consequences of the conflict; (2) the succeeding economic liberalization without socioeconomic redistribution; and (3) the development plans of the new government. Zimbabwe’s colonial governments systematically dispossessed Africans of land and denied them the rights of political participation and equal access to education, healthcare and other social services. This system of exclusion was maintained through violent repression, creating the conditions of anger and resentment that triggered a war for liberation. The transition from colonial rule delivered political freedom and constitutionally corrected civil and political exclusion, but it failed to institute accountability processes for violent abuses and to address the economic injustices of the colonial era. Twenty-eight years later, those failures, plus a combination of bad governance, greed and external factors, have brought the country to its knees. The ensuing political strife has been substantially underwritten by resentment over unaddressed colonial inequalities. President Robert Mugabe could claim championship of mass justice as his legitimation for holding on to political office since independence, and with that legitimation, he has perpetrated serious human rights violations – civil, political, economic and social.

This article interrogates our understandings of transitional justice and, using Zimbabwe as a case study, makes the argument that the failure of transitional justice processes to address historically constructed socioeconomic inequalities is as serious a cause of recurrent conflict as unaddressed civil and political wrongs. As and when Zimbabwe embarks on a transition from the Mugabe era, the now compounded socioeconomic injustices will remain critically in need of correction. I suggest some ways in which socioeconomic justice can be addressed.

**Justice and Transitional Justice**

Because socioeconomic issues have been so absent from the transitional justice discourse, the conceptualization of the field itself needs some discussion. Transitional justice is relatively new as a field of study, but it has grown rapidly in a short space

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6 In his response to Mamdani, Patrick Bond argues that this phenomenon is not unique to Zimbabwe, which is true but does not detract from the logic of capitalizing on resentment. Ibid.
of time.\textsuperscript{7} We can identify some of its key tenets by unpacking the justice and the transition components. In Jens David Ohlin’s view, transitional justice is intended to ‘hold violators responsible for their actions and punish them accordingly, after a rigorous process of determining their guilt before a neutral decision maker.’\textsuperscript{8} This retributive approach has its adherents.\textsuperscript{9} Other scholars and practitioners have conceptualized transitional justice in much broader terms, encompassing truth seeking, reparations and institutional reform.\textsuperscript{10} However, when exploitative repression is occurring and social groups are not only politically oppressed but also socially and economically marginalized, much more needs to be done. From the perspective of the exploited and marginalized, individuated prosecutions or truth commissions can hardly be seen as achieving justice. The exclusion of socioeconomic equity calls into question the very objectives of transitional justice. That such a question is far from just hypothetical abstraction becomes clear when looking at the example of Zimbabwe today.

The late Archbishop Oscar Romero once observed, ‘Political repression is often both an instrument and the result of economic disparity.’\textsuperscript{11} In a similar vein, several scholars have made the point that economic and political equality are inseparable and equally important components of justice.\textsuperscript{12} Unequal relations of power, as in the reality of colonization, give rise to impoverishment, which has a close association with instability.\textsuperscript{13} For this reason, according to Barash and Webel, rich states maintain huge military forces: to prevent any fundamental reorganization of wealth and power at a global level.\textsuperscript{15} In poor countries, elites do the same in localized contexts. It is not surprising, then, that in societies emerging from repressive pasts, redistributive justice is as emotive and explosive as retributive justice. Such was the reality in Rhodesia (as in apartheid South Africa and elsewhere), where political, social and economic oppression were inextricably intertwined. This casts doubt on the justness of a transitional justice that focuses on prosecutions of individual wrongdoers for the crimes they have committed, as well as on truth seeking and


\textsuperscript{15} Barash and Webel, supra n 1.
even on enshrining civil and political rights in constitutional bills of rights, but leaves unaddressed the economic disparity perpetrated on victims.

Distributive justice entails conceptualizing justice in terms of equality, in addition to liberty. Liberty does not appear to be problematic as a component of justice, but equality is contentious and there are varying approaches to equality-based justice. Equality can be dependent on the presence of normatively constructed relationships, such as the social contract conceptualized by French philosopher Jean-Jacques Rousseau. More universalist approaches conceive of socioeconomic or distributive equality as ‘a necessary implication of the foundational moral commitments of a theory of justice.’ In this view, equality attaches to the concept of justice without the need for mediation by agreement, which extends its application to the global arena. The most widely accepted conception of universal justice is grounded in international human rights, and many transitional justice scholars have emphasized the primacy of human rights standards. Almost without exception, however, they reference only civil and political rights, which is in large part a reflection of the bias in the human rights field. Yet, the Universal Declaration of Human Rights (UDHR) concretizes the universality of equality in all rights both in its language and in specific provisions.

In light of the above, and specifically with reference to Article 17 of the UDHR, the deprivation of land as happened in Zimbabwe’s colonial conquest was an injustice under international law. Such injustice requires substantive correction in the transition to a more just order. Conceptualizations of equality as merely formal equality that is blind to de facto inequalities and historical context serve to render justice and especially human rights meaningless. Justice that is rooted in substantive equality requires the redress of past wrongs to enable equality of opportunity. This is perhaps best articulated in John Rawls’ ‘principle of difference,’ resting as it does on the premise that whatever political equality there may be in a society, injustice may still persist in the form of social and economic inequality. Formal guarantees of political voice and civil rights, while important, are certain to be insufficient for the poor and marginalized.

These arguments demonstrate the need for justice on a group level. Conflict along group lines is arguably one of the most challenging issues for peace. Frances Stewart, among others, has argued that socioeconomic inequalities are a significant cause of conflict and conceptualizes group inequality in terms of horizontal

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18 Blake and Risse, supra n 16 at 167.
19 Siegel, supra n 9.
20 Miller, supra n 3.
21 Article 17 states, ‘(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.’
inequalities. Transitional justice processes are implicated when difference is the result of intergroup discrimination and not of ongoing hierarchical inequalities that are an inevitable component within any society. As Christine Bell points out, transition and postconflict, although related, are not the same. This is clarified further by the definition of transitional justice suggested by former UN Secretary-General Kofi Annan:

The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.

Transitional justice’s focus is thus on past abuses and not necessarily on the entirety of activities in the postconflict period.

Three factors appear to contribute to the marginalization of social and economic injustices in transition processes: (1) a preoccupation with the cessation of violence and the transfer of power; (2) the subservience of social and economic rights in the dominant human rights discourse and practice; and (3) the dominance of the neoliberal free market global paradigm, which is perceived as the only viable path to development and human well-being. The negotiation of peace is a delicate exercise, and both conflict resolution and transitional justice scholarship have been preoccupied with the very real and serious dilemmas of balancing justice, political expediency and cessation of violence. As Roy Liklider argues, conflict management privileges cessation of hostilities, without which, after all, peace and human rights are not practicable. Unfortunately, transitional arrangements that lock out corrective measures can come back to haunt postconflict peace initiatives.

Human Rights and Redistributive Justice

Justice in economic and social issues can and should be addressed through the lens of human rights, particularly in postrepressive states, but it first requires a shift in the field of human rights itself. Miller argues that transitional justice discourse and practice have imported the biases of the parent field, human rights. Scholars have made the case for poverty as disempowerment, and have demonstrated how human rights concepts can provide a paradigm for ending that marginalization. The UDHR and the African Charter on Human and Peoples’ Rights similarly provide for the holistic applicability of rights. Yet, as Shirin Rai writes, ‘The voices

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24 Bell, supra n 7.
26 Miller, supra n 3; Laplante, supra n 14.
28 Miller, supra n 3.
of the marginalized and the deprived continue to be ignored within the context of economic and social inequalities. The practice of human rights has remained overwhelmingly civil and political, even within the context of the African Charter. Part of the cause lies in the triumph of human rights in the post-Cold War period taking place at the same time as the ascendency of the twin doctrines of democracy and neoliberal capitalism. Neoliberal capitalism has led to significant economic development for some, but there is well-documented evidence of linked increased inequality and misery among the world’s poorest.

In addition to the ascendency of neoliberal capitalism, a philosophical discourse has emerged that distracts theorists and practitioners from paying adequate attention to socioeconomic issues. Michael Ignatieff, for example, while presenting a spirited defense of human rights, argues for a ‘minimalist’ approach that focuses on civil and political rights, noting that

we could do more than we do to stop unmerited suffering and gross physical cruelty. That I take to be the elemental priority of all human rights activism: to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of ordinary people. My minimalism is not strategic at all. It is the most we can hope for.

This propagation and maintenance of human rights discourse and practice that are cleansed of redistributive justice calls into account what Tony Evans refers to as the politics of human rights truths, which begs the question of whose truths and whose interests the propagation of particular forms of human rights discourse advance. Miller refers to this limited approach to human rights as a ‘constructed invisibility of economic questions.’

Social democratic human rights scholars have argued for human rights to be contextualized so that they take cognizance of the realities of the contemporary world. Neil Stammers notes that a socially constructed concept like human

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34 Ignatieff, supra n 31 at 173.
36 Miller, supra n 3 at 268.
rights cannot and should not be understood outside of context and power.38 Economic and social asymmetries need to be interrogated, in particular, in the context of societies transitioning from repression, because advocating rights in the here and now misses a key element of marginalization and denial of rights. The social democratic idea is an excellent start, but it needs to be pushed further. The decontextualization of rights is also critiqued by Wendy Brown, who makes the point,

The promise of rights to enable the individual’s capacity to choose what one wishes to live and die for does not address the historical, political, and economic constraints in which this choice occurs – agency is defined as choice within these constraints and thus largely codifies these constraints.39

Analysis of the Zimbabwean experience illustrates that entrenched stratifications do not disappear with the transfer of political power. Historically structured inequalities such as those that emerge from colonial situations have been exacerbated by the operations of globalization. The new configurations of power in the globalizing world complicate old divisions of North and South, developed and developing worlds and core and periphery. International economic institutions, such as the World Trade Organization, the International Monetary Fund (IMF) and the World Bank, demand compliance with their policies if new nations are to participate in global trade or receive secure funding. As a result, negotiated settlements of conflicts now have as much to do with the outside world as they do with internal factors. External pressure tends toward the maintenance of order and the creation of conditions conducive to international investment and trade, not necessarily to socioeconomic equity. This power dynamic and its impact on states undergoing transition have been absent from the transitional justice discourse.40 Richard Rorty’s proclamation of rights as a world fact has to be tempered with recognition of the lag in attention to economic rights and the institutions that substantially determine them.41

The Zimbabwe Paradox: Political Popularity and State Failure

Zimbabwe is in crisis on every conceivable front, yet Mugabe has enjoyed significant popularity and support in the region for many years.42 At the Earth Summit in Johannesburg in 2002, Colin Powell and Tony Blair were booed and jeered while Mugabe ‘was greeted by a tumultuous standing ovation.’43 In a poll by

38 Ibid.
39 Brown, supra n 31 at 455.
40 Miller, supra n 3.
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What could explain Mugabe’s standing given that he has been accused of violating human rights on a mass scale and that his government has clearly presided over economic disaster in the country? I argue that the answer lies substantially in the unaddressed socioeconomic grievances of the colonial period.

The colonization of Zimbabwe led to the dispossession of indigenous Africans, particularly of their land, and the construction of racial inequality through force. In addition to being the spiritual grounding for the identity of Africans, land was the core of economic well-being in what is an agriculture-based society. Inequality was institutionalized through limited access to education, healthcare and other social services for Africans. In addition, cultural and psychological dehumanization accompanied the colonizers’ denigration of all things African and their attempt to replace African culture with European civilization.

The dismantling of colonization proved to be a tough and bloody business. Help for fighting the racial colony did not come from western nations – the self-proclaimed champions of democracy and human rights – which chose to side with white ‘kith and kin.’ It was the Soviet Union, China and the Eastern Bloc, with their ideology of communism, that provided tangible support for liberation. The colonial Ian Smith government capitalized on the West’s fear of communism and effectively blocked material support for what were caricatured as ‘communist terrorists.’ The Africans’ struggle for their rights, both political and economic, was lost in the convolutions of Cold War politics and the colonial government’s construction of racial oppression as the defense of western Christian civilization. International human rights advocacy was muted and, in that, it missed an opportunity to become more meaningful for the oppressed majority.

The repressive colonial state structure was well established by the time of independence in 1980, when the erstwhile liberation movements inherited the state. In the immediate aftermath of political transition, maintenance of order was promoted, particularly so that the economy would not be destabilized. There was active encouragement, support and indeed pressure from the West not to tamper with the economic base of the country. The fear of destabilization by elements

outside the country was real, as sabotage of the air force at Thornhill Air Base proved. South Africa was still the citadel of white power, and it was actively hostile to the new African state. The new Zimbabwean government calculated that the desire of the majority for economic redistribution was less threatening than the backlash from those who still held military and economic power. Commercial agriculture was overwhelmingly in the hands of white farmers and Britain led the West’s effort to protect them.

Zimbabwe’s transitional arrangements were disquieting. At independence in 1980, approximately 6,000 white commercial farmers, comprising less than 1 percent of the country’s population, owned 45 percent of the prime agricultural land. Whites not only had the best agroecological areas, but also benefited from massive state support interventions in the farming economy in the form of subsidies and loans, as well as extensive communication infrastructure, including railways, roads and telecommunications. The racial hierarchy applied to every economic and social sector in the country, including access to education and healthcare. Leading up to the negotiations for ending the liberation war, the former colonial master, Britain, mooted the formation of an Anglo-American Development Fund to buy out white commercial farms as an incentive for liberation movements to come to the negotiation table. The British initially offered to contribute £75 million to the fund, and the US hinted it would contribute an additional $200 million. Before the negotiations were concluded, however, Britain insisted on guarantees for existing white property rights for 10 years in exchange for underwriting half of the costs of resettlement. Under Section 16 of the new Zimbabwe constitution, land could only change hands on a ‘willing seller, willing buyer’ basis. The only expropriation allowed would be for public and resettlement purposes, in which case white farmers would have to be paid out in foreign currency. Under pressure from neighboring ‘frontline states,’ which were feeling the brunt of the war, the Zimbabwe African National Union (ZANU) and the Zimbabwe African People’s Union (ZAPU) agreed to a 10-year freeze on land. In time, Britain renounced any responsibility for the land issue.

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54 Masters, supra n 52; Martin Plaut, ‘US Backed Zimbabwe Land Reform,’ *BBC News*, 22 August 2007.
55 The constitution of Zimbabwe in 1980 was published as a Schedule to the Zimbabwe Constitution Order 1979 (S.I. 1979/1600 of the United Kingdom).
56 Claire Short, letter to Zimbabwe’s minister of lands, 5 November 1997 (copy in author’s possession).
The provisions effectively ruled out an effective redistribution of land, given the number of issues demanding the attention of the new government. Overcrowding was a major problem in rural areas, as was mass displacement resulting from people fleeing war zones. Food production was skewed, with ‘90 per cent of the country’s marketed food requirements being produced by white farmers’ due to the land inequities. These issues were part of the legacy of large-scale social and economic inequalities more generally.\textsuperscript{57} In the interest of maintaining order and continuity, the new government instituted a policy of reconciliation and racial harmony, choosing not to pursue a policy of redistribution that could threaten this policy. It thereby maintained the inequalities. This earned Mugabe and the Zimbabwe African National Union-Patriotic Front (ZANU-PF) government accolades from the international community,\textsuperscript{58} but at the cost that the serious underlying structural inequalities and the brutalization of the Zimbabwean people were ignored. Western pressure to maintain order and ignore colonial-era and liberation war abuses was additionally effective because the new political elite was unenthusiastic about transforming the state into a truly democratic and egalitarian enterprise. It soon assumed the form of a new power class, maintaining colonial structures, complete with repressive legislative instruments such as the notorious Emergency Powers Act. As Brian Kagoro notes,

These nationalist movements paid scant attention to issues of individual and civic rights in fashioning their vision of a liberated Zimbabwe. They were preoccupied with the transfer of power from white to black hands rather than with the conditions in which such power should be exercised.\textsuperscript{59}

Provisions in the new constitution ensured African participation in the polity, as well as entrenched a bill of rights. No attempt was made, however, to bring to account those who had committed abuses as part of the colonial machinery or in the war. Instead, amnesty was granted to all sides, both by the British government, which briefly resumed control of the country, and by the new government.\textsuperscript{60} The amnesties were politically expedient, but they also arguably were precursors to the culture of impunity that enabled the \textit{Gukurahundi} massacres in Matabeleland soon after independence, as well as innumerable acts of state violence thereafter.\textsuperscript{61} An opportunity was lost to come to terms with past abuses. It may be too late to revisit these specific abuses (although calls for such a move have been renewed

\begin{itemize}
\item \textsuperscript{57} Lebert, supra n 53.
\item \textsuperscript{58} Mamdani, supra n 5. The party was renamed ZANU-PF in 1988.
\item \textsuperscript{60} The Lancaster House Agreement provided for amnesty for participants in the war and Lord Soames, the British governor for the transitional period, concretized this through legal fiat. Hansard (Parliament of Great Britain), Rhodesia: Lancaster House Final Agreement, HL Deb (18 December 1979), vol. 403, cc1571–1576; Rhodesia Amnesty Act, Ordinance 3/1979, and Amnesty (General Pardon), Ordinance 12/1980.
\item \textsuperscript{61} In 1982, the government deployed the army to quell dissent from opposition party ZAPU’s former combatants in Matabeleland. In the process, thousands of civilians were massacred. Catholic Commission for Justice and Peace, supra n 50.
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with the changing political context in Zimbabwe), but it is not too late to address structural inequalities and their continued consequences.

No doubt, independence brought some material gains for the masses, particularly in the sectors of health and education, but the economic benefits of independence have been overwhelmingly monopolized by ZANU-PF through a vast network of cronyism and plunder. Moreover, those limited gains that accrued to the masses eroded rapidly with the implementation of IMF- and World Bank-mandated structural adjustment programs and the government’s accession to neoliberal capitalism. In time, fissures appeared within the black population as a disjuncture between the interests of the top classes and the masses materialized. The emerging middle class, composed of an educated and entrepreneurial population, soon saw itself progressively squeezed out as an increasingly greedy government, indistinguishable from the ruling party, demanded more and more resources out of the economy while at the same time becoming more intolerant of criticism.

The ruling elite, meanwhile, experienced rapid amnesia regarding the ideals for which the liberation war had been fought, even though hollow rhetoric was maintained in favor of human rights. Far from popular democracy, a discourse of entitlement based on participation in the liberation war was constructed and came to be the basis of legitimacy for holding political office. Liberation participation was reinterpreted by ZANU-PF to define those who were in the upper hierarchy of the liberation movements and their relatives. War veterans had to hold Mugabe to ransom before they could get a cut of the economic pie. As for the millions of villagers that gave support to the liberation effort and were on the receiving end of the wrath of the Rhodesian army (and sometimes the liberation forces), they lost out and acquired little voice in the new political arena. Land redistribution – the most basic expectation and need of the vast majority – was left unaddressed until it became politically expedient for the government to capitalize on resentment of colonial dispossession when the popularity of the ruling party was sagging. What redistribution there was benefited the governing elite and an emerging bourgeoisie that did not have farming capabilities. It did little to relieve the congestion in rural areas, where the vast majority of the African population remained powerless, vulnerable and dependent on government subsidies in times

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63 This is the thesis of Patrick Bond and Masimba Manyanya, Zimbabwe’s Plunge: Exhausted Nationalism, Neoliberalism and the Search for Social Justice (London: Merlin Press, 2002).
of drought.\textsuperscript{67} In fact, when peasants tried to effect land occupations in 1998, the government evicted them as ‘squatters.’\textsuperscript{68} The government only endorsed and then instigated ‘fast-track’ land redistribution following the political crisis of 2000.\textsuperscript{69} With continuing poverty in rural areas, the government was able to use food aid as a tool for manipulating support, giving or allowing food aid to its supporters and denying it to those perceived as opposition supporters.\textsuperscript{70} Long-standing economic disempowerment created a vulnerability that the government was able to manipulate for political ends.

It would be misleading to imply that internal dynamics were the sole cause of the Zimbabwean collapse. The failure of redistributive justice and the ineptitude and greed of the government were compounded by the dictates of global neoliberal capitalism and its powerful institutions. As in many developing countries, the IMF and the World Bank imposed what were, in retrospect, disastrous structural adjustment programs.\textsuperscript{71} The self-contradictory nature of neoliberal capitalism, which depends on the proper functioning of the state to provide order while demanding a hands-off-the-economy approach, served to weaken the state at a time when orderly and equitable redistribution of resources was increasingly needed. As Bell argues in the case of Northern Ireland, a serious contradiction lies in prescribing a limitation on government spending while expecting the construction of a functional democratic state that requires the setting up of the necessary institutions.\textsuperscript{72} The negative effects of economic adjustment programs have been far reaching, as evidenced in several research studies.\textsuperscript{73} Eventually, the combination of elite greed, poor governance and government raids on the treasury, together with neoliberal free market dysfunctions, led to the bankruptcy of the Zimbabwean state and the increased impoverishment of the masses. Mugabe’s popularity plummeted and, to regain it, he rediscovered the evils of colonization and capitalized politically on the emotive land issue, adopting the extreme solution of land invasions, which by that point easily struck a chord with the population. Had land redistribution been addressed as part of the transitional process, Mugabe arguably would not


\textsuperscript{68} Mamdani, supra n 5; Sachikonye, supra n 67.

\textsuperscript{69} Sachikonye, supra n 67.

\textsuperscript{70} Human Rights Watch, \textit{Not Eligible: The Politicization of Food in Zimbabwe} (October 2003).


\textsuperscript{73} See, for example, Lloyd M. Sachikonye, \textit{Restructuring or De-Industrializing?: Zimbabwe’s Textile and Metal Industries under Structural Adjustment} (Uppsala: Nordic Africa Institute, 1999); Rudo Gaidzanwa, \textit{Voting with Their Feet: Migrant Zimbabwean Nurses and Doctors in the Era of Structural Adjustment} (Uppsala: Nordic Africa Institute, 1999).
have been able to utilize the resentment surrounding the issue as a basis for the violation of civil and political rights in the 1990s and 2000s in the way that he did. While the land issue was utilized as a political tool for regaining electoral popularity, it was poorly planned, benefited cronies and party supporters and caused serious destabilization. The general population did not benefit and, in fact, a huge population of farm workers was forced into homelessness and penury. When the farm invasions did not garner ZANU-PF the acquiescence it desired, political intolerance for criticism increased. The middle class, which was internationally mobile, left for South Africa or overseas. The working class soon followed, creating a massive economic refugee crisis in neighboring South Africa and Botswana. It has been argued that political elites either accept electoral loss or, if they deem the costs of short-circuiting democracy less costly, impose their will by force. Mugabe and ZANU-PF chose the latter route. Twenty-plus years later, the socioeconomic rights and needs that were left unaddressed postindependence came back to haunt the country, as acknowledged in the Abuja Agreement. ZANU-PF now claimed championship of redistributive justice, offering an untenable choice to the population: either support Mugabe, who was proclaiming the desired land reform but was now politically unattractive, or oppose him and appear to accede to a continuation of neocolonization and the absence of redistribution.

All this was taking place without critique or suggestion of an alternative paradigm for a more just and equitable vision. The international community focused primarily on the civil and political rights violations in the country, paying little attention to the importance of inherited economic inequalities. There can be no question that the leadership had an obligation to deliver on the promises of liberation, but vocal and active human rights activism locally and internationally would have helped. The international human rights community, absent during the colonial era, was equally absent during the struggle for liberation and remained so in the immediate aftermath of independence. When the economic meltdown began and ZANU-PF started fighting for its political survival, what human rights voices there were maintained their traditional focus on civil and political violations, which were very real, but offered little on the huge social and economic problems besetting the ordinary Zimbabwean.

No wonder that for the ordinary person, human rights and democracy talk rang hollow for the longest time and support for a president who claimed to champion the cause of anticolonialism proved difficult to dissipate. This championing was reinforced by the government’s perceived role as the savior in times of drought.

74 Lloyd M. Sachikonye, The Situation of Commercial Farm Workers after Land Reform in Zimbabwe (Harare: Farm Community Trust Zimbabwe, 2003).
78 See paras. 2(a), (b) and (e) of the Abuja Agreement.
as it maintained the role of food relief distributor in rural areas. Criticisms and condemnations from the West and Mugabe’s defiant anti-West rhetoric only served to increase his popularity in Africa as a hero of antiimperialism, despite the disintegration at home. Whatever Mugabe’s failings, his mobilization against the West for the exclusion of socioeconomic rights from the global agenda has resonated both at home and elsewhere on the African continent. As Mugabe has noted,

So we are not yet really free in the true sense of the word . . . We appeal all the time to Europe to assist us, and assist us in developing ourselves so that we can become equal economically with them. And Europe is talking down to us. The first subjects they raise are not subjects that have to do with economic assistance. Good governance, human rights, the rule of law – that’s what they put first. Let us discuss this first they say. But the people want economic cooperation and all [the Europeans] want to talk about are human rights and so on.79

Historically structured poverty was and is an integral part of the problem in Zimbabwe. The transgressions of Mugabe simply drowned out the legitimacy of the real and serious socioeconomic rights issues that he, late in the day, has claimed to champion.

Human Rights, Transition and the Postcolonial State

The implosion of Zimbabwe was astounding and tragic, both in its speed and in the magnitude of the suffering to which the vast majority was driven. This raises some fundamental questions about how we handle transitions from oppressive rule. When the context within which human rights are to be protected is already riddled with structural inequality, no amount of rights protections can bring about a just society. Zimbabwe had a declaration of rights in its 1980 constitution. The constitution provided for democratic governance, especially guaranteeing civil and political rights, but it did not address socioeconomic inequalities. In fact, the constitution did the opposite by protecting whites’ property rights.

The human rights premise that posits the ‘immorality of politically induced suffering’ has to demand more than liberal civil and political minimalism if it is to have meaning.80 Ignatieff proposes political rights as the enabling condition for the attainment of social and economic security.81 But, the political kingdom is not an automatic precursor to the economic ideal. Democratic institutions were in place in Zimbabwe and they did not lead to equality. As in other repressive contexts, entrenched disadvantages and systemic barriers precluded the possibility of meaningful and equal participation in the economic, social and political spheres. The question of what alternatives exist for postcolonial societies is a critical one.82 Human rights discourse and practice could have played a greater role in envisioning

80 Brown, supra n 31 at 453.
81 Ignatieff, supra n 31.
a more equitable future, but they failed to do so because they do not have an equal emphasis on social and economic rights.

In Zimbabwe, the human rights discourse had already lost the moral high ground through its notable absence during the oppressive colonization period. Mugabe simply assumed unchallenged the mantra of the bulwark against the ‘imperialist neocolonizing west,’ even though in reality his policies have made the country vulnerable to external pressure.83 Disgruntlement over socioeconomic injustices muted enthusiasm for human rights that focus primarily on civil and political rights. Craig Richardson concludes that Zimbabwe ‘provides a compelling case study for the perils of ignoring the rule of law and property rights when enacting (often well-intentioned) land reforms.’84 I would argue, instead, that Zimbabwe is a classic case study for the perils of the failure of transitional justice to address deep-rooted inequities that constitute the powder keg of resentment. The volatile events in Zimbabwe are historically contingent and structurally embedded in colonial rule, the transition away from colonial rule, international intervention and the failure to correct preexisting inequities.85

New Directions for Socioeconomic Rights

Postcolonial theorists would no doubt critique the claim that a universalizing discourse such as human rights can hope to be the solution to global imperialist capitalism. While the doctrine of relocalization is attractive, its practical utility is limited. With nothing purely local possible any longer, a universal doctrine that counters equally universalizing marginalization is needed.86 Human rights, with their theoretical prioritization of the person rather than the economy, offer one possibility. David Marshall Smith posits the discourse of human rights as such an alternative to the generally unchallenged paradigm of neoliberal capitalism.87 That takes us back to the need to critique human rights and transitional justice on the premise of whose truths and whose interests they further.

I agree with Paul Williams and Ian Taylor that, contrary to neoliberal orthodoxy, which insists on the separation of economics from politics, economic neoliberalism is itself deeply political.88 As Brown notes, liberal philosophizing of Ignatieff’s sort is not simply an ontological account of the ingredients of human well-being, ‘but rather a political-economic account of what markets need to thrive.’89 That is not

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89 Brown, supra n 31 at 457.
just about the pragmatics of human rights; it is also about the advancement of a particular truth that serves specific interests. Minimalist, neoliberal interpretations of human rights urge the oppressed and the poor to fight their governments over freedom of movement or speech but not to demand change of the prevailing economic arrangements that impoverish them.

If we accept that repressive political arrangements cannot be disassociated from the detrimental social and economic impacts that they institutionalize for the marginalized, then transitional experiences must be reconceptualized. Transitions mean that governments change and responsibility for violations becomes a more complex phenomenon than simply government versus individual. New governments that take over from offending regimes cannot be viewed in the binary of violating governments versus vulnerable citizens. It is the new governments that bear the responsibility for dismantling inherited marginalizing structures. The human rights field needs, therefore, to move beyond the categorical offending state–victimized individual paradigm and present a more nuanced approach that takes cognizance of other factors that impinge on social and economic rights.

Another aspect of the dominant liberal argument that requires change is that human rights should focus on core individual civil-political rights because collective group rights are either legally meaningless or politically misguided. In many parts of Africa, particularly in areas that ascribe to collectivist philosophies such as ubuntu, this perspective does not sit well. As Claude Ake points out, 'Liberal democracy assumes individualism, but there is little individualism in Africa.' In any event, the hostility to anything group oriented flies in the face of more than cultural orientation, as the exploitation and marginalization of Zimbabwe’s Africans was based on membership to a particular group, as was the privileging of whites.

On the path to creating a just society, it is necessary to recognize and name the transition phase to enable the necessary critical confrontation with inherited stratified systems. Transformations can only take place when the nature and impacts of the oppressive state are fully comprehended. Confrontation entails identifying the dysfunctions and grappling with their correction before moving to the assumption of the ‘normal time’ operation of human rights. An unjust social order, inequitable economic structures and the institutions that maintain them require transformation, not adoption and preservation or even simple reform. The transition phase creates space for redistribution during which the main objective is not the protection of privilege but the correction of injustice as groundwork for the construction of a more just order. As truth commissions and criminal tribunals exist, so should commissions on material deprivations, reparations and the

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91 African humanist philosophy that emphasizes the notions of common humanity and an individual’s relations to others. It is literally translated as ‘a person is a person through other persons.’
renegotiation of socioeconomic power relations. As Rai has argued, ‘Equality of opportunity and access to resources requires at times that individuals and groups be treated unequally where they are disadvantaged due to circumstances beyond their control.’\(^4\) Redistributive justice demands the contextualization of rights as the way to emancipation from the oppressive state.\(^5\)

In this, the state has a key transformational role. So far in transitional contexts, human rights and transitional justice advocates have confined themselves to pointing legalistically to breaches of governmental obligations and the criminal activities of perpetrators. The state, however, may be the only practical mechanism for ensuring people's rights, especially in light of the power of corporations and international institutions. On this, I part ways with Stammers and his critique of the social democratic argument.\(^6\) Stammers rightly argues that the social democratic perspective fails to deal with the very real issue of power and contends that it fails to escape the state-boundedness of liberalism. Power is indeed a key aspect that cannot be ignored, but having offered this critique, Stammers fails to provide any alternative means for the poor to confront power. One of his dilemmas is that having cast the state inexorably in the role of enemy, he precludes the state from playing an emancipatory role. But, the state is a complex player. Although the state can violate and be used to violate rights, it remains the major mechanism through which poorer nations can act in response to the power of the market. The role of the state in socioeconomic issues in transition therefore needs nuanced reexamination.

South Africa went some way in this respect. The South African bill of rights makes clear provision for socioeconomic rights, including labor relations and access to food, water and housing.\(^7\) The rights became justiciable. In at least two cases, courts in South Africa have ruled that socioeconomic rights are enforceable by law.\(^8\) The Zimbabwean bill of rights has not sought to make such provision, even after the lapse of the restrictive 10-year provisions in the Lancaster House constitution, nor have the courts attempted to enforce socioeconomic rights. As John Cantius Mubangizi’s comparative analysis shows, other African nations could learn at least this much from the South African example.\(^9\)

A shift is needed in the focus of transitional processes from almost exclusive attention on victims to addressing the privileged. So often, efforts have revolved around victims abandoning their anger and resentment, leaving the privileged largely untouched. The pressure always appears to be for forgiveness. In the case of

\(^4\) Rai, supra n 30 at 67.
\(^6\) Stammers, supra n 37.
\(^8\) *Government of the Republic of South Africa and Others v. Grootboom and Others*, (11) BCLR 1169 (CC) (2000); *Minister of Health and Others v. Treatment Action Campaign and Others*, Case CCT 8/02 (5 July 2002). The bill of rights does recognize reasonable limitations in the fulfillment of these rights, including the progressive realization of the rights and the issue of available resources.
Zimbabwe, the focus has been on reconciliation, which has effectively translated into leaving the privileged white class intact. Transitional justice thinking and practice need to address privileged communities beyond the token criminal trials of select leaders. Already there are calls for forgiveness of ZANU-PF for the heinous crimes it has committed, but little has been said about correcting its contribution to existing economic inequalities. To fail to address these at this juncture, and with the current window of opportunity in Zimbabwe, would be just as erroneous as the original failures of transitional justice at the time of liberation.

The challenges of redistribution are many and serious. In arguing for redistribution, I am going beyond a call for reparations, important though that is. Reparations represent a payoff to victims of violations. In cases where economic exploitation has been systemic and institutionalized, individual reparations are inadequate. In fact, reparations, by individuating compensation, may impede systemic change by surrogating redistribution. Systemic arrangements of inequality need reconstituting so that the exploitation can come to an end. Some aspects of redistribution are easier to point to than others – for example, land and mining rights, housing and provision of services – and tackling redistribution is a huge undertaking. Again, at this point in time, the one institution most capable of taking on this task is the state. The exercise of power, especially by ordinary citizens, is practicable through collectivities, such as civil society organizations, that can leverage the power of the state. The investment priorities of private capital focus on the development of gated communities rather than of townships, and that is hard to change without government intervention. As many analysts have pointed out, the operations of neocapitalism do not favor redistribution that benefits the poor. In addition, the state does not and need not stand alone in the endeavor for economic and social justice or redistributive justice. Reflections and studies by scholars of the South African transition have pointed to other responsibility bearers and potential implementers of redistributive justice, including corporations and urban administrations.

Resistance to political human rights that take account of power and interests and make human rights relevant to people’s lived realities can only stultify the concept and disable it from imagining truly just futures. Part of the struggle has to come from within the human rights field. Instead of resisting state-initiated structural change and insisting on market-based or market-friendly growth, the international human rights community should facilitate change and provide the

100 Miller, supra n 3.
101 See Laplante’s arguments on the inadequacies of the neoliberal model and the increasing recognition of the need for redistribution. Laplante, supra n 14.
moral basis for development. Human rights can give ethical content to such
movements by focusing on the things that really make a difference to the life of
the ordinary person. In the African context, there is a starting point, as the African
Charter, in its Preamble, provides that ‘the satisfaction of economic, social and
cultural rights is a guarantee for the enjoyment of civil and political rights.’ The
Charter thus offers legal grounding for arguing economic and social rights, and
efforts have been made to actualize this.

In addition, not enough empirical research has been done in transitional justice
on victims’ perceptions of justice. One of the few is a study of Czech reparations
to victims of human rights abuses by Roman David and Susanne Choi Yuk-ping.
One of its significant findings is that satisfaction with financial compensation was
the most powerful predictor of positive outcomes of sociopolitical redress. If
we know little else about the transition process, we can learn from this research
that money matters in the perceptions people have of justice and democratic
institutions. Logic points to an even more powerful relationship when grievances
include previous socioeconomic injustices.

Conclusion

When political and social structures generate and institutionalize privilege and
oppression of groups, transitions therefrom and attempts to create more just dis-
pensations cannot be constructed in a vacuum. Transitional societies have in their
baggage the consequences of previous arrangements. In Zimbabwe, the postcolo-
nial era has been characterized by the failure of the imagined equitable society.
That strikes at the very heart of the struggle for transformation to liberation and
the yearning for just peace.

The current atmosphere in the country is one of uncertainty over the newly in-
stated Government of National Unity. The radical political transformation needed
for a comprehensive transitional justice program has not occurred. Predatory
ZANU-PF leaders are still in place and are unlikely to submit to accountability for
their misdeeds or to accede to the dismantling of their economic empires. This
will stand in the way of injustices inherited from the colonial era being addressed,
given that ZANU-PF added its own abuses to preexisting problems. It may
be too late to revisit the civil and political oppression of the colonial days and
abuses during the liberation war, but the economic inequalities persist and must
be corrected. Mugabe’s land redistribution policy has been grossly unfair to the

104 Hevina S. Dashwood, ‘Inequality, Leadership, and the Crisis in Zimbabwe,’ International Journal
105 Chidi Anselm Odinkalu, ‘Analysis of Paralysis or Paralysis by Analysis? Implementing Economic,
Social, and Cultural Rights under the African Charter on Human and Peoples’ Rights,’ Human
106 Roman David and Susanne Choi Yuk-ping, ‘Victims on Transitional Justice: Lessons from the
Reparation of Human Rights Abuses in the Czech Republic,’ Human Rights Quarterly 27(4)
Raftopoulos and Tyrone Savage (Cape Town: Institute for Justice and Reconciliation, 1994).
majority African population, driven as it is by violence, corruption and favoritism. Contrary to Mahmood Mamdani’s hope, ‘fast-track’ land invasions did not resolve colonial inequities.108 This has to be revisited so that land is redistributed on the basis of equity (return of land to communities that were displaced) and need. A transparent and independent audit of who got what in the ZANU-PF land allocations must be conducted.109 The extensive loss of property that occurred during both the Gukurahundi massacres and Operation Murambasvina also cannot be ignored.110 The Gukurahundi massacres and more recent political violence need to be addressed, too, but with the opposition Movement for Democratic Change’s (MDC) calls for forgiveness, another cycle of enforced amnesia and accompanying impunity may well be on its way.111 Unless a rigorous timetable for radical political transformation is put in place, it may become increasingly difficult to differentiate the MDC from ZANU-PF.

Human rights principles may provide some of the basis for a transitional justice process in the country. Without simultaneously addressing socioeconomic rights and helping create meaningful equality of participation, however, they could serve merely to protect the privileged at the expense of the majority. For the privileged, it might be profitable to pay heed to the rights of others, if for no other reason than the increasingly dangerous prospect of a powder keg of poverty-driven social and political instability. As Christopher Reenock and colleagues have argued, ‘The intense concentration of society’s resources in the hands of a narrow elite [is] an important cause of democracy’s failure.’112 The absence of redistribution has been and will continue to be a contributory factor in the instability in Zimbabwe.

A combination of policy and practice shifts related to transitional justice are imperative. Human rights philosophizing and discourse have to adopt a more holistic approach that addresses both civil/political and socioeconomic rights, the internationally dominant neoliberal model has to be tempered with social justice considerations and transitional justice must confront head-on the need to correct socioeconomic injustices. As Peter J. Pham concludes, ‘Justice in the future cannot be achieved unless the injustice of the past . . . is addressed.’113

109 Sachikonye, supra n 74.
112 Reenock, Bernhard and Sobek, supra n 77 at 678.