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No Justice without Narratives: Transition, Justice and the Khmer Rouge Trials

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Cover Page Footnote

Research is in accordance with the University of XXXXX's Code of Research Practice. All research followed approval from its Research Ethics Committee in January 2012. Participants have been anonymized, apart from those speaking on behalf of their organizations or who explicitly asked to be named. English speakers are recorded verbatim: in other cases, the words of the translator are reproduced verbatim. I would like to thank my interpreter Mr. Sina Thor, and all those referred to in this paper who generously gave me their time.

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**No Justice without Narratives:
Transition, Justice and the Khmer Rouge Trials**

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Introduction

This article addresses a crucial concern amongst transitional justice scholars and practitioners: How can locally and culturally rooted conceptions of justice and Western/international legal projects attain a more equitable balance? By highlighting the need for international actors to pay greater attention to subaltern voices it demonstrates a sociological methodology which can be deployed by transitional justice scholars and practitioners to enable survivors of atrocity to narrate justice on their terms without being overpowered by the dominant discourses of justice. In short, it highlights the need for and presents a way of ‘knowing-how-to-hear.’¹

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¹ Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota, 1990), 21.

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‘Confusion’ and ‘Silence’

Peter H. Maguire relays a conversation with a UN official in the early 1990s:

When I described my current interest in Khmer Rouge [KR] war crimes... she grew defensive and dismissive. ‘Well, nobody is really interested in those questions anymore’... When I politely reminded her that... the war crimes impunity in Cambodia raised serious questions about war crime accountability in the late twentieth century, she sharply rebuked me for using the word ‘genocide’ as the official term was now ‘autogenocide’... Her final piece of advice to me: ‘Don’t bother talking to Cambodians, they will only confuse you.’²

Since 2006 the United Nations Assistance to the Khmer Rouge Trials (UNAKRT) has supported a series of trials that include the charge of Genocide at the Extraordinary Chambers in the Courts of Cambodia (ECCC). The term ‘auto-genocide’, a word that shaped policy and attitude during the UN’s interactions with Cambodia in the 1990s, has now utterly disappeared from the lexicon. It is on such struggles over language and narrative, over the act of *telling the story*, central to the articulation of justice, that this paper is grounded.

This leads us to the two research questions it sets out to address: First, how do ‘social actors’ within the Cambodian intellectual tradition view justice and transition? And second, how can international organizations learn to listen to and understand what is being said about the issues they are mandated to deal with, even in a discourse alien to them?

My core premise is that there is no justice or transition without narrative. It is narrative that performs both of these functions; it is also narrative that inhibits them. Throughout, I will be constantly returning my focus to individual Cambodians who have lived through the KR era and examining their relationship with the ‘big’ transitional justice institution, the ECCC, and its narrative. I

² Peter H. Maguire, *Facing Death in Cambodia* (New York: Columbia University Press, 2005), 17-18.

consider that only in their “little stories” (to use Paul Ricœur’s phrase) “the history of the vanquished dead crying out for justice” can be told.³

“Don’t bother talking to Cambodians, they will only confuse you” epitomizes an attitude very apparent in discourses within the paradigm and practice of transitional justice. Such confusion is ‘caused’ by anyone outside the global discourse on justice, dominated as it is by the normative values of a (mostly western-educated) elite working within western academies, international non-governmental organizations (INGOS), state donor groups and the UN system. In the ECCC context Alexandra Kent characterizes this problem as international staff “focusing on abstract discourse and adopting the language of legal-technical precision, international legal projects tend[ing] to create an illusion of their isolation from the social contexts that shape people’s lives.”⁴ Elena Baylis describes UN staff ‘tribunal-hopping’ from global post to post in such rapid succession that they are no more than superficially knowledgeable about the social/cultural contexts in which they work, whilst applying technical discourses and practices which universalize experience and structure it around a westernized narrative.⁵ For anyone seeking to fit the history of Democratic Kampuchea (DK) (17 April 1975-7 January 1979) into this narrative, talking to Cambodians would be confusing. When individuals tell stories that ‘do not fit’, standardized academic or legal frames become askew. Trials perform specific ideologies/narratives, but non-canonical stories disrupt the flow of their narrative and become marginalized. Alternative tellings, in locally more accessible discourses, can exist alongside the official tellings only as long as they fit with the constraints imposed. Those with no proper place can only transgress, become marginalized or silenced—‘confusing’ Cambodians battling to deposit their own memories into

³ Interview with Paul Ricœur in Richard F. Kearney, *On Paul Ricœur: The Owl of Minerva* (Aldershot: Ashgate Publishing, 2004), 127.

⁴ Alexandra Kent, “Friction and Security at the Khmer Rouge Tribunal,” *SOJOURN: Journal of Social Issues in Southeast Asia* 28.2 (2013): 309.

⁵ Elena Baylis, “Tribunal-Hopping with the Post-Conflict Justice Junkies,” *Oregon Review of International Law* 10 (2008): 390.

cultural memory. For many of those I spoke with who had lived through the DK regime, the most important meanings of transition and justice are these: transition is communicating one's personal/community story and being believed by the succeeding generation and the wider world in order to make a move out of the former time; *justice* is the opportunity to narrate and not be ignored.

In 2012, I attended a conference organized by the NGO Impunity Watch, entitled 'Breaking the Silence'. This title unquestioningly assumed the existence of a 'silence' to 'break'. This assumption, I contend, is one on which most international NGOs premise their justice work in Cambodia. So do many senior international staff at the ECCC; some told me directly that discussion of the DK regime was "taboo for 30 years... People would just not talk about it."⁶ "I think a lot of people form the opinion of outreach that they have only since the tribunal started... talking about the past."⁷ However, Cambodians were not 'silent' prior to the arrival of the ECCC and the INGOs who followed in its wake with international donor money. The assumption about 'silence' arises from an inability to conceive other modes of discussing DK before the arrival of the international transitional justice mechanism. Cambodians are in fact communicating the DK past within their culture in ways alien to western-derived discourses, ways INGOs and the UN entirely overlook. Those words, 'silence', 'confusing', and 'taboo', reveal a set of assumptions emanating from a discourse specific to transitional justice, a narrative structure embodying normativities which govern the way international actors frame the ideas of justice and of transition.

This paper makes three points which might seem obvious but which seem to be ignored in practice: first, that the narratives in which states, international institutions and international NGOs present events follow certain narrative structures that support their goals. Second, that if justice is to be truly realized or indeed have any

⁶ Lars Olsen, Legal Affairs Spokesman at the ECCC, interview by author, Phnom Penh, March 18, 2010.

⁷ Judge Rowan Downing QC, International Judge at the Pre-Trial Chamber in the ECCC, interview by author, Phnom Penh, 29 July 2012.

meaning to those seeking redress many narratives have to be taken into account; third, that ‘smaller voices’ are not heard because the dominance of the narrative structures of transition and justice sideline them or make them actively transgressive. This is not to argue that all narratives are the same. Nostalgia for the DK period, and even outright historical revisionist accounts of events do exist; however, this paper does not deal with these narratives. I am not writing a paper about genocide denial but about people seeking justice for the events of DK, seeking acknowledgement of what happened to them.

The current failure to hear is exemplified by the ‘results-based lessons learned’ approach of transitional justice researchers and practitioners. For example, quantitative studies attempt to measure the ‘success’ of the foundational claims of transitional justice.⁸ These ‘yardstick’ approaches of justice delivery and satisfaction produce statistics that can indicate a mood and high poll numbers here mean success.⁹ Yet when one asks less reductive, more open-ended questions, such as, ‘Why do you support the ECCC?’ the answers are less encouraging. From those to whom I put this question, the emergent sentiment was, “It was better than nothing.”¹⁰ Put crudely, transitional justice as a praxis measures transition and justice by its own normative standards, its own definition of terms, and as I hope to show, its own narrative.

It is important, then, that ‘transition’ and ‘justice’ become problematized concepts, situated outside the transitional justice praxis and explored in domestic intellectual/cultural traditions. In

⁸ Nadine Kirchenbauer, Mychelle Balthazard, Latt Ky, Patrick Vinck, and Phuong Pham, *Victims’ Participation Before the Extraordinary Chambers in The Courts Of Cambodia: Baseline Study Of The Cambodian Human Rights And Development Association’s Civil Party Scheme For Case 002* (Phnom Penh: Harvard Humanitarian Initiative and Cambodian Human Rights and Development Association, ADHOC, January 2013).

⁹ Nadine Kirchenbauer et al., *Victims’ Participation Before the Extraordinary Chambers*; Claire Moon, *Narrating Political Reconciliation: South Africa’s Truth and Reconciliation Commission* (Plymouth: Lexington Books, 2008): 2

¹⁰ Sum Rithy, Motorbike mechanic, Civil Party at ECCC, Survivor of Siem Reap Prison, Phnom Penh, interview by author, 29 July 2012

this paper, I discuss a methodological approach to the problem of adequately ‘speaking to’ and ‘listening to’ the society for and in which transitional justice institutions work, through the Cambodian experience. In particular, I utilize Luc Boltanski’s “Sociology of Emancipation,” as outlined in *On Critique*, to discuss how non-local actors can seek enhanced understanding of the voices of local actors from a different epistemological orientation.¹¹ By choosing a methodological approach *not* focused on how the normative aims of transitional justice have or have not been achieved, I indicate the possibility of an alternative approach (in conjunction with quantitative polling data) whereby international bodies /scholars can seek to understand the views of people from ‘outside’ the mechanisms. In particular, I focus on ‘transition’ as experienced by two sets of people: an area populated mainly by former KR, and survivors of the regime with a history around one of the crime sites in Case 004. However, I contend that the methodology here discussed/ proposed is applicable to other contexts.

Theoretical frame

As already indicated, my framework for this discussion is based on the idea of narrative. This allows me to present interactions between “institutional infrastructures”¹² as a process of configuring a narrative of justice and transition about DK and its aftermath.¹³ I will briefly provide an overview of what I understand here by narrative.

Lyotard calls narrative “the quintessential form of customary Knowledge.”¹⁴ Narrative is a permanent feature of what societies and institutions do, a permanent feature of social interaction.¹⁵ Narrative

¹¹ Luc Boltanski, *On Critique: A Sociology of Emancipation*, trans. Gregory Elliott (Cambridge: Polity Press, 2013), 5.

¹² *Ibid.*, 75.

¹³ Paul Ricœur, *Time and Narrative: Vol. 1(1983)*, trans. Kathleen Blamey and David Pellae (Chicago: University of Chicago Press, 1990), 31.

¹⁴ Lyotard, *The Postmodern Condition*, 19.

¹⁵ Ricœur, *Time and Narrative*.

is the means by which the generations are linked.¹⁶ Through it society's knowledge is stored, transmitted and legitimized. Lyotard has identified the Grand Narratives of Human Progress—the meta-narratives through which the West arranges and transmits its history, whether the story arc is that of Liberalism—“from barbarism to enlightenment”—or Marxism—“from oppression to revolution.” Yet these grand narratives are problematic: indeed Lyotard famously argues they have collapsed. For Lyotard, the Holocaust is a rock upon which grand narratives crash and founder. “With Auschwitz, something new has happened in history.”¹⁷ For Lyotard we must now reconfigure history and justice in terms of a new historiographical project based on the “universality of cultural differences,” utilizing the whole range of discourses to interrogate one other.¹⁸ It is the challenge of postmodernity to ‘know-how-to-speak’ and ‘know-how-to-hear’ this multiplicity of narratives. Lyotard is clear that “it is not exactly advisable to resist the plenum of instituted narratives by taking a stand on the void of a universal principle of discourse.”¹⁹ He envisages instead an obligation to attend to those points on which the Grand Narratives crash and to hear the voices of those silenced. Collections of “uncomfortable little stories” not only offer eye-witness accounts of injustice, but ‘breathe new life’ into the stories of those ignored in the past, as well as interrogating the present. I suggest that the more ‘official’ (state and internationalized) the processes, the more embedded they are into the grand narratives. My

¹⁶ Jan Assmann, ‘Collective Memory and Cultural Identity’, trans. John Czaplika, *New German Critique*: 65, 1995; Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London, Penguin Books, 1966). See also Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (London: Penguin Books, 1966), and Benedict Anderson, *Imagined Communities* (London and New York: Verso, 1991), 1-7.

¹⁷ Jean-François Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van Den Abeele (Minneapolis: University of Minnesota, 1988), 57.

¹⁸ Jean-François Lyotard, “Universal History and Cultural Differences,” in *The Lyotard Reader*, ed. Andrew Benjamin (Oxford: Blackwell 1998), 319.

¹⁹ Jean-François Lyotard, “Lessons in Paganism,” in *The Lyotard Reader*, ed. Andrew Benjamin (Oxford: Blackwell 1998), 133.

task here is to identify how the grand narratives collapse in the face of the Cambodian genocide and to discover some of the stories that crash against them. Throughout the article I shift between micro- and macro-history, between the grand narratives of state, international institutions, and regimes and the “small, quiet and orderly” voices drowned in comparison.²⁰

Two major narratives run within the hybrid ECCC and inform the way that all stories within it are told: what I define as the transitional justice narrative and the narrative pushed by the Royal Government of Cambodia (RGC). The Cambodian Prime Minister since 1985, Hun Sen, has already stated that “the accused are guilty,”²¹ and other Government officials have stated that no further trial is needed.²² Along with Case 001, (now resolved), and Case 002, still being tried, two further Cases are under investigation (003 and 004). Hun Sen has explicitly stated that he will not allow these to proceed.²³ His information minister declared, “If [the ECCC] want to go into Case 003 and 004, they should just pack their bags and leave.”²⁴ Despite officially ‘inviting’ the UN to help the state prosecute the atrocities, the trial narrative for the RGC stops after Case 002. The arc of this official narrative moves with all possible speed to a point Hun Sen envisages when Cambodia can “dig a hole and bury the past.”²⁵

²⁰ Ricœur, *Time and Narrative*, 179.

²¹ Quoted from Supreme Court Chamber Decision on Nuon Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35: Applications for Summary Action 6, 14 September 2011, Case 002; Doc. no. F28, E176/2/1/4.

²² Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide* (Lubbock: Texas Tech University Press, 2006), 17; Laura McGrew, “Re-establishing Legitimacy Through the Extraordinary Chambers in the Courts of Cambodia,” in *Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society*, eds. Joakim Ojendal and Mona Lilja (Copenhagen: NIAS Press, 2009), 253.

²³ Cheang Sokha, “Hun Sen to Ban Ki-Moon: Case 002 last trial at ECCC,” *Phnom Penh Post*, October 27, 2010.

²⁴ Quoted from Press Release by the International Co-Investigating Judge, The Extraordinary Chambers in the Courts of Cambodia, 10 October 2011.

²⁵ Hun Sen quoted in Laura McGrew, “Re-establishing Legitimacy Through the Extraordinary Chambers in the Courts of Cambodia,” 253.

The RGC are anxious to maintain their narrative of the DK era—one of progress over which they preside. The ruling party, Hun Sen’s Cambodian Peoples Party (CPP) maintain that further prosecutions could have a socially destabilizing effect. In reality, more than three decades after DK, this is an implausible assertion. The most likely explanation is that deeper investigations would likely implicate current senior party officials. Pursuing Cases 003 and 004 would mean widening the narrative of events beyond the CPP’s shaping political narrative: that they (when known as the Kampuchean People’s Revolutionary Party) are the bringers of national salvation from the KR.

My prime focus here, however, is on the other main narrative, which, as I explore in a later section, has a complex relationship with that of the RGC: the Westernized narrative of transitional justice. The internationalized transitional justice praxis often demonstrates a lack of awareness that it is itself a narrative—that, in short, it is an offshoot of the liberal narrative identified by Lyotard as one of the Grand Narratives of human progress.²⁶ In terms of critical scholarship Ruti Teitel has exposed the roots of the transitional justice narrative in terms of explicitly Western stories of suffering and redemption, from Moses in the wilderness to Shakespeare’s *Tempest*. The arc of this ‘transition’ narrative runs “from authoritarianism to liberalism,”²⁷ (i.e. liberal democracy/democratization), via a process of reckoning with the past, articulated and enacted through institutions like the ECCC.

The justice-seeking phenomena discussed here are intimately tied to the fashioning of a liberal political identity...the turn to legalism...is emblematic of the liberal state, with transitional justice reconstructing the political identity on a judicial basis by deploying the discourse of rights and responsibilities.²⁸

²⁶ Lyotard, *The Postmodern Condition*.

²⁷ Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000), 5.

²⁸ *Ibid.*, 225.

In short, transitional justice is a narrative of events within the parameters of democratization.²⁹

However, internationalized judicial institutions construct historiographies of atrocity, editing, prioritizing and presenting histories uncritically within the limits of the methods of the transitional justice institution, such as tribunals. The kind of history which transitional justice mechanisms present as their final ‘product’ depends on how information is ‘extracted’, and under what conditions.³⁰ Trials and the records they produce make narratives foundational to historical national political identity. Past and present are linked in a narrative format,³¹ whose shape is “how far we have come since the bad old days.”³² Kjetil Grødum sums up the ECCC’s own reading of transitional justice: “By accepting the followability of the transitional justice narrative, the victims are empowered to re-interpret memories of the conflicting past and orient themselves towards a better future.”³³

The limitations of the transitional justice narrative are exposed on encounter with ‘the small voices of history.’ ‘Small’ narrations—which include oral storytelling, and stories which are assumed or enacted, rather than spelled out, within socio-cultural processes such as religious ritual—may overlap with legalistic

²⁹ Alexander Mayer-Rieckh and Roger Duthie, “Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform,” in *Transitional justice and Development* eds. Pablo de Greiff and Roger Duthie (New York: Social Science Research Council, June 2009), 249.

³⁰ Audrey R. Chapman, “Truth Finding in the Transitional Justice Process,” in *Assessing the Impact of Transitional justice: Challenges for Empirical Research*, eds. Hugo Van der Merwe, Victoria Baxter, and Audrey R. Chapman (Washington DC: United States Institute of Peace, 2009), 100.

⁶⁹ Teitel, *Transitional Justice*, 7.

³² Shawn Rowe, James Wertsch and Tatyana Kosyaeva, “Linking Little Narratives to Big Ones: Narrative and Public Memory in History Museums,” *Culture and Psychology* 8.9 2002.

³³ Kjetil Grødum, *Narrative Justice: A Study of Transitional justice in Cambodia Discussed on the Basis of Elements from Paul Ricœur’s Philosophy*, (Ph.D. diss., University of Agder, 2012), 254.

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narratives of justice; but it is often the case that these individual voices transgress, or are marginalized by, the grand narratives.³⁴

The people whose stories I include here are aware of the exclusion of their personal stories, or those of their community, from the narrative that dominates the way a particular time is told, or its inclusion on terms not wholly theirs.³⁵ Lyotard considered that such a situation could only be avoided by basing a post-modernist ‘justice’ in language: people must be able to employ their own discourses in seeking justice. To this end, in *The Differend* he problematizes the point at which someone is unable to phrase his or her grievance in a way acceptable to the structure of power.³⁶ A *Differend* occurs where at least two interlocutors are unable to resolve their issue in a way that satisfies both, as there is no mutually agreed rule by which judgment can be rendered and one party must therefore be excluded.³⁷ “The victim is deprived of life, the freedom to make his or her ideas or opinions public.”³⁸ The victim of the injustice is silenced by inability to convey their story in the discourse prescribed for their use.³⁹ The victim of the injustice is silenced by inability to convey their story in the discourse prescribed for their use.

As of August 15, I had carried out 90 in-depth interviews with regime survivors, former cadres, victims of KR atrocities, jurists and religious and community leaders in Cambodia, about what justice means to them, in context of their own histories.⁴⁰ Wanting a term less passive than ‘interviewee’ or ‘subject’, I came to think of them as ‘narrators’, becoming aware that their stories often diverged

³⁴ Kearney, *Owl of Minerva*, 127.

³⁵ Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming*, trans. Wlad Godzich (Minneapolis: University of Minnesota, 1985), 66-67.

³⁶ Lyotard, *The Differend*.

³⁷ *Ibid.*, xi.

³⁸ Lyotard, *The Differend*, 10.

³⁹ *Ibid.*

⁴⁰ Tallyn Gray, *Justice and Transition in Cambodia 1979-2014: Process, Meaning and Narrative* (Ph.D. diss., University of Westminster, May 2014), http://westminsterresearch.wmin.ac.uk/14376/1/Tallyn_GRAY_2014.pdf; accessed 30 June 2017.

significantly from what was or can be articulated in the discourse of the ECCC.⁴¹ This underlined the need to develop a theoretical frame which simultaneously recognized the importance of transitional justice—given the ECCC as a transitional justice mechanism—while clearly identifying it as a narrative-generating tool or a technology of heritage running alongside others.

Here I present a relatively small selection from the narrations I took over the course of my research to illustrate the methodological approach I advocate. I chose these examples as they can be deployed as self-contained narrations without the need for complex lengthy contextualization. All directly pertain to the ECCC process. I do not claim generalizability for these Cases. Indeed the entire orientation of this article renders this a phoney objective. But they all share an inability to fit neatly into the ECCC narrative. The narrators clearly have ‘biases’; so do the UN officials who talk of ‘confusing Cambodians’ or international groups that insist that before the ECCC’s arrival Cambodians were silent about the DK era. My strategy here is to place all narrations on an equal plane so that they can interrogate one another. An international judge in this article has as no more authority on the question of justice (as opposed to the technical questions of law on which he is expert) than a rice farmer in rural Cambodia. The discontent of social actors is taken seriously even while acknowledging that their narrations are in a position of relative powerlessness compared to those of the ECCC and of a transitional justice praxis which normativises the powerful.

While I asked my narrators a range of questions, in particular open-ended questions about their life histories, the key questions were always, What does justice mean to you? And what do you think about the ECCC in the context of your own life experience?

Towards a methodology of listening to ‘little stories’

Rather than silence for the 30 years preceding the ECCC’s arrival, a variety of discourses for discussing, describing and narrating DK and

its aftermath have developed. My Cambodian narrators have their own methods and group-specific discourses; they establish collective memories, away from institutional restrictions, official discourse and political control.⁴² One such discourse is that surrounding Pchum Ben, a 15-day long festival in which people pay ritual attention to the dead of the past seven generations, in particular to the recently dead. They hope to transfer their merit and positive *karma* to their dead relatives, to ease their suffering in the *dukkha* cycle.⁴³ This festival was forbidden under DK. In the aftermath, it was quickly re-established; after years of separation it generated family cohesion, allowing the *karma* transfer process between survivors and the millions who perished.⁴⁴ Guillou suggests that Pchum Ben and other spirit festivals are the logical vehicles of commemoration, healing and memory-making for all the dead of DK. They fall outside prevailing discourses about the DK dead in that they treat them as subjects rather than evidence.⁴⁵ Pchum Ben thus challenges the view that there is ‘a silence’ around discussion of DK, justice and transition. Rather, it opens up space for a different kind of narrative in which to articulate them.

To shape an overall methodological framework arising logically from Lyotard’s call to attend to the infinite plurality of speaking history, and, as transitional justice scholars, to address phenomena like Pchum Ben, it is helpful to turn to the sociologist Luc Boltanski.⁴⁶ Boltanski stresses the need to take social actors seriously, working in their frames of reference rather than imposing metatheories/metacritiques/metanarratives: in this context, not to ‘go to’ field sites as a liberal transitional justice scholar or Marxist

⁴² Susanne Karstedt, “Introduction: The Legacy of Maurice Halbwachs,” in *Legal Institutions and Collective Memories*, ed. Susanne Karstedt (Oxford: Hart Publishing, 2009), 5.

⁴³ John Clifford Holt, “Caring for the Dead Ritually in Cambodia,” *Southeast Asian Studies* 1.1 (April 2012), 4.

⁴⁴ *Ibid.*, 29.

⁴⁵ Guillou, Anne Yvonne, “An Alternative Memory of The Khmer Rouge Genocide: The Dead Of The Mass Graves And The Land Guardian Spirits [Neak Ta],” *South East Asia Research* 20.2 (2012): 207–226.

⁴⁶ Boltanski, *On Critique*, 5.

critic, but to go to focus upon social actors in their world, and their *own* sense of justice and morality. He offers a broad frame in which to locate the practices I describe. He attempts to reconcile ‘critical sociology’ (which exposes the mechanisms of power passively endured and not always recognized by the oppressed) with a ‘pragmatic sociology’ based on the perspectives of social actors. He envisions an interdependent relationship between critical sociology and a more interpretivist perspective grounded in social actors. He notes that “Critical theory has to grasp the discontents of actors and explicitly consider them in the labor of theorization”⁴⁷—that is, the theorist should theorize *through* social actors, not make them subjects of theory. It is important to explore power relations in terms of the experience and judgement of the oppressed, to “enable the disclosure of aspects of reality in the immediate relationship with the preoccupations of actors—that is also with ordinary critiques.”⁴⁸ ‘Progressive’ (liberals/new left/Marxist) theoreticians in pursuit of their research agenda effectively ventriloquize their subjects, and speak on their behalf or pursue their own agendas (asking, for instance, how a mechanism contributes to democratisation). Boltanski focuses on the abilities of social actors to critique in their own way and in response to their own situations, and stresses the need for social researchers to recognize this, to not treat actors as passively acquiescent to hegemonic domination. He contends that people do not need an “emancipatory theoretical enlightenment” conceived ‘above’ them but rather a “pragmatic sociology of critique”⁴⁹ which takes the lived experience of actors to its heart and works “on the ground,”⁵⁰ refocusing “the sociologist’s attention on actors *en situation* as the main agencies of performance of the social”⁵¹ and bringing to bear a variety of disciplines “to account for the capacity of actors to produce acceptable critiques and/or justifications *en situation*,” in contrast to those theorists and

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., 23-29.

⁵⁰ Ibid., 26.

⁵¹ Ibid.

philosophers who only create metacritiques/metatheories about society. It is for me to bring my methodology to a discussion: not to seek to question the facts of the stories told to me. My purpose is not to establish historical fact about places and events, or seek a purely photographic kind of truth through the accounts of eye witnesses, but rather to discuss the ‘meaning’ of what is told to me.⁵²

Boltanski draws a distinction between “reality” and “the world.”⁵³ “The world” is ‘an unknown portion of uncertainty ... the flux of life.’⁵⁴ There is an inevitable disparity between this and ‘reality’—Boltanski’s term for the work of institutions in “saying and confirming what matters. This operation assumes the establishment of types which must be fixed and memorized in one way or another (memory of elders, written legal codes, narratives, tales, examples, images, rituals, etc.)”⁵⁵—to which institutions ascribe names and definitions. Thus, they construct ‘social reality’, order, coordinate, control, and justify behavior. This constructed ‘reality’ exists despite ‘the world’. Institutions survive through discourse and sign systems. Actors adhere to institutional codes and narratives and thereby create the boundaries of that ‘reality’, what Boltanski calls the “*whatness of what is*.”⁵⁶ ‘Reality’ appears coherent because it “succeeds in getting actors to believe in its solidity and internalize their powerlessness to change test formats.”⁵⁷ Institutions ‘succeed in providing descriptions of what happens and... what might occur.’⁵⁸ They provide ‘confirmation’ of what reality is, and attempt to justify and legitimize themselves through “truth tests”⁵⁹—visible demonstrations of the standards they wish to show as norms. This is achieved through what Boltanski calls “ceremonies” embodying and demonstrating “the relationship between the order of symbolic propositions and the

⁵² Catherine Kohler Riessman, *Narrative Analysis* (Newbury Park, Sage, 1993), 4-5.

⁵³ Boltanski, *On Critique*, 57.

⁵⁴ *Ibid.*, 57-58.

⁵⁵ *Ibid.*, 75.

⁵⁶ *Ibid.*, 55.

⁵⁷ *Ibid.*, 34.

⁵⁸ *Ibid.*, 34 (*italics mine*).

⁵⁹ *Ibid.*, 83.

order of the state of affairs.” As he shows, such ‘tests’ are often tautological, for example, ‘the king is the monarch’. They do not hold up well to critique; but their role is crucial, because of their power when they succeed. Then “their effect is not only to make ‘reality’ accepted. It is to make it loved.”⁶⁰

This process is illustrated by a literal ‘ceremony’ described in a newspaper story from 1999: a ceremony undergone by ‘the last of the KR hard-liners’ in Anlong Veng who defected to the RGC:

Four anti-aircraft artillery pieces were hauled out and lined up as props for Tuesday’s ceremony, as were dozens of Chinese and Russian assault rifles, some bearing bayonets. Officials [i.e. top level defence officials from Phnom Penh] handed the defecting troops green nylon backpacks containing new RCAF uniforms.

‘The Khmer Rouge is dead,’ noted one former guerrilla. But he said he would keep his old uniform, ‘just in Case.’ One KR comments, ‘I trust the government, I defected to the government, I believe in the government. Now it’s time for the government to help develop my home.’

Rebel representative Sang Kong, in his address to Phnom Penh officials, said troops would change their rallying cry from the communist-inspired ‘pdach-nhal’ meaning ‘promise,’ to ‘chaiyo!’ commonly used today in political rallies to mean ‘long live.’⁶¹

This can be characterised as a tautological ‘truth test’:⁶² the state demonstrates itself and demands participants prove the ‘reality’ of the RGC institutional infrastructure by engaging in the ‘ceremony’ of donning new uniforms. What reveals the weakness of the ‘reality’ tested here is the soldier keeping his old KR uniform ‘just in Case’ and the statement, ‘now it’s time for the government to help develop my home.’ Both men cite clear reasons for their actions which

⁶⁰ Ibid.,105.

⁶¹ Marc Levy and Phann Ana, “Last Anlong Veng Hard-Liners Join Gov’t,” *The Cambodia Daily*, February 10, 1999.

⁶² Boltanski, *On Critique*, 83.

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demonstrate that the ‘reality’ of the institutions constructed by the RGC is precariously foundationed in ‘the world.’⁶³ Both are aware of the process of acquiescence to the RGC.

An example of how a transitional justice institution operationalizes such a tautological ‘truth test’⁶⁴ is the quantitative study vaunted by the Public Affairs office of the ECCC alluded to earlier,⁶⁵ substantiating the foundational claims of the transitional justice mechanism with statistics such as: “7 out of 10 genocide survivors feel transitional justice mechanism X is satisfactory in dealing with their justice concerns.”⁶⁶ This is the kind of research undertaken by huge institutions embedded in what Clair Moon calls “the reconciliation industry,” whose theory and praxis dominate post-conflict/atrocity societies.⁶⁷ Statistical results legitimize them. The Public Affairs section of the ECCC lists such research on its ‘blog’ as proof of the civil parties’ “largely favorable impression of the ECCC.”⁶⁸

On the other hand, ‘existential tests’ open up the constructed social order to ‘the world’ through critiques. By ‘existential tests’ Boltanski means tests not emanating from institutions. He locates radical critique in the creative processes, “whose aesthetic orientation makes it possible to bypass the constraints of consistence and legal or moral justification imposed by argumentative discourse.”⁶⁹ In the case of the social actors with whom I situate myself, such tests might involve ceremonies (such as those around Pchum Ben), poems, dreams and stories, conveyed in variously chosen media. Even where they are less ‘creative’, my narrators demonstrate “the capacity of actors to produce acceptable critiques and/or justifications *en*

⁶³ Ibid., 57.

⁶⁴ Ibid., 83.

⁶⁵ ECCC, “Civil Party survey: 74.5% says ECCC is doing enough for victims,” ECCC Website <http://www.eccc.gov.kh/en/blog/2013/04/26/civil-party-survey-745-says-eccc-doing-enough-victims>; accessed 4 June 2013.

⁶⁶ Harvard Humanitarian Initiative and Cambodian Human Rights and Development Association.

⁶⁷ Moon, *Narrating Political Reconciliation*, 2.

⁶⁸ ECCC.

⁶⁹ Boltanski, *On Critique*, 108.

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situation... their sense of justice or their moral sense.”⁷⁰ Although multiple Cambodian regimes have constructed ‘realities’, and ensured that, if not always ‘loved’, they are accepted, my narrators are not blithely unaware of their own social realities and do not inhabit institutions as if they were fish unaware of the water in which they swim. This is notably evident in the case of former KR cadres in their current dealings with the government. In the next section I show how I have tried to answer Boltanski’s call to “grasp the discontents of actors and explicitly consider them in the labour of theorization”⁷¹ by asking those watching the grand narratives unfolding in their nation what they think.

Cambodia as a Case example

I will discuss two examples of listening to views from the outside using this methodology. These ‘views’ challenge the ECCC in that they are both from groups who feel marginalized by the way the ECCC has constructed the narrative of the whole Khmer Rouge era. They use discourses from ontological bases and Cambodian cultural orientations very different from the ECCC legal-liberal discourse. Such different ways of addressing this history serve to interrogate the grand narratives at the epistemological centre of court or government by their inability to fit. Like small grains of sand in a machine, they challenge the smooth running of the ideological process. These readings of culture and society emerge from the critical frames of the social actors *en situation* as the main agents of, and producers of, critiques about their own society, culture, history and politics. Talking to social actors *en situation* allows them to utilize their own discourse without the context that gives rise to a *Differend*.

Former Khmer Rouge Cadres as Victims

The experience of one individual I spoke to can be described as an ‘existential test’ which interrogates the grand narratives. A former KR cadre explained to me why he joined the KR at around

⁷⁰ Ibid., 24.

⁷¹ Ibid., 5.

15/16 years old. He went to fight in the North: “I was a Khmer Rouge soldier ...at that time... I was still young. At the time the country was still divided and we were collected to be Khmer Rouge soldiers because of this situation. I was a KR soldier because of my family situation. We were poor, and there was no work at home [in his home village] so I became a KR soldier.”⁷²

However, his experience falls outside the period of nationwide Khmer Rouge rule over the 3 years, 8 months, and 20 days of DK. The ECCC narrative relates exclusively to this time frame. This cadre, like millions of others, lived under KR rule for significant portions of time preceding and following the regime known as Democratic Kampuchea. He said, “I’m not sure what it was like in the other parts of the country, but here we were, always under KR for a long time, not just the length of what is termed Democratic Kampuchea.”⁷³

David Chandler characterizes the unofficial policy of the ruling Cambodian Peoples Party (CPP) in the 1990s as “induced amnesia;”⁷⁴ as the state attempted the demobilization and integration of the KR cadres, discussion of that whole period, including the civil war, had to be ‘forgotten’. In the 2000s, renewed popular interest in DK as the ECCC began operations led to a modification of this policy. Chandler states, however, that it “remain[ed] partially in force.”⁷⁵ I would go further. I argue that not only has it remained ‘partially in force’ but has been strengthened. The ECCC narrative about ‘3 years, 8 months, 20 days’ is ‘top-heavy,’ focusing on the leadership; it excludes not only the civil wars inconvenient to the RGC narrative, but also the American bombing of Cambodia inconvenient to its own. This time frame drives narratives it deems ‘non-canonical’ into obscurity, boxing memories and sealing them so

⁷² Former KR Cadre 5, former Head Monk, interview by author, September 18, 2012.

⁷³ Ibid.

⁷⁴ David Chandler, “Cambodia Deals with its Past: Collective Memory, Demonization and Induced Amnesia,” *Totalitarian Movements and Political Religions* 9.2-3 (2008): 357.

⁷⁵ Ibid.

nothing additional may enter. It writes a historical narrative, which prevents individuals like this former cadre from establishing hermeneutic understanding of their situation.

Excluded from the court narrative by the date of his experience, this former cadre is also excluded from the therapeutic processes afforded to victims of DK. Some monks found that a familiar genre of discourse, that of Buddhism, could be a way to bridge the gap between personal memories and narratives, to help victims find their voice and have it affirmed within ritual or therapeutic process. This cadre became a monk in a poor community that needed to rebuild its temple; he found himself labouring in a place where tradition had been destroyed, rather than learning a discourse that might help him. He had to manage with the transition he could afford.

It is useful to return here to Lyotard's idea of the *Differend*. If justice is to be ethical there must be recognition of the rights of others to use their own discourse and modes of thought. If hegemonic discourse silences or marginalizes, an additional injustice occurs. My narrator—an ex-cadre and former head monk—is aware of how silence about issues running counter to government narratives impinges on a community: “The villagers here are nearly all ex-Khmer Rouge; many will not talk about the Communist party, or the leaders etc. Because... in some villages around 80% were KR and now some of their children, their sons, are [government] soldiers also. So people never say bad things about the cadres or the staff. About 20% are government soldiers now.”⁷⁶

Experience is silenced. The local villagers cannot talk about the events and history fails to be inter-generationally communicated. There are many possible reasons, including shame at involvement in a movement many forcibly recruited KR always resented. My narrator himself stressed, “I just want to let you know that while I was a Khmer Rouge soldier, I was so only after 1979”⁷⁷—specifically

⁷⁶ Former KR Cadre 5, former Head Monk, interview by author, September 18, 2012.

⁷⁷ Ibid.

to detach himself from the grotesqueness of DK. The lengthy, violent and traumatic history of civil war after 1979 is being ignored by the ECCC, which provides the only official narratives counter to the CPP's claim that it saved the nation from civil war.

The victim-perpetrator binary favored by NGOs working around KR issues and even the ECCC cannot work here. My narrator and his fellow villagers are far from pro-Khmer Rouge; they despise DK. But they fall through narrative gaps, unaccounted for in the telling of the story at both official and alternative, therapeutic levels. They exist both in the category of victim (I was abused by the KR and they forced me to do things I did not want to) and perpetrator (I carried out atrocities under the KR that I regret).

As is clear, the experience of the individual discussed here is not uncommon. Two other former cadres I interviewed expressed loathing for the regime. Both became monks after their experience with the KR: One told me: "I wanted to be a Monk because I wanted to make good Karma after joining the Khmer Rouge because it was a group that worked on the basis of 'an eye for an eye.' It was a bad group."⁷⁸ The other expressed: "Sometimes I think about the past during the Khmer Rouge; it is very difficult and especially because they forced us to labour; we had no place to stay, just in the forest fighting, fighting, fighting. Now we have freedom."⁷⁹

The notion of a cadre being a victim is not completely alien. One monk outlined the commonest answer to my question about the use of children by the KR. "They know nothing; they kill because they receive instruction/indoctrination; they do not have capacity to understand—they do not have responsibility."⁸⁰

The complex relationship between being a victim of the regime and one of its enforcers is discussed by Meng-Try Ea and Sorya Sims; their study of this dual identity concludes that former

⁷⁸ Former KR Cadre 5, former Head Monk, interview by author, September 18, 2012.

⁷⁹ Former KR Cadre 4, former Monk, interview by author, September 18, 2012.

⁸⁰ Ven.6, Phnom Penh, interview by author, March 14, 2010.

cadres are both.⁸¹ However, I argue that their ability to construct their own narratives, or feel part of one, is restricted. The notion of ‘cadre as victim’ is not widely addressed by the ECCC or the RGC or in the NGOs. There is no outlet for them in the conceptual gap between ECCC jurisdiction and the ‘reality’ of the RGC, except for the very few that can access INGO-run mediation processes, such as the International Centre for Conciliation⁸² Victim/Former Khmer Rouge Dialogue Project—yet budget constraints mean that this is a very small number. The result for many is silence and a lost set of incomplete narratives. Their experience and stories are lost.

The Trapeang Thma Dam

The Trapeang Thma Dam is a vast concrete irrigation system built by the Khmer Rouge using the slave labour of thousands, and costing thousands of lives. It is one of the crime sites in the ECCC Cases 003, 004 and 004/01—cases subject to obstacles and blatant interference by the RGC.⁸³

The charged person in Case 004/01 was Ms. Im Chaem, who in her role during the regime assigned workers to the Trapeang Thma dam. On 22 February 2017, the Co-Investigating Judges issued a joint closing order in the proceedings against Im Chaem. They dismissed the case, because they found that Im Chaem was not subject to the ECCC’s personal jurisdiction.⁸⁴ Thus one aspect of the narrative of the Trapeang Thma Dam has been removed.

I interviewed eight men, all of whom worked on the dam’s construction. Thousands died making it. It is staggering in scale. Today its construction would cost millions of dollars and take years.⁸⁵

⁸¹ Meng-Try Ea and Sorya Sim, *Victims and Perpetrator? Testimony of Young Khmer Rouge Comrades* (Phnom Penh: Documentation Center of Cambodia, 2001).

⁸² Re-organized as a national NGO under the name ‘Kdei Karuna’.

⁸³ John D Ciorciari and Anne Heindel, *Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia* (Ann Arbor: University of Michigan Press, 2014), 272.

⁸⁴ ECCC, ‘Co-investigating Judges Dismiss Case Against Im Chaem’ ECCC Website <https://www.eccc.gov.kh/en/articles/co-investigating-judges-dismiss-case-against-im-chaem>; accessed 14 March 2017.

⁸⁵ May Titthara and Bridget Di Certo, “Latest Tourist Attraction has “Bloody” Past,” *Phnom Penh Post*, August 20, 2012.

It is still in use, integral to contemporary livelihoods, as it irrigates huge swathes of farmland. Plastic chairs were set up next to the reservoir at the head of the dam and the men talked about working on it. They drew me a map of the place before the dam's construction. One took me around the lake, pointing out items of interest; our interview is my major source here.

Around the Khmer Rouge time I was a farmer around here, like a mobile farmer in a group. At that time, I was about 14, 14 or 16, but I'm not sure. And one of my jobs was to carry the land. In about 1975 I was not that useful as a farmer, because I was still a boy. All of the people were here at this dam. The dam started to get built in about 1976, and also many of the people were working as part of the youth groups, but every type of person built this dam. This dam was built January 1976. It took six months to build under the order of the KR leaders, you know, because the way the water flows is too high, too dangerous for the low lands. The reason Pol Pot wanted to make this dam was to flood the rice paddies on the lowlands, two or three times a year. So this place was deemed a good place to carry out this irrigation. So this is why they ordered the farmers to build this. In 1975 Pol Pot built all these water channels; in 1976 this thing started to be built to protect the water for the low land... People came from four districts around here to come build this, so it may have been a million people who came to build this dam. [The actual number is around tens of thousands; however, he is trying to get across that this place was a hive of activity teeming with people.] They needed it in a hurry, to get it done in 6 months, so they transferred farmers from other places to build it. I don't know how many people died to make this, but many died of starvation, overwork. Some were not thought to be working hard enough, so Pol Pot killed them or beat them to death. But the specific number who died I do not know. We were forced to work very hard from 6AM to 11AM and then 1PM to 7PM, no break [except for that one hour]. They divided us into two groups. We had to work

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daytime and nighttime... You know after the regime, we collected many of the skulls and the bones of the victims, the people who died making the dam, to put it all together in the Pagoda to commemorate them. But now they are all destroyed because there was no one to preserve them.

The farmers at the time in Pol Pot were taken to be killed, but not seen directly; they were maybe sick or not hard workers, so they were taken for ‘treatment’ or ‘re-education.’ We heard that ‘re-education’ meant being taken to be killed. We never saw those people again.

They were taken to the forest behind the pagoda; this is what we heard; after the Pol Pot regime, we found all the skulls there.⁸⁶

Christian Oesterheld identifies an ‘elite’ category, of victims whose suffering is publicly acknowledged by the ECCC, in contrast to a ‘mass’ of other traumatized victims.⁸⁷ The men at Trapeang Thma Dam embody a gap between the two. Despite the right of civil parties to file for Cases 003, 004, 004/1, Hun Sen’s appointed national counterpart to the internationals, Judge You Bunleng initially did not co-sign their admission.⁸⁸ Following the dismissal of the Im Chaem Case, all the civil parties that were connected to the case have been rejected. The narrative of the Dam is a site of contestation between ‘wings’/factions of the court, a clash between the narratives of the ruling party’s preferred history and international legal liberalism. The contradiction for the men enslaved is that their government’s selective history of DK restricts the actors to the top

⁸⁶ Former worker on the Trapeang Thma Dam, interview by author, October 15, 2012.

⁸⁷ Christian Oesterheld, “Exploring the Limits of Catharsis in Transitional justice: The Khmer Rouge Tribunal, Victim Elitism, and the Reconfiguration of Cambodian Memoryscapes,” (paper presented ASEAS-UK Conference, University of Cambridge, UK, 9-11 September, 2011).

⁸⁸ Office of the Co-Investigating Judges: Lawyer's Recognition Decision Concerning All Civil Party Applications on Case File No.004, Extraordinary Chambers in the Courts of Cambodia; Doc. No: D126, 1 April, 2013.

CPK leadership; it thus frustrates bringing their direct persecutors to account, according to the desires of the international community. The small narratives of these men fall into the RCG's generalized narrative of national suffering, a 'mass' of victims. The contestation between local and international elements at the ECCC constrains the space in which the smaller narratives of such men could articulate their grievances.

In 2015 the ECCC debated whether to admit testimonies from hundreds of civil party applications 'forwarded' from Case 004 into Case 002⁸⁹ Defense Counsel for Nuon Chea, Victor Koppe, characterized this sudden influx of material from Case 004:

Why can't we simply say, 'Let the lawyers and the judges in Case 003 and 004 deal with these civil party applications?' What's the necessity, what's the strong necessity to have these civil party applications become part of Case 002? Of course, I understand what's behind it, or it's maybe speculation. But the idea that Case 003 and 004 will ever happen, that's of course very unlikely. That's probably the reason why we are still being flooded with all that new evidence coming from Case 003 and 004.⁹⁰

He is expressing the almost open secret at the ECCC: that Cases 003 and 004 are unlikely to happen. But the debate in court presents itself as a discussion about which narratives can and cannot be admitted; thus, hundreds of personal narratives, which have already waited decades to be heard, have become a football to be kicked around in procedural debates in the trial chamber.

The dam, and the presence of my narrators, is both a reminder of atrocity, and a means of sustaining a livelihood for the next generation. I visited the day after the end of Pchum Ben, the festival of the dead: on my way the night before, I met several people returning home after spending the day around the dam to pray. One said, "They do it almost every year, especially during the Pchum Ben

⁸⁹ Trial Chamber, 10 August 2015, Trial Day 308 (Case 002/02); Doc. no. E1/327.1, 6.

⁹⁰ Trial Chamber, 27 July 2015, Trial Day 304 (Case 002/02); Doc. no. E1/323.1, 18.

festival, but mostly the local people here dedicate, like, food, or pray, to the spirits of those who died in this place.”⁹¹

Despite this there is no memorial plaque, no indication that this is where the bodies of hundreds, even thousands, worked to death were discarded in the reservoir. There is one sign telling people this is “Thapang Thmar Irrigation Rehabilitation Project. Under the Japanese Non-Project Grant, Ministry of Water Resources and Meteorology, August 2004 [*sic*].” Thus, the Japanese government’s contribution to restoration work/upkeep is acknowledged; the deaths of the thousands who built it are not.

The ECCC is not perceived as the agent of justice here (at least, according to my narrators), who said: “We do not know the processes of the ECCC court very well, but the ECCC should not be taking a very long time to prosecute the Khmer Rouge leader. We are not happy or supportive of the prosecutors of the court, because it’s taking too long, and the money that is being spent on this court process is so much, so the longer it takes the less happy we are.”⁹²

This is not an uncommon sentiment: the length of the process is a source of constant concern. The failure to acknowledge the dam as a site of KR atrocity perturbs people: “In order to bring justice to survivors here, the government or NGOs that work on the Khmer Rouge story should build a stupa or a monastery, like a memorial site, to allow the people here to have a day to pray, or a specific holiday to allow the next generation to pray. This place is a memorial site; lots of people died working in this place, and this would be justice.”⁹³

If this were a site of contestation at the ECCC, would a memorial bring to attention a narrative the pro-RGC narrative of the KR era is trying to suppress? Would it at least thwart an attempt to imply that this site is only one of many? People who come for Pchum Ben do so on their own initiative, an organic process. It has been

⁹¹ Former worker on the Trapeang Thma Dam, interview by author, 15 October, 2012.

⁹² Ibid.

⁹³ Former worker on the Trapeang Thma Dam, Banteay Meanchey Province, interview by author, 15 October, 2012.

done for decades, challenging the idea of a ‘silence’; the dead are thought about and incorporated into pre-existing local Khmer religious frameworks. DK is not unaddressed, taboo or not talked about, but dealt with in a discursive framework far removed from the discourse parameters of the ECCC.

Even without official recognition to commemorate the dead, people come to offer prayers, though they say them around the lake rather than at a formal memorial. By indicating his awareness that NGOs carry out memorialization projects in other sites, and suggesting something similar, or implying that the government should memorialize the dead here, my narrator cited here identifies an injustice. He asserts a lack of recognition that thousands died in the construction of a facility still used to benefit the nation. Even the sign attesting to Japanese aid explicitly reworks the narrative origin of the dam. The site is part of the DK atrocity narrative, yet reworking its existence into a ‘development’ narrative has obscured its origins. My narrators’ notion of justice locates itself in opposition to the way the RGC narrates justice through the ECCC. To quote Lyotard: “exclusion from the discourse of the just is a further injustice.”⁹⁴

The story of the dam is undeniable, but marginalized in the overarching RGC/ECCC narrative. If the rest of Case 004 were to proceed, the ECCC would develop a narrative around this site, breaking those parameters set by the RGC for its official history of DK. This is one of thousands of personal narratives across many crime sites—one facing active exclusion. Many others also exist. The image of the figures standing around the lake to pray, rather than at a *stupa* memorializing the dead, is a silent comment on the official history and its actors.

An Act of Institutional Violence against survivors of atrocity?

An example of institutional thinking overriding local realities can be presented in an example from Case 001. The ECCC, by including ‘Civil Party’ applicants in the process, offers an avenue for participation. Civil parties are represented by a legal team with rights

⁹⁴ Lyotard, *The Postmodern Condition*, 66.

in the court akin to those of the prosecution and defence teams. During Case 001 civil parties applied to be admitted into the case and the trial chamber determined each individual's admission in context of the whole.⁹⁵

The court determined whether there was a connection between the actions of the accused and the grievance of the individual civil parties. The Chamber allows victims to claim where an immediate or an extended family member was a victim of the crime,⁹⁶ explicitly acknowledging the “nature of familial relationships within Cambodian culture.”⁹⁷ Yet it rejected over a quarter of those who had participated throughout the trial. These rejections were mainly based on the ‘failure’ of civil parties to substantiate their “proof of kinship or special bonds of affection or dependency in relation to immediate victims...”⁹⁸

While this was legally correct, the reaction of the civil parties, both rejected and successful, was disgust. The failure here lay in the way that the ECCC had neglected to communicate effectively to civil party applicants that their applications were *provisional*, so that rejection came as a shock. Phuong Pha notes that “among those who ultimately had their status denied, anger, helplessness, shame, and feelings of worthlessness prevailed... the rejection was possibly made worse by its timing at the end of trial.”⁹⁹ The ECCC, an institution that describes its purpose as “Moving forward through justice,”¹⁰⁰ was in the view of some civil parties actively re-abusing them. A prominent Civil Party, Chum Mei, was seen throwing copies of the verdict to the ground in protest at the decision.

⁹⁵ Extraordinary Chambers in the Courts of Cambodia Trial Chamber, Kaing Guek Eav alias Duch, Judgment, 26 July 2010 (Case 001); Doc. no. E188 para. 636.

⁹⁶ *Ibid.*, para. 643.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*, para. 649.

⁹⁹ Phuong N. Pham, Patrick Vinck, Mychelle Balthazard, Judith Strasser, Chariya Om, “Victim Participation and the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia,” *Journal of Human Rights Practice* 3.3 (2011): 284.

¹⁰⁰ The ECCC’s motto, which accompanies its logo on its publicity materials.

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The Supreme Court Chamber (SCC) did then admit ten of the rejected civil parties on appeal, noting that:

There appears to have been a fundamental misunderstanding between the Trial Chamber and the Civil Party Appellants as to the merits and legal effect of the initial review of their applications. The [SCC] also recognizes that the process for the admissibility of civil party applicants and the revocation of their status in the Trial Judgement may have caused anguish and frustration at the futility of their practical and emotional investment in the proceedings. Having regard to the novel character of the civil party framework before the ECCC and the conceivable lack of clarity as to its specific arrangements as discussed above, the [SCC] acknowledges the possibility that some among the Civil Party Appellants may have been confused as to whether submission of evidence was still expected of them.¹⁰¹

They later recognized “the need to fundamentally restructure Civil Party participation in the light of the vastly greater dimensions of Case 002.”¹⁰²

It is useful to return here to Lyotard’s view. If justice is to be ethical there must be recognition of the rights of others to use their own language games and modes of thought. If hegemonic discourse silences or marginalizes, an additional injustice occurs. Exclusion from the discourse of the just can be more than a further injustice, it can be an act of violence.¹⁰³ Iris Chang’s *The Rape of Nanking* exemplifies this, narrating atrocities by the invading Japanese army against 300,000 Chinese civilians and military in the Second World War.¹⁰⁴ The final part of Chang’s book deals with what she terms the ‘Second Rape’: that the Japanese government (and even academics)

¹⁰¹ Supreme Court Chamber, Kaing Guek Eav alias Duch, Appeal Judgment, 3 February 2012 (Case 001); Doc. no. F28, para. 501.

¹⁰² Extraordinary Chambers in The Courts Of Cambodia Internal Rules (Rev.5), 9 February 2010.

¹⁰³ Lyotard, *The Postmodern Condition*, 66.

¹⁰⁴ Iris Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (London: Penguin Books, 1997).

ignore it, alter it, lie about it, and never acknowledge it, and that Cold War politics contributed to a similar neglect in mainland China also across years of communist suppression of information.¹⁰⁵ Chang argues that this attitude is an act of violence, denying victims their rightful voice in history.¹⁰⁶ As the DK era survivors age, and the ECCC process continues, the majority of DK survivors are losing their chance for historical voice to the state narrative—they are on their own.

The entire debacle has emerged not out of malice, but, I would contend, from a fundamental blinkering of institutions and the individuals who work in them. The ECCC suffers from the kind of results-based framework I described earlier. Fundamentally this exemplifies an institution's failure to grasp the discontent of the social actors for whom it is supposed to provide justice, because of the blinkering effect of the 'grand-narrative' of transitional justice. The result is a *Differend*. My assertion is that the act of violence thus committed against the rejected Civil Parties could have been avoided if the institution had been better equipped to 'know-how-to-speak' and 'know-how-to-hear' the people it was mandated to serve.¹⁰⁷

Conclusion

All the examples I have cited represent people who do not fit into the ECCC/ RGC constructed 'reality.'¹⁰⁸ transitional justice and the RGC contain and produce both history and memory. I discussed how the 'induced amnesia' policy obscures the roles of cadres and other staff whose stories fall outside ECCC jurisdiction and are disabled in their capacity to hermeneutically read their story, as the ECCC and RGC state override it with their own. The designated vessel for depositing memory (the ECCC) fails to provide freedom for multiple kinds of narrative, and offers no inclusive space for the complex narrations of the history of the KR and modern Cambodian history. While in many Cases alternative narratives are enabled in their expression, for

¹⁰⁵ Ibid., 11.

¹⁰⁶ Ibid., 199-225.

¹⁰⁷ Lyotard, *The Postmodern Condition*, 21.

¹⁰⁸ Boltanski, *On Critique*, 55.

others, particularly former cadres, history outside the immediate DK period is not for discussion. DK in this narrative sits isolated in history, divorced from its context. This has the effect of silencing some stories.

Within the official discourse, it is possible to identify as part of the amorphous ‘mass’ of victims which the ECCC narrative permits. Individuals may situate themselves in this loose ‘victim’ category, but few get the chance to bring their narrative directly to the ECCC. The example of the Trapeang Thma Dam demonstrates that the ECCC/RGC transitional justice narrative cannot necessarily find a place for individual persons and locations, even at atrocity sites with vast numbers of dead. If survivors do not discuss, and pass the story to the next generation, then the story will be lost. If the communicative ability is shut down/silenced, it cannot function. As people let their stories slip into enforced or self-imposed silence, they will be forgotten.

I would argue that Boltanski’s call for social scientists to theorize through, rather than above, social actors is an attitude that should be adopted by institutions such as the ECCC. They should confront the fact that the grand narratives they present may be radically disconnected from the ways non-institutional social actors understand their situation or prioritize their needs.

The moral and collective reparations the trial chamber has awarded civil parties have been described by one of the civil party lawyers as “really the most minimal, most conservative, and perhaps it’s fair to say unimaginative that could have been ordered.”¹⁰⁹ In Case 001 the reparations consisted of a list of the accused’s apologies, in a booklet and on the court’s website.

In October 2014, when Case 002/02 had just got under way hundreds of civil parties stood outside the ECCC to protest the ‘worthless’ moral and collective reparations awarded in Case 002/01.¹¹⁰ The reparations awarded by the ECCC included a book,

¹⁰⁹ James O’Toole, “Reparations remain a key issue,” *Phnom Penh Post*, July 27, 2010.

¹¹⁰ Kuch Naren and Holly Robertson, “Victims Call for Money From ECCC,” *Cambodia Daily*, October 17, 2014.

publication of civil party names on a website, a monument outside the French Embassy in Phnom Penh, another in Paris, some exhibitions, and some underfunded rehabilitation and therapeutic healing.¹¹¹ In this author's view these latter are the most useful, but are desperately underfunded. When one looks down the list of donors, that is German, Swiss, French state development agencies, who provide funding to the various groups mandated to execute the reparations projects, the question one cannot help asking is, 'whose priorities are being met here? Do the reparations reflect the interests, narratives and priorities of western agencies rather than the desire of DK survivors to articulate their story on their own terms in order to communicate the story of the DK period inter-generationally, achieving to their minds both transition from the past and a sense of some justice?'

The perceived 'silence' of three decades is indicative of internationals' inability to hear, and the quantitative data considered to indicate 'success' shows a troubling contentment with a superficial picture. The 2014 protesters are not merely expressing dissatisfaction at a particular court ruling but highlighting that the institution has, through such meager reparations, actively stripped them of voice and recognition, creating rather than breaking a 'silence' and unwittingly conforming to the advice inflicted on Maguire about avoiding 'confusing' Cambodians.

How can this be achieved in concrete terms? Above all, by simple awareness—within academia, the policy making arena, and reparation projects and institutional mechanism design—that transitional justice, conceptually and in practice, is a narrative—and one, moreover, which can never be brought to a completely satisfactory conclusion. As Lyotard points out, the potential of a grand narrative to achieve finality is not a fact but a narrative convenience.¹¹² Those who inhabit the transitional justice narrative

¹¹¹ECCC, 'Overview of Civil Party Reparation Requests in Case 002/01,' ECCC Website, <http://www.eccc.gov.kh/en/articles/meaningful-reparation-khmer-rouge-victims>; accessed 14 November 2014.

¹¹²Jean-François Lyotard, "The Sign of History," in *The Lyotard Reader*, ed. Andrew Benjamin (Oxford: Blackwell Publishing, 1998), 409.

and go to developing nations to ‘bring justice’ and ‘break silences’ often find the people they work for ‘confusing’ and encounter narratives that do not fit, but they press ahead with their notions of a just response and affirm (albeit unconsciously) their own narrative, entrenching the *Differend*. I advocate here for embracing the ‘confusion’ and try to overcome it: taking social actors seriously, by listening in order to know better how to speak; being sensitive to the culture of others whilst acknowledging one’s own narrative.

It is therefore important to explore the concepts of ‘transition’ and ‘justice’ from ‘outside’ legalistic mechanisms, and discuss ideas of justice arising from within the society in whose interests these mechanisms act.

This is not as complex a task as it may first appear, but it does require looking outside of the praxis for ways to better address the constituents of transitional justice. This can be done through, engaging with local NGOs not as organizations to devolve the implementation of international agendas, but as the instigators of projects and ideas of justice that are then facilitated by international donors (rather than the current model of small NGOs having to make lengthy bids to appeal to donor priorities). In academic terms, it could be advantageous to promote a more globally inclusive dialogue about what justice means by investing in research into nonlegal/policy areas: linguists, ethnographers, and historians can assist in providing valuable insights into the culture that international staff can find confusing.

The enormity of mass atrocity and its impact can become lost in policy, law and procedure. This paper seeks to enhance the transitional justice praxis not dismiss it, but to highlight it as one narrative among many.

How social actors within the Cambodian intellectual tradition view justice and transition can be understood better with the approach developed here. International organizations can learn to listen to and understand what is being said, even in a discourse alien to them. The need to recognize that Justice requires many narratives, and that while transitional justice pursues one within the confines of the western progressive narrative, transitional justice

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bodies, to ‘speak’ adequately to the society for which they operate, must begin to engage on an everyday level that requires serious consideration of methodologies of “know[ing]-how-to-speak’ and ‘know[ing]-how-to-hear.”¹¹³

¹¹³ Lyotard, *The Postmodern Condition*, 21.

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