

The Epistemic Violence of Transitional Justice: A View from Sri Lanka

Kiran Kaur Grewal*

ABSTRACT

In this article I explore the failures of transitional justice in post-war Sri Lanka. For most commentators this is simply explained in terms of a lack of political will. However, I argue that beyond this transitional justice in Sri Lanka is a story of epistemic violence. This is a result of its over-reliance on abstract, universalist liberal democratic theory that fails to properly grasp the historical, cultural and socio-political specificity not just of the locations where transitional justice is proposed but of the conceptual foundation of transitional justice itself. As a result, transitional justice simultaneously discounts colonial legacies while reproducing colonial categories. In the case of Sri Lanka this has resulted in a failure to fully understand and address the root causes of conflict and an inability to see and draw upon resources for reconciliation, reparation and redress.

KEYWORDS: Coloniality, epistemic violence, liberalism, Sri Lanka

INTRODUCTION

In this article I explore the failures of transitional justice in post-war Sri Lanka. A site of extensive armed conflict and political violence over its postcolonial history, Sri Lanka has long been a *potential* site of transitional justice intervention. Yet it has generally been under-represented within international transitional justice literature. While conflict resolution and peacebuilding have long been frames used to study the country, transitional justice scholars have only fairly recently begun to take an interest in Sri Lanka. This may be due to the fact that it was only following the end of the war in 2009 and change in government in 2015 that transitional justice was formally placed on the national and international agenda. Since then, there have been various attempts by national and international actors to implement transitional justice interventions. Yet it is widely agreed that these initiatives have thus far failed and that Sri Lanka remains an unresolved site.

For most commentators, the stalled nature of transitional justice in Sri Lanka is to be understood primarily in terms of the political climate. However, in this article I am interested in exploring the questions the Sri Lankan example raises for the transitional justice field as a whole.

* Reader in Sociology, Goldsmiths College, University of London, UK. Email: k.grewal@gold.ac.uk.

Taking up the question of the knowledge politics of transitional justice¹ and its role in interrogating hierarchies of power,² I argue that transitional justice in Sri Lanka is a story of epistemic violence. Moreover, while the nature of this violence becomes visible when we have regard to Sri Lanka's specific social, political, economic and historical context, I argue that this violence is built into the very nature of transitional justice as a global enterprise. The creation of a portable toolkit and language has undermined transitional justice's ability to adequately grapple with the complexities and diversities of specific locations. It has also undermined the possibility for many – and often those most affected – to actively engage and take ownership of the process. This is in spite of efforts at 'localizing' transitional justice.

The problem lies in transitional justice's reliance on abstract, universalist liberal democratic theory in its founding principles. As a result, transitional justice simultaneously discounts colonial legacies while reproducing colonial categories. This acts to depoliticize and overly fix culture while reifying liberalism, liberal democracy and civil society in ways that do not account for the differential experience of citizenship and the postcolonial developmental state. Finally, by retaining a narrow conception of the political, transitional justice is unable to recognize certain actors and voices, missing vital opportunities for agency and perspectives on post-violence justice.

THE CONCEPT OF 'EPISTEMIC VIOLENCE': POSTCOLONIAL, DECOLONIAL AND SUBALTERN STUDIES INTERVENTIONS

In using the concept of 'epistemic violence,' I explicitly invoke postcolonial, decolonial and subaltern theory in my interrogation of transitional justice. Thus, in this section I will summarize some of the key aspects of these overlapping but distinct bodies of scholarship before I apply them to the Sri Lankan context. In her now seminal essay 'Can the Subaltern Speak?' postcolonial scholar Gayatri Spivak famously concludes that the subaltern cannot be heard on her own terms. Exploring the narratives circulating around a case of *sati* (widow immolation), Spivak observes the ways in which differently positioned actors spoke for or represented the widow whose voice, perspective and experience could only be heard via this mediation. By taking up the question of representation and voice, Spivak both draws our attention to the colonial encounter that has shaped our perceptions of non-western subjects and provides a definition of the 'subaltern' as the figure who remains unheard within the epistemic order.³

This inability to appear as a speaking subject has been a focus for many decolonial scholars who point to the domination of Eurocentric modes of knowing being elevated to the level of 'universal' and/or 'global' knowledge while alternative epistemologies are denied, erased or denigrated.⁴ It is this colonial knowledge matrix that explains the ongoing coloniality of power in the supposed 'postcolonial' era.⁵ Meanwhile, subaltern scholars have tracked the figure of the subaltern from the colonial to the postcolonial developmental state: most famously Partha Chatterjee in his formulation of 'political society' as opposed to 'civil society.' For Chatterjee, while the latter is representative of the colonized elites refigured as postcolonial citizens, the former

¹ For more on this, see Briony Jones and Ulrike Lühe, eds., *Knowledge for Peace: Transitional Justice and the Politics of Knowledge in Theory and Practice* (Cheltenham: Edward Elgar Publishing, 2021); Briony Jones, 'The Performance and Persistence of Transitional Justice and its Ways of Knowing Atrocity,' *Cooperation and Conflict* 56(2) (2021): 163–180.

² Vasuki Nesiiah, 'The Specter of Violence that Haunts the UDHR: The Turn to Ethics and Expertise,' *Maryland Journal of International Law* 24(1) (2009): 135–154.

³ Gayatri C. Spivak, 'Can the Subaltern Speak?' in *Marxism and the Interpretation of Culture*, ed. Cynthia Nelson and Lawrence Grossberg (Urbana: University of Illinois Press, 1988), 66–111.

⁴ Walter D. Mignolo, *Local Histories / Global Designs: Coloniality, Subaltern Knowledges and Border Thinking* (Princeton: Princeton University Press, 2000); Boaventura De Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (Abingdon and New York: Routledge, 2015).

⁵ Anibal Quijano, 'Coloniality of Power and Eurocentricism in Latin America,' *International Sociology* 15(2) (2000): 215–232.

emerges out of the assumed 'pre-political' masses transformed into populations for intervention and development (in place of civilization) by the postcolonial state.⁶

While each of these scholarly traditions take a slightly different trajectory, some common concerns emerge. First, the dangers of abstract, universalist categories that privilege Western experiences and are then applied uncritically to other contexts. Second, the importance of history in understanding the present. And finally, the ongoing systems of knowledge and power that make certain actors and voices not just marginal but literally *unhearable*.

With these theoretical interventions in mind, I return to Sri Lanka: a state that achieved independence from colonial rule in 1948 (an independence given to rather than sought by local elites), has transitioned through its postcolonial history from a social welfare to neo-liberal developmental state and continues to be marked by high levels of inequality and social division along a range of lines (ethnicity, geography, language, class, caste, sex).

TRANSITIONAL JUSTICE IN SRI LANKA

Despite having long been a fairly stable and functional liberal democracy, since the earliest days of independence Sri Lanka has experienced periodic outbreaks of political violence. This intensified throughout the 1990s into a civil war between the Sri Lankan government and a Tamil separatist movement, the Liberation Tigers of Tamil Eelam (LTTE), in the North and East. While there was also violence involving the State and the Sinhalese population and *within* the Tamil population between different political groups, it is the war with the LTTE that has come to represent Sri Lanka and established its reputation as a site of 'ethnic conflict.'

From the 1990s on there have been local and international human rights investigations into the widely reported high levels of torture, disappearance, arbitrary detention and extrajudicial killing.⁷ With the establishment of a Norwegian brokered ceasefire in 2002 and peace talks from 2000 to 2006, Sri Lanka became a focus for peacebuilding and conflict resolution scholars and practitioners. However – despite early calls from certain local actors⁸ – transitional justice was largely absent from official discourses on Sri Lanka at either an international or national level until 2009.

Following the end of the civil war in May 2009, there were allegations of major violations of international humanitarian law and human rights by both the Sri Lankan government forces and the LTTE. This led to local and international human rights actors and members of the Tamil community both within Sri Lanka and in the diaspora calling for investigations and prosecutions.⁹ These calls were met with great hostility from the then Rajapakse government that insisted there would be no prosecutions. Instead, the government established a 'Lessons Learnt and Reconciliation Commission' (LLRC) that it claimed would allow the country to move forward.

A flawed and highly partial process, the LLRC produced a report in 2009 but little action was taken subsequently and few of the recommendations implemented. Meanwhile two international investigations were mandated by the UN: the first being the UN Secretary-General's Panel

⁶ Partha Chatterjee, *Politics of the Governed: Reflections on Popular Politics in Most of the World* (New York: Columbia University Press, 2004); Partha Chatterjee, *Lineages of Political Society: Studies in Postcolonial Democracy* (New York: Columbia University Press, 2011).

⁷ Kishali Pinto-Jayawardena, *A Legacy to Remember; Sri Lanka's Commissions of Inquiry 1963–2002, A Reference Guide to Commission Reports with a Tabulated List of Recommendations* (Colombo: Law and Society Trust, 2010).

⁸ Bhavani Fonseka, 'Introduction: What Is Transitional Justice?' in *Transitional Justice in Sri Lanka: Moving Beyond Promises*, ed. Bhavani Fonseka (Colombo: Centre for Policy Alternatives, 2017), 19.

⁹ This was particularly powerfully presented in a 2011 documentary by British television broadcaster Channel Four, *Sri Lanka's Killing Fields*, which was also screened in Geneva in June 2011 during the 17th UN Human Rights Council session.

of Experts in 2010¹⁰ and the second an investigation by the OHCHR in 2014.¹¹ Despite both of these investigations finding credible evidence of human rights violations, little action was taken aside from a number of Human Rights Council resolutions urging the Sri Lankan government to take steps to ‘investigate past violations,’ ‘ensure accountability’ and work towards ‘meaningful reconciliation.’¹²

Notwithstanding civil society efforts (including a conference on transitional justice in Colombo in February 2014), it was only following a change in government in 2015 that a transitional justice agenda was formally adopted. The new *Yahapalanaya* (‘good governance’) government co-sponsored a UN resolution in which it made a commitment to implement a series of measures to ‘promote reconciliation, accountability and human rights in Sri Lanka.’¹³ Transitional justice was formally placed on the national agenda and there followed a proliferation of projects and training. For the first time, the term entered mainstream Sri Lankan public discourse.

While the translation into local languages proved tricky, with many people still unclear as to what transitional justice in fact meant (a point I will return to later), it became common among victim groups (such as families of the disappeared and those living in displacement or areas still under military occupation) and within the civil society sector to hear discussion of the ‘four pillars.’ This was greatly enhanced by the work of the 2015 Consultation Task Force on Reconciliation Mechanisms (CTF): an independent body established by the government in accordance with the UN Resolution. Made up of 11 core members, two additional panels (one of transitional justice experts, one of community representatives) and numerous zonal-level taskforces, the CTF was tasked with obtaining public views on the four proposed mechanisms for transitional justice and reconciliation: an Office of Missing Persons (OMP), an Office for Reparations, a Truth, Justice and Non-Recurrence Commission and a judicial mechanism. The CTF also expanded its mandate to accept recommendations for ‘any other mechanism or process related to reconciliation.’¹⁴

For a number of months in 2016, the CTF held public meetings and focus-group discussions across the country as well as receiving written submissions. In January 2017, it issued an impressively detailed 800-page report that sought to collate and analyse the 7,300+ responses, make a series of general conclusions and recommendations, while also including the individual zonal taskforce reports for each part of the country.¹⁵ Among the key recommendations, the CTF called for the government to prepare and implement a ‘roadmap on transitional justice’ with a focus on countering ethnic and religious division, ensure non-recurrence through reform of State institutions (particularly the justice sector), provide a right to truth and memorialization, counter impunity and move towards demilitarization and the return of land to displaced populations. Unfortunately, the government distanced itself from the report as soon as it had been published.¹⁶

¹⁰ Marzuki Darusman, Steven R. Ratner and Yasmin Sooka, ‘Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka,’ 31 March 2011, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf> (accessed 23 June 2023).

¹¹ Martti Ahtisaari, Silvia Cartwright and Asma Jahangir, ‘Report of the OHCHR Investigation on Sri Lanka,’ UN Doc. A/HRC/30/CRP.2, September 2015, <https://digitallibrary.un.org/record/803408> (accessed 23 June 2023).

¹² UNHRC Resolutions 19/2 (2012), 22/1 (2013), 25/1 (2014), 30/1 (2015), 34/1 (2017), 40/1 (2019).

¹³ UNHRC Resolution 30/1 (2015).

¹⁴ Manouri Muttetuwegama, Shantha Abhimanasingham, Mirak Raheem, Visaka Dharmadasa, Gameela Samarasinghe, Farzana Haniffa, Paikiasothy Saravanamuttu, K.W. Janaranjana, Daya Somasundaram, Sitralega Maunaguru, and Gaminii Viyan-goda, ‘Final Report of the Consultation Task Force on Reconciliation Mechanisms,’ 17 November 2016, Vol. 1: 9, <https://womenandmedia.org/ctf-on-reconciliation-mechanisms-final-report-all-volumes/> (accessed 19 June 2023).

¹⁵ Copies of the full reports can be found on the Women and Media Collective website: <https://womenandmedia.org/ctf-on-reconciliation-mechanisms-final-report-all-volumes/> (accessed 19 June 2023).

¹⁶ *Daily News*, ‘CTF on Reconciliation Mechanisms Fear Recommendations Will Not Be Used,’ 17 March 2017, <http://www.dailynews.lk/2017/03/17/local/110736/ctf-reconciliation-mechanisms-fear-recommendations-will-not-be-used> (accessed 15 December 2022).

Since then, transitional justice has largely fallen off the agenda. A series of bombings in April 2019 by members of a militant Islamist organization the National Thoweeth Jama'ath helped fuel already growing Islamophobia: in some cases leading to unlikely alliances between Tamil and Sinhalese nationalist political figures. It also revived fervent Sinhala-Buddhist nationalism and militarism, precipitating the return to power of the Rajapakse regime in parliamentary and presidential elections in 2018 and 2019. The Covid-19 pandemic and the ensuing lockdowns returned the military to the streets, and Sri Lanka's economic collapse in 2022 has totally eclipsed any other political concern. State-driven mechanisms (like the OMP, the Office of National Unity and Reconciliation (ONUR) and the Office for Reparations) have largely been abandoned and the international community, too distracted by other more volatile regions, has shown little appetite for being more actively involved in promoting a transitional justice agenda in Sri Lanka. Only the families of the disappeared have kept the topic alive through their impressive ongoing protests.¹⁷

A brief moment of optimism came in early 2022 when popular protests swept the country and led to the overthrow of the re-elected Rajapakse regime. While criticized for being Sinhala-dominated, tentative gestures were made by some parts of the protest movement towards cross-communal coalition building and serious conversations began about the meaning of democracy and – to a lesser extent – justice and accountability. However, this has since been converted into 'business as usual' by a parliament largely impervious to popular opinion, backed by a self-interested elite and once again resorting to censorship and aggressive policing as a means of control. In this context and with the country in economic freefall, unsurprisingly transitional justice has been largely relegated to the bottom of the priority list. As of June 2023, a Truth and Reconciliation Commission is once again being proposed, however it has been met with scepticism from Tamil political leaders and the human rights community who question how different this will be from previous government-led commissions.¹⁸

For many, the failure of Sri Lanka to implement a meaningful transitional justice agenda can be explained as a simple problem of timing: commentators point to the lack of political will at both international and national levels. It is not transitional justice that has failed, in this account, but that the necessary conditions to facilitate its success are not there. This is undoubtedly true in part. However, having watched events unfold in Sri Lanka over the past 11 years, I believe that the country's experience also provides an important opportunity for critical reflection on transitional justice as a field.

THE 'ILLIBERAL CONSEQUENCES' OF LIBERAL DEMOCRACY

Various scholars have pointed to transitional justice's uncritical commitment to liberal democracy in its *modus operandi*.¹⁹ While there is now literature that attempts to expand the scope of transitional justice to include established democracies, the inherent commitment to liberalism has remained largely unquestioned.²⁰ This commitment is also evident among transitional justice advocates in Sri Lanka who seek to counter the problems of 'ethnic'/'ethno-religious'

¹⁷ *Tamil Guardian*, 'Mullaitivu Families of the Disappeared Continue Calls for International Justice,' 30 March 2023, <https://www.tamilguardian.com/content/mullaitivu-families-disappeared-continue-calls-international-justice> (accessed 17 June 2023).

¹⁸ Shihar Aneez, 'Sri Lanka's TRC Draft Has Nothing to Solve Tamils' Concerns – Sumanthiran,' *Economy Next*, 2 June 2023, <https://economynext.com/sri-lankas-trc-draft-has-nothing-to-solve-tamils-concerns-sumanthiran-122216/> (accessed 23 June 2023).

¹⁹ Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice,' *Human Rights Quarterly* 31(2) (2009): 321–367; Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections,' *Third World Quarterly* 29(2) (2008): 275–289, 277; Alexander Laban Hinton, *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence* (New Brunswick and London: Rutgers University Press, 2011).

²⁰ Stephen Winter, 'Towards a Unified Theory of Transitional Justice,' *International Journal of Transitional Justice* 7(2) (2013): 224–244, although note Rosemary Nagy's recognition of the importance of decolonization: Rosemary Nagy, 'The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission,' *International Journal of Transitional Justice* 7(1) (2013): 52–73.

tensions and divisions with stronger liberal democratic institutions and clearer articulations of liberal values and principles.²¹

However, as noted above, Sri Lanka's history of armed conflict and serious human rights violations has largely coincided with long periods of functioning liberal democratic institutions. Throughout the 1990s it maintained a functioning, independent judicial system, held democratic elections (largely regarded as free and fair) and maintained an internationally regarded national human rights institution (headed up by prominent international human rights figures, including Radhika Coomaraswamy). Its highest court, the Supreme Court, heard fundamental rights cases and a number of independent commissions of inquiry were established to look into allegations of human rights violations.

Yet the 1990s was also a period of intense political violence, with torture, disappearance and extrajudicial killing practised not only against Tamil militants in the North and East but also by the Sinhalese JVP movement in the South.²² Horrific atrocities committed by state and non-state actors have long co-existed with functioning institutions of democracy and rule of law in Sri Lanka. In the words of leading Sri Lankan political scientist Jayadeva Uyangoda, Sri Lanka 'represents a unique political model in which institutions of democracy and acute political violence appear to co-exist, with one sustaining the other.'²³ The paradigm of an authoritarian regime needing to (re)turn to liberal democracy did not really apply until the final years of the armed conflict and the Rajapakse government.

Moreover, Sri Lankan studies scholars have argued that it is not simply a matter of co-existence but that:

...the origins of the 'ethnic' divide between Sinhala and Tamil, and much of the peculiar nastiness of the past 20 years of conflict lie in the institutional structure and working dynamic of representative democracy in Sri Lanka.²⁴

This leads Jonathan Spencer to conclude that 'it is impossible to tell the story of nationalism [in Sri Lanka] as anything but a story of the illiberal consequences of liberal democracy.'²⁵ Not only have liberal democratic structures co-existed with and not prevented violence, they have in fact facilitated it in the context of Sri Lanka.

This contextual information is absent when transitional justice as a global project relies upon abstract, universalist conceptions of liberal democracy. It reproduces the problem that Partha Chatterjee has identified with political theory in general: of reifying an ahistorical, decontextualized account of the liberal democratic nation-state against which real contexts are then

²¹ The Colombo-based Centre for Policy Alternatives has been particularly vocal on these issues and produced an extensive range of reports and publications: <https://www.cpalanka.org/> (accessed 23 June 2023). See also Gehan Gunatilleke, *The Chronic and the Entrenched: Ethno-Religious Violence in Sri Lanka* (Colombo: International Centre for Ethnic Studies, 2018).

²² For some detailed accounts of that period of Sri Lanka's violent history, see Sasanka Perera, 'Spirit Possessions and Avenging Ghosts: Stories of Supernatural Activity as Narratives of Terror and Mechanisms of Coping and Remembering,' in *Remaking a World: Violence, Social Suffering and Recovery*, ed. Veena Das, Arthur Kleinman and Margaret Lock (Berkeley, Los Angeles and London: University of California Press, 2000), 157–200; Alex Argenti-Pillen, *Masking Terror: How Women Contain Violence in Southern Sri Lanka* (Philadelphia: University of Pennsylvania Press, 2003); Dhana Hughes, "'Retired" Insurgents: Recreating Life After Sri Lanka's Terror,' *Contemporary South Asia* 21(1) (2013): 62–74.

²³ Jayadeva Uyangoda, 'A State of Desire? Some Reflections on the Unreformability of Sri Lanka's Post-colonial Polity,' in *Sri Lanka at Crossroads: Dilemmas and Prospects after 50*, ed. Siripala Hettige and Markus Mayer (New Delhi: Macmillan India Limited, 2000), 92–118, 94. Perhaps this is not so unique to Sri Lanka: Lundy and McGovern, among others, have also observed the paradoxical relationship between the establishment of democratic institutions and the persistence of human rights abuses in post-conflict settings: Patricia Lundy and Mark McGovern, 'Whose Justice? Rethinking Transitional Justice from the Bottom Up,' *Journal of Law and Society* 35(2) (2008): 265–292.

²⁴ Jonathan Spencer, 'A Nationalism without Politics? The Illiberal Consequences of Liberal Institutions in Sri Lanka,' *Third World Quarterly* 29(3) (2008): 611–629.

²⁵ *Ibid.*, 627.

measured.²⁶ It is not just that an analysis of the historical, social, political and economic specificities of liberal democracy in Sri Lanka is relevant: these specificities should highlight the problems with starting from the assumed universality of the concept of liberal democracy. While there are gestures towards the importance of local context, this has not happened in a way that fundamentally disrupts the epistemological and ontological assumptions on which transitional justice operates. In the case of Sri Lanka, it becomes easy to cast it as a dysfunctional version of idealized (Western) liberal democracy rather than calling into question the assumed benevolence of liberalism and its institutionalized democratic form. This is further facilitated by resorting to culturalist explanations of the violence.

THE PROBLEM OF 'CULTURE'

One way in which the complicity of (neo)liberal democracy with violence in Sri Lanka has been masked is through the frequent deployment of the frame of 'ethnic conflict.' This narrative was reinforced by the spectacular violence of the final stage of the civil war in May 2009 during which thousands of Tamil civilians were cornered and bombarded by the Sri Lankan armed forces and used as human shields by the LTTE. On the one hand this has fed a claim of 'Tamil genocide' that has dominated Tamil political discourse both locally and in the diaspora. On the other hand, the recharacterizing of these events by Sinhalese nationalists as a 'humanitarian operation' that saved the country from the scourge of terrorism has shored up majoritarian politics in the South of the island. These competing narratives are well-captured in UK media outlet Channel Four's documentaries on the end of the war,²⁷ referenced in the OHCHR investigation report and screened at the 17th session of the UN Human Rights Council in Geneva; as well as the Sri Lankan government's response, which included the screening of a counter-documentary, 'Lies Agreed Upon / Sri Lanka: Humanitarian Operation – a Factual Analysis,' at the 18th session of the UN Human Rights Council and the publication of a book entitled *Corrupted Journalism: Channel 4 and Sri Lanka* by a group calling themselves 'Engage Sri Lanka.'

While transitional justice initiatives have tried to displace the focus away from this one particularly horrific period and respond to the much longer and more complex histories of violence, the idea that the roots of the conflict lie essentially in ethnic division remain deeply entrenched. Although this is not entirely without cause (and to in no way deny the history of State-sanctioned racism that has deeply affected minorities in Sri Lanka), the 'ethnic' frame is also reductive in ways that are unhelpful to understanding and responding to the root causes of the violence. Again it is transitional justice's reliance on an abstract, liberal theory-informed approach to 'culture' that has made it ill-equipped to disentangle the transitional justice project from this frame. On the contrary, it has tended to stabilize culturalist narratives in unhelpful and misleading ways.

Various scholars have critiqued liberal theory's conceptualization of culture. In particular, critics have pointed to the privileging of some forms of difference over others, the failure to recognize the multiple processes of identification and exclusion that produce cultural difference, the over-assumption of internal coherence and homogeneity and the reduction of space for critical analysis of cultural claims.²⁸ Essentially, while the concept of culture has been shown by anthropologists to be highly fluid, dynamic and amorphous, within liberal political theory culture is all too often treated as clearly delineable,²⁹ synonymous with ethnicity³⁰ and something

²⁶ Partha Chatterjee, 'The Nation in Heterogeneous Time,' in *Politics of the Governed: Reflections on Popular Politics in Most of the World*, Partha Chatterjee (New York: Columbia University Press, 2004), 3–26.

²⁷ Channel Four has produced three documentaries on the Sri Lankan war: *Sri Lanka's Killing Fields* (2011), *War Crimes Unpunished* (2012) and *No Fire Zone* (2013).

²⁸ Rita Dhamoon, *Identity/Difference Politics: How Difference Is Produced and Why It Matters* (Vancouver and Toronto: UBC Press, 2009).

²⁹ Seyla Benhabib, *The Claims of Culture* (Princeton: Princeton University Press, 2018).

³⁰ Dhamoon, *supra* n 28.

liberal democracy must contend with, accommodate or counter.³¹ Liberalism emerges as without a culture and culture becomes something associated with non-western actors and actions: a process Uma Narayan has aptly described as 'death by culture.'³²

Through its largely uncritical endorsement of liberalism, transitional justice has inherited this problematic approach to culture. The culture of liberalism remains invisible while too often 'culture' is reduced to ethnicity and ethnic identity treated in a fixed, essentialized and overly homogenized way. This undermines attempts at expanding the analysis even as gestures are made towards recognizing wider patterns of victimhood.

The labelling of the violence in Sri Lanka as an 'ethnic conflict' has allowed for an erasure of the integral role that violence has played in the logic of the (liberal democratic) Sri Lankan state and the significant contribution of economics.³³ It has masked the violence that has not only been deployed against the Tamil minority but also against the rural Sinhalese majority of the South³⁴ (as well as against the Muslim population). It is therefore unsurprising that for many Sinhalese, human rights in general and transitional justice in particular are only concerned with Tamil issues, making them at best apathetic and at worst hostile to transitional justice initiatives. Without denying the significance of ethnicity as an important factor, the failure to more thoroughly interrogate how and why it has come to be so significant does little to dismantle division, setting transitional justice up to fail in its aims of reconciliation.³⁵

Just as the above critiques predict, this label has also flattened internal diversity through the establishment of homogenized communities, privileging and reifying ethnicity over all other identifications and markers of difference. No space remains for analysing and understanding the contradictory experiences of the Sinhalese rural majority: on the one hand privileged in symbolic and linguistic recognition by the State, on the other disenfranchised through class, caste and geographic forms of exclusion and marginalization. It is noteworthy that the Asia Foundation reported in research done on the prevalence of torture by police in 2012 that the largest numbers were to be found in the Sinhalese-majority areas of the South.³⁶ There are various reasons for this (possible reporting issues, the avoidance of police by Tamil communities, the prevalence of military control in the North of the island) but this does suggest that State violence in Sri Lanka is based on more than just the logic of ethnicity. Furthermore, with much of the past unrest in the south of the country related to the lack of economic and employment opportunities for (politically and socially) unconnected rural poor, regardless of their education, the expanded recruitment for both the armed forces and police provided alternative employment avenues for those unable to access highly sought-after public sector jobs. This has created a large potential support base for Sinhalese politicians running on an anti-transitional justice platform who capitalize on the feelings of victimhood among disadvantaged rural Sinhalese communities, creating a fear of the risk of prosecution of their family members and breadwinners.

Meanwhile the shorthand of 'Tamil community' allows little room for interrogating the significant divisions and processes of domination operating within the Tamil community: the dominance of Jaffna over other Tamil-majority geographical areas, the exclusion and economic

³¹ Kiran Grewal, 'Australia, the Feminist Nation? Discourses of Gender, "Culture" and Nation in the "K Brothers" Gang Rapes,' *Journal of Inter-cultural Studies* 33(5) (2012): 509–528.

³² Uma Narayan, *Dislocating Cultures: Identities, Traditions and Third World Feminism* (New York: Routledge, 1997).

³³ Ambalavaner Sivanandan, 'Sri Lanka: Racism and the Politics of Underdevelopment,' *Race & Class* XXVI(1) (1984): 1–37; Sirimal Abeyratne, 'Economic Roots of Political Conflict: The Case of Sri Lanka,' *The World Economy* 27(8) (2004): 1295–1314.

³⁴ A particularly infamous case involved the disappearance of 32 Sinhalese schoolboys last seen at an army camp in Embilipitiya, Ratnapura District in 1989. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence also noted in his 2017 report the importance of not limiting transitional justice to the May 2009 events: Pablo de Greiff, 'Observation by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr Pablo de Greiff, on the Conclusion of his Recent Visit to Sri Lanka,' 23 October 2017, https://docs.wixstatic.com/ugd/bd81c0_3a8b43afeb334c66b2233cbeac3b3cfc.pdf (accessed 23 June 2023).

³⁵ For a similar argument in relation to international responses to Kosovo, see Kiran Grewal, *The Socio-Political Practice of Human Rights: Between the Universal and the Particular* (Abingdon and New York: Routledge, 2016).

³⁶ Information shared with author in interviews conducted in Colombo in 2012 and 2013.

precarity of Malayaga Tamils from the plantation sector (often identified as ‘Indian’ as opposed to ‘indigenous’ Tamils), the strict caste hierarchies particularly prominent in Northern Sri Lanka, to name but three. Finally, all other forms of identity, difference and differentiation – divergent political ideologies, impoverished classes, feminist and queer communities – are rendered secondary. Groups or individuals that speak from these other positions are not treated as ‘representative,’ opening them up to suppression by more dominant sectors of the Tamil population. There is also no way of addressing the profound ambivalence that exists and has always existed around Tamil nationalism from sectors of the Tamil population, torn between the realities of State racism and internal communal hierarchies and oppressions.

So too the role played by colonial histories in contributing to the conditions of conflict are erased. For a start, the primordialness of both ‘Tamil’ and ‘Sinhalese’ ethnicity and the naturalness of ethnicity as a primary source of identification in Sri Lanka is historically flawed. Various scholars have shown that it was a product of British systems of knowledge production and organization of the colony that took ‘the dizzying “cosmopolitanism” of Ceylon’ and ‘counted, classified and *sedentarized* [this] into less than a handful of ethnic groups.’³⁷ In turn, the social and ethnic hierarchies maintained and promoted by the British colonial authorities necessarily contributed to the resentment of the Sinhalese rural majority, later capitalized upon by post-colonial politicians through the implementation of exclusionary and Sinhalese Buddhist nationalist policies.

All of this matters if we are to properly understand and address the root causes of violence in Sri Lanka. However, by uncritically accepting a simplified (read simplistic) conception of ‘culture’ as essential ethnic difference and the primary source of conflict, transitional justice advocates in Sri Lanka are unable to do this work. All that is offered is more liberalism in the face of irrational communitarianism.

Again, this is not something that is incidental to the transitional justice project but is rather inherent in its globalized form. The more contextualized and nuanced analysis of identity, community and State formation – as with the histories and specificities of liberal democracy – necessarily requires an ethnographic sensibility that is simply not possible within an abstract and universalist globalized and globalizing framework. Resort to abstract categorizations reproduces the problems of liberal political theory and its tendency towards Eurocentric and colonial assumptions that treat culture as a ‘thing’ associated with non-Western and non-liberal Others. Moreover, the ‘local turn’ in transitional justice does not solve this problem, for reasons on which I will now elaborate.

COMPLICATING ‘THE LOCAL’: CIVIL VERSUS POLITICAL SOCIETY

One way in which transitional justice has sought to respond to critiques of its lack of sensitivity to context, international elitism and potential neo-imperialism³⁸ has been to promote the inclusion of local civil society and victim populations. However, by again uncritically drawing on the universalist categories of ‘civil society’ and ‘citizens’ that exist within liberal political theory, transitional justice is unable to recognize the historical and socio-political specificity of these concepts. This has implications for what can be heard and from whom.

As Gayatri Spivak has pointed out, there is often a real epistemic discontinuity not just between actors of the Global North and subalterns of the Global South but also between the

³⁷ Rapti Siriwardane-de Zoysa, ‘Decolonizing Seascapes: Imaginaries and Absences on an Island Hub,’ *Postcolonial Interventions* VI(1) (2021): 56–101, 81. Andi Schubert has been working on producing fascinating historical analysis of the British recategorization of the Ceylonese population away from caste and other forms of identification towards racial and ethnic categories through censuses: unpublished work shared with the author.

³⁸ Tshepo Madlingozi, ‘On Transitional Justice Entrepreneurs and the Production of Victims,’ *Journal of Human Rights Practice* 2(2) (2010): 208–228; Nesiah, *supra* n 2.

human rights (and I would add transitional justice) advocates of the Global South and the subaltern populations they propose to work for.³⁹ In the case of Sri Lanka, liberalism is deeply embedded in elite political culture and many of the key proponents of human rights and transitional justice are much better networked within the international community than with their more marginalized compatriots. This complicates the picture that assumes 'imperialist' international interventions can be remedied through greater 'local' participation. As Shaw and Waldorf also identify, the 'local' voices are often simply those of NGOs who stand in for local populations.⁴⁰ Yet these intermediaries do not necessarily share the experiences of those they purport to represent even if they hold the same nationality.

In the case of Sri Lanka, as I have written about elsewhere (drawing on Partha Chatterjee's insights), the celebration of 'civil society' fails to grasp the very different experiences and relationships of citizenship among different members of the Sri Lankan population.⁴¹ The ways in which histories of colonialism and modern techniques of governmentality have produced the postcolonial liberal democratic state are both important and missing from abstracted invocations of liberal theory and frameworks. In South Asia at least the model of liberal democracy has reinforced a division between the citizens of 'civil society' and the populations of what Chatterjee refers to as 'political society'. While the former are understood as rights-bearing subjects and political agents, the latter remain objects of regulation even if this is often done in the name of their welfare.

This history may be specific to South Asia or it may have resonances elsewhere but that requires careful decolonial theoretical, historiographic and ethnographic work. It cannot be done through the currently fairly blunt comparative tools used in the field of transitional justice, which may pay attention to the specificities of local histories of conflict, violence and politics but do not adequately interrogate the assumed universal categories of liberal democracy, State, citizen and civil society. This also highlights the ways in which the 'civil society' integrated into transitional justice discourses and practices may be as much a part of the problem as the solution. Sri Lanka is a highly divided society not simply in ethnic terms but between the elite spaces of civil society (mainly located in a few leafy suburbs of the capital Colombo) and the vast majority of the population, particularly those living in rural or provincial areas: those we might call Sri Lanka's 'political society'. This divide is not reduced by initiatives that continue to focus on the formal public sphere which is by and large exclusionary of the majority and certainly of the majority of the victim population in Sri Lanka.

My argument therefore goes further than other critics of transitional justice who have pointed to the divide between victims and communities rendered passive by transitional justice processes and institutions and 'experts' empowered to speak for them.⁴² This is because too often the proposed solution to this is greater incorporation of 'victim's voices' or participation.⁴³ This does not alter the conceptual framework within which the encounter takes place. While subaltern participation is constantly sought, the question of how this participation facilitates a shift in the subaltern's position from object to be saved to active subject to decide remains. All too often participation becomes a device: a space to suggest the desire for inclusion of the subaltern when in fact they are only brought into legitimate structures and processes that are already decided and over which they have no say. This is where the epistemic violence of transitional justice is the most acute.

³⁹ Gayatri Spivak, 'Writing Wrongs,' *Atlantic Quarterly* 103(2/3) (2004): 523–581.

⁴⁰ Rosalind Shaw and Lars Waldorf, 'Introduction,' in *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, ed. Rosalind Shaw, Lars Waldorf and Pierre Hasan (Stanford: Stanford University Press, 2010).

⁴¹ Grewal, *supra* n 35.

⁴² Madlingozi, *supra* n 38; Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,' *Journal of Law and Society* 34 (4) (2007): 411–440.

⁴³ Simon Robins, 'Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal,' *International Journal of Transitional Justice* 5 (1) (2011): 75–98.

(HOW) CAN THE SUBALTERN SPEAK IN TRANSITIONAL JUSTICE?

To return to Spivak's example of the figure of the widow in colonial accounts of *sati* discussed at the beginning of this article, we see the postcolonial version of this in the form of the suffering victim and the humanitarian actor who makes this suffering intelligible and remediable.⁴⁴ Using the example of the Sierra Leonean 'bush wives' whose testimony in the Special Court for Sierra Leone required the mediation of an expert witness, I have argued elsewhere that the subaltern of transitional justice continues to be constituted through the impossibility of being able to speak and be heard on their own terms.⁴⁵ At a minimum, as Shaw and Waldorf conclude, '[s]urvivors are ... unlikely to get what they ask for if it contradicts international legal norms.'⁴⁶

For example, Jones highlights that research with victims overwhelmingly shows their prioritization of economic needs over transitional justice mechanisms.⁴⁷ A review of the transcripts of the LLRC (and acknowledging the partial nature of this process) shows this was also true of those who testified before the LLRC in Sri Lanka. So why is this not given greater policy prioritization by transitional justice? In the case of Sri Lanka, while there is reference to reparations and return of lands, most of the focus of transitional justice has been on ethnically focused political settlement, truth-telling and/or accountability. This is in spite of the fact that – as mentioned above – various commentators have pointed to the economic roots of the conflict.

Even if we assume that the majority of those who testified *are* asking for some form of accountability, truth-telling and political reconciliation (and not denying that many are), the process of converting claims for justice into the technical language used in transitional justice is not neutral. It inevitably gives power to those already versed in transitional justice's lexicon and logic. This is not necessarily those directly affected by the wrongs being righted. Within the various debates at the local and international level on transitional justice in Sri Lanka those communities and individuals most affected have generally been reserved the role of 'testifying survivors.' They provide the raw material through their testimonies of suffering that are then rendered intelligible and resolvable by 'experts,' formal actors and institutions.

This problem is noted but often identified as a limitation on the part of those testifying. In the words of one civil society organizer, 'people tend to talk more about their problems and what they feel. They don't have that practice of being part of the solution.'⁴⁸ If we return to Chatterjee's conception of political society it is not surprising that this would be the case: having long been treated as a population to be managed rather than rights-holding and claiming citizens, it is a lot to expect of people that they should suddenly adopt this role.

At the same time, I want to suggest that this depoliticized and indeed passive role assigned to subaltern groups is not the whole story. While they may struggle to articulate themselves within the frameworks we impose upon them, that does not necessarily mean that they are not speaking. If, as Simon Robins observes, '[t]he language of rights is alien to many,'⁴⁹ it does not mean that concepts of fairness, justice and equality are.

The problem is rather transitional justice's focus on channelling local experiences through international frames, which requires local populations to learn – or at least have their experiences translated into – the language of rights. Even the CTF, while collecting huge quantities of testimony from across the country and presenting a very detailed, sensitive and thoughtful report, was ultimately structured around a pre-determined and fairly standard set of transitional justice

⁴⁴ Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (Berkeley: University of California Press, 2012).

⁴⁵ Kiran Grewal, 'Can the Subaltern Speak within International Law? Women's Rights Activism, International Legal Institutions and the Power of "Strategic Misunderstanding"', in *Negotiating Normativity: Postcolonial Appropriations, Contestations and Transformations*, ed. Nikita Dhawan, Elisabeth Fink, Johanna Leinius and Rirhandu Mageza-Barthel (Cham: Springer, 2016), 27–44. See also Grewal, *supra* n 35.

⁴⁶ Shaw and Waldorf, *supra* n 40 at 4.

⁴⁷ Jones, *supra* n 1 at 172.

⁴⁸ Interview with civil society organizer, Colombo, 1 March 2023.

⁴⁹ Robins *supra* n 43 at 77.

recommendations and mechanisms. Discussions were framed by reference to ‘the four pillars.’ As noted earlier, while this language of ‘transitional justice’ and its ‘four pillars’ has entered Sri Lankan public discourse, the process of translating this into local languages has not been straightforward. The highly technical nature of the terminology means that even when they are presented in Tamil or Sinhala, their meaning remains elusive for the majority of people.

As Robins points out:

[T]he privileging of an external discourse can empower elites and outsiders at the expense of victims, particularly the most disempowered who have both the greatest needs and the least access to the language of rights.⁵⁰

By using a globalized framework, whatever the efforts are to ‘tweak,’ adapt or translate it to specific contexts, transitional justice imposes an epistemological order on local populations who have to adapt and reframe their own discourses.⁵¹ While they sometimes are able to do this creatively and productively, it remains necessary to ask why they should have to and what may be missed in the process of doing this.

Moreover, this is not remedied simply by advocating for greater victim participation. It requires a willingness to resist the imposition of an existing framework of transitional justice, however well it is ‘adjusted’ or ‘contextualized.’ It also requires a willingness to critically interrogate the abstract and universalist principles on which the framework relies to recognize their historical, cultural and political specificity that may affect their translatability across contexts. As Patricia Lundy and Mark McGovern explain:

... the attempt to apply values uniformly across cultures and societies, where the possibilities for peoples in those societies to participate, influence, and impact upon that process are confined and delimited, is in essence a negation of those values by the very means of their supposed implementation. Put another way, the values and ideas informing justice may need to be articulated within and by each community, based on its specific realities and needs, for both conceptual and, indeed, practical reasons.⁵²

As they point out, this can be read – even if not intended – as a relativist argument. However, this is only the case if we continue to draw on limited and overly simplistic conceptions of culture as I have described above: versions that erase the cultural specificities of transitional justice’s liberalism while reducing communities to homogenous, static and essentialized ethnic groups. A more dynamic and nuanced ethnographic approach, informed by postcolonial, decolonial and subaltern theoretical insights, demonstrates a range of resources on which we might draw.⁵³ It is to these I will now turn.

Subaltern Engagements with Transitional Justice

As others have identified in other transitional justice contexts,⁵⁴ an exploration of the everyday realities of life in post-war Sri Lanka demonstrates that alongside the more formal programmatic transitional justice initiatives, many ordinary people have been and continue to ‘do’ transitional justice. Some of this involves engagement with the formal mechanisms and frameworks and some is happening in quite distinct forms and spaces. In both cases, these engagements exceed

⁵⁰ *Ibid.*, 78.

⁵¹ See also Shaw and Waldorf, *supra* n 40, for a similar critique.

⁵² Lundy and McGovern, *supra* n 23 at 274.

⁵³ See also Lia Kent’s writing on East Timor: *The Dynamics of Transitional Justice: International Models and Local Realities in East Timor* (Abingdon and New York: Routledge, 2012).

⁵⁴ *Ibid.*; Hinton, *supra* n 19.

the limits of traditional transitional justice and highlight the ways in which a willingness to think beyond existing frameworks may be highly productive even if it challenges conventional wisdom and may threaten established expertise.

For example, many have expressed cynicism about the various investigations, commissions and consultations that have taken place in Sri Lanka over the years and the inaction they have almost invariably met. Nonetheless, many war-affected people continue to come forward and testify in these processes: why? Often this is read as simple desperation or as a naïve and misguided hope that this time something tangible will come out of the process. While undoubtedly there is a sense of desperation that has led many survivors in Sri Lanka to keep coming back, I think it is patronizing to assume that people are not aware of the limits of the institutions. Some of those who have family members who have been disappeared express a sense of obligation to their loved ones to continue even if they are disillusioned. But I also think the narrow focus on experts and civil society as the primary agents of transitional justice, and victims – when they do speak – confined to actors making moral and ethical (rather than political) claims, has led to a failure to recognize the political agency of victims themselves. I will give a couple of examples to illustrate this.

First, Sharika Thiranagama in her analysis of the LLRC hearings argues that the participation of war-affected Muslim and Tamil populations can be read as a way of ‘asking the state that was simultaneously the aggressor to act as a state that cared for them.’⁵⁵ While Thiranagama presents a compelling case regarding how the LLRC operated as a redemptive performance of State sovereignty, I think there is more that can be said for how and why people came forward to testify. Let us take the example of a particular exchange between an elderly man and the LLRC Commissioners during a hearing in the North of Sri Lanka.

While there to speak about issues of displacement and land occupation, the man’s testimony slipped into a critique of the lack of development assistance his village had received. The LLRC Commissioners tried to stop the man, explaining to him that this was beyond the mandate of the Commission and seeking to educate him on the relevant issues at hand. The man persisted. Was it ignorance that led him to misunderstand why he was there? Perhaps. But might this event also be read differently?

While the LLRC’s aim was to delimit and address specific concerns, the man’s refusal to contain his testimony to what was being asked of him might be read as a subtle form of resistance. This act of political agency might be further understood in the context of someone who is otherwise too easily reduced within the existing political system to an object of welfare or management (to draw again on Chatterjee). Might this man therefore not have been taking the opportunity to use the LLRC as another space to speak as a political agent?

In fact, many otherwise disenfranchised people I have encountered in the North and East of Sri Lanka have spoken of using the spaces offered by transitional justice as a way of speaking as political actors in their own right. Many have also been quite clear in their understanding that this does not mean they expect their demands to be met. But the very act of speaking for themselves has been an important act of self-education, agency and empowerment. This is something transitional justice’s over-reliance on experts fails to fully recognize and valorize, although critical transitional justice scholarship is increasingly highlighting this point.⁵⁶

At the same time, to hear what is spoken may require us to look beyond the formal understanding of what is to be spoken *about*. Otherwise we are likely to misread the voices of subaltern actors as naively, misguidedly or simply ‘incorrectly’ speaking. To go back to my example of the

⁵⁵ Sharika Thiranagama, ‘Claiming the State: Postwar Reconciliation in Sri Lanka,’ *Humanity: An International Journal of Human Rights, Humanitarianism and Development* 4(1) (2013): 93–116, 101.

⁵⁶ Madlingozi, *supra* n 38; Isaias Rojas-Perez, *Mourning Remains: State Atrocity, Exhumations, and Governing the Disappeared in Peru’s Postwar Andes* (Stanford: Stanford University Press, 2017).

old man at the LLRC hearing, the assumption being that he simply did not understand the process and what was expected of him rather than that his speaking beyond this may be an act of knowing disruption. As James Scott identifies, without paying attention to not just the *official* transcripts but also the *hidden* transcripts, we are likely to continuously (and problematically) operate within and reproduce dominant hegemonic structures of power and assume the false consciousness of the less powerful.⁵⁷ I have also suggested that 'strategic misunderstanding' of dominant forms of knowledge may be an important form of subaltern politics.⁵⁸

Alternative Political Spaces

At the same time, an understanding of subaltern political discourse may also require us not only to listen differently to what subalterns say (or don't say) within established spaces of politics but also to look to spaces previously not conceived as political. There is a fairly large body of anthropological and social psychology literature on the various ways in which village communities across Sri Lanka have coped with the mass atrocities, violence, trauma and loss they have lived. Patricia Lawrence has documented the ways in which the cult practices of *Amman* (goddess) ritual temples in Eastern Sri Lanka flourished during the war. In particular, she writes, oracles 'facilitate[d] a process of testimony that overcomes political silencing and acknowledge[d] broken kinship connections, abductions and arrests, extortion practices, socio-economic paralysis and torture.'⁵⁹ In a context of mass violence and state repression and neglect, the ritual temple space was one of the only to allow for expression of ordinary peoples' suffering. This has continued to be the case in the post-war period, with the temple acting as a site where, among others, many families of the disappeared have come together, and indeed has facilitated their organization into a social movement.⁶⁰ Meanwhile Sasanka Perera has argued that hauntings, ghost sightings and spirit possessions have acted as one way in which communities in the South of Sri Lanka have been able to process and remember the horrors of the period popularly known as 'the Terror' (*Beeshanaya*).⁶¹ In Tamil communities, Doma Somasundaram and Jane Derges have also identified the role that particular forms of ritual have played as a way of coming to terms with violence and suffering.⁶²

Transitional justice's narrow conception of politics only in its liberal democratic form means that these spaces, while perhaps identified as therapeutically beneficial, are unlikely to ever be seen as political. Indeed, transitional justice has tended to reproduce a colonial binary between 'the political' space of the rational State and 'the cultural' space of the masses.⁶³ This has the effect of depoliticizing spaces that may otherwise be more inclusive, contextually familiar and accessible sites for popular engagement than those of the official political realm.⁶⁴

For example, the practice of *kooththu*⁶⁵ continued throughout the war and during the post-war period in both the North and East of Sri Lanka. Even displacement communities organized and performed this artform, often using it as a space to comment on current events and to critique political elites. In recent years, this has come to be known as *Disco Kooththu* and continues

⁵⁷ James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven and London: Yale University Press, 1990).

⁵⁸ Grewal, supra n 45; Grewal, supra n 35.

⁵⁹ Patricia Lawrence, 'Violence, Suffering, Amman: The Work of Oracles in Sri Lanka's Eastern War Zone,' in *Violence and Subjectivity*, ed. Veena Das, Arthur Kleinman, Mamphela Ramphele and Pamela Reynolds (Berkeley, Los Angeles and London: University of California Press, 2000), 171–204, 222.

⁶⁰ Interview with Families of the Disappeared organizer, Batticaloa, 30 March 2017.

⁶¹ Perera, supra n 22; see also Argenti-Pillen on 'the gaze of the wild', supra n 22.

⁶² Daya Somasundaram, *Scarred Communities: Psychosocial Impact of Man-Made and Natural Disasters on Sri Lankan Society* (New Delhi: Sage Publications, 2014); Jane Derges, *Ritual and Recovery in Post-Conflict Sri Lanka* (London: Routledge, 2012).

⁶³ Thiranagama, supra n 55 at 96.

⁶⁴ For more on this, see Kiran Grewal, 'Politics Beyond Institutions: The Creation of New Social Imaginaries in Post-war Sri Lanka,' *Social Alternatives* 37(4) (2018): 55–59.

⁶⁵ A traditional form of Tamil folk theatre based around the retelling of Hindu Epics.

to operate as a space for the community to discuss issues as diverse as local government corruption, accountability for war-related violence and migration. Aside from the often highly political content (disguised within a well-known mythical or religious story), Dr Jeyasankar Sivagnanam has demonstrated in his doctoral research⁶⁶ that the preparation of *kooththu* can involve deeply democratic forms of community organizing, debate and decision-making (regarding which story will be told and how, as well as who will play particular roles). This led Sivagnanam and other activist scholars and artists in Batticaloa (Eastern Sri Lanka) from the 1990s on to use *kooththu* as a means of introducing social issues (such as torture and violence against women) and challenging forms of social injustice and exclusion (based on sex, caste, indigeneity).⁶⁷

Other organic forms of inter-communal cultural engagement also exist that blur the simplistic divisions between discreet, ethnically defined and antagonistic communities and have acted as potential sites of reconciliation. For example, Malathi de Alwis has documented the cross-communal worship of the goddess Patthini/Kannagi, which at the local level has brought together Tamil, Sinhalese and Muslim worshippers.⁶⁸ In recent years, Hasanah Ceguisadeen and I have begun exploring the ways in which Tamil and Muslim communities have been brought together around the protection of local Sufi shrines in the North and East of the country. Finally, in research I have conducted with Kaushalya Ariyaratne we have also found a number of examples from different communities and parts of the country of the use of the historical mythical figure of *Kuveni* as a device for critiquing and reimagining ethno-nationalist and patriarchal sovereignty: a phenomenon Neena Mahadev has also documented.⁶⁹ This stands in contrast to the general view that mythical history in Sri Lanka has operated solely as a vehicle for illiberal communitarianism and thus requires rejection in favour of the promotion of liberal values.⁷⁰

For subalterns otherwise silenced, excluded or depoliticized within formal transitional justice and State practices, the space of ritual may offer a way to reclaim political agency. This is an argument Isaias Rojas-Perez has powerfully made in relation to the mobilization of indigenous Quechua women in Peru searching for the missing remains of their disappeared children. Through their engagement of the spiritual and the sacred, Rojas-Perez argues, these women mount radical critiques of contemporary practices of sovereignty, including those of the apparently benevolent post-atrocity state.⁷¹ Within the narrow conception of both politics and culture incorporated by transitional justice through the lens of liberal democratic theory, these practices are largely unseeable. Where ritual or tradition is incorporated, it is often only in instrumentalist, essentialized and conservative forms, as Adam Branch illustrates in his analysis of the Acholi practice of *Roco Wat* in Northern Uganda.

Drawing also on the work of decolonial philosopher Paulin Hountondji to develop a concept of 'ethnojustice,' Branch convincingly demonstrates that 'traditional justice' mechanisms promoted as an alternative to dominant liberal models in fact incorporate 'the same political tendencies.'⁷² Far from representing a radical move towards truly contextual responses to past violence, this approach, Branch argues:

⁶⁶ Unpublished manuscript, copy with author.

⁶⁷ Grewal, supra n 64.

⁶⁸ Malathi de Alwis, 'Divine Eyes on the Sorrow of Lanka: Post-war Devotion to Pattini-Kannaki,' in *Multi-Religiosity in Contemporary Sri Lanka: Innovation, Shared Spaces, Contestation*, ed. Mark Whitaker, Darini Rajasingham-Senanayake and Pathmanesan Sanmugeswaran (London and New York: Routledge, 2022), 73–85.

⁶⁹ Neena Mahadev, 'Vijaya and Kuveni Retold: Sri Lanka's Post-war Iconography as an Affirmation of Inter-community Mixing,' in Whitaker et al., *ibid.*, 86–98; Grewal, supra n 64.

⁷⁰ Gunatilleke, supra n 21.

⁷¹ Rojas-Perez, supra n 56. For further discussion of Rojas-Perez's book and the possible reading of ritual as site of subaltern politics, see Kiran Grewal, 'The Role of Victims in Transitional Justice: Agency, Cooption and Exclusion,' *International Journal of Transitional Justice* 13(3) (2019): 608–619. See also Naomi Roht-Arriaza and Laura Arriaza, 'Social Reconstruction as a Local Process,' *International Journal of Transitional Justice* 2(2) (2008): 152–172, for examples of Mayan methods used by local communities in Guatemala.

⁷² Adam Branch, 'The Violence of Peace: Ethnojustice in Northern Uganda,' *Development and Change* 45(3) (2014): 608–630, 613.

tends to reduce the specifically 'African' to the cultural. It fails to problematize the tradition-modernity dichotomy that underlies both orthodox transitional justice (which values the modern) and ethnojustice (which values the traditional).

He therefore concludes that, 'despite its self-proclaimed distance from the liberal peace model, the political consequences of so-called Africanized interventions can end up hewing closely to the outcomes of so-called liberal transitional justice interventions'.⁷³

The ethnojustice of *Roco Wat* does not allow Acholi themselves to articulate their own traditional justice system. Instead it is up to experts and outsiders, with the assistance of Acholi academics and elders, to compile and formalize the traditional justice system as a coherent whole, subsequent to which it will be up to outsiders to help revive those traditions among the Acholi.⁷⁴

Once again, the conceptually thin understanding of culture within liberal democratic thought, combined with the legacies of colonialism, serves to assume and reinforce static versions of rituals and tradition, destroying the potential of these to operate as contextually relevant spaces for debate, reflection and contestation.

Yet the example of *kooththu* demonstrates the ways in which these spaces are both currently operating and could be drawn on further for cultivating habits of democracy beyond the formal institutional political sphere. Certainly, they are sometimes more genuinely inclusive and egalitarian than the formal institutions of liberal democracy in Sri Lanka and those of transitional justice. They are also spaces where subalterns may in some instances be able to speak on their own terms (overcoming the limited forms of 'participation' I have described above). Finally, they may offer alternative sites for communities to debate and disagree on the issues that affect them in ways that are not always mediated by 'experts' and gatekeepers. Without wishing to over-romanticize what can also be reactionary, hierarchical spaces, I use this example to highlight ways in which transitional justice may want to open itself up to a more expansive conception of both the political and the cultural.

CONCLUSION

In this article I have attempted to provide an overview of recent debates and initiatives related to transitional justice in post-war Sri Lanka. In doing this I have argued that Sri Lanka is not just a possibly stalled site of transitional justice. It is also a useful case study for a more general critical analysis of transitional justice and in particular its limited conception of both politics and culture. This comes as a result of an over-reliance on abstract, universalist principles drawn from liberal theory. This contributes both practically to paralysis and ethically, conceptually and politically to a form of epistemic violence.

What is often missing from transitional justice discourses – including those of critical voices – is a clear engagement with postcolonial, decolonial and subaltern theory. This is important not only because it calls into question the imperialist assumptions and practices of international intervention (an issue now well canvassed in critical literature if still inadequately redressed in practice), but also because it offers a more fundamental interrogation of concepts too often taken for granted in the field of transitional justice: the nature of the political and the cultural, the liberal democratic State, civil society and the citizen. Without this, even critical engagements with transitional justice remain unable to understand how and why simple appeals for more

⁷³ Ibid., 615.

⁷⁴ Ibid., 620.

investment in 'localizing' transitional justice or 'greater participation' of marginalized or victim populations are insufficient. Moreover, by being incapable of redressing its own role in reproducing epistemic violence, transitional justice not only continues to disenfranchise the very populations it claims to be working to support; it also ignores and maybe even suppresses crucial sites for the development of alternative and potentially more radically democratic political processes.

It remains debatable whether a field such as transitional justice, which is inevitably formed around an idea of some commensurability between different post-conflict, post-atrocity sites, can ever engage deeply enough in a given location to understand the local textures of history, culture and politics. However, an important starting point is to critically reassess the epistemological and ontological foundations implicit within the transitional justice project. This would allow us to recognize that it is not just the specificity of transitional justice locations that requires attention but the historical, cultural and political specificity of the principles on which transitional justice itself – explicitly or implicitly – rests.