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To cite this article: Matthew Evans (2016) Structural Violence, Socioeconomic Rights, and Transformative Justice, Journal of Human Rights, 15:1, 1-20, DOI: 10.1080/14754835.2015.1032223

To link to this article: http://dx.doi.org/10.1080/14754835.2015.1032223

Accepted author version posted online: 14 Apr 2015.
Published online: 14 Apr 2015.

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Structural Violence, Socioeconomic Rights, and Transformative Justice

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This article provides a critique of the scope of existing models of transitional justice, which focus on legal and quasi-legal remedies for a narrow set of civil and political rights violations. The article highlights the significance of structural violence in producing and reproducing violations of human rights, particularly of socioeconomic rights. There is a need to utilize a different toolkit and a different understanding of human rights from that typically employed in transitional justice in order to remedy structural violations of human rights. Focusing on a case study of land inequalities in postapartheid South Africa, the potential for transformative (rather than transitional) justice in postconflict and postauthoritarian contexts is discussed. The article outlines a definition of transformative justice, relevant actors, and relationships for such an agenda and discusses the kinds of strategies that promise a more transformative approach.

Introduction

In exploring the relationships between structural violence, socioeconomic rights, and transformative justice, this article takes a human rights perspective. Particular attention is paid in this article to the interaction between structural violence, landlessness, and broader human rights issues in postapartheid South Africa and to the potential for advancing transformative justice within postapartheid South Africa. This provides a useful empirical case study in which the possible application of transformative justice can be explored. This is an appropriate case study because, since the end of apartheid in 1994, a number of transitional justice mechanisms have been employed in South Africa. Principally these include the Truth and Reconciliation Commission (TRC) as well as both an amnesty process and some recommended prosecutions for apartheid-era political crimes (International Center for Transitional Justice n.d.a). The South African model of transitional justice—particularly the TRC—has been held up as a successful and praiseworthy example and has been used as the basis for similar models in other postconflict and postauthoritarian contexts (Tarrow 2005: 183–192). However, broadening the focus from truth commissions and trials to issues of societal transformation provides a lens through which the South African model may be seen as less successful (N. C. Gibson 2006: 1–28). While authoritarian rule
in South Africa ended long enough ago for many aspects of transition to democracy to take place, the effects of apartheid are still clear to see with wider societal transformation yet to occur. South Africa therefore occupies a space in which the effects of authoritarian rule as well as the effects of post-transition policies can be explored in relation to their influence on contemporary politics. Discussion of the case study then informs the analysis put forward in the final section and the conclusion of the article.

Building a critique of existing models of transitional justice, this article first explores the relationship between structural violence and transitional justice. Shortcomings of existing models of transitional justice are highlighted. Next, the article outlines a definition of transformative justice and contrasts the approach of transitional justice to structural issues to the approach of transformative justice. This takes place with specific reference to land and related socioeconomic rights. Third, the particular focus upon post-apartheid South Africa is introduced. Land inequalities and responses to these are discussed in relation to the potential for transformative justice as an illustrative case study of how the concept might be applied. Finally, a discussion of relevant actors and relationships for transformative justice is provided and conclusions are drawn regarding gaps in the existing literature and a need for practice-oriented research to explore the kinds of strategies that promise a more transformative approach.

Three key debates are highlighted in this article. There is a question over how transitional justice mechanisms can better take account of structural, socioeconomic issues and whether these mechanisms are appropriate or adequate for dealing with these issues (Mani 2008). A second debate surrounding how to resolve potentially competing rights claims of the landless and landowners is also discussed (James 2007). Thirdly, there is a broader debate over what strategies and tools are appropriate and likely to be effective in both addressing structural violence in general and addressing inequalities in land specifically which is highlighted in the article (Duthie 2008).

The article concludes that existing models of transitional justice are not adequate for addressing structural violence and land inequalities or for ensuring the realization of socioeconomic rights. Transformative justice may address these shortcomings. The case study of landlessness and related socioeconomic rights issues in South Africa is put forward in order to explore this potential. It is proposed that for transformative justice to be achieved, the involvement of a diverse range of actors is required. An exploration of the strategies of, and relationships between, social movements and trade unions as well as nongovernmental organizations (NGOs) in relation to transformative justice in general and land inequalities in particular is proposed.

Structural Violence and Shortcomings of Transitional Justice

The concept of structural violence provides a means of expressing the category of human rights violations that are produced and reproduced by landlessness and land inequalities. This section of the article outlines the shortcomings of existing models of transitional justice in addressing these. Following this, transformative justice is outlined as an approach that puts forward an understanding of the links between human rights violations within this category; (Gready et al. 2010).

Structural Violence

Structural violence refers to a condition in which violence occurs without being precipitated by the direct actions of specific individuals against other specific individuals. It may
be defined, in contrast to direct or personal violence, as a condition akin to (perhaps even synonymous with) social injustice (Galtung 1969: 171). It may be conceived of as a form of violence because “violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations” (Galtung 1969: 168; emphasis removed). Structural violence has also been explained as being social arrangements that are “structural because they are embedded in the political and economic organization of our social world” and “violent because they cause injury to people” (Farmer et al. 2006: 1686; emphases in original). Though this definition of violence is broad, in the view of Johan Galtung (1969: 168), it is necessary in order for the idea of peace as the absence of violence to be validly maintained without “[h]ighly unacceptable social orders” being compatible with peace (Galtung 1969: 168).

This broad definition of violence (to include forms of social injustice as structural violence) can be seen as a logical extension of more narrow conceptions of violence as direct, intended, and personal (Galtung 1969: 168). Direct actions carried out by individuals or groups can affect the ability of human beings to realize their physical and mental potential. Structures that promote or maintain particular conditions also affect the ability of human beings to realize their physical and mental potential. For instance, a person’s life expectancy may be reduced by an act of direct, intended personal violence or by the failure of a system to provide adequate care for those with treatable illnesses. Similarly, a person may be physically prevented from attending school by another individual or they may be prevented from accessing education due to resources being diverted away from education or towards providing education to a different group of people. Referring particularly to factors that limit access to health care and thus contribute to deaths from disease in Haiti, Paul Farmer argues that:

Structural violence is structured and stricturing. It constricts the agency of its victims. It tightens a physical noose around their necks, and this garroting determines the way in which resources — food, medicine, even affection — are allocated and experienced. Socialization for scarcity is informed by a complex web of events and processes stretching far back in time and across continents. (2004: 315; emphasis in original)

Despite the differences in the process, under Galtung’s definition (1969: 169), each of these instances would constitute examples of violence due to the outcome in each case being that someone’s potential was not realized when it might otherwise have been. As Farmer puts it:

Social inequalities are at the heart of structural violence. Racism of one form or another, gender inequality, and above all brute poverty in the face of affluence are linked to social plans and programs ranging from slavery to the current quest for unbridled growth. These conditions are the cause and result of displacements, wars both declared and undeclared, and the seething, submerged hatreds that make the irruption of Schadenfreude a shock to those who can afford to ignore, for the most part, the historical underpinnings of today’s conflicts. (2004: 317)

Critique of Transitional Justice

Structural violence has been identified as an important issue by scholars addressing a variety of related and overlapping fields, such as peacebuilding, transitional justice, and
human rights (Laplante 2008; Mani 2008; Muvingi 2009). This importance has been highlighted both in terms of addressing structural violence in itself and in terms of addressing structural violence as a root cause of, or contributing factor towards, direct and personal violence (Galtung 1969; Laplante 2008). Transitional justice has been defined as comprising:

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. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. (Annan 2004: 6)

However, in the application of transitional justice processes, emphasis has largely been placed upon a relatively narrow set of tools (particularly truth commissions, amnesties, and trials) addressing only “bodily integrity” human rights violations relating to direct, personal violence (Gready 2011). Indeed, such issues as social justice, poverty, and land inequalities have tended to be overlooked by or considered outside the remit of transitional justice (Mani 2008: 254; de Greiff 2006: 205). There have, though, been moves towards expanding the focus of transitional justice to consider the impact of socioeconomic structures and be “sensitive” to (if not always to directly address) these, which might otherwise be treated as entirely separate issues relating to development (Duthie 2008). However, in the view of Mani (2008), expanding the focus of transitional justice to take account of social injustice presents a number of dilemmas, while also being necessary for transitional justice to maintain credibility. Drawing on these dilemmas, this article focuses particularly on how transitional justice and transformative justice address the nexus of land inequalities and socioeconomic rights.

Recent moves towards transitional justice being used to address socioeconomic inequalities, and the consequent production of dilemmas such as those raised by Mani, have engendered a range of responses. Various means of reconciling transitional justice with addressing structural violence have been suggested. These include allowing further space for the airing of socioeconomic grievances in truth commissions and specifically addressing collective, societal injustices (such as land inequalities) through reparations (Pasipanodya 2008: 392–395). These kinds of suggestions have, nevertheless, focused upon addressing structural violence only inasmuch as existing transitional justice tools can be adapted to do so. This is a shortcoming of transitional justice processes.

Lars Waldorf (2012: 171–186), on the other hand, argues that, even through the limited means of truth commissions and reparations programs, transitional justice should not attempt to directly address structural, socioeconomic inequalities. Waldorf (2012) highlights that a number of studies (e.g., S. Robins 2011a) have suggested that in postconflict societies victims (including those narrowly defined as suffering direct violence during the conflict) often prioritize addressing socioeconomic issues, such as housing, education, and basic economic subsistence, over the civil and political rights issues usually focused upon by transitional justice (Waldorf 2012: 175). He accepts that “everyday injustices rooted in historical inequalities may be as important, if not more important, for many survivors than the extraordinary injustices” of severe violations of civil and political rights (Waldorf 2012: 175).
Bringing to mind Mani’s dilemma (2008: 255) over the difficulty in applying transitional justice measures to socioeconomic injustice, Waldorf questions whether transitional justice can adequately address socioeconomic issues in practice (2012: 176–177). Indeed, he suggests that transitional justice processes are not necessarily particularly successful even in carrying out narrow “bodily integrity” violations-oriented mandates (Waldorf 2012). For instance, truth commissions have been suggested as one of the transitional justice mechanisms that might most readily be adapted to address socioeconomic grievances (Pasipanodya 2008: 392–395). However, the political weakness attached to and the necessarily short lifespans of truth commissions mean that their recommendations are easily (and frequently) ignored (Waldorf 2012: 176–177). This is echoed in Steven Robins’s suggestion that on the one hand the South African Truth and Reconciliation Commission “became a number one export” whereas, on the other hand, since the end of apartheid “the gap has widened between this bright vision of a ‘rights paradise’ and the grim everyday social, economic and political realities experienced by the majority of South Africa’s citizens” (S. L. Robins 2008: 2). Similarly, reparations programs might be more readily adapted to addressing socioeconomic inequalities than other transitional justice mechanisms. A lack of easy means of identifying potential beneficiaries for inclusion (or exclusion) in schemes, limited resources, and time constraints make it difficult (following Waldorf’s view, perhaps even impossible) though to adequately address socioeconomic grievances through reparations (Waldorf 2012: 177–179). The possibility of utilizing reparations in order to address socioeconomic rights violations is further constrained by the fact there is little political will to implement reparations in transitional justice programs, and that in practice reparations are rarely implemented (Waldorf 2012: 177).

The case can be made that “transitional justice is inherently short-term, legalistic and corrective” (Waldorf 2012: 179). This, however, merely describes rather than solves the problem at hand. It may well be the case that the standard toolkit of transitional justice is ill-suited to addressing structural violence and violations of socioeconomic rights. The standard toolkit of transitional justice in fact often seems ill-suited to addressing even the narrow set of “gross violations of civil and political rights” that Waldorf suggests should be its focus (2012: 179). According to Waldorf’s analysis (2012: 175–179), transitional justice overpromises that reconciliation may be delivered, cannot address the socioeconomic inequalities prioritized by victims and regularly fails to deliver reparations or to follow through on recommended institutional reforms. This does not leave much room for success. Even if other transitional justice mechanisms, for example, prosecutions for gross violations of civil and political rights, are wholly successful, there still remains a question over how structural violence and socioeconomic grievances might be addressed in postconflict and postauthoritarian societies.

**Defining Transformative Justice**

A common thread that runs through the emerging transformative justice discourse is that transformative justice seeks to broaden the focus of measures aimed at promoting postconflict or postauthoritarian justice for human rights abuses beyond that of transitional justice. Crucial to this “transformative” agenda is a focus upon socioeconomic structures, the ways in which inequalities may produce structural violence and a focus upon how this structural violence may effectively be addressed (Gready et al. 2010). This focus is a key point of commonality between various different attempts to define transformative justice (Gready et al. 2010; Daly 2002; Lambourne 2011).
In proposing her model of transformative justice, Erin Daly (2002: 74) points out that the literature often conflates “transition” and “transformation” (see, e.g., Teitel 2000: 4–6). This conflation is problematic. Transition may be seen as a change “at the top” (Daly 2002: 74), based on “elite bargains” (Waldorf 2012: 179). Transformation may be seen as more wide-reaching change throughout society. According to Daly:

Transition suggests movement from one thing to another — from oppression to liberation, from oligarchy to democracy, from lawlessness to due process, from injustice to justice. Transformation, however, suggests that the thing that is moving from one place to another is itself changing as it proceeds through the transition; it can be thought of as radical change. (2002: 74)

Importantly, Daly (2002: 80) suggests that in some cases the pursuit of transformative justice would require “a central economic component.” However, she largely concentrates on the idea that culture must be transformed in postconflict and postauthoritarian societies in order to prevent a return to violence (Daly 2002: 73–74). In her view, the primary purpose of transformative justice is to facilitate the two “related aims of reconciliation and deterrence” (Daly 2002: 84). This is not entirely satisfactory. Firstly, this definition of transformative justice places the aims of a transformative agenda as being very similar to those of transitional justice (Annan 2004). Secondly, there is a risk that, in setting up reconciliation as one of the primary aims of transformative justice, the agenda is being set up for failure.

As previously alluded to, there has been criticism of the ability of transitional justice processes to successfully promote reconciliation (Waldorf 2012: 175–179). In practice the discourse of reconciliation in postconflict societies may be an empty one (Waldorf 2009: 104–105). Promotion of reconciliation at the expense of accountability may undermine gains made through transitional justice (Huggins 2009: 336; see also Collins 2010). Furthermore, Daly’s (2002) focus on “deterrence” as the second key aim of transformative justice appears to reinforce the focus of transitional justice on direct interpersonal violence and violations of civil and political rights. Maintaining this focus but recognizing the potential importance of socioeconomic grievances leaves Daly’s approach to transformative justice closer to the suggestion that there may be transformative potential within existing transitional justice mechanisms (see Skaar 2011) than to broader definitions of transformative justice (Gready et al. 2010). This peripheral or indirect impact may be the best that can be expected regarding the contribution of standard transitional justice mechanisms to transformative justice.

In recent years, several attempts have been made at defining transformative justice as more clearly broader than and separate to transitional justice. Wendy Lambourne has put forward wide-reaching suggestions that transformative justice should cover socioeconomic, political, psychosocial, symbolic, and ecological aspects (Lambourne 2009, 2011). Lambourne acknowledges that this conception may be too broad, overreaching the practical possibilities of a model of justice (2009: 46), and has drawn criticism for this (Waldorf 2012: 180). Nevertheless, there are clear points of overlap between Lambourne’s model for transformative justice and the narrower proposals of Gready et al. (2010) and, indeed, the (narrower still) proposals of Daly (2002).

It has been suggested that there can be transformative elements within transitional justice. The reform and effective use of legal institutions and the development of rights-based constitutional reforms as transitional justice programs may strengthen wider democratic structures and means of political participation by building confidence in the rule of
law and providing new forums in which societal inequalities and structural grievances may be aired (Skaar 2011). However, given the necessarily limited participation of affected communities and the typically narrow definition of victimhood applied in truth commissions and similar processes, it is necessary for participation in transformative justice to be pursued primarily via a different toolkit. While the transformative effects of certain transitional justice processes may not be their primary function and they may be unintended, it is still the case that these processes can contribute towards transforming socioeconomic structures (Skaar 2011). Nevertheless, a focus upon these structures in transformative justice requires new, specifically focused, tools. For instance, reparations could in some circumstances be transformative but this cannot be relied upon (Uprimny Yepes 2009; Brett and Malagon 2013). However, in addition to the abovementioned criticism that reparations programs are rarely implemented due to a lack of political will (see also Brett and Malagon 2013: 269–270) and the difficulty in identifying who should be included or excluded from reparations programs, it is also the case that reparations do not in themselves address structural issues. This is particularly the case as in practice reparations programs are typically concerned with restitution rather than transformation (Gready and Robins 2014: 347). Moreover, there is a danger that the addressing of socioeconomic issues becomes (unevenly) attached to reparations for particular victim groups rather than to a more inclusive, or longer term, claim for justice (Gready and Robins 2014: 347; Firchow 2013). If, as it is argued here, there is a need from a transformative justice perspective to address structural violence and socioeconomic conditions in post-conflict and postauthoritarian contexts, then it follows that these should be addressed as directly as possible. This is likely to require utilizing longer term and less individualized economic tools than those typically employed in transitional justice reparations programs.

Though pursuing transformative justice may include the addressing of structural violence through transitional justice mechanisms, transformative justice looks beyond these mechanisms and the “transitional” lens they provide. It must be defined separately. The intention of transformative justice is to address the structural, social, and economic issues that are merely overlapping with and peripheral to the existing transitional justice toolkit (Gready et al. 2010). Figure 1 illustrates the relationship between transformative justice and transitional justice.

Figure 1 is not intended to pin down or limit transitional justice or transformative justice to a complete set of necessary and sufficient components. Instead, the purpose is to indicate the main transitional justice mechanisms (particularly those already discussed in some capacity above) and their foci and to compare and contrast these with the focus of transformative justice in order to provide some clarity on the differences and overlaps between the two concepts. Necessarily, elucidation of mechanisms to promote transformative justice is vague. Relatively little analytical and political attention has yet been paid to concretizing transformative justice processes. One purpose of this article is to move towards defining action that could contribute to transformative justice.

Importantly, as indicated in Figure 1, it is argued here that transformative justice is not part of transitional justice. The question of how to pursue transformative justice outcomes is not merely a question of improving or expanding transitional justice. Firstly, as indicated above, the established toolkit of transitional justice is not adequate for pursuing the socioeconomic and structural outcomes transformative justice necessitates (except, possibly, as peripheral or unintended consequences). Secondly, the processes by which transformative justice is pursued matter.

For transformative justice to be meaningfully defined, it is necessary to give significant consideration to action that falls outside of the inherently legalistic and elite-driven sphere
of transitional justice. For postconflict and postauthoritarian outcomes to address the needs of affected communities, it is necessary for them to be involved in the process of shaping these outcomes. This is principally for two reasons. Firstly, participatory processes provide a means by which issues that concern affected communities (rather than outside elites) may be raised (Gaventa and Barrett 2010: 36). Participation of affected communities in shaping these processes also increases the likelihood of outcomes being considered legitimate, particularly in comparison to outcomes resulting from the imposition of an agenda by outside elites (S. Robins and Kumar Bhandari 2012; S. Robins 2013a). Moreover, a lack of meaningful participation by affected communities can lead to the institutionalization of unequal, corrupt, socially exclusionary, or otherwise negative processes, undermining positive outcomes in the long term (Uvin 2004: 137–138; Gaventa and Barrett 2010: 25–26). Meaningfully participatory processes can mitigate these risks by, for instance, validating the experiences, and agendas, of affected communities, including with regard to how these are expressed in the vernacular rather than necessarily in the language of elite terminology (S. Robins 2011b: 281–283; S. Robins 2013b: 205–206, 209).

Secondly, participatory processes can be an end in themselves (S. Robins 2013b: 210). Participatory processes provide a means by which marginalized people attain agency and are empowered to engage in addressing injustices that affect them (S. Robins 2013b: 15). John Gaventa and Gregory Barrett argue that the “knowledge and awareness” necessary to create and define an “empowered self-identity” is often “gained through a process of participation itself” (Gaventa and Barrett 2010: 27–28). This can be beneficial even if mobilization and engagement in participatory processes do not lead to a positive outcome (such as government action). For instance, Simon Robins argues that regardless of the wider result of such mobilization, meaningful participation in these processes “allows victims to meet others in the same position and to construct the meaning and identities that permit them to cope” (S. Robins 2011b: 286). Uvin, similarly, concludes that “process is as important if not more important than the product in most development work” (2004: 138). The same principle can be applied to transformative justice.

It is also necessary, in order for transformative justice to remain meaningful, for the concept to be defined as different to more general ideas of social justice. This is for a number of reasons. Perhaps most important is the focus of transformative justice upon postconflict and postauthoritarian contexts and the related need to recognize that
transformative justice cannot do everything. There is a danger that if transformative justice attempted to address all social injustices, in all contexts, that the agenda would, on the one hand, be set up to fail and, on the other hand, that it would lose meaning. It is important that clarity is maintained regarding the areas of injustice that transformative justice might hope to address. There is still value added by applying the concept of transformative justice without overclaiming with regard to its potential impact in practice. Transformative justice, as conceived here, emerges particularly in the context of the need to address structural violence and socioeconomic rights issues that precipitate, and are produced and reproduced by, conflict and authoritarianism. These are not the only (social) injustices. However, the lens of transformative justice is particularly useful for illuminating these issues — and potential resolutions to them — whereas other lenses may be more clearly applicable to broader contexts of social injustice (see Gready and Robins 2014: 340). Necessary conditions for transformative justice can be seen as the following: the inclusion of affected communities (not just elites) in shaping the agenda for policy and practice; a focus on addressing economic conditions; emphasis on long-term societal changes; and attention to the historical and structural roots of contemporary injustices.

It is important to keep in mind that transformative justice, while separate, does emerge from the same point of departure as transitional justice. Both concepts are defined in relation to the same set of injustices. As discussed above, transitional justice cannot adequately address all of the socioeconomic injustices and structural violence present during periods of conflict or authoritarian rule. Nevertheless, the civil and political rights issues and interpersonal violence that are addressed by the standard toolkit of transitional justice are precipitated by the same conditions that also precipitate socioeconomic injustices and structural violence. That is to say conflict and authoritarian rule produce injustices. Transitional justice may address some — but not all — of these injustices. Transformative justice is a means of conceptualizing how some of these other injustices may be addressed in postconflict and postauthoritarian contexts.

With regard to the mechanisms that might be employed in order to promote transformative justice, there is a case to be made that existing tools designed for combating poverty, inequality, or corruption, for instance, are appropriate. This could be the case. However, to ascertain whether these mechanisms genuinely contribute to transformation in any given case there is a need to analyze and understand them in terms of the injustices they seek to address. The concept of transformative justice is useful as an analytical tool maintaining a focus upon the specific forms of socioeconomic injustice and structural violence that affect postconflict and postauthoritarian societies. This allows tools aimed at addressing poverty or other socioeconomic rights issues to be evaluated in terms of the extent to which they resolve socioeconomic injustices that continue to be rooted in past conflict or authoritarianism. This contrasts with an analysis of these mechanisms from a standpoint (implicitly) assuming that such injustices are unrelated to other aspects of societal transition (or indeed transformation). An antipoverty tool only contributes to transformative justice (rather than a less specific kind of social justice) if it combats (contemporary) poverty that has its root in a (past) context of injustice caused by conflict or authoritarian rule. The transformative justice conceptual framework might also be usefully applied to advocacy and policymaking. This could be either as an explicit framework for action (i.e., through practices or policies overtly described as intending to promote transformation from socioeconomic conditions rooted in past injustices) or as a means of assessing whether action (regardless of how it is framed) is effective in addressing the kinds of injustice mentioned above. As a conceptual framework, it is useful for linking together a broad set of issues (and potentially the tools
used to address these) that might appear under another analytical lens to be separate to one another.

Applying Concepts to the Case Study of South Africa

This section of the article utilizes the concepts of structural violence and transformative justice discussed above to analyze the case study of land inequalities in South Africa. The aim here is to illustrate one possible application of the transformative justice concept to empirical realities. This section concentrates more on exploration of transformative justice in practice than on theorizing the concept, which much of the rest of the article is concerned with.

There is a tension between protecting the rights of existing property owners and realizing the right of those without property to own property without discrimination. An analytical lens on socioeconomic inequalities and structural violence may be useful in revealing resolutions to this tension. With this transformative justice lens, it is possible to judge whether existing structural conditions are just and whether they promote or inhibit positive transformation and the realization of human rights in postconflict and postauthoritarian societies.

The vast majority of people in South Africa are landless; around 85% of land remains under white ownership, though estimates vary (War on Want n.d.). Indeed, it has been estimated that by the end of apartheid in 1994 up to 87% of land in South Africa was owned by the white minority (Moyo 2004: 1–2; James 2007: 3; Integrated Regional Information Networks [IRIN] 2008). This was largely a result of colonialism and the subsequent implementation of laws such as the 1913 Native Lands Act and the policy of forced removals under apartheid (Moyo 2004: 1–2; James 2007: 3; IRIN 2008). In South Africa, addressing structural violence stemming from land inequalities can be seen as a key element in the promotion of transformation towards a more just society postapartheid.

The redistribution and restitution of land and the reform of tenure was central to the African National Congress’s (ANC) program prior to the end of apartheid. Despite land issues reducing in prominence in the ANC’s priorities since the 1990s, a certain degree of rhetorical commitment to address land inequalities has remained since the ANC entered government. Some land reform has taken place, predominantly restitution to the formerly dispossessed (rather than wider redistribution) through market-based “willing buyer, willing seller” processes.4 However, even the (arguably) modest commitments of the postapartheid government to addressing land issues have not been realized. Consequently, the ANC has been subject to criticism over its land policies (Tilley 2002; Greenberg 2004; South African Press Association 2006; Ntsebeza and Hall 2007; Urban Landmark 2007: 13–16; IRIN 2008; Losier 2009; Kienast n.d.; War on Want n.d.).

One issue, which is particularly pertinent when analyzing the degree to which structural violence can be reduced, is the suggestion that the current land reform process has focused too much on restitution rather than on redistribution or on addressing tenure reform (James 2007: 7–8; Walker 2008: 28–29). Chris Huggins states that “there is a strong argument that any attempt to redress injustice over land rights must look not just at individual cases of dispossession but at the entire land tenure system” (2009: 352). In South Africa, many of those who have benefited from land reform (through restitution) have not been the poorest or most marginalized groups (who might benefit from wider redistribution or tenure reform). Those black people who are in a position to have land restored to them are likely to have been part of the relatively small and comparatively well-off group of black people who owned land prior to losing it during minority rule
In order to address the structural inequalities that remain present in South Africa, a wider reaching, transformative agenda is necessary. As well as being protected by international mechanisms (Universal Declaration of Human Rights [United Nations 1948], Article 17; International Convention on the Elimination of All Forms of Racial Discrimination [United Nations 1965], Article 5), the right to property is also legally protected in the South African Constitution (Constitution of the Republic of South Africa 1996: Section 25). However, South African law and international instruments also protect rights (such as to food and to housing) that can be seen as articulating a right to land.

Section 25 of the South African Constitution specifically provides for the possibility of property (including land) being expropriated for a public purpose including for the purpose of creating more equitable land distribution through land reform (Constitution of the Republic of South Africa 1996: Section 25). Use of this provision is one way in which transformative justice in relation to land could be pursued. Indeed, there is some support for using this provision amongst activists and scholars (Papayya 2008; Berrisford 2009; Pityana 2013).

To privilege the rights of existing property owners without exception would necessarily limit the rights of the landless to access land, for example, for food or for housing. It is also the case that land reform is likely to limit the rights of existing property owners to some degree. This is particularly the case with policies aiming to redistribute land. On the face of it, there might appear to be a dilemma from a human rights perspective. The degree to which either the rights of existing property owners or the rights of the landless may justifiably be limited in order to facilitate the realization of the others’ rights is not self-evident. However, keeping in mind the concept of structural violence and the aim of promoting transformative justice goes some way to resolve instances of prima facie competing rights claims over land. This is not to say that dilemmas or contradictions are wholly removed. Rather, keeping a focus on transformative justice (for instance, on the necessary conditions for transformative justice discussed above) and on structural violence provides criteria by which the justness or otherwise of prioritizing one specific rights claim over another can be determined. Applying these criteria allows a choice to be made in practice in individual cases without privileging one right (such as to property or to housing) over another in principle or in all possible instances of apparently competing rights claims.

A question may be asked regarding whether existing structures of land distribution maintain a form of violence, and whether it is possible to move towards its negation (peace — broadly defined). Land distribution in South Africa maintains structural violence. For example, Huggins highlights that South Africa’s: business-as-usual agrarian policy has meant that those black farmers who have claimed land and have attempted to start smallholder farm enterprises are struggling to succeed within a wider economic system geared for large-scale production. (2009: 352)

The “socio-spatial exclusion” and the division between shack settlements of landless people and “citadelised and securitised” urban areas present in formally desegregated South African cities is another example of this (N. C. Gibson 2011: 25–27). The transformative justice analytical lens can be used as a means of evaluating existing structures and policies surrounding access to land and housing. Inasmuch as it can be seen that maintaining (or changing) existing conditions of access or ownership in favor of one competing rights claimant maintains or reproduces the structural violence inherent in the apartheid
system, upholding that rights claim may be seen as unjust. Keeping this focus allows for competing rights claims to be distinguished according to those that are consistent with a transformative justice framework and those that are not.

The demand-driven, market-oriented (as opposed to egalitarian), approach to land reform (see James 2007: 57) can be seen as failing to address the (structural) violence inherent in existing land distribution in South Africa. Moreover, this approach has been pursued despite evidence suggesting that the distribution of land continues to be considered important by the South African population. James L. Gibson’s (2009: 35–37) study of a representative sample population found that land ownership and redistribution was viewed as a “very important” social problem by 46% of respondents (and 50% of the black respondents) in 2004. Indeed, during the apartheid era the ANC and its allies had advocated a more egalitarian approach to land reform. The Freedom Charter stated that “land [shall be] re-divided amongst those who work it, to banish famine and land hunger . . . . All shall have the right to occupy land wherever they choose” (Congress of the People 1955). Moreover, the rhetoric of high-profile ANC members, such as Joe Slovo, prior to the negotiated settlement to end apartheid indicated that land redistribution would be a central component of any transition to democracy. In 1986, Slovo (who was at the time General Secretary of the South African Communist Party [SACP] and Chief of Staff of the ANC’s armed wing, Umkhonto weSizwe) argued that “the redistribution of the land is the absolute imperative in our conditions” (Walker 2008: 51). The ANC’s alliance partners in the SACP and Congress of South African Trade Unions (COSATU) have continued to call for a change in land reform policy (Nzimande 2007; Thomas 2007: 135; South African Press Association 2006). However, despite the recent reemergence of proredistribution sentiment in pronouncements by leading ANC members (outlined further below), postapartheid land policy has thus far followed the demand-driven paradigm.

The strong legal protection of the right to property provided by the South African Constitution has been suggested as one of the key determinants, if not the most important factor, influencing the imposition of South Africa’s demand-driven, market-led approach to land reform (Kahn 2007: 4–5). This means it may be possible for some more aggressive policies than “willing buyer, willing seller” to be challenged legally. It is important, however, to note that Section 25 of the South African Constitution does allow land to be expropriated without market-level compensation, though the market value must be taken into account (Constitution of the Republic of South Africa 1996: Section 25). While constitutional protection of the right to property might legally hamper certain land reform policies, more radical policies than those so far pursued are nevertheless permissible.

Despite the suggestion that current policies are ineffective and result in the maintenance of existing land inequalities, the ANC has maintained that addressing land inequalities is a continuing priority. In February 2012 Gwede Mantashe (ANC General Secretary) commented that to “remove the land question from the centre of the ANC’s agenda, [would] be betraying what was the immediate challenge after the formation of the African National Congress” (South African Press Association 2012). Even more recently, President Jacob Zuma has suggested that the abovementioned clauses in the South African Constitution allowing for the possibility of land to be expropriated will be used (Zuma 2013). Given this — at least rhetorical — commitment, the presence of the tension between demand-driven and egalitarian development paradigms is once again evident. At least in terms of providing a means for describing and analyzing the problem at hand and for forming priorities for policy and practice, the framework of transformative justice may be of use in forging just resolutions to these tensions. Actors relevant to
the pursuit of transformative justice as well as the roles of their relationships and strategies are explored below.

**Relevant Actors and Relationships for a Transformative Approach**

Keeping a focus on the pursuit of transformative justice, particular actors, their relationships, and their strategies in relation to addressing land inequalities are especially worthy of exploration. This is important, particularly, because of the need in transformative justice to facilitate the meaningful participation of affected communities in shaping policy and practice. This requires taking account of the praxis of actors — such as social movements, NGOs and trade unions — that are made up of and articulate the concerns of those affected by the injustices transformative justice seeks to address. The historic and contemporary importance of social movements, trade unions, and NGOs to the praxis of human rights and social justice in South Africa is important for exploration of land, socioeconomic rights, and the pursuit of transformative justice (N. C. Gibson 2006: 1–27; Ballard et al. 2006: 15). In particular, the positioning of NGOs, trade unions, and social movements in relation to each other and in relation to the state is relevant to this issue.

As noted above, one of the shortcomings of transitional justice processes has been a tendency for change to occur through elite bargains and the transfer of power at the top (Daly 2002: 74; Waldorf 2012: 179). The centrality of elite bargains might go some way to explaining why postapartheid land policies have not been heavily geared toward redistribution or otherwise addressing the structural violence inherent in the existing distribution of land. In order for the shortcomings of transitional justice to be overcome and a transformative approach pursued, there need to be attempts to move away from elite bargains. If a move away from elite bargains is not in itself possible there is at least a need to interrogate and pursue strategies that allow for such bargains to be contested, influenced and altered by affected communities. Social movements and community-based organizations articulate concerns of those affected by issues such as land inequalities (Personal interview with Mncedisi Twalo, July 4, 2012; Greenberg 2004; Ballard et al. 2006). Social movement praxis is therefore important for understanding how a transformative justice agenda might be promoted.

As noted above, postapartheid, COSATU has at times been critical of many of the ANC government’s policies. Moreover, independent and non-COSATU-affiliated unions have also emerged. Some of these take a more critical position than COSATU in relation to engagement with the ANC and the state. For example, the farm workers’ union Sikhula Sonke has taken part in election boycott campaigns of the sort carried out by landless people’s social movements heavily critical of the ANC (S. L. Robins 2005: 9–11; Naidoo 2009; SAIinfo n.d.; Women on Farms Project n.d.). While the (often) different membership constituencies of social movements organized around land and related issues and trade unions (and organizations’ political affiliations) can cause tensions, there can be value added by trade unions to action on land issues (Personal interview with Mike Louw, July 6, 2012). For instance, trade unions often have greater resources than grassroots social movements, which can lead to more effective action if these resources are made available for land rights-campaigning purposes. Furthermore, in instances where land issues overlap with the recognized industrial mandate of trade unions (for example, regarding farm workers’ housing) then the established arenas for negotiation with employers and government might be used to advance transformative justice aims in relation to land (Personal interview with Mario Jacobs, July 30, 2012; Personal interview
NGOs are important political actors in postapartheid South Africa. Postapartheid “social movements and NGOs have mobilised locally in order to leverage access to state resources such as land, housing and health care” (S. L. Robins 2008: 5). Moreover, NGOs can act as intermediaries between grassroots activism and more formal politics nationally and internationally, not least through funding streams and through opening up access to transnational networks (Keck and Sikkink, 1998: 9). As Steven Robins puts it, NGOs and social movements acting in partnership deploy “both local rights-based strategies and globally connected modes of collective mobilisation in marginalised communities” (2008: 5). It is therefore important to explore the ways in which these relationships and the strategies of these actors might be used to promote transformative justice. Maintaining a critical lens on the realization of socioeconomic rights, the addressing of structural violence, and the pursuit of transformative justice provides a means by which the strategies of these actors might be evaluated.

Conclusion

There are several major themes that emerge consistently in debates over structural violence, socioeconomic rights, and transformative justice. There are also gaps evident in the foci of existing studies, which warrant exploration through further research. The first key theme is that structural, socioeconomic inequalities impact upon postconflict and postauthoritarian societies significantly. This is both as sources of tension that can lead to unrest and conflict, and as social justice issues that must be addressed to facilitate development.

The second theme centers on the concern that structural, socioeconomic issues are not being widely or effectively addressed in conventionally applied transitional justice mechanisms. Despite the potential to do so, this has not happened, for the most part (Pasipanodya 2008).

The third theme is that transitional justice on its own cannot adequately resolve structural, socioeconomic issues (Mani 2008; Waldorf 2012). Focusing specifically on addressing land and related inequalities in South Africa, this literature highlights the tension between the legal rights of existing land owners and the legal and moral rights of landless people. Scholarship in this area suggests that postapartheid policies have largely failed to address structural inequalities in land in South Africa (Greenberg 2004; James 2007; Walker 2008).

Based on these themes a number of conclusions are drawn, which are laid out more fully below. Existing models of transitional justice are not adequate for addressing structural violence and land inequalities or for ensuring the realization of socioeconomic rights. Exploration of the strategies of and relationships between social movements, trade unions, and NGOs in relation to transformative justice in general, and land inequalities in particular, is necessary.

Keeping in mind the focus in wider literature on the impact of structural violence on postconflict societies and the potential for this to impact upon continuing and future conflicts, there is a gap within the literature on land in South Africa. This relates to the detail of how actors such as NGOs, trade unions, and social movements might effectively promote alternatives to the current paradigm. These actors are important to promoting a more transformative approach; NGOs, trade unions and social movements engage in a variety of action and interact with each other in various formal and informal networks.
There is a need to investigate these relationships further, applying an analytical lens turned to the effectiveness of, and potential for, new approaches to addressing land and related socioeconomic rights issues.

While there is some literature on the need for transformative justice to be pursued using a different toolkit to that associated with transitional justice (Mani 2008; Gready et al. 2010; Skaar 2011), there is not a great deal written about what tools could be used effectively to promote a transformative agenda addressing structural, socioeconomic inequalities such as land distribution in South Africa. There is, therefore, a particular need for research in contexts such as South Africa to be carried out exploring the practical possibilities for furthering transformative justice and addressing structural issues such as land inequalities. This article has attempted to highlight the shortcomings of transitional justice in relation to these areas and has put forward a broad definition of transformative justice. The article makes proposals regarding the need to engage with the praxis of social movements, trade unions, and NGOs in order to gain insight into how a transformative agenda might be pursued, by practically applying transformative justice to a possible case study — landlessness and related socioeconomic rights issues in South Africa. This article, however, does not propose answers to all the questions it raises. The key conclusions here are taken forward as areas to be explored by scholars and practitioners, in particular, the need to explore strategies of diverse actors and networks in promoting transformative justice. The aim in highlighting these themes is to develop them further and through future research and practice to come to more detailed conclusions regarding the content of effective strategies in promoting transformative justice.

Acknowledgments

In addition to the anonymous reviewers and the editors, thanks must go to Joel Quirk, Paul Gready, Lars Waldorf, Jon Ensor, and Paula Meth for their helpful input during the development of this article. Furthermore, thanks must go to the organizers of the Land Divided: Land and South African Society in 2013, in Comparative Perspective conference (University of Cape Town, Cape Town, March 24–27, 2013), where an earlier draft of the article was presented.

Notes

1. See also the similar definition put forward by the International Center for Transitional Justice (n.d.b).
2. Cath Collins’s concept of “post-transitional justice,” though questioning the established transitional justice framework to some extent, likewise places emphasis on addressing political violence committed by state actors rather than structural or socioeconomic human rights issues (Collins 2010: 7–25).
3. Four dilemmas are put forward by Mani (2008: 255–261). The most relevant of these to the discussion in this article is the concern that the targeted measures associated with transitional justice (truth commissions, trials, and institutional reform) are difficult to apply to the wide-reaching effects of structural violence and social injustice (Mani 2008: 255).
4. Since 1994, a number of land reform policies have been put in place. These cover three broad categories: restitution, redistribution, and tenure reform (James 2007: 3–5). The initial target of these policies was to redistribute 30% of white-owned agricultural land into black ownership by 2014 (World Bank 1993; Walker 2008: 20). This was to be achieved through a market-based “willing buyer, willing seller” approach (World Bank 1993). By 2008, however, the date by which this target was expected to be achieved was moved back to 2025 (Republic of South Africa, Department of Land Affairs and Department of Agriculture 2008: 35). These targets are
James L. Gibson highlights that in surveys of a representative sample population, 85% of the black respondents indicated agreement with the statement that “Most land in South Africa was taken unfairly by white settlers, and they therefore have no right to the land today” and 68% of black respondents agreed that “land must be returned to blacks in South Africa, no matter what the consequences are for the current owners and for political stability in the country” (J. L. Gibson 2009: 31–32).


6. Also, personal interviews with Martin Legassick (August 4, 2010), Mercy Brown-Luthango (August 10, 2010), Luthando Ndabambi (August 12, 2010), Mzonke Poni (August 12, 2010), Warren Smit (August 13, 2010), and Ruth Hall (August 13, 2010). Ethical approval for conducting interviews cited in this article was granted by the University of York’s Department of Politics ethics committee and by its successor, the Economics, Law, Management, Politics and Sociology ethics sub-committee, on May 17, 2010 and May 30, 2012 respectively.

7. Various explanations for this have been posited, including limited success of more radical policies in other contexts and the importance of pressure enacted by business groups and international financial institutions (James 2007: 10–11; Walker 2008: 51–52, 63–64). Concerns have also been raised that policies such as expropriation of land might bring results in line with the “terrifying exemplar” of Zimbabwe (J. L. Gibson 2009: 18). However, it is worth noting that despite the widely held view that “Zimbabwe seems to be totally imploding” (J. L. Gibson 2009: 213) with regard to redistribution of land, the reality may be more complex, and perhaps less disastrous, than this implies (Scoones et al. 2011).

8. Indeed, the largest COSATU union, the National Union of Metalworkers of South Africa (NUMSA), recently withdrew support for the ANC (and SACP) and has announced plans to create a new political party. At the time of writing, its future in the COSATU federation remains uncertain (see Letsoalo and Mataboge 2013; South African Press Association 2014a, 2014b).

References


