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Engendering transitional justice: questions of absence and silence

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Abstract

The globalisation of transitional justice as a framework for the resolution of conflicts is a remarkable phenomenon of the post-Cold War era (Bell and Craig, 2000). In different contexts this framework has significant consequences for women's equality. This article asserts that a conceptualisation of gender that intersects with other dimensions of inequality in state formation provides an important tool for understanding contemporary transitional justice processes. This complex tool of intersectional analysis is used to explore the issue of women's equality in Northern Ireland's transition. This is applied to the problems of women's absence from negotiations and the silence in these negotiations on matters to do with women's day-to-day lives. The Good Friday/Belfast Agreement and the enactment of the equality legislation enacted in the Northern Ireland Act 1998 are the textual sites of analysis. These documents comprise the formal transitional framework for Northern Ireland. The article examines the theoretical tensions and practical implications inherent in universal claims for women's equality in a situation where recognition of 'difference' is enshrined in both the equality legislation and the mechanisms for future democratic representation. The article concludes by suggesting that transitional justice discourse can benefit from the theoretical challenges posed by intersectionality and that social stability in NI and in other conflicted societies may be strengthened through addressing the corrosive impacts of inequality.

Introduction

The globalisation of transitional justice as a framework for the resolution (or dampening) of long standing conflicts is a remarkable phenomenon of the post-Cold War era (Bell and Craig, 2000).[2] In tandem with formal peace treaties, the transitional justice framework is applied in the resolution of conflicts in diverse national contexts. This aims for the integration of hitherto 'unstable' polities and postcolonial states into the 'new world order' of liberal democratic norms which incorporates a dominant capitalist economic system (Cleary, 2003: 39).[3] Like the liberal state form from which it is derived and that it augers, transitional justice embeds universal principles of citizenship, equality

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2 Bell and Craig (2000) identify 65 peace agreements signed in the last decade of the twentieth century. 'Transitional justice' is a term used to describe a range of judicial and non-judicial approaches undertaken by societies experiencing a profound reordering of their political, legal, social and economic affairs. This reordering results from an end to violent conflict and/or a changeover from an authoritarian regime to one based on principles of democracy and pluralism.

3 Cleary argues that Ireland's relationship with Britain is part of a process: 'through which different parts of the globe were differently integrated into an emergent world capitalist system . . . it follows that the determination of a specific national configuration must be conceived as a product of the global . . . the national arena still remains a crucial site for social struggle, but a true understanding of those struggles can only be grasped contextually within a wider global frame' (Clery, pp. 43–4).

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before the law and protection of human rights.[4] The liberal principle of equality between men and women is recognised in international law and is contained in many international human rights treaties.[5] It is also recognised in liberal democracies in varying forms, constitutionally and legislatively.[6]

The gender neutrality of liberal equality norms raises critical questions for women in transitional justice contexts. For instance, the absence of women amongst negotiating elites and the silence in negotiations on socio-economic matters to do with women's day-to-day lives lead Bell et al. (2004) to argue that any examination of the gendered dimensions of transitional justice raises 'awkward questions about the neutrality' of the transitional project itself (ibid., p. 320). The absence of women in the negotiations that precede peace agreements is the first of the 'awkward questions' considered by these authors. They argue that this absence leads to a 'male bias' in negotiations and a subsequent failure to mainstream a gender perspective into transitional policies and programmes, as is called for, for instance, in the Beijing Platform (1995). This context of women's absence from negotiations and the silence in negotiations on women's lives in the transitional society is the impetus of this article.

Part one, 'Awkward Questions', analyses the theoretical implications posed by Bell's 'awkward questions'. The paradigm of intersectionality is introduced as a way to address them. The argument is advanced that a conceptualisation of gender that intersects with other dimensions of inequality in state formation provides an important tool for understanding contemporary transitional justice processes. This complex tool of intersectional analysis is used to explore the issue of women's gains in the Good Friday/Belfast Agreement (Agreement) which constituted the formal treaty outcome of Northern Ireland's peace negotiations. In Part two: Presence in Negotiations, the intersectional theoretical framework is applied to gender, sect and class as central social categories in Northern Ireland's state formation and in the post-conflict reconstitution of its institutions of governance. This frames a brief theory to practice discussion of women's presence in Northern Ireland's political parties and negotiations. Part three: Intersecting Transition, examines the theoretical tensions and practical implications inherent in universal claims for women's equality in a situation where recognition of 'difference' is enshrined in both the equality legislation and the mechanisms for future democratic representation. The texts of the Good Friday/Belfast Agreement and the enactment of the equality legislation enacted in the Northern Ireland Act 1998 are the textual sites for this analysis. The article concludes that transitional justice can benefit from undertaking the theoretical challenges posed by intersectionality and that social stability in conflicted societies may be strengthened through addressing the corrosive impacts of inequality.

The feminist challenge in an article such as this is to analyse the pivotal role that a construction of 'women' plays in the transitional context and to assert its importance to debates about the resolution of conflict. At the same time, the aim is to set out progressive strategies that target structural inequalities which impact most severely on the most marginalised women's lives. The strategic challenge is to do this and at the same time to avoid the trap of essentialising fixed identities that, in Northern Ireland, may foster sectarian dissonance. This is neither about valorising identities nor essentialising differences but about exploring how citizen-state relationships have been established

4 As Teitel (2000) notes, however, transitional justice is also remarkable precisely because it embeds other values (e.g. amnesty) which seem counter-intuitive to these positive liberal virtues.

5 This principle was formally adopted by the United Nations (UN) in the 1948 Universal Declaration of Human Rights.

6 It has gained renewed prominence at the beginning of the twenty-first century in UN Security Council Resolution 1325 which urges member states 'to ensure increased representation of women at all decision-making levels'.

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and are sedimented within structural inequalities of sectarian state formation over time.[7] Key to this is how the implementation of equality legislation and targeted social policy can be used to dismantle structural inequalities that precipitated civil disturbance in places such as Northern Ireland in the first instance.

The challenge for transitional justice experts is to recognise what is at stake in the conceptualisation of 'women's absence' in transitional contexts. When people are excluded from negotiations or absent from electoral assembles on the basis of race, religion, or ethnicity the inequality or discrimination is more easily recognised (Rooney, 1997). 'Absence' is rarely recognised in relation to either social class or gender. If the transitional framework is to aid a society to deal with the trauma of the past and create a 'different' future then state citizen equality, as well as the socio-economic harms of structural inequality, have also to be addressed. For there to be any possibility of women participating as equals, and benefiting from the redistribution of state power due to Northern Ireland's transition, then the commitment made to women's equality in the rhetoric of the peace agreement needs to be applied with legal force. One measure of over-time success in this regard would be to monitor the participation of women in public life. A more significant and enduring measure of women's inclusion would result if the deepening levels of women's poverty in Northern Ireland were targeted and reversed. The poorest 'Catholic' (nationalist) and 'Protestant' (unionist) women and their families would benefit and thereby social stability as a whole would be enhanced. As it is, and as President Mary Robinson has observed from the vantage point of the privileged 'insider', the full participation of women in society is perceived as an issue that is, *only* for women. And it is a short step from this to the position that such issues are, *merely* for women (Rooney, 1997; Robinson, 1992). Because transitional justice norms are, like the law itself, 'relatively concrete, widely applied and imbued with strong normative weight they are highly influential in shaping people's views and perceptions' (Conaghan, 2007). Transitional justice experts may not be in a position to directly influence what happens to women in this arena but the discourse that they create can enable us to see the potential and the failures of transitions to deliver social benefit from the resolution to long standing conflicts.

Part one: 'awkward questions'

In an analysis of post-Cold War peace agreements Christine Bell (2000) found that these negotiations typically focus upon a, 'male conception of conflict'. This revolves around allocations of power and territory and stopping (only) certain forms of violence' (Bell et. al., 2004, p. 321). In the process issues central to women's day-to-day lives are neglected whilst socio-economic exclusions may also be ignored (ibid.). Women in transitional societies have reason to be sceptical of the potential of the transition to impact positively upon their lives. Drawing upon feminist scholarship in the field, these authors go further to affirm that the absence of women in negotiations reinforces a 'conceptual exclusion' which is also found in 'liberal-democratic constitutionalism' (ibid.). In a study of political violence and gender, Ní Aoláin (2006) supports this perspective, on the real world consequences for women of their 'conceptual exclusion' in transitions. She concludes that: 'women's rights are generally the most ignored and under-enforced category of norms in a transitional context' (ibid., p. 849). Ní Aoláin and Turner (forthcoming) also reference the absence of women in the context of negotiations to contend that socio-economic deprivations, with particular adverse impacts on women in conflicted societies are regularly ignored in negotiations. These authors develop this

7 There is nothing 'inevitable' about these inequalities though their resilience may have the appearance of inevitability. They are the outcomes of decisions taken in relation to economic developments, social policy, and political expediency, and sometimes inertia and they can be reversed. For a visual representation of regional inequalities of economic under-development linked to Catholic and Protestant population densities, see maps reproduced in Shuttleworth and Green (2004); for related regional incidences of sickness see maps reproduced in Committee for the Administration of Justice (CAJ) (2006).

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insight within a broader argument that calls for the introduction in these contexts of second generation human rights which include socio-economic rights.

The absence of women from negotiations and the discursive silences on women's lives are seen as doubly unfair given that women will often have been at the 'forefront of peace initiatives throughout the conflict' (Bell et. al., 2004, p. 320). The 'important role of women in the prevention and resolution of conflicts and in peace building' is also emphasised in UN Resolution 1325 which calls for the 'equal participation of women in the maintenance of peace and security'. The academic argument and the resolution suggest that the presence of women will improve the chances of peace. Whilst this is obviously a strong strategic reason for women's participation in peace negotiations it should be advanced with some caution. It implies that an additional expectation and responsibility may attach to the participation of women in negotiations. It further suggests a conditional admission of women to negotiations that is not applied to men in these contexts.

To raise the 'awkward question' of women's absence in the transitional context, in order to challenge the dominance of men and the prominence of 'male' priorities, risks falling into the trap of essentialising the 'woman' who is absent and her capacities for building peace. It may lead to the assumption that a 'presence' of women, of any women, will address the gender gap and thereby positively change the process. However, when this 'solution' is countenanced, other equally 'awkward' questions arise with equally perplexing implications for the 'neutrality' of transitions. For instance, which women should be present? Would any woman be able to 'represent' women's interests? Can *only women* represent these interests? Are 'women's interests' different from men's interests? How so? In the context of violent political conflicts, in what ways may women's and men's 'interests' and experiences diverge or be in dispute or coalesce? Can legal formulation accord recognition to women's presence in this context? The strategic answer provided to these complex and pragmatic questions by some international agencies, in their brokerage of conflicts, has been to implement UN Resolution 1325 that requires the presence of women in delegations (Brittain, 2003). However, Brittain reports that women artificially installed in negotiation teams in this way have viewed their presence as 'window dressing' and they become disillusioned. The strategy may provide short-term visible gains in a reported and applauded 'presence' of women in negotiations and may usefully highlight their erstwhile-unnoticed absence. However, claims that the UN resolution has thereby been effectively implemented is potentially damaging for women in these contexts, who see their 'presence' as providing only the illusion of transformation. An externally imposed presence of women is no guarantee that issues pertaining to women's day-to-day lives will be addressed.

The absence of women in negotiations in the transitional context may initially seem simply a matter of common sense – men dominate in militaries as well as in the political parties and government elites that negotiate a peace treaty and its legal framework (Yuval-Davis, 2000). So, those present at the negotiations simply reflect the 'reality' of sex segregation in the public sphere. However, this uncritiqued 'common sense' reality is one of the disappearing acts of 'legitimising discourses', whereby women's absence in negotiations generally goes unnoticed and unremarked. Along with it, also unnoticed, goes any critique of the hegemonic masculinity of conflicts.[8] This conceptual exclusion, or failure to 'see' the absence of women as deeply problematic, corresponds with the unquestioned acceptance of the dominance of men in negotiations. Indeed, the masculinity of those present in negotiations goes unnoticed within this gender-free discourse. This discourse legitimises the 'patriarchal dividend' enjoyed by elites in negotiations.[9] These benefits are not shared

8 Hegemony here is meant in the Gramscian sense referring to the maintenance of and *consent* to class inequalities in democratic society (Connell, 1995, p. 77, cited in Thomson, 2006, p. 4).

9 The phrase 'patriarchal dividend' (Connell, 2005, p. 1806) references the collective benefits that accrue mainly to men from global patterns of gender inequality. Connell argues that men 'have a lot to lose from pursuing gender equality' (ibid.).

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equally by all parties to negotiations. Neither are the lethal costs of military participation in conflicts borne equally by all.[10] 'Awkward questions' are not raised in these contexts about which men are killed or about the gender composition of those imprisoned or the gendered harms that result from conflict.[11] This raises other critical questions around what constitutes harm that requires restitution and remedy in negotiations, and what actually counts as 'participation' in conflicts. Negotiation agendas often centre on harm to be redressed whilst the composition of those present is drawn from participants in the conflict. The conceptualisation of what constitutes 'participation' is deeply gendered. 'Participation' correlates to prominence in the public domain of politics and military status. How 'harm' and 'participation' in conflict are conceptualised is of central importance to understanding how inequalities experienced by different women in their everyday lives are left out of consideration in negotiations and why women are not present and moreover, why their absence is unnoticed and unremarked. Women are deeply involved in multiple ways in deeply conflicted societies.[12] The forms of women's 'participation' are not seen and do not count or qualify for admission to post-conflict negotiations. For instance, women and children figure disproportionately as conflict refugees whilst forms of violence experienced by women may be excluded from legal accountability, and therefore invisible, in the post-conflict post-regime environment (Ní Aoláin, 2006, p. 830). Furthermore, in transitional negotiations men are viewed as recognisably 'representative' of the 'identities' and interests that are the subject of negotiations. Recent analysis of the gender dynamics of conflicts reveal 'that there is a tangible link between the experience of women during conflict and the exclusions identified in the transitional context' (Ní Aoláin, 2006, p. 837). Intersectional analysis raises critical questions about gendered exclusions and gendered forms of power that are otherwise hidden from view and absent from academic analysis (Rooney, 2006).

The absence of critical attention to gender in these contexts is a discursive mechanism whereby women's exclusion and subordination is 'routinely accepted'[13] and 'gender' comes to mean solely a reference to 'all women' that fails to comprehend structural inequalities *between* women and *within* social groups in conflicts. Also, 'routinely accepted' are the unexamined differences between men. The intersectional operations of patriarchy in conflicts and the disparity in costs and benefits experienced by men who are differentially positioned in structural terms, for instance, of class, sect, and race in the political regime in transition are also rendered invisible.[14] These disparities involve material and political inequalities of recognition and redistribution accrued over time and experienced by social groups within different polities. In these contexts men are effectively construed as unproblematically 'representative' of the social categories of groups in conflict whilst women are categorised as essentially apart from these conflicts. In the Northern Ireland context, these gender roles are instantiated through a conflict narrative whereby women are not included in any way that reflects their presence in social categories or that comprehends gendered forms of women's participation within conflicts (Rooney, 2006). When women in this conflict come into public view, they often do so as people uniquely able to overcome discredited sectarian politics

10 In the context of Northern Ireland over 95% of conflict-related deaths were of men and working-class areas paid the highest human costs (McKitterick et al., 1999; Hillyard et al., 2005).

11 See Ní Aoláin (2006) for analysis of gendered experiences of violence.

12 Studies include: Abu Zneid, 1997 (Palestine); Aretxaga, 1997 (Northern Ireland republicans); Hassim, 1993 (South Africa); Lorentzen and Tupin, 1998 (various conflicts); Sharoni, 1995 (Israeli-Palestinian conflict); two unpublished Northern Ireland dissertations, Moore, 1993 (Northern Ireland Protestant women); Alison, 2003 (Northern Ireland and Sri Lanka women combatants).

13 Thomson (2006) uses the phrase 'routinely accepted' to summarise how gendered discourse provides a normative framework of shared understanding.

14 For analyses of the intersectional operations of patriarchy see Thomson (2006) and Connell (2005). Neither of these authors discusses masculinity in conflicts, but their work is useful for understanding gender in these contexts.

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(ibid.). This representation accords with the expectation and responsibility for making peace, noted earlier, that may attach to women's admission to negotiations. It is as though women are admitted to the narrative, and to negotiations, as symbolic presences free of the brutality and messiness of conflicts and outside of the deep rooted intersectional inequalities at their core.

The invisibility of women in conflict narratives and the absence of gender awareness in the transitional context is core to understanding how women's day-to-day lives get left out of consideration in the context of negotiations. The precarious role of women in conflict discourses maintains the invisibility of gender regimes operating within conflict scenarios. This precarious role is vital to the sustenance of the narrative fiction that conflicts are gender-free. Indeed, the massive literature and mainstream analysis of the Northern Irish conflict *is* gender-free (Rooney, 2006). Women's (in)visibility in the conflict narrative conceals how gender regimes frame what is in view for analysis. Yet, gender as a key organising principle of conflicts that structures the discursive 'frame for understanding' (Butler, 2002), is unexamined in this regard. The academic spotlight is on violence and on its male perpetrators and victims. Women rarely feature anywhere other than in a feminist scholarship which is ignored in the mainstream academic literature. In this way, the scholarly terrain of gender analysis mirrors the status of what it investigates and becomes a field that is *merely* about women (Rooney, 1997; Robinson, 1992). It is arguable that conflict analyses that focus solely on male actors see only half – albeit the most visible half – of what is going on.

The question of what goes on and who is present in negotiations that lead to a peace treaty is of fundamental importance to the restructuring of relationships within the new dispensation that is the subject of negotiation. Peace treaties are in effect legal documents that go on to govern the distribution of state or regime power and benefit within a future framework of law.[15] The presence of women and, moreover, what they gain or do not gain in this context may be core to the potential for gender equality in the transitional society. It is arguably also critical for future stability (Rooney, 2006). This question of women's presence in transitional negotiations reveals how these processes embed conceptual frameworks that can have forceful, concrete gendered outcomes that contain disadvantages for all women but particularly for marginalised women and notably for the poorest women. These pragmatic questions of presence and absence in peace negotiations have social justice as well as theoretical dimensions. These peace treaty processes are typically driven by an enforced pragmatism rather than theoretical coherence or social justice. Ending violence is a priority of states, regimes and international agencies in these situations and may be a bargaining tool used by parties to negotiation. The circumstance whereby violence is maintained or ended and which violations are recognised as requiring legal remedy are deep concerns with different ramifications for those present and for the women who are absent. This is all the more reason for negotiations to be fully representative of the population facing the challenge of building future stability.

Part two: presence in negotiations

The predominant perspective in intersectionality theory has been about looking at how different social categories – such as gender, race and class – interact in shaping subjective experiences, often experiences of discrimination, and how they are taken up in constructions of identity in different contexts (Knapp, 2003, p. 18). Intersectionality provides a framework for the analysis of how gender relations, class relations and configurations of ethnicity and race are interwoven in the structural make-up of a given society. As such, it has several benefits for the analysis of social categories in the 'divided' society of Northern Ireland. Intersectionality exposes the 'illusory sameness' suggested by the very terms (such as 'Catholic' and 'Protestant') used to describe dimensions of inequality and

15 In this case, law is seen as a complex set of practices with material and political effects (Conaghan, 2002).

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discrimination in Northern Ireland. As Joan Scott (2001) argues, 'identities don't pre-exist their strategic political invocations'. Strategic political invocations of 'Catholic' and 'Protestant' (and 'woman' for that matter) in the Northern Irish context illustrate and affirm her point. Furthermore, intersectionality functions here as a conceptual framework or heuristic device for asking ('awkward') questions otherwise not asked, for seeing women otherwise hidden from view (or seen only within a certain frame) and for describing the kinds of things to consider especially in the transitional process in Northern Ireland when sect, and the political affiliation it denotes, is being institutionalised in post-agreement mechanisms of governance.[16]

The 'problem' of women's absence at the Northern Ireland negotiations is further complicated by the approach taken by the individual political parties to proactive strategies, such as quotas, for women's inclusion in party structures.[17] An empirical study of the disparities between women's and men's participation and prominence in political parties in Northern Ireland investigated party views on strategies for women's inclusion (Rooney and Woods, 1995). All parties agreed that more women would be welcome. However, this study found that a party's position on the constitutional issue of state formation and the social class from which it derives its support base are decisive in whether or not the party operates quotas for women in party structures (ibid.). Those unionist (mainly Protestant) parties that support the constitutional status of Northern Ireland within the United Kingdom reject quotas on the basis of the 'merit' principle (ibid., pp. 23–29). Nationalist (mainly Catholic) political parties opposed to Northern Ireland's constitutional status operate various quotas for women at all levels in party structures (ibid., p. 23). It is not necessarily the case that unionist politicians are more conservative than their nationalist counterparts, though that may sometimes be so, the point is that the relationship between the political party and the defence of state formation is seen to be a factor. The prominence of women in nationalist and grass-roots political movements is a feature noted in the feminist literature (Coulter, 1993; Hassim, 1993). Again, assumptions cannot easily be drawn from this that nationalist politicians are necessarily progressive, though that may sometimes be so and clearly nationalist parties in Northern Ireland operate more progressive strategies for women's inclusion. The point is that opposition to state formation is a factor in the involvement of women whilst in the post-conflict reconstitution of the state women may loose out.[18] At Northern Ireland's negotiations unionist women were noticeable for their invisibility in negotiating teams. This could lead to the conclusion that these women were the most 'absent women' in the negotiations.[19] The intersecting influence of social class is a significant factor in this for unionists and nationalists. In the Rooney and Woods' study, both male and female respondents for the more middle-class nationalist Social Democratic and Labour Party (SDLP) said that 'merit' rather than quotas was the best criterion for selection to prominent positions even though the party itself operates quotas. Sinn Féin (SF) respondents said that they had operated quotas for over a decade. This party is the political branch of the republican movement, whilst the Irish Republican Army (IRA)[20] is its military wing. SF does not negotiate on behalf of the IRA. It represents mainly

16 The Northern Ireland Assembly functions through 'weighted majorities' based upon 'unionist' ('Protestant') and 'nationalist' ('Catholic') political representation.

17 Proactive strategies include opportunities for women to gain prominence in the media (Rooney and Woods, 1995, p. 118). All the political parties in Northern Ireland agree on the need for pragmatic strategies such as adjustment of meeting times to take account of women's responsibilities for children (ibid., p. 23).

18 Irish feminist studies critical of the deterioration in women's status in post-conflict processes of state formation in the Republic of Ireland include Ward (1983) and Cullen Owens (1984).

19 It is not that women are uninvolved in unionist politics. The Ulster Unionist Party has the oldest women's political organisation. Most parties in Rooney and Woods' study claimed 50% female membership (ibid., p. 27).

20 The IRA is responsible for 1,707 conflict-related deaths (see Sutton, 2006).

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working class republican constituencies and had the highest number of women constituency representatives elected to the political talks.[21] When the Progressive Unionist Party (PUP) came to the fore, to represent mainly working class unionist constituencies, it alone of the unionist parties operated proactive strategies for women's inclusion. The PUP represents the Ulster Volunteer Force (UVF)[22] that is now headed by Dawn Purvis.[23] The higher representation of women in parties that emerge from 'grass roots' movements in this context may indicate some linkage between the prominence of working class representatives in negotiations and the addition of socio-economic issues to the agenda (Bell et al., 2004).[24]

The reference to gender as a category that conflates with 'being a women' is registered in the responses of women and men to questions about the experience of being a politician in Northern Ireland (Rooney and Woods, 1995). This study found that women in different parties articulated similar gendered experiences *as women politicians* in the North of Ireland. Unionist and nationalist women said that they were seen as 'women first' and politicians second and that they were treated as 'different' (ibid., p. 21). These experiences were not perceived as problematic by men in the same parties. It is not that men could not comprehend this experience, it is simply that these men 'did not say and did not see' how women's political participation is an experience of being treated as 'different' (ibid., p. 21). In the practical realm of party politics, this study indicates that 'being a woman' is a 'difference' that must be accommodated within the normative domain of male dominated party politics. This accommodation is problematic, especially for those male politicians who do not understand or have no sympathy for the obstacles that women encounter. Indeed, the condescending attitudes of some male politicians are obstructive to women's participation in political parties (Rooney and Woods, 1995, pp. 19–22). It is not the case that all women in this study who had similar experiences in their various parties support proactive measures for women's inclusion. As noted above, the party position on the status of the state and on affirmative action as a principle is decisive. Unionist women in this study broadly supported their party opposition to proactive strategies for women's inclusion. Party politics is a highly competitive arena for men and women who, by virtue of their political ambitions, are keen to gain party prominence. The Northern Ireland context provides additional insight for thinking about UN Resolution 1325 that urges an equal presence of women in peace negotiations. Such a hypothetical imposition in Northern Ireland would be problematic for the range of situated reasons outlined.

Women politicians were present, albeit in small numbers, at the 'talks' that led to the Good Friday/Belfast Agreement.[25] Women were also present in significant roles at the multi-party talks on behalf of the two governments (Mo Mowlam, MP and British Secretary of State for Northern Ireland; Liz O'Donnell, TD and representative of the Irish government).[26] The unique development, from within Northern Ireland's 'women's sector',[27] of the NIWC meant that two women were mandated to provide 'a woman's voice' at the talks (Monica McWilliams and Pearl Sagar). Women were present to

21 Three of the eight women so elected (Elliott and Flacks, 1999).

22 The UVF is responsible for 432 conflict related deaths (see Sutton, 2006).

23 She is the second woman party leader in Northern Ireland. The first was Monica McWilliams leader of the Northern Ireland Women's Coalition (NIWC).

24 The situation in stable democracies may differ somewhat in that time constraints linked to poverty are seen as key determinants of women's public participation and social exclusion (Lister, 1997).

25 Eight women were elected to the 90 seats designated for constituency representatives (Elliott and Flax, 1999). Two women became ministers in the first Northern Ireland Assembly executive: Bairbre de Brún, SF and Brid Rogers, SDLP.

26 The Democratic Unionist Party (DUP), which is now the largest unionist party did not participate.

27 This is a reference to the 350–400 women's groups and network organisations in Northern Ireland (McMinn, 2000).

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represent the positions of the two governments, of parties with opposed positions on the constitution of the state and, distinctively, strategically to represent 'women's voices' by setting aside the constitutional issue and envisioning a form of politics free from constitutional opposition (Fearon, 1999). However, what a 'presence' of women means in this context, and how it translates into space in the negotiations being devoted to women's conflict experiences or to the recognition of gendered harms (including socio-economic inequalities), would all be dimensions of party political dispute about the redistribution of power and reconstitution of state institutions. As it is, the priority that is given to matters to do with 'stopping (only) certain forms of violence' (Bell et al., 2004, p. 321) or the deployment of these issues in order to continue negotiations in the transition, appear to offer little time for serious debate on women's inequalities. Virtually no public attention has been paid to women's status and the implementation of the Agreement.[28]

Part three: intersecting transition

My approach to gender in the Northern Irish context is 'intersectional' and is not confined for insight to a single disciplinary area. I draw upon Knapp's (2003) useful discussion and definition of gender within the frame of feminist sociology as a central axis of dominance and inequality that structures contemporary society. It is also important, particularly in the transitional context of negotiations between different groups, to counter the conceptualisation of 'gender' as exclusive of men.[29] Women and men have many interests in common in the outcomes of negotiations. In the Northern Ireland context, questions of citizenship and democratic participation in the exercise of state power are crucial to understanding how the shared interests and socio-economic position of parties to negotiations influence the presence of women in them.[30] The theoretical paradigm of intersectionality is beneficial for this analysis. First, the introduction of gender into thinking about men and women present in negotiations deconstructs the primary binary way of thinking in terms of oppositions *between* nationalist and unionist men. It brings women into view. At the same time, intersectionality qualifies the dominance of 'identity' oppositions with the introduction of structural relations of social class. It brings into view issues of poverty that are of central importance in transitional contexts. To some extent this mirrors the US experience, where 'race' becomes the intersectional move qualifying the dominance of gender oppositions in 'race-free' feminist theory. Intersectionality also qualifies the dominance of race oppositions in 'gender-free' race theory. These theoretical interventions have practical implications for women in these contexts.

Three intersectional aspects of recognition and redistribution in feminist critical race perspectives are useful here for thinking about women's absence from negotiations and the view that this leads to a failure to address issues pertinent to women's day to day lives. Of first importance are the forms of concealment that constitute and govern public discourse and their implications for argument from feminist jurisprudence (Conaghan, 2000). Being invisible in a discourse or being assumed to be included though not mentioned, is one form of concealment. Mentioning 'women' whilst failing to bring the concept of gender into play is another form of concealment (as is a focus on gender which bypasses men). In Northern Ireland there is the additional political gesture of avoiding allusions to women in the sectarian context which is central to the negotiations. In this discourse women may symbolise a desirable, alternative future that is without sectarian conflict. However, this

28 For exceptions to this public silence see the Transitional Justice Institute website, http://www.transitionaljustice.ulster.ac.uk/ and also O'Shea (2005). The gender dimension of the Agreement was a strand of the international TJI conference, 'Women and Human Rights: Conflict, Transformation and Change', Belfast, 2005.

29 See Connell (2005) and Thomson (2006) for analysis of gender and masculinity.

30 For a survey of women's experiences see Lorentzen and Turpin (1998).

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evocation may also work to conceal women, obviate gender and ignore the many inegalitarian consequences of sectarianism that affect women's day-to-day lives. Occasionally, this avoidance is breached when women are hailed in particular ways in the conflict narrative. In this context, the otherwise concealed female presence often carries powerful rhetorical authority.[31]

There is much to be learned from Northern Ireland for understanding the gendered dimensions of recognition and redistribution in transitions. This is a significant site for analysis of how the language of the Agreement provides a discursive resolution to the problem of postcolonial state formation in modernity but leaves intact structural dimensions of gender and class inequality. In theory, the definition of the nation state, its territorial integrity and citizen-state equality have been redefined through dual British-Irish citizenship which includes the right of citizens to exercise their democratic mandate in order to reconstitute the state. This recognition and the redistributive rights it confers matter politically and materially to women and to men. This importance is not diminished by the fact that few women were present in the negotiations that led to this resolution and few are among the decision-making political elites.[32] Transitional negotiations represent what Thomson (2006), in another context, calls a 'critical moment' in the reassertion of hegemonic gender power. As Hamber (2003) observed of the South African transition, the failure of the transitional process adequately to tackle the socio-economic harms of apartheid meant that social stability involved the reassertion of power and advantage by those elites who benefited most throughout the apartheid regime. In Northern Ireland the foundational, resilient and structural dimensions of inequality and discrimination differentially experienced by nationalist and unionist women within the state are left to the vicissitudes of the struggle for the implementation of what was gained in the passage of the Agreement. In Northern Ireland's transition the important recognition of dual-citizenship may be granted and valued by women as well as men. However, the redistributive measures required for the exercise of equal participation in citizenship may not be enacted with legal force or in the spirit envisaged in the aspirational language of the Agreement.

Women's rights and equality are referenced at several points in the text of the Agreement that emerged from the negotiations in Northern Ireland in 1998. Two commitments address the low level presence of women in public life. One, made by the political parties, in the section on 'Rights, Safeguards and Equality of Opportunity', but containing no implementation mechanism, is 'the right of women to full and equal political participation' (p. 16). Government also made a commitment, again without an implementation mechanism, to 'pursue broad policies for . . . the advancement of women in public life' (Agreement, p. 19). If implemented, these commitments should result in an increase in the percentage of women politicians and women in public life generally. As already noted, this would be one measure of women participating as equals and beneficiaries of the redistribution of state power resulting from the peace negotiations. In practice, however, the parties do not concur as to how this should come about (Rooney and Woods, 1995). The last NI Assembly elections (2007) returned 19 women amongst the 108 members (approximately 18%).[33] With regard to the more enduring measurement of women's social inclusion, that of tackling women's poverty, all parties to the negotiations acknowledged in the text of the Agreement that women's unequal access to social and economic opportunities requires legislation. Key commitments to women's equality of opportunity are made within a rights framework by the parties where they affirm 'the

31 The characterisation of the NIWC as apart from sectarian conflict figured in this way (Rooney, 2006).

32 In the 2007 election the DUP returned three women amongst 36 elected members; the Ulster Unionist Party returned no women amongst their 18 members; SF returned eight women of 28 elected members; whilst the SDLP returned the highest percentage of women elected with five women amongst 16 members; two of the Alliance Party's seven members are women. Data available online: http://www.niassembly.gov.uk/results_07.htm.

33 This contrasts with the Welsh Assembly, where women comprise 50% of representatives.

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right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity' (p. 16). This commitment is matched by the government's intention, 'to create a statutory obligation on public authorities to carry out all their functions with due regard to the need to promote the equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation' (p. 16). This public sector statutory duty is set out in s. 75 of the Northern Ireland Act 1998.[34] The language of the parties and that of the government is notably different in important respects. For instance, the parties refer to 'class' as a category to be recognised in the equality provisions whilst government does not. Commitments to class equality would impact positively upon the poorest women's circumstances. Whilst the parties make no mention of 'political opinion' it is given second place in the government's list of equality grounds. The subsequent legislation repeats the language of government and makes no mention of social class. The first two dimensions of inequality named in the legislation, those of 'religious belief' and 'political opinion', give recognition to context specific, structural patterns of discrimination and inequality in Northern Ireland that map onto regional patterns of political and religious inequalities (Shuttleworth and Green, 2004).

The social exclusion that women experience through poverty is exacerbated in the Northern Ireland context by forms of deep segregation between Catholic and Protestant working class communities. This is most clearly evident in the segregation of public housing into 'Catholic' and 'Protestant' areas and in the segregation of children into Catholic and Protestant (or state) sectors in education.[35] The poorest Protestant areas commonly occur at what have come to be called 'interfaces' between the most deprived Protestant and Catholic districts. Since the passage of the Agreement levels of deprivation amongst workless households in the poorest Protestant areas have worsened and are moving closer towards the same level of exclusion as their Catholic counterparts (CAJ, 2006, p. 66). Women in these areas are more likely to experience poverty than men.[36] These areas have also endured the worst impacts of the conflict (Hillyard et al., 2005). The significant social policy commitments made by government in the Agreement to target objective need were expected to benefit the most marginalised people including the most socially excluded women living in these interface areas.[37] This could ensure that the people who experienced the worst impacts of the conflict would positively benefit socially and economically from its resolution.

The political power to deliver such benefit is embedded by the Agreement legislation in the Northern Ireland Assembly. The Assembly functions through 'weighted majorities' based upon unionist/Protestant and nationalist/Catholic political representation. In this way, sect is institutionalised in the mechanisms for power sharing governance. At a time when sect is institutionalised in the arrangements for power-sharing in local governance, the implementation of equality legislation can undermine the material weight and cultural meaning of institutionalised sectarianism. From an

34 Section 75 requires public authorities in carrying out their duties in Northern Ireland to equality impact assess public policy as it impacts on people who experience these intersecting dimensions of inequality. They are required by the legislation to pay due regard to the need to promote equality of opportunity between: persons of different religious belief, political opinion, racial group; age; marital status; or sexual orientation; between men and women generally; between persons with a disability and those without; and between persons with dependants and persons without.

35 More than 70% of public housing is more than 90% Protestant or Catholic whilst around 95% of children attend either Catholic or state (Protestant) schools. The nature of the problem that this segregation exemplifies is another matter. For instance, the 'segregation' of housing and schooling in Northern Ireland into middle- and working-class spaces that manifest deeper differences in terms of environment and attainment levels is not viewed as problematic and in need of public policy solutions.

36 Almost two-thirds of income support claimants in Northern Ireland are women (Moore et. al., 2002).

37 The pledge made in the Agreement is to target social need, in order to progressively eliminate 'the differential in unemployment rates between the two communities by targeting objective need' (Agreement, p. 19).

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intersectionality perspective, what Hill-Collins (2004) has to say on the limitations of race-only or gender-only approaches to equality in a US context is insightful and cautionary, 'intersections of race, class, and gender, among others, create more fluid and malleable boundaries around the category "African-American women" . . . and fluidity of boundaries operates as a new lens that potentially deepens understanding of how the actual mechanisms of institutionalised power can change dramatically even while they reproduce long standing group inequalities of race, class, and gender' (ibid., p. 68). The Good Friday/Belfast Agreement has mandated a dramatic change in the exercise of political power in Northern Ireland. However, democratic participation is based upon and reproduces 'long standing group inequalities'. The drama of the negotiations and the resulting Agreement has so far not been matched by the full implementation of what was agreed. The gender inequalities experienced by women in politics and public life that are addressed in the Agreement have no implementation mechanisms. The dramatic change of institutionalised power augured by the Agreement may yet be seen to further institutionalise deep group inequalities.

The warning from transitional justice experts that women would do well to be sceptical of the potential of the transitional process to deliver benefit is one that is well made in Northern Ireland. Perhaps the stereotypical construction of women as 'apart from the conflict', as occupying a 'woman only' innocent space are influential in how 'gender' is defined and in how the legislation is handled. There may be a desire to protect women from a divisive 'competition for scarce resources' (Hill-Collins, 2004, p. 69). As I have noted earlier in the context of conflicts (and transitions), the presence of the hitherto absent figure of 'women' often carries powerful rhetorical authority in the discourse. This is so in the prosecution of war as well as in the implementation of peace agreements. The exclusion of women, in the context of the implementation of intersecting dimensions of the equality legislation, is such a discursive disappearing act (Rooney, 2006). The powerful rhetorical authority embodied in the otherwise absent female presence and claims for redistribution on her behalf are disciplined and defined by ignoring her as 'innocent' of politically disputed differences of religious belief and political opinion. Structural, religious and political inequalities and other inequalities and discriminations experienced by women are then rendered invisible in the same move. Contentious, politically disputed inequalities and discourses appear to be male-only territory.[38] This renders the inequalities experienced by the most marginalised Catholic and Protestant women invisible to remedy.

Conclusion

The reforming capacity of the liberal democratic state (within a global capitalist economic system) was questioned by Bell (1990) in relation to the failure of the British state to dismantle structural sectarianism in Northern Ireland during over 30 years of violent conflict and direct rule from Westminster. He graphically claimed that this failure had to mark the 'graveyard of British social-democratic illusions about the reforming capacities of the state in capitalist society' (ibid., p. 95). However, he was writing before any assessment could be made of the full impact and significant success of the then recently introduced fair employment legislation (1989). It is not that this legislation would satisfy his social democratic aspirations for reform but it has effectively and importantly aided the dismantling of sectarian employment practices. The Northern Irish workplace is now viewed as one of the most integrated spheres in the society (CAJ, 2006). These benefits are experienced less by women, who have lower levels of participation in the workplace. They are not experienced at all by people living in workless households. Nevertheless, the capacity for strong law to deliver beneficial structural impacts is important. The equality legislation delivered by the

38 This is not to say that the most marginalised men stand to benefit substantially from the equality legislation. There have been economic improvements for those in employment but workless households have experienced deepening levels of inequality in Northern Ireland.

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Agreement and government policy to target objective social need may yet be implemented with full rigour and for the benefit of the people most in need of them.

There is room for hope as well as space for scepticism. It must be recognised that outcomes of peace agreements are not entirely determined by the people who negotiate them, although who they represent and the presence of women in this representation are significant matters of social justice. Neither is the implementation of an agreement determined by the people who provide the democratic mandate. The way that different political parties and public bodies implement or deter the implementation of legislation is important but may not be the decisive issue. The outcomes of agreements 'are not determined by words [alone] but by the power relations that impose their interpretations' (Chomsky, 1998, p. 26).[39] State power is decisive. On occasion the law is an effective arbiter of this power. The 'watching brief' of transitional justice experts in these contexts is to monitor, analyse and report observations from particular contexts for the benefit of other transitional societies. This work is carried on with an eye to the future and to the question that may be posed by those looking back from that vantage point and wanting to understand what went wrong. Critical transitional justice research will provide some of the answers. In situations where transitions are successful this discourse will have made a contribution to such a future. Then the academic question will be: 'how did they succeed?' This article is offered as a tentative contribution to either of these future questions from within the context of Northern Ireland.

Research postscript

For a more comprehensive understanding of structured subject positions in transitions it is necessary for the transitional justice research agenda to extend its analytical range to include intersectionality. This will involve investigations of discursive regimes of representation and recognition along with their objective structural and socio-economic correspondences (redistribution). This poses methodological challenges for the intrepid researcher bent on crossing disciplinary boundaries between law and the social sciences in search of conceptual insights and their objective correspondences with impacts on people in transitions. In the field of feminist post-structural analysis, core concepts and the historical conditions of their construction are deconstructed and sifted for uncertainties as well as for the life chances concealed within their hegemonic silences. Here, concepts are used with post-structural caution. Analyses of equality legislation and socio-economic data fix boundaries and create categories for pragmatic purposes. At stake in all of this is how the construction and conceptualisation of gender has pivotal and concrete material effects for women's day-to-day lives in the transitional society. The search for the 'absent woman' who raises 'awkward questions' in transitions leads to critical questions about the unexamined presence of men. In turn, the political economy of gender in conflict, transition and in state formation comes into view and new boundaries appear. Intersectionality originated in urgent political conditions in the US. Perhaps its most important contribution to transitional justice discourse and methodology is to assert the importance of continuing to pose questions that are not easily answered.

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39 On this occasion Chomsky was addressing himself to the implementation of the Multilateral Agreement on Trade.

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