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## **‘The cast of the past<sup>1</sup>’: Truth Commissions and the Making and Marginalisation of Identity**

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## **Abstract**

While truth commissions have become the ‘go to’ response in the aftermath of violent conflict and human rights abuses, serious critical discussion on the extent to which commissions have tended to shape and reify the identities of victims and perpetrators and obscures the reality of structural culpability is only tentatively emerging in the field. Drawing on literature from the field of transitional justice, this article critically interrogates the relationship between truth commissions and the three key constituencies of victims, perpetrators and structural actors. It suggests that binary oppositions between victims and perpetrators are frequently privileged, resulting in hierarchal conceptions of innocent victims and guilty perpetrators. These polarized categories fail to reflect the complexity of conflict and promote easy and uncritical allocations of blame and responsibility. It also argues that the capacity of truth commissions to engage with structural actors and the structural causes of conflict is limited due to the influence of human rights and criminal justice on transitional justice and an individualized focus on violations of civil and political rights. An impunity gap is thus created, eliding broader patterns of institutional complicity and responsibility for structural violence, while the focus on civil and political rights violations creates further hierarchies of harm and hierarchies of victimisation. The paper concludes that greater recognition of the complexity of identity and involvement in conflict is required to provide a more honest reflection on the past and a more sustainable link between truth telling and peace building.

## **Key Words**

Truth commissions; transitional justice; victims; perpetrators; structural violence.

## **Introduction**

Transitional justice and truth commissions attempt to mediate between what Cohen (2001) terms the competing ‘forces of denial and acknowledgement’ (p.6). In essence, the field and its central institutions grapple with the clamor for truth, justice and reconciliation after mass atrocity on one hand, and the desire to bury and silence the past on the other (Lawther, 2014). ‘Dealing with the past’, often through the recovery of truth about past human rights violations (either by state or armed opposition forces), is now a frequent demand and expectation post-conflict (Hayner, 2011). The origins of this demand are two-fold – that accountability is due after atrocity and that the legacy of massive crimes will not simply disappear with the passage of time. Originating in Latin America in the post-authoritarianism of the 1980s, truth commissions marked a move away from an individualized and prosecutorial approach to past atrocities (Roht-Arriaza and Mariecurrena, 2004). The South African Truth and Reconciliation Commission (SATRC) in the late 1990s subsequently crystallized international attention and established truth commissions as an effective and necessary component of peace building (Lundy, 2010). At the time of writing, this ‘urge to truth’ has been manifested in the creation of approximately 40 truth commissions worldwide. The ease with which the terms ‘truth’ and ‘reconciliation’ have, for example, been adopted by historical inquiries into the involvement of Ireland’s Catholic Church in institutional child abuse and the forced assimilation and abuse of indigenous children at Canadian Residential Schools – two ‘settled’ democracies, provides further evidence of the intellectual and practical mainstreaming of this mode of inquiry (James, 2012; McAlinden, 2013; McEvoy, 2007).

Hayner (2011) identifies five common features of a truth commission:

(1) focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review (p.11-12).

Truth telling is therefore backward looking – the argument that by discovering the truth about the past and calling perpetrators to account ends impunity, and forward looking - the argument that by uncovering the events of the past and telling the truth about them, a country announces itself as no longer tolerant of such abuses (Phelps, 2004). Between these frames of reference, a number of positive benefits have been attached to truth commissions. They include challenging secrecy and denial maintained by perpetrators, their supporters and bystanders; examining institutional responsibility; responding to victims' needs; making known the range of forensic, personal and social 'truths' about past conflict; reaffirming the rule of law; clarifying the truth and establishing an authoritative record of past abuses; and fostering reconciliation (Boraine, 2000; Cohen, 1995; Tutu, 1999). While the connection between truth telling and dramatic social change may require what Teitel (2000) calls a 'poetic leap of faith', for many victims, truth telling represents firm acknowledgement that their claims are credible and that the atrocities committed against them were wrong (Stanley, 2005).

These purported benefits are, however, the subject of intense debate. As Mendeloff (2004) argues, they may be based more on faith than fact. For example, while

advocates of truth commissions present a causal link between acknowledging suffering and allowing victims to tell their story, truth can be re-traumatizing and the most marginalized voices – women, the injured and victims of torture are often excluded. Alternatively, as demonstrated in South Africa, victims' voices can be reappropriated to fit the demands of peace-building programmes (Wilson, 2001). The capacity of truth commissions to challenge denial and establish an authoritative record of the past has been similarly challenged (Daly, 2008). Rather, the findings of truth commissions have been ignored and/or disputed. In a recent poll in Serbia, half the respondents said they did not believe Serbs had committed war crimes during the 1990s, despite the findings of the International Criminal Tribunal for the former Yugoslavia (Leebaw, 2008). In an extension of this argument – the claim that truth commissions can contribute to embedding the maxim of 'never again', Mendeloff (2004, p. 356) cites a lack of empirical evidence and argues that such an assumption claims 'more about the power of truth telling than logic or evidence dictates'. Olsen, Payne and Reiter (2010) go further and argue that when truth commissions are employed alone, with no other transitional justice initiatives, they can have a negative impact on human rights and democracy.

These criticisms aside, this article does not intend to present a comprehensive evaluation of truth commissions. Rather, it seeks to step back and focus on the three constituencies most closely involved in truth commission work – victims, perpetrators and structural actors. In doing so, I am drawn to two arguments made by Gready (2011, p. 166) – 'that the cast of the past, their narratives and relationships depend on the questions asked and the identities assigned' and that '[v]ictims (and perpetrators) are a necessary part of a truth commission's starting point, but they cannot be its sole

destination'. This article questions the extent to which truth commissions have tended to shape and reify the identities of victims and perpetrators and whether these binary oppositions obscures the reality of structural culpability. It suggests that strict divisions between victims and perpetrators are often privileged, resulting in hierarchies of victimhood built around the notion of innocent victims and guilty perpetrators. These polarized categories fail to reflect the complexity of victims and perpetrators' identities during and post conflict and promote easy and uncritical allocations of blame and responsibility. It also argues that the capacity of truth commissions to engage with and promote accountability for structural violence is limited due to the influence of human rights and criminal justice on transitional justice and an individualized focus on violations of civil and political rights. An impunity gap is thus created, eliding broader patterns of institutional complicity and responsibility for structural violence. The true complexity of perpetratorhood is therefore obscured, while the focus on civil and political rights violations creates further hierarchies of harm and hierarchies of victimhood. The article concludes by arguing that greater recognition of the complexity of identity and involvement in conflict is required to provide a more honest reflection of the past, and a more sustainable link between truth telling and peace building.

### **Truth Commissions and the Making of Victims**

Marks and Chapman (2005) argue that in the aftermath of violent conflict, 'asking the victim question' and placing the victim first provides an important corrective lens on crime and human rights abuse. According to Stanley (2005), acknowledging victims' experiences is a means to challenge cultural injustice and an opportunity for the State to upwardly revalue the disrespected identities of maligned groups. As Minow (1998,

p. 76) notes, 'moving beyond statistics to real people of blood, flesh and tears, a commission that gathers individual testimony can present human consequences of atrocities that are otherwise unfathomable and overwhelming'. Truth commissions can, then, correct the failure to recognise and acknowledge victims' experiences and can counter inaccurate and dishonest portrayals of their plight. Yet, truth commissions have also been found to privilege a particular conception of 'victim' and thus negate the reality of complex political victimhood. The following discussion teases out these tensions.

Imported from long-standing criminal justice and victimology debates, the question of 'who' is a 'victim' is integrally related to political claims making. As Bouris (2007) argues, images of the victim are powerful, gripping and implicated in helping us make sense of conflict, particularly in making moral calculations and determining who is 'good' and who is 'evil'. Moreover, victimhood is inevitably mapped onto competing narratives of community, nation and the contested past. Particularly in the post-conflict context, where imagined versions of the past can become reified and deified by its key players, 'imagined victims' and by extension, 'imagined offenders' shape the construction of imagined political communities (Lawther, 2010, 2013; Walklate, 2007). As regards transitional justice and truth commissions, one-dimensional victim and perpetrator identity positions can be most clearly seen in respect to the SATRC. The TRC defined a victim as follows:

...when dealing with gross human rights violations committed by perpetrators, the person against whom that violation is committed can only be described as a victim, regardless of whether he or she emerged as a survivor. In this sense, the state of mind and survival of the person is irrelevant; it is the intention and



action of the perpetrator that creates the condition of being a victim (SATRC, 1998, vol. 1, chp. 4, p.58).

The TRC thus interpellated its subjects and gave victims and perpetrators clearly defined roles (Moon, 2008). Moon (2008, p. 105) argues that this strict definitional approach was part of the politics of naming – designed to perform the ‘restoration of human dignity’ of victims and the ‘shaming’ of perpetrators.

This polarization between the definition of victims and perpetrators and the privileging of the victim identity readily lends itself to the creation of victims as ‘idealized citizens’ and in which only the ‘innocent’ victim can be a ‘true’ victim of conflict (Simon, 2007). Gready (2011) for example notes that in South Africa, victims often constructed themselves as entirely innocent, passive and devoid of agency, caught up in events over which they had no control. The absolute entitlement of those wronged to identify themselves as victims or survivors (if they so wish) is a given (McEvoy and McConnachie, 2012). The emphasis on innocence is also a natural and expected reaction to traumatic loss – as Enns (2012, p. 98) argues, ‘we seem devoted to upholding the absolute innocence of victims’ and the defence of victims’ stories and images is often a duty of memory (Brown, 2011). However, when conceptualized in purely binary terms and the innocent victim placed at the top of the hierarchy of victimhood, innocence can become a symbol around which contested notions of past violence and suffering are constructed and reproduced (McEvoy and McConnachie, 2012). Such hierarchies of victimhood, predicated on distinctions between what Madlingozi (2007) has termed ‘good’ victims and ‘bad’ victims, often maps onto both subjective views on the ‘justifiability’ of victimization and victims’ attitudes to peace processes and efforts to deal with the past (McEvoy

and McConnachie, 2012). Innocence and guilt are therefore mutually dependent – in the process of political claims making, the positioning of the guilty perpetrator is required to satisfy and exemplify the innocence of the victim. Innocence, and claiming victimhood can therefore become a way to calibrate blame and responsibility. Indeed, Tilly (2008, p. 11) has argued that institutions such as truth commissions are designed to assign blame to perpetrators while giving due credit to victims and survivors – ‘to draw a line between worthy and unworthy citizens’. One of the ironies of the long-standing debate on the creation of a formal truth recovery type body in Northern Ireland is for example, a tendency on the part of both parties to the conflict to seek to use truth recovery as a mechanism through which to ‘blame’ the other (Lawther, 2014).

Rigid conceptualizations of victimhood therefore lend themselves to the construction of a very particular image of the victim. The consequence is that those victims who do not fit the dominant mould of victimhood are excluded or put outside truth commission proceedings. To some extent, a degree of bias in who is willing to testify, who thinks his or her suffering is worthy and who is willing to come forward as a victim is inevitable (Minow, 1998). Problematic is the negation of voice, experience and harm on the basis of a reified version of victimhood. This critique operates at several levels. First, victimhood is a matter of self-identity and there are those individuals who eschew the term ‘victim’ for that of ‘survivor’ (Bouris, 2007). This may reflect a reluctance to identify with the word victim due to its connotations of passivity and vulnerability or a determination not to be defined by the events of the past (Huyse, 2003). Andre du Toit (cited in Minow, 1998, p. 80), an academic and activist involved with the SATRC well articulates this dynamic, arguing

[t]he survivors [who do not identify as victims] do not relate to this situation. They respond by saying, [w]e have had these experiences but we do not want to present ourselves as victims in need of healing. We do not necessarily agree with the message of forgiveness. What political purpose does the story serve when it is framed in this way?

In other respects, individuals who would otherwise identify as ‘victims’ – frequently the powerless – are marginalized. For example, Stanley (2005) – based on fieldwork in Chile, South Africa and Timor Lest – presents a compelling critique of how truth commissions, in those jurisdictions at least, have tended to struggle to recognize certain victims of state crime. In Chile for instance, the Rettig Commission limited its investigations to cases that ended in death, meaning that the Commission did not recognise those who survived serious violations, including torture, and ultimately contributed to the production of an incomplete truth. In other cases, certain victims, such as indigenous or poorer populations may find they are less likely than others to be identified and provided with a space for dialogue in the aftermath of state crime, and, as was the case in Timor Leste, the demands of daily survival may take priority over truth telling (Pigou, 2004). A gendered dimension may also be identified. Ni Aolain and Turner (2007) have argued that the exclusion of socio-economic crimes from truth commissions in Chile and El Salvador privileged ‘male conceptions of conflict’ and failed to address versions of harm, loss and violence experienced predominantly by women (Ross, 2003). For the women who did speak to the Catholic Church’s Recovery of Historical Memory (REMHI) project in Guatemala, over half talked about what happened to others – typically men, their families and their communities rather than about themselves (Hanlon and Shankar, 2000). Similar

themes can be identified in Indonesia, Peru and elsewhere. As McEvoy and McConnachie (2013) point out, even in contexts where the significant challenges associated with helping women to come forward and to give testimony to truth commissions have been overcome, naming the wrongs committed as ‘human rights violations’ may narrow and individualize the experience and obscure the broader cultural or structural elements of patriarchy in a given society.

Equally, truth commissions may simplify victims’ identities and needs to fit the demands of the political landscape, and in particular, projects of national reconciliation. As Wilson (2001), Moon (2009) and Cole (2010) have all discussed with regard to the SATRC but of broader resonance, the decisions as to which victims’ voices were heard and the ways in which those voices were recorded, edited, performed or broadcast, all reflected choices made by those managing the process. In South Africa at least, and as is well documented, this led to the privileging of the voice of the ‘forgiving’ victim due to its neat correlation with the prevailing political ethos in South Africa at that time. Large sections of the TRC Report were subsequently devoted to ‘exemplary’ accounts of seeking and granting forgiveness by both victims and perpetrators (Moon, 2008). Wilson (2001, p. 120) comments:

The hearings were structured in such a way that any expression of a desire for revenge by victims would seem out of place. Virtues of forgiveness and reconciliation were so loudly and roundly applauded that emotions of vengeance, hatred and bitterness were rendered unacceptable, an ugly intrusion on a peaceful healing process.

Humphrey and Valverde (2008) have noted a similar pattern with the Argentine truth commission whereby the stories of suffering told by victims rather than the facts of

individual perpetrators were put at the centre of public truth finding efforts. This meant that the effects of violence rather than the causes of violence became the centrepiece of the project of national reconciliation.

The ‘quality of voice’ and the capacity to narrate may therefore be more closely aligned to the imperatives of nation building than the experience of conflict, trauma and victimhood (Hamber, 2009). Such selectivity invariably leads to what Gready (2011) describes as ‘narrative inequality’ and problems of hearability. This may be particularly so in respect to more ‘uncomfortable’ voices who may challenge privileged notions of innocence and blame, or contradict legitimizing narratives and imagined communities of victimhood. In South Africa, the voices of those victims who wished to ‘speak truth to reconciliation’ – the explicit opposite to the TRC’s emphasis on truth as the route to reconciliation – because they, for example, disputed the notion that victim-led reconciliation could be achieved through truth-telling or because they baulked at the operating procedures used to achieve it - went largely unheard (Gready, 2011, p. 156). The effect is to put those voices beyond the realm of victimhood and to deny victims’ agency and suffering. Again, an exclusive and specific victim identity is promoted. Similar dynamics can be identified with the place of former combatants in truth commission proceedings.

## **Truth Commissions and the Construction of Perpetrators**

The involvement of ex-combatants in truth commissions and other truth recovery bodies has a number of benefits for both parties. For example, participation in truth

telling may provide ex-combatants with an opportunity to apologize for their actions or show contrition – all of which may improve civic trust and ease reintegration back into their former communities (Smyth, 2003). An explicit link between participation in the TRC and reintegration was made by a number of ex-combatants in Sierra Leone who stated, ‘The TRC will give us a chance to explain why we fought’, ‘The truth will help families and victims to forgive us’ (Pride 2002, p. 12; Shaw, 2005). Equally, it may provide an opportunity for former combatants to explain that they too were victimized (particularly if they were forcibly recruited) or to distance themselves from those who committed international crimes or gross human rights abuses (Bouris, 2007). In other cases, truth commissions can provide a ‘safe space’ in which individuals can begin to ‘make sense’ of their involvement in conflict and potentially ease their own traumas, guilt, shame or fear (Duthie, 2005). Likewise, Waldorf (2009) suggests that truth commissions can benefit enormously from ex-combatants telling the truth about international crimes and gross human rights abuses that they perpetrated or witnessed. Given that a major weakness of many commissions is an overreliance on victim statements, testimony from ex-combatants can help locate victims’ remains, identify beneficiaries for reparations, prompt security sector reforms and construct more honest accounts of the past (Waldorf, 2009). Speaking to the literature on restorative justice and Braithwaite’s theory of re-integrative shaming, Chapman and van der Merwe (2008) also argue that the public identification of perpetrators and their offences constitutes a form of accountability, and can impose the punishment of shame. Realizing these aims and objectives requires recognition of the complexity of conflict and the existence of ‘complex’ political victims/perpetrators (Baines, 2009). Yet, as Borer (2003) argues, truth commissions can reify the idea that victims and perpetrators are homogenous, even opposing

groups. The following discussion critically explores this tendency by focusing on the binary opposition of ‘the victim’: ‘the perpetrator’. It does so by firstly teasing out the notion of complex political perpetrators and goes on to critically assess the weaknesses and long-term limitations of working with a narrow and tightly bound definition of a perpetrator in situations of political violence and human rights abuses.

Minow (1998, p. 63) provides a way into the complexity of the political perpetrator with the following simple example: ‘A student watches his parents being harassed by secret police; the student joins protest or freedom-fighting groups and then is arrested; the student emerges willing to use terrorist tactics against the secret police and sets off bombs to kill civilians’. In this example, the student has been a victim, perpetrator and bystander. This complexity and diversity of experience is best illustrated by Borer’s (2003) nuanced and reflective delineation of victims and perpetrators in South Africa. It includes perpetrators who became heroes; heroes who became perpetrators; victims who were heroes; official victims and perpetrators; direct versus indirect perpetrators; and group perpetrators. These categorizations are further complicated by degrees of accountability, scope and self-identification (Borer, 2003).

Some unpacking of the term ‘perpetrator’ or ‘ex-combatant’ is therefore necessary at this juncture. First is the argument that while victims can be perpetrators, perpetrators can also be victims. While this may seem to dishonor those who have suffered, Boraine (2000, p. 128) argues that

[t]o think of the perpetrators as victims is not to condone their actions or their deeds, nor it is to turn away from the many victims whose lives they destroyed

by their activities. It is simply to try to understand something of the ambiguity, the contradictions, of war, of conflict, of prejudice.

While child soldiers are perhaps the most obvious example of perpetrators who can also be thought of as victims (and therefore raising the issue of perpetrator agency), this is not exclusively the case. Shirlow and McEvoy (2008) note that in interviews with ex-combatants in Northern Ireland, almost all interviewees spoke of their experience of victimhood in the form of violence visited against them, their families, or communities by other organisations, state forces or armed groups they belonged to. Many ex-combatants also continue to suffer as a result of their militarized histories and involvement in violent conflict (Gear, 2002). Bouris (2007, p. 67) argues that ‘recognizing these perpetrators as victims is quite critical, because if we do not see them as victims, we are unlikely to understand the true horror of [the context]’.

Distinctions between direct and indirect perpetrators are another useful example of these complexities. The Report of the SATRC (1998) for example notes that alongside direct perpetrators – those who came forward, applied for and were granted amnesty, there was also a ‘Chain of Command’ phenomenon, providing cover for those in senior positions who were the architects of atrocities, filtering down from senior members of government, to elite level security and police officers, and then to their subordinates, entrusted with carrying out criminal acts.

This complexity of identity has at least two consequences for truth commissions. First is that a narrow definition of ‘perpetrator’ limits those who come forward to truth commissions or those whom commissions can reach. For example, in South Africa, many would-be amnesty applicants did not apply because they could not



identify with the definition of a perpetrator laid down by the TRC. Rather, they regarded themselves as defenders of the nation, 'fighting the good fight, upholding the safety of the state and opposing communism' (Borer, 2003, p. 1115). In other cases, perpetrators modified their narratives to meet the conditions for amnesty. Pigou (2002, p. 49) notes the prevalence of tactical storytelling – particularly by politicians and security force officials, who, backed by extensive legal personnel, produced 'tightly interlocking submission and testimonies' explicitly 'designed to minimize fallout'. Wilson (2001, p. 25) comments that 'The much vaunted truth of amnesty hearings was often the truth of unrepentant serial murderers who still felt that their war was a just one'. Others like Winnie Mandela, Chief Buthelezi and FW de Klerk who, despite their involvement in gross human rights violations, were able to limit their statements and maintain their standing within South Africa (Boraine, 2000). A focus on political violence rather than criminal acts also resulted in a tendency to see much racist violence as outside the TRC's mandate (Gready, 2011). Limiting the number of amnesty applicants and the (implicit) encouragement to produce a particular style of amnesty application subsequently impacted on the TRC's responsibility to establish as complete a picture of the past as possible.

The result is that the complexity of conflict is elided in preference for tightly bound definitions of victims and perpetrators. Holocaust survivor Primo Levi (1986, p. 23) showed unusual levels of generosity when reflecting on his experience of concentration camps, writing, that even there, the complex network of human relations could not always be reduced to 'two blocs of victims and perpetrators'. Later, Levi (1986) reflected on his and others 'inadequate' efforts at resistance and hinted at a belief that through their 'failure' to 'resist', he and fellow prisoners were

also complicit in the atrocities that took place. Rather, in the midst of conflict and its aftermath, it is often easier and more satisfying for people to think in absolutes, with little acknowledgement that there may be shades of grey. So, for example, under apartheid, and according to the SATRC, people were either victims or perpetrators and the reality of a more complex relationship between the two was buried. Posel and Simpson (2002, p. 10) argue that this binary left little scope

to explore moral ambiguities born of a politics of complicity or collaboration under apartheid; nor to explore the complexities of social causation where individuals are caught up in structural processes that both motivate and constrain their actions, in ways that may not be intelligible to the actors themselves.

The individualization of responsibility for violence onto only those who took up arms therefore fails to capture the complex conditions under which individuals commit acts of violence, the reality of victims who are not entirely blameless or what Osiel (2007, p. 200) has termed ‘complicit and benefitting bystanders’ who may also bear some responsibility for past abuses (Jamieson, 2012; McEvoy and McConnachie, 2013). Rather, as Posel (2002, p. 116) argues, ‘[h]aving to focus a narration of the past around the clash between ‘victims’ and ‘perpetrators’ provides very blunt tools for the craft of history-writing’. The space in which to provide a more rounded account of past conflict – capturing individual human agency and hurt as well as the broader structural causes, context and consequences within which such acts occurred is hence diminished (McEvoy, 2007). If truth commissions are to realize the ‘creative consequences’ to which they have often boldly linked themselves – reconciliation,

peace building, deterrence of future atrocities and so on, acknowledging the identity and presence of the complex political perpetrator is essential (Teitel, 2000, p. 110).

### **Truth Commissions and the Marginalisation of Structure**

The preceding discussion has focused on the relationship between truth commissions and victims and perpetrators. However, as stated in the introduction, the social structure against which violence and human rights violations take place is also of relevance to the proceedings of truth commissions. This part of the article engages with the argument that the ‘dominant script’ of truth commissions has been to focus on civil and political rights violations to the neglect of structural violence (Cavallaro and Albuja, 2008). It interrogates this critique as to the capacity of truth commissions to recognise the true complexity of victim- and perpetrator-hood and the multilayered reality of involvement in and responsibility for conflict. According to Galtung (1994) and Mani (2008), structural or systemic violence is that which is caused by social structures or social institutions and includes practices of discrimination, exclusion and marginalization targeting certain groups or communities identified along the lines of ethnicity, race, class, caste, gender, religion or other perceived differences. This violence is ‘built into the very social, political and economic systems that govern societies, states and the world’ (Galtung, Jacobsen and Brand-Jacobsen, 2002, p.17) and is symptomatic of ‘deeper pathologies of power’. For Farmer (2003, p.17), structural violence is ‘linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm’. The following discussion will argue that while truth commissions focus on recognizing and addressing certain kinds of ‘direct’ violence – namely, widespread human rights violations, they give little attention to more ‘everyday’ experiences of poverty,

disadvantage, exclusion and inequality (Stanley, 2009; Humphrey, 2003; Nevins, 2002; Nagy, 2008). This focus on direct violence not only fosters the assumption that extraordinary violence occurs within a specific time and place, and is caused by individuals, but creates an impunity gap by eliding broader patterns of institutional complicity and responsibility for structural violence. In effect, individual agency has been privileged over the structural causes of violence. Furthermore, by privileging the response to violations of individual civil and political rights, hierarchies of harm and hierarchies of victimhood are created and reinforced, creating an impoverished view of conflict and putting many victims beyond the realm of victimhood.

While it is not the intention of this article to engage in an analysis of the socio-legal backdrop of transitional justice and truth commissions, some brief comments are instructive at this juncture. At least four points can be identified which go some way to accounting for the neglect of structural violence in truth commissions and transitional justice more broadly. First, as a discipline, transitional justice has been heavily influenced by human rights and has tended to import its longstanding legalistic bias towards civil and political rights which are seen as more amenable to ‘naming and shaming’ (in the court of public opinion) and more justiciable (in a court of law) (Arbour, 2006; Waldorf, 2012). Second and relatedly, transitional justice has been influenced by criminal justice and the rise of international criminal law – which treats those civil and political rights linked to bodily integrity and emphasizes individual criminal responsibility rather than structural causes of conflict (Waldorf, 2012). Justice is also conceptualized in narrow terms of accountability and procedural fairness (McEvoy, 2007). As Mani (2008) points out, while it is easier to identify violations and violators of civil and political rights, on the surface at least,

perpetrators of structural violence may appear more amorphous – more faceless and nameless, hence making it appear more difficult and more arbitrary to assign exact responsibility and culpability through existing transitional justice approaches. The temporal nature of truth commissions may also make the task of responding to long-standing and historical patterns of violations appear particularly challenging. That some scholars continue to define truth commissions as pertaining solely to ‘personal integrity rights’ (Cavallaro and Albuja, 2008), or as ‘bodies set up to investigate a past history of violations of human rights in a particular country’ (Hayner, 2011) reinforces this partial focus (Nagy, 2012). James (2012, p.199) well articulates this point in respect to the Canadian TRC: ‘Truth telling by individual members of the schools is, quite understandably, most likely to focus on particular experiences of wrong, loss and abuse. While crucially important, this procedure is unlikely on its own to produce larger societal understandings of colonialism as a system, or even to situate residential schools as core institutions in a colonization agenda of land theft and political dispossession’. Forth and finally, because transitional justice developed based on a understanding of transition as transition to a (predominantly Western) notion of liberal democracy, it has been frequently co-opted by the ‘liberal peace-building’ agenda which stresses marketization and liberal democracy and civil /political rights issues over an interrogation of and response to the roots and depth of violence and its ongoing effects (Arthur, 2009; Sharp, 2013; Lekha Sriram, 2007).

This backdrop in mind, as the previous two sections of this paper have argued, both civil and political rights violations and socioeconomic rights abuses are committed against overlapping sets of victims by an invariably overlapping set of perpetrators (Carranza, 2008). An impunity gap is thus created when transitional justice

mechanisms, such as truth commissions, deal with only one kind of abuse while ignoring accountability for structural violence. Waldorf (2012) and Mamdani (2000) for example argue that the SATRC's narrow focus on the perpetrators of extra-judicial killings, disappearances and torture obscured any clear understanding of institutionalized racism and let apartheid's many beneficiaries off the hook all too easily. Likewise, the truth commission reports of Argentina, Chile and El Salvador failed to delve into the underlying structural causes of conflict in each site – which included vast social inequalities, economic mismanagement and abuse by elites (Laplante, 2008). Indeed Cavallaro and Albuja (2008) have critiqued later truth commissions for relying on early Latin American truth commissions as inspiration for their mandates, which given their focus on gross violations of civil and political rights, especially forced disappearances, execution and torture, meant they failed to include economic crimes and corruption in their terms of reference. There are of course exceptions - the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor held hearings on economic rights violations and established that of the estimated 102,800 victims who died during the Indonesian occupation, approximately 84,200 died of hunger and illness rather than being killed outright or forcibly disappeared (Carranza, 2008). Other recent truth commissions have also begun to grapple in greater depth with economic crimes (Kenya), gender-based violence (Sierra Leone) and racism and socio-economic inequality (Guatemala) (Nagy, 2012; Schmid and Nolan, 2014). Promising as these developments are, they are far from perfect - the East Timorese government and the international community have for example largely ignored its report, while more broadly, determining accountability for structural violence and socio-economic rights violations has remained at the margins of the work and recommendations of truth commissions (Nagy, 2008; Waldorf, 2012).<sup>2</sup> By

failing to expose the extent and nature of structural violence/corruption or the scale of economic crimes, truth commissions cannot demonstrate that the true nature of victimhood and perpetratorhood goes beyond violence directed at opponents or against civilians targeted by repressive measures (Carranza, 2008). Complicity is thus elided, accountability truncated and the capacity to inculcate a complete sense of ownership and responsibility for the past reduced.

The immediate consequences are three-fold. One, compartmentalizing human rights violations and the socio-economic context in which those violations take place oversimplifies the relationship between direct harms and underlying practices of social injustice, marginalization and exploitation that were directly or indirectly responsible for violence and conflict. Second, by bypassing the context in which conflict occurred, the causes of conflict – social injustice or economic corruption for example, are not addressed. A failure to capture the nature, extent and consequences of structural violence in the proceedings and final reports of truth commissions not only results in an incomplete understanding of the origins of the conflict, but fails to guard against its repetition in the future. Sounding a warning on this point, Lisa Laplante (2008) draws attention to the cases of Peru, South Africa and Guatemala – all post-conflict jurisdictions where truth commissions investigated only civil and political rights violations, and notes that the rising trend of civil unrest and violence in each jurisdiction is the result of the same socio-economic grievances that underpinned the countries earlier conflicts. Third, creating individualized accounts of direct victims and direct perpetrators narrows the capacity for establishing a more complete truth about the past. Not only is the subjective experience of political conflict, injustice and its consequences minimized in the historical narrative, but an

individualized approach to the past provides a hiding place for uncomfortable truths concerning the expression of power, the creation of exclusionary and discriminatory policies and the involvement of the state and its institutions in perpetuating such practices. As a result, physical violations act as a metaphor for the systemic, a product of individual ‘bad apples’ rather than being structural in nature and bolstered, in some cases, by international supporters and collusive bystanders (Cohen, 2001; Miller, 2008). Writing in respect to the Canadian Truth and Reconciliation Commission, James (2012, p. 202) hones in on this point - ‘ a more aggressively fault-finding focus on acts and decisions might serve more effectively to confront Canadians with their historical and ongoing complicity in the residential schools agenda’. Moreover, the ‘truth’ that is produced is that of a narrow or ‘forensic’ truth rather than one that is reflective of the broader causes, context and consequences of conflict and wider patterns of involvement and complicity in violence. As Bonner and Nieftagodien (2002, p.175) write in respect to the SATRC, ‘The relationship between different categories [of violations] of ‘incident’ are thus rendered opaque....Motivation becomes truncated, accountability leaches away. Historical process is utterly obscured, and explanations are reduced to a single political realm’.

In the earlier part of this article I argued that the insistence on a strict binary division between ‘the victims’ and ‘the perpetrators’ does not respond to the complex reality of victimhood post-conflict and can result in the creation of a hierarchy of victimhood. Such hierarchies are often predicated on distinctions between the ‘most innocent’ and the ‘most guilty’ and frequently map onto subjective views on the ‘justifiability’ of victimhood. Privileging violations of social and political rights to the neglect of structural violence also creates a hierarchy of harms and its own hierarchy



of victims. Thus, harms such as torture, abduction or severe ill-treatment appear 'more' significant or inherently more 'grave' than those of poverty, inequality or forced displacement on the basis of race, class or gender for example. The human impact of these harms is therefore marginalized, lowering the visibility of victims and decreasing the scope for understanding and remedy. Women's stories of violence and suffering may therefore not emerge (Nagy, 2008), harms of destruction or looting of property may be dealt with as 'economic violations' rather crimes with a potentially devastating personal impact as in Sierra Leone (Sierra Leone Truth and Reconciliation Commission, 2004) and as in Colombia, recommendations on reparations may only refer to individual victims of physical integrity harms (Sankey, 2014). The former United Nations High Commissioner for Human Rights Louise Arbour (2006, p.2) has called for transitional justice to 'reach to, but also beyond the crimes and abuses committed during the conflict...into the human rights violations that pre-existed the conflict and caused, or contributed to it', concluding that in doing so, 'it is likely that one would expose a great number of violations of economic, social and cultural (ESC) rights and discriminatory practices'. Arbour's vision would greatly assist with flattening hierarchies of harm and hierarchies of victimhood and would enable the impunity gap regarding structural violence and institutional responsibility to be narrowed. As yet, it is a vision that has not been fully realized.

## **Conclusion**

This article is set against the proliferation of truth commissions in the twenty first century. Indeed, the establishment of a truth commission now appears to be a 'go to' response in the aftermath of violent conflict. Yet, as this article has argued, clear problems remain regarding truth commissions, recognition of the complexity of

victimhood and perpetratorhood post conflict and questions of structure and agency. These dynamics occur at the level of the individual and the collective. In the broader transitional justice literature increasing attention has been paid to the fluidity of the terms victim and perpetrator and it has been emphasized that the ground between the two is often complex, messy and overlapping (McEvoy and McConnachie, 2012, 2013). Yet, as I have argued in this article, truth commissions have tended to privilege strict binary divisions between victims and perpetrators, combining the promotion of easy and uncritical allocations of blame and responsibility with a failure to 'see' and respond to broader patterns of institutional complicity and responsibility for structural violence.

While an emphasis on 'innocence' and 'guilt' may be a natural and expected reaction to traumatic loss, it is not one that chimes with the messy reality of conflict. On one level, it fails to recognise that the categories of victim and perpetrator are, in fact, composed of a range of identities and that the ground between the two is complex and often overlapping. Rather, it readily lends itself to the creation of a hierarchy of victimhood where only the 'innocent' victim can be considered a 'true' victim of the conflict. Those victims whose experiences of victimhood do not fit the mould of innocent victimhood – because they, for example, were also involved in violence, are therefore at risk of having their experiences devalued and used as a prism through which blame and responsibility for past suffering is calibrated. Equally, however, the political perpetrator is a complex identity which cannot be simply reduced. Rather as Osiel (2007) and McEvoy and McConnachie (2013) argue, the individualization of responsibility for violence onto only those who took up arms fails to capture the complexity of human agency and the variety of conditions under which individuals

committed acts of violence – as a result for example of having a direct personal experience of violence visited against them or their families, as a child soldier or as a result of pressure from senior members of state or non-state armed organisations. Moreover, with structural violence and responsibility for institutional abuse to the sidelines of many truth commission mandates, accountability is truncated and impunity fostered, while victims of, for example, poverty, disadvantage or exclusion are minimized from view and their experiences put beyond the realm of victimhood. In practical terms, this may mean paying greater attention to the need for thematic hearings into the role and effect of gender based violence, educational discrimination or socio-economic deprivation for example, and ensuring that truth commissions are sufficiently empowered to call for persons and papers.

The net effect is that a narrow and particular image of the victim and the perpetrator is created and sustained, and polarizing hierarchies of victimhood – between the so-called innocent and guilty victim or between those who suffered violations of their civil and political rights and those who experienced the endemic and systematic effects of structural violence are created and reproduced. If seeing the past in all its horrors is the route to a more stable and peaceful future, such practices do little to achieve this aim. Rather they reduce our capacity to ‘see’ and understand what victimhood, perpetratorhood and responsibility mean post-conflict and fail to reflect the complexity of conflict and the widespread nature of harm and victimisation. Inevitably, the quality of truth and the capacity to create a thicker more honest reflection on the past is curtailed. Scholars and practitioners must therefore be alive to challenging and complicating our understanding of the past and neat categories of identity and involvement in violence, however unsettling or disruptive that may be.

As this paper has argued, if we do not step away from two-dimensional notions of victims and perpetrators or include issues like gender based violence, racism or social inequality in our accounts of violence, we will only offer a restricted account of the past and an impoverished view of peace and justice.

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<sup>1</sup> Gready (2011, p.166).

<sup>2</sup> While beyond the scope of this article, it is worth noting that a lively debate has developed concerning how truth commissions should handle structural violence. For example, Mani (2008) argues that commissions should go further than analyzing the causes of social injustice or marginalization and should propose workable solution actionable by government. In contrast, Gready (2011, p.25) states that while truth commissions could do more to name and analyse violations of economic and social rights, it is unrealistic to expect them to offer ‘informed strategic recommendations on everything from torture to education’ – they simply lack the expertise for such policy formulation (Waldorf, 2012).