AFTER GADDAFI, WHAT NOW? ISSUES OF TRANSITIONAL JUSTICE

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By

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ABSTRACT

Libya is in a state of transition following the Arab Spring revolution of 2011. Because Muammar Al-Gaddafi’s dictatorship imposed structural violence, direct violence, and cultural violence, causing many injustices and human rights violations, as well as the violent nature of the transition, there is a dire need for transitional justice within the country. Through the lenses of Fathali Moghaddam’s springboard to dictatorship model, social psychology, conflict resolution theory, and transitional justice theory and practice, I analyze the Libyan challenge of transitional justice based on the specific history that the country experienced under Gaddafi. My recommendations include ensuring local ownership of the transition process, establishing security before attempting transitional justice processes, balancing punitive justice and restorative justice in prosecutions, being careful concerning lustration, not conducting a truth commission any time soon, ensuring sensible reparations, and approaching reconciliation in an inclusive manner, all the while adhering to nonviolent methods. Keeping the psychology of change and the springboard to dictatorship model in mind, I also recommend patience concerning the change of informal normative systems and the inclusion of checks and balances in the government as insurance against future governmental abuses of power.
I would like to thank my advisor Dr. Fathali Moghaddam for his assistance along the way as well as Dr. Charles Villa-Vicencio, who worked in close concert with me and provided much valuable advice and feedback. Thank you both for being such an inspiration to me.

Many thanks,

Katarina M. Pedersen
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Chapter 1: Introduction

1.1: Background

In February of 2011 the Libyan people, inspired by the successful revolutions and regime changes in their neighboring Arab countries of Tunisia and Egypt, rose up in revolution against their dictator of 42 years, Colonel Muammar Al-Gaddafi.\textsuperscript{1} What ensued was a bloody civil war of eight months that ended with the capture and killing Gaddafi, leaving a gaping hole in the structure of the Libyan state, for his rule was total. This has required the new government to work from the ground up, starting with the basics of governance and moving into issues of transitional justice. The change affords opportunities as well as challenges – opportunities to build a democratic state and challenges ranging from the lack of independently functioning institutions to leaders often devoid of institutional memory and experience.

Libya now finds itself at the interface between Gaddafi’s authoritarian state of total control and the beginning of democratic rule. In this paper I will analyze the Libyan challenge of transitional justice based on the specific history that the country experienced under Gaddafi.

1.2: Research Hypothesis

By analyzing Libya’s specific situation, as well as the influence of Gaddafi on the Libyan state during his 42-year reign, it will be possible to expose the difficulties facing contemporary Libya and contribute to a discussion on how the country can move forward in promoting policies of transitional justice. The appropriate policies for Libya can be found by using the lenses of social psychology, conflict resolution theory, and transitional justice theory and practice.

1.3: Scope of the Study

\textsuperscript{1} From here on in simply referred to as “Gaddafi”. I will refer to the uprising in Libya from February 2011 to October 2011 as the “revolution”, although some refer to it as a civil war.
The scope of this study will focus on Libyan history, especially the Gaddafi years from 1969 to 2011, but will also draw upon prior Libyan history, from the periods of the Senussi monarchy, the Italian imperialist years, and before.

As with any study, there are limitations to the scope of this paper. First of all, there are limitations to what the field of transitional justice can do in providing mechanisms for dealing with past injustices and atrocities. No matter what one does with transitional justice, it will never be enough. However, at the same time, it is necessary do something. A commitment to peace and moving forward using transitional justice is difficult, as history has shown us. Violence and revenge is the norm, not the exception. The exception is a commitment to peace and the decision to move forward. In addressing past injustices through transitional justice mechanisms in order to move forward, justice, at least in some measure, may be found for victims.

1.4: Research Methodology

This study draws upon the history of Libya under Gaddafi and before, as related by the historiography of the country through monographs of Libyan history as well as academic articles and articles found in the news media. I have also gathered information through informal discussions with Libyans, particularly through Libya Outreach, a civil society organization of Libyans, Libyan expatriates, and others with an interest in Libya that focuses on topics of Libyan transitional justice. I also draw upon opinions of Libyans related through social media, such as Facebook and Twitter. For my analysis, I employ elements of the fields of social psychology, conflict resolution, and transitional justice.

1.5: Overview
A brief overview of the structure of this paper is as follows. In Chapter 2 I will cover theory and methodology, including social psychology theory in Section 2.1, conflict resolution theory in Section 2.2, and transitional justice theory and practice in Section 2.3 in order to establish the theoretical approaches used in this paper. Chapter 3 covers the relevant history of Gaddafi’s Libya for my argument, starting with the climate in Libya at Gaddafi’s 1969 takeover in Section 3.1, followed by Gaddafi’s dictatorship years in Section 3.2. In Chapter 4 I answer the question “what were the options available for removing Gaddafi from power?” In order to do so, I assess the implications of the NATO intervention in Section 4.1, a possible AU Intervention in Section 4.2, and a nonviolence approach in Section 4.3. In Chapter 5 I will cover my analysis of the transitional justice situation in Libya today, along with recommendations about how Libya can move forward. I will end in Chapter 6 with a summary of my conclusions.

**Chapter 2: Theory and Methodology**

In this section I will cover the main theories that I will draw upon in this paper and give definitions for terminology, providing a basis for my analysis of the Gaddafi regime, the transition with the revolution, and transitional justice measures can be made.

**2.1: Social Psychology**

There is much that can be referenced from the field of social psychology that can assist with my analysis of the state in Libya both under Gaddafi and in how the country should move forward through transitional justice mechanisms. I will reference the theories that are the most relevant to the discussion: the psychology of dictatorship, the psychology of change, superordinate goals, and displacement of aggression.

**2.1.1: Psychology of Dictatorship**
As Fathali Moghaddam notes, “dictatorship, not democracy, has been the norm of human societies since of the last 12,000 years…and our psychological characteristics have largely evolved within this context of social relations.”

Dictatorship has been the major form of rule for many millennia, while democracy has taken much time to develop and displace dictatorship. Dictatorship is much more common than one would think it is. Libya, for one, has not experienced anything but tribal rule and dictatorship in one form or another throughout its history until 2012.

What are some elements of psychology that make it possible for dictators, including Gaddafi, to gain power and stay in power? Fathali Moghaddam proposes a theory called the “springboard to dictatorship model”. In this model it is apparent that it is not only the authoritarianism of the individual that leads to his rise to power, but also the context of the situation that gives rise to the opportunity for dictatorship to spring up. Some potential dictators may be more skilled than others and creating and using a springboard to power, perhaps through charisma, but context is key. Gaddafi certainly had charisma; he was a young and dashing military officer with promises for the future. However, that alone would not have sufficed for his rise to power.

Moghaddam notes three main components of context related to the springboard to dictatorship model: (1) perceived threats, (2) situational factors that make people view that dictatorship can best course for solving ongoing problems, and (3) the characteristics of the

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potential dictator and the “revival” he espouses to “resurrect” a society. Also, “two important parts of the springboard concern the psychological characteristics of a population and leader-follower relations.” In order to ensure a transition to democracy, changes need to be made to dismantle the springboard. In Libya, it is of the utmost importance to make sure that none of these elements that can help to enable dictatorship survive.

Threats perceived by the general population “typically arise out of economic and political uncertainty, as well as a strong sense that society is under attack from both internal and external enemies.” Psychological research shows that “feelings of uncertainty and threat among a population results in greater conformity, intolerance of dissent, and support for authoritarian leadership.” Also, in non-Western societies traditionalists and fundamentalists can feel threatened by globalization and feel that because of it there is a general sense of societal decline and threats to collective identity. In cases such as this, there is an exaggeration of between-group differences and a minimization of within-group differences, which leads to in-group favoritism and ethnocentrism. This was certainly the case in Libya at the time of the coup d’état carried out by Gaddafi and his Free Officers, for there was a general perception that came along with their long history of foreign invasions, rising economic and political uncertainty, coupled with rising Arab nationalist sentiments, that made it seem like there were threats both from both the inside and the outside.

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5 Ibid., 170.
6 Ibid., 171.
7 Ibid., 175
8 Ibid.
9 Ibid., 176.
Context can also shape behavior and cause obedience to authority, which comes from normal psychological profiles as well as cultural or structural factors in society. Stanley Milgram conducted experiments that showed that “people with normal psychological profiles, would, under certain conditions, obey authority and inflict serious harm to others.”\textsuperscript{11} Also, what is considered evil can arise from very normal people, as expressed by Hannah Arendt in her analysis of Adolf Eichmann’s trial in Jerusalem and the banality of evil: “the trouble with Eichmann was precisely that so many were like him, and that the many were neither perverted nor sadistic, that they were, and still are, terribly and terrifyingly normal.”\textsuperscript{12} Context, together with culture and structures, can enable and reinforce dictatorship.

2.1.2: Psychology of Change

There are “limitations that psychological factors impose on the extent to which change actually takes place,” notes Moghaddam.\textsuperscript{13} There is a difference between the maximum speed of change at the micro psychosocial level and the speed at the macro level of economic or political change.\textsuperscript{14} Macro-level changes can come about quickly in politics, as with revolutions, or regime change, however, “the psychosocial transformations needed for individuals to change their styles of thinking and action to fit in with the new macro system are often much slower.”\textsuperscript{15} The two major influences of human thought and action are “formal ‘black letter’ law and the informal normative system, consisting of values, norms, and rules.”\textsuperscript{16} Black letter law can be changed

\begin{footnotes}
\item\textsuperscript{11} Ibid., 173-4.
\item\textsuperscript{13} Moghaddam, “The Springboard to Dictatorship”, 170.
\item\textsuperscript{14} Fathali M. Moghaddam, \textit{Multiculturalism and Intergroup Relations: Psychological Implications for Democracy in Global Context} (Washington: American Psychological Association, 2008), 11.
\item\textsuperscript{15} Ibid., 12.
\item\textsuperscript{16} Moghaddam, “The Springboard to Dictatorship”, 171.
\end{footnotes}
overnight, but it is the informal normative system, which has more influence on regulating behavior through conformity and obedience, that takes more time to change.

In Libya, the revolution wiped out the entire Gaddafi government, leaving room for building a new Libya from scratch. For the most part, the new laws that have been enacted have been democratic, although elements of the transitional government have fallen back on the informal normative system that reigned during the Gaddafi regime, such as elements of ethnocentrism, corruption, lack of due process, and lack of transparency. Any plan moving forward needs to take into account the inevitability of slow changes in normative systems and include assurances and checks and balances against the normative systems of the past in order that, over time, the norms can develop to be more democratic.

2.1.3: Superordinate Goals

Superordinate goals are “goals that all groups want to achieve but that can only be achieved through the participation of all groups.”17 The purpose of a superordinate goal is to bring disparate groups together in the common purpose of achieving a goal that they all want, but can be easier achieved through cooperation.

In Libya, the use of superordinate goals is necessary because of the disparate backgrounds that the people have from different regions and from different styles of living.18 During the revolution, militias were united under the sole goal of toppling Gaddafi and exterminating his minions. A new superordinate goal that is focused on developing democratic

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17 Moghaddam, *Multiculturalism and Intergroup Relations*, 84.
18 The regions I refer to are Cyrenaica, Tripolitania, and Fezzan. As for different styles of living, there is the more urbanized population, and then there are the rural, more tribal Libyans. See Appendix A for a map of the three regions.
institutions and achieving some form of transitional justice, so the people can move forward, would be helpful in order to have a productive transition.

2.1.4: Displacement of Aggression

Displacement of aggression is a strategy used by some leaders that involves “the identification of an external target as a threat…channels negative energies toward an enemy outside and binds group members more tightly together inside.”¹⁹ When displacement of aggression is used in groups, it is associated with increased cohesion, conformity, obedience, and the rise of more aggressive leadership within a group.²⁰ State leaders often use foreign policy as a means of using displacement of aggression, identifying foreign threats, and telling everyone in the in-group how they should feel. It is a form of a superordinate goal, calling the in-group to rally against a threat, creating unity.

Gaddafi used displacement of aggression to create cohesion within the state, blaming the West and his neighbors for interfering in Libya’s internal affairs. Today, displacement of aggression continues to exist in Libya in the form of terror acts committed by militias and fundamentalists against foreign embassies and those that are seen to be agents of change. It is important to keep in mind the psychological tool of displacement of aggression and ensure that the population is not taken into it for negative purposes, such as acts of violence against minorities or foreigners, going forward, in order to ensure a stable and just transition to democracy.

2.2: Conflict Resolution Theory

¹⁹ Moghaddam, Multiculturalism and Intergroup Relations, 57.
²⁰ Ibid., 56.
There are a number of ideas and theories from the field of conflict resolution that can be helpful to the discussion of transitional justice in Libya and how the country can move forward.

**2.2.1: Conflict Resolution**

The field of conflict resolution is interdisciplinary and covers a variety of approaches to resolving conflicts. It draws upon international relations, psychology, sociology, political science, among other disciplines. The purpose of drawing upon multiple disciplines is to be able to analyze a conflict situation from multiple angles in order to determine what the best methods for addressing the situation in a productive way are, given the context.

In order to be able to define what conflict resolution is, what a conflict is must be defined; a conflict is a situation in which two or more parties have real or perceived incompatible goals. This conflict can manifest itself violently or nonviolently. Conflict resolution views conflict as not necessarily a bad thing, rather a pathway for growth. No matter what we do, there will always be conflict in the world. This happens because people and groups of people will always be inherently different in some way or other and the real or perceived interests that they pursue are also different accordingly. The trick with conflict resolution strategies is to deal with conflicts in a constructive manner. The fact that there was a revolution, a conflict, in Libya, can be a chance for development, as long as the situation is dealt with using a sensitive and constructive approach.

There are a number of key pillars to conflict resolution that enable practitioners to address the situation in a constructive way. One of the most important tenants of conflict resolution is “Do no harm”. By analyzing the situation it is more possible to approach it sensitively and not cause undue harm to any of the parties, further aggravating the situation, or
causing new issues. This includes disruptive foreign intervention, which may cause more harm than good, as is the case in Libya.

A theme throughout conflict resolution is the importance of communication. There is particular emphasis on communication between conflicting parties. Without communication, neither side can know what the other is thinking or what they want. If they do not know this, then there is more of a chance of them acting in a way that can negatively affect their relationship. If a conflict is over and there are a number of parties who have been hurt on account of it, an equitable solution can only be found through involving and communicating with all parties, leaving no one out. All transitional justice measures enacted in Libya need to keep in mind the importance of including all groups, no matter the size or the ideological faction, and establishing communication to find equitable and sustainable solutions.

The importance of local solutions to local conflicts is stressed in conflict resolution practice. The key to making a sustainable and constructive difference is to enable local capacities to deal with the situation. As foreigners, it is imperative not to impose orders on locals. Foreigners and conflict resolution practitioners, however, can make recommendations and work to help locals and local institutions to come up with solutions and enact solutions on their own. This approach is especially important in Libya, where the people are sensitive to foreign invasion and foreigners telling them what to do.

It is important to keep in mind that a conflict must be approached holistically, from different angles and from different actors. A one-off event or agreement does not create a sustainable solution. Rather, efforts must be sustained and multi-pronged. Although there have been notable achievements in Libya during the transition, such as the first democratic elections
ever held in the country in July 2012, the opening of free media, and the establishment of women’s organizations, there remain multiple challenges. The informal normative system that persisted under Gaddafi has not yet disappeared and with an opening up of the country to free speech and opinions, which was not allowed before, there is also an opening up of the country to potential conflict, for the people are not used to dealing with and tolerating multiple opinions and groups, as is the case in developed democratic societies. In order to meet these challenges the above conflict resolution approaches are important to keep in mind.

2.2.2: Negative and Positive Peace

The terms negative peace and positive peace, first identified by Johan Galtung, are useful for discussion. A negative peace is one in which there is an “absence of organized, collective violence.” Positive peace, on the other hand, “is cooperation for mutual and equal benefit” for all, where social justice and justice exist. Of course, a positive peace is the goal, but it is nigh impossible to have a perfect positive peace.

Through applying transitional justice mechanisms to Libya, the aim is to get away from a negative peace, where Libya is now, which is simply an absence of violence on a large scale, and move toward a more positive peace. Through doing so, a more sustainable peace can be achieved and there is less chance of the country breaking out into widespread violence again.

2.2.3: Johan Galtung’s Typology of Violence

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Johan Galtung identified three types of violence. His typology of violence includes: direct violence, structural violence, and cultural violence.

Galtung says that direct violence occurs when there is a subject (person) who acts and when the violence is personal, or happens directly.\textsuperscript{23} Forms of direct violence include: killing (including extermination, genocide), maiming, siege, sanctions, misery (silent holocaust), alienation, secondary citizenship, repression, detention, and expulsion.\textsuperscript{24} Gaddafi employed direct violence throughout his regime and during the revolution. He killed and tortured his opponents, denied the identity and marginalized minority groups such as the Libyan Amazigh, repressed variety of opinions, detained those who opposed him, and caused many to flee from Libya.

Structural violence does not have a subject (person) who acts, as direct violence does, and is indirect.\textsuperscript{25} Structures of unequal power lead to unequal life chances and uneven distribution of resources.\textsuperscript{26} Forms of structural violence include: exploitation, marginalization, and fragmentation (keeping the underdogs away from each other).\textsuperscript{27} Galtung writes, “A violent structure leaves marks not only on the human body but also on the mind and the spirit.”\textsuperscript{28}

Galtung notes that structural violence is built into a social structure, and therefore exhibits a certain amount of stability, making it difficult to change quickly.\textsuperscript{29} Gaddafi imposed structural violence on his people through his megalomaniac institutions based on his Third International Theory and socialism, reinforced by the distributive nature of the Libyan state, which received

\begin{thebibliography}{99}
\bibitem{26} Ibid.
\bibitem{27} Galtung, “Cultural Violence,” 292, 294.
\bibitem{28} Galtung, “Cultural Violence,” 294.
\end{thebibliography}
large profits from the petroleum industry. In his institutions power and resource distribution was unequal, political parties were not allowed to flourish, and segments of the population were marginalized. The elites were well off, while the people were silenced with widespread, but meager, government benefits and subsidies. The separate regions were kept fragmented and kept in rival relations, in order that they could not rise against the dictator together. The people were kept as subordinates to the government with lack of access to resources, making it difficult to revolt.

Galtung defines cultural violence as: “those aspects of culture, the symbolic sphere of our existence – exemplified by religion and ideology, language and art, empirical science and formal science...that can be used to justify or legitimize direct or structural violence.” Elements of Arab and Islamic culture can be used to justify and legitimize direct and structural violence, as can be seen in Libya. Religious authority, as was seen under King Idris, allowed him to continue his unjust policies. Both under Idris and under Gaddafi, the Arab and Islamic culture of respecting authority figures and not questioning them too much led to the legitimation and justification of direct and structural violence.

The three types of violence, direct, structural, and cultural, can be added to form a triangle. Depending on which way the triangle is flipped, the two points at the bottom serve as legitimizers or sources of the third type of violence at the top of the triangle. See Figure 1 below.

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30 Among those marginalized were the ethnic Amazigh, a minority Berber people that live in Libya. Women were also marginalized and kept out of public life.
There is a time relation between these three types of violence as well. “Direct violence is an event; structural violence is a process with ups and downs; cultural violence is an invariant, a ‘permeance’.” Seeing as cultural violence and structural violence take time to resolve, this must be taken into account in any attempt to move forward using transitional justice mechanisms. This includes inequalities that have persisted between men and women, marginalization of minorities, and elements of religious and cultural sources of legitimacy and justification for violent policies.

2.2.4: Nonviolence Theory

Nonviolence is a conflict resolution approach that can be an effective method of bringing about change. Although countering violence with violence may seem to be the most straightforward way accomplish things, there are many downsides to using violence to accomplish objectives, such as: creating a spiral of violence, losing the moral high ground, and creating more hurt. A nonviolent approach, on the other hand, is a more constructive way of approaching a conflict situation. However, it is also more difficult, requiring a great deal of sacrifice and courage.

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Ibid.
The nonviolent activism technique that Mohandas Gandhi proposed is called satyagraha. This approach takes the stance that one should act in conflicts and that conflicts should be solved. In doing this, one must define the conflict well in terms of goals and facts.\textsuperscript{34} The approach to the conflict should be positive, and be an opportunity to transform the society and the self.\textsuperscript{35} During the conflict, practitioner of satyagraha act nonviolently. This is difficult, but it must be carried out in a goal-consistent manner, where actors must not cooperate with evil, not polarize the situation, not escalate the situation, and most importantly, be willing to sacrifice.\textsuperscript{36} Sacrifice entails understanding that imprisonment, mal-treatment, or even death may occur in the process. A conflict is solved quicker when nonviolent actors insist on the essentials, not the non-essentials, see themselves as equally fallible as their opponents, and aim for conversion, not coercion.\textsuperscript{37} The aim of this approach is to enter into dialogue with the other party on respectful terms.\textsuperscript{38}

Martin Luther King, Jr. details a similar approach, having been influenced by Gandhi. Step 1: collection of the facts to determine injustices, Step 2: negotiation with political and economic leaders, Step 3: self-purification, which is the same as Gandhi’s concept of sacrifice,

\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
and Step 4: direct action – creating a crisis and establishing creative tension, which can eventually lead to negotiation.³⁹

Taking non-violent action, there is a better probability of a negotiated agreement. In both dialogue and negotiations, the aims of both Gandhi’s and Martin Luther King’s approaches to nonviolence, communication enables the actors to determine the positions and problems of the other side. Unlike in fighting, the aggressor will not lose as much face by dealing with nonviolent actors. Attacking or killing nonviolent protestors is likely to cause outrage of the injustice of the situation, while if both sides are attacking and killing each other, the morality of the situation gets muddled. As Timothy Garton Ash points out, another name for a nonviolent revolution is a “negotiated revolution”, with the exit status of the ruling elites not being under threat.⁴⁰ How they are removed from power and how they are treated after their removal from power should be equally nonviolent. If there is a chance that the ruling elite will be harmed after their removal, then they will have less incentive to give up their grip on power and will more likely use violence to remain in power. Violence, both during and after the revolution, is a deterrent for a smooth transition. These are all issues that have effects on transitional justice. On top of being more effective in bringing in a new government, following a path of nonviolence throughout the transition can mark a stark contrast with the previous government.

2.3: Transitional Justice Theory and Practice

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Since the aim of this paper is to determine how Libya should move forward given the context of Gaddafi’s reign, with an emphasis on the transitional justice mechanisms that should be employed, it is important to establish what transitional justice is, why it is necessary in Libya, and what transitional mechanisms are available.

2.3.1: Transitional Justice

Transitional justice grapples with how societies in transition deal with the past when massive human rights violations have occurred or after a period of armed conflict, often when there is a transition from a period of conflict or state repression to a democratic government. How a country or society deals with the transition out of a period of conflict or away from a repressive regime has a direct impact on the future politics of the country, the legitimacy the government has, and the harboring of resentment among the populace who have been wronged. This can effect whether the country takes the path of a negative peace or a positive peace. The choice of path depends upon the context, which includes the “character of the preceding dictatorship, the nature of the transition, and the particular situation of the succeeding democracy”.

In order to achieve justice, the grievances and needs of the people who have suffered need to be taken into account. Since human rights violations vary and levels of repression vary, no one mechanism is the answer to achieving justice. Rather, a comprehensive and multi-level, multi-pronged effort is necessary. Having come out of a long period of injustices and various kinds of violence perpetrated by the Gaddafi government, where there are a wide range of victims, going through a violent transition with violent acts committed on both

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42 As can be seen in conflict resolution theory and practice, see Section 2.2.1.
sides of the revolution, and transitioning into a democratic society, transitional justice is of the utmost importance to Libya right now.

Scholars of transitional justice have identified several elements to transitional justice mechanisms. Timothy Garton Ash mentions three ways of how to deal with the past: trials, purges (including lustration), and history lessons (which can take multiple forms). Daniel Philpott identifies six ways of achieving justice: building socially just institutions and relations between states, acknowledgment, reparations, punishment, apology, and forgiveness. Similarly, Charles Villa-Vicencio notes three interrelated steps necessary for restorative justice: retribution (which can positively include the rehabilitation of perpetrators into society), addressing the legitimate claims of victims and survivors by providing material compensation and program of economic restoration (reparations, institutional and economic development), and relationship and trust building at both the political and economic levels.

For transitional justice to occur, there needs to be justice. But, what is justice and what can justice look like in cases of mass human rights violations or atrocities? Transitional justice scholars often categorize justice into two types: punitive justice and restorative justice. Philpott writes, “Justice involves practices that redress, insofar as is possible, the many forms of these diminishments and increase the flourishing of those who have suffered them.” There is a constant need to balance justice needs at all levels, from the individual, to the communal, to the

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43 Garton Ash, “The Truth About Dictatorship.”
46 Philpott, Just and Unjust Peace, 4.
national levels, and all of these levels are linked to one another. All of these levels need to be taken into account in Libya in a way that the victims can flourish once again.

Punitive justice entails prosecutions for crimes, but can also take the forms of seeking revenge, such as vigilante justice killings of ex-regime members. Another name for this type of justice is retributive justice.

Restorative justice, an inherent part in any peace process, works towards a more positive peace and is more constructive. It is grounded in the principles of rule of law and human rights, prioritizing the beneficence of victims and survivors. It also deals with bringing perpetrators of past crimes back into the society as a whole, for their interest, for the victims’ interest, and for the interest of the society. The focus is on establishing a new society in which both victims and perpetrators alike can move on together and become active members in the new society. According to Howard Zehr, a restorative lens to approaching transitional justice includes: focusing on the harms and consequent needs of the victims, as well as the communities of the offenders, addressing the obligations that result from those harms (obligations of the offenders, the community, and the society), using inclusive, collaborative processes, involving all with a legitimate stake in the situation, and seeking to right the wrongs, all the while ensuring respect for all. Restorative justice also seeks to right the root causes on the injustices that were experienced. The point of doing this is to tackle the underlying social, economic, or moral causes and reasons for the violence. By finding these factors, it is a step forward in making sure that

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48 Ibid.
49 Ibid.
50 Ibid.
these things do not happen again. It does so by addressing the building of democracy, good
governance, peace, security, stability, and justice – all essential building blocks for socio-
economic development.\textsuperscript{52} This is all a process that must come from the people.\textsuperscript{53} If the end goal
in Libya is to create a positive peace, then a restorative element in transitional justice is essential.

2.3.2: Prosecutions

Prosecutions, which can be both a form of punitive and also restorative justice, can take a
number of forms: criminal trials, war crimes tribunals, international law, the International
Criminal Court (ICC), trials by regional institutions.

There are a number of structures in place through international law, treaties, and
agreements that allow for the intervention of the international community in the affairs of other
countries. Of particular note are the ICC and regional institutions. Although I recommend that
neither the ICC nor regional institutions such as the African Union (AU) get involved in
prosecutions in Libya, it is important to understand the options available.

The ICC has existed since the adoption of the Rome Statute treaty in 1998. The purpose
of the court is to “end impunity for the perpetrators of the most serious crimes of concern to the
international community.”\textsuperscript{54} The crimes covered by the Rome Statute that are within the
jurisdiction of the ICC are: the crime of genocide, crimes against humanity, war crimes, and
crimes of aggression.\textsuperscript{55} Only individuals may be prosecuted by the ICC, therefore certain people

\textsuperscript{52} Villa-Vicencio, “Restorative Justice,” 38.
\textsuperscript{53} Desmond Tutu in Villa-Vicencio, “Restorative Justice,” 37.
\textsuperscript{54} “About the Court,” The International Criminal Court, \url{http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx}.
who bear major responsibility of the crimes get prosecuted.\textsuperscript{56} In terms of issues of admissibility, Article 17, 1(a) of the Rome Statute importantly states that a case is inadmissible to the ICC when “the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.”\textsuperscript{57} A State that has signed on to the Rome Statute has certain responsibilities to fulfill to their people, including prosecutions. Only when the state does not have the will or the capacity to deal with a situation, can the ICC intervene. Libya is both willing and arguably able to carry out investigations and prosecutions, therefore making ICC intervention unnecessary.

Regional institutions, such as the AU can also get involved in prosecutions. The AU, for example, has the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights, which deal with cases submitted to the AU on human rights violations. The AU can also decide to intervene for peace, send in peacekeepers, and be involved in making peace deals.

A question to keep in mind is, “would prosecution help or aggravate the situation?” It is necessary to question to what extent trials are necessary if there is a good chance that the country would slip back into conflict because of prosecutions.\textsuperscript{58} When an individual knows that they will be prosecuted for their crimes and not given amnesty, they may be driven to fight back.

War crimes tribunals and criminal tribunals can take place at the local, regional or international levels and have the added value of history lessons, which can be beneficial to

\textsuperscript{56} Ronald Slye, “The International Criminal Court,” in \textit{Pieces of the Puzzle: Keywords on Reconciliation and Transitional Justice}, ed. Charles Villa-Vicencio and Erik Doxtader, 81.


victims.

It is possible to give victims a sense of justice through prosecuting individuals involved in mass atrocities, revealing the truth about their lost loved ones, and establishing a historical record. If these facts are established and publicized as a great atrocity that must not be repeated, then there can be less of a chance of cyclical violence or hatred.

Prosecutions, while they have their value, are not enough when trying to deal with the entirety of transitional justice. “A legal duty selectively to prosecute human rights violations committed under a previous regime is too blunt an instrument to help successor governments who must struggle with the subtle complexities of re-establishing democracy.”\(^{59}\) However, prosecutions can also play a role in establishing the rule of law in a new government.

2.3.3: Mechanisms of Transitions

There are a number of mechanisms available for transitional governments to employ in order to achieve transitional justice. These include: reconciliation efforts, lustration (and reverse lustration), truth-seeking measures such as truth commissions, and reparations.

Reconciliation deals with simply getting to a point where opposing groups who were fighting with each other can learn to live with one another. However, coexistence alone is not the answer, for that would simply be a negative peace. Philpott writes that reconciliation “is the restoration of right relationship,”\(^{60}\) where right relationship in the political realm is defined by the characteristics of “respected citizenship defined by human rights, the rule of law within


\(^{60}\) Philpott, \textit{Just and Unjust Peace}, 5.
political communities, and respect for international law between political communities.” In order for a positive peace to come about, reconciliation is necessary. Reconciliation also entails meaningful cooperation and communication between opposing sides and participation by all groups. As Villa-Vicencio says, “To reach out to your former enemies…is central to self-interest and sustainable peace building.” There is no quick solution to reconciliation, rather “it involves a commitment to the long haul of building political confidence as a basis for social cohesion.”

There is an element to reconciliation that can be linked to religion – mercy and forgiveness. Forgiveness and reconciliation are separate, though; forgiveness refers to a personal and spiritual healing, but political reconciliation needs to be addressed by the government. Only victims have the right to forgive and no government policy can make that come about. Neither is it possible for a government to force people to be repentant. Forgiveness and mercy are the ideal situation that can be aspired to, but are not required for reconciliation to take place.

When a government is in power, especially in undemocratic or oppressive societies, it is supported by a wide array of government lackeys and subordinates. Some individuals who work for the government have a larger say in what the government does than others. It is accepted that they have a larger share of the responsibility for the good or bad things that the government does. Others just follow the crowd, listen to instructions obediently, or are intimidated into performing certain actions. The purpose of lustration is to get rid of the few bad apples at the top of the

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61 Ibid.
63 Ibid., ix.
64 Ibid., 5.
65 Garton Ash, “The Truth About Dictatorship.”
government hierarchy who bear the heaviest responsibility for injustices enacted by the
government on its people. This process must be conducted at some level in order for a new
government to rule. As Stover et al. write, “vetting to remove abusive officials from positions of
authority, if carried out fairly, properly, and prudently, can be a legitimate part of a larger
process of institutional reform in periods of transition.”66 By eliminating them from the new
governing institutions, there is a hope that the government will be less likely to perpetrate the
same wrongs as the old regime and follow the old ways. Lustration is an important tool, but it
also has the potential for being misused. For example, Paul Bremer, a State department official
who issued the directive for de-Ba’athification in Iraq, only saw the former Ba’ath members as
villains. “They did not consider…that the Baathists’ skills and experience-and their political
power-made them indispensable in the effort to rebuild post-war Iraq.”67 It must be kept in mind
that the goal is to avoid more violence and create a lasting, constructive solution.

The trouble is that those who worked for the government are the majority of the people
who know how to run a government. At the same time, the kind of government that they know
how to run was a corrupt and unjust government. But if those who are in charge do not have
experience or knowledge of governance, there is a vacuum of skills and the transitional
institutions can fall apart. Another facet that must be contemplated is what to do with the people
who were of the old regime that are now being removed. If these individuals are kicked out of
the government in a way that does not allow for rehabilitation or some way of providing for their
own lives, they can potentially create trouble. Leaving them with limited employability, or

67 Ibid., 844.
having the society stigmatize them so they cannot get a job, increases the possibility for radicalization.

Rather than eliminating all previous-serving officials from government, potentially causing an array of troubles, it is possible to conduct reverse lustration, which allows ex-officials to take elected posts and use their knowledge of governance for the betterment of the new government and the people.

It is often the case that when violence and atrocities occur, the perpetrators hide or have been hiding the truth of their actions. Truth-seeking measures break the silence and get people discussing the issues. The most common form of truth-seeking is a truth commission, although truth-seeking can also happen through prosecutions.

As the Chilean human rights expert José Zalaquett has noted, the point is not only to find out as much as possible of the truth about the past dictatorship but also that this truth be “officially proclaimed and publicly exposed.” By finding out the truth and exposing it to society, victims can achieve a sense of justice, for their harms will not go unnoted or unnoticed or forgotten. By exposing truths, the evils of a society in the form of cultural or structural violence can be highlighted. This can inform a society of the necessary changes that need to be made in order to create a more egalitarian and peaceful society.

A truth commission only has a reasonable chance of success when a nation says to itself that they are committed to changing gear and moving forward. The nation has to agree that the past is over, and they are ready to create something new and move on. A truth commission cannot be recommended when a country has not reached this point yet.

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68 José Zalaquett in Garton Ash, “The Truth About Dictatorship.”
Truth-seeking brings up the issue of the delicate balance between punitive and restorative justice. Determining the truth is important for victims in their process of moving forward. However, exposing truths can also expose the crimes of individuals that they may not want to disclose for fear of repercussions in the form of punitive justice. This is where there is a need for amnesty. Amnesty can be used as a tool to bring forth the truth from perpetrators. What needs to be determined is to what extent bringing the truth forward can help in the restorative justice process.

When a country has undergone a major political upheaval and when violence has occurred, there will be a loss of life. It is impossible to compensate people for their losses, whether for a lost loved one or perhaps a lost limb. However, an option exists for the new government to make reparations. Reparations entail giving something to these victims. This can come in the form of a cash payment, whether as a lump sum or dispersed over time, as a range of benefits given by the government to victims, or by mixing money with another factor such as apology or truth-telling. This act is meant to address justice for the victims by showing acknowledgement for their suffering, history-writing by publicly marking down the fact that those acts that were committed were wrong and harmful.

Pablo De Greif mentions a number of elements that must be considered when discussing reparations: completeness, comprehensiveness, complexity, coherence, and finality.\(^\text{69}\) It is desirable for reparations to be comprehensive, for it is a sign of “the dynamics of inclusion and ownership behind lawmaking”, which is a sign of political morality, establishing legitimacy of

the government and the rule of law. Reparations should be both internally and externally coherent. In being internally coherent, there is a coherent “relationship between the different types of benefits a reparations program institutes.” External coherence “expresses the requirement that the reparations efforts be designed in such a way as to bear a close relationship with other transitional justice mechanisms.” Also, reparations alone will not suffice in creating a successful transition. Transitional justice mechanisms have to be multifold and coherent with one another. Finality refers to “whether a program stipulates that receiving its benefits forecloses other avenues of civil redress or not.”

2.3.4: Memory and Healing

Memory and healing are two themes that are important for the victims of repression and injustices, especially in bringing about reconciliation. In the transitional justice toolbox, there are a number of ways to go about addressing memory and healing. Memory is helped along through history lesson writing, as noted by Garton Ash, forms of which include: establishing the truth, reparations, and memorializations. Healing, it should be noted, takes place on the individual level through achieving the different kinds of justice that different people need in order to move on.

Ways of preserving memory through history writing are important to victims and survivors. Establishing the truth through truth commissions or through prosecutions, as well as pointing out injustices through reparations, helps in the process of healing as well as in history

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70 Ibid., 9.
71 Ibid., 10.
72 Ibid., p. 11.
73 Ibid., 12.
74 Garton Ash, “The Truth About Dictatorship.”
writing. Through writing history, the ills in society and mechanisms of repression can be highlighted as injustices that should not happen again.

Memorializations are another tool of memory and healing. The purpose of memorializations is to create a memorial of some kind, such as a monument, to commemorate those who have suffered or who were lost. It is a visual reminder of their suffering that will stand the test of time and raise awareness about the injustices caused. It a visual form of history-writing that makes the event more difficult to forget.

Chapter 3: Gaddafi’s Libya

Through analyzing Libya’s specific situation, including the influence of Gaddafi on the Libyan state over his 42-year reign, it will be possible to make suggestions as to how the country should move forward in its policies of transitional justice. Of primary importance to my analysis is the springboard to dictatorship model put forth by Moghaddam, as detailed in Section 2.1.1, and the psychology of dictatorship.

3.1: Climate in Libya at Gaddafi’s takeover in 1969

If Muammar Al-Gaddafi was a heinous leader who repressed his people, killed off the opposition, and later became increasingly paranoid and schizophrenic, how was it that such a man could come to power in the first place? As it happens, Gaddafi’s regime had a number of aspects in common with the previous government run by King Idris. Although some may not categorize it as such, Libya was already under the control of a dictatorship of sorts with King Idris, the reluctant leader of Libya who took up the position with the independence of the country granted by the United Nations (UN). Around the time that Gaddafi chose for his coup d’etat, the conditions were ripe again for a dictator to spring to power.
Moghaddam’s springboard to dictatorship model provides some answers. The three main components to the springboard to dictatorship model, mentioned above, were: (1) perceived threats, (2) situational factors that make people view dictatorship as the best course for solving ongoing problems, and (3) the characteristics of the potential dictator and the “revival” he espouses to “resurrect” a society.⁷⁵

3.1.1: Perceived Threats

There were perceived threats, both political and economic, and from both the inside and outside of the county.

Arab nationalism gave rise to political and economic perceived threats from both the inside and the outside. With the wave of Arab nationalism sweeping the Middle East, bolstered by the charismatic success of Gamal Abdul Nasser in neighboring Egypt, the Western political and economic influence and inroads were seen as a threat to identity and governance in Libya.⁷⁶ The perceived threat of the West was one that Libyans could identify with, due to their long history of invasions by foreign powers, the most recent being the Italians, as well as King Idris’ support from the West. Through Arab nationalism, displacement of aggression took place against the West. This tactic would help with the lacking national consciousness and cohesion within Libya, creating an outlet for negative emotions and uniting the people in the superordinate goal of having an Arab state. Focusing on an outside threat, bad governance at home would not be focused on as much.

Due to the instability and insecurity of the nascent Libyan state, which had not coalesced in

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⁷⁵ Moghaddam, “The Springboard to Dictatorship,” 175-176.
⁷⁶ Due to grants given to Western militaries to keep bases in Libya and concessions to Western companies related to the petroleum industry.
any way, politically, economically, or socially, King Idris required foreign assistance both for its security and its economy. At the time of independence, Libya was the poorest countries in the world, having not discovered oil yet. Idris drew in the support and protection of the United States as well as the United Kingdom, through financial and political aid for their military bases in Libya. Idris saw Western support as necessary for security, and later, when oil was discovered, for economic benefits. This connection with the West at a time of rising Arab nationalism was a vulnerability in the Kingdom of Libya and increasingly seen as a threat by Arab nationalists.

Another perceived threat was that of regionalism, an internal political and economic affair. King Idris favored the eastern province of Cyrenaica over the more urban and increasingly populous western province of Tripolitania and sparsely populated southwestern province of Fezzan.77 Under the federal system the Cyrenaicans prospered, and they wanted to keep it that way, fearing Tripolitanian supremacy, but the Tripolitanians and Fezzanese alike preferred a unitary system, believing that it would be more equitable for them.78 For those who lived in Tripolitania, including Gaddafi himself, this was a threat.

In these ways, King Idris himself was seen as an internal threat to the state, welcoming in external powers.

3.1.2: Seeing Dictatorship as the Answer to Ongoing Problems

At the time of Gaddafi’s coup d’état, Libyans viewed that dictatorship could be the best answer for solving their ongoing problems.

Under the government of King Idris, there were many ongoing problems. For one, King

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77 See Appendix A for a map of the three regions.
Idris was a reluctant leader. The government that he led was weak, poor, and inexperienced to begin with, so it took on a policy route of balancing interests between the domestic, Arab nationalists, and Western interests. Although Kind Idris’ rule was tolerated from the start of the United Kingdom of Libya on because it was seen as necessary to gain independence in 1951, people were getting increasingly fed-up with him. Not only was he firmly pro-Cyrenaican, but he also was a reluctant ruler.

Secondly, the policies of King Idris were not fair or democratic. His home region of Cyrenaica benefited more than the more populous region of Tripolitania. Even from the start, parliamentary elections were not completely fair – the 1952 election was manipulated by the government so that the National Congress Party, the most important party in Tripolitania, with an agenda that would take power away from Cyrenaica and make a united Libya, did not win.79 Multi-party elections were never held again after 1952, all political parties were banned, as well as political opposition to the government.80 Power ended up being hoarded within an oligarchy based on family and tribal ties.81 “The king created a kind of court government, made up of loyal tribal notables reliant on patronage. This bypassed the official structures of the state that had been so arduously thrashed out in the constitution.”82 Along with power and oil also came corruption within government circles. Since there was a growing number of empowered and educated youths that wanted to be involved in the decisions of government, but had no means of doing so if they had no family ties, the lack of democracy led to disillusionment in the system and a desire for a government that would listen to what they wanted.

80 Ibid.
81 Ibid.
82 Alison Pargeter, Libya: The Rise and Fall of Qaddafi (Yale University Press, June 27, 2012), Kindle edition, 40.
Despite a booming economy and profits following the discovery of oil, distribution of profits ended up being unequal. Although GDP per capita was growing rapidly, the average takes in both the very wealthy and the very poor; there was a great and growing gap in incomes.

3.1.3: Revival and Resurrection

Gaddafi hit upon a number of characteristics in his “revival” he said he would espouse and bring about a “resurrection” of society in his revolutionary rhetoric and in his ideology. This made his leadership seem more decisive and potentially beneficial to the people.

Gaddafi presented a revival of Libyan, Muslim, and Arab identity that struck a chord with the masses. The constitutional proclamation of the Revolutionary Command Council on December 11, 1969 called for freedom, socialism, unity, Arab as well as African identity, with Islam as the religion of the state. With the petroleum industry income, it was possible for Gaddafi to use the state resources to support his model of Libyan development.

Gaddafi was a proponent of Arab nationalism, the ideology that was sweeping the region that made positive affirmations about the past glory of the Arab world. With the strong leadership of individuals such as Gamal Abdul Nasser in Egypt, this ideology brought those in Arab states under one banner as a superordinate goal as well as placed displacement of aggression conveniently on the West and Western-backed governments. This ideology was already being spread in Libya through the growing number of educated youths as well as over the radio.

Since there was political apathy within Libya, and the country itself was still non-centralized in terms of identity, and the people were used to their country being ruled by one

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group or another swooping in and telling them what to do, they did not see too much point in being involved in politics. Gaddafi sought to rectify this situation, at least in rhetoric, through his “Popular Revolution” launched on April 16, 1973, aimed at mobilizing Libyan citizens from below, not above. It was meant to bring in locally based, youthful leadership from the lower and middle classes and bring them in to the growing bureaucracy of the country. Since Gaddafi had come from a relatively poor background, there was a ring of truth to this.

Later on, Gaddafi tried to perpetuate his revolution with his own ideology, “The Third Universal Theory”, which was outlined in The Green Book. Anti-communist and anti-capitalist, it focused on socialism and whatever else Gaddafi thought was important.

3.1.4: Elements of Culture

There were elements in the culture and the context at the time that helped to enable Gaddafi to come to power. A number of these elements can be linked to cultural violence, as defined in Section 2.2.3. It is important to note that although these trends exist, Libyan, Muslim, or Arab culture is not monolithic and there are variations. I mostly am referring to conservatives, which make up a significant portion of the population and influential in both the culture and politics of the country.

For one, the patriarchal nature of Middle Eastern and Muslim society suggests that authority figures should not be disrespected and should be listened to. Tribalism and rule by oligarchy was the norm; political authority in Libya “was exercised through local notables and

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85 Ibid.
87 Cultural violence can make direct and structural violence look right, legitimizing violence.
tribal leaders who served as the link between the head of the system and the tribal clans.”

This patriarchal nature of the culture also reinforces a division in society regarding the roles of men and women, with women’s place being in the home, and the role of men as being providers.

Legitimacy also came from Islamic religiosity and the relationship between Islamic identity and political leaders was and is strong. The general milieu of the country was Islamic and conservative. King Idris was a descendant of the Prophet Muhammad through his daughter Fatima and head of the historical Senussi Order, founded in the nineteenth century. Back during the fight against the Italian colonialists, it was the Senussi Order and religious men such as Omar al-Mukhtar who fought constantly. In terms of a united ideology within Libya, Islam was what united the country.

All in all, with perceived threats, a government that the people did not support any more because it had numerous issues, and a revivalist ideology of Arabism, and later Gaddafi’s other ideologies, as well as other elements of the culture, the context was ripe for Gaddafi’s springboard to dictatorship.

3.2: Gaddafi’s Dictatorship

In order to understand what needs to be done in the transition of the Libyan state from Gaddafi’s dictatorship, elements relevant to discussion from the years under the Gaddafi regime must be analyzed. In this section I discuss what I determine to be the three most important elements of the Gaddafi regime that are relevant to the discussion of transitional justice in Libya.

today: the centralized state, the state security apparatus, and the petroleum industry.

3.2.1: Centralized State

Under Gaddafi, the Libyan state was centralized. Soon after coming into power, Gaddafi consolidated his power using a mix of ideology, government institutions that he designed, and the state security apparatus to increasingly control the state. Gaddafi’s Libya had a number of similarities to Nazi Germany. Similar to what Hannah Arendt writes of the Nazis, “the regime was never ‘monolithic’ but ‘consciously constructed around overlapping, duplicating, and parallel functions,’ and…this grotesquely amorphous structure was kept together by the…Fuhrer-principle – the so-called ‘personality cult’ – we find in Nazi Germany.”90 This is seen in his Green Book, which was supposed to be the ideological backbone for Gaddafi’s rule. Although the Green Book and Jamahiriyya ideology outlined that there be multiple levels of People’s Congresses and Committees that were meant to have citizens in charge of the country’s resources and administration, without hierarchy, managing their own affairs, creating a socialist state. However, in reality, the Green Book manifesto ended up being hypocritical, for it was Gaddafi and his posse that made all of the decisions. The Green Book ideology was forced on the people, and debate was banned.

Similar to his predecessor, he gathered a small group of individuals for his loyal inner circle, which was the core of governance in the country. Although there were supposed to be elements of civilian involvement in the government, democracy was completely lacking. As such, there is a lack of a developed civil society, political parties, and political debate in general.

Libya became a socialist state in 1977, bringing the private sector of the country to a

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grinding halt. Due to nationalization of multiple industries during the Gaddafi era because of socialist policies, private businesses declined and many people ended up working for the state, directly or indirectly.

3.2.2: Security Apparatus

Gaddafi controlled the country by having a strong grip on the state security apparatus. Under Gaddafi, Libya was run as a security state, with the army and security arms, but not the police, controlling a monopoly on violence and control of the people. This was similar to what Hannah Arendt wrote of Nazi Germany - “the executive branch of this particular government was not the party but the police.” Also, as Arendt mentions, “The automatic ascendancy of the army was even more decisive; it now held a clear monopoly of the instruments of violence with which to decide inner-party conflicts.”

The intimidation factor through the state security apparatus prevented any opposition to the regime, reinforcing the singular state ideology. Those who openly opposed the regime would be jailed or killed. Many opposition members had to move abroad, where even there, they were hunted by Gaddafi. This intimidation technique kept the population in line for fear of repercussions. The intimidation culture that stemmed from this has not subsided completely.

3.2.3: The Petroleum Industry

Gaddafi’s government and its intimidation policies were propped up by the abundance of oil revenues available to the government. Although the petroleum industry began during King Idris’ rule, it had not developed extensively. Gaddafi began a process of nationalizing the oil

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91 These industries include banking, petroleum, and other economic industries.
industry. Despite nationalization of the petroleum industry, foreign companies were still eager to get their share of high quality Libyan oil. Nationalization of the petroleum industry gave the government more control over prices and tenders and kept the government in control of revenues as well as distribution of profits.

As Vanderwalle says, the discovery of oil led to development of a distributive state, where the state does not depend on extraction from its citizens, as is done in a production state, but rather derives its income almost exclusively from the sale of a commodity. The resources are convenient for manipulation and control. Since wealth was being distributed rather than taken from the people via taxes, there was less responsibility for the government to be accountable to the people in the institutions that it created and how it treated them. A system develops in distributive states where “individuals increasingly become rent takers – a process rulers often encourage for reasons of political manipulation” where “the constraints on rulers’ behaviour are relatively few.” Since there was no accountability for the use of the money, the government could use the money to do what it wanted to. Also, since the people were not paying much in taxes and receiving state benefits, it was difficult for them to complain about their situation.

Chapter 4: What Were the Options Available for Gaddafi’s Removal from Power?

In this chapter I will analyze the various options that were available for removing Gaddafi from power. The purpose of analyzing these options is to highlight certain elements of the revolution that played out a certain way, and by doing so left Libya in the situation that it is now. It also highlights the limits of how much is possible to change, and what the likelihood is for certain paths and changes given human psychology.

95 Vanderwalle, *Oil and State-Building*, 24-25.
4.1: NATO Intervention Implications

How Gaddafi was removed from power had repercussions in what kind of a government was to come to power following his demise. The violent aspect of the transition, including the intervention conducted by the North Atlantic Treaty Organization (NATO) and the UN had an impact on the nature of the transition.

Local ownership of a transition of power is considered one of the pillars of a meaningful and sustainable transition as well as conflict resolution. Since there was foreign intervention, an element of the legitimacy of the transition of power is questionable.

It is possible to argue that the NATO intervention was necessary to protect Libyan citizens from the brutality of their dictator, who was increasingly using force against his own people, through the Responsibility to Protect (R2P) argument. Gaddafi had turned increasingly rabid and incoherent (although this really had been the case for many years), blaming the uprising on youth drinking drugged Nescafe provided by Westerners, and declaring a need to purge the country of these individuals. It looked like this was a madman with whom no one could deal with or negotiate with. When NATO entered the scene, they started with an attack on a column of Gaddafi tanks headed to the eastern city of Benghazi, surely saving many lives.

At the same time, there is the argument of ulterior motives and interests at stake. Libya has a wealth of oil reserves that are important for oil availability and price stability for Western countries. There are plenty of countries around the world that go through civil war, such as Syria today, but do not receive the same amount of R2P involvement as Libya did.

96 “Defiant Gaddafi vows to fight on,” *Al Jazeera*, February 23, 2011, 
One repercussion of the involvement of NATO and the West in bringing about the change in power and supporting the transitional government can be a perceived lack of legitimacy on the part of the new government. Especially in the Arab world, there is a long-time perception that foreign intervention and foreign meddling in home governments is a sign of the corruption of the government and their lack of legitimacy, for they have to be propped up by Western governments in order to act as their puppets.

There is also a potential feeling of entitlement by Western powers, seeing as they helped bring about the change. They may feel that they are entitled to making certain recommendations in the new government as well as entitled to business deals, such as oil contracts. This is a potentially destabilizing factor, for, as mentioned above, the local ownership of a transition is key to sustainable success in the long run, both from a transitional justice and conflict resolution perspective.

What happened was a UN Security Council-approved NATO-led intervention with the aim to protect civilians and civilian-populated areas, enforcement of a no-fly-zone in Libya’s airspace, and an arms embargo. The UN Security Council voted to end the mandate for military operation almost immediately after the death of Gaddafi. There are questions as to whether the NATO intervention in Libya departed from the UN Security Council Resolution 1973, which authorized a no-fly-zone and all other necessary measures to protect civilians. With the resolution being based on the 2006 Security Council resolution on R2P, critics point out that the resolution authorized neither regime change nor support for rebel forces. Questions are also asked concerning the extent to which Gaddafi had declared war on his own people, with Admiral Mike Mullen, chairman of the U.S. Joint Chief of Staff, testifying to Congress that he had no
confirmation of reports that Gaddafi’s aircraft were firing on Libyan citizens. It is further argued that the UN Security Council and NATO failed to give adequate consideration to the alternative proposals by the International Crisis Group and the African Union for a non-violent alternative to the use of violence in confronting Gaddafi. Critics of the UN resolution insist that the primary intent of the West was regime change, rather than the protection of Libyan citizens or the likely aftermath of an externally imposed regime change.

4.2: Possible AU Intervention

An option that was available, but was not pursued, was that of a possible African Union intervention. As mentioned above in Section 2.3.2 on prosecutions, regional organizations can get involved in the resolution of a conflict, whether for prosecutions, or otherwise. An African solution would have been a more local, regional solution, as opposed to one that the international community would be involved in. In its own way, hypothetically, this option would have had legitimacy and would have been more of a local solution, making it more sustainable by local actors.

After the violence had started, there was the option to allow Gaddafi to seek asylum in an African country. Following his failures with pan-Arabism, Gaddafi had increasingly poured his efforts into defining Libya as an African nation and was instrumental in the founding of the African Union in the mid-1990s, inviting the heads of African states and governments of the ailing Organisation of African Union to Libya. The Sirte Declaration was signed in Sirte, Libya on September of 1999, paved the way for the establishment of an African Union, with the Constitutive Act of the African Union being adopted in Lusaka, Zambia in 2001.
One scenario that the AU proposed was a plan for a ceasefire, which Gaddafi had already accepted, followed by negotiations. The proposal, which was made in April 2011 by an AU delegation to bring about a truce, however, was rejected by the Benghazi revolutionary leadership.97

This more local solution, with AU leadership, based in the continent and the region, may have had more legitimacy in terms of local ownership. Also, Western countries would not have been involved, and the taint of their involvement in the transition would have been avoided. If the negotiations went well, then the transfer of power away from Gaddafi would have been more nonviolent than it was and the transitional government would have had more legitimacy from the start. There still would have been violent acts that would have to be addressed during the transition, but it would have been far less so.

On the other hand, since the AU had strong ties with the Gaddafi regime, there may have been the possibility that the AU process would have broken down along the way due to perception that they were not a neutral third party. This is actually one of the reasons why the AU intervention did not appear convincing to the Benghazi revolutionary leadership.

4.3: Nonviolence Approach

One of the defining features of the Libyan revolution was the level of violence that was committed both on the part of Gaddafi and his armed men and on the part of the revolutionaries. It is often noted that the manner of change in power reflects the nature of the ensuing regime. Victims become perpetrators in an endless cycle of violence. In the case of Libya, violence was used to topple the dictator from power as well as to kill Gaddafi. As Human Rights Watch

relates, today “militia brigades continue to haunt the security scene in Libya and men refuse to
give up their arms...Lawlessness is particularly acute in the East and South, where armed militias
and criminal groups act with impunity.”\textsuperscript{98} Considering the nature of the change in power, this is
to be expected.

One approach that the Libyan revolution did not take was nonviolence. In Libya’s
neighboring Arab Spring countries of Tunisia and Egypt, change came about with relatively little
violence.\textsuperscript{99}

Although Libya’s revolution ended up being violent in nature, the benefits of a
nonviolent transition should be analyzed in order to understand what went awry, causing
problems now, and what may be possible to accomplish now using nonviolent approaches.

The nonviolent activism techniques proposed by Mohandas Gandhi and Martin Luther
King Jr.’s as described in Section 2.2.4 could have been helpful in Libya and still can be. In
Libya, this could have been carried out, not by avoiding the conflict or acting cowardly, but
through being brave and being willing to sacrifice for the ultimate purpose of the revolution.
Many revolutionaries, through fighting and using violence, died for the ultimate goal of the
revolution. Sacrificing themselves in a non-violent manner instead would have helped to not
polarize or escalate the situation, perhaps ending the conflict sooner, and the Gaddafi
government would not have been removed in a violent manner. Since the aim of this approach is
to enter into dialogue and reach a negotiated solution with the other party on respectful terms, an

\textsuperscript{98} “Libya: Slow Pace of Reform Harms Rights; Prioritize Control of Militias, Detainee Abuse, Rule of Law,”
Human Rights Watch, February 6, 2013, \url{http://www.hrw.org/news/2013/02/06/libya-slow-pace-reform-harms-rights}.
\textsuperscript{99} While it is estimated between 25,000 and 30,000 people died during the Libyan revolution and many more were
injured, about 200-300 died in Tunisia, and 840 killed and many more injured in Egypt.
opposition group would have ultimately discussed with Gaddafi what they wanted – his removal from power. They could have gotten to this point by following Martin Luther King Jr.’s steps, starting out with a collection of the facts to determine injustices, negotiate with political and economic leaders, self-purify themselves, preparing for sacrifice, and then taking direct action, establishing tension in a way to bring about negotiations. If the revolution itself and the treatment of Gaddafi and his officials afterward had been nonviolent, they may not have held on to their grip of power and turned so violently on their own people. There would have been a better chance that Gaddafi would see this as a way in which he would not lose face. Using conversion, not coercion, as the modus operandi, it would have also established a basis for a nonviolent transitional government and the start of change in the culture that surrounded the government, questioning the norm of intimidation tactics.

During the revolution, punitive justice measures were enacted by many of the revolutionaries. They were angry for the injustices they had endured for many years and the suffering of those who had died in the pursuit of regime change and freedom from oppression. Those who were involved or perceived to be involved in the repression and heinous acts of violence by the regime were automatically labeled as the enemy, giving leave to an a swath of violence committed by revolutionaries. Vigilante justice acts mercilessly left many black Africans, who were seen as mercenary soldiers for Gaddafi, dead. In the end, Muammar Al-Gaddafi himself was killed in a brutal fashion and his bloodied body left for the public to view and spit on for four days.

The acts of the revolutionaries in pursuit of regime change were violent, the Gaddafi’s demise was violent, and the transitional government was violent in a number of ways as well.
This transition in general was marred by violence on all fronts at all times. This continues today in the form of vigilante justice killings and purges of ex-Gaddafi regime members, both in Libya and abroad in places like Egypt. Criminal justice and prosecutions, retroactive sanctions, and punitive justice measures continue. These do not fit under the nonviolence umbrella. These acts of violence and persecution muddle the line between the past and the present, making it harder to make a new start. The transition may have been easier and less muddled if the revolution had taken place nonviolently.

One may say that there was no choice in the matter in terms of nonviolence, that violence was the only option when dealing with a ranting madman who had declared war on his own people, claiming that they were drugged youth, saying that he would hunt down and cleanse the country “inch by inch, house by house, home by home, street by street, [and] person by person”. 100


Due to the nature of the Gaddafi regime as well as the nature of the transition, there are many challenges to address now in the new Libya. Since there were countless human rights violations that occurred during the Gaddafi regime from 1969-2011, as well as during the revolution from February 2011 to October 2011, and subsequently after the transition of power, there is a dire need for transitional justice in Libya. Steps must be taken so that society can rebuild, citizens can be reconciled, and the country can move forward and develop an inclusive, egalitarian society and government.

100 “Defiant Gaddafi vows to fight on.”
In this chapter I will evaluate the situation in Libya as it stands at the time of this paper’s submission, April 2013, and provide analysis and recommendations based on conflict resolution theory, transitional justice theory and practices, and with a particular focus on the springboard to dictatorship model, the psychology of dictatorship, and the psychology of change, looking on the residual impact of Gaddafī’s dictatorship on Libyan transitional justice.

5.1: Local Ownership

It is well documented in the conflict resolution and transitional justice fields that in order that a transition or process be successful and sustainable, it is best in the long run if a process is conducted with local ownership. Foreign advice can be taken, but locals should be in charge of the transitional justice processes. I recommend this pattern for Libya’s efforts at transitional justice, because of the long-term advantages of local ownership.

In the case of Libya, local ownership is especially important, for the people have had enough in terms of foreign intervention and control. They do not want to be told what to do and nor should they have to be told what to do any more.

Whether they like it or not, during the Gaddafī era the Libyan people were subject to Gaddafī’s ideology and ideas. Included in what he pounded into the population, he had an unwavering steadfastness in his abhorrence for Western intervention in Libya and around the world. It is inevitable that this bias has trickled down to at least some members of the population. Many Libyans grew up hearing these opinions. As such, there is a reluctance to depend upon foreigners and foreign intervention. This is another reason to limit overt foreign involvement in the transitional justice process. In any approach taken going forward, therefore, there must be sensitivity to the Libyan fear of foreign invasion or control.
Instead, foreign involvement is best kept to advice and in the development of local capacities, such as in education, teaching business skills, teaching about civil society and ways of getting involved, training in a variety of technologies, training for key positions in the economy, and enabling transitional justice programs.

Local ownership puts pressure and responsibility on the new government and the Libyan people to perform. It should be kept in mind that the informal normative systems that inform leader-follower relations, obedience and conformity, values, norms, and rules, will not change anytime soon, as described by the psychology of change.\textsuperscript{101} Libyans who are involved in the transitional justice process must recognize that this is the case and consciously and actively put safety measures, checks and balances, against passing policies that revert to the normative systems of the dictatorship era.

\section*{5.2: Security}

Security must be addressed before any substantial transitional justice measures can take place. The state of security right now in Libya is one of the top-most priorities for the transitional government. Without security and a firm rule of law implemented, it is difficult for both members of society and government officials to be fully involved in attempting to deal with the past through transitional justice measures. Stover et al. write, “…in a post-conflict situation…in which the state has collapsed, security trumps everything: It is the central pedestal that supports everything else.”\textsuperscript{102} The security situation is especially delicate because Gaddafi ran a centralized security state, backed by the resources generated from the petroleum industry. At a time when contextual factors that can be linked to the springboard to dictatorship, including perceived

\textsuperscript{101} See Section 2.1.2.
threats, both political and economic, internal and external, and a lack of decisive or charismatic leadership (which may lead people to wanting a potential dictator), exist, the new government has to be careful not to be too overbearing or controlling by using excessive force, while also keeping rogue elements in check. There is a delicate balance that needs to be struck.

The situation in Libya at the moment is as follows. Armed militia remnants from the revolution, mostly collective groups that formed in geographical areas, still command a great deal of armed power and leverage. Militia groups continue to stand and hold key security positions that would otherwise be run by state forces. This includes providing security for oil and gas complexes, the backbone of Libya’s economy. The government is trying to transition away from having militias in security positions by providing them jobs with the government, but a significant portion of militiamen have yet to transition over to working for the government.

There are a number of reasons why security is needed before prosecutions, lustration, reconciliation, truth seeking, and reparations can happen. For one, security, which includes an established rule of law, is needed prior to prosecutions, for without state control of security and prosecutions, those prosecutions may end up being carried out by militias and vigilante justice enforcers that kill or take part in human rights violations while the prosecuted is in jail. Security is also needed for restorative justice measures. Without security, victims’ needs cannot be addressed safely, socially just institutions and relations between states cannot be built, acknowledgment by perpetrators cannot happen without violent backlash, reparations cannot be decided upon in a orderly, smooth, or safe manner, and apologies may not have positive effects if they are followed by vigilante justice attacks.

Security has implications on the smooth running of the government, the General National Congress (GNC), and on the ability of the government to make decisions regarding transitional justice measures, for the GNC is the highest legal governing body in Libya. The actions of militia members have been disruptive on a number of occasions to the running of the GNC. Militias use force and intimidation to get what they want, a sign that the intimidation culture of the Gaddafi years has not subsided yet. For example, on March 5, 2013 the members of the GNC were gathered in the GNC to discuss the issue of lustration of Gaddafi-era officials from government positions. Armed men surrounded the building where the GNC was meeting and broke in, holding the GNC members hostage for 12 hours. Later, one GNC member, Hassan al-Amin, head of the human rights committee and long time expatriate rebel to Gaddafi, called on television for locals to get involved and save congress. Following this, he got death threats, leading him to resign. Acts like this prevent the government from running smoothly as well as put officials in danger. The citizens and government officials alike need to feel safe in order for the transitional justice process to run smoothly.

If citizens do not feel safe, they cannot participate to their full abilities in the budding civil society or express their opinions freely. Since Libyan culture remains conservative, women who speak out about developing women’s rights are vulnerable to attack by Islamic conservatives who still believe that the place of a woman is in the home. Even now, those who work in women’s rights groups, human rights law, and the International Committee of the Red Cross have been attacked and are at risk of being attacked again. A number of progressive Libyans have had to move abroad because of death threats and assaults made on them. Although
change happens slowly, no change can happen if civil society cannot have a safe and open
discussion about how the country will move forward.

Security is also linked with economic development, foreign investment, foreign
development aid, developing infrastructure, and boosting the oil industry, all elements that can
contribute to restorative justice. When a security situation is unstable or a country is in conflict,
the amount of aid and investment going into that country drops. If foreign investors or
organizations do not deem the country to be safe enough to operate in without considerable risk,
then they cannot get involved in a variety of projects, especially long-term projects and
commitments, which can help develop the Libyan economy or improve its civil society.

Although oil and gas production levels have reached their pre-war levels, availability is not the
only issue; safe access to these resources and safe management of the operations is necessary for
the revenues to be generated. Economic development and stability is important, for a stable and
working economy is linked with lower unemployment rates, which is much needed, especially
for the youth who still carry weapons.

One of the reasons why the security situation is so volatile and some people retain arms is
because they do not have enough confidence in the current government in terms of politics or
their ability to provide security to the people. The rule of law and security are linked directly
with good governance.

There is hope, however. When militias commit violent acts, there have been peaceful
protests on the part of many Libyans demanding the end to militia violence and rule. This
happened following the killing of the U.S. Ambassador to Libya and three other Americans on
September 11, 2012. Calls for protests continue to happen in response to intimidation tactics and
violent outbursts by militias. The Libyan people are getting increasingly fed up with militias attacking freedom of speech, government buildings and officials, and using intimidation to get what they want. As a news article relays, “despite the increase of number of incidents against public and private legitimate institutions by the militias, the public opinion is also increasingly moving into the support of the elected government and a stable secure and secure state.”

Under Gaddafi, Libya was run as a security state, with the army and security arms, but not the police, controlling a monopoly on violence and control of the people. The nature of this style of governance has left the people suspicious of a strong state security apparatus and sensitive to intimidation tactics. If the current government were to crack down on the people now in the name of security and stability, there is a chance that the people would not want a very strong military and police keeping them in order and accuse the current government of acting as Gaddafi did. Since the police were the non-violent state arm during the Gaddafi era, they maintain the good will of the people. As this is the case, a rule of law maintained by a non-military force, such as the police, might be ideal, at least for the foreseeable future.

The security arena is an area for advice and aid given by foreign governments. Both European and Arab nations have been involved in helping Libya to rebuild and reorganize their army. At the moment European experts are training Libyan security forces and police and rebuilding the army, navy, and air force. Arab partners are also helping along with European powers to help Libya to secure its long and porous border from terrorist elements.

There is much that needs to be done in terms of enforcing security, demobilizing militias, and enforcing a stable and secure rule of law. The new government has to be careful not to revert

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to dictatorial security policies. However, there is reason to be hopeful that the security situation will not endure for too long, seeing as public opinion is turning against militia thugs that want to use violence and intimidation to achieve their aims and is increasingly changing to support for the government over the militia groups. Also, so far, the government has not been reverting back to the security policies of the Gaddafi government.

5.3: Prosecutions

The subject of prosecutions is a delicate matter in Libya. The balance between punitive and restorative justice is fragile, for if too much punitive justice is sought, the country may focus too much on the past and cause new conflicts, instead of looking to rebuilding for the future. Prosecutions and incarcerations must be carried out in a nonviolent manner (including no death penalties), with due process and transparency in order that restorative justice can occur. This is particularly important because this was not the case under the Gaddafi regime. By following transparent and fair procedures in prosecutions, the new government has a chance to set itself apart from the previous regime as well as set a precedent for moving forward. These procedures can be a step in the right direction away from a culture of violence, intimidation, and government corruption and control, towards a more transparent government that is based on the rule of law. Doing so can also help in the goal of history lesson writing, establishing what happened, so that it does not happen again. However, the process will not be simple, for violence, intimidation, and government corruption are all informal normative systems that take time to change. At the same time, the Libyan government should be in charge of prosecutions, for it is only with local control of the matter that constructive prosecutions can take place.
Prosecutions so far in Libya are not being enforced in an entirely constructive manner. During the revolution and following the revolution many suspected Gaddafi supporters were thrown in jail and left there under brutal conditions.\textsuperscript{105} Human rights violations occurred in these prisons as well as illegal detainment.\textsuperscript{106} This is particularly the case in militia-run detainment facilities.\textsuperscript{107} The criminal justice system in Libya lacks much; both due process and humane treatment of jailed individuals is suspect. Some prosecutions against those who bear major responsibility for crimes, injustices, and human rights violations, have already been carried out, while others are awaiting implementation of prosecution. During the revolution, Gaddafi himself, as well as a number of his family members and top ranking officials were killed, leaving no time to put them through the court system or to establish any history lessons from any such prosecution.\textsuperscript{108} Without an established rule of law, supported by a definitive constitution, as well as security, it is difficult to completely endorse the local justice channels. However, local control is imperative for a lasting and constructive transition and the international community needs to take a step back and not get overly involved in the Libyan justice system. Also, as mentioned above, international interference beyond what is absolutely necessary or at an advisory level only, could aggravate the situation by causing a sense of foreign intrusion.

The ICC, which has taken interest and gotten involved in trying to prosecute Libyans, should not be involved, unless absolutely necessary. This necessity is unlikely to arise, despite the need for development of the justice system in Libya. Libyans are willing and for the most


\textsuperscript{106} Ibid.

\textsuperscript{107} Ibid.

\textsuperscript{108} Among those killed were Muammar al-Gaddafi and his sons Muatassim Gaddafi and Saif Al-Arab Gaddafi.
part capable of trying perpetrators domestically. The ICC issued warrants for arrest for Gaddafi’s son Saif Al-Islam Gaddafi and Gaddafi’s head of military intelligence, Abdullah Al-Senussi back in June 2011.\textsuperscript{109} Both Saif al-Islam and Abdullah Al-Senussi are indicted for crimes against humanity, with Saif Al-Islam accused of being “criminally responsible as indirect co-perpetrator” and Abdullah Al-Senussi as “criminally responsible as indirect perpetrator” for both murder and persecution.\textsuperscript{110} Saif Al-Islam and Abdullah Al-Senussi are now in Libyan custody. Libyans do want prosecution, but they want to do it on their own soil, under their own sovereignty. Since it is the ICC’s policy to allow prosecutions to happen when the local country is willing and able to do so, they should let the Libyans prosecute them. Having top-level officials tried in Libya would be a major boost to establishing the rule of law in Libya. Besides, since high-profile cases are under scrutiny by the international community in particular, it would be difficult for any vigilante justice to occur or for these individuals to be treated inhumanely, for word would get out about this treatment.

Another reason why the ICC should not be involved in prosecutions in Libya is because of Libyan sensitivity to outsiders meddling in their affairs. Both from previous history and from Libya’s history under Gaddafi, the Libyan people are sensitized to foreign involvement. If the international community gets too involved in prosecutions, it may cause ill will and not be productive.

\textsuperscript{109} There was also a warrant for the arrest of Muammar Al-Gaddafi from the ICC, but since he was killed, charges are no longer being enforced.

\textsuperscript{110} “Libya: Situation in Libya,” The International Criminal Court, February 26, 2011, \url{http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/ICC0111/Pages/situation%20index.aspx}. In other words, direct and structural violence.
The AU has not made any move to prosecute since the ICC got involved, and it should remain out of the picture. Again, the local institutions must be most involved in the prosecution process, for that is the best way for more constructive and restorative outcomes to come about. Also, since the AU had strong ties with Gaddafi, their prosecute his ex-regime officials does not seem likely. In fact, they made a point of not seeking to prosecute Gaddafi. If they were to get involved now, it would not only be too late, but it would be questionable as to how and why they would get involved.

In the end, it is best if prosecutions are left up to the local government. They need to step up to the plate and establish what kind of government and rule of law they are going to implement. In doing so, they can establish history lessons for the future, a firm rule of law that is not based on intimidation and violence, and have a chance to make their own way, and if they do it in a nonviolent, just, and transparent way, then the prosecutions can be considered productive and a part of restorative justice. This path will also help in steering the country away from reverting to dictatoral practices of the past and start the long transition and change to a culture of accountability and fair rule of law.

5.4: Lustration

Institutional reform through lustration is necessary for Libya to move forward, but we need to keep in mind the limitations to sudden change and develop solutions accordingly. As mentioned above, macro changes can happen at a faster rate than micro changes. As such, Libya faces a problem when it wants to deal with lustration. The trouble is, many if not most of those who have any experience with governance and running institutions held positions in the Gaddafi government or with association to it. Others have had to promote Gaddafi’s ideology in some
degree.\textsuperscript{111} Since ridding the government of many Gaddafi-era officials will leave a vacuum of governance capability in the country, I suggest that lustration only occur in the cases where there is evidence to prove severe wrongdoing during the Gaddafi era on the part of the officials and that others, including with those who have been elected to positions in the new government, be allowed to stay on in their official capacities, getting them to use their expertise for the common good of all Libyans, a case of reverse lustration.\textsuperscript{112} These officials can be kept in line by developing strong checks and balances within the government to prevent them from abusing their positions of public office, such as impeachment procedures in the case of wrongdoing.

As it so happens, the GNC is debating the implementation of a lustration law called the “Political Isolation Law”, which would exclude Gaddafi-era officials from holding public office for ten years.\textsuperscript{113} “The terms of the law would ban a swath of former Gaddafi officials from the government, civil service, police, judiciary and banking.”\textsuperscript{114} Those who hold public office now have their information reviewed by a body called the “Integrity and Patriotism Commission”, that decides whether an individual can hold office or not any longer. The individual can appeal the decision, but many have not done so. The process of vetting these officials and naming them publicly has already begun. This Political Isolation Law has disturbing similarities to the de-

\textsuperscript{111} Professors in university and teachers in primary and secondary education had to discuss Gaddafi’s Green Book and books shops had to carry the Green Book, for example.


\textsuperscript{113} See following article for further information, Valerie Stocker “The Constitutional Commission will be elected and the political isolation law is constitutional, rules Congress,” \textit{Libya Herald}, April 11, 2013, \url{http://www.libyaherald.com/2013/04/11/the-constituent-assembly-will-be-elected-and-the-political-isolation-law-is-constitutional-rules-congress/}. Debates concerning the constitutionality of this law have stopped, since the GNC ruled that the Political Isolation Law is constitutional. This decision cannot be overruled by the Supreme Court.


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Ba’athification program enacted in Iraq, which caused much trouble.\textsuperscript{115} It would also prevent members of the current government such as Mohamed Magarief, President of the GNC, and Prime Minister Ali Zeidan from holding office. Also it would expel Mahmoud Jibril, current leader of the National Forces Alliance, who also served as interim Prime Minister for seven and a half months during the transition.\textsuperscript{116} These members have been very influential and helpful in the transition, which to this point has been relatively successful.\textsuperscript{117} An issue with this is the assumption of guilt on the part of the officials. This process is without due process in the court system.

The Political Isolation Law and the amount of lustration that will be enacted has been a contentious topic in Libya from the start. There have been incidents where militias have committed acts of violence in order to move the Isolation Law forward and get it passed as soon as possible, without further discussion. Understandably, there are Libyans who would rather see Gaddafi-era officials out of public office positions. Since they have been subject to corruption in the government and injustices enacted by the government, they may feel safer just getting rid of all of those even slightly involved. For those who are worried, the process may be simplified by ensuring transparency in the vetting process, ensuring that those that do get excluded from public office have identifiable severe crimes that they were responsible for, and have a series of checks

\textsuperscript{115} For more details see Stover, et al., 830-857. This includes removing members from positions of authority and banning them from future employment in the public sector for 10 years, still having a chance for appeal, but which is limited, and assuming that ex-Gaddafi regime officials are all evil from the start (guilty until proven innocent).

\textsuperscript{116} The National Forces Alliance is a liberal political party, is considered more liberal than the Muslim Brotherhood’s Justice and Construction Party.

\textsuperscript{117} Although human rights violations did occur during the transition, given the history of the country and the culture of dictatorship, the new government has been able to be mostly nonviolent, free and mostly fair elections did take place, the government is gaining more legitimacy from the people, and the country is moving forward.
and balances in place in the government that would enable their ouster if evidence proves that they are abusing their power.

The Political Isolation Law should be working for restorative purposes as much as possible. In order to do so, the amount of further tensions that it creates needs to be kept in check. If certain individuals are excluded from government, where will they go and what will they do after that? The names that have not passed the screening checks by the Integrity and Patriotism Commission get published for everyone to see. Once they get singled out like that, they may be stigmatized, and it is not certain whether they will be able to get a job or not in other sectors. Exclusion of a whole swath of individuals would just lead to their unemployment and their discontent. This is not productive and may cause tension. Rather, their expertise and knowledge of the running of government should be used for the greater good.

I recommend that this Political Isolation Law be reviewed prior to its passing by the GNC. In order for reconciliation to come about, these individuals who held positions under the Gaddafi regime cannot be completely excluded. They have expertise and knowledge that can be used to better the country. Working together with those who are new to government would be in the better interest of the country in terms of efficiency of transition as well as for furthering of reconciliation.

I established above in the sections on the psychology of change and the psychology of dictatorship the limitations on the ability to change informal normative systems. The structure of the government that they had is what the people know and it is what those who have government experience know. A culture of corruption in the government is not likely to dissipate

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118 See Section 2.1.1 and Section 2.1.2
immediately. This applies to both those who were in public office under Gaddafí and those who were not. In order to alleviate fears of slipping back into past behaviors, as mentioned above, firm and enforceable checks and balances should be in place in the governing structure to get rid of bad apples, old or new, as they may arise. This can occur through government bodies or through the Libyan public during democratic elections.

5.5: Truth-Seeking

Under the Gaddafí era as well as through the transition there were countless injustices that took place and human rights violations committed. The timing of any truth-seeking measures is delicate and the efforts for finding the truth should follow what the victims want. In Libya truth-seeking measures, if and when they happen, should focus on both following what the victims need in terms of memory and healing, as well as establishing a clear picture of the violence caused by the Gaddafí regime in terms of direct violence, structural violence, and cultural violence, delving into the root causes of the abuses of power and injustices of the Gaddafí era. They should also be conducted in a nonviolent manner, so that those who give information are given amnesty and not put in danger.

A truth commission in Libya is potentially a helpful tool, although it ought to be approached carefully, with thoughtful attention paid to what the victims want and the local culture. Timing is a key factor, for it cannot be too soon or too late. As mentioned above, a truth commission should take place when it has a reasonable chance of success, when a nation says to itself that it is committed to changing gear and moving forward. Libya is not at this point yet. I would recommend that if there were to be a truth commission in Libya, it should not occur immediately. After all, the Truth and Reconciliation Commission in South Africa was arranged a
year after the change in power that occurred there. The point of a truth commission is to give the victims of serious crimes a space and a time to express what happened to them for their own catharsis and to write down the truth so that it is not forgotten. This can only happen when the victims are ready to come forward and discuss their pain, as well as move forward.

Another reason why a truth commission cannot happen just yet is there would be a danger in opening up very fresh wounds or stoking fires of conflict between tribes or with those that are remain pro-Gaddafi. Vigilante justice killings of ex-regime members and officials continue to be a common occurrence. As mentioned above, security needs to be in place, so that those who do come forward with information useful to transitional justice, memory, and healing do not become the victims of further violence. Since these killings continue to occur, I gauge that there is still negative and violent sentiment amongst the community, where not all individuals are ready to move forward. Another potential issue with a truth commission in Libya would be the inability or unwillingness of victims to come forward and tell their stories. For example, during the revolution there is evidence that Gaddafi distributed sex drugs to mercenaries and ordered them to rape women. In a conservative Muslim society it is doubtful that many of these women would come forward and acknowledge this experience due to the stigma that would be associated with being raped. Cultural sensitivity, as well as the wishes of the victims, must be kept in mind.

5.6: Reparations

Reparations, of course, are a tool for transitional justice that can be used in Libya and is already being used in Libya. The elements that De Greiff noted as being important considerations when dealing with reparations (completeness, comprehensiveness, complexity,
coherence, and finality) make for a useful framework for talking about reparations. The government, however, should be careful when dealing with reparations, for they cannot be seen as simply giving an array of handout and pay-offs. If they do so without sensitivity to the victims, then they may be in danger of following Gaddafí’s policies of simple distribution tactics, using the country’s oil wealth, to silence those that are causing trouble or demanding more from their government. Careful policy in reparations can show a clear change in the approaches of government in caring for the people, meeting the people’s needs, being fair, establishing a government of inclusion and not exclusion, and establishing a rule of law that reflects the illegality of the crimes committed on these people.

Reparations in Libya need to be complete and comprehensive, covering the wide range of potential beneficiaries. Who are those that deserve reparations within Libya and where should the reparations start and end? Those that should be considered for reparations should include: those who fought in the revolution and lost limbs, families who lost loved ones who were murdered by the Gaddafí regime or who died in the fighting during the revolution, those who lost their lives as a result of vigilante justice killings during and after the revolution because they were deemed to be Gaddafí supporters, women who were sexually assaulted by troops on either side during the fighting, as well as those who lost their homes and had to either move abroad or become internally displaced.\(^{120}\)

\(^{120}\) For example, Tawerghans became internally displaced on top of being attacked. The village of Tawergha was attacked by revolutionary militia groups during the revolution. The reason that was given for this was suspected affiliation or support for Gaddafí. Men, women, and children were killed, women raped, and homes destroyed. Recently a number of politicians and activists have had to move abroad for their own safety due to threats made on their life for their activism.
Reparations in Libya should be both internally and externally coherent. These reparations need to be coherent with other transitional justice mechanisms employed within the country, following similar elements of respect, inclusion, transparency, and development of democratic institutions. These reparations should also have an element of finality, a set period in which people can ask for reparations, for if it goes on indefinitely, then there may be too much and too long of a focus on the past.

5.7: Reconciliation

In Libya there is a dire need for reconciliation between those who were a part of the Gaddafi regime, no matter how long ago or how small a part they played in it, and those who were not a part of the regime, as well as those who fought against Gaddafi during the revolution. Before true reconciliation can begin, however, there are two prerequisites. For one, there needs to be stable security in place and two, all sides need to recognize and agree that it is in the best interest of the country to come together, cooperating and communicating, in order to have meaningful discussions about how to move forward in a peaceful manner. In this way, right relationships between individuals and groups within the country can be established. One way in which they can unite is to agree upon a superordinate goal of establishing a democratic and transparent government together.

Communication between all parties needs to happen in a respectful and inclusive way, not shutting out anyone, including former combatants from all sides, militiamen, Gaddafi supporters, and minority groups. This is the case not only within government, but also within

\[\text{De Greiff, “Introduction,” 11.}\]
society. There needs to be a conversation among the people about how they can work together and move forward together nonviolently.

All the while, the government cannot force forgiveness or repentance from anyone.

5.8: Infrastructure Development and Institutional Reform

Institutional reforms and development of infrastructure and state services for the people are a form of restorative justice, righting some of the root causes from which injustices under the Gaddafi regime came from. Making these reforms and developments is to the benefit of all of those who had to suffer under the structural and direct violence of the Gaddafi regime and can work against future structural or direct violence by the government. Institutional reform has to be focused on changing the practices of government by instituting checks and balances that ensure more democratic and fair practices.

Among the institutional reforms should be measures against corruption, as well as measures that promote and ensure transparency. There remains a lack of transparency in government institutions. This was the case under Gaddafi, it was the case during the year of National Transitional Council governance, and it remains the case now with issues of money and investment. Lack of transparency can lead to people in power abusing their positions for their own benefits and not the benefit of the government or the people. Managing Libya in a responsible way so that the oil money does not corrupt elites and does reach the people in an equitable way, avoiding the unequal structures that controlled the country as under Gaddafi, is important.

The socialist republic and distributive nature of the government left the country lacking a developed private sector. Institutions and infrastructure need to be developed so that young Libyans can be trained in useful and hirable employment, such as in technical, mechanical, management, educational, and business fields.

Measures that promote social justice would also tackle some of the institutional deficits in the country. This can come about through improving the health and education sectors, which were neglected during the Gaddafi regime. A report conducted by the Libyan Ministry of Education and the United National Children’s Fund on Libyan schools documents the damage done to the education system by both 42 years of dictatorship as well as damage inflicted during the revolution.123 A recent study of the Libyan health system ranked it the same as war zones.124

Infrastructure development can be related to the petroleum industry, as well as transportation and Internet access. Any developments related to the smooth running of the petroleum industry can be to the economic benefit of the Libyan people. Roads between the Eastern province of Cyrenaica and the Western Province of Tripolitania are scarce, reinforcing the divide between the two provinces. Quicker transportation infrastructure needs to be developed so that the country can be more connected and integrated. In order that freedom of information be more widely dispersed and communication amongst civil society improved, access to the Internet should be universal and without government surveillance.125

Through making these developments and reforms, restorative justice can be achieved.

125 Under the Gaddafi regime, the Internet was controlled and monitored by the government. In the wake of the revolution, the country has to rebuild telecommunications networks.
5.9: Governance

As the springboard to dictatorship model and the psychology of change show, change takes a long time. Dictatorship, in one form or another, has been the norm for Libyan politics for over the past century. Although rapid changes have taken place at the surface in terms of change in government structure and leadership, the informal normative systems that silently inform the actions of all Libyans will take time to change into more democratic and inclusive systems that move away from the cultural and structural violence that has dominated their country. As such, it is necessary to prepare for and adjust policies and approaches to these limitations.

The Libyan nation-state did not exist prior to 1951 and the concept of a single “Libya” only was applied under the Italian occupation in 1911. Prior to this, rule was divided into three territories: Tripolitania, Cyrenaica, and Fezzan. Even saying that rule was divided into three territories is stretching the facts. For a long time Libyan authority has been divided by tribe. On top of this, regional competition and biases persist, especially between Tripolitania and Cyrenaica. During the revolution, the various tribes, militias, and groups of people from different regions worked together to achieve the supra-ordinate goal of toppling Gaddafi. Following Gaddafi’s fall, a number of militias went autonomous, while the eastern region of Cyrenaica dabbled with establishing a federalist state. One way to overcome this issue may be to develop a bicameral legislature, such as exists in the United States, where there is representation by population of a state in one and even representation by state in another. This would create both checks and balances and potentially reduce regional rivalries and suspicions.

126 There was even violence during the July 2012 elections in the Eastern capital of Benghazi by federalists, those in Cyrenaica who want to establish a separate federal state of Cyrenaica.
Transitions can be furthered along when there is strong leadership in the government. Since the people may be afraid of another dictator rising to power if an individual at the top of government is deciding too much on his own, checks and balances should be established to prevent this from happening. A strong central government would also be helpful in coalescing legitimacy in the new government. However, similar to strong leadership, caution has to be exercised to make sure that pronouncements and declarations without consultation do not get out of hand.

Chapter 6: Conclusions

In this paper I have analyzed the Libyan challenge of transitional justice based on the specific history that the country experienced under Gaddafi and made recommendations for Libyan transitional justice based on the impact that Gaddafi had on the country. I have done so through the analytical frameworks of social psychology, conflict resolution theory, and transitional justice theory and practices, as detailed in Chapter 2. In Chapter 3 I analyzed Gaddafi’s Libya, how he came to power through the springboard to dictatorship model, and the most influential elements of Gaddafi’s government on Libyan transitional justice today. Chapter 4 followed with a look at what options were available for Gaddafi’s removal from power, examining the implications of NATO’s intervention, to a possible AU intervention, and the nonviolence approach. I concluded in Chapter 5 with my recommendations for Libyan transitional justice.

In sum, my recommendations for Libyan transitional justice are as follows. Keeping in mind the context of Libya, what would be best at this point would be a local approach that is buttressed by foreign consultation when required or requested. The situation must be approached
in a constructive way, balancing punitive justice and restorative justice measures. There is a “need to find an appropriate balance between accountability and human rights on the one hand and peace and reconciliation on the other.” Dealing with security is the top-most priority for the current government, for it needs a stable security situation before transitional justice measures can be carried out. Since the police were not involved in Gaddafi’s state security apparatus, the police would be a good candidate for enforcing security while also appearing more legitimate and benign than the military. Prosecutions should be carried out in a nonviolent manner, with attention paid to ensuring human rights and transparency. The Political Isolation Law needs to be reviewed prior to its passing to make sure that it is not similar to Bremer’s De-Ba’athification policy in Iraq. Instead of enforcing too much punitive justice in this arena, those who worked for the previous regime in any capacity should be kept in place and their knowledge and expertise used for the common good of all Libyans. A truth commission would be a useful tool down the line, but now is not the appropriate moment for it, because the people are not ready for it. Reparations need to be dealt out with sensitivity to the victims and be complete, comprehensive, complex, coherent, and final. All groups around the country need to come together in reconciliation, determined that they will cooperate and communicate with each other in order to have meaningful discussions about how to move forward in a peaceful manner. Infrastructure development and institutional reform are excellent ways to carry out restorative justice, righting some of the root causes of injustices carried out by the Gaddafi regime. Since the revolution was carried out violently, moving forward, the new government needs to rely on nonviolent methods as much as possible in order to retain legitimacy and work toward a

sustainable peace without further harm being caused that could aggravate the situation once more.

It will take time for Libya to move forward from the dictatorship years of Gaddafì and to develop a more democratic culture. Keeping in mind the psychology of change, there is a need for patience in attaining goals, and for sustained change of informal normative systems, including those that reinforce dictatorship. This knowledge should be built into the governing structure, including checks and balances of power, as well as transparency to lessen corruption.

There is reason to be hopeful. Unlike neighboring Arab Spring countries such as Egypt and Tunisia, Libya has the chance to make changes, for they have a new government structure. If the Libyan government and the Libyan people stick to nonviolent methods, make efforts towards ending corruption and violent structures in the government, balance both punitive justice and restorative justice, and decide to work together respectfully as one for the betterment of the country, then they truly may be on their way to achieving justice and peace.
Appendix A: Map of Libya Showing the Three Historical Provinces

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