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Karma after Democratic Kampuchea: Justice Outside the Khmer Rouge Tribunal

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The Khmer Rouge regime, a Maoist communist regime that ruled Cambodia between 1975 and 1979, claimed the lives of up to one third of the Cambodian population, and devastated the country by dismantling government, education, religion, healthcare and law.¹ Since its deposal in 1979, the question of how to determine justice for victims of the Khmer Rouge regime has held national and international interest. The regime, and its subsequent rendering in public record and memory, has been highly politicized, both in Cambodia and abroad, from a politics of demonization in the 1980s,² through the shadows and mirrors of the early 1990s (“the practices and policies of the past”),³ to a past that, according to the Prime Minister, Hun Sen, should be “buried,” and what David Chandler calls the “collective amnesia” of the 1990s).⁴ In recent years there has been a turn towards considering the treatment of the Khmer Rouge within an international model of criminal justice and reconciliation, played out in the hybrid courts of the Extraordinary Chambers in the Courts of Cambodia (ECCC). As a highly visible institution, the ECCC stands as a symbol of government and international responsibility – supposedly for Cambodian people, but also aimed towards the global sphere and an international rhetoric of justice framed within transitional processes of democratization and liberalization.

This article steps outside the Extraordinary Chambers to consider how people in rural Cambodia, who have not been involved in the court, create their own understandings and lived experiences of the Khmer Rouge regime. I do this by examining how people use ‘karma’ to account for the genocide and its consequences.⁵ By stepping outside the court, I consider ways of dealing with genocide that exist beyond the international framework of transitional justice and the narratives it produces, and by doing so, ask wider questions of what justice is and does. This allows a consideration of the many different ways justice is understood, framed, narrated, and enacted, in Cambodia, particularly in lives that are far distant (metaphorically, physically, and temporally) from the court.

After introducing the ECCC, I will explain karma as explained to me by my research participants (including lay people and Buddhist monks), before introducing case studies from my research. This paper is a study of the everyday enactment of Buddhism, rather than being a paper in Buddhist studies that considers the lexicon or formal teachings of the religion. The voices of my informants are presented, and my understanding and analysis of their use of the term karma in narrating these circumstances, follows.⁶ The discussion I develop asks for an appreciation of the

* This article went to press before the verdict of case 002/02 on 16 November 2018, when in a landmark verdict, Nuon Chea and Khieu Samphan were the first people to be convicted of genocide by the ECCC.

¹ For a comprehensive description of the Khmer Rouge, read Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia Under the Khmer Rouge, 1975 – 1979*, 3rd ed. (New Haven: Yale University Press, 2008).

² David Chandler, “Cambodia Deals with its Past: Collective Memory, Demonisation and Induced Amnesia,” *Totalitarian Movements and Political Religions* 9, no. 2-3 (2008), 355–369.

³ Tom Fawthrop and Helen Jarvis, *Getting Away with Genocide? Elusive Justice and the Khmer Rouge Tribunal* (London: Pluto Press, 2004).

⁴ Chandler, *Cambodia Deals with its Past*, 355.

⁵ Although some scholars debate the validity of the term genocide for Cambodia (see Ben Kiernan, “The Cambodian Genocide: Issue and Responses,” in *Genocide: Conceptual and Historical Dimensions*, ed. George Andreopoulos (Philadelphia: University of Pennsylvania Press, 1997), 191–228; and William Schabas, “Problems of International Codification - Were the Atrocities in Cambodia and Kosovo Genocide?” *New England Law Review* 35 (2000), 287–302, I follow Ben Kiernan’s conviction that the term is appropriate, due to the nature of the Khmer Rouge regime’s rule, which was based on an ideology of purity that led to the disproportionate targeting of ethnic minorities among those killed (see *Blood and Soil: A World History of Genocide and Extermination from Sparta to Dafur* (New Haven: Yale University Press, 2007), 540–554).

⁶ Michael Jackson (*The Politics of Storytelling: Variations on a Theme by Hannah Arendt* (Copenhagen: Museum Tusulanum Press, 2013, 17)) argues that stories are a form of sociality - creating belonging to family, friends, even nations - but they are also transformative, particularly when told in relation to suffering, when stories are also told to recount and rework events that befell us, enabling us to recover “a sense of ourselves as actors and agents in the face of experiences that make us feel insignificant, unrecognized, or powerless” (ibid.). Because of this, stories are always

way people in Cambodia draw on existing frameworks of knowledge and understanding to make sense of their history. By exploring how people make sense of violence and national tragedy on the everyday level I also provide a space to hear stories and voices from beyond the court – the voices of all people: those who killed people; those whose people were killed; those who do not fit into the neat categories of victim and perpetrator that a court requires.

By allowing for modes of dealing with the past outside the court, I provide a way of thinking that does not confine justice to one cosmological or conceptual configuration. Justice is a dynamic and ongoing process, and I suggest that the many overlapping domains in which it is enacted, even when conceptually at odds, exist simultaneously. Considering the local case-study of Cambodia allows me to posit then, that rather than a dichotomy between (inter)national and local forms of understanding and providing “justice,” the different frameworks are co-existing forms of global interaction; sometimes at odds with each other; sometimes complementary; often times unrelated but important companions.

The Research

This article results from an ongoing exploration into the Khmer Rouge regime in contemporary Cambodia. Most of the research was conducted during ethnographic fieldwork between June 2012 and December 2013, with a return trip of one month in 2017. The main focus of this research was an examination of mass graves from the Khmer Rouge regime and the politics of the dead within them. The fieldwork was multi-sited, focussing on two primary locations (Choeung Ek Genocidal Center, Phnom Penh, and an island in the Bassac river I have named Koh Sap), with visits to fifteen other locations across Cambodia, at which I spent varying amounts of time, ranging from a few hours to a few weeks. The research consisted of a mixture of participant-observation, formal and informal interviews, and the collection of archival data. Informants ranged from rural farmers, to ministerial advisors, Buddhist monks at all levels of the *sangha*,⁷ professors at universities in Phnom Penh, other religious personnel including Buddhist *âchaa*,⁸ Islamic teachers, and a range of other people. Both men and women were participants in the research. Some interviews were conducted in semi-formal environments, many happened conversationally as we went about everyday life. A research assistant accompanied me throughout my research and was an active participant in all data collected.⁹ Interviews were primarily conducted in Khmer and then transcribed into English. The names of all informants have been changed.

Transitional Justice and the ECCC

The rhetoric of transitional justice originally considered justice to be situated within democratization and liberalization processes, particularly in post-authoritarian states. Accountability for past crimes and human rights abuses was considered central to this. This rhetoric has become so embedded in the international imaginary that as Dustin Sharp points out, “for many, the question is no longer whether transitional justice is needed in the wake of dictatorship or mass atrocity, but how it should be implemented.”¹⁰ This has led to a certain institutionalisation of processes across the globe. However, as Sharp also argues, recent models have widened the scope, positioning transitional justice within wider peace-building contexts outside liberalization.¹¹ These narratives consider the restorative potential of justice systems, and the need to disembed the narrow confines

partial, selective, and agentive, excluding the complex inter-relational spheres in which events happen and are understood. They are also socio-culturally mediated and use specific frameworks and narratological devices to make them shareable and relatable. Thus I use the term narrative to refer to the stories that people tell that exist within cultural spheres of communication and are agents of sociality and transformation in the post-conflict environment.

⁷ The Buddhist monastic order (Khmer words are transcribed using the Huffman system of transliteration except for words that have attained a common written form, such as *Pchum Benh*, *preta*, and *neak ta*).

⁸ Lay ritual specialists.

⁹ Thanks in particular to Um Sompoah and Res Phasy for their help and support in collecting this data.

¹⁰ Dustin Sharp, “Emancipating Transitional Justice from the Bonds of Paradigmatic Transition,” *International Journal of Transitional Justice* 9, no. 1 (2015), 153.

¹¹ *Ibid.*

of the liberalizing framework that may not fit with local cosmologies and justice systems. It is in this sphere that the Extraordinary Chambers in the Courts of Cambodia sits.

Established in 2005, the ECCC is one of only a handful of hybrid courts in the world, where international and national personnel work in partnership to try perpetrators of mass violence. Situated in Cambodia, but established through agreement between the UN and the Cambodian government, the ECCC aims to unite national and international perspectives on justice, and by doing so, create political change as well as judicial influence and oversight.¹² Although primarily following a retributive model, aimed at punishing the leaders of the Khmer Rouge regime for crimes directly associated with their actions, its wider aims are restorative, and include widespread civil party engagement, a reparation plan, and an outreach programme stretching across Cambodia.¹³ The effects of these efforts, particularly the civil party engagement, has been the creation of a court which is a unique hybridisation between local modes of being in the world and internationalised systems of transitional justice. To date the court has concluded two cases: in 2010 former commandant of S-21, Kaing Guek Eav (Duch) was found guilty of crimes against humanity and grave breaches of the Geneva Conventions (case 001), and in 2014 Nuon Chea (Brother Number Two) and Khieu Samphan (President of Democratic Kampuchea) were found guilty of crimes against humanity (case 002/01). Cases 003 and 004 are in progress.

Much of the literature (academic and public) on justice in Cambodia concentrates on the ECCC as the central forum of transitional justice. Those who argue against the court pay attention to its many compromises and asserted failures – for example, the temporal restrictions of only investigating crimes conducted between 1975 – 1979 (which obscures the geopolitical circumstances that aided the regime both before and after its rule);¹⁴ the endemic corruption and ongoing interference of the Cambodian government;¹⁵ and the personal jurisdiction which limits its cases to only the top cadre deemed “most responsible” for the crimes of the regime (thereby obscuring others who committed atrocious crimes, as well as further compounding the political impunity that runs rife in Cambodia).¹⁶ These, as well as many other issues, are examined in minute detail by scholars and the media, and deemed to affect the court’s ability to administer justice in, and for, Cambodia.¹⁷

These discussions primarily position the perceived failure of the courts with the Cambodians, rather than considering the incommensurability of the transitional justice system within the Khmer sphere;¹⁸ the “friction” as Alexandra Kent calls it of the “co-performance [of] justice” between the international system and the Khmer reality of patronage-based social encounters.¹⁹ By positioning Cambodia as a failing state, as well as considering the international framework of justice as the only relevant one, these critiques fail to engage with the ways the ECCC has some influence and arguable success, and the key features that make it distinctive among international courts. Wendy Lambourne argues that whilst there are many compromises, there is symbolic value to the court,

¹² Duncan McCargo, “Politics by Other Means? The Virtual Trials of the Khmer Rouge Tribunal,” *International Affairs* 87, no. 3 (2011), 613-627.

¹³ “Home page,” Extraordinary Chambers in the Courts of Cambodia (ECCC), accessed October 25, 2018, <https://www.eccc.gov.kh/en>.

¹⁴ Alexander Laban Hinton, “Justice and Time in the Khmer Rouge Tribunal: In Memory of Vann Nath, Painter and S-21 Survivor,” *Genocide Studies and Prevention: An International Journal* 8, no. 2 (2014), 7-17.

¹⁵ Joel Brinkley, “Justice Squandered: Cambodia’s Khmer Rouge Tribunal,” *World Affairs* 176, no. 3 (2013), 41-48.

¹⁶ McCargo, *Politics by Other Means?*

¹⁷ The list of articles critiquing the ECCC in the mainstream media is too vast to list here. In addition to those academic works listed above, readers are also directed to John D. Ciorciari and Anne Heindel, *Forging a Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia* (Ann Arbor: University of Michigan Press, 2014); Mneesha Gellman, “No Justice, No Peace? National Reconciliation and Local Conflict Resolution in Cambodia,” *Asian Perspective* 32, no. 2 (2008), 37-57; Abby Seiff, “Seeking Justice in the Killing Fields,” *ABA Journal, Chicago* 99, no. 3 (2013), 52-57; Kheang Un, “The Khmer Rouge Tribunal: A Politically Compromised Search for Justice,” *The Journal of Asian Studies* 72, no. 4, (2013), 783-792; Allen Yang, “No Redemption: The Failing Khmer Rouge Trial,” *Harvard International Review* 29, no. 4, (2008), 11-12.

¹⁸ These arguments follow Kamari Maxine Clarke’s critique of transitional justice whereby the global is not readily localised, as laid out in McCargo, *Politics by Other Means?*, 622.

¹⁹ Alexandra Kent, “Friction and Security at the Khmer Rouge Tribunal,” *Sojourn: Journal of Social Issues in Southeast Asia* 28, no. 2 (2013), 299-328.

particularly as “some evidence suggests that the details of the charges are not as important for the survivors as simply seeing their former leaders in court and behind bars.”²⁰ Cheryl White argues that civil party participation has led to discursive proceedings that complicated the international frames of justice by expanding dialogue within the trial “beyond purely evidentiary matters,” thus enabling restorative mechanisms more akin to Truth Commissions than international criminal courts.²¹ Eve Zucker, meanwhile, suggests that one of its primary criticisms – the restriction of personnel – may in fact work towards its restorative aims, by helping smooth some form of local reconciliation made possible by laying the blame for the violence at the feet of only the high-level Khmer Rouge, enabling low level cadre to re-enter communities.²²

Whilst useful in consideration of the court as a central political institution in the process of justice, by limiting their frame to the ECCC, these considerations omit the many facets of justice that exist outside and beyond the court, and are part of the way Cambodian people make sense of that specific part of history in their day to day lives. As Alexander Laban Hinton states: “one of the key dangers of the transitional justice imaginary is that it directs attention away from social practice and the ways in which the meaning and understanding of such transitional justice processes are negotiated on the ground.”²³ In his exploration of the trial of Duch, Hinton shows that while the court opens some unique spaces for discussion, there are many encounters with the Khmer Rouge regime in contemporary society that the judicial system cannot tackle: the affective dimension of remembering; the way hierarchies of violence and victimhood created and reinforced by those deemed appropriate for the court renders other forms invisible; the many violences which can never be proven and may be more psychological than physical.²⁴ Others who have worked on the court, such as Tallyn Gray, Maria Elander, and Peter Manning, have likewise found that whilst the court provides some justice for some people, it cannot encompass the many alternative spaces and voices that need to be heard for reconciliation.²⁵

This is partly a disjuncture of modes of understanding and enacting justice, and partly a result of the temporal distance: as Anne Yvonne Guillou notes, the UN-backed courts were set up nearly 30 years after the Khmer Rouge regime officially ended, but in the meantime, local systems of justice and remembrance have been in place. She argues that many Cambodians do not frame themselves as passive victims as required by court narratives, nor do their modes of remembering conform to those suggested by the ECCC. By considering how remembrance is embraced by the Khmer annual ritual cycle, she shows how Buddhism allows people not only to remember the

²⁰ Wendy Lambourne, “Justice After Genocide: Impunity and the Extraordinary Chambers in the Courts of Cambodia,” *Genocide Studies and Prevention: An International Journal* 8, no. 2 (2014), 35.

²¹ Cheryl White, “Discursive Proceedings and the Transitional Trial: A View from the Extraordinary Chambers in the Courts of Cambodia” in *Transitional Justice and the Public Sphere: Engagement, Legitimacy and Contestation*, ed. Chrisje Brants and Susanne Karstedt (London: Bloomsbury Publishing, 2017), 173.

²² Eve Zucker, “Trauma and its Aftermath: Local Configurations of Reconciliation in Cambodia and the Khmer Rouge Tribunal,” *The Journal of Asian Studies* 72, no. 4 (2013), 793–800. Other studies conducted with court participants – either as civil party claimants or as part of outreach efforts across Cambodia – have found satisfaction with the court processes, even when frustrated by judicial decisions, for example, Rachel Killean, “Procedural Justice in International Criminal Courts: Assessing Civil Parties’ Perceptions of Justice at the Extraordinary Chambers in the Courts of Cambodia,” *International Criminal Law Review* 16 (2016), 1-38; Jeudy Oeung, “Expectations, Challenges and Opportunities of the ECCC,” in *The Extraordinary Chambers in the Courts of Cambodia* [International Criminal Justice Series 6], ed. Simon M. Meisenberg and Ignaz Stegmüller (The Hague: T.M.C. Asser Press, 2016), 103-121. However, as Peter Manning asserts, this success may be in part due to the outreach and participation projects, which through their communicative processes, reinforce the court (and state) sanctioned narrative of the Khmer Rouge regime, while attempting to “disarm and reconstitute” conflicting narratives and operations of justice (Peter Manning, “Governing Memory: Justice, Reconciliation and Outreach at the Extraordinary Chambers in the Courts of Cambodia,” *Memory Studies* 5, no. 2 (2012), 165-181).

²³ Hinton, *Justice and Time in the Khmer Rouge Tribunal*, 13.

²⁴ Alexander Laban Hinton, *Man or Monster: The Trial of a Khmer Rouge Torturer* (Durham: Duke University Press, 2016).

²⁵ Maria Elander, “The Victim’s Address: Expressivism and the Victim at the Extraordinary Chambers in the Courts of Cambodia,” *International Journal of Transitional Justice* 7, no. 1 (2013), 95-115; Tallyn Gray, “Justice and Transition in Cambodia 1979-2014: Process, Meaning and Narrative” (PhD Thesis, University of Westminster, 2014); Peter Manning, “Reconciliation and Perpetrator Memories in Cambodia,” *International Journal of Transitional Justice* 9, no. 3 (2015), 386-406.

dead, but also to position the regime itself within an episodic temporal frame that does not fit that of the court. As such they have found their own ways of dealing with the past:

Cambodians have not remained silent, unconcerned or reluctant to try the Khmer Rouge leaders, but had instead developed, decades before the trial, their own 'relief device' from social suffering and their own sophisticated 'memory device' interlinked with the traditional Khmer religious system. This has been working silently for 30 years now, far from the city and the journalists.²⁶

As she, and others such as Peter Manning argue,²⁷ we must therefore pay attention, and remain cognizant, to the resilience of Cambodian communities, recognizing their ways of establishing relationships to their own history outside formal interventions such as the ECCC. These relationships also provide ways of complicating the narratives created and reinforced within the court, by allowing other possibilities to exist.

Buddhism and Karma

Theravada Buddhism has been Cambodia's state religion since the Thirteenth Century.²⁸ Whilst I am mindful of the seductive appeal of depictions of it as being all encompassing (either before or after Democratic Kampuchea), Buddhism is significant to many people's lives, as well as to community life in general in Cambodia. Except in a minority of locations, the Buddhist pagoda is central to most villages, and is the place where many communal and community events occur, such as voting, village meetings, and ritual and family-based ceremonies.²⁹ The Khmer annual calendar revolves around the Buddhist ritual cycle,³⁰ and many of the practices of Buddhism infuse everyday life, even for those following other religions. It also influences how people talk about life and living, and the actions they take. Merit-making is at the core of Buddhist practice,³¹ the aim of which is to improve one's karma (or if providing merit by giving offerings to the monks, the karma of a relative or friend), so that rebirth might be quicker and to an improved status. The accumulation of karma, therefore, is a central driving force of Buddhist action in Cambodia, as well as a cosmological means of understanding and narrating the world.

Viewed as a foreign import, with leaders whose education, and vocal political positions were highly influential in local communities, Buddhism was considered a threat by the Khmer Rouge, who took extreme measures in attempts to destroy it.³² It remained restricted even after the fall of the regime as the Vietnamese led-government, the People's Republic of Kampuchea (PRK), asserted control over the country and its population.³³ Regardless of its public banning, however, many of the cosmological concepts of Buddhism continued to exist throughout Democratic Kampuchea.³⁴ As Judy Ledgerwood explains, Buddhist modes of "thinking, feeling, speaking, moving," were learned as children and "embodied as habitus;" they therefore continued to be important despite (or perhaps because of) attempts to destroy them.³⁵ Because of this, Buddhism and its central

²⁶ Anne Yvonne Guillou, "An Alternative Memory of the Khmer Rouge Genocide: The Dead of the Mass Graves and the Land Guardian Spirits (neak ta)," *South East Asia Research* 20, no. 2 (2012), 211-212.

²⁷ Manning, *Reconciliation and Perpetrator Memories in Cambodia*.

²⁸ Ian Harris, *Cambodian Buddhism: History and Practice* (Honolulu: University of Hawai'i Press, 2008).

²⁹ Judy Ledgerwood, "Buddhist Practice in Rural Kandal Province 1960 and 2003: An Essay in Honor of May Ebihara," in *People of Virtue: Reconfiguring Religion, Power and Moral Order in Cambodia Today*, ed. David Chandler and Alexandra Kent (Copenhagen: NIAS Press, 2008), 147-168.

³⁰ Guillou, *An Alternative Memory of the Khmer Rouge Genocide*.

³¹ Ledgerwood, *Buddhist Practice in Rural Kandal Province*.

³² With the widespread persecution and execution of all aspects of Buddhism, only a handful of monks survived the regime in Cambodia. See Ian Harris, "Sangha Groupings in Cambodia," *Buddhist Studies Review* 18, no. 1 (2001), 65-72.

³³ *Ibid.*

³⁴ Occasionally rituals were practiced, though in mediated and adapted forms.

³⁵ Ledgerwood, *Buddhist Practice in Rural Kandal Province*, 148.

tenets, resurged, and were re-imagined after the regime,³⁶ and have been central to the way many Cambodians have come to deal with the Khmer Rouge. Reincarnation and karma (*kamm*) became particularly salient due to the massive number of dead created by the regime.

Karma is accumulated through intentional acts conducted throughout this (and sometimes previous) lives.³⁷ It provides the force to affect the realms of existence into which beings are reborn in *samsara*³⁸ - the endless cycle of death and rebirth that is part of Buddhist life – a cycle of *dukkha* – suffering. Meritous acts enable the accumulation of karma, adding force to the transition to the next life. While the *dhamma* asserts that rebirth happens immediately upon death, for my participants outside the *sangha*, karma also affects when and with whom people are reborn: a wealth of karma means a quick rebirth with people you know; a lack of merit, and therefore karma, results in delays between death and rebirth and an increased likelihood of rebirth with strangers. In this way, historical and contemporary actions affect the life cycle of those in *samsara* and future positioning in the world.

Like others such as Hinton and Ledgerwood, Tallyn Gray who works on post-Khmer Rouge justice, considers Buddhism to be central to its understanding in Cambodia.³⁹ He asserts that rather than retribution or exoneration, justice for his participants meant “the opportunity to narrate and not to be ignored,” thus creating a present no longer plagued by the past. For Gray, karma is used as part of this as “a narratological device by which people situate themselves in time.”⁴⁰ I further this, by suggesting that karma also provides a means of positioning oneself within a wider cosmological order, ontologically as well as narratologically. This order is shared by the vast proportion of the population, and expounded by the influential sphere of politicians and, most importantly, the Buddhist *sangha*, to whom people look for advice and guidance, particularly in a violent political sphere that many people distrust. It is a device that can explain mass rupture and chaos, and within which actions that seem incomprehensible and insurmountable can be made sense of and understood. As well as providing a means of re-imagining historical events, karma also provides a means of exploring the materialization of justice through social life, embodied experiences, and narration, rather than as understood within a judicial framework.

“How Come I Survived?”: Case Studies of Karma

The following case studies consider the way karma was used by my informants to form some kind of understanding of the violence of the Khmer Rouge regime. Whilst this was a concept used by many, wide-ranging, informants, I have concentrated on three examples to elucidate its different facets, following which I will discuss its position vis-à-vis justice and the ECCC.

Sreypich was around 50 years old when I met her. She was living by herself in a small village not far from Phnom Penh. She makes a living as an occasional farmer and seamstress, subsidizing her income with donations from a local church in times of extreme need. During the regime she was repeatedly moved around the country as the Khmer Rouge re-organized community and family living. While she survived, she lost over twenty-five members of her extended family. Her Uncle

³⁶ See Alexandra Kent, “Recovery of the Collective Spirit: The Role of the Revival of Buddhism in Cambodia,” *Legacy of War and Violence - Working Paper Series No. 8* (Socialantropologiska institutionen, Göteborg Universitet, Göteborg, 2003); Ledgerwood, *Buddhist Practice in Rural Kandal Province*; Eve Zucker, “Transcending Time and Terror: The Re-emergence of *Bon Dalién* after Pol Pot and thirty Years of Civil War,” *Journal of Southeastern Asian Studies* 37, no. 3 (2006), 527-546.

³⁷ Karma can also be accumulated after death through the transference of merit from the living to the dead via rituals and offerings – *vea bon* (doing meritorious deeds).

³⁸ The six realms are divided into material and immaterial realms, within which are thirty-one planes of existence, each in a strict hierarchy of being, ranging from beings possessing purely of minds, to devas, to humans, to animals, and various forms of the dead.

³⁹ Gray, *Justice and Transition in Cambodia*; Tallyn Gray, “Re-Imagining the Community? Cambodian Cham Muslims: Experience, Identity, Intergenerational Knowledge Transfer and the Extraordinary Chambers in the Courts of Cambodia,” *South East Asia Research* 23, no. 1 (2015), 101-119; “No Justice without Narratives: Transition, Justice and the Khmer Rouge Trial,” *Transitional Justice Review* 5, no. 1 (2017), 63-96.

⁴⁰ Gray, *Justice and Transition in Cambodia*, 171.

and his family were killed because he had been a soldier in the Lon Nol regime.⁴¹ Both her parents died of starvation and exhaustion at a rural work-camp in Kampong Thom province; her sister also died there, but of disease. Her brother was executed because he displeased an officer in the work group he had been sent to. "Three died on my mother's side," she told me. "But on my father's side, there were more: seven people. All gone." Other distant members of the family also died.

During the regime Sreypich worked in the youth section of a massive rural work-camp and came close to losing her life several times. At one stage she was imprisoned and taken to be "built up" (*kāsang*):

At that time, they captured us just because we screamed because of hunger. They called us *Neaytun Sakade Phum*.⁴² We couldn't even say aloud that we didn't get enough rice. I, myself, was at Tuol Krasang dam,⁴³ oh my god... We ate just for the sake of eating. If there was a camera at that time, you'd see how thin I was. Just stepping over grass I would trip and fall... So many died. Some died of sickness, some died because they complained... They would take us to build us up (*kāsang*) because they didn't want us to think of the past. It was so difficult... But according to Buddhism, I had good karma. That's how I survived.

In contemporary Khmer, *kāsang* translates as "to build." However, during Democratic Kampuchea the word took on a dual meaning where to build also meant to destroy or tear down in order to start building from scratch: a kind of death and rebirth of particular institutions, or, in this case, individuals.⁴⁴

Sreypich survived. Throughout Democratic Kampuchea she had been able to live and work alongside others from her hometown. She used karma to explain to me why she had survived whilst others had died:

All of these dead people must have had bad karma in the religion. Yes, now you think about it - they were strong and physically healthy. What about me? How could I survive? I met a *don chee* [lay nun], a monk, an *âchaa* [lay priest]. The monk was disrobed and had to carry a gun. He told me so. But how come I survived?

During Democratic Kampuchea, Sreypich said, people were "forced to die." When I asked her to explain, she elaborated: "if they didn't have karma, they would not die. It must be that they committed bad deeds; that's why they were killed like this."

Ta Sann, an elderly man who lives close to Choeng Ek, also lost several members of his family, including his brother, Sok. After the regime, he ran into a man who had worked in the same commune as Sok. "As soon as he saw me, he asked if I was Sok's brother because we looked very similar. He told me that, 'I worked with Sok. He was showering after we finished working - moving soil. [His name] was called out. They killed him.'"

The man told Ta Sann the name of the cadre who killed his brother and where he lives now. "I thought I wanted revenge," he said. "But then I thought about the Buddhist teaching - that it was probably his bad karma from a past life; that's why it was like that." His brother was a gentle man, he told me, reserved and polite. We discussed his family and experience at some length, and he repeatedly referred to karma when discussing people who had died. "The reason I think about Buddhist philosophy" he said, "is because I had to face death [during the Khmer Rouge] many times." Like Sreypich he had been captured by the Khmer Rouge, but like Sreypich, he had survived, while others, people he thought, stronger, had died or been killed.

⁴¹ The US backed regime led by General Lon Nol ruled Cambodia before the Khmer Rouge, after overthrowing the former leader, Prince Norodom Sihanouk in a coup in 1970. Particularly in the early days of DK, their soldiers were targeted for execution.

⁴² Directly translated as capitalist, this phrase was sometimes used by Khmer Rouge soldiers to insult people they considered lazy or complaining.

⁴³ One of the many dams built during the Khmer Rouge rule.

⁴⁴ Harris, *Cambodian Buddhism*, 186.

Although claiming not to be a fully-fledged cadre, following his capture and release, Ta Sann had worked for the local Khmer Rouge commune. He was responsible for guarding food supplies, and would sometimes deliver food and other goods to local Khmer Rouge meetings. After the fall of the regime, Ta Sann joined the PRK, and later became a member of the CPP. Nowadays he claims not to follow a political party, but to concentrate on doing good deeds and accumulating karma. He goes to pagoda, to “practice Buddhism and gain merit,” both for himself, and for his brother: “I [want] to help relieve my brother of his bad karma.”

The final story, of Dara and her son, shows further how karma is used to understand the consequences of the regime. Dara was introduced to me one morning while I was researching in a village close to Choeung Ek. Knowing I was interested in those with connections to the graves, an elderly man I was interviewing advised me to speak to Dara because, “she got pregnant from the graves.” Dara’s son, she told me, is reincarnated from someone buried in the mass graves at Choeung Ek: she became pregnant after climbing into a pit to loot it in the 1980s.

Dara’s family is modest, and neither she nor her husband is educated. One of the reasons she is sure her son is reincarnated from Choeung Ek, she told me, is his intelligence - he has been successful throughout his education and his career. Those killed at Choeung Ek were mostly brought from Tuol Sleng prison in Phnom Penh - the prison where, particularly in the early days, high profile prisoners were taken, including those who posed the highest threat to the regime: lawyers, doctors, and the intelligentsia. As the regime progressed and purges of cadre considered to be spies or traitors increased, the site also became the final location for many cadre and their families.⁴⁵ In explaining how her son’s karma had led to his rebirth with her, Dara said:

According to Buddhism, if you do good things, you will be reborn quickly. If you have a lot of sin, it’s not easy to be reborn. If you kill anyone or anything, you will not be reborn soon. If you have good karma, you can be reborn with those you know.

Dara considered her son’s death at Choeung Ek, and his rebirth into a modest, uneducated family, to be the result of his karma; although still human, she considered his status to be lowered. “I feel sorry for my son. I’m not sure if it was his bad karma or something: if that was why [he was killed], and why he was destined to be with me.”

His karma was also responsible, she thought, for his rebirth with strangers. Those who died, she told me, were lonely because they could not find their families. But those ready to be reborn needed a place, and without being able to locate their friends or relatives (which was only possible, she told me, for those with good karma), they had to reincarnate with those close to their graves. That is why her son had come to her. Others could not reincarnate, or at least not for a long time – they are stuck, she said, as *preta* – hungry ghosts who suffer in the Khmer underworld and can only come to the earth once a year during *Pchum Benh* (the annual festival for the dead) to feed. “Those who had done good things [in the previous life] could be reborn. Some had a lot of sin and could not go anywhere. They have to stay like that.”

The Justice in Karma

When my informants used karma to explain the deaths that had happened, their own survival, or to provide narrations of consequences for torture and killing, they drew on pre-existing Buddhist frameworks to make sense of the Khmer Rouge. Their narrations were as much about understanding and creating meaning as they were about finding blame or punishing people for crimes and misdemeanours. Sreypich survived, when many others did not, because of her karma. Her family, friends, and thousands of others around her, suffered and died because of theirs. When Dara spoke of her son, she considered his place of birth – with strangers not family, and to a lower social status - to be a result of karma. Ta Sann used karma as a device to connect himself to a Buddhist framework that enabled him to decide against revenge against the person who killed his

⁴⁵ See David Chandler, *Voices from S-21: Terror and History in Pol Pot’s Secret Prison* (Berkeley: University of California Press, 2000).

brother, and he now works within that framework to make merit and accumulate karma for his, and his brother's, actions in the past.

In the nearly 30 years between the end of the regime and the establishment of the ECCC, people found ways to narrate the period that fit within an acceptable cultural framework, a framework that allows both recognition of the horrors of the past, remembrance of the many thousands, if not millions, who died, and a practical means of living side by side with former cadre. According to Judy Ledgerwood, many Buddhist practices have become embodied acts of remembering the period before the regime, recreating senses of place and belonging.⁴⁶ The strength of Buddhist action and concepts is their persistence and the way they order life. None imply that nothing changes, or that no-one is to blame for what happened - these are not fatalistic narratives - instead they invite an understanding of chaos and destruction as elements of Buddhist life; as such, they are both inevitable and transient.

Dara, and several others told me they follow the idea of *bon/baap* - good/evil: "if you do good, you will receive good, if you do evil, you will receive evil." These modes of narration do not necessarily equate exactly to justice as understood within an internationalized judicial framework. But they provide a means of making sense of the horror, or at least wrestling it into a conceptual framework that makes sense. By doing so, they provide a way people can share stories, make links between their own experience and the wider Cambodian context, and find some way of negotiating a violent past that still interjects in the present. Karma and reincarnation are embodied as well as narrated and allow people to continue existing in a cosmological sphere that makes sense. In opposition to the concepts of reconciliation and justice provided by the court, which necessarily flatten narratives and frames memory and understanding in ways that are, in many ways, disconnected from local lives, most people have found their own ways of remembering and re-connecting with the dead specifically, and the Khmer Rouge period as a whole, ways that enable them to negotiate that period of history in their everyday lives.

One of the aims of the ECCC is a kind of truth-telling - the creation, through intense interrogation, documentation, and other evidence, of a judicially (and politically) accepted narrative of the Khmer Rouge regime. However, to be able to consolidate evidence, present arguments, and make verdicts, the court has to contain and flatten narratives, understandings, and experiences, of the past. It is part of the very nature of courts that they need stratified stories and evidence that enable sense to be made within a legal system, however much that system is aimed to complement local cosmologies, and however complex and confused the reality may be. As Maria Elander notes in her consideration of expressivism in the court, while the ECCC attempts a multi-dialogic interaction through the participation of victims as civil parties, "a court cannot hold the complexity of victimization."⁴⁷ The result of this is a funneling of narratives where certain types become normalized, and others are rendered invisible because they do not fit the structure of the court. Stories of karma, however, allow different narratives to emerge, ones that encompass the complexity not only of victimization, but also of perpetration. Ta Sann worked for the Khmer Rouge, and now works hard to accumulate merit and improve his karma. Dara's son, reborn from the graves at Choeung Ek, where a large proportion of victims were Khmer Rouge, was reborn with an unknown family. Other perpetrators are reborn as *preta*, or are yet to be reborn.

The use of karma and reincarnation in my informants' stories, as well as other Buddhist references, such as the *Put Tumneay* prophecies (ancient Khmer prophecies), may be narrative devices that exist within an accepted cultural frame with which to talk about violence, and express grief and loss. Eve Zucker suggests this may be the case for stories she heard that related the Khmer Rouge to nineteenth century Thai invasions: "this employment of a cultural framework to discuss and attempt to narrate the traumatic rupture that occurred may provide a means to express what is otherwise inexpressible."⁴⁸ When Sreypich spoke of her grief at the loss of her extended family, she reflected on it in relation to her own survival, a survival that seemed incomprehensible given

⁴⁶ Ledgerwood, *Buddhist Practice in Rural Kandal Province*, 159.

⁴⁷ Elander, *The Victim's Address*, 109.

⁴⁸ Zucker, *Trauma and its Aftermath*, 797.

the deaths of so many, seemingly spiritually superior, people – monks, lay nuns and priests, the elderly and the sick. Karma provided some means to do this.

Beyond expressing the inexpressible, there may be another way justice is enacted through karma: as a form of “ontological justice” (to follow Alexander Laban Hinton’s phrasing).⁴⁹ In a country where a culture of impunity condones violence past and present, where many ex-Khmer Rouge hold positions of authority, where the Prime Minister has repeatedly interfered with the ECCC, and where the ECCC is far distant from everyday lives, Buddhist frames are vital and ways people make sense of what happened. Restorative justice focuses on the harms done and their redress,⁵⁰ but the court arguably does not address this. What space is there for former Khmer Rouge who were child soldiers to have harm enacted on them redressed? What space to consider stories outside the normative frames of perpetrators and victims? Karma allows the nuances of perpetration and victimisation to be conceptualised and narrated. Like Dara, many other informants told me that the karma of Khmer Rouge cadre will result in terrible suffering for them; for the next life and potentially others after it.

Though there appears an element of fatalism to this, it does not mean that actions in this life are meaningless and have no effect. Quite the contrary: the karmic force of bad deeds (or rather the lack of karma accumulated by doing good deeds) will potentially affect people for many lives to come. All subsequent actions are therefore important. As one informant commented, “whoever Khmer Rouge wanted to kill, they would kill. They would accuse us of not respecting the culture, or [would kill you] if you stole a piece of cassava or corn, or you were lazy about working. But the ones who killed people during that time committed bad deeds.” My informants did not excuse the Khmer Rouge cadre or those who were complicit in their regime of terror. But many did consider their actions to have dire consequences for the future.

It is this certainty that led Kok-Thay Eng, a senior researcher at the Documentation Center of Cambodia, a research facility aiming to “help Cambodians heal the wounds of the past by documenting, researching, and sharing the history of the Khmer Rouge,”⁵¹ to use karma and reincarnation as a plea for forgiveness and reconciliation within the Khmer population, in a newspaper article in 2010:

The enormity of the crimes committed by leaders of the Khmer Rouge could make them the worst *bret [preta]* (lost or wandering ghosts who have committed serious sins during their lifetimes and cannot be reborn) of all, who would always be hungry and wandering without destination. If they can be forgiven by survivors, their prospect for life after death could be improved.⁵²

Preta can only be released from their suffering (and Cambodia from their sinister presence) once they are reborn. For that they need to accumulate merit, something hard to do if you are a *preta*. However, it can be done. Annual ritual ceremonies during *Pchum Benh* and New Year allow people to send merit to the nameless dead.⁵³ The population has funded most of the pagodas that have been rebuilt since the demise of the regime, with large donations often coming from politicians or businessmen and women as modes of merit-making. The same is true of many of the concrete stupa that have been built in recent years to replace the wooden *ptěah kmoac* (house of the dead/ghost house) that initially contained the remains of those who died during the regime. Ta Sann, who worked for the Khmer Rouge, goes regularly to the local pagoda to make merit for himself and his brother, to help both their karma. Some ex-cadre have become *âchaa* (lay Buddhist priests), *don chee* (nuns), or elders who live in pagodas and take care of the monks. These are all sources of gaining merit and accumulating karma.

⁴⁹ Hinton, *Truth, Representation, and the Politics of Representation after Genocide*, 78.

⁵⁰ Geneviève Parent, “Reconciliation and Justice After Genocide: A Theoretical Exploration,” *Genocide Studies and Prevention: An International Journal* 5, no. 3 (2010), 277–292.

⁵¹ “Home page,” Documentation Center of Cambodia (DC-Cam), accessed October 20, 2018, <http://www.dccam.org/>.

⁵² Kok-Thay Eng, “Analysis: Can murderers be forgiven?” *Phnom Penh Post*, October 14, 2010.

⁵³ Guillou, *An Alternative Memory of the Khmer Rouge Genocide*.

Karma is, of course, not the only concept people use when discussing the Khmer Rouge. Many, like Ta Sann, also made reference to forgiving and letting go of anger. Temporality was a central mode of thinking about the different periods, and some informants referenced ancient prophecies, and folk tales.⁵⁴ Some of my informants considered the need for imprisonment following a formal judicial procedure. One or two expressed anger and hatred towards the former cadre, and a desire for revenge. Dara expressed frustration at the ongoing trials, arguing that Nuon Chea and Khieu Samphan should not be given a trial because during Democratic Kampuchea: “they didn’t try us: they grabbed our hands and took us away and killed us straight away.” In the same conversation, as described above, she told me that many cadre were reborn as *preta*, and that even though she thought it was unfair for the Khmer Rouge leaders to be tried when victims of the regime were not, a trial was important to try and find out the root causes of the genocide: “why Khmer killed Khmer.” She thus drew on both Buddhism and the ECCC to assert modes of justice in dealing with the genocide.

The court does not entirely ignore Buddhism; it has attempted to encompass a degree of the religion, as well as animism, within its limits: outreach projects have been conducted with the *sangha*, monks attend the court, civil parties frame their expositions within the court related to Buddhism, and like all Cambodian courts, the ECCC houses a *neak ta* (guardian spirit).⁵⁵ However, its interactions with Buddhism are necessarily limited by its retributive and internationalized sensibilities, and therefore try as it might, the court cannot fit local needs and models of narrating that period of history.

While there is a need, therefore, to take seriously other ways of thinking about justice, the international/global eye cannot be removed for discussions on Cambodia – it is central to much action by the government (and other elites), who remain keen to be in contact and co-operation with foreign powers, with their borders relatively open to foreign visitors and investors.⁵⁶ The ECCC is a political act; of course it has to be, even where it does good. It belongs to a particular temporality where Cambodia, and Southeast Asia in general is extending and asserting itself in the global sphere. It belongs in a government that is trying to distance itself from the past, to create a new political temporality, a government that, ever since the regime, has been attempting to exert its position as the saviors of Cambodia. The ECCC is one small part of this wider interaction. As such it is situated within a transitional justice model which “works discursively to establish a break between the violent past and a peaceful, democratic future.”⁵⁷ But there is, and can be, no break. The violent past is present now and in the future.

Like many post-genocide states, contemporary Cambodia is a complex political sphere where perpetrators and victims live side by side, and where these categories are not valid anyway, encouraging, as they do, a simplistic dichotomisation of guilt and innocence which is not supported by reality. Trying all the Khmer Rouge commanders, or all those who killed other people, would not be possible. Trying everyone who aided the Khmer Rouge, or who were complicit in some of the violence, would put a huge proportion of the country’s population on trial. For nearly four decades now, people have had to determine on a daily basis how to live, often quite literally, with the dead, as well as the living.⁵⁸ How do you make sense of a world and rebuild a community, where the person who killed your family lives in the next-street, or village, or commune? How do you re-establish a world where every community and family, including Khmer Rouge of all levels, lost friends, family, leaders, and trust?

The transitional justice imaginary is normative, performative, and productive, characterised by linear temporality the aim of which is to provide a break between the violent past and the

⁵⁴ See also Gray, *Justice and Transition in Cambodia*, 166-171.

⁵⁵ Alexander Laban Hinton, *The Justice Facade: Trials of Transition in Cambodia* (New York: Oxford University Press, 2018), 181.

⁵⁶ Andrew Robert Cock, “External actors and the relative autonomy of the ruling elite in post-UNTAC Cambodia,” *Journal of Southeast Asian Studies* 41, no. 2 (2010), 241-265.

⁵⁷ Lia Kent, “Transitional Justice in Law, History and Anthropology,” *Australian Feminist Law Journal* 42, no. 1 (2016), 1.

⁵⁸ Caroline Bennett, “Living with the dead in the killing fields of Cambodia,” *Journal of Southeast Asian Studies* 49, no. 2 (2018), 184-203.

present.⁵⁹ But tribunals, courts, and truth commissions are but one means of providing justice and reconciliation. Parent suggests that “in order for transitional justice to be transformative it needs to address the multiple justice needs and priorities of local affected populations, to transform relationships as well as structures and institutions, and to focus on the future as well as justice for past human rights violations.”⁶⁰ The ECCC is only one tiny part of an ongoing process. By wrestling the past into a comprehensible present and future using pre-existing concepts such as karma and reincarnation, this is arguably what people do themselves.

As Eve Zucker comments “cultures endure because they manifest a variety of coping strategies in dealing with trauma and rupture.”⁶¹ For most of my informants, who have been dealing with this past and its present for decades, this break (that the court, and the government attempt to create) between the Khmer Rouge regime and now is not possible – the violent past is ever present. People have found their own ways of narrating the period; ones that fit the wider cosmological understanding of a Buddhist world subject to chaos and transformation, and resists the standardizing narrative of the state (and now the court), which collapses all narrations of the period into one presentation of the past.⁶² Buddhist concepts offer a mode of narrating and normalizing the events and could not be destroyed precisely because of their metaphysical nature; Buddhist action provides a means by which the past can be wrestled back into control of everyday life. These frames make sense of the past and allow it to exist in the present and the future, therefore allowing people to get on with life, and living with the dead.⁶³

However, while the conceptual bounds that frame transitional justice in the international sphere, and karma in the Cambodian cosmology, seem in contrast to one another, they both provide modes of narrating and making sense of the genocide and its aftermath. The ECCC is not completely separate from lay experiences and understandings of justice in Cambodia: indeed, the two are often in dialogue with each other, as shown by Dara, who drew on both spheres to talk about justice. Both provide interaction with the violent past, and both are influenced by each other: those attending the court take their experiences back to their communities; those communities provide other ways of making sense of the everyday realities of living in post-Khmer Rouge Cambodia; and those coming to court to participate as civil parties affect how it runs and the sphere of its interaction.⁶⁴ There IS a problem in reifying the ECCC as the only means of justice, but not in asserting its place in a wider cosmology.

Conclusion

Justice works at all levels simultaneously, and in different, sometimes conflicting, frameworks. This article has explored one Buddhist concept that is used as a framing of justice by research participants in Cambodia. Karma is by no means the only way people think about, or narrate the regime and its consequences. But it is central to the way many people talk about the death and survival, as well as considering the consequences of the violence conducted by many Khmer Rouge cadre. Sometimes the differing frameworks undermine each other; sometimes one is given priority over the other; sometimes they co-exist with little effect on each other. My point here is to provide other means of thinking about justice by taking it outside the court and its legalistic framing, to the everyday ways people come to terms with the Khmer Rouge regime on the ground.

The sense-making that occurs after genocide takes place both within the court and outside it; it could be argued this is one of the only truly shared aims between the two. In the court this plays

⁵⁹ Hinton, *Justice and Time in the Khmer Rouge Tribunal*, 13.

⁶⁰ Parent, *Reconciliation and Justice after Genocide*.

⁶¹ Zucker, *Trauma and its Aftermath*, 796.

⁶² See Judy Ledgerwood for her discussion of the place of Tuol Sleng in this political endeavour, “The Cambodian Tuol Sleng Museum of Genocidal Crimes: National Narratives,” *Museum Anthropology* 21, no. 1 (1997), 82-98.

⁶³ Bennett, *Living with the dead*.

⁶⁴ Eric Stover, Mychelle Balthazard and K. Alexa Koenig, “Confronting Duch: Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia,” *International Review of the Red Cross* 93, no. 882 (2011), 502-546; White, *Discursive Proceedings and the Transitional Trial*.

out in a judicial system that enables the apportioning of blame to individual perpetrators and the construction of a collectively acceptable narration of the regime. Outside the court, particularly in rural Cambodia, this plays out as making sense within a wider, Buddhist, cosmology. Concepts such as karma and reincarnation provide a means by which individual lives can be negotiated and narrated in opposition to the cases in the court, which, through the selection of those that are 'remembered' publically, inadvertently renders invisible the many hundreds of thousands of other experiences that affect day to day life of people across Cambodia. Tied in with Buddhist notions of forgiveness and letting go of anger,⁶⁵ karma provides a way of narrating the millions of deaths caused by the Khmer Rouge. It also offers a means by which everyday people can make sense of the complicated intertwining of past and present lives in today's world and provide narratable, shareable, and relatable stories by which people can connect to each other and the past.

In concluding this article, I pose a question. While I have argued that the court provides no space for competing narratives, and that in understanding justice, we should step outside its bounds to consider the ways people have, for decades, been dealing with the past, I wonder whether there is space to think beyond the irresistible dichotomization an argument such as this can lead to. I ask, therefore, whether the different narratives created and performed inside and outside the court—even within different conceptual bounds—create incommensurable local and national spheres of justice? Or are all frames used part of a sphere of justice that interact in multiple modes and can co-exist imaginatively and practically as part of a world figuring out how to reshape itself after mass violence? Perhaps the best way to think about justice, then, is as a system that allows for many iterations and (re)creations; that leaves space for reimagining the past and the future within the overlapping systems of the everyday and the extraordinary. Karma provides one way of doing this.

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⁶⁵ Alexander Laban Hinton "Truth, Representation, and the Politics of Representation After Genocide" in *People of Virtue: Reconfiguring Religion, Power and Moral Order in Cambodia Today*, ed. David Chandler and Alexandra Kent (Copenhagen: NIAS Press, 2008), 62-82.

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