

When and Why It Started: Deconstructing Victim-Centered Truth Commissions in the Context of Ethnicity-Based Conflict

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Abstract¹

This article argues that truth commissions as a transitional justice mechanism have fallen short of what is achievable within the context of their own aspirations, particularly with respect to cases involving ethnicity-based violence. This failure is primarily due to the structural application of the narrative process, where (1) the commissions shy away from exploring the motivations behind violent actions; (2) victims' and perpetrators' voices are restrained to fit into collective accounts; and (3) victims' voices are elevated over perpetrators' in the memory-making aspect of the commissions' work. This article asserts that truth commissions must focus on personal narratives over grand narratives, de-essentialize the 'victim' and the 'perpetrator' and place victims' and perpetrators' narratives on equal footing with respect to the collective memory project. Governments must allow more time and resources for truth commissions to delve into the nuances of conflict in order to create a more feasible platform for realistic reconciliation and the possibility of enduring peace.

Introduction

The idea that the clarion call 'Never Again' will ring hollow in the near future, that history may yet repeat itself despite the transitional justice efforts of postconflict societies, is beginning to make its way into the literature of the field. Lisa Laplante notes recent occurrences of violence in Peru, South Africa and Guatemala arising from the same types of grievances that led to the human rights violations addressed by these countries' truth commissions.² These new forms of violence raise the question of whether truth commissions and similar restorative justice projects 'could do more to *assure* the goals of postconflict recovery, such as reconciliation

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¹ I am grateful to those who contributed to this article through comments on earlier drafts and help with the research process.

² Lisa J. Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework,' *International Journal of Transitional Justice* 2(3) (2008): 331–355; Zinaida Miller, *Constructing Sustainable Reconciliation: Land, Power, and Transitional Justice in Post-Genocide Rwanda* (Cape Town: Institute for Justice and Reconciliation, 2007).

and sustainable peace.³ This question requires an initial understanding of the defining features of truth commissions. The literature on such commissions often asserts that the novel nature of the mechanism makes evaluation of its effectiveness difficult.⁴ However, some aspects of the process can be synchronically analyzed based on the goals of restorative justice to which truth commissions aspire.

This article argues that, as a justice mechanism for societies emerging from ethnicity-based conflict, truth commissions have fallen short of what is achievable within the context of their own aspirations. The grand narrative of human rights violations identifies the perpetrators and the victims within the framework of a specific episode. These classifications are then entrenched in the truth-telling space and unwittingly restrain victims' and perpetrators' voices within imposed categories, obscuring the complexity of the ethnic antipathy narrative. The restraint in the truth-telling space results from a disproportionate focus on the what, where and how of particular violations, which undermines the repair of social relations in the long term. This overemphasis on the sensationalizing narrative of victimization is largely aimed at seizing global attention, but ignores a more measured investigation into the 'why' of violations. If undertaken, such an investigation could lead to greater understanding of the source of the antipathy and why it swells to the level of mass human rights violations.⁵

The second section of this article highlights the key ideas that support the use of truth commissions as restorative justice mechanisms for societies emerging from ethnicity-based conflict. It also presents the ways in which truth commissions have failed to meet their own achievable goals. The third section proposes ways in which truth commissions could remedy these limitations. It suggests a process geared toward the repair of social relations that also allows for the possibility of multiple perspectives on truth for a society emerging from conflict. The concluding section asserts the need for a focus on personal narratives over grand narratives, the de-essentializing of victims and perpetrators and the placement of victims' and perpetrators' narratives on equal footing with respect to the collective memory project.

³ Laplante, *supra* n 2 at 332 (emphasis added).

⁴ See, for example, Neil J. Kritz, 'Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights,' in 'Accountability for International Crimes and Serious Violations of Fundamental Human Rights,' special issue, *Law and Contemporary Problems* 59(4) (1996): 127–152; Nneoma V. Nwogu, *Shaping Truth, Reshaping Justice: Sectarian Politics and the Nigerian Truth Commission* (New York: Lexington Books, 2007).

⁵ Arguing that human rights reporting is a literary genre, Mark Osiel states, 'Accounts of mass atrocity, published by Amnesty International, Human Rights Watch, and national truth commissions, offer their readers many arresting details – the most lurid grotesqueries, in fact . . . Such reports on governmental violation of international human rights have become an indispensable source of information for political discussion throughout the world – themselves the focal point, in fact, of such discussion. These reports present claims to knowledge of a very important kind, to symbolic capital and attendant influence in the highest circles of power . . . These texts expressly disavow, with a flourish of humility, any attempt at historical or social scientific explanation, deferring to recognized authorities.' Mark J. Osiel, *Mass Atrocity, Ordinary Evil, and Hannah Arendt: Criminal Consciousness in Argentina's Dirty War* (New Haven, CT: Yale University Press, 2001), 165–166.

Truth Commissions' Shortcomings in Dealing with Ethnicity-Based Mass Atrocities

The primary elements of truth commissions are not at issue here.⁶ Rather, the focus is on the following specific ideas deemed key to the utilization of truth commissions in postconflict societies:

- A truth commission is a pragmatic justice mechanism that operates in a locale and period of power equilibrium between the past and the present;
- Part of the pragmatic nature of such a mechanism is that it effects justice by means of a collective memory project. This project is intended to provide an understanding of the violent past, repair social relations between warring groups and offer a lasting reminder of the atrocities to deter future generations from repeating them; and
- Such a justice process requires an architecture that submits to the context of each society's historical conflict.⁷

Questions regarding the limitations or potentialities of truth commissions can be posed within the bounds of these ideas.

Done through this lens, an assessment of truth commissions formed in societies emerging from ethnicity-based conflict suggests that they have fallen short in three main ways. The first is that such truth commissions – specifically those in Africa – have all but focused on a memory-making project marked by the narration of events, paying little or no attention to the motivations behind the events. Mark Osiel, citing Hannah Arendt, observes that

the great historical novelty of the Holocaust . . . lay neither in its means nor ends, its technologies nor its ideology . . . but in the motivation of its agents, in the mental universe of its most humble perpetrators.⁸

Despite having a mandate to seek an understanding of the violent past, truth commissions have shied away from 'making sense of' those who commit atrocities and 'the social conditions eliciting such conduct from them.'⁹

⁶ According to Priscilla Hayner, a truth commission strives to document the greatest possible number of cases rather than deal with specific events; usually exists for a limited predefined period of time; is concluded with the presentation of a report; and has certain quasijudicial authority granted by the political body that established it. Truth commissions also usually enjoy a certain moral authority and credibility. Priscilla Hayner, 'Same Species, Different Animal: How South Africa Compares to Commissions Worldwide,' in *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000).

⁷ For more on these ideas, see, Nwogu, supra n 4; Nenad Dimitrijevic, 'Justice beyond Blame: Moral Justification of (the Idea of) a Truth Commission,' *Journal of Conflict Resolution* 50(3) (2006): 368–382; Michael Humphrey, 'From Victim to Victimhood: Truth Commissions and Trials as Rituals of Political Transition and Individual Healing,' *Australian Journal of Anthropology* 14(2) (2003): 171–187; Ruti G. Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000); Aletta J. Norval, 'Truth and Reconciliation: The Birth of the Present and the Reworking of History,' *Journal of South African Studies* 25(3) (1999): 499–519.

⁸ Osiel, supra n 5 at 2.

⁹ *Ibid.*, 3.

This avoidance is particularly detrimental to societies emerging from ethnicity-based conflict. For the purposes of this article, ethnicity-based conflict refers to an

intense, sudden, though not necessarily wholly unplanned, lethal attack by civilian members of one ethnic group on civilian members of another ethnic group, the victims chosen because of their group membership.¹⁰

Such violence can be informally supported or initiated by the state through propaganda but is not accompanied by any state law or policy. It can rise to the level of pogroms, as in the case of northern Nigeria, or even genocide, as occurred in Rwanda.¹¹ Unlike the ethnicity-based violence in South Africa, where the perpetrators were agents of the state who, for better or worse, sought to justify their acts as legitimate uses of state power or just ‘following orders,’¹² the violence in Rwanda and Nigeria was perpetrated by civilians acting solely on the basis of their and the victims’ ethnic identity. Further, genocidal violence varies by context, as exemplified by the contrast between the genocide in Germany during World War II, which was conducted by state officials, and that in Rwanda in 1994, which, while facilitated by the government, was conducted mainly by civilians.¹³ As such, while different regimes may violate the human rights of citizens based on varied motivations, the underlying narrative for ethnic rivalry in a society is often unchanging.

In cases of civilian-led ethnic conflict, truth commissions’ mandate to repair social relations demands that preconflict narratives be included in the commissions’ memory-making project. Donald Horowitz notes that ‘like the willingness to die for a cause, the willingness to kill for a cause constitutes a statement about the cause, the killer, the victim, and the act of killing.’¹⁴ Yet, the fear of allowing a free flow of discussion on the mental state of perpetrators of ethnicity-based mass atrocities may lie, as Osiel argues, in ‘the possibility that perpetrators of the most horrific offenses might prove to be little different from the rest of us.’¹⁵ As suggested by the infamous ‘Nazification’ of a 1960s California high school class through a teacher’s social experiment, few differences exist between perpetrators and victims in ethnic conflicts.¹⁶ Any argument to the contrary would suggest that some collectives are inherently evil and violent while others are inherently good and peaceful.

¹⁰ Donald L. Horowitz, *The Deadly Ethnic Riot* (Berkeley, CA: University of California Press, 2001), 1.

¹¹ Ibid.

¹² Leigh A. Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham, NC: Duke University Press, 2008).

¹³ For more details, see, Helen Fein, ‘Genocide: A Sociological Perspective,’ *Current Sociology* 38(1) (1990): 1–126.

¹⁴ Horowitz, *supra* n 10 at 2.

¹⁵ Osiel, *supra* n 5 at 5.

¹⁶ In 1967, Ron Jones, a history teacher at Cubberley High School, began the ‘Third Wave’ in an attempt to teach his class what it was like to live in Nazi Germany. His experiment revealed that the same mentality that led to the Holocaust can develop in an innocuous setting among a group of people who readily condemn the historical atrocity. This actual event was portrayed in the film, *The Wave*, directed by Alexander Grasshoff (TAT Communications, 1981).

Laplante argues that the South African Truth and Reconciliation Commission (TRC) missed an opportunity to educate the public about the underlying grievances, beyond pure political ideology, that motivated the human rights violations under apartheid.¹⁷ She adds that her argument is not a proposition that such underlying grievances justify the violation of basic rights.¹⁸ She suggests, rather, that even as the violence is condemned, underlying motivations should be examined in order to prevent its recurrence.

While Laplante posits a socioeconomic theory that she proposes should be added to the political grand narrative, I argue that accessing the underlying reasons, economic or otherwise, for political violence or mass atrocities is already clearly articulated within the mandate of truth commissions.¹⁹ As such, truth commissions can investigate the socioeconomic foundations of violence if they so choose. The limits of truth commissions instead lie in the structural application of the narrative process. By choosing to limit the perpetrator's story to the timeline of the victim's story, truth commissions look away from underlying grievances that could flow from a perpetrator's narrative and thus withhold a democratizing truth. Perhaps, in a perpetrator's narrative, truth commissions could locate the vulnerabilities, grievances or aspirations in which the masterminds of ethnicity-based mass atrocities anchor their criminal schemes.

The second way in which truth commissions have failed to deal with ethnicity-based mass atrocities is by restraining voices in the truth-telling space. This restraint results in the essentializing of victims and perpetrators. The grand narrative of mass human rights violations in the context of ethnic conflict, as usually reported by the global media, presents an epic battle between good and evil as personified in the victims and perpetrators of societal conflict. In these battles, boundaries are neatly defined between ethnicities. Using the example of Rwanda, in the public consciousness, Tutsis are synonymous with victims while Hutus are synonymous with

¹⁷ Laplante, *supra* n 2.

¹⁸ *Ibid.* Laplante also asserts that national dialogue is still pending about why hundreds of Peruvians were willing to take up arms to change an economic system that failed to improve their families' and own socioeconomic situation. While Laplante focuses on an exposition of the socioeconomic context for violence, the context for ethnicity-based conflict populates the coordinates of a quadrant that includes socioeconomic theory, collectivist behavior theory, postcolonial conflict theory and other psychosocial, identity and power dynamics theories.

¹⁹ See, for example, the mandates of the South African Truth and Reconciliation Commission ('to provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date,' Department of Justice, 'Explanatory Memorandum to the Parliamentary Bill,' <http://www.justice.gov.za/trc/legal/bill.htm>), the Liberian Truth and Reconciliation Commission ('determining whether [the human rights violations] were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances, factors and context for such violations and abuses,' TRC of Liberia, 'TRC Mandate,' <https://www.trcofliberia.org/about/trc-mandate>) and the Sierra Leone Truth and Reconciliation Commission ('get a clear picture of the past in order to facilitate genuine healing and reconciliation,' Article XXVI of the Lomé Peace Accord, <http://www.sierra-leone.org/lomeaccord.html>) (all accessed 28 April 2010). Also see the mandate of the Nigerian Human Rights Violations Investigation Commission ('ascertain or establish causes, nature and extent of all gross violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th day of May, 1999,' Nwogu, *supra* n 4 at 114).

perpetrators.²⁰ No separation is made between the unsentimental and routinized actions of the state and its agents and the actions of the civilian aggressor, whose behavior is largely underpinned by a historical antipathy that derives from ethnic identity. The idea of a Hutu victim or Tutsi perpetrator becomes oxymoronic. However, as noted by Sylvia Servaes and Nicole Birtsch, ‘genocide survivors, ex-prisoners, and ex-combatants’ are ‘three vulnerable groups that belong to both Tutsi and Hutu.’²¹ Similarly, black Sudanese versus Arab Sudanese populate the Manichean narrative of the Darfur conflict. In Nigeria, the Igbo and the Hausa occupy the narrative template in the enduring story of the Nigerian 1966 pogroms and subsequent riots.

In the construction of these grand narratives in the truth-telling space, the individual voices integral to the work of truth commissions are often lost. Citing Michael Humphrey, Kirk Simpson asserts that ‘because of their peripheral status, the trauma and individual experiences of victims have often become homogenized through dominant narratives about those events.’²² He posits,

Having been denied the opportunity to relate their stories as part of a public process of truth reclamation, victims have instead often been compelled to adapt and to tell of their experiences according to a predominant collective model or archetype of ‘victimhood’ (which is usually established by the media or those with a particular political agenda). This archetype of victimhood, focusing as it does often only on high profile cases, has a limited capacity to penetrate the public consciousness. It can also essentialize and objectify victims.²³

Therefore, victims’ voices – deemed to be the most important voices by truth commissions today – are restrained.²⁴

Truth commissions also restrain perpetrators’ voices, not only by imposing grand narratives but also by centering victims’ experiences as the starting point for truth reclamation. Humphrey asserts that the transitional state’s focus on ‘recovering victims after mass atrocity ritually inverts the former regime’s project of producing them.’²⁵ This project creates a model of the produced victim and the producer perpetrator. As once stated by the leader of the defunct Republic of Biafra, a region of Nigeria that attempted to secede as a result of the pogroms conducted against the Igbo, to speak of those who were killed is to provoke the question, ‘Who killed

²⁰ ‘Almost fifteen years after the genocide in Rwanda victim–perpetrator ascription still tends to follow the lines of conflict and equate Hutu with perpetrators and Tutsi with victims.’ Sylvia Servaes and Nicole Birtsch, ‘Engaging with Victims and Perpetrators in Transitional Justice and Peace Building Processes’ (report of the Working Group on Development and Peace and KOFF SwissPeace international workshop, Bonn, Germany, 12–13 February 2008), 14.

²¹ Ibid.

²² Kirk Simpson, ‘Victims of Political Violence; A Habermasian Model of Truth Recovery,’ *Journal of Human Rights* 6(3) (2007): 330.

²³ Ibid.

²⁴ See, Nwogu, *supra* n 4 at 80–81, stating that ‘ethno-political groups . . . ensured the containment of individual stories within the boundaries of the collective story . . . Individuals told the stories of their victimization as “witnesses” to a collective petition . . . Thus in ensuring intra-group consensus, these groups, consequently, prevented intergroup consensus and a nuanced perspective of the past.’

²⁵ Humphrey, *supra* n 7 at 1.

them?²⁶ Yet, the dichotomy of the produced victim and the producer perpetrator does not neatly describe the phenomenon of ethnicity-based conflicts.

For example, while the South African case can speak to the government officials who conducted killings and the people who experienced the killings (as well as the third-party passive beneficiaries of the violence), Rwanda underwent a tripartite process in which the state acted as a perpetrator, civilians acted as perpetrators and other civilians became victims.²⁷ In such a case, motivations for the killings can differ with regard to government officials and ordinary civilian perpetrators. Horowitz notes that when civilians go after other civilians on the basis of ethnic membership, 'the search is conducted with considerable care' and ends in the 'murder, mutilation or torture of the target group when they are found.'²⁸ He adds that 'despite an atmosphere of sadistic gaiety that frequently surrounds the killings,' nothing about the perpetrators' actions is flippant or 'lighthearted.'²⁹ They act on motives that are deeply linked to the identity of their ethnic group. A number of reasons create and nurture the antipathetic sentiments of one group toward another.³⁰ Because an investigation into motivations is necessary to creating a mechanism that prevents ethnicity-based conflict, applying the voice of the perpetrator as a supplement to the story of the victim and placing the state perpetrator and the civilian perpetrator in a single category shortchanges the future stability of the affected society.

As noted earlier, thinking about civilian perpetrators as having grievances that deserve to be heard in the public space and included in the collective memory project can be problematic. The problem only arises, however, if perpetrators are deemed, by virtue of their crimes, to have forfeited their voice and contribution to the formation of their society's future. The notion of civil rights forfeiture by virtue of criminal conviction is not uncommon in retributive justice systems,³¹ but truth commissions derive from restorative justice systems, which aim to integrate rather than alienate. The repair of social relations – that is, reconciliation – is part of the mandate of truth commissions. Because restorative justice forums have been criticized as meting out something less than justice,³² proponents of truth commissions may seem cautious about a process that treats perpetrators

²⁶ Personal interview, Chief Chukwuemeka Ojukwu, Enugu, Nigeria, June 2000.

²⁷ The largest human rights tragedies were tripartite in nature. As noted by Henry Steiner and Phillip Alston, they often had 'powerful underlying ethnic components – religion, race, ethnic tradition – and involved savage dehumanization and hatred often stimulated by an oppressor state.' Henry J. Steiner and Phillip Alston, *International Human Rights in Context: Law, Politics and Morals*, 2nd ed. (Oxford: Oxford University Press, 2000), 1131.

²⁸ Horowitz, supra n 10 at 2.

²⁹ Ibid.

³⁰ For a detailed explanation, see, *ibid.*

³¹ For related articles, see, Reed Cozart, 'Civil Rights and the Criminal Offender,' *Federal Probation* 30(1) (1966): 3–5; Andrew L. Shapiro, 'Challenging Criminal Disenfranchisement under the Voting Rights Act: A New Strategy,' *Yale Law Journal* 103 (1993): 537–566; Pamela S. Karlan, 'Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement,' *Stanford Law Review* 56(5) (2004): 1147–1170.

³² This criticism is discussed in Nwogu, supra n 4, and noted in Alex L. Boraine, 'Transitional Justice: A Holistic Interpretation,' *Journal of International Affairs* 60(1) (2006): 17–27.

compassionately.³³ Yet, restorative justice demands empathy and the reintegration of perpetrators into the community. By restricting the narrative and the voices in the narrative space, a truth commission not only fails to attain an achievable goal, it also potentially serves as a weapon of oppression.³⁴

Often perpetrators respond to the hostile space of truth commissions with silence or denial. Leigh Payne notes a similar phenomenon in prosecutorial mechanisms, where amnesia is typical among perpetrators.³⁵ Irrespective of what shape the restraint on a perpetrator's voice takes, Payne observes that the restraint plays a role in the postconflict process. It 'provides audiences an opportunity to fill in the gaps left by what is unsaid,' as well as 'a way for victims and survivors to equalize their relationship' with perpetrators.³⁶ She notes that the 'torturer's inability to remember offers them [victims] power – the power of memory' – and that victims can 'confront the perpetrator's hole-ridden stories with the missing details.' Payne cites a victim who, referring to his torturer's silence, said,

At this point, he was no longer the arrogant torturer. He was a shadow of himself. The power relationship had changed. I was in a better position to stare at him, shout at him, or whatever.³⁷

While it is important for victims to regain their dignity, a reversal of the power dynamic undermines the objective of truth commissions to help prevent repetition of the past. This is particularly relevant in ethnic conflicts, where relative power dynamics are often one of the key characteristics that underpin the selection of an ethnic group as the target for ethnic violence.

Payne also asserts that filling the gaps in memory is not merely a healing and personal project for the victim but also a political project for the nation.³⁸ This national narrative, which is defined by the perspective of a particular ethnic collective – that is, the perspective of victims on the specific violent acts the truth commission was formed to address – ignores a substantial part of the story. Consequently, the untold story ossifies and becomes justification for an enduring antipathy that eventually reproduces patterns of ethnic violence.

In addition to ignoring the motivation for the atrocities and restraining the voices of participants in the truth-telling space, the third way that truth commissions have failed to meet their achievable goals is the elevation of victims' voices over those of perpetrators in the memory-making project. As Humphrey asserts,

A central premise of these projects of political transition to democracy has been the importance of challenging state impunity and silence about human rights violations through truth rituals. Successor states have embarked upon the pursuit of the truth as necessary for the establishment of democratic processes and *full citizenship*. Truth has

³³ Scholars who have skirted the issues surrounding the grievances of perpetrators include Laplante, supra n 2; Simpson, supra n 22; Miller, supra n 2.

³⁴ For a fuller discussion, see, Miller, supra n 2.

³⁵ Payne, supra n 12 at 246.

³⁶ Ibid.

³⁷ Ibid., 246–247.

³⁸ Ibid.

been seen as essential to the establishment of law, political legitimacy and historical justice . . . Public inquiries have been the principal ways of establishing the truth about past violence seen as essential to achieve *social and moral reconnection* after the social contraction produced by violence.³⁹

As such, the pursuit of truth about past violence is translated into giving victims a voice in order to break the silence on violations of their rights. Furthermore, 'democratic governments and social movements often advocate censoring [perpetrator] confessions [that reassert heroic interpretations of violence] to protect democracy and the dignity of victims and survivors.'⁴⁰ While this is a noble goal and should perhaps serve as the overarching aim in certain postconflict societies, the unearthing of truth in societies emerging from ethnicity-based conflict primarily through the voices of victims can consolidate some of the particular tensions that led to the atrocities in the first place.

As demonstrated by Paul Collier and colleagues, societies that have already experienced civil war are more likely to return to conflict because the factors that caused the conflict are often still in place in the postconflict period.⁴¹ Yet, in an effort to acknowledge the pain and suffering of victims, truth commissions often elevate the community of victims over the community of perpetrators by centering the former's experience and legitimizing their views on the blueprints for the future peace of the society. 'Full citizenship' and 'social and moral reconnection' as discussed by Humphrey are therefore only applicable to victims and not to perpetrators. This is contrary to restorative justice's promise to aid the repair of social relations in postconflict societies. In addition, the elevation of one community over another typical of the period before and during ethnicity-based mass atrocities is replicated (rather than dissolved) in the postconflict period.

Perspectivizing Truth for Societies Emerging from Ethnic Conflict

The creation of space for the perpetrator's narrative is as important as the victim's in the aftermath of ethnicity-based mass atrocities. As articulated by former UN Secretary-General Kofi Annan, while the façade of conflict may take many forms, the underlying causes can be 'socioeconomic inequities and inequalities, systemic ethnic discrimination, denial of human rights, disputes over political participation or long-standing grievances over land and other resource allocation.'⁴² In the case of truth commissions, the question is how to investigate the root causes of atrocities without seeming to justify criminal acts. In criminal justice systems, accused persons are given the opportunity to defend themselves, replete with all

³⁹ Humphrey, *supra* n 7 at 2 (emphasis added).

⁴⁰ Payne, *supra* n 12 at 7.

⁴¹ Paul Collier, with V. L. Elliott, Havard Hegre, Anke Hoeffler, Marta Reynal-Querol and Nicholas Sambanis, *Breaking the Conflict Trap: Civil War and Development Policy* (Washington, DC: World Bank, 2003).

⁴² *Prevention of Armed Conflict: Report of the Secretary General*, UN Doc. A/55/985-S/2001/574 (7 June 2001), para. 7.

the protections afforded by law once the state, on behalf of victim and society, has met the specified standard of proof. To be sure, substantive retributive measures also lie at the end of this process if the defense does not pass legal muster, but such measures are tempered and sometimes excused by a lawful defense. The need to repair social relations in contexts of ethnic conflict should compel truth commissions to provide perpetrators with the space to proffer their narratives. This might also defuse further resentment that might otherwise arise from the perception of being silenced in favor of the victims' narrative.

A narrative process that focuses on the individual participants in truth-telling and memory-making projects requires that perpetrators be placed on an equal level as victims. Nenad Dimitrijevic proposes that the 'specific task capable of providing the ultimate justification of truth commissions consists of rebuilding the lost sense of justice in the community of perpetrators.'⁴³ This is rightly so because the key distinction between restorative and retributive justice mechanisms lies in their treatment of the perpetrator.⁴⁴ Dimitrijevic argues that while the goals of 'condemnation, ascription of guilt, distribution of blame, healing, reconciliation, or even the restoration of equality between victims' and perpetrators' groups' are all important justifications for the establishment of a truth commission, the primary justification should lie in the 'province of practical morality.'⁴⁵ He asserts that a truth commission would accomplish its goals if 'it is capable of reconstructing the reasons that led vast numbers of people to forsake the basic standards of right, good, and just.'⁴⁶

Dimitrijevic's proposition, while correct, cannot operate in isolation. It is a means without an end. Rather, the rebuilding of a lost sense of justice reconnects the perpetrator to society and to the victim. It is only through such rehabilitation of the perpetrator that a victim, whose suffering has been acknowledged, can forgive and be reconciled with the perpetrator. As such, the repair of social relations ought to be the primary goal, especially in societies recovering from ethnicity-based conflict. This repair can be accomplished through an encompassing rebuilding of the lost sense of what is 'right, good and just' among perpetrators and the restoration of the lost sense of dignity, both human and civil, among victims. This process can only be achieved in a truth commission that shifts away from centering victims toward centering an idea – the repair of social relations and the provision of equal footing to participants – allowing for truth tellers to present an account of their experiences in the context of their own timelines, personal worldviews and particular sensibilities.

How would such a process work? Simpson suggests a method that fosters a truth-telling space for both parties. However, his format is largely the same as that

⁴³ Dimitrijevic, *supra* n 7 at 369.

⁴⁴ Retributive justice mechanisms are thought to place the victim at the periphery, but by juxtaposing the perpetrator with society, they often lend victims a positive reputational currency in the form of empathy and, sometimes, support.

⁴⁵ Dimitrijevic, *supra* n 7 at 369.

⁴⁶ *Ibid.*

already used by truth commissions and does not provide the space for perpetrators to tell their stories in a manner that would sufficiently ensure a type of truth recovery centered on the repair of social relations rather than only on victims.⁴⁷ Simpson's proposed dialogic process requires uninterrupted story telling from victims, which provides them with a much-needed platform from which to narrate their experiences; victims' discussion of their stories and experiences with a truth recovery panel, which can ask victims relevant questions; and victims' engagement in direct dialogue with their abusers, mediated by the truth recovery panel.

A strategic update to Simpson's method would foster a more democratic process. Such a process would present uninterrupted accounts by victims about the entire conflict as they experienced it and similar uninterrupted accounts by perpetrators. Dialogue between victims and perpetrators, mediated by a truth recovery panel, would follow the individual accounts. The truth commission panel would be empowered and trained to guide the dialogue with the overarching aim of providing a safe space for both sides to connect and communicate. This is no easy task.⁴⁸ Perhaps this is where amnesty, reparations and education on the importance of doing the difficult task to ensure a safe and more secure future for posterity may be used as a tool of persuasion for both sides to participate. Such a process would be successful only if, as Simpson suggests (albeit for a different mechanism), the following conditions for the narrative process are met:

Equal participation of all those who are affected, full openness concerning time and people, freedom from coercion or constraint, and the authenticity of participants (that is, the absence of deliberate and misleading deception in articulating or explaining past acts and intentions).⁴⁹

In relation to dealing with perpetrators, Martha Minow suggests that 'individuals who commit atrocities on the scale of genocide are unlikely to behave as "rational actors," deterred by the risk of punishment.'⁵⁰ Truth commission proponents would agree with this assessment, as commissions are aimed not at retribution but at rehabilitation. Given the way the restorative justice process is applied to perpetrators today, truth commissions hardly achieve or aim for rehabilitation.

Although atrocious crimes should in no way be excused or justified, the moral goals of a truth commission and the integrity of its intellectual underpinning require a de-essentialization of victim and perpetrator. A process that allows for

⁴⁷ Simpson, *supra* n 22.

⁴⁸ For example, scholars have highlighted the detrimental effects to victims of confronting their perpetrators in both prosecutorial and nonprosecutorial settings. For discussions on the retraumatization of victims, see, Ulrich Orth and Andreas Maercker, 'Do Trials of Perpetrators Retraumatize Crime Victims?' *Journal of Interpersonal Violence* 19(2) (2004): 212–227; Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia, PA: University of Pennsylvania Press, 2005); David Mendeloff, 'Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice,' *Human Rights Quarterly* 31(3) (2009): 592–623.

⁴⁹ Simpson, *supra* n 22 at 332.

⁵⁰ Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998).

understanding of both sides in the context of a fluid continuum is integral to the success of mechanisms seeking to address ethnicity-based conflict. As Payne observes in the South African context, the victims who were able to see their torturer gained what they sought from the truth-telling process:

[They] did not really view Benzien as a monster. On the contrary, they saw him in a position equal to their own: 'It's context that makes us, it's the structure. If you look at the profile of their side and our side, you see the same thing: conscientiousness, obedience, blind trust. Any one of us could become a torturer in a certain context' . . . The important political message was the critique of the apartheid system, not the individuals within it, the goal being to end unequal power relations.⁵¹

Truth commissions are more likely to contribute to societal repair if they view the condition of both victim and perpetrator not as a status to be essentialized in a memory project but as a temporary state that any person could enter and from which such a person can exit – a state that a certain mix of circumstances could generate and a different set of circumstances can eradicate.

Furthermore, the historical context and practical needs of a postconflict state divided by ethnic distrust require that perpetrators be allowed to air their grievances. Otherwise, the suppression of one ethnicity's grievances by another, supported by an international system, could in later years become the vulnerable point that a rogue government utilizes to mobilize neighbors against neighbors, friends against friends, families against families and communities against communities.

As Zinaida Miller has observed, Rwanda, for example, cannot wish ethnicity away with a legal fiat.⁵² Rather, the ethnic character of a violent past must be confronted through a truth-telling process with the aim of deconstructing and eradicating it. Understanding that mass mobilization works in part by 'destabilizing the individual's confidence in his own intuitions and capacity for sound judgment when confronted with an ethical challenge,'⁵³ and that the 'frequent public reproduction' of collective narratives which often relies on 'stereotypes or archetypes' does not always address the agency of individuals in the conflict and consequently frustrates any meaningful recovery of truth,⁵⁴ truth commissions must analyze and engage with perpetrators and their stories with the aim of determining the point of personal agency. This is particularly relevant to processes dealing with past ethnic conflict, where narratives more readily identify collectives rather than individuals as perpetrators of atrocities. Therefore, not only is it important for a community of perpetrators to see themselves as individuals with personal will and motivations, it is also necessary for victims to see perpetrators as individuals. The official truth of a past regime, which presented a prism of a collective action against a collective threat, can be unearthed and retold, so to speak, to reveal individuals, though

⁵¹ Payne, *supra* n 12 at 248.

⁵² See, Miller, *supra* n 2.

⁵³ Osiel, *supra* n 5 at 84.

⁵⁴ Simpson, *supra* n 22 at 328.

defined by ethnicity, relating to and hurting each other on a person-to-person basis.

Similarly, victims' narratives, while recognized and acknowledged on the basis of their victimhood, must be analyzed for the purpose of the collective memory project. As Simpson observes, 'those who seek truth recovery as validation or vindication for their actions, or to "concretize" their own predetermined and politicized version of the future, miss the point entirely.'⁵⁵ This assertion obviously must include victims and perpetrators alike. Providing victims with the safe space to deal with the past does not translate into providing only those who have been victims with free reign to determine the future for the entire society. As Payne posits, 'Contentious coexistence, or a conflictual dialogic approach to democracy in deeply divided societies . . . provide[s] a better alternative to reconciliation processes that suppress political talk.'⁵⁶ A useful definitional framework for truth commissions becomes one in which former rivals can generate 'mutual recognition and acceptance, invested interests and goals in developing peaceful relations . . . mutual trust, positive attitudes, and sensitivity and consideration for the other party's needs and interests.'⁵⁷

Humphrey argues that the transitional state seeks to 'reverse the social and political effects of violence' and to do so, the state 'manipulates the "spectacle" of the victim's pain and suffering.'⁵⁸ Perhaps this needs to be balanced with the 'spectacle' of the perpetrator's fall and redemption, which also serves as a metaphor for the postconflict state, as do the suffering and healing of victims. In this way, the victim and perpetrator selves of the state are united and the dichotomy of victim and perpetrator is transformed. The victim whose dignity is restored is no longer a victim in the postconflict state, and the perpetrator who is redeemed is no longer a perpetrator.

Furthermore, truth commissions can show how mastermind perpetrators spur ethnicity-based conflict, usually by intensifying ethnic rivalry through discriminatory patronage strategies with the aim of maintaining repressive systems. In this context, perpetrators' stories should be heard not to contradict victims' stories but to enrich a society's account of its violent past and with it, hopefully, reveal the more inconspicuous beginnings of the violence.

Conclusion

In truth commissions as currently instituted and conducted, a perpetrator walks into the narrative space having been labeled a perpetrator. Unlike in a trial, he or she is not in the narrative space for the purpose of defense. Thus, the benefit

⁵⁵ Ibid., 329.

⁵⁶ Payne, *supra* n 12 at 3.

⁵⁷ Daniel Bar-Tal and Gemma H. Bennink, 'The Nature of Reconciliation as an Outcome and as a Process,' in *From Conflict Resolution to Reconciliation*, ed. Yaacov Bar-Siman-Tov (Oxford: Oxford University Press, 2004), 15.

⁵⁸ Humphrey, *supra* n 7 at 3.

of doubt granted to an alleged perpetrator in a trial is not present in a truth commission. The commission is often not interested in motive but rather in the details of a crime, but only to the extent that these are not already supplied by the victims or survivors. As such, the narrative created by truth commissions presents the evil act and personifies the evil in the perpetrator, but is not aimed at the perpetrator's redemption, which would be based on the recognition that he or she 'was' once human. Forgiveness stems from an understanding of common humanity that cannot be achieved without an understanding of the sequence of human impulses that escalated into the evil act. Yet, the victim is asked to forgive without having understood or even heard why someone in his or her community, society, country chose to harm him or her in particular. How then can the victim connect to the perpetrator in a human way, when all that the victim sees is an essentialized perpetrator? How do the public and the perpetrator restore a sense of what is right when they have not been tasked to ask how they ended up where they are?

In summary, rather than centering victims, truth commissions should create narrative spaces that center the repair of social relations, particularly in the aftermath of ethnicity-based mass atrocities. To achieve this goal, victims and perpetrators alike must be de-essentialized and valued and their description understood as a point in the shift from loss of dignity to dignity or from loss of humanity to redemption.

Furthermore, the memory-making aspect of truth commissions, if guided by the normalization of social relations by which both victims and perpetrators are seen as parties with an equal stake in the development of their society's future,⁵⁹ is more likely to generate a democratizing truth. This, in turn, is more likely to lead to a more realistic societal consensus on the events of the past, as well as the motivations behind them. For practical reasons, truth commissions must allow perpetrators, in addition to victims, to give their accounts of the past conflict on the basis of their own timelines, worldviews and sensibilities. The truth arrived at in this way presents lessons both for victims and for perpetrators with respect to the future of the society.

While grand narratives hold the attention and support of the global audience, which are necessary for the legitimacy of truth commissions, human rights organizations and other civil society authors of these narratives must recognize that the citizens for whom the mechanisms are set up end up bearing the intergenerational brunt of such sensational and simplistic means of casting history. The dynamics of the Rwandan genocide, the Nigerian pogroms and the Sudanese genocide are messier than each country's truth commission – with their inherent compulsion to tidy up and categorize – has suggested. As such, while we set up grand narratives of peace against violence, integrity against corruption, community against ethnicism

⁵⁹ Jennifer J. Llewellyn and Robert Howse, *Restorative Justice: A Conceptual Framework* (Ottawa: Law Commission of Canada, 1999).

and truth in our common humanity against paranoia doused with nativism, we must refrain from painting broad strokes in portraying victims and perpetrators, lest we reaffirm the very ideas we are seeking to demolish.

If they are to create a feasible platform for reconciliation and the possibility of enduring peace, truth commissions must demand more time and resources to delve into the nuances of conflict. Otherwise, they will continue supporting a short-spanned process that, in retrospect, is often viewed merely as a transitional government's political posturing.