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## Applying Transitional Justice Frameworks to the United States after Covid-19

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KATIE COYLE, OCT 29 2022

During a secret press briefing in the oval office on January 28, 2020, discussions turned to a mysterious pneumonia like outbreak in China. [1] This was not some geopolitical issue which could develop three years down the road, according to the National Security Advisor Robert. C. O'Brien, he informed Trump this virus could develop very quickly in the United States. Pottinger, on the National Security Council, agreed. He was particularly qualified to deliver this assessment. He had lived in China for seven years and, had written extensively on China's cover up of 2003 SARS outbreak. His work on SARS had been submitted for a Pulitzer Prize. In an interview with an expert, Pottinger had inquired whether this outbreak could be on par to SARS 2003, to which the official responded, "Don't think SARS 2003, think Influenza 1918." [2] A month later after this chilling warning, on the 27<sup>th</sup> February, Trump addressed the public. [3] The message he portrayed was that the virus would disappear like a "miracle". Later, on April 3, when there were 273,880 cases, the US president continued to stand by these remarks. In an interview with Bob Woodward on February 7th however, Trump provided an alternative view. He stated, "this is deadly stuff, you just breathe the air and that's how it's passed. It's also more deadly than even your strenuous flu." [4] Over one million US citizens have died from the virus. The US became the country with the highest level of Covid-19 deaths. The key ingredients of a transitioning society are present in the United States. There is a large scale of victims of human rights abuses, an unstable society, misleading policies and rhetoric, and institutional failings. As this paper will submit, however, applying transitional justice pillars to the United States faces significant barriers. A formal truth and reconciliation commission is necessary in the United States. This may serve as a first step in determining how to transition in the aftermath of Covid-19, to establish what went wrong, and most importantly to guarantee non-recurrence.

### Defining Transitional Justice

There can sometimes be unnecessary confusion about whether a country is in a period of "transition" or not, but practically speaking it is not that complicated. The question is whether an opportunity has emerged to address massive violations, even if it is a limited opportunity. [5]

Bell has argued that 'transitional justice discourses are themselves still in transition'. [6] Questions can be raised as to what constitutes transitional justice and when it is necessary. Determining how to implement transitional justice is a "task of first determining the problem". [7] Bell and O' Rourke argue transitional justice pose 'fundamental questions about what exactly transitional justice is transiting "from" and "to"'. [8] This can be compounded shifting scholarly conceptions as to what Transitional Justice is. Transitional justice, as a concept, arose in the 1980s and 1990s following the fall of authoritarian regimes in South America. [9] Ruti Teitel has defined transitional justice as "the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoing of repressive predecessor regime." [10] The ICTJ conceives of Transitional justice as, "the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response." [11] Transitional justice is generally associated with regime change, but it has also been adapted in democratic countries where grave human rights abuses have occurred. [12]

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Roht-Arriaza, widens the scope of transitional justice in 'Transitional Justice in the Twenty-First Century', as "that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law." [13] She however advocates against, "broadening the scope of what we mean by transitional justice to encompass the building of a just as well as peaceful society may make the effort so broad as to become meaningless". Mani, however, contends that building peace and building a just society are inseparable. [14] Orford proceeds to offer a much broader conception of transitional justice. She examines the "everydayness and bureaucratization of genocide and of massive human rights violations" through Australia's (1997) Bringing Them Home report on the separation of Aboriginal and Torres Strait Islander children from their families. [15] Similar examples can be found in the Royal Commission on Aboriginal Peoples (1996); the planned Residential Schools Truth and Reconciliation Commission; and the Greensboro (North Carolina) Truth Commission, Ireland's response to The Magdalene Laundries [16], and compensation funds established for victims subsequent to terrorist attacks such as 9/11. Transitional Justice frameworks have been and can also be used to address mass violations of human rights outside of authoritarian regimes. [17]

## Transitional Justice and Covid-19

From January 2020 to January 2021, the US had transformed from a country where there had been no prior reported Covid-19 cases to over twenty million cases in January 2021. [18] Some have attributed this to confusing rhetoric and misinformation on the part of the US president, with statements declaring "It's going to disappear. One day — it's like a miracle — it will disappear. And from our shores, we — you know, it could get worse before it gets better. It could maybe go away. We'll see what happens. Nobody really knows." [19] Two months later, US Covid related deaths had surpassed 100,000. A Cornell study into misinformation, has established that Trump was the largest driver of "infodemic" falsehoods with regards to the Covid-19 pandemic. [20] Sarah Evanega who is the director of the Cornell Alliance for Science and the study's lead author stated, "The biggest surprise was that the president of the United States was the single largest driver of misinformation around Covid." [21] Editors at the *New England Journal of Medicine (NEJM)* stated that the Trump administration's response of the COVID-19 pandemic, had "taken a crisis and turned it into a tragedy." [22] Rather than mere miscalculation according to interviews with Bob Woodward, Trump intentionally downplayed the risks of the virus. [23] Some have suggested that motivations stemmed from concerns for the economy and in order to protect the stock market. [24] This same misleading rhetoric could be observed a year later when it became apparent that Trump administration had falsely pledged vaccines for states. "The governors of several states accused the Trump administration of deception in pledging to immediately distribute millions of COVID-19 vaccine doses from a stockpile that the U.S. health secretary has since acknowledged does not exist." [25] Following this, the Biden team revealed that upon taking office, there was no vaccine distribution plan or public education campaign prepared by the Trump administration. [26]

The number of covid deaths and recorded cases is a scale of victims so numerous and so serious that the normal justice system will not be able to provide an adequate response. [27] The Mental Health Association in New York State have further referred to the 'collective trauma' anticipated in the wake of Covid-19. [28] It can be questioned, however, whether the harm suffered constitutes a human rights violation. International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Governments are obligated to take effective steps for the "prevention, treatment and control of epidemic, endemic, occupational and other diseases." [29] The US is not a signatory state to the International Covenant on Economic and Social Rights (CESCR), however, there is growing support for extending transitional justice to include Economic and Social rights [30]. Furthermore, it could be argued that the severe consequences of Covid-19 could extend such into the political realms of a right to life [31], and a right to free from cruel and inhumane treatment [32].

Anna Myriam Roccatello has stated that "transitional justice techniques are definitely something which should be used in the aftermath of the pandemic." [33] She argues that transitional justice should be used to address systemic abuses and harms linked to the legacy of slavery in the U.S. in order to heal the political divide which is evident here. [34]

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Some of this work, especially around repair and reparation, is already happening across the country in places such as Ferguson, Missouri, and Greensboro, North Carolina. More cities and states are now implementing transitional justice techniques, such as the Maryland Lynching Truth and Reconciliation Commission.[35]

She has argued that inadequacies in the US' response to the Covid-19 pandemic are indicative of greater institutional failings;

The United States is fortunate not to have experienced a recent civil war, but this country does have the sort of the massive division, broad-scale injustice, and weakened institutions that transitional justice projects seek to address in post-conflict areas. A minority-controlled government has left the U.S. completely incapable of responding to the COVID-19 pandemic. While the House of Representatives has passed relief bills, Trump and the Republican-controlled Senate have stalled attempts to send economic relief to millions of struggling people. And 400 years of unresolved oppression of Black people continues to result in state violence and mass incarceration. [36]

According to McGonigle Leyh, "the rule of law in the US has long been under attack from both external and internal forces." [37] Trump's presidential campaign was run on an 'anti-trade, anti-immigrant, anti-elitist and often racist and xenophobic' platform.[38] McGonigle Leyh argues that this make it clear that the US has never fully engaged with its exploitative, violent, and traumatic past. Some argue that the Covid-19 pandemic has further exposed a wider legacy of human rights violations which has never been addressed. The divergent political protests of the Black Lives Matter Movement following the killing of George Floyd and the attempt of insurgents to storm the US capitol have prompted many commentators to remark that the US is generally in need of transitional justice. The aims of transitional justice will vary depending on the context, potential pillars of traditional justice which may be applied to the US must be explored. Constant features to be considered are "the recognition of the dignity of individuals, the redress and acknowledgement of violations; and the aim to prevent them happening again." [39] De Greiff, "defines transitional justice as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation." [40] These can be achieved through the core pillars of [I] truth-seeking, [II] reparations, [III] criminal prosecutions, and [IV] reforms of law and institutions.

## Truth Seeking

This first step in any transitioning society, is to initially establish the harm itself that has occurred, and to what extent. Multiple commentators in the US have called for the establishment of a truth and reconciliation commission (TRC), not only with respect to Covid-19, but broader violations which have occurred under the Trump Administration. Gottlieb argues that "Any hope for reconciliation without a public reckoning is doomed to fail." [41] He calls for a wider TRC focusing on multiple issues which have occurred under the Trump administration, with sub committees of Human and Civil Rights abuses, Insurrection and Incitement to riot, Undermining American foundational principles, and a committee dedicated to Covid-19 which investigates the US role in "minimising the threat of the virus" and "spreading misinformation".

The South Africa (TRC) has been suggested as potential model for what a potential US commission may look like. [42][43] Established by parliament in response to Apartheid, South Africa's truth commission was comprised of seventeen commissioners and was chaired by Anglican Archbishop Desmond Tutu. The commission was supported by approximately 300 staff and divided into three committees. The TRC had an annual budget of approximately \$18 Million USD. Prior to presenting the final report to Nelson Mandela in 1998, the TRC took the testimony of approximately 21,000 victims with 2,000 of them appearing in public hearings. The report concluded with making recommendations for reform in African Society and the political system. The commission also made further recommendations for a reparations program with financial, symbolic, and community reparations. It was recommended that each victim should receive approximately \$3,500 USD each year for six years. While the plan was fully endorsed by president Mandela who issued a formal apology on behalf of the state, some reservations remained such as from the president of the ANC. Further issues remained with respect to the implementation of the report, with a body subsequently established in 2006 to ensure that the report was implemented. There were further issues with the reparations which had been advised, with long delays in financial remuneration and the government refusing to

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release the remaining money which had been reserved for reparations.[44] Despite these challenges the TRC was hailed to be an international success with dozens of countries subsequently following the South African example and setting up Truth and Reconciliation programs in countries such as Guatemala and Peru.

Most countries work through governments or the UN, the US has held variations of truth commissions, however, often organized by local organizers who are not affiliated with government organizations. The first of these programs was organized at the University of Mississippi in 1997. In accordance with the, "One America" initiative, this was aimed at encouraging community dialogue in addressing racial divisions. A series of conversations were started with a diverse group of Mississippians to address racial violence related to the civil rights movements and the killings of participants within the movement. The first formal truth commission in the U.S., however, was established in Greensboro, North Carolina in 1999. The Greensboro TRC concerned murders which had been perpetrated by the Klu-Klux Klan and the American Nazi party in the 1970's. In May 2006, the Greensboro commission released a 511-page report which allowed victims to express their experience, and framed the protests from the perspective of a greater human rights struggle. It has been argued, that the Greensboro TRC's biggest impact, however, was that it has inspired multiple other communities to begin their own reconciliation work.[45] Multiple grassroots projects have developed their own variations of truth commissions. Examples of these localised projects have explored legacies of racism in the Boston Public School system, the abuse of native children by child welfare agencies, and legacies of segregation in the metro Detroit area.[46] It can be argued that within the US, a government back truth commission is necessary, from a reparative lens of accountability. Government support can in itself constitute a form of reparations for victims. This was evident in the case of South Africa through the support and apology issued by Nelson Mandela.

Aside from these experiences, Congress has also conducted investigations to expose wrongdoing. These include the Commission on Wartime and Relocation, the National Commission on Terrorist Attacks on the United States, and an investigation into the Iran-Contra affair. Investigations have also been conducted by the senate into the George W. Bush's involvement in the torture of terrorist suspects (albeit despite fierce opposition). [47] Another example of National commissions which have been established include the Belmont Report[48] which was assembled to respond to racial-based abuses, such as the National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research.[49] Currently, a commission is underway in the US to address potential reforms to the Supreme Court. Many have remained critical of these efforts, however, with organisations such as 'Demand Justice' arguing that the "commission made up mostly of academics, that includes far-right voices and is not tasked with making formal recommendations, is unlikely to meaningfully advance the ball on Court reform." The People's Parity Project, has also criticised a seeming lack of authority attached to the commission, "The urgency of court reform should not be treated as an intellectual exercise, but as something that has a direct impact on the lives of real people." [50]

The scale and nature of the Covid-19 pandemic calls for an independently commissioned TRC. This would be more in line with the South African Commission, and alike such, could possess subpoena power to compel testimony and production of documents. Advocating for such, Sabatello suggests "The TRC should comprise of diverse members, led by leaders from underserved and well-served populations, and provide historical information and cultural competency training before the beginning of sessions to address misperceptions that all members of the committee may have." [51] The Commission would be mandated to hold public hearings where witnesses identified as victims would be invited to give public testimony about their experiences. The TRC could be charged with establishing a fund to pay victims monetary damages and the commission would also be tasked with making recommendations for reform in order guarantee non-recurrence. As Hayner notes, a TRC can be the "starting point from which other measures for accountability, reparations, and reforms may be developed." [52]

## Reparations

De Greiff, refers to reparations as a "form of relief offered for calamities outside the realm of a civilised world." [53] Reparations are required as a means to recognize victims as victims and foster civil trust and social solidarity. While it has been established that a truth commission would be an appropriate initial step in addressing harms, a potential truth commission in the US could also establish any financial redress due to victims as was determined in South Africa.

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In the absence of a truth commission, however, there is still a potential that victims from Covid-19 could receive financial reparations through alternative means such as through a compensation fund alike the fund adopted subsequent to 9/11. The limitations of such a program are evident from the 9/11 fund, however. Failings in the administrative and individualised nature of the 9/11 fund can be traced to congressional motivations to prevent tort litigation against airlines industries. There was also a “perceived unseemliness of providing compensation to companies, but not individuals.”[54] In administering the fund, Kenneth R. Feinberg was appointed as Special Master and approximately \$4 billion of the fund was directed to compensate victims of the \$15 billion which had been directed to bail out the airline industry.[55] Bringing justice for victims was not mentioned at any point during the funds promulgations. Restitution was further absent from the 9/11 fund, unlike the other reparation schemes such as those utilized in Germany post-WWII and in the aftermath of the Argentinian War.

The 9/11 fund further solicited a public comment period in order to determine how individual experiences could best be compensated in a bid to ‘lure individuals from the tort system’. Critics of the fund commented that it should be distributed evenly, each loss should be considered indistinguishable rather than a fund which “declared a dishwasher’s life less valuable than that of a stockbroker”. [56] Determinations were further held to be discriminatory against women and minorities. In retrospect commenting on the fund Feinberg has stated, “that the 9/11 fund formula was defective. Instead, if Congress decides to provide compensation in the event of a new terrorist attack, all eligible claimants should receive the same amount”. Personal injury claims also proved to be particularly challenging, not least on the basis that much more were filled than had previously been anticipated. Master Feinberg noted that he had anticipated no more than 300 claims, let alone the 4,4000 which were filed.[57]

Questions arise as to whether such a fund could be administered for the victims of Covid-19. Questions may arise to the scope of victims, the burden of proof, and policy concerns of frivolous litigation. Lastly, and potentially the greatest barrier is the significant number of victims of Covid-19. With over 30M cases in the US and over 577, 000 deaths, this is a far cry from the 4,400 submissions which Feinberg received. The potential to recover under the fund just for families of those who have died, would requires over \$139, 250, 000,000. Feinberg has now overseen multiple victim’s compensations programs including the BP oil spill, the Pulse Nightclub shooting, and the Boston Marathon bombing.[58] He has commented that a similar reparations program is impractical due to the “scale of the suffering.”[59] Compensation funds set up after the 2013 Boston marathon bombing and 2016 Pulse nightclub shooting in Orlando logged roughly 230 and 310 eligible claims, respectively.[60] Nonetheless, U.S. lawmakers have proposed a handful of bills for such a fund, including Reps. Adriano Espaillat[61] and Carolyn Maloney.”[62] In submitting the bill, Maloney commented that it “is modelled after the successful September 11th Victim Compensation Fund.”[63] These bills seemingly perpetuate similar reparative issues as demonstrated by the 9/11 compensation fund. The nature of the 9/11 fund is not in line with reparative concepts of justice. If a Covid-19 fund were to be established in a similar manner, it would likely not calculate pain and suffering. Furthermore, it has the potential to further exacerbate the inequalities through rewarding lower compensation to those in lower wage employment, women and minorities. Covid-19 compensation may be more in line with principles of ‘reparative justice’ if distributed evenly and in line with previous restitutive models such as Argentina and South Africa. Likewise, a truth commission has the potential to serve as a mediator in determining compensation.

Financial compensation is only one of various reparations that can be provided to victims. Acknowledgement in the form of a TRC, and a public apology can also provide reparative relief for victim. Previous cases such as the Irish Magdalene Laundries[64] and the Canadian indigenous schools program[65] indicate that such an apology need not necessarily be issued directly by the perpetrator. Another crucial way to ensure reparations and recovery for victims would be to establish additional social supports such as education and psychological support for victims. Scholars such as Dixon[66] and Hamber[67] have noted the psychological healing natures of reparations.

De Greiff has noted how unaddressed specific traumatic events may lock countries in repeated cycles of violence.[68] He additionally states that in the presence of “high levels of inequality, poverty and unemployment, where people’s sense of dignity and self-worth are severely compromised on a daily basis, violent behaviour can become a simple means of taking back the control people are denied in their life.” [69] He advocates for, “Trauma counselling [to] be used to overcome and transform victim/perpetrator identities, as an important step towards reaching a conclusion.”[70] The impacts of Covid-19 have been referred to as a ‘shared trauma’. Aside from

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emerging data indicating long term physical impacts of Covid-19[71]. Studies have indicated emerging psychiatric conditions as a consequence of the disease, especially depression, anxiety and post-traumatic stress disorder (PTSD).[72] The Mental Health Association in New York State has already called for the legislature and executive to take steps to deliver trauma informed mental health assistance to those impacted by Covid-19.[73] The provision of mental health support in the US is an important avenue to be explored.

## **Criminal Prosecutions**

Prosecuting a president after they leave office is unprecedented in American history. Nonetheless, Trump currently faces criminal legal action for multiple allegations.[74] Manhattan District Attorney Cyrus Vance Jr. is investigating Trump for potential bank and tax fraud. Ga. District Attorney Fani Willis is investigating Trump's call to ask that the secretary of state in Georgia "just ... find 11,780 votes".[75] Prosecuting a former president for alternative offences, is not reparative justice for victim, however. This poses questions as to whether potential charges could be brought with regards to Covid-19.

On an individual basis, citizens have and can be charged for knowingly spreading the virus. Deputy Attorney General, Jeffrey Rosen distributed a memorandum rather encouraging the prosecution of people for "the purposeful exposure and infection of others to Covid-19" under national terrorism laws.[76] People who have faced such charges include a woman who purposely coughed on produce in Walmart, and a Pennsylvanian man who deliberately coughed near an elderly man with pneumonia. Additionally, US citizens face liability under communicable disease laws, under assault and battery, harassment, and reckless endangerment. A Hawaii couple were charged with second-degree reckless endangerment for boarding a flight after testing positive for Covid-19. An absence of intent makes it unlikely that Trump could be charged under terrorism laws or for assault. There remains the question as to whether Trump could face criminal liability for criminal negligence.[77] Federal and state laws in the US define criminal negligence as a gross or reckless disregard for human life, resulting in serious injury or death. It must also be established that the defendant was not mistaken or they acted in a way so careless no reasonable person would. It is undeniable that Trump acted with a reckless disregard for human life. Not only through attempts to downplay the virus but public political rallies which violated the WHO's pandemic guidelines. Criminal law would require a clearer relationship between the perpetrator and the victim, however. It is much more difficult to establish guilt for collective suffering, especially with all the variables of a disease.

There has furthermore been a reluctance to criminally prosecute former US presidents for policies adopted. Organizations such as Amnesty International called for the prosecution of President W. Bush in response to a mandated torture program and the forced disappearances of terrorist suspects. [78] In spite of the establishment of these crimes, the US Attorney General, indicated great resistance to any potential criminal prosecutions which could arise. Even redefining torture to avoid prosecution.[79] The 2006 Military Commissions Act revised the War Crimes Act and limited the definition of war crimes, with retroactive effect. Sarat has commented that the US system adopts a different approach to executive accountability to other states such as South Korea and France. She notes that the US approach, dating back to the 17<sup>th</sup> century, is to "hold elected officials accountable through elections, which (in theory) incentivize those officials to perform their duties well". She further suggests that turning to criminal law could also have the impact of emboldening Trump's most fervent supporters in the perception of Trump as a martyr. This carries the risk of further dividing an "already dangerously divided nation". Prosecutions in the absence of truth and reconciliation mechanisms could further exacerbate the issues which transitional justice seeks to address.[80] As Hayner notes, a "difference between trials and truth commissions is the nature and extent of their attention to victims." [81] While victims can be called to testify during a trial, usually very few victims are called to testify in criminal trials, in which case their testimonies may be "directly and perhaps aggressively challenged by the defense attorneys in court." [82] Truth commissions focus primarily on the victims and can improve the understanding of victims needs. "By listening to victims' stories, perhaps holding public hearings and publishing a report that describes a broad array of experiences of suffering, commissions effectively give victims a public voice and bring their suffering to the awareness of the broader public." [83] On this basis, the establishment of a TRC would be more in line with concepts of Transitional Justice than a criminal prosecution.

## **Reform**

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Roccatello argues that more than any particular program, transitional justice provides “a mindset: a recognition that a country needs to go beyond reform, and fundamentally evolve and change”. She acknowledges that despite a reluctance to amend the federal government or the constitution that “just as you can’t expect the government recovering from a dictatorship to look the same after a transition, you can’t expect the U.S. to look the same after the sort of transition justice program it needs”. Special Rapporteur\*[84] De Greiff[85] has emphasised the importance of legal empowerment and the creation of an enabling environment in order for civil society to discharge its crucial role in the transitioning context. Commentators have further pointed to key economic and political structural failings in American society. There have been calls to raise the minimum wage, increase workers’ rights, access to unions and to prevent meddling of corporations in elections. [86] In the wake of the George Floyd protests, sweeping police reform bills are currently in progress.[87] As has been noted, a commission has also recently been established to review the US Supreme Court. Adam Cohen had pointed to the highly politicised nature of the Supreme Court as the core of US inequalities today.[88] Presidents have coerced judges off the court who were not in line with their political ideologies.[89] This, he argues, has contributed to landmark judgements such as *San Antonio Independent School District v. Rodriguez*[90] which upheld inequalities in the US education system, and *Citizens United v. FEC*[91], which upheld the ability of corporations to fund election campaigns. This may indicate a corrosion of the separation of powers within the US.[92] According to a 2019 Quinnipiac University poll, 51% of American voters believe the Supreme Court “should be restructured in order to reduce the influence of politics.” A variety of Supreme Court reforms have been proposed such as court packing, a balanced bench, and term limits.[93]

Additional structural reforms in the US could focus on improved economic and social rights. In adherence to international law, the US could ratify additional treaties such as the Convention on Economic and Social Rights.[94] The Covid-19 pandemic has exposed vast inequalities with regards to poverty and access to healthcare per Philip Alston.[95] Krieger has noted that African Americans are dying from COVID-19 at higher rates than whites, even though they make up a smaller percentage of the population. The death toll among Blacks/AAs and Latinxs from Covid-19 is on average 5.6 and 4.3 times higher than that for Whites.[96] Commentators have argued that the need for health care reforms that ensure universal access to affordable care for all Americans have never been more apparent”. [97] Sabatello further argues that the US health care system alone calls for transitional justice mechanisms and a TRC.[98] “Although the U.S is neither a fragile democracy nor in the process of moving from a totalitarian to a democratic regime in its state and Federal governance structures, its healthcare system displays characteristics of an authoritarian regime.”[99] As has been noted by Ballou and Landreneau, the system was established by a powerful few consisting of white male physicians and administrators. They further highlight that the system remains controlled by private, corporatized bureaucrats and is resistant to change or democratization.[100] Sabatello argues that the current system of health care in the US is comparable to that of apartheid South Africa where “clinicians often cooperated, or were complicit with, a segregated healthcare system, public health policies that ignored diseases affecting primarily Black people, and a political system that systematically denied social determinants of health (e.g. clean water supply) to the Black population”.[101] A Covid-19 TRC could not only address administrative failings which contributed to the spread of the virus but additional structural issues in the US healthcare system which contributed to its disparate impact on minority populations.

## Conclusion

While it is undeniable that the Covid-19 pandemic has created large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response, further questions can be raised as to whether the pandemic has in fact created human rights violations so numerous that even traditional transitional frameworks may be challenged. A myriad of issues in the US have been illustrated through the Covid-19 pandemic, from the disparate impact of an authoritarian healthcare system, to the deliberate decision of the state’s highest ranking official to downplay the virus. As has been illustrated, questions can be raised as to the practicality of a compensation fund comparable to that previously incorporated in response to tragedies such as 9/11 and the Boston Marathon bombing. Further barriers can be seen in any potential prosecutions which could be bought forth. A lack of ‘proximity to victims’ makes it highly untenable. Although, a TRC could at least garner some form of political liability in the absence of justice in national courts. This paper submits that at the very least, a truth commission is necessary in order to reach the starting point of transitioning the US after Covid-19. While countries globally have suffered immensely as a result of the virus, it can be further questioned whether similar

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commissions are required in other jurisdictions, comprised of experts in both legal and medical fields. The US should lead by example in order to pinpoint the institutional issues that contributed to and culminated in over a million dead citizens, and potentially prevent a similar biological disaster from occurring again.

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## Notes

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[2] *Id.*

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[9] Brianne McGonigle Leyh, "No Justice, No Peace: The United States of America Needs Transitional Justice", (Opinio Juris, May 2020) available at: [opiniojuris.org/2020/06/05/no-justice-no-peace-the-united-states-of-america-needs-transitional-justice/](http://opiniojuris.org/2020/06/05/no-justice-no-peace-the-united-states-of-america-needs-transitional-justice/)

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[12] Nasser Hussain and Austin Sarat, "Responding to Lawlessness: What Does the Rule of Law Require", in "When Governments Break the Law: The Rule of Law and the Prosecution of the Bush Administration." (New York: New York University Press, 2010), 20.)

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