

Truth and Reconciliation Commissions and Victims' Need for Justice: The Unfulfilled Promises Behind the Rhetoric of a "Victim-Oriented" Justice

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To date, there have been more than fifty Truth and Reconciliation Commissions (TRCs) in the world. Following South Africa's famous TRC, some scholars have identified them as being "victim-oriented" and a form of restorative justice. A priori, this suggests that TRCs have great potential for victims. However, the data seems to indicate profound dissatisfaction with TRCs as a form of restorative justice. This article explores the theory behind TRCs. Although victims play an important role in TRCs, TRCs do not meet the criteria to be qualified as restorative justice from the victims' points of view because they are only "victim-oriented" from a methodological point of view. This false impression can be a major source of dissatisfaction for victims, particularly when generating misleading promises. Acknowledging that victims' individual needs take second place to those of society could open the way for discussion about how to maximize the positive effects of TRCs on victims.

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À ce jour, plus de cinquante commissions de vérité et réconciliation (CVR) ont été mises sur pied dans le monde. À la suite de la célèbre CVR sud-africaine, certains chercheurs les ont qualifiées de « centrées sur les victimes » et de formes de justice réparatrice, ce qui laisse croire a priori qu'elles offrent un grand potentiel pour les victimes. Cependant, les données semblent indiquer une profonde insatisfaction à l'égard des CVR en tant que forme de justice réparatrice. Cet article explore la théorie qui sous-tend les CVR. Bien que les victimes y jouent un rôle important, les CVR ne répondent pas, de leur point de vue, aux critères définissant la justice réparatrice, car elles sont « centrées sur les victimes » seulement d'un point de vue méthodologique. Cette fausse impression peut être une source majeure d'insatisfaction pour les victimes, en particulier lorsqu'elle donne lieu à des promesses trompeuses. La reconnaissance du fait que les besoins individuels des victimes sont relégués au second plan par rapport à ceux de la société pourrait ouvrir la voie à une discussion sur la manière de maximiser les effets positifs des CVR sur les victimes.

I. Introduction

Over fifty Truth and Reconciliation Commissions (TRCs) have taken place worldwide, some of which are still ongoing.¹ Since the emblematic case of South Africa, they have become an important part of the "dominant scenario" of transitional justice.² Despite their great popularity, TRCs remain difficult to define because they are both rooted in specific national and cultural contexts and based on the best practices of international law and transitional justice.³ Nevertheless, Mark Freeman, founder of the Institute for Integrated Transitions, defined them as follows:

an *ad hoc*, autonomous, and victim-centered commission of inquiry set up in and authorized by a state for the primary purposes of (1) investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict, and (2) making recommendations for their redress and future prevention.⁴

TRCs emerged in South America to help stabilize democratic transitions by investigating and establishing truth about past abuses.⁵ Although the first example occurred in Uganda in 1974, South American examples in the 1980s really shaped this form of justice.⁶ At the turn of the 2000s, the case of South Africa laid the foundation for TRCs as we know them today.⁷ Since then, a

¹ Priscilla B Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed (New York: Routledge, 2011) at xi-xii [Hayner, *Unspeakable Truths*]; International Center for Transitional Justice, "Where We Work" online: <ictj.org> [perma.cc/4G72-38R9].

² Dustin N Sharp, "Transitional justice and 'local' justice" in Cheryl Lawther & Luke Moffett, eds, *Research Handbook on Transitional Justice*, 2nd ed (Cheltenham, UK: Edward Elgar Publishing, 2023) 60 at 64.

³ *Ibid*; Sandrine Lefranc, "Les commissions de vérité: une alternative au droit?" (2008) 56:2 Droit et cultures 129 at 130 [Lefranc, "Les commissions de vérité"]; Rosemary Nagy, "Transitional Justice as Global Project: critical reflections" (2008) 29:2 Third World Q 275 at 276 [Nagy, "Transitional Justice as Global Project"].

⁴ Mark Freeman, *Truth Commissions and Procedural Fairness*, 1st ed (Cambridge: Cambridge University Press, 2006) at 18; Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*, 1st ed, (London: Routledge, Taylor & Francis Group, 2010) at 3.

⁵ Mylène Jaccoud, "La portée réparatrice et réconciliatrice de la Commission de vérité et réconciliation du Canada" (2016) 46:2-3 Recherches amérindiennes au Québec 155 at 155; Lefranc, "Les commissions de vérité", *supra* note 3 at 132; Hayner, *Unspeakable Truths*, *supra* note 1 at 10.

⁶ Jaccoud, *supra* note 5 at 155; Hayner, *Unspeakable Truths*, *supra* note 1.

⁷ Jaccoud, *supra* note 5 at 155; Hayner, *Unspeakable Truths*, *supra* note 1. Jaccoud, "La justice de l'après-conflit politique: justice pour les victimes, justice sans tiers?" (2015) 24:2 Négociations 101 at 109 [Lefranc, "La justice de l'après-conflit"]; Jaccoud, *supra* note 5 at 156; Stéphane Leman-Langlois, *Réconciliation et justice* (Outremont, Québec: Athéna Éditions, 2008) at 65; Lefranc, "Les commissions de vérité", *supra* note 3 at 136.

consensus seems to have emerged in favor of TRCs as an essential component of peace-building processes.⁸ A number of reasons have been put forward for this preference, from the fact that they are rooted in local legal traditions – which would facilitate the implementation of more contextualized transitional justice – to the limitations of national or international criminal law in contexts of massive human rights violations.⁹ The main reason for this enthusiasm is the fact that they are now promoted as "victim-oriented".¹⁰ Since then, TRCs have been viewed as a form of restorative justice concerned with victims and their well-being.¹¹

In this article, I will demonstrate that TRCs can be seen as a macro-application of restorative justice that seeks the best justice solution for society. However, it is not enough to say victims are at the heart of their considerations. Restorative justice from a macro perspective does not automatically mean consideration for victims. As we will see, the "victim-oriented" nature of TRCs seems to have more to do with methodology and does not necessarily have a positive impact on victims. This article attempts to clarify the origin and meaning of the "victim-oriented" nature of TRCs and the idea that they can serve as a form of restorative justice. This article then examines the concrete effects on victims to determine whether they are indeed at the heart of TRC considerations.

II. TRCs as Restorative Justice?

As Western countries began to increasingly focus on victims' rights, transitional justice theories have shifted their focus "from perpetrators to victims".¹² An important branch of transitional justice thinkers started to see

⁸ Eric Brahm, "Uncovering the Truth: Examining Truth Commission Success and Impact" (2007) 8:1 Intl Studies Perspectives 16 at 16; Lefranc, "Les commissions de vérité", *supra* note 3 at 135; Lefranc, "La justice de l'après-conflit", *supra* note 7 at 102; Sharp, *supra* note 2 at 64; Wiebelhaus-Brahm, *supra* note 4 at 3.

⁹ Sharp, *supra* note 2 at 64; Jaccoud, *supra* note 5 at 157; Lefranc, "Les commissions de vérité", *supra* note 3 at 132; Wiebelhaus-Brahm, *supra* note 4 at 3; Brahm, *supra* note 8 at 17.

¹⁰ Matt James, "A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission" (2012) 6:2 Intl J Transitional Justice 182 at 186; Arnaud Martin, ed, *La mémoire et le pardon. Les commissions de la vérité et de la réconciliation en Amérique latine* (Paris: Harmattan, 2009) at 20; Jaccoud, *supra* note 5.

¹¹ Lefranc, "La justice de l'après-conflit", *supra* note 7 at 102.

¹² Kora Andrieu & Geoffroy Lauvau, "La justice transitionnelle à l'épreuve de la philosophie politique appliquée" in Kora Andrieu & Geoffroy Lauvau, eds, *Quelle justice pour les peuples en transition?*

justice as having the potential to be "reconstructive".¹³ In this context, following the example of South Africa, TRCs have been described as a more "inclusive" form of justice for victims than criminal justice and even as a form of restorative justice.¹⁴ To fully understand the implications of this shift, we must define different conceptions of restorative justice and situate TRCs within them.

A. South Africa's Turning Point in Conceptualizing TRCs as Restorative Justice

South Africa's Truth and Reconciliation Commission was set up in 1995 by the African National Congress government, led by Nelson Mandela, to shed light on the apartheid regime that lasted from 1948 to 1990.¹⁵ It was completed in 2002, with the submission of a seven-volume report containing almost a thousand pages.¹⁶ For the first time, in addition to the principles of investigation and fact-finding, the TRC had to contribute to reconciliation and provide reparations to victims.¹⁷ As a result, many authors consider the South African case to be a turning point in the development of today's "victim-oriented" TRCs and the rhetoric of TRCs as a form of restorative justice that followed.¹⁸ The origin of this new rhetoric is often associated with Archbishop Desmond Tutu, Chairman of South Africa's TRC, who

Démocratiser, réconcilier, pacifier (Paris: Presses de l'université Paris-Sorbonne, 2014) 7 at 13; Cheryl Lawther & Luke Moffett, "Introduction" in Cheryl Lawther & Luke Moffett, eds, *Research Handbook on Transitional Justice*, 2nd ed (Cheltenham, UK: Edward Elgar Publishing, 2023) at 1; Sandrine Lefranc, "L'ordinaire d'une justice d'exception" in Kora Andrieu & Geoffroy Lauvau, eds, *Quelle justice pour les peuples en transition? Démocratiser, réconcilier, pacifier* (Paris: Presses de l'université Paris-Sorbonne, 2014) 127 at 144 [Lefranc, "L'ordinaire d'une justice d'exception"]; Leman-Langlois, *supra* note 7 at 65.

¹³ Andrieu & Lauvau, *supra* note 12 at 13; Lefranc, "Les commissions de vérité", *supra* note 3; Lefranc, "L'ordinaire d'une justice d'exception", *supra* note 12 at 144.

¹⁴ Lefranc, "L'ordinaire d'une justice d'exception", *supra* note 12 at 144; Martin, *supra* note 10 at 20.

¹⁵ Following Parliament's adoption of the *Promotion of National Unity and Reconciliation Act, 1995*; Jennifer J Llewellyn & Robert Howse, "Institutions for Restorative Justice: The South African Truth and Reconciliation Commission" (1999) 49:3 UTLJ 355 at 365.

¹⁶ In line with the objective of spreading the truth, reports are available online. They can be consulted on the official TRC website: Truth and Reconciliation Commission, "The TRC Report", online: <justice.gov.za> [perma.cc/22CK-YRLM].

¹⁷ Jaccoud, *supra* note 5 at 155.

¹⁸ Lefranc, "La justice de l'après-conflit", *supra* note 7 at 109; Jaccoud, *supra* note 5 at 156; Leman-Langlois, *supra* note 7 at 65; Lefranc, "Les commissions de vérité", *supra* note 3 at 136.

consistently referred to it as a form of restorative justice.¹⁹ In the preface to the TRC's final reports, he wrote:

We believe ... that there is another kind of justice – a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships – with healing, harmony and reconciliation. Such justice focuses on the experience of victims; hence the importance of reparation.²⁰

Since then, TRCs have been considered by most authors as a form of restorative justice.²¹ For this reason, TRCs tend to be promoted as the post-conflict model par excellence, because they are believed to be either the best choice in a transition context²² or the best choice out of bad options.²³ In both cases, this assertion stems from the link between TRCs and restorative justice.²⁴ From this link comes the presumption that victims will benefit from it.²⁵ Indeed, a presupposition at the heart of TRCs is that recognition of victims and restoration of dignity are necessary to achieve healing and peace.²⁶ Consequently, victims are important to TRCs because of the link between their individual recovery and peacemaking. Sandrine Lefranc concludes that the example of South Africa and the theorization of victim-oriented TRCs as a form of restorative justice have endowed them with "universal validity" as an "exemplary" way out of violence.²⁷ Many believe

¹⁹ Lefranc, "Les commissions de vérité", *supra* note 3 at 136; Kathleen Daly & Gitana Proietti-Scifoni, "Reparation and Restoration" in Michael Tonry, ed, *The Oxford Handbook of Crime and Criminal Justice* (Oxford, UK: Oxford University Press, 2011) 207 at 233; Martha Minow, "Between Vengeance and Forgiveness: South Africa's Truth and Reconciliation Commission" (1998) 14:4 *Negotiation J* 319; Llewellyn & Howse, *supra* note 15 at 372.

²⁰ *Truth and Reconciliation Commission of South Africa Report*, vol 1 (29 October 1998) at ch 1, para 36.

²¹ Jaccoud, *supra* note 5 at 155; Llewellyn & Howse, *supra* note 15 at 357; Brahm, *supra* note 8 at 19; Leman-Langlois, *supra* note 7 at 18; Christian Nadeau, "Responsabilité collective, justice réparatrice et droit pénal international" (2008) 58:6 *R française de science politique* 915 at 919; Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated* (New York, NY: Good Books, 2015) at 6; Stephan Parmentier, "Global Justice in the Aftermath of Mass Violence. The Role of the International Criminal Court in dealing with political crimes" (2003) 41:1-2 *Intl Annals Criminology* 203 at 215; Minow, *supra* note 19.

²² Llewellyn & Howse, *supra* note 15 at 357; Minow, *supra* note 19; Brahm, *supra* note 8 at 19.

²³ Lefranc, "Les commissions de vérité", *supra* note 3 at 131.

²⁴ *Ibid* at 136; Jaccoud, *supra* note 5 at 157; Étienne Brown, "Une justice au-delà des tribunaux? Finalités et enjeux des commissions vérité et réconciliation" in Kora Andrieu & Geoffroy Lauvau, eds, *Quelle justice pour les peuples en transition? Démocratiser, réconcilier, pacifier* (Paris: Presses de l'université Paris-Sorbonne, 2014) 223 at 224; Leman-Langlois, *supra* note 7 at 142; Brahm, *supra* note 8 at 19.

²⁵ Lefranc, "Les commissions de vérité", *supra* note 3 at 131.

²⁶ Jaccoud, *supra* note 5 at 156; Sandrine Lefranc, "16 : La consécration internationale d'un pis-aller : une genèse des politiques de « réconciliation »" in Georges Mink & Laure Neumayer, eds, *L'Europe et ses passés douloureux* (Paris: La Découverte, 2007) 233 at 234.

²⁷ Lefranc, "Les commissions de vérité", *supra* note 3 at 136.

this shift toward restorative justice is driven by a desire to legitimize this form of justice, which is now a must in transition.²⁸ As Lefranc notes, the proliferation of TRCs has led to the judicialization of their capacities, which were previously more of a political nature.²⁹ These transformations occurred precisely under the argument that TRCs would become a form of restorative justice, evoking the character of this form of justice as morally superior to retributive justice.³⁰

B. Victim-Centered Restorative Justice

It is important to properly introduce the concept of restorative justice, which is not homogeneous and a matter of debate.³¹ Restorative justice was inspired by Indigenous practices, but was really introduced in the 1990s.³² It is defined as a conversation between all those whose relationships have been broken or damaged by a crime, with the aim of closing the social gaps created by it.³³ It focuses on the idea that crime is a violation against a person and creates an obligation to repair the harm caused.³⁴ Restorative justice includes all parties affected by the crime: the victim, the offender, the state and the community, with the aim of finding a solution acceptable to all parties.³⁵ According to criminologist Howard Zehr, restorative justice aims to make justice more healing, even transformative.³⁶ Indeed, it was developed in response to the “devastating effects of the punitive system” in the hope of diminishing the antitherapeutic aspects of the judicial process.³⁷

²⁸ Sandrine Lefranc, “La justice transitionnelle n’est pas un concept” (2008) 53:1 *Mouvements* 61 at 65 [Lefranc, “La justice transitionnelle”]; Brandon Hamber, “Doing Justice” in *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (Dordrecht, Netherlands: Springer, 2009) 117 at 132 [Hamber, “Doing Justice”]; Lawther & Moffett, *supra* note 12 at 1; É Brown, *supra* note 24 at 224.

²⁹ Lefranc, “La justice transitionnelle”, *supra* note 28 at 65.

³⁰ *Ibid*; Hamber, “Doing Justice”, *supra* note 28 at 132.

³¹ Jaccoud, *supra* note 5 at 157.

³² Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford: Oxford University Press, 2002) at 46; Llewellyn & Howse, *supra* note 15 at 372.

³³ Pete Wallis, *Understanding Restorative Justice: How Empathy Closes the Gap Created by Crime* (Bristol, UK: Policy Press, 2014) at 1; Jaccoud, *supra* note 5 at 157; Strang, *supra* note 32 at 44; Prince Pius Imiera, “Therapeutic jurisprudence and restorative justice: healing crime victims, restoring the offenders” (2018) 51:1 *Jure* 82 at 97; Tinneke Van Camp & Jo-Anne Wemmers, “La justice réparatrice et les crimes graves” (2011) 44:2 *Criminologie* 171 at 173.

³⁴ Zehr, *supra* note 21 at 30.

³⁵ Jo-Anne Wemmers & Katie Cyr, “Victims’ Perspectives on Restorative Justice: How Much Involvement Are Victims Looking For?” (2004) 11:2–3 *Intl Rev Victimology* 259 at 261; Zehr, *supra* note 21 at 27; Van Camp & Wemmers, *supra* note 33 at 173; Wallis, *supra* note 33 at 1.

³⁶ Zehr, *supra* note 21 at 48.

³⁷ Van Camp & Wemmers, *supra* note 33 at 172; Zehr, *supra* note 21 at 6.

Whereas the usual focus of criminal justice is on the accused and the determination of criminal responsibility, restorative justice considers the needs of victims.³⁸ Victim-centered restorative justice sets itself apart by placing greater emphasis on the needs and perceptions of victims.³⁹ The first aspect is reparation, which restores victims' emotional and material losses.⁴⁰ The second component concerns procedural rights, such as participation and access to information.⁴¹ Finally, the third aspect concerns victims' experiences of the justice system and the second victimization that can result from this experience, particularly if they do not feel they have been treated fairly.⁴²

Thus, Zehr believes restorative justice must accord space to victims and their needs, which is not a matter of consensus. For example, criminologist John Braithwaite considers satisfying needs, restoring victims' dignity and repairing broken relationships desirable effects that should be encouraged but not prioritized.⁴³ He believes only the "constraining standards" of nondomination, equal concern for all stakeholders, empowerment, respect for sanctions set by law, respectful listening, accountability and respect for fundamental human rights are mandated in the restorative justice process.⁴⁴ The considerations that should be given to victims and their needs are open to debate, highlighting the fact that restorative justice does not necessarily prioritize victims.

C. Restorative Justice in the Context of Transition

For many, TRCs are a "macro" application of restorative justice principles.⁴⁵ Criminologist Stéphane Leman-Langlois noted that the evolution of TRCs was closely tied to that of restorative justice principles.⁴⁶ Although the link between TRCs and restorative justice has been well

³⁸ Zehr, *supra* note 21 at 32.

³⁹ Jo-Anne M. Wemmers, *Victimologie: Une perspective canadienne*, translated by Louis Courteau (Québec: Presses de l'Université du Québec, 2017) at 254 [Wemmers, *Victimologie*].

⁴⁰ Strang, *supra* note 32 at 48; *ibid* at 250.

⁴¹ Wemmers, *Victimologie*, *supra* note 39 at 252.

⁴² *Ibid* at 253; Strang, *supra* note 32 at 48.

⁴³ John Braithwaite, "Setting Standards for Restorative Justice" (2002) 42:3 *Brit J Crim* 563 at 569.

⁴⁴ *Ibid*; Kerry Clamp, *Restorative Justice in Transition*, 1st ed (London; New York: Routledge, Taylor & Francis Group, 2014) at 11.

⁴⁵ Parmentier, *supra* note 21 at 215; Clamp, *supra* note 44 at 3.

⁴⁶ Leman-Langlois, *supra* note 7 at 18.

established,⁴⁷ several authors have suggested that restorative justice theory should not be simply transposed to the context of transitional justice. For example, Kerry Clamp warns against the risk of transposition creating false expectations that transitional justice cannot necessarily achieve.⁴⁸ She also highlights some of the challenges that can make it difficult to apply restorative justice in a transitional context: the blurring of lines between offender and victim, the scale of the violations committed and the likely involvement of the state in the violations.⁴⁹ Philosopher Christian Nadeau proposes speaking instead of "international restorative justice".⁵⁰ The most important distinction in the context of transition is that many consider that restorative justice should not be victim-centered in order to avoid creating an imbalance between the many actors and the various objectives.⁵¹

If TRCs are recognized as a form of restorative justice, it appears, however, that they are not embedded in the victim-centered approach of it. Professor Brandon Hamber, who has studied the case of South Africa, argues that although the TRC was in the spirit and language of restorative justice, it failed to meet the criteria from the victims' points of view.⁵² He writes: "although 'voice' increased feelings of fairness among survivors, this was undermined because victims did not get what they wanted; remorse on the part of perpetrators, full truth, adequate reparations, or prosecutions."⁵³ Still, some recognize that the TRC has created an ethic of reconciliation and restored moral dignity for victims.⁵⁴ Consequently, rather than delivering justice in an individual way for victims, it seems that the TRC has provided a general framework of justice for the country in the context of transition: it has helped to repair past global injustices, perhaps to the detriment of individual injustices.⁵⁵

Colleen Murphy calls for restorative justice to be distinguished from transitional justice and for TRCs to be considered as belonging exclusively

⁴⁷ See in particular Jaccoud, *supra* note 5; Llewellyn & Howse, *supra* note 15; Brahm, *supra* note 8; Leman-Langlois, *supra* note 7; Nadeau, *supra* note 21; Zehr, *supra* note 21; Parmentier, *supra* note 21; Minow, *supra* note 19; Lefranc, "Les commissions de vérité", *supra* note 3; É Brown, *supra* note 24.

⁴⁸ Clamp, *supra* note 44 at 6-7.

⁴⁹ *Ibid* at 18.

⁵⁰ Nadeau, *supra* note 21 at 920.

⁵¹ Clamp, *supra* note 44 at 6; K Daly & Proietti-Scifoni, *supra* note 19 at 212; Nadeau, *supra* note 21 at 911.

⁵² Hamber, "Doing Justice", *supra* note 28 at 133.

⁵³ *Ibid* at 132.

⁵⁴ *Ibid*; Leman-Langlois, *supra* note 7 at 93.

⁵⁵ Hamber, "Doing Justice", *supra* note 28 at 133.

to transitional justice.⁵⁶ Transitional justice, while giving an increasingly important place to victims, aims to transform society. It seeks to create “the conditions for a tolerant, open and transparent society, respecting pluralism of opinion and individual rights and freedoms”⁵⁷ by restoring citizens’ confidence in the legitimacy of the state. As a result, transitional justice has focused more on the needs of society than on the needs of its victims. She added that restorative justice is not sufficiently open to the compromises that transition requires.⁵⁸

Hamber and Murphy highlight a dilemma that emerges when considering TRCs as a form of restorative justice. On the one hand, victim-centered restorative justice postulates the importance of focusing on the effects of justice on victims. On the other hand, international restorative justice emphasizes the need for reconciliation and social transformation. Christine Lillie and Ronnie Janoff-Bulman address this issue in their study of macro and micro perceptions of justice.⁵⁹ They distinguish between the perspective of individual justice (micro), which focuses on individuals and their needs, and collective justice (macro), which focuses on the needs of society as a whole and of groups that share a certain social identity.⁶⁰ They believe these different perspectives influence the impression of having obtained justice.⁶¹ In the case of TRCs, they found that they were designed to meet the collective need for justice, but not necessarily those of individuals.⁶²

In his conception of international restorative justice, Christian Nadeau also saw victims through the prism of collective justice and asserted they were only one party to be considered.⁶³ Lillie and Janoff-Bulman have noted that when researchers emphasize the individual aspect of justice victims tend to take a negative stance towards the justice they have experienced.⁶⁴

⁵⁶ Colleen Murphy, *The Conceptual Foundations of Transitional Justice* (Cambridge, UK: Cambridge University Press, 2017) at 24.

⁵⁷ Andrieu & Lauvau, *supra* note 12 at 11 [translated by author].

⁵⁸ Murphy, *supra* note 56 at 25.

⁵⁹ Christine Lillie & Ronnie Janoff-Bulman, “Macro versus Micro Justice and Perceived Fairness of Truth and Reconciliation Commissions” (2007) 13:2 *Peace & Conflict: J Peace Psychology* 221.

⁶⁰ *Ibid* at 222; Jo-Anne Wemmers, “Victims’ Need for Justice. Individual versus Collective Justice” in Rianne Letschert et al, eds, *Victimological Approaches to International Crimes: Africa*, 1st ed (Cambridge: Intersentia, 2011) 145 at 147 [Wemmers, “Victims’ Need for Justice”].

⁶¹ Lillie & Janoff-Bulman, *supra* note 59 at 223; Wemmers, “Victims’ Need for Justice”, *supra* note 60 at 147.

⁶² Lillie & Janoff-Bulman, *supra* note 59 at 222.

⁶³ Nadeau, *supra* note 21 at 916.

⁶⁴ Lillie & Janoff-Bulman, *supra* note 59 at 226.

They suggest studies on victims should more often adopt a collective justice perspective.⁶⁵ It is argued victims are aware of these tensions between their needs and those of society with regard to justice: they may feel that an action is justified for the common good (macro), while at the same time considering that it is unfair on an individual level (micro).⁶⁶ Lillie and Janoff-Bulman also found individuals who use an individual perspective of justice tend to perceive TRCs as less fair than those who adopt a collective perspective.⁶⁷ Consequently, they proposed that a collective perspective of justice be adopted to study TRCs, which would emphasize shared identity while acknowledging individual suffering. However, an important limitation of Lillie and Janoff-Bulman's study is that it was not conducted with victims. Therefore, while these observations remain relevant, it is necessary to bear in mind victims may find it more difficult than the general population to live with compromises and sacrifices for common peace.⁶⁸

While TRCs respond to the imperative for collective justice, it seems less certain they can respond to victims' individual need for justice. One problem with the argument that TRCs are a form of restorative justice is victims are led to believe they can achieve the benefits that come with participation in restorative justice initiatives. The commonly accepted idea that TRCs are victim-oriented fueled these expectations. It is assumed TRCs can do both, while ultimately little space is provided for reflecting on victims' individual needs for justice.⁶⁹ TRCs contain many objectives that can be contradictory, hence the importance of taking a more nuanced approach when measuring outcomes. Therefore, while the recognition of TRCs as a form of restorative justice leads to the presumption that this is necessarily beneficial for victims, more thought must be given to the individual effects of this form of collective justice on them.

III. The Signification of a "Victim-Oriented" Methodology

TRCs and the rhetoric used to legitimize them have undergone a major shift toward restorative justice, at the heart of which is the widespread idea

⁶⁵ *Ibid.*

⁶⁶ Wemmers, "Victims' Need for Justice", *supra* note 60; Hamber, "Doing Justice", *supra* note 28 at 122.

⁶⁷ Lillie & Janoff-Bulman, *supra* note 59 at 226.

⁶⁸ Hamber, "Doing Justice", *supra* note 28 at 122.

⁶⁹ Leman-Langlois, *supra* note 7 at 143.

that TRCs are “victim-oriented”.⁷⁰ This idea remains unclear. What does it mean to be “victim-oriented”? What are the implications for victims of this orientation in a context in which TRCs are not part of a victim-centered approach of restorative justice? As we will see, being “victim-oriented” is above all a reflection of the methodological choice to use storytelling, and it is collective benefits that are sought through the choice of this methodology, even if individual positive effects can be observed.

A. Storytelling as a Methodology

Victim-oriented TRCs are defined in opposition to perpetrator-centered forms of justice that seek to establish the criminal responsibility of offenders.⁷¹ The latter forms of justice have often been identified as potentially problematic for victims, who may view themselves as tools toward the conviction of individuals rather than entities with their own needs and perspectives.⁷² By contrast, victim-oriented TRCs are characterized by a strong emphasis on victims’ testimonies, which can serve several purposes: documenting the violations committed, assisting victims’ personal healing and enabling eventual reconciliation of the parties. These objectives guide the search for truth.⁷³ Rather than a simple search for factual truth, these objectives construct a national truth made up of subjective experiences.⁷⁴ These TRCs postulate that reconciliation requires the healing of victims, which can only be achieved by including their experiences in the elaboration of the national narrative.⁷⁵ Thus, victims are the source of knowledge.⁷⁶ TRCs are said to be victim-oriented because of their

⁷⁰ Lefranc, “La justice de l’après-conflit”, *supra* note 7 at 102; James, *supra* note 10 at 186; Martin, *supra* note 10 at 20; Jaccoud, *supra* note 5 at 156; Minow, *supra* note 19 at 323.

⁷¹ James, *supra* note 10 at 186; Dany Rondeau, “Justice centrée sur la faute ou justice centrée sur les victimes? Le dilemme des commissions de vérité et de réconciliation” (2016) 18:1 *Éthique Publique* at 2.

⁷² James, *supra* note 10 at 187.

⁷³ Rondeau, *supra* note 71 at 9.

⁷⁴ Rondeau, *supra* note 71; James, *supra* note 10 at 188; Lefranc, “Les commissions de vérité”, *supra* note 3 at 135.

⁷⁵ Wiebelhaus-Brahm, *supra* note 4 at 4.

⁷⁶ Lefranc, “La justice de l’après-conflit”, *supra* note 7 at 111.

methodological choice of using individual testimonies as the main source of information, which is commonly referred to as “storytelling”.⁷⁷

Storytelling also emerged in the South African TRC, which refers to the process of soliciting and recording stories.⁷⁸ For Teresa Godwin Phelps, storytelling is a form of justice for victims.⁷⁹ She defines justice as the search for truth, whether through a court or a commission.⁸⁰ Consequently, the discovery of truth would be a whole form of justice, not a substitute for it. Through storytelling, she defends the idea that victims can obtain justice by participating in TRCs. Storytelling in the context of TRCs is indeed distinct from “ordinary” testimony because of the political and legal power it assumes.⁸¹ Victims do not play a secondary role in convicting an individual but rather an active one, which may enable them to acquire certain rights during the process. The case of Canada’s TRC, which ran from 2008 to 2015 and focused on residential school systems, is an interesting example. Anthropologists Ronald Niezen and Marie-Pierre Gadoua observed the presence of “legal lobbying” by Indigenous victims during testimony before the TRC.⁸² Some victims leveraged victimization to claim certain rights. Sociologist Brieg Capitaine has described the TRC as a “movement of victims’ reappropriation”.⁸³ The case of Guatemala, which experienced a TRC from 1997 to 1999, is also an interesting example of this possible reappropriation.⁸⁴

⁷⁷ James, *supra* note 10 at 185; Fiona C Ross, “On having Voice and Being Heard: Some after-Effects of Testifying Before the South African Truth and Reconciliation Commission” (2003) 3:3 *Anthropological Theory* 325 at 328 [Ross, “On having Voice”].

⁷⁸ Ross, “On having Voice”, *supra* note 77 at 328.

⁷⁹ Teresa Godwin Phelps, *Shattered Voices: Language, Violence, and the Work of Truth Commissions* (Philadelphia: University of Pennsylvania Press, 2004) at 53.

⁸⁰ *Ibid* at 54.

⁸¹ *Ibid* at 53; Christopher J Colvin, *Traumatic Storytelling and Memory in Post-Apartheid South Africa: Performing Signs of Injury*, 1st ed (Oxon, UK: Routledge, 2019) at 36 [Colvin, *Traumatic Storytelling*]; Brieg Capitaine, “Sortir de la violence: La Commission de vérité et de réconciliation du Canada sur les pensionnats indiens” (2017) 32:3 *CJLS / RCDS* 349 at 356 [Capitaine, “Sortir de la violence”]; Ronald Niezen & Marie-Pierre Gadoua, “Témoignage et histoire dans la Commission de vérité et de réconciliation du Canada” (2014) 29:1 *CJLS / RCDS* 21 at 41; Karine Vanthuyne, “Les contradictions d’une reconstruction démocratique « par le bas»: Le Guatemala dans l’après-conflit civil armé” (2007) 4:80 *Politix* 81.

⁸² Niezen & Gadoua, *supra* note 78 at 41.

⁸³ Brieg Capitaine, “La Commission de vérité et réconciliation du Canada : réécrire l’histoire nationale, décoloniser le Canada ?” (address delivered at the “Perspectives sociales et théoriques sur la vérité, la justice et la réconciliation dans les Amériques” symposium, Université du Québec à Montréal, 25 April 2018) [unpublished].

⁸⁴ See Vanthuyne, *supra* note 81.

Storytelling can have several benefits for victims. First, storytelling can enable victims to reappropriate their experience of suffering by giving meaning to it, which can have therapeutic and liberating effects.⁸⁵ Numerous studies on restorative justice have demonstrated the real restorative effects on victims' abilities to express themselves.⁸⁶ Second, storytelling can be a major weapon against oppression.⁸⁷ Indeed, many authors subscribe to the idea that the very purpose of violence is to appropriate victims by muzzling them.⁸⁸ Yael Danieli uses the term "conspiracy of silence" to refer to the intergenerational transmission of trauma through the silencing of victims.⁸⁹ From this perspective, one of the advantages of storytelling is it enables victims to publicly assert themselves against the violence, thus breaking the conspiracy of silence.⁹⁰ More than legal reparation, storytelling becomes an opportunity for the state to include itself by finding a place in collective narratives.⁹¹ For Teresa Godwin Phelps and many others, stories have power in the quest for justice as acts of language.⁹² From this perspective, the simple

⁸⁵ Inger Agger & Søren Buus Jensen, "Testimony as ritual and evidence in psychotherapy for political refugees" (1990) 3:1 *J Traumatic Stress* 115 at 116; Lætitia Bucaille, "Vérité et réconciliation en Afrique du Sud: Une mutation politique et sociale" (2007) *Été*:2 *Politique Étrangère* 313 at 316.

⁸⁶ On that topic, see: Jaccoud, *supra* note 5 at 157; Jo-Anne Wemmers & Katie Cyr, "Can Mediation be Therapeutic for Crime Victims?: An Evaluation of Victims' Experiences in Mediation with Young Offenders" (2005) 47:3 *Can J Corr* 527 at 540; Niamh Joyce-Wojtas & Marie Keenan, "Is Restorative Justice for Sexual Crime Compatible with Various Criminal Justice Systems?" (2016) 19:1 *Contemporary Justice Rev* 43 at 60; Haley Clark, "'What is the justice system willing to offer?' Understanding sexual assault victim/survivors' criminal justice needs" (2010) 85 *Family Matters*; J Wemmers, "Victim Participation and Therapeutic Jurisprudence" (2008) 3:2-3 *Victims & Offenders* 165 at 186; Strang, *supra* note 32 at 10; Jo-Anne Wemmers & Katie Cyr, "What Fairness Means to Crime Victims: A Social Psychological Perspective on Victim-Offender Mediation" (2006) 2:2 *Applied Psychology in Crim Justice* 102 at 122; Hamber, "Doing Justice", *supra* note 28 at 130.

⁸⁷ Phelps, *supra* note 79 at 55.

⁸⁸ Jelke Boesten, *Sexual Violence during War and Peace: Gender, Power, and Post-Conflict Justice in Peru*, (New York: Palgrave Macmillan, 2014) at 60; Ross, "On having Voice", *supra* note 77 at 330; Kimberly Theidon, "Gender in Transition: Common Sense, Women, and War" (2007) 6:4 *J Human Rights* 453 at 457; Agger & Jensen, *supra* note 85 at 116; Alison Crosby & M Brinton Lykes, "Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala" (2011) 5:3 *Intl J Transitional Justice* 456 at 462; Capitaine, "Sortir de la violence", *supra* note 81 at 352.

⁸⁹ Yael Danieli, "Massive Trauma and the Healing Role of Reparative Justice" (2009) 22:5 *J Traumatic Stress* 351 at 352.

⁹⁰ Capitaine, "Sortir de la violence", *supra* note 81 at 356; Jo-Anne Wemmers & Amissi Manirabona, "Regaining trust: The importance of justice for victims of crimes against humanity" (2014) 20:1 *Intl Rev Victimology* 101 at 108; Danieli, *supra* note 89 at 352.

⁹¹ Martin, *supra* note 10 at 22.

⁹² Phelps, *supra* note 79 at 54.

act of telling can provide a form of reparation for the narrator and those who listen, while leading to a "more inclusive history of violence".⁹³

B. Collective Goals Behind This Methodological Choice

In addition to benefits to individuals, storytelling can extend benefits to society.⁹⁴ According to Phelps, there are several collective benefits to be derived from storytelling: translating emotions between individuals who would not normally be able to understand each other, reuniting families and societies through the act of remembering, and overcoming feelings of revenge, which is essential to rebuilding a society.⁹⁵ TRCs ask victims to transcend their individual suffering to contribute to the national narrative, despite the risks involved in exposing or recounting the trauma.⁹⁶ The notion of healing is no longer reserved for victims of trauma but is transposed to society for the sake of reconciliation. In this way, a certain assimilation is pursued between the individual and the collective on the assumption that what heals one heals the others.⁹⁷ Philosophers Kora Andrieu and Geoffroy Lauvau note that the notion of justice is becoming increasingly complex as reconciliation becomes indispensable to its fulfillment.⁹⁸ They write, "only an appeased memory will enable the long-term reconciliation of a society scarred by war".⁹⁹ Consequently, in the context of a TRC, storytelling – even if it relies heavily on victims and their individual experiences – is also intended to serve the societal goals of reconciliation.

Over the course of TRCs, storytelling has evolved to meet this collective objective, placing increasing emphasis on the traumatic nature of narratives. Christopher Colvin notes that storytelling has evolved from a tool for political advocacy to an instrument for individual healing.¹⁰⁰ He observes that a shift has taken place from focusing primarily on past suffering to the focal point being the therapeutic rhetoric of healing. Colvin defines the storytelling of trauma in three stages: first, it speaks of a specific traumatic event; second, it is embedded in therapeutic language and logic; and third,

⁹³ Boesten, *supra* note 88 at 72.

⁹⁴ *Ibid.*

⁹⁵ Phelps, *supra* note 79 at 56.

⁹⁶ Boesten, *supra* note 88 at 77.

⁹⁷ Lefranc, "L'ordinaire d'une justice d'exception", *supra* note 12 at 148.

⁹⁸ Andrieu & Lauvau, *supra* note 12 at 11.

⁹⁹ *Ibid.*

¹⁰⁰ Colvin, *Traumatic Storytelling*, *supra* note 81 at 36.

it constitutes a difficult and painful act that can be traumatic for both the teller and the listener.¹⁰¹ Many scholars consider the need for reconciliation and restorative rhetoric to be responsible for this shift.¹⁰² Indeed, after the use of massive violence, repairing social bonds becomes a priority. This shift toward a therapeutic language and healing approach can be explained by the need for reconciliation. The insistence on reconciliation would come not only from the state and the nation, but also from the international community and the process of remembrance itself.¹⁰³ Consequently, the storytelling of trauma in the context of TRCs would respond above all to the societal need for reconciliation, rather than to those of the victims. Many consider it difficult to remove storytelling from the therapeutic rhetoric in which it is embedded, as this would imply that TRCs would decentralize their focus from their primary objective of reconciliation, opening the door to testimonies that could run counter to it.¹⁰⁴

C. The "Victim-Oriented" Approach Serving the Needs of the State

This evolution of storytelling to serve state objectives of reconciliation has led several critics to denounce the "eminently political" nature of TRCs.¹⁰⁵ TRCs seek to channel victims' claims into forms of political practice that aim to legitimize the new state rather than challenge it.¹⁰⁶ This standardized form of storytelling is the voluntary political product of a specific form of post-conflict liberalizing democracy and not simply the result of a lack of alternatives in the face of mass violation.¹⁰⁷ To this end, political scientist Wendy Brown argues in her work that the memory of

¹⁰¹ *Ibid* at 5.

¹⁰² *Ibid* at 6; Martin, *supra* note 10 at 121; Jaccoud, *supra* note 5 at 157.

¹⁰³ Colvin, *Traumatic Storytelling*, *supra* note 81 at 6; Nagy, "Transitional Justice as Global Project", *supra* note 3 at 275; Lefranc, "La justice transitionnelle", *supra* note 28 at 61.

¹⁰⁴ Colvin, *Traumatic Storytelling*, *supra* note 81 at 158; Nagy, "Transitional Justice as Global Project", *supra* note 3 at 284; Robyn Green, "Unsettling Cures: Exploring the Limits of the Indian Residential School Settlement Agreement" (2012) 27:1 CJLS 129 at 130.

¹⁰⁵ Lydia S-Liberge Hlakoane, "Commission vérité et réconciliation. Écriture de l'histoire ou discours sur le passé?" (2003) 623:2 Temps Modernes 222 at 226; Lefranc, "La justice transitionnelle", *supra* note 28.

¹⁰⁶ Colvin, *Traumatic Storytelling*, *supra* note 81 at 159; Nagy, "Transitional Justice as Global Project", *supra* note 3 at 279; Deborah Posel, "History as Confession: The Case of the South African Truth and Reconciliation Commission" (2008) 20:1 Pub Culture 119 at 119.

¹⁰⁷ Colvin, *Traumatic Storytelling*, *supra* note 81 at 159; Nagy, "Transitional Justice as Global Project", *supra* note 3 at 275.

violations is the foundation of liberal democracies as an identity policy: new states are built on shared political identities and wounds.¹⁰⁸ Professor Deborah Posel concurred, asserting that TRCs are, first and foremost, nation-building projects.¹⁰⁹ In her view, the South African TRC was a historical narrative about the redemptive power of human rights, driven by a spirit of national reconciliation. TRCs' project of writing the truth is inseparable from a humanist project because the writing of past suffering aims to produce a new historical subject that will be ethically and psychologically redeemed.

Deborah Posel refers to this process used by TRCs as the "politics of negative commemoration", which aims for democratic inclusion in the present and provides an effort of remembrance in the face of past injustices.¹¹⁰ This negative commemoration is associated with the valorization of historically marginalized voices through storytelling and is therefore inseparable from a victimization policy.¹¹¹ To function as negative commemoration, TRCs must synthesize the plurality of points of view on the past, which implies two things: first, the affirmation of the central role of individual memories and second, the centrality of affect and suffering.¹¹² Consequently, for TRCs to succeed in developing restorative truths, their narratives must be about suffering and redemption.¹¹³ Thus, therapeutic rhetoric is essential to the creation of a national narrative, which would serve as the foundation of the new post-violence society.¹¹⁴ As sociologist Laetitia Bucaille writes, "consensus-building would be at the expense of a critical interest in the past."¹¹⁵ Although at first glance this interest in individual suffering may give the impression it will benefit victims, this is not what we observe in reality.

IV. The Impacts of "Victim-Oriented" TRCs on Victims

The "victim-oriented" character of TRCs is due to a methodological choice that aims to produce positive societal effects, potentially favourably affecting victims by ricochet. However, this assertion should also mean

¹⁰⁸ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995) at 27.

¹⁰⁹ Posel, *supra* note 106 at 119.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid* at 123.

¹¹² *Ibid* at 128.

¹¹³ *Ibid* at 140.

¹¹⁴ *Ibid* at 119.

¹¹⁵ Bucaille, *supra* note 85 at 325 [translated by author].

TRCs attach importance to the effects they produce on victims. Sandrine Lefranc goes so far as to say TRCs should conceive of victims as the ultimate beneficiaries of their procedures.¹¹⁶ An important aspect of TRCs' self-asserted legitimacy comes from the central role they claim to give victims, enabling TRCs to be described as restorative justice.¹¹⁷ However, this link is difficult to establish in practice. First, there is no precise framework for evaluating the effects of TRCs.¹¹⁸ Second, because most studies on these issues have been conducted on the case of South Africa, this raises the question of the generalizability of observations to other cases.¹¹⁹ Therefore, there is a consensus in the literature: there is currently no empirical evidence to suggest TRCs are fundamentally beneficial for victims from an individual point of view.¹²⁰ The widespread idea that TRCs benefit victims stems essentially from presuppositions, particularly that storytelling is cathartic for victims. It is unclear whether this is enough to conclude that TRCs are intrinsically positive for victims.¹²¹ On the contrary, this presumption can be a source of suffering for victims who may discover their participation has not yielded the promised therapeutic effects.

A. Limits to Expression in the Search for Monolithic Truth

Truth is not monolithic; while the search for restorative truth may contribute to collective justice as part of a policy of negative commemoration, it may also conflict with victims' individual needs to tell their stories freely. In the context of transition, many scholars have observed that truth tends to be shaped by power, institutional factors and the audience, leading to the creation of "partial and exclusionary" truths.¹²²

¹¹⁶ Lefranc, "La justice de l'après-conflit", *supra* note 7 at 111.

¹¹⁷ Jaccoud, *supra* note 5 at 157; Lefranc, "La justice transitionnelle", *supra* note 28 at 65; Hamber, "Doing Justice", *supra* note 28 at 132.

¹¹⁸ Janine Natalya Clark, "Reconciliation via Truth? A Study of South Africa's TRC" (2012) 11:2 J Human Rights 189 at 189; Brahm, *supra* note 8 at 17.

¹¹⁹ Wiebelhaus-Brahm, *supra* note 4 at 12.

¹²⁰ See *ibid* at 7; Clamp, *supra* note 44 at 7; Brahm, *supra* note 8 at 19; K Daly & Proietti-Scifoni, *supra* note 19 at 232; Erin Daly, "Truth Skepticism: An Inquiry into the Value of Truth in Times of Transition" (2008) 2:1 Intl J Transitional Justice 23-41; Lefranc, "La justice de l'après-conflit", *supra* note 7 at 112; J Clark, *supra* note 118 at 202.

¹²¹ H Clark, *supra* note 86 at 202; Lefranc, "La justice de l'après-conflit", *supra* note 7 at 112.

¹²² Catherine Turner & Maja Davidović, "Transitional justice: an interdisciplinary landscape?" in Cheryl Lawther & Luke Moffett, eds, *Research Handbook on Transitional Justice*, 2nd ed (Cheltenham, UK:

Narratives can therefore be subject to pressures that shape who can testify and what can be said. The case of South Africa is an example in which stories were carefully selected to provide a representative symbolic sample, mixing stories of pain and forgiveness to arrive at a common narrative of reconciliation.¹²³ Only 10% of the approximately 21 thousand victims were identified as having experienced gross violations of their human rights, giving them access to the TRC hearings.¹²⁴ While stories were initially diverse, many scholars observed they were homogenized and reduced to stories of suffering by the media and in the final report.¹²⁵ These stories thus became necessary in exchange for the recognition of victim status, visibility and even full citizenship.¹²⁶

This phenomenon has also been documented in the Canadian TRC by Niezen and Gadoua.¹²⁷ Heterogeneous experiences were transformed into a common historical narrative. These narratives were shaped both by the model testimonies presented in Canada's TRC and by the survivors themselves. The narratives were amalgamated into an official version told by the victims. Consequently, narratives of suffering respond to the state's need to create a national history to inscribe past violence, which can ironically lead to the neglect of victims and their families. Storytelling can lose its individuality as it becomes an instrument belonging to a national experience.¹²⁸ National needs will guide the search for narratives required for reconciliation and influence their interpretation, rather than the needs of the victims. For example, while TRCs give space to talk about suffering, they do not necessarily accept the sharing of the anger that accompanies it or the naming of those responsible.¹²⁹

Another interesting example of the pressure that the needs of the state can place on victims' testimonies is the insistence on women talking almost

Edward Elgar Publishing, 2023) 26 at 32; Bucaille, *supra* note 85 at 318; Hamber, "Doing Justice", *supra* note 28 at 128; Martin, *supra* note 10 at 14; Priscilla B Hayner, "Commissioning the truth: further research questions" (1996) 17:1 Third World Q 19 at 24.

¹²³ E Daly, *supra* note 120 at 25.

¹²⁴ *Ibid* at 31.

¹²⁵ Ross, "On having Voice", *supra* note 77 at 329; Colvin, *Traumatic Storytelling*, *supra* note 81 at 158; Boesten, *supra* note 88 at 75; Posel, *supra* note 106 at 139.

¹²⁶ Boesten, *supra* note 88 at 75.

¹²⁷ Niezen & Gadoua, *supra* note 81.

¹²⁸ Boesten, *supra* note 88 at 75.

¹²⁹ Lefranc, "La justice de l'après-conflit", *supra* note 7 at 113.

exclusively about their experiences of sexual violence.¹³⁰ For example, in the case of the South African TRC, women were expected to talk about the sexual violence they had experienced, while silence was valued for men.¹³¹ For many, this is explained by the societal need to construct an intelligible and tolerable national narrative that can be understood by a national and international audience.¹³² A complex, fragmented narrative, in which suffering is not confined to a specific past event, would not lead to reconciliation and would undermine the future of the new state. Narratives of sexual violence can be framed within a certain framework that would make them tolerable and understandable, because these narratives would contain little ambiguity concerning the identities of the victim and the assailant. Historical truths will be constructed from individual experiences, understood and imagined in accordance with the normative framework of gender, race, sexuality and class existing among those listening.¹³³ Using women as an example, anthropologist Kimberly Theidon views TRCs as profoundly contradictory: while they aim to examine truth, they often reduce women's stories to the sexual violence they have experienced, locking women into a highly gendered victim role.¹³⁴

Colvin considered that if TRCs are victim-oriented, they are not victim-driven.¹³⁵ While storytelling may benefit victims, the instrumentalization by the state would be detrimental to it. According to Colvin, storytelling is not as effective for victims as it could be, precisely because the practice has been hijacked to meet the concerns of the state.¹³⁶ Although at first glance storytelling may seem to increase victims' voices, they have very little control and room to maneuver in structuring, elaborating and giving

¹³⁰ Julissa Mantilla Falcon, "The Peruvian case: gender and transitional justice" in Lisa Yarwood, ed, *Women and Transitional Justice: The Experience of Women as Participants* (London: Routledge, 2013) 184 at 184; Boesten, *supra* note 88 at 87; Ross, "On having Voice", *supra* note 77 at 327; Theidon, *supra* note 88 at 458; Nagy, "Transitional Justice as Global Project", *supra* note 3 at 276.

¹³¹ Boesten, *supra* note 88 at 95.

¹³² *Ibid* at 88.

¹³³ *Ibid* at 93.

¹³⁴ See Theidon's study to learn more about women's narratives of armed conflict: Theidon, *supra* note 88.

¹³⁵ Christopher J Colvin, "'Brothers and sisters, do not be afraid of me': trauma, history and the therapeutic imagination in the new South Africa", in Katharine Hodgkin & Susannah Radstone, eds, *Memory History Nation: Contested Pasts*, 1st ed (New Brunswick, US: Transaction Publishers, 2006) 153 at 165 [Colvin, "Brothers and sisters"].

¹³⁶ Colvin, *Traumatic Storytelling*, *supra* note 81 at 157.

meaning to their narrative.¹³⁷ A study conducted by the Trauma Centre for Victims of Violence and Torture in Cape Town revealed that between fifty and 60% of victims who had testified regretted having done so, due to the loss of control over their narrative.¹³⁸ Victims of sexual violence, for example, resented how their intimate stories were widely disseminated, analyzed, and reinterpreted in “cruel” ways.¹³⁹ These victims felt abandoned by TRCs and that their participation was a source of second victimization.¹⁴⁰ It has been found that victims who testify are rarely prepared to deal with the public attention that follows their testimony or adequately supported to deal with the negative effects of recollection.¹⁴¹ TRCs rarely have sufficient resources to ensure the testimonial process is not victimizing. Law Professor Erin Daly deplores the widespread presumption that truth-seeking is necessarily beneficial to victims, urging instead that possible harms be given greater consideration.¹⁴²

B. Invisibilizing the Root Causes of Violence and the Risk of Reproducing Injustices

Another major problem with this monolithic search for truth is it may have the effect of shifting the state’s attention away from problems at the root of the conflict. When the attention of TRCs is focused on the idea of personal healing, critics state TRCs avoid thinking about necessary structural changes, thus bypassing all the “hard” questions, such as those of resistance, class, race, gender, cultural differences and structural and economic inequalities.¹⁴³ The focus on sexual violence for women serves precisely this purpose: to make traumatic experiences evident as opposed to the invisibility of the cultural, historical, structural and gendered

¹³⁷ Ross, “On having Voice”, *supra* note 77 at 329; Colvin, *Traumatic Storytelling*, *supra* note 81 at 158; Boesten, *supra* note 88 at 75.

¹³⁸ H Clark, *supra* note 86 at 194.

¹³⁹ Fiona C Ross, “An Acknowledged Failure: Women, Voice, Violence, and the South African Truth and Reconciliation Commission” in Rosalind Shaw, Lars Waldorf & Pierre Hazan, eds, *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford: Stanford University Press, 2010) 69 at 84 [Ross, “An Acknowledged Failure”]; J Clark, *supra* note 118 at 194.

¹⁴⁰ E Daly, *supra* note 120 at 41.

¹⁴¹ J Clark, *supra* note 118 at 194; E Daly, *supra* note 120; Ross, “An Acknowledged Failure”, *supra* note 139.

¹⁴² E Daly, *supra* note 120 at 24.

¹⁴³ Green, *supra* note 104 at 130; Colvin, *Traumatic Storytelling*, *supra* note 81 at 164; Nagy, “Transitional Justice as Global Project”, *supra* note 3 at 277; Buaille, *supra* note 85 at 319; Crosby & Lykes, *supra* note 88 at 462.

dimensions of gender-based violence.¹⁴⁴ Sexual violence becomes the gendered face of conflict and bearing witness becomes the role of women in TRCs. Consequently, not only are women too often locked into the identity of the perfect, innocent victim, but they are also reduced to the status of victims of a specific and unique crime, which then affects their possible access to reparations.¹⁴⁵ Peru's TRC, which ran from 2001 to 2003, is particularly interesting for illustrating this problem. In 2004, a parallel reparation commission was set up to create a register of victims.¹⁴⁶ Having victim status provided potential access to economic and symbolic reparations. However, this access depended on the definition of "victim" given by the TRC, which adopted a restrictive definition of rape that excluded victims of forced sterilization, sexual slavery and forced pregnancy.¹⁴⁷ These women were excluded from the distribution of reparation because their experiences of suffering did not fit into the TRC's preestablished definition.

As a result, critics denounce the false "depoliticization" of TRCs, which present themselves as neutral, universal, secure institutions that break with the past, when in fact, they are primarily involved in the project of transition to a specific, ideologically situated state model.¹⁴⁸ These criticisms have been particularly virulent regarding Canada's TRC. It has been strongly criticized for its approach to reconciliation, which adopts this therapeutic rhetoric with a Eurocentric conception of individual healing.¹⁴⁹ Indeed, the notion of healing would not have the same meaning for Indigenous Peoples, since it would imply a reconnection with the territory and traditions that colonization had denied.¹⁵⁰ A number of authors have denounced this therapeutic rhetoric as a means of circumventing fundamental discussions

¹⁴⁴ Crosby & Lykes, *supra* note 88 at 463.

¹⁴⁵ Kevin Hearty, "'Victims of' human rights abuses in transitional justice: Hierarchies, perpetrators and the struggle for peace" (2018) 22:7 Intl JHR 888.

¹⁴⁶ Mantilla Falcon, *supra* note 130 at 194.

¹⁴⁷ *Ibid.*

¹⁴⁸ Nagy, "Transitional Justice as Global Project", *supra* note 3 at 279; Colvin, *Traumatic Storytelling*, *supra* note 81 at 159; Crosby & Lykes, *supra* note 88 at 462.

¹⁴⁹ For a review of these criticisms, see Justine Monette-Tremblay, "La Commission de vérité et réconciliation du Canada: une étude de la sublimation de la violence coloniale canadienne" (2018) 31:2 RQDI 103.

¹⁵⁰ Jaccoud, *supra* note 5 at 161; Green, *supra* note 104 at 138.

on the need for decolonization and the restitution of territories and resources.¹⁵¹

Thus, there is fear that blindness to the political nature of TRCs could lead to the production of an official national truth that is insensitive to social injustices and gender issues. This could lead to injustices being maintained beyond the work of TRCs.¹⁵² There is a tendency to present TRCs as a break with the violence and the causes that led to it, presuming it will end.¹⁵³ The transitional context seeks to present TRCs as something of the past, and the idea that violence could have persisted or been reincarnated is completely dismissed. Yet the socioeconomic conditions of victims often remain precarious even after the TRCs' work, because the structures of their oppression may still be present.¹⁵⁴ In this light, Erin Daly considers truth a luxury that brings neither healing nor bread to the table for dispossessed victims.¹⁵⁵ States should instead assume their responsibilities by questioning the structural origins of violence and its post-conflict persistence during TRCs. This approach would constitute a commitment to truth that would be closer to victims' needs.

C. Failure of Therapeutic Promise and Revictimization

Finally, one of the most important consequences for victims is the promise of certain therapeutic benefits.¹⁵⁶ When individual healing is put forward in this way, it inevitably generates expectations for victims. These promises of "therapeutic reparations" are always at the heart of victim-oriented TRCs.¹⁵⁷ The healing power of storytelling tends to be presented as a remedy for all illnesses through a restored sense of self, community, history and justice.¹⁵⁸ The victims would agree to participate, recounting

¹⁵¹ Rosemary L Nagy, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission" (2013) 7:1 Intl J Transitional Justice 52 at 53 [Nagy, "The Scope and Bounds"]; Green, *supra* note 104 at 129; Augustine SJ Park, "Settler Colonialism and the Politics of Grief: Theorising a Decolonising Transitional Justice for Indian Residential Schools" (2015) 16:3 Human Rights Rev 273 at 274.

¹⁵² Nagy, "Transitional Justice as Global Project", *supra* note 3 at 279; Nagy, "The Scope and Bounds", *supra* note 151 at 61; Crosby & Lykes, *supra* note 88 at 462; Green, *supra* note 104 at 135.

¹⁵³ Nagy, "Transitional Justice as Global Project", *supra* note 3 at 279; Crosby & Lykes, *supra* note 88 at 462.

¹⁵⁴ E Daly, *supra* note 120 at 31.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* at 23.

¹⁵⁷ Colvin, *Traumatic Storytelling*, *supra* note 81 at 4; Lefranc, "L'ordinaire d'une justice d'exception", *supra* note 12 at 147; Hamber, "Doing Justice", *supra* note 28 at 124; Wiebelhaus-Brahm, *supra* note 4 at 4; Imiera, *supra* note 33 at 89.

¹⁵⁸ Colvin, *Traumatic Storytelling*, *supra* note 81 at 4; Theidon, *supra* note 88 at 463.

their experiences of suffering as requested, in the hope that this would enable them to access a sense of justice and well-being. Christopher Colvin denounces the “transactional” nature of storytelling.¹⁵⁹ However, in the aftermath of the South African TRC, for example, this promise has disappointed. Many of the victims interviewed felt things had not changed, and some went so far as to say they felt more injustice after being exposed to the TRC.¹⁶⁰ Many victims felt the TRC started a process it did not have the capacity to complete.¹⁶¹ The great frustration stems from the slow implementation of reparative measures.¹⁶² Researchers have observed that victims are tired and exasperated by being constantly asked to tell their stories.¹⁶³ They feel their story is being exploited, even though they continue to share it in the hope that it will eventually help them. They denounced the lack of reciprocity on the part of journalists and researchers, and the feeling of dispossession.¹⁶⁴ Some victims went so far as to say that asking them to tell their stories of suffering for the good of the nation was premature, insulting and politically suspect.¹⁶⁵

Furthermore, some victims feel that by being asked to publicly disclose their painful memories for the benefit of others, they have been asked to do all the work – and very painful work at that.¹⁶⁶ They believe the TRC has placed the burden of national healing on individual healing, which should have been the responsibility of the state, not individuals. This rhetoric of individual healing also suggests it is possible and desirable to recover from the violence experienced and that victims’ forgiveness should necessarily come for the well-being of the nation. Contrary to restorative justice principles, the notion of forgiveness tends to be presented as essential for societies to turn the page on violence. Storytelling therefore tends to be presented as a step before the healing of victims, and the healing of victims as a step before reconciliation. Healing also implies the idea that one should overcome trauma and move on. This intention is very clear in the words of

¹⁵⁹ Colvin, *Traumatic Storytelling*, *supra* note 81 at 14.

¹⁶⁰ Colvin, “Brothers and sisters”, *supra* note 135 at 164; David Backer, “Evaluating Transitional Justice in South Africa From a Victim’s Perspective” (2005) 12:2 J Intl Institute 1 at 4.

¹⁶¹ Brandon Hamber, “‘Ere their Story Die’: Truth, Justice and Reconciliation in South Africa” (2002) 44:1 Race & Class 61 at 65; J Clark, *supra* note 118 at 203.

¹⁶² Ross, “On having Voice”, *supra* note 77 at 330.

¹⁶³ Colvin, *Traumatic Storytelling*, *supra* note 81 at 3; Ross, “On having Voice”, *supra* note 77 at 330.

¹⁶⁴ Ross, “On having Voice”, *supra* note 77 at 330.

¹⁶⁵ Colvin, “Brothers and sisters”, *supra* note 135 at 164.

¹⁶⁶ *Ibid* at 165.

the Peruvian Government, whose representative said of Peru's TRC: "By paying attention now, through the post-conflict nation-wide exercise of examining the recent past from the victim-survivors' viewpoint, these divisions would be highlighted and, ultimately, overcome."¹⁶⁷ It would therefore be a matter not only of recognizing the suffering of victims but also of ultimately overcoming it while moving toward a united and healed society in the name of reconciliation. In such circumstances, therapeutic rhetoric can leave the impression the narrator has overcome their suffering and healed.¹⁶⁸ Or, if not, that they should do so now that they have been able to express themselves for the good of the nation. While the use of therapeutic rhetoric lies at the heart of victim-oriented TRCs because of the benefits it brings to the construction of a new state's identity, it is not without consequences for the victims.

V. Conclusion

TRCs, as national bodies belonging to the transitional justice paradigm, have the primary objective of national reconciliation. Despite the central role played by victims' stories in these commissions, their fundamental political nature seems to limit their ability to improve victims' well-being and to respond to their quest for justice. On the contrary, they are part of a collective justice approach that may require victims to sacrifice their individual needs for justice. Indeed, even if there seems to be a consensus on the restorative effects of speaking out about one's experience of violence and seeing one's abuser held accountable, most authors consider that simply sharing one's story publicly would not be enough to enable victims to achieve a sense of justice. The limited data available on victims' feelings indicate they had expectations regarding their participation which were not fulfilled and instead may have created distress. Victims' freedom to express themselves is confined to developing a "restorative truth".

This article highlighted that the primary objective of TRCs, despite being "victim-oriented" from a methodological point of view, is not to enable victims to access justice. This may even prevent victims from achieving the benefits associated with storytelling. As French jurist Arnaud Martin wrote, TRCs respond to the need for consideration rather than justice.¹⁶⁹ In this

¹⁶⁷ Boesten, *supra* note 88 at 72.

¹⁶⁸ Colvin, *Traumatic Storytelling*, *supra* note 81 at 164.

¹⁶⁹ Martin, *supra* note 10 at 15.

sense, he believes TRCs recognize victims but do not necessarily do justice for them. However, the question arises as to the extent to which TRCs can respond to victims' individual needs for justice by placing them – rather than their stories of suffering – at the heart of the approach, focusing on their well-being as a priority. If victims are aware compromises to their individual well-being are necessary for the common good, one might ask whether there might be ways of improving their situation and ensuring victims feel the positive effects of their participation. Without saying these individual considerations should take precedence over collective considerations, they remain legitimate and deserve more attention.

At present, however, we know very little about the origins and nature of victims' dissatisfaction. Why do TRCs fail to meet victims' needs for justice? What needs have not been met? Why do victims not feel they have obtained justice? What would have been acceptable in their view? Furthermore, given that participation in restorative initiatives is associated with numerous therapeutic benefits, such as a reduction in psychological problems, feelings of anger and post-traumatic stress symptoms, as well as an increase in feelings of well-being and empowerment,¹⁷⁰ we might wonder whether the theory surrounding victim-centered restorative justice can offer important considerations when contemplating possible improvements to TRCs. One example of this is in procedural rights; it could be beneficial to simply ensure victims are properly informed of the process. Studies have demonstrated that adequate information at the beginning of the process can help manage expectations and increase the level of satisfaction afterward.¹⁷¹ However, this means we first need to be fully aware of the results they can expect, which is, as we saw, a complicated task.

¹⁷⁰ Van Camp & Wemmers, *supra* note 33 at 175; Strang, *supra* note 32 at 129.

¹⁷¹ Van Camp & Wemmers, *supra* note 33 at 182.