

Transformative Gender Justice: Setting an Agenda

Jelke Boesten and Polly Wilding

This special issue of *Women's Studies International Journal* explores the potential for justice mechanisms, in the broadest sense, to have transformative outcomes upon gender relations and the position of women in countries with histories of violence, whether that be political violence, post-conflict, chronic criminal and / or social violence. Much of women's experiences during and following periods of extensive violence are informed by pre-existing, peacetime, inequalities. The specific gendered harms suffered by women, such as sexual violence and exploitation, are grounded in understandings of gendered roles in society and the perceived links between reproduction and community. Thus, as the growing body of feminist research into processes of transitional justice show, women have vital stakes in post-conflict transformation, rather than reconstruction (Chinking and Charlesworth 2006 cited in Reilly 2007, Ní Aoláin 2012). Likewise, the (often far less visible) expectation that women sustain their caring roles in the everyday of war – providing food, shelter, and care for dependents, or soldiers, in often desperate contexts – constitutes specifically gendered experiences associated with existing inequalities and expectations (Reilly 2007). With this knowledge in mind, it is increasingly obvious that for women periods of societal transition have to aim for the transformation of the underlying inequalities that provided the conditions in which these specifically gendered harms were possible. Consequently, it is inadequate to talk of 'transition' – moving from context of chronic violence to a more 'peaceful' society – if this results in more of the same just under different circumstances.

The essays in this Special Issue on Transformative Gender Justice¹ build on this emerging body of work that emphasizes the need for a transformative approach to the opportunity that transitions can pose in the aftermath of mass violence. This means that we are not only interested in the structures of inequality and injustice, and how these relate to violence, but in the institutional processes that silently and, often contrary to intentions, reproduce those same inequalities. Ultimately, we are interested in investigating strategies rooted in different disciplinary traditions that challenge such structures. In other words, we are interested in how different justice strategies and mechanisms can contribute to the reconfiguration of power beyond individual experiences of violence and injustice, but rather, at societal level. This Special Issue, therefore, is a contribution to this emerging debate, which explicitly aims to bring together a range of disciplinary perspectives with gender analysis at the heart.

Gender, 'peace' and transformation

In recent years there has been a global momentum in thinking about and responding to violence against women (VAW), originating with the early research into domestic

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violence in the 1970s and 1980s (e.g. Brownmiller 1975, Kelly 1988), and more recently has been focusing on the issue of sexual violence in war. There is also increasing attention being paid to high levels of violence against women, especially intimate partner violence (IPV), in developing countries. The latest WHO (Garcia-Moreno et al 2005) report concludes that 35% of women worldwide experience physical and/or sexual violence in their lifetime, of which the majority (30%) constitutes intimate partner violence. Nationally, levels of IPV range from 17% in Japan to 71% of women experiencing such violence in Ethiopia – figures that are likely to be much higher in reality given the chronic underreporting and stigma surrounding violence against women in most of the world. The report also indicates that the differences in prevalence are related to gender ideology and to institutionalized gender inequality. Despite the inherent difficulties of producing comparable statistics on violence against women, the findings of this report nevertheless make it clear once more that gender inequality matters.

There is a certain consensus in feminist literature about the continuum of gender-based violence: the idea that violence against women may take different forms and be of a different scale during periods of conflicts, but that ultimately, such violence is rooted in existing and surviving gender ideologies and inequalities. However, the term as it was first conceptualised by Liz Kelly (1988) did not only incorporate behaviour that we would readily recognise as ‘violence’, but rather identified a range of interactions and abusive behaviour as being part of the same continuum of behaviour that reinforced the normalisation of women as sexualised objects. Thus the term’s usefulness goes beyond its ability to highlight the false separation between different forms of violence, by also unpacking underlying and persistent practices that normalise women’s subordinate position in society. The term, therefore, can describe the normative structures that make women ‘rapable’ and vulnerable to abuse. The continuum of violence, therefore, is expressed in the everyday violence that women experience in their homes, on the streets, and in the public sphere. While recognising the existence of a continuum of violence may not lead to useful immediate interventions with regard to the gross violations of human rights that women may experience in any given conflict, as O’Rourke argues in this issue, it does force us to look at the structures of inequality that are at the basis of such violations. Recognising that women do not only face male violence, sexual or otherwise, during conflict, but before and after conflict on a massive scale means that transitional justice has an obligation to look at ameliorating the structures underlying this violence, whether they be the institutions, norms and values, economic relations or family structures that shape people’s experiences, choices and opportunities.

As feminist scholars have pointed out time and again, it might not really be apt to speak of ‘peace’ in reference to societies where violence against women is chronic and persistent (Jacobs, Jacobson and Marchbank, 2000, Meintjes, Pillay and Turshen 2001, Pankhurst 2003). When everyday violence is ongoing and pervasive, formal ‘peace’ may provide no more security for women than societies experiencing political conflict. Many ‘peaceful’ societies fail to provide physical security, especially for particularly marginalised or subordinated groups. As scholars of Guatemala, El Salvador, Peru, Sierra Leone, and South Africa have shown (Menjívar 2011, Sanford 2008, Hume 2009, Boesten 2014, Coulter 2009, Jewkes et al 2009), violence against

women can be widespread and normalised in post-conflict societies, indicating an uncomfortable peace at best, or the continuation of war at home at worst. This corresponds to feminist concerns about 'low-intensity' violence that many women face in non-conflict zones (Wilding 2012), but also links to a growing preoccupation with 'post-war' crime and violence (Kelly 2000, Bourgois 2001, LAP Special Issue 2008).

We argue, therefore, that the macro and formal processes that constitute existing elite-driven, formal transitional justice mechanisms exclude, by design, the complexity of gendered experiences. Even when women's voices are included, as is increasingly the case, the fact that they speak to a different – messier – agenda, means that they are often not heard. As Gready and Robins (2014) point out, the notion of transformative justice proposes the inclusion of more grassroots groups, victims groups and activists, in order to move away from the liberal peace agenda and its top down ways of working. But this has to be done in a way that is sensitive to women's needs. As Monica McWilliams points out in this issue, if you actually ask what peace looks like to women, it becomes clear that women's priorities are just as political as men's, but that limited understandings of what is 'political' – or what is important in politics – obscures women's claims. Seeing women's voices – and the voices of otherwise marginalised groups – as an enrichment of post-conflict political change that has to be taken seriously is then essential in order to build a more peaceful and just society.

Highlighting the socio-political nature of structural violence enables us to question the role of the state in the reproduction and escalation of such violences. What role does the state play in ameliorating or challenging gendered violence (Jacobs, Jacobson and Marchbank 2000)? Or in perpetuating and creating violence (Pearce 2010)? The high incidence of violence against women in many societies is one example to draw on. High levels of violence against and among young men is another phenomenon that would benefit from an analysis that includes a socio-political framework and a gendered lens (such as urban and gang violence, Wilding 2010; Hume and Wilding 2015). But not only gender matters; the structural violence presented by poverty, marginalisation, and exclusion shape these forms of physical violence.

Paul Gready and Simon Robins (2014 p8) explicitly refer to the importance of addressing socio-economic structures in transitional societies. The authors see three main reasons why this is essential: first, local populations and victim-survivors tend to prioritise economic and social rights; second, socioeconomic injustices are often at the root of conflict, so addressing this would help prevent future conflict; and third, Gready and Robins assert, the human rights field has moved to include social and economic rights alongside civil-political rights, echoing a call made by feminists for many years (e.g. Meintjes and Goldblatt 1996). This recent interest can be seen as moving a step closer towards realising a 'positive peace', as envisaged by Galtung, through the challenge it poses to inequality and poverty, which might otherwise produce fertile terrain for conflict and violence. The need to focus on broader structures facilitating violence is echoed by Matthew Evans (2013, p1), who refers to the need to address structural violations of human rights versus 'individual violations of a narrow set of civil and political rights'. Such structural violences of a social and economic nature directly intersect with the 'individual violations' of human rights

and mass violence, abuses which overlap and reinforce one another. Social and economic rights are often distributed along lines of differentiation, be these of a gendered, racial, ethnic, religious, or class nature, and are thus tightly linked to civil and political rights and manifestations of violence. Therefore, a key underlying question that remains unaddressed in the existing literature is how we can include an analysis of unequal power relations at a societal level that includes the intersecting domination of gender, race, and class as determining vectors of inequality and vulnerability to violence in our conceptualisation of justice. The idea of a transformative approach to justice intends to contribute to that analysis.

Transformative Justice

The lack of peace for large parts of the population in societies with histories of violence raises significant questions regarding how we understand and attempt to implement 'justice'. Assuming that the notion of justice is based on a distinction between right and wrong, thus setting the boundaries of acceptable behaviour and, ultimately, how we live together, then the neglect or even denial of high-levels of violence that permeates households, streets, and communities sends a clear message to those who experience this violence on a daily basis. Violence is an effective tool of maintaining and enforcing certain power relations, which is experienced through the presence of threat and fear. By allowing everyday forms of violence to continue, it legitimises this violence, isolates those who experience violence and, in doing so, reinforces and reproduces the structures in which such violences are embedded. By recognising gender-based violence as structural, in other words, as something that is formative of social relations, and hence, of social, economic and political configurations of power in any given society, this highlights the fact that it should not be considered as an individual's problem, a problem of only victims and perpetrators, or a women's problem.

Using the term 'transformative justice' indicates a need for justice mechanisms to address the structures and institutionalised inequalities that allow violence against women to persist. The term 'transformative justice' has been circulating for some time, and, interestingly, is most widely associated with debates around alternatives to criminal justice in cases of interpersonal violence, especially gender-based violence (Braithwaite and Daley 1994, Braithwaite 1999, Coker 2002). In this body of literature, drawing on socio-psychology and criminal justice, specific forms of restorative justice are discussed as part of a wider agenda of transformation of relationships and self-understanding among victims and offenders. Hence, transformation refers to the potential that different restorative justice mechanisms, as opposed to retributive justice, have the potential to transform social relationships that feed into inter-personal violence. This raises questions around the potential of restorative justice mechanisms at societal level and whether there is a way to use insights from restorative justice to address aspects of structural gender inequalities.

However, social and economic structures and inequalities are not centre-stage in restorative justice approaches (Coker 2002, Nocella 2011), something which transformative justice needs to address. As Coker notes (2002), restorative and transformative justice are often used interchangeably in criminology, while the former is very much a form of justice and restoration between individuals.

Transformative justice – in conflict settings or in broader society – should take into account institutional bias and structures of inequality (Nocella 2011). Moving into the field of transitional justice, Erin Daly (2002) observes that transformation and transition are too often used interchangeably, while transformation suggests far more radical change at the roots of society than a linear transition from here to there implies. But Daly does not address structural inequalities, as Matthew Evans observes (2013). Instead, Daly emphasises the idea of reconciliation and deterrence as transformative, which are not necessarily apt models for transforming societies' inequalities.

Within the recent literature that uses the term transformative justice in relation to transitions, there is an emerging understanding that transformation suggests more bottom-up approaches to justice, more involvement and less elitist, as opposed to top-down processes and interventions (Laplante 2008, Gready and Robins 2014, Waldorf forthcoming). As the main victims of conflict are often those who are marginalised from social, economic, and political processes in the first place, participation and voice in determining the form that transitional justice takes seems essential yet overlooked. Discussing reparations programmes, Laplante contends that involvement and participation of victim-survivors in the process of designing mechanisms of redress might help establish an initial form of trust between government and victimised populations, and help establish better buy-in from populations in the reparations that are finally decided upon, which may provide symbolic reparation, as well as starting to break down the structural inequalities at the basis of marginalisation and victimhood. Linking up to this idea of bottom-up forms of justice, Lars Waldorf (forthcoming) explores legal empowerment as a way of providing marginalised populations with the tools to make claims on the state, or other relevant institutional bodies, and carve out a space for themselves.

This literature – somewhat scattered and fragmented – is starting to consolidate. Paul Gready and Simon Robins published a comprehensive overview of the debates (2014), and moved this forward by proposing to put participation and process at the centre of transitional justice. As such, they define 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' (p2). So far so good; however, what this means for women's justice claims is yet to be clarified. Unfortunately, the inclusion of women, despite the UNs active promotion of women at the peace-table and in transitional justice since 2000 (Hudson 2010, Valji 2010), has proved difficult to implement in practice. As Monica McWilliams' testimony (interview, this issue) so vividly demonstrates, once women gain a place in institutional processes, the fight for respect is far from over. So what does transformative gender justice then mean?

Transformative Gender Justice

As the above discussion suggests, a further inclusion of women in the design and implementation of peacemaking and transitional justice processes and mechanisms is essential for an agenda of more bottom-up inclusion. In practice, this should go

beyond the obligatory quotas of women on committees and at peacetables, and should be far more inclusive of and attentive to a myriad of voices, such as activist groups, victim-survivors, local leaders and defenders of human rights. Women and men's understandings of the need for change in their immediate surroundings – at community level, at the workplace, and in the institutions that govern daily life, including the family – should be put at the centre of any transitional justice process, in order to not only repair harms done, but in order to help shape a better future. Perhaps, in order to 'break' with patterns of inequality that lead to conflict in the political, social, or family spheres, communication itself should be transformed. The top-down, expert versus lay, politics versus domestic way of understanding governance, could be reimagined as a bottom-up, inclusive and politicised process that can breach the gaps between local, national and global levels of politics. Feminist social transformation is necessary to break the cycles of gender based violence and inequality, but the existing arrangements of liberal peace do not appear suitable for that purpose.

The language of 'transformation' has been around in feminist work for a long time, with ideas of a 'transformative project' being inseparable from the political goals of a more just and equal society. Recently, the term has been gaining increasing traction in writings regarding the pursuit of gender justice, not only in the fields of transitional justice but also in other areas, such as in transforming victim-offender relationships. Romi Sigsworth and Nahla Valji (2011), for example, argue that transitional justice mechanisms are failing to address continuous gender-based violence in post-conflict societies because these mechanisms do not aim to undo and remake the social relationships that lead to violence against women. This omission is partly to blame, therefore, for the continuation of sexual violence in war in times of peace (Sigsworth and Valji 2011 in Buckley-Zistel). Rashida Manjoo, UN Special Rapporteur for Violence against Women has similarly called for urgent legal and non-legal measures that can challenge and transform damaging gender relations (cited in UN Women 2011, p97-98). Nevertheless, experts deem several rulings by the Inter-American Court for Human Rights regarding cases of violence against women as examples of transformative justice (UN-Women 2011, Rubio-Marín and Sandoval 2011). The transformative aspects in these rulings lies in the comprehensive reparations pledged to victims-survivors and their victims that include significant state action towards non-repetition and symbolic recognition.

At the heart of calls for transformative measures for gender justice lies the analysis that gendered violence is not limited to, nor particularly characteristic of, conflict. While evidence shows that violence against women, especially sexual violence, is often used strategically in conflict as a weapon of war, 'common' (civilian) sexual violence also tends to increase during conflict. As Holly Porter shows in her research (this issue) on Gulu, Northern Uganda, the majority of rape cases involved non-combatants: boyfriends, husbands, and 'suitors'. Research carried out among demobilised soldiers in the Democratic Republic of Congo also revealed the extent to which rape could either be strategic, in other words part of the conflict, or opportunistic (Eriksson Baaz and Stern, 2009). Cynthia Enloe (2000) already made this point of course in her work on the militarization of women's lives: sexual violence has a high 'entertainment' value among soldiers. The rape regimes which Jelke Boesten (2014) highlights in her work on the war between Shining Path and the

armed forces in Peru, showed strong links with peacetime hierarchies based on race, class and gender, and actively reproduced such hierarchies through collective and public, as well as individual and private, acts of violence upon women's bodies. All these findings indicate that sexual violence in conflict cannot be separated from the gendered structures of society pre and post conflict. Rape in war, weapon or not, is a product of the inequalities, stereotypes and prejudices that lie at the heart of the continuum of violence against women.

Recognising this means we need to move away from seeing sexual violence in war as extraordinary events addressed separately from the social, economic and political context. Rita Shackel and Lucy Fiske present their initial findings from their on-going research in Kenya, Uganda and DRC (this issue) to suggest that gender-based violence and social, economic and political marginalisation are not only intertwined, but mutually constitutive. They show how gender, poverty, and political (often ethnic) status make some women more vulnerable to violence than others, and that this violence also further entrenches marginalisation and poverty. To a certain extent, this echoes Boesten's findings (2014) with regard to the reproduction of race, class and gender hierarchies through sexual violence in Peru. Such findings clearly indicate that policies aimed to end sexual violence in conflict need to look beyond individual acts of rape in war to address the broader structures of inequality.

The goal of 'Transformative Gender Justice', as set out in this issue, explicitly intends to move away from a singular vision of women as victims of conflict-related sexual violence towards a more relational approach. Increasing calls to bring perpetrators to account via international law, specifically in the ICC but also in national courts and tribunals, have done little to actually bring perpetrators to account or provide redress for victim-survivors (Viseur Sellers 2007, Londras 2010, Ní Aoláin, Haynes and Cahn 2011, Brouwer et al 2013). This is in part because of practical and procedural problems around evidence and testimony, but is also related to institutional bias and hierarchies of harm. For example, as Solange Mouthaan shows in this issue, the ICC has difficulty understanding and effectively dealing with the gendered experiences of child soldiers. In part this is because of the limited interpretation of what it is to be a victim – or perpetrator – of sexual violence, and the inability of legal systems to deal with multiple harms, ambiguous victim-perpetrator status, and the agency (and demands) of victim-survivors. On the other hand, the emphasis on women as victims of sexual violence in public processes may further stigmatise women when they ultimately fail to provide justice. Feminist legal scholars such as Karen Engle (2005) and Katherine Franke (2006) argue that the emphasis on criminal accountability for perpetrators of sexual violence exposes victim-survivors to a scrutiny that is personally traumatising, and collectively categorising. 'Sexual violence victim' becomes a label, a script assigned to certain women from certain groups and regions of the world. Feminists have also expressed concern regarding the narrow emphasis on sexual violence as a marker of the severity of conflict (McWilliams this issue; Palermo and Peterman 2011), to the exclusion of wider harms and abuses.

Examining and unpacking the workings of the law and how it is implicated in maintaining or perpetuating women's disadvantage in society provides to the work of feminist legal scholars in contributing to 'transformative social and political change' (Ní Aoláin 2012). Along those lines, in this issue, Torunn Wimpelmann

examines law reform in post-2003 Afghanistan. Law reform with regard to violence against women was on the agenda of Western agencies involved in Afghanistan, as well as on the agenda of Afghan women's organisations and professionals. However, what resulted has not been transformative, but rather was the product of skewed political relationships and tended to reproduce rather than challenge existing gendered hierarchies. In Mouthaan's analysis of international criminal law (this issue), the legal categories of 'child soldier' and 'victims of sexual violence' become mutually exclusive and, ultimately, restrict girl soldiers to categories that do not reflect the reality of their experiences. What both cases emphasise once more is that legal processes are seldom transformative for women, as they tend to label women as victims in need of protection. The gender binary that relies on women as victims only, but men as both perpetrators and protectors, ultimately allows for the reproduction of cycles of violence, or rather, reinforces continuums of violence. As Ní Aoláin further stresses (2012, p213), following Doris Buss, there is an inherent tension in feminist activism directed at eradicating gender inequality, and the structure of criminal law, which is directed at individual crimes and perpetrators. This tension speaks to the agency/structure debate, in which the focus on individual responsibility should not be to the detriment of acknowledging structure, or vice versa. With the confines of criminal law, women all too easily become solely the object of harm, instead of the agent (or indeed, subject) of change.

It seems clear then that any meaningful transformation is unlikely to emerge from existing institutions and arrangements. As Gina Heathcote and Diane Otto (2014) assert in their reflections on contemporary gender and international peacekeeping and security paradigms, existing international institutions have limited means to pursue gender equality. Monica McWilliams, one of the main actors in the peace process of Northern Ireland, reflects in this issue on her experiences as both activist within, and externally to, the existing institutions (Interview, this issue). Her work in the field shows the difficulty in getting women's demands onto the agenda in the midst of periods of 'transformation', wherein women's issues are automatically assumed to be secondary to the broader goal of formal 'peace', a distinction which implies these goals are mutually exclusive, rather than reinforcing one another. As Molyneux (1985) pointed out in the context of the Nicaraguan revolution, women's demands are all too easily considered secondary to the main goal of political transformation – and indeed a threat to the cohesion of the movement.

What all contributors to this Special Issue share in common, therefore, is an interest in imagining new ways of responding to persistent social and political violence, since existing responses seem to mitigate and at best repair, but not transform the social and political relationships and institutional arrangements that feed into violence in the first place. As evidenced in this collection of articles, there are multiple causes of violence in women's lives, which implies the need to imagine new forms of justice seeking that can accommodate these complex realities. The authors are all concerned with learning lessons across transitional, criminal, and restorative justice at local and global levels to address VAW and gender inequality. This issue is separated into two broad sections. First, we focus on unpacking and analysing why certain understandings of gender justice and associated interventions are *not* transformative. In highlighting the tensions in contemporary practices in

transitional justice, the first four articles aim to contribute to changes in social and political understandings of gender justice. The second set of three papers in this issue look at possibilities for thinking in terms of transformative gender justice, moving the debate with regard to women, peace and transitional justice forward. As Niamh Reilly (2007 p155) so aptly concludes, considering the realities of women's experiences during war 'women clearly have a major stake in how justice and human rights are conceptualised and enacted in transitional contexts and how a society reinvents itself in the move away from violent conflict'.

There is an increasing body of theoretical and empirical scholarship that looks at different aspects of transitional justice with a feminist lens. This critical work feeds into understandings and critiques of interventions intended to address VAW and gender inequality in both post conflict societies and peacetime societies that experience high levels of VAW. One of the main critiques that continues to be made by feminist analysis of contemporary transitional justice, international criminal and human rights law as well as from scholarship looking at the security and peacebuilding sectors, is the limited way in which 'gender' is understood. By and large, while gender studies and feminist critique have indicated the need for a relational and intersectional understanding of gender, the term is applied so as to equal 'women' (Hudson 2010, p50). Since such an interpretation does nothing for an understanding of gender inequality as a societal problem, this way of applying 'gender' to international policy and law tends to reproduce harmful binaries and stereotypes that only reinforce the inequality that is supposedly being challenged (Franke 2006; Campbell 2007; O'Rourke 2011; Sjoberg 2011). These are important insights that need to be repeated over and over, underpinned with empirical evidence, and challenged with proposals for practical solutions. We hope that this Special Issue makes a modest contribution to these efforts.

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