

The Palliative Role of Reparations in Reconciling Societies with the Past: Redressing Victims or Consolidating the State?

Abstract: Reparations are employed to address the violence of the past as means to ensure a peaceful future. However, as part of transitional justice, and with an emphasis on state-building and with a liberal market democracy as an endpoint, reparations can conflict with other post-conflict goals of reconciliation and the prevention of future violations. This article reviews the claimed goals and expectations for reparations as an element of transitional justice, exploring especially the relationship of reparations with reconciliation and guarantees of non-recurrence. Drawing from fieldwork in multiple jurisdictions, we explore the complexity of reparations in practice. We assess whether reparations operate primarily as a palliative solution to the violence of the past that aims to settle and foreclose political contestation, rather than addressing root causes of violence.

Keywords: Reparations; Reconciliation; Guarantees of Non-Recurrence; Transitional Justice; Victims

Main Text:

Introduction

Reparations are often employed by different actors to try to reconcile their past in the hope of sustaining a peaceful future. They form a key pillar of transitional justice in a liberal view of state-building as part of a response to mass atrocities in the aftermath of armed conflict or authoritarian regimes. In these settings, the use of reparations often reflects a corrective conception of justice designed to address the wrongs of the past and victims' harm. In recent scholarship and practice, reparations have been extended to address guarantees of non-recurrence and societal transformation that are intended to also prevent future victimisation or even to facilitate individual and social reconciliation. As a result, reparations carry the weight of significant expectations.

This article draws on fieldwork conducted by the authors and other members of a comparative study on the effectiveness of reparations in the aftermath of mass violence. Over 250 interviews were conducted with victim-survivors, lawyers, civil society actors, non-state armed groups and representatives of governments, donors and international organisations in Colombia, Guatemala, Nepal, Northern Ireland, Peru, and Uganda between March 2018 to February 2020. The data from interviews was coded using a codebook based on thematic issues from the project proposal and that arose the fieldwork. The reparations we have analysed range from large administrative processes, to judicially ordered measures, as well as settlements and informal measures provided by responsible actors.

The present article sits within a critically informed trend in transitional justice (TJ) literature. It does not reject the potential of reparations to contribute to the restoration of civic trust and the rule of law, as part of the (re)development of State-citizen relations (de Greiff 2006). Instead, it reviews the broader claimed goals and expectations for reparations as an element of transitional justice, exploring especially the relationship of reparations with reconciliation and guarantees of non-recurrence. This article begins by first outlining the role and current debates on reparations in TJ, international law, and academic literature. It demonstrates that reparations offer the potential for a nuanced and multi-layered mechanism that can meet some of the material and psychological needs

of victim-survivors after armed conflict or authoritarian regimes, under the auspices of a variety of normative goals. The second section sets out the current debates on reparations and reconciliation in the literature and the challenges of translating the nuanced commentary into policy that is feasible for victims, perpetrators and affected communities. In the third section the article explores the extent to which reparations can achieve reconciliation in practice in the face of structural violence. The fourth section examines the gaps between reconciliation, state-building and structural violence through guarantees of non-recurrence. We reflect on our interviewees' responses during our fieldwork on the difficulties of finding common ground on these debates and what this means for reparations in practice.

This article interrogates whether reparations are necessarily palliative if they do not redress the root causes of violence. By palliative we mean that while reparations can ameliorate some of the harm caused by human rights violations, by themselves they are unable to address structural injustices, that may require longer-term initiatives and more fundamental changes to the distribution of resources and power in a society. We examine this in a manner that seeks to avoid further consolidating the professionalization and elite driven nature of TJ, but instead lays bare the power dynamics of the state in brokering reparations that victims accept. This article argues that reparations can settle social and political discussion of the violent past, in a manner that inhibits broader agonistic political contestation that addressing the root causes of a violent past. Understanding guarantees of non-recurrence as a form of reparations may function as a means to address some of these concerns, by focusing on the power dynamics at play and re-imagining what success can look like in remedying the past.

Reparations and Transitional Justice

In international law, 'reparation' can be understood as an umbrella term for different forms of redress, such as restitution, rehabilitation, compensation, apologies or memorials (United Nations 2004, para. 16; Evans 2012, 13). While the definition and practice of reparations has continued to evolve over time, it remains largely predicated on a corrective or interactional conception of justice, based on responding to the harm to a victim-survivor by a responsible individual, organisation or State (Lu 2017). There are several nuanced and complex dimensions to reparations. First, reparations can be provided to individuals, collectives and States. Individual reparations address human rights violations against individual persons, whereas collective reparations address violence against groups or communities, but at a sub-State level and so different from inter-State reparations (Roht-Arriaza 2014b, 129-130). Collective reparations reflect an acknowledgment that international crimes such as genocide or crimes against humanity often harm individuals as members of religious or ethnic minority communities (Moffett 2017, 378). Such collective reparations may include restitution of communal lands or of cultural property, or communal access to education and health facilities (Roht-Arriaza 2004b, 122).

Second, reparations may arise from different legal and political foundations. De Greiff distinguishes reparations through a judicial process or a politically agreed administrative process (2007). Court awarded reparations may rely on emergent international legal norms regarding reparations (e.g. UN Basic Principles 2005). In the context of the inter-state origins of reparations, restitution constitutes a key objective of judicially-led reparation in international law: 'reparation must, as far as possible,

wipe all of the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.’ (Factory at Chorzów Case (Germany v. Poland) 1928). In contrast, reparations with a more political foundation may reflect these norms but are also more explicitly the product of negotiation and compromise. In addition, *ex gratia* reparations (as a gift), that are administered by State bureaucracies, may reflect a process of top-down design by States of their perception of victim needs and/or an outcome of advocacy and negotiation (Daly 2014, 195).

Third, the scholarship and practice regarding reparations also distinguishes between material and symbolic reparations. Material reparations refer to individual cash payments, as either a lump sum or long-term pensions, and access to public services, such as health care, employment assistance or housing (Roht-Arriaza 2004a, 159). In contrast, symbolic reparations refer to any form of reparation designed to explicitly recognise and acknowledge the harms done to victim-survivors and their status as rights-bearers. Symbolic reparations may include apologies, memorials, museums, or the renaming or removal of landmarks.

Across these variables of design, reparations, as an element of TJ, claim to serve a variety of normative goals. These goals both seek to enhance the status and lived experience of victim-survivors, based on a corrective or interactional account of justice, and benefit a transitional society, predicated on a conception of post-conflict or post-authoritarian transition (Arthur 2009). Some of these goals recognise the necessary inadequacy or impossibility of a purely corrective or interactional account of justice to respond to mass atrocity. In the case of gross violations of human rights, full restitution may be inappropriate or impossible. In instances of physical and mental harm, even compensation cannot restore the victim to the situation she was in prior to the violation, nor can any amount of money effectively equate to the damage suffered (United Nations 2008, 10). In recognition of these inadequacies, De Greiff suggests that reparations should also aim to provide recognition and acknowledgment to victims and survivors, acknowledging their standing as rights-holders and citizens entitled to freedom from such violations. In this way, the goal of recognition seeks to re-affirm victims as citizens, as persons of significance and value to the State (2009, 57). The function of reparations in providing recognition or acknowledgment exists within a set of further basic norms to be (re)established in society. It is within this space that TJ has been considered as part of a liberal view of reconstituting the state, wherein state-building is premised on human rights norms with a free market democracy. In practice, policymakers may prioritise state-building as a local process and downplay the implementation of international norms that insist on the delivery of TJ (Lotz 2010, 227). In contrast the goal of reconciliation can be seen as the process of response to the failures of TJ measures.

Reparations and Reconciliation

For de Greiff, one of the ultimate goals of TJ is reconciliation that ‘describes a state in which social relations are characterized by a civic and norm-based type of trust, and while transitional justice measures can contribute to making institutions trustworthy, actually trusting institutions is something that requires an attitudinal transformation that the implementation of TJ measures can only ground but not produce.’ (Greiff 2010, 26). For de Greiff, unreconciled societies are

characterised by massive and systematic failures to recognise individuals as subjects of fundamental value and dignity (2010, 26).

Reconciliation on de Greiff's account is epiphenomenal, that is, it results from pursuing life, or in this case, law and policy, in a certain way, rather than being a goal to seek directly (2008, 122). As a result, there are very few things that can be done to promote reconciliation independently of other TJ goals or initiatives (de Greiff 2008, 126). Rather reconciliation is the overall relationship-oriented process within which these diverse instruments are the constitutive parts (Bloomfield 2006, 11; Philpott 2009). It therefore necessary to interrogate whether and how reparations can indirectly ground reconciliation, understood as relational and attitudinal transformation leading to civic trust in State institutions and other citizens.

Reconciliation is subjected to various and competing conceptualisations. It is commonly understood to have multiple layers and as a concept is both a normative goal and a process. Reconciliation is concerned with developing relationships between 'individual, interpersonal, socio-political, and institutional levels' that have been ruptured by violence and/or structural violence (Seils 2017, 1). Verdeja suggests: 'reconciliation is best understood as a multilevel process, one characterized by specific logics and strategies operating at four levels: the political, institutional, civil society, and interpersonal levels.' (2009, 20). Reconciliation is not a one-off event, but a continuous process of 'constant readiness' to acknowledge the past and prevent its recurrence (Huyse 2003, 19). Beyond being a process, it also provides a space of common ground of critical dialogue amongst affected parties (Doxtader 2004, 122-123). Reconciliation can be seen in 'thin' and 'thick' terms. A thin conception of reconciliation is a 'non-violent co-existence' with 'little emphasis on attitudes and feelings' (Govier 2006, 13) and 'little or no trust, respect, and shared values' (Seils 2017). A thick conception involves 'restoration of dignity, reversing structural causes of marginalization and discrimination, and restoring victims to their position as rights bearers and citizens.' (Seils 2017).

Other theories of reconciliation extend its role to address structural injustice and social alienation. For Lu, structural reconciliation is normatively fundamental for guiding genuine communication between agents about the terms of interactional reconciliation. Furthermore, existential reconciliation concerns 'the disalienation of agents whose subjective freedom has been distorted by such injustice.' (Lu 2017, 19–20) For Mouffe, it is necessary to transform antagonistic violence into agonistic relations: those relations that do not result in the destruction of shared political life, but establish the conditions for a vibrant, but tolerant contest between groups that espouse different identities and normative orientations (Mouffe 2009, 80–88).

Reparations can contribute to the goal of thick and thin conceptions of reconciliation, reflecting the context and process in which they are shaped. Much of the theoretical discussion focuses on a thick notion of reconciliation and in this context, by directing attention to the wider normative and structural context that gave rise to such armed conflicts (Seils 2017, 6). Mass victimisation reflects a breakdown in a range of relationship between individuals, communities and society. Such injustice can often involve 'fractured moral relationships between citizens, a lack of civic trust, feelings of alienation and a lack of self-respect amongst members of the historically wronged group, as well as

economic hardship and a lack of adequate opportunities.’ (Kumar 2014, 198). Reparations can be part of reconciliation in offering a corrective solution in changing the record of the past, relationships and future behaviour between victims and perpetrators (Minow 1998, 91). Reparations can be seen as a part of a therapeutic process of TJ that aims at reconciliation (Wolfe 2014, 61).

Mégret views reparations more broadly as a means to repair relations between individuals or groups and the rest of society (Mégret 2014, 186). On this account, the relationship between a victim and responsible actor is intended to encompass values of accountability and reciprocity, rather than return to the past status quo. This relational perspective is about finding a way to move forward together from the past (Walker 2015, 22). The engagement with wider society in remedying the past can reflect notions of social solidarity and inclusion of victims within the polity. This requires empathy with the situation of victims and trying to put ourselves in their shoes (Radzik 2009, 107). A more legal or retributive justice approach to reparation is the satisfaction of the victim, whereas on a reconciliation account, the focus is on whether the parties affected have re-established/restored their relationship or at least prepare to live in peaceful co-existence (Thompson 2002, 47). Accordingly, a reconciliatory account is more forward-looking in developing relationships between the victim and perpetrator in the future, rather than other accounts of reparation that focus on redressing the past injustice (Thompson *ibid.*, 48).

The scale of ambition of reconciliation has implications for the effectiveness and the appropriateness of reparations and other TJ mechanisms in addressing state-building inequalities (Murphy 2017, 179). There are often a range of other issues that shape victim-society relationships. The process of reparations, if not designed cognisant of these issues, may not meaningfully address the harm caused, and remain unable to contribute effectively to reconciliation. Mass violence associated with protracted armed conflicts weaves a complex web of victimhood and responsibility, where violence is experienced everyday by a range of actors, with, at times, no fixed identity. Even reference to the link between victims and responsible actors as a ‘relationship’ perhaps over-conveys the connection through violence that they experience afterwards. While some may suggest that this creates a moral relationship, in times of conflict it is both complex and reductive. The messiness of war can mean that it is sometimes unclear or convoluted who is responsible and is harmed, and yet often is rationalised into good and bad collective actors, with some exemplary and notorious individuals who may end up prosecuted, leaving most of those responsible faceless.

As a result, while reparations and reconciliation are both relational concepts, Doxtader suggests that ‘each makes a promise that it cannot keep’ (2004, 117). Instead greater emphasis on symbolic gestures of acknowledgement are more conducive to build relationships of equality and respect (Govier 2006, 12). It may thus be necessary to maintain humble expectations of the relational work that either reparations or reconciliation can feasibly do. According to Minow, reparations ‘provide a specific, narrow invitation for victims and survivors to walk between vengeance and forgiveness. The ultimate quality of that invitation depends on its ability to transform the relationships among victims, bystanders, and perpetrators.’ (1998, 106)

However, legislating or developing policy for a clear causal link between reparations and reconciliation on this nuanced basis remains significantly more challenging. Instead, reparations may equally reflect greater bureaucratisation and tick box exercise of expiating the past, rolled out in a pre-determined peacebuilding toolkit (Firchow and MacGinty 2013, 233), rather than a genuine and cathartic atonement that is more appropriate in informal spaces beyond the law. The possibility of reconciliation may also be undermined in practice by political contestation over who is a victim, who is responsible and whether resources are best spent on reparation rather than reconstruction efforts that may close any space for reconciliation. Moreover, reconciliation may be 'compromised' by power relations that emerge at the end of hostilities in the victor-loser or negotiated power sharing settlement dynamics (Firchow and MacGinty 2013, 234).

The symbolic and communicative work of reparations and reconciliation remains dependent on the willingness of victim-survivors and affected communities to embrace the possibility of changing attitudes and behaviours. Some victims do not want to have a relationship with the perpetrator(s) nor repair their moral standing with them (Satz 2012, 137). Reparations may exacerbate anger, frustration and humiliation that may diminish any opportunity for reconciliation (Petersen and Daly 2010, 272). Some reconciliation advocates argue that forgiveness not only assists the social and moral reintegration of perpetrators but can enable victims to 'avoid the self-destructive effects of holding on to pain, grudges, and victimhood' allowing them to create new relations, grieve and break the cycle of violence (Minow 1998, 14-15). Indeed, some of the more critical work around TJ has examined whether such institutions and measures actually change victims' situation, or force them to fix their own identity to claim such benefits (Lawther, 2020, 10; Robins 2017, 53).

As a result, the politics and construction of victimhood can become entangled in the interaction of a reparation scheme with the structural conditions affecting different sectors of a given society. Where the perception of victimhood becomes primarily a politically contested function of eligibility for material compensation or support, it may inhibit the capacity of any such reparations process to meaningfully contribute to reconciliation. For Lu reconciliation has interactional, structural and existential aspects that looks at responding to alienation caused by interactions between agents, by social and political practices and structures, and internal self-reflection (2017, 37). However, in the aftermath (or continuation) of mass violence, victims may not have the political or moral agency to engage in reconciliatory or relational engagements with those responsible and society (Andrieu 2014, 100). Victims can lose their 'trust in the world' and gross violations of human rights can 'erase the fundamental normative expectations that make social action possible.'(Id.) Moreover, the experience of victims and the nature of their violations may make their status difficult to empathize with, such as in the cases of the disappearances of informers within a community, or victims of sexual violence seen as 'prostitutes', or perpetrators who have been victimized (Moffett 2016).

The interaction of reparations and reconciliation as elements of a response to mass violence thus claims to contribute to constructing the conditions for civic trust, reconciliation and the (re)establishment of a peaceful democracy. By examining the theoretical claims of both concepts in more detail in the contexts of our case studies, it soon becomes readily evident that both concepts can be subjected to competing interpretations and political contestation, and risk being sites of significant exclusion, marginalisation or manipulation of victim-survivors. The potential for reparations to reflect a nuanced understanding of the limits of what can be done to address mass violence remains largely unrealised.

Teasing Out the Links: Reparations and Reconciliation in Practice

The views of our participants confirm that rebuilding relationships, reciprocity and civic trust are key elements in reconciliation and reparation. In Colombia several participants emphasised the importance of acknowledgment for victim-survivors as an element of reparation. (COL1= donor) This included giving space to acknowledge victims as legitimate voices, that stops 'judging or prejudging' them. Acknowledgement also required that the State meaningfully implement laws and deliver reparations, to develop credibility in the eyes of victims and to redress the past and prevent its repetition. (COL3 = unclear what category)

As with other elements of TJ, it is claimed that the process of reparations can serve a healing function (Hayner 2011, 171; Minow 1998, 92). Hamber suggests that, 'by serv[ing] as focal points in the grieving process,' reparations can 'play an important role in any process of healing, bereavement and addressing trauma.' (2000, 218) Some participants spoke of reparations in the language of healing. (COL33 – state official; COL36 unclear; G19 – victim representative; G21 – unclear) One participant in Guatemala stated: "we cannot heal all these violations that we have suffered, we know that, but what we do want is that they give us at least some attention, at least just support us." (G21 unclear) One Colombian displaced victim saw reparations as "a forgiveness process [and] a healing process. I don't want to carry with [me] this hate. It's too heavy. I have no space in my heart for hatred. I get sick. My body cannot resist that feeling." (COL2 unclear) For other communities who have suffered decades and generations of structural and physical violence, healing had to involve addressing those "wounds that you carry with you inside", such as self-discrimination and isolation, before engaging in more relational reconciliation and claiming reparations. (COL 17 unclear)

An emphasis on reparations as a device to contribute to the healing of survivors underscores the importance of the process through which reparations are delivered. Victims may be re-traumatised, on the one hand, if the wrong message is sent (Roht-Arriaza et al., 2009, 181) as well, on the other, if it is delivered in a way that conveys insincerity (Moosa et al., 2003, 137). Ill-designed processes may scrutinise the life, choices and experiences of abuse by victim-survivors (Winter 2018). These concerns were evident in our responses. One victim who had campaigned for decades to establish his brother's innocence after he was killed by state forces in the Bloody Sunday massacre. While the British Prime Minister had apologised as a tribunal vindicated his brother's name, the state dragging its feet to prosecute the soldiers responsible and reach a compensation settlement with the families left him feeling deflated – "no money would have been payment enough for what the families had to go through ... Money doesn't matter, as far as I'm concerned. Okay, it eases the problems that people have in relation to financial aspects of it, but it certainly doesn't heal the heart." Although he accepted a five-figure sum monetary award in 2019 for the 1972 killing, for him compensation remained a "dirty word" or "bloody money" as people would say "you are in it for the money". This speaks to not only the representational practices and values imbued in the process with the state or a responsible actor in making reparations, but also how it is socially seen.

A related claim is that the delivery of reparations can help re-building civic trust, between a state administering a reparations scheme and eligible victim-survivors (de Greiff 2007). On this account, reparations seek to achieve some measure of social solidarity as an element of re-constituting a social contract between victims and the State (de Greiff 2007, 465). A human rights lawyer in Nepal was cautious regarding claims that the state providing reparations would rebuild trust in state institutions: in a way reparations is a “public relations building state-people relationship in a bigger sense”, by repairing the harm caused and allowing victims’ ‘buy-in’ and ‘ownership’ of such a process. A human rights lawyer described that in one case in Peru where hundreds of millions were poured into a range of TJ activities, victims felt that the process itself was like a “slap in the face” despite the public apology and acknowledgement of the innocence of their killed family member.

In contrast to the focus on civic trust, several participants in Guatemala, including survivors and church representatives, framed reconciliation as a comprehensive and holistic concept, in which reparation, whether judicially awarded or distributed through an administrative programme, formed part of an overall conception of justice involving truth, accountability and redress. These views were echoed in Nepal, where one human rights lawyer stated:

“If you put pride on the establishment of the truth, prosecution, reparation to the victims it will give the victims a sense of trust and then reconciliation will evolve. It’s not a kind of process where you call a victim, you call a perpetrator and you make them hug each other and that’s the reconciliation ... that is not going to help.”

Similar views were expressed in Northern Ireland, where one victim said “we hear other people talking about reconciliation, but what are we reconciling ourselves to? Because if we don’t know what came before, reconciliation to me is what comes at the end of the other pillars, as such, i.e. truth and justice. I don’t know who I can reconcile myself with, because I don’t know who the perpetrators were and that’s part of the problem.”

Participants in Colombia noted the link between challenges of reconciliation and reparations amid current material circumstances for victim-survivors and perpetrators, with one survivor advocate stating “What they’re seeking is to reconcile themselves with the non-state armed groups and the people who did this to them and also with life so life itself in the situation that they’re they are currently in.” Another spoke about the need for victim-survivors to have the means to engage in psychological and emotional counselling to reconcile with themselves:

“Because if it is not worked from within, the emotional, psychological part of it I can’t even have better conditions, but if I’m not reconciled with myself, my history [or] ... the damage that I’ve suffered I may have opportunities and maybe I even use these opportunities to do more damage in society.” (COL 17 unclear)

The same participant continued:

“The person has to interiorise reparations and start to repair themselves, in so far as they are repaired themselves, and they repair themselves only then can they be reconciled.”

Another Colombian participant noted the multi-dimensional relationship between reparations and reconciliation: “I see sort of two tracks, one track related to how people feel, because depending on whether they have been getting reparations or not, and then another track that has to do with social dilemmas that are going on, regardless of what's happening in terms of reparations.” (COL25 unclear) Other Colombian participants, including a representative of a donor organisation, noted that the procedural relationship in engaging victim-survivor groups and other elements of civil society were key to enabling reparations processes to have a reconciliatory effect: “there is a lot of relation between reparation and reconciliation, but it depends on the way that you do it. If you don't do it in a cooperative way it won't generate reconciliation, or it affects that reconciliation will be less.” It could be for some victims that coming forward to claim reparations and interacting with such a process brings them into contact with other victims, supportive civil society actors and state officials, which can be conducive to normalising their suffering, mitigating their isolation and reconciling themselves with their harm. However, this one-sided approach precludes an engagement with those responsible, which may not be feasible or safe, but has the result of inhibiting more relational accounts of reconciliation through reparations as a source of making amends by those directly responsible for perpetrating the violations.

One Ugandan NGO representative found the interconnected dimension of individual and national reconciliation, which suggests a role for reparations as a facilitative mechanism,

“We cannot talk about national reconciliation with just victims that are wounded. We need to first heal the individuals who will participate in healing their communities [in contrast to wherein] warfare we talk of pacifying areas. You cannot pacify, you demobilise, you demine an area, it should also be something that should apply in terms of the individuals, in terms of healing, the spirit should be comprehensive that the way you demine by moving one landmine you also want to heal and individual and then also be able to use and power this individual to be able to impact the wider community, to be part of a broader social change within the community so that together they can be able to participate in meaningful national reconciliation initiatives.”

These comments reflect a nuanced awareness of the relationship between reparations and reconciliation. Several participants affirmed a broad and holistic conception of reconciliation as the outcome of multi-layered TJ processes involving several of its paradigmatic elements (investigation, accountability, reparation). This indicates the potential for several permutations of reparations, reconciliation and the relationship between them. Across our large sample of interviews, it seems a diversity of views on these concepts and their relationships was consistent. As a result, it would seem a mistake to privilege one narrow conception of the ideas, and instead it may be necessary for lawyers and policy makers to expect a plurality of views regarding reparations and reconciliation. Such an approach may align with Lu and Mouffe's emphasis on reconciliation in agonistic terms. By emphasising its structural and agonistic dimensions, the role of reconciliation may enable victim-survivors and citizens to contest the justice and legitimacy of the state as a honest-broker in dealing with the past. Reparations do not equal reconciliation. They do offer an expressive and symbolic acknowledgement of victims' suffering and the wrongdoers' responsibility. In this way reparations can provide a space to socially reintegrate victims and perpetrators as a path in which reconciliation

can grow. However, it is equally predictable that often reparations are resisted, delayed or partially made, undermining trust and faith in each other.

There is a presumption that in pursuing TJ a society will facilitate its transition to a peaceful, reconciled democracy (de Greiff 2010). This conception remains rooted to a transition to a liberal democracy model, without a causal connection between them or assumed without appreciating the complexity and fragilities of political transitions. It is unclear that participants across the case studies share this understanding of the role of either reparations or reconciliation. Instead, they often voiced concern regarding the need for TJ measures to go further and address structural violence.

Looking beyond relationships to structural violence

In recent years, there have been growing criticisms of transitional justice, suggesting the need for an alternative and more ambitious approach. Robins and Gready suggest transformative justice 'as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level.' (2014, 340) They note the 'tools of transformation will not be restricted to the courts and truth commissions of TJ, but will comprise a range of policies and approaches that can impact on the social, political and economic status of a large range of stakeholders.' (2014, 340)

In the context of these critiques, a discourse regarding 'transformative reparations' has emerged (Uprimny 2009; Walker 2016). Uprimny defines transformative reparations as 'an effort to articulate the dominant idea of reparations, that in current legal theory is backward looking and grounded in corrective justice, with the concept of distributive justice, that is present and forward looking and takes into consideration current needs of the population.' (2009, 637) As such the justification for taking a transformative approach to reparations is to recognise that corrective justice risks returning victims to their original position of poverty, discrimination and marginalisation. Instead transformative reparations consider victims' circumstances and aim to change the way they live in light of the root causes of the conflict (Uprimny 2009, 638). Using Fraser's work, Durbach and Chappell (2014, 548-549) emphasise the importance of the representative or political transformation of gender relations through gender mainstreaming in institutions, processes and economic equality, but this can be a broader distributive justice in transforming society. Yet as Walker notes transformative reparations risks diluting victims' rights by placing them as the catalyst for social change (2016).

This intersection with liberal democracy in an account of transformative reparations dovetails into the more communitarian approach of reparations leading to political inclusion and civic trust advocated by de Greiff (Uprimny 2009, 639). However it goes beyond just the notions of moral and political recognition of victims, to also consider their economic, social and cultural situation, where reparations are complemented by poverty reduction and development initiatives (Uprimny 2009, 642). De Greiff and others have cautioned the need to maintain the distinctiveness of reparations from development, to avoid diluting the rights of victims or be seen as a substitute (2009, 63; Gready and Robins, 347). Nevertheless on the donor side, TJ is increasingly seen as part of development and

state-building reflected in the Dili Declaration 2010 and UN Sustainable Goal 16. Yet these developments have emerged in 'parallel', rather than an integrated approach that considers how they are linked and causal to respond to fragile societies emerging from conflict (Baker and Obradovic-Wochnik 2016).

A transformative conception of reparations critiques approaches based on individual acts of harm or based on proving successive individual acts as a totality, as more likely to miss the more widespread or systemic nature of gross violations of human rights and their root causes in society. Lu argues: 'In cases where structural injustice enables widespread, coordinated, legalized, and normalized individual, collective, or corporate wrongdoing – a typical defining feature of most major political catastrophes – a narrow account of reparation that aims to settle accounts only between the particular agents involved is no longer appropriate for determining the field of responsible agents for victim reparations.' (Lu 2017, 235)

It is possible to frame reparations as contributing to broader goals of TJ, that may address root causes of violence and better facilitate a transition to democracy, or alternatively, may point to a more open-ended and grassroots conception of the post-conflict or post-authoritarian future, which may not be necessarily compatible with neo-liberal conceptions of state-building. In particular, the remainder of this article will interrogate the potential contribution of reparations to guaranteeing the non-recurrence of gross violations of human rights, based on the existing literature and our interviews.

Reparations as Guarantees of Non-Recurrence (GNR) or simply palliative?

GNRs are an under-developed component of TJ discourse and practice. The term often forms part of the recommendations of inquiries and truth and reconciliation commissions. (Roht-Arriaza 2019, 121) According to Roht-Arriaza, GNRs are not about putting the victim back where they would have been before the violation, but instead are about changing the status quo (2019, 113). In this regard, they align with more transformative reparations. GNRs may be well placed to connect the more individual forms of reparation with more institutional and societal transformative along with political inclusion that is aspired to with transformative reparations. (Chappell 2017, 1225-1226)

Considering the inevitable inadequacy of reparations as a form of healing, it may be necessary for the State in addressing a violent past to signal its commitment over time to preventing the recurrence of violence and making a long-term effort to address the causes and structures of violence. In addition to the transformative conception of reparations, guarantees of non-recurrence may fulfil this function. In most early TJ literature, GNRs have taken three main forms: demobilisation and dissolution of armed groups; vetting; and institutional reforms focused on the security and justice sectors and prevention of future conflict (Mayer-Rieckh 2017). The 2005 UN Basic Principles speak about institutional reforms, education and integration of legal and ethical norms into a range of actors that can be directly or indirectly involved in violations, and the promotion of 'mechanisms for preventing and monitoring social conflicts and their resolution'. Such GNR activities have tended to be limited in their impact (A/68/345, 2013, 17). Roht-Arriazi notes 'Where vetting and institutional reforms have fallen short, ... they rarely tackle the informal

structures of power derived from wealth, tribe or other forms of elite solidarity that often survive a political transition. As long as these underlying “hidden powers” are intact, neither vetting nor reform of police, military or judicial institutions will be effective for long in avoiding either rights violations or corruption, as the deep structures remain in control.’(2019, 125)

Based on this concern, GNRs as a form of reparations may seem quite detached from victims’ individual experiences of violence, as they speak more to society and institutions future behaviour. However, in several interviews with victims, ensuring the non-repetition of violence was of key importance. Victims often spoke not of themselves in being victimised again but wanting to ensure a better peaceful future for their children and grandchildren. The comprehensiveness of reparations in publicly acknowledging and memorialising victims, determining who is responsible and providing benefits to victims can assist in “social transformation” that can facilitate “political transformation” in that such knowledge and processes changes society and “guarantees to us that this will not happen again.” Victims also spoke about reparations as only providing compensation or other measures alone without the prevention of future violence was seen as futile, as one respondent said,

“it is very difficult to repair a victim when you have another victimisation next month. How do you close the tap of reparations then?”

Indeed one Colombian civil society actor said that comprehensive reparations is part of guaranteeing that it “does not happen again” by bring attention to the violation and creating a cost for it to be remedied. One Guatemalan civil society actor felt that prosecution was an important part of reparation and GNRs, in that when “we don’t have the justice, then the army can start to think their ideas and do this again.” This might be best addressed in terms of overlapping conceptualisations or goals that different institutional mechanisms might achieve – i.e. the capacity of a criminal prosecution to provide some dimension of victim repair traditionally associated with a direct reparation/redress program. Overlapping may be preferable to the suggestion of reparation as a primary or exclusive concept that would dominate the others mentioned in the comment.

Reparations, understood as a mechanism of non-recurrence, and as a form of reconciliation, may ideally speaking, represent complementary elements of a holistic conception of justice (de Greiff, 2010). However, several tensions may undermine this ideal. First, it may be possible that reconciliation is pursued as a State-led mechanism, whether through truth commission, restorative justice body or other processes, for prematurely settling the social and political contestation regarding what is a desirable post-conflict or post-authoritarian society. Reconciliation in this context could operate to affirm a narrow conception of TJ as state-building, designed to affirm the legitimacy of the new government, to the exclusion of victim-survivors’ concerns or other marginalised sectors of society. As a potential element of this conception of reconciliation, reparations as being palliative may be designed to avoid disrupting existing political consensus or to consolidate existing power structures. In this regard, reparations may operate as a form of patronage for those who function to affirm the existing power structures and political order in society. Indeed the failure for reparations to contribute to transforming the root causes of violence, risk them being a palliative tool to quieten and demobilise victims.

The Oxford English Dictionary defines palliative as something that 'relieves the symptoms of a disease or condition without dealing with the underlying cause' (OED 2005). Palliative care is contrasted to medical treatment, as the former is concerned with relieving suffering and improving the quality of life of those terminally ill, whereas the latter focuses on curing illness and prolonging life (Morrison and Meier 2004). The WHO defines palliative care as 'that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.' (WHO 2002, 84) Such palliative care also recognises that such interventions should be administered as early as possible to mitigate symptoms that can become more difficult to manage later in life (WHO 2002, 83). Palliative care is not a negative connotation or regulated as a substitute to curative care, but promotes improved quality of life, relief of suffering, enhancement of human dignity, as well as to assist individuals to discover 'new potentials and meanings in life', health relationships with themselves and others, as well as develop resilience (Meghani 2004, 157)

In relation to reparations being palliative, the focus on remedying the individual's suffering may be too private and insular to go beyond their personal experience of harm in helping to ameliorate the burdens they live with on a day-to-day basis as a result of the violations they have suffered. As one Colombian civil society actor said on the recovery of those disappeared as reparations "It is a palliative so that the relative can transit the moment of the return. It is a palliative for the moment of the return and it is not so much so that you do not make a fuss but it is so that you can transit that moment." As such, reparations have a temporal aspect to assist victims in surviving and manage their suffering.

In this regard, reparations processes may benefit from being explicit in acknowledging their limited contribution to victim healing is not merely due to some deficiency in implementation, but as an inevitable feature of reparations as a concept. Zolkos argues, 'The importance of making place for unrectifiable loss within the humanitarian politics of restitution and reparation is thus that it signifies not merely a failure or an error in the implementation or execution of restitution making (though that is at times the case), but, rather, that it marks a constitutive limit, or a threshold, for politics and for law in their encounter with situations of trauma, mourning and dispossession' (Zolkos, 2017, 335-6).

However, reparations being palliative may undermine transformation or reconciliation, by allowing such violations to repeat in the future. As such reparations may be used to placate victims to facilitate the political priorities of those in power and avoid criminal accountability, uncovering the truth of the scale of violations, or inhibit structural reform that GNRs aim to achieve. Thus, while acknowledging the limitations of reparations may help inform expectations, it may also undermine advocacy for more ambitious programmes if seen as inevitably inadequate. Hamber suggests reparations can be a 'double edged sword' as the promise of full remedy to international standards is unachievable, no matter how inclusive or sensitive the justice or administrative reparation process. Instead, governments and perpetrators must "continually, and perhaps endlessly, trying to make substantial, personalised and culturally relevant symbolic, material and collective reparations" (Hamber 2000, 225).

At the same time, we should not expect victims to be so wedded to principle to reject reparations that fall short of transforming the root causes of violence or ensure reconciliation. Victims may be satisfied by reparations, which are palliative or patronage, where they benefit from them, and they

may not be concerned about the bigger political picture. In such circumstances, reparations are just a means to assist in moving on with their lives and not be defined by the past or their suffering politically instrumentalised. Maybe reparations being palliative can provide victims with the support they need to engage with reconciliation efforts or engage in agonistic debates about the past and future of their country (see Gilmore and Moffett 2021), which may facilitate a more vibrant liberal democratic order.

Similar concerns regarding reparations as being palliative were expressed by participants in Colombia, with one participant finding “for me that’s why the monetary approach, I think it’s the easiest approach just throw money at it which is a kind of typical response from the Colombian political elite in general, they like to brag about how much they invested or not where the actual change came from more about the investment itself and this kind of fits within that framework. It also has a very clear political interests and favour.” (COL5 unclear) For some ex-combatants, they viewed reparations as a means of extending the state’s power over them by imposing such measures against them as further retribution for their disloyalty. As explored above, reparations as palliative can be a means to consolidate the status quo and the state’s dominance diluting civil society efforts to address structural injustice.

It is also foreseeable that a patronage approach to reparations is likely to create division among victim-survivors (between those favoured and those excluded) and between victim-survivors and perpetrators within different patronage structures. As one civil society actor in Nepal noted in Rolpa, where the Maoist insurgency started and has continued support, Maoist political leaders say “if our party is in government you will get this much money as a compensation. They don’t see that it’s your human right ... they just put it as some kind of favour from the party... as something that their party has done for them.” Another civil society actor agreed and found that there was resentment with some people being distinguished by the government as being more victimised than others, yet all live in poverty - “reparation also has brought a sense of division in the society. ... in the society there is a kind of rift or a new kind of conflict that sees that person is getting that much money from the government and we are not getting anything.”

There was also a perception of hierarchy of victims with those closely associated with political parties, which reproduced further inequalities between those who are within the state political system and those outside it. As another Nepalese civil society actor said,

“The victims who are at the top at the political level, they are not very much concerned for the justice of [all] victims because they are already, in a beneficial position those kind of people try to ignore the real victims and minimise their demands like justice, truth, reparation and things like that...”

A second challenge relates to the ambition inherent in reparations contributing to both reconciliation and guarantees of non-recurrence. While theoretically capable of supporting a holistic approach, the range of variables inherent in the design and implementation of reparation schemes, and in a victim-survivor centred fashion, can render this illusory. TJ literature already expresses concern about reparations through courts or administrative bodies designed to have a

transformative effect on social relations, on the grounds of practical realism and feasibility (Williams and Palmer 2016), but also, according to Walker, 'because this agenda threatens to bypass or displace reparative justice as a distinct and distinctly victim-centered ideal in favor of a different kind of justice agenda.' (2016, 110)

The scale of these challenges has long been acknowledged, albeit in the context of economic development. Scott argues that society must be remade before it can be the object of quantification (1998, 22). Scott states administrators are content with the gross simplification, because they believe that the real world is mostly empty, i.e. most of the facts of the real world have no great relevance to the situation that they are facing. This approach has led to a hierarchy of relevance in determining the factors for governance – i.e. what 'matters'. For Scott 'the formal order encoded by social engineering designs inevitably leaves out elements that are essential to their actual functioning.' (1998 351) He notes the paradox of social engineering: 'The more ambitious and meticulous the plan, the less is left, theoretically, to chance and to local initiative and experience.' (1998, 347). As a result, for Scott, this realisation should prompt 'radical modesty about our capacity to predict the consequences of any major social intervention into a tolerably functioning complex social or natural order' (1998, 288).

Participants interviewed in our case studies demonstrated awareness of the challenges of meaningful mechanisms to address structural injustices and offer guarantees of non-recurrence. In Colombia, one ex-combatant said, "we will gain nothing by the State saying things or doing things in reparation now and subsequently that the same State creates conditions for the same situation to happen again". Another victim advocate preferred to exclude the possibility of meaningful GNRs, suggesting the focus should be on removal of the material means of violence: "even if there's a social or personal disposition to be violent, that won't become effective because there are no weapons available or no mines around." A Nepalese government representative identified the need to create "an environment of win-win situation in the society and stop the conflict in the future". Some participants addressed these issues, noting the challenges and need for pragmatism. In Colombia, one participant stated: "The question there remains about how is it possible for us to repair democracy or fix democracy with the same norms and the same rules and institutions that caused this harm, right? So, those norms and those institutions need to be changed themselves in order for that reparation process to go ahead." (COL07 unclear) This view reflects the interdependence of reparations as a process with the reform and/or transformation of State and democratic institutions. Both processes contribute and co-constitute democratic values in transitional settings.

Others including a trade union representative spoke about the need for reparations to contribute to enhancing the cultural legitimacy of collective action through civil society organisations, especially trade unions, and their role in constructing democracy, social justice and the conditions for just working environments. It can be difficult after mass atrocities for society to rebuild the social fabric when civil society actors are targeted and continue in the transition to be subjected to violence and threats. An often-overlooked aspect is the collective harm caused by the death of human rights, civil society, or trade union organisations to the group in terms of leadership, internal trust and capacity. Reparations have struggled in such cases to repair this collective harm, perhaps scholarships in the

victim's name and subject for marginalised groups, may go some way to supporting the next generation. Often it will require more to change the organisational culture in such institutions as the military or intelligence services, which view human rights defenders as insurgents or rebel sympathisers. This requires more of a cultural shift within such groups that will go beyond trials, truth commissions or GNRs. Institutional resistance and defiance continue to shape many state organisations implicated in past crimes. It also highlights the limits of a technocratic approach to remembering the past and TJ work.

In contrast, setting expectations for reparations to form a meaningful part of long-term processes of reconciliation and GNRs, are inevitably going to require more than single, albeit expensive and complex, reparation schemes. Sustainable state-building when transitioning from mass violence needs to consider long-term vision of transformation from cultures and structures of violence of past. Often contestation, lack of attention to long-term challenges, and political change over in governance means there is an ebb and flow only pressurised by victim and civil society activism. There are no panaceas in structuring the advocacy, design and implementation of reparations for the long-term goals of reconciliation or GNRs. Instead, explicitly setting expectations against short-term fixes and avoiding over-promising regarding what reparations can deliver seem appropriate. Reading has recently argued that 'instead of viewing restitution as a one-off, discrete, or bounded process toward a goal, it is better understood as an assemblage of practices that involve unfinished processes and interventions that operate across multiple domains...that are political, judicial, symbolic, affective, spiritual, and cultural.' (Reading 2019 236) By acknowledging the long-term nature of these processes and the involvement of cultural, affective and emotional dimensions to reconciliation, it may be possible for reparations to play a narrow and humble role in long term processes of social, cultural and political change.

Conclusion

Reparations are laden with values and reflect a struggle to bring those responsible to remedy the harm they have caused to victims. However, given the gap between their normative value and their implementation it often means that it is difficult to measure the success of reparations in terms of reconciliation or the continuation of the status quo. This article reviewed the claimed goals and expectations for reparations as an element of TJ, specifically regarding reconciliation and guarantees of non-recurrence. Despite the theoretical potential to align neatly with other elements of state-building and social change to contribute to these broad and long-term goals, the nuanced nature of reparations and the challenges in meeting the needs of diverse victim-survivors should provide caution that more ambitious conceptions of reparations may make the perfect the enemy of the good.

Considering the complexity of reparation, it is incumbent on those designing and implementing reparations to be clear and explicit in informing survivor expectations around the limitations of reparations in two regards. First reparations should be understood as palliative, as inherently inadequate given the profound nature of loss and harm endured. Second reparations are slow, in contrast to the theory of change involved in transitional justice, which is very presentist, and is exacerbated by the short-term financing inherent in post-conflict donors and aid. Thinking about profound social change or transformation is inevitably inter-generational or at least multi-decade in nature. State-building after mass violence needs to be cognisant of these issues as not simply a

policy, short-term goal, but a cultural and practice shift in order to avoid the mistakes of the past repeating themselves.

At the same time the consequences of poorly designed or implemented reparations will be felt by victim-survivors, who may lose out on material benefits, be subjected to distress or re-traumatisation. This may be particularly acute for reparations that are cynically implemented as a means of palliation, by the state choosing not to relate reparations to either reconciliation or guarantees of non-recurrence. Reparations are politically contentious and can undermine reconciliation where they are used to punish one side or group in moving forward. That said they can provide a moral benchmark and process to recognise victims' rights and suffering that can lead to a place when the pain and anger of the past can be alleviated. The difficulty is that TJ is often not hermetically sealed or a time limited process but can be politically contaminated and defray over time as nationalistic discourses or revisionist accounts of the past re-emerge. The past can become part of a meta-conflict and institutions the place of lawfare rather than redress and upholding values. Explicitly lowering expectations and making clear that reparations form only part of broader processes of legal, social and cultural change offer a direction for a humbler and reflective practice.

Notes on contributors:

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