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Addressing the Toll of Truth Telling

Ingo N. Laurent

INTRODUCTION

“Do the best you can until you know better. Then when you know better, do better.”—Dr. Maya Angelou

Citizens, churches, educational institutions, states, and communities are committing to grappling honestly with the past. Bryan Stevenson’s array of truth-telling projects, the State of California’s Reparations Task Force, the Truth &
Healing Council and Healing Fund, and the Springfield, Illinois reparations program for Black residents, are just a few notable examples of this proliferation. Globally and in the United States, there are mounting and renewed calls for applying restorative justice principles to deeply entrenched societal issues rooted in racial, ethnic, and religious discrimination. The title of a recent article exemplifies this call to action: “The United States Needs a Truth Commission. It Should be Televised.”

Truth and Reconciliation Commissions (TRCs)—temporary, nonjudicial bodies tasked with uncovering what happened during a period of conflict or systemic human rights abuses via the creation of public truth-telling forums and other investigative mechanisms—have become the norm for responding to protracted conflict, especially in countries dealing with the aftermath of civil wars, such as in “Peru, Sierra Leone, Ghana, Timor-Leste, and Libera.” Often presented as the transitional justice alternative to criminal tribunals, TRCs typically reject

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retributive mechanisms in favor of truth (and sometimes compensation) as the core driver of social reconciliation. Alongside this growing demand for TRCs, there is also a resurgence of ancient restorative ideals, revitalized and operationalized through modern practices. This is especially the case in schools and in the juvenile justice setting.

In light of the lessons learned from previous TRCs, we have an obligation to consider the appropriate, well-measured critiques of past processes in the creation of any new commissions. TRCs are powerful agents of change. They are also limited, often failing to fully realize their transformative capacity. As restorative and transitional justice practitioners, scholars, and supporters, we should already possess an awareness that we cannot control outcomes. We cannot ensure that responsible parties will come to the table, let alone be prepared to take consequential—if any—accountability for the harm caused, or that the capacity or will exists for restitution. We cannot force states to address the proposed recommendations, and this is especially the case with respect to changes in leadership. Because we lack control over outcomes, we ought to have fidelity in the process, intentionally constructing one that is beneficial for participants.

Our primary focus should be maximizing the healing potential of TRCs. To do this, we must both evaluate past processes and draw on developing interdisciplinary wisdom. This is especially important as TRCs have become commonplace

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17 See Androff, supra note 13, at 1961.

rather than rarities.19 Since the establishment of the Truth and Reconciliation Commission of South Africa (SATRC) in 1995,20 more than twenty national TRCs have been created.21 Most recently, the adoption of the UN Declaration on the Rights of Indigenous Peoples has inspired a wave of new TRCs focused on legacies of colonialism and violence against indigenous peoples.22 TRCs have proven fairly adept at collecting sanctioned Victims and Survivors’ (VS)23 stories and contextualizing the conflict in an abstract, historical manner. For example, the SATRC operated for seven years (mandate December 1995–2002), interviewed around 21,000 victims, “received 7,112 amnesty applications” (849 of which were granted), established a register of reconciliation for members of the public to express regret for failing to prevent human rights violations,24 and produced a seven-volume report.25 While the SATRC hosted “institutional hearings” that gave general context for “individual stories provided in victim hearings,”26 the hearings failed to include the

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23 According to the Rape, Abuse & Incest National Network (RAINN), the United States’ largest antispousal violence organization, “victim” and “survivor” are both appropriate terminology for referencing those who have been affected by sexual violence and thus should be left up to individual preference. Typically, RAINN uses the term “victim” when referring to someone who has recently been affected by violence, discussing a particular crime or when referring to aspects of the criminal justice system whereas “survivor” refers to one who has gone through the recovery process or when discussing the short and long-term effects of sexual violence. See Key Terms and Phrases, RAINN, https://www.rainn.org/articles/key-terms-and-phrases (last visited Jan. 11, 2023).
26 Mahmood Mamdani, Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC), 32 DIACRITICS 33, 37 (2002) (In the words of the Commission, “[t]hese submissions made a valuable contribution to the section of the final report dealing with the broad context within which
potential ways to address actors who, while not physically violent, upheld destructive systemic apartheid policies.\textsuperscript{27}

In Canada, a Truth and Reconciliation Commission (CTRC) was created to examine the government’s role in facilitating a policy that encouraged the forced removal of Indigenous children from their families to be placed in residential schools in an attempt to eradicate their cultural and linguistic traditions along with communal and family ties.\textsuperscript{28} The CTRC operated for six years, during which time it hosted seven national events across the country and received testimony from more than 6,500 witnesses—culminating in a six-volume final report that contained ninety-four calls to action.\textsuperscript{29} Similarly, the Sierra Leone Truth and Reconciliation Commission (SLTRC) collected 7,706 statements from Sierra Leoneans living across the region—many as refugees in neighboring countries.\textsuperscript{30} At the conclusion of the SLTRC’s two-year investigation,\textsuperscript{31} a three-volume report was published and adapted for various audiences, including a secondary school and children’s editions, and video adaptations.\textsuperscript{32} In Argentina, the National Commission on the Disappeared (CONADEP) prepared approximately 7,300 files over a period of nine months, comprised of depositions from relatives of the disappeared, VS testimony, and statements from
members of the security forces. In the end, CONADEP’s final report documented 8,960 disappearances during the 1976–1983 military rule and recommended that a reparations program be established, and that continued prosecutions and follow-up investigations take place.

But cataloguing testimony of thousands of instances of injustice and abstractly contextualizing the explicit and implicit policies that allowed for conditions to exist that perpetuated discrimination, violence, killing, and other wrongdoings is a far cry from obtaining the full story. The mechanisms for categorizing and collecting people’s stories face a range of discursive limitations that severely constrict the nuance of individual and collective truths. TRCs encounter resource, framing, and political challenges that obstruct substantial ventilation and can retraumatize VS. The unintentional reinforcement of invisible colonial idealization and the state legitimization of the political party in power prioritizes others’ needs. Suggestive reconciliation, categorical, and temporal framing limitations create new latent harms that layer over those stemming from old atrocities.

Additionally, while the lived experience of VS and some subsequent reports show that truth telling has some positive

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34 Id.
36 See Carla De Yeaza, Search for Truth: A Critical Analysis of the Liberian Truth and Reconciliation Commission, 14 HUM. RTS. REV. 189, 196 (2013) (“Due to lack of adequate funding and financial resources, the Commission was unable to gather credible evidence against the accused.”).
37 See Moon, supra note 35, at 272 (“South Africa’s past is, of course, irreducible to a single plot.”); Mamdani, supra note 26, at 37.
38 See Mamdani, supra note 26, at 37.
39 See Damien Short, Reconciliation and Colonial Power: Indigenous Rights in Australia 161 (2008); see also Metis Calgary, Dr Taiake Alfred Presentation, YouTube (Oct. 1, 2014), https://www.youtube.com/watch?v=xQ6k2Rm5ZZQ.
40 See generally STANLEY COHEN, VISIONS OF SOCIAL CONTROL: CRIME, PUNISHMENT AND CLASSIFICATION (1985) (parsing conceptions of crime and the social control policies enacted by governments to address them, specifically noting the rise of state intervention as “the machine,” which generates impediments to reify its own importance in resolving those newly created problems).
41 Claire Moon, Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation, 8 J. HUM. RTS. 71, 72 (2009).
42 See generally Moon, supra note 35 (discussing categorizations of human rights violations and the limitations to these labels and categories).
43 Michael R. Marrus, Official Apologies and the Quest for Historical Justice, 6 J. HUM. RTS. 75, 83 (2007).
impacts for those who suffer human rights violations, developing empirical data also dictates caution. Psychologists warn that the assumed catharsis of truth-telling testimony can be at odds with the process, implicating the danger of revictimization.44 New empirical literature suggests that whereas certain aspects of VS testimony during TRCs can be empowering, others divest participatory agency.45 One study found “no significant difference in rates of depression, PTSD, or other anxiety disorders” for those who gave testimony during the SATRC.46 Another study “of 1,200 Rwandans demonstrate[d] that [G]acaca witnesses [actually] suffer[ed] . . . higher levels of depression and PTSD” than nonwitnesses.47 In Sierra Leone, an ethnographic case study focusing on perceptions and evaluations of the SLTRC revealed similar results: “almost all of the . . . interviewees provided negative evaluations of the effects of the TRC.”48 One interviewee, a village farmer named Alpha, recounted the problematic nature of the process:

I feel it was just provocation as they talk it on the radio . . . Because they just keep talking about it all the time, TRC, TRC, and I don’t see what they have done for us, so it seems as if it is only provocation to those that they seized advantage on during the war.49

Though TRCs have not fully realized their ability for meeting the needs and expectations of participants and the international community, the advantages and possibilities they

44 Mendeloff, supra note 18, at 365.
45 Shane Stepakoff et al., A Trauma-Informed Approach to the Protection and Support of Witnesses in International Tribunals: Ten Guiding Principles, 9 J. HUM. RTS. PRAC. 268, 269 (2017) (“On the whole, the theoretical and empirical literature suggest that while some aspects of testifying are empowering, other aspects may be disempowering . . . . There is, however, much scepticism [sic] surrounding the therapeutic assumptions underlying truth-seeking institutions.”).
47 Brounéus, supra note 12, at 408.
48 Gearoid Millar, Assessing Local Experiences of Truth-Telling in Sierra Leone: Getting to “Why” Through a Qualitative Case Study Analysis, 4 INT’L J. TRANSITIONAL JUST. 477, 490 (2010). The author also found a significant divergence of opinion between the “educated elite” and the “non elite interviewees,” noting that member of the “elite, representatives of a privileged class in Makani, clearly had positive experiences of the TRC and its public hearings. Some reported having experienced psychologically healing effect, and most projected their experience onto the immunity or the national as a whole, claiming . . . that talking about one’s hardships ‘naturally’ allows you to overcome them.” In a later section, he assesses these divergent perspectives, theorizing that most non-elite interviewees had “very little” understanding of the process, especially regarding what support would be provided to victims. People expected the transfer of money and resources and the “help” of the TRC, not just “talk.” Id. at 489–92.
49 Id. at 489.
present demand continued attention and forward motion. Learning from previous mistakes enables us to forge high-quality processes in the future. Knowing that the “truth” and “reconciliation” components currently only achieve partial fulfillment provides the impetus for increased professional duties, ensuring that all participants receive value. We can augment the value of TRCs by preventing further latent harms in myriad ways: (1) bringing in the concept of movement lawyering;\(^5\) (2) incorporating increased democratization and agency present in the global legal empowerment and ethical storytelling movements;\(^4\) and (3) integrating multidisciplinary frameworks, such as liberation theory, trauma-informed and victim-centered care, and emergent experiential practices like somatic abolitionism.\(^5\) There are new solutions to the old problems that plague us if we are open to exploration and to listening to those who keep finding methods to transcend the strictures of marginalization.

This article is forward focused with an eye on a remedial analysis. It includes a discussion for transitional and restorative justice believers about our increasing responsibility in this realm. It seeks to synthesize the critiques and widen our awareness of truth-telling limitations, allowing us to think generatively about possibilities. Most importantly, this article asks us to consider our obligation to the truth tellers, to those who have been harmed and who continue moving forward. They can show us the way. We must intentionally design and create safeguards on processes that shield participants from further latent harms. Part I of this article investigates the current landscape of TRC truth-telling processes while Part II delves


\(^{5}\) See Resmaa Menakem, White Bodies and the Energies of Race, PSYCH. TODAY (Mar. 12, 2022).
into the emerging, critical scholarship which questions the assumptions underlying that landscape. The article’s second part considers both the cathartic impact truth telling has on VS, as well as theoretical and experiential critiques of TRC processes as a whole, identifying potential gaps in TRC programming that must be thoughtfully addressed moving forward. Part III presents prospective, interdisciplinary solutions to the problems raised, drawing from the tenets of movement lawyering to outline how future TRC programmers can “do better” for VS and communities overall.

I. KNOW BETTER: ASSESSING THE TRUTH-TELLING PROCESS

Truth telling in response to atrocity is a vital exercise. When people tell their stories, understanding the complex contours and grasping a more holistic picture of the narrative becomes possible. Societies share a collective interest in developing a mutual awareness of why and how violence has been implicitly and explicitly sanctioned against a segment of its population. While many VS desire to tell their truths, we are learning that this process may take a significant toll on those who participate in them. This Part investigates the multitudinous benefits of TRC processes in their current form alongside the literature discussing the disadvantages that interdisciplinary researchers are beginning to unearth.

A. What We “Know”

The benefits of TRCs and the value of their processes are generally accepted. Truth telling is envisioned to have enduring and multifaceted societal, institutional, and individual benefits. Indeed, in transitional justice contexts, there is widespread belief that the act of truth telling will bring about healing for individual victims, which in turn promotes group reconciliation and, ultimately, democratization and peace. VS also show a preference for truth-telling processes, “believing

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53 E.G.M. Weitekamp et al., supra note 10, at 226.
54 See generally James Gibson, Overcoming Apartheid: Can Truth Reconcile a Divided Nation?, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 82 (2006) (comparing South Africa’s TRCs and their perceived success with data gathered from interviews with South Africans regarding the legacy of the country’s TRCs).
55 Ruti Teitel, in his important work Transitional Justice Genealogy, defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.” Ruti Teitel, Transitional Justice Genealogy, 16 HARV. HUM. RTS. J. 69, 69 (2003).
56 Mendeloff, supra note 18, at 358.
that [they] will bring relief from emotional and psychological pain, anguish, and suffering.\textsuperscript{57}

We start this exploration with the most important perceptions—those of individuals who have been harmed. While this knowledge is mostly anecdotal, there are a few studies confirming that VS regard truth-telling as a vital avenue for seeking justice and accountability.\textsuperscript{58} However, we must acknowledge this desire while holding a simultaneous truth that scant empirical evidence exists regarding the psychological benefits of TRCs.\textsuperscript{59} Regardless of the empirical data, supporting VS needs and desires—as they express them—can augment agency and should be one of the aims of the restorative process, especially because VS experience a loss of personal autonomy due to the wrongs committed against them.\textsuperscript{60} Opportunities to reassert power, such as deciding whether to participate in the process, are paramount; these opportunities amount to a return of agency that was once stripped.\textsuperscript{61} Because VS see truth-telling as beneficial, it is incumbent upon supporters and scholars to both support continued proliferation of truth-telling and refine these processes.

Restorative justice literature explains that there is a vast range of personalized needs of VS—some need very little and others need extensive support.\textsuperscript{62} Some of the primary needs that consistently resurface for most VS include (1) the need to understand “why”—an explanation of the underlying choices of the wrongdoer;\textsuperscript{63} and (2) the need for ventilation—an

\textsuperscript{57} David Mendeloff, \textit{Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice}, 31 Hum. RTS. Q. 592, 595 (2009).

\textsuperscript{58} \textit{Id.} at 594–95.

\textsuperscript{59} \textit{Id.} at 595.

\textsuperscript{60} HOWARD ZEHR, \textit{CHANGING LENSES: RESTORATIVE JUSTICE FOR OUR TIMES} 19–32 (1990) [hereinafter ZEHR, \textit{CHANGING LENSES]}.

\textsuperscript{61} \textit{Id.}

\textsuperscript{62} \textit{Id.}

\textsuperscript{63} \textit{Id.} at 21. Zehr identifies six basic questions that victims often have to answer for themselves to heal from the trauma induced by crime; however, he notes that information must be available to enable the victim to formulate the answers to these questions:

(1) What happened? (2) Why did it happen to me? (3) Why did I act as I did at the time? (4) Why have I acted as I have since that time? (5) What if it happens again? (6) What does this mean for me and my outlook (my faith, my vision of the world, my future)?

\textit{Id.} at 27. The author does note that there is likely a difference between how violent crime and war crime and long-standing discriminatory practices impact VS; however, as Mendeloff states:

Although there may be important differences... there is an absence of well-developed empirical studies that directly address the relationship between national truth-telling in post-conflict societies and the psychological health and emotions of victims and survivors of war and atrocity. In that voice, then, the
opportunity to story about the ways the wrongdoing affected and subsequently altered their lives. Restorative theory, one of the foundational theories upon which TRCs rest, posits that providing dialogic opportunity for an exchange of information between a wrongdoer willing to take accountability and a harmed party (and optimally the community as well) is the most efficacious way to meet the needs for ventilation and understanding. This dialogic exchange provides a pathway for reintegration through norm-correction—a starting place for rebuilding frayed relationships through a flexibly responsive structured process of linguistic exchanges that allow parties to view each other’s subjective worlds.

Providing an opportunity for a VS to own their experiences and accompanying narratives can be greatly beneficial. When a VS articulates that newly fashioned, cohesive story, especially to the person who committed the wrong, that can net positive effects—especially from a psychological standpoint—as VS are reminded of their own power and aided in the process of working through their trauma. Ventilation can help an individual integrate their tragedies into an evolving version of self, the narrative of who they are becoming, which can result in a “cognitive sense of control over the incident.” Furthermore, if this retelling is done communally, a VS’s need to have their “suffering and the truth acknowledged” is possible. Additionally, this communal retelling creates space for VS to inform others

research from clinical and forensic psychology offers the best available data we have to evaluate some of the broader claims of truth-telling’s impact.

Mendeloff, supra note 57, at 596.


65 See generally Zehr, Changing Lenses, supra note 60 (proposing a restorative model for VS justice).

66 See Audrey Barrett, Exploring Habermas’ Discourse Theory to Explain the “Magic” and Potential of Restorative Justice Processes, 36 Dalhousie L.J. 335, 342-43 (2013) (“The self can see themselves through another’s eyes (alter); they can see the other through the other’s eyes’, they can see the interaction between self and other through another’s eyes (third person) and they can see the physical world through another’s eyes. . . . [I]n order to come to understanding and coordinate action, you must understand how you view the facts, intentions, and norms, as well as how another party views facts, intentions, and norms. Only when his is understood can the positions be synchronized and actions coordinated.” (citing Jürgen Habermas, The Theory of Communicative Action: Reason and the Rationalization of Society 69 (1981))).


68 Barbara Perry, Hate Crimes: The Victims of Hate Crimes 206 (2009).

about their ongoing needs in light of the wrongdoing and provides prosocial opportunities for neighbors and advocates to find impactful methods to fill those gaps.\textsuperscript{70} Prosocial behavior is an action that an individual undertakes which provides benefits for others.\textsuperscript{71} Researchers have found benefits associated with prosocial behavior, including a decrease in the harmful impacts of stress on the emotional well-being of the giver, thus creating multiple beneficiaries.\textsuperscript{72}

Prosocial benefit can also flow to wrongdoers in well-designed dialogic truth exchanges.\textsuperscript{73} Wrongdoers have copious needs, and if we hope to stabilize society and address the root causes of conflict, we cannot ignore them. Typically, a wrongdoer has a need to tell their side of the story—an opportunity to provide fuller context and supplement the prototypical singular, flat characterization of “bad” or “evil” frequently projected onto them.\textsuperscript{74} Many, if not most, responsible parties have also been victimized at some point in their history.\textsuperscript{75} Their profiles generally include exhaustive lists of unfulfilled needs, including a host of maladaptive mechanisms adopted to find ways to meet those needs.\textsuperscript{76} The communication exchange centered through accountability processes opens up space for the expression of that full range of complexity. This allows a wrongdoer to have a fuller profile, which can include nuanced realities like any competing emotions and thoughts prior to, during, or subsequent to a wrongdoing.\textsuperscript{77}

But for this type of intervention, access to this information frequently remains inaccessible, as most wrongdoers remain silent.\textsuperscript{78} There is a strong psychological incentive to dissociate from destructive actions, using “neutralizing strategies.”\textsuperscript{79} Responsible parties minimize their

\textsuperscript{70} See Zehr, Little Book, supra note 67, at 14–18.
\textsuperscript{71} Nicole Celestine, Prosocial Behavior: 12 Examples, Activities & Findings, POSITIVEPSYCHOLOGY.COM (Sept. 12, 2020), https://positivepsychology.com/prosocial-behavior/ [https://perma.cc/F3QS-C7RF].
\textsuperscript{73} See Zehr, Little Book, supra note 67, at 17, 26, 56.
\textsuperscript{74} Zehr, Changing Lenses, supra note 60, at 45–49.
\textsuperscript{75} See id.; see also Barb Toews & Jackie Katounas, Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice?, in CRITICAL ISSUES IN RESTORATIVE JUSTICE 107–09 (Howard Zehr & Barb Toews eds., 2004).
\textsuperscript{76} Toews & Katounas, supra note 75, at 109.
\textsuperscript{77} See Allan & Allan, supra note 69, at 463.
\textsuperscript{78} Zehr, Changing Lenses, supra note 60, at 49–50; see Toews & Katounas, supra note 75 at 111.
\textsuperscript{79} Zehr, Little Book, supra note 67, at 16.
role and responsibility, further insulating themselves with elaborate rationalizations, while casting blame externally.80 Additionally, physical safety needs might also be at issue, especially in post-civil war environments where retributive and vigilante justice can be sanctioned.81

The restorative process widens the perception of offenders, and this can generate increased empathetic understanding for the choices and nuanced realities facing the people who ultimately chose to commit a wrongdoing.82 This insight can elucidate the many factors which influence and motivate people who commit harmful acts, including the heightened survival coping mechanisms present during war, long intractable conflicts, and environments ripe with discrimination or dehumanization.83 Without sufficient opportunity for processing, responsible parties have little incentive to contemplate the impetus or root causes of their own harmful actions, let alone envision or create the space to be able to receive information about the impact those actions had on others.84 Providing a dialogic process committed to recognizing the dignity of all persons in the process and allowing for the separation of the person from the act creates generative possibilities.85

When community is involved in a truth process, reintegration avenues can arise. In large-scale atrocities where transitional justice typically operates (after events such as a civil war or genocide), “it is frequently impossible to identify and remove all perpetrators from society without destabilizing the country.”86 Thus, providing pathways for prosocial reintegration is vital for ongoing community stabilization, benefiting responsible parties and society at large.87

Another supplemental communal benefit includes breaking the “culture of silence” that

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80 Id. at 49–50.
81 See Mendeloff, supra note 18, at 368 (“Cases such as Kosovo and Rwanda reveal that revenge attacks are most common and most dangerous . . . in the immediate aftermath of war . . . it is in the short term that efforts to mitigate violent reprisals are most needed.”).
82 Allan & Allan, supra note 69, at 464 (In “century old conflicts . . . it is rare to find a situation where the other side is blameless. There are usually perpetrators on both sides.”).
83 Id. (“Many [perpetrators] are well informed and freely choose to involve themselves in atrocities; however, some perpetrators may themselves have been the victims of human rights abuses . . . Others, who are later branded as perpetrators, were at the time acting within the law and believed that their behavior was justified.”).
84 See Zeh, Little Book, supra note 67, at 45–49.
85 See generally id. (advocating for such a restorative justice model in response to wrongdoing broadly).
86 Allan & id, supra note 69, at 464.
87 Id.
occurs when an atrocity is societally ignored. Consider Spain’s near century long “pact of forgetting” or “Pacto del Olvido” that disregarded large-scale human rights abuses that took place during Franco’s dictatorship in exchange for the reestablishment of order under a new democratic government. But truth silenced has a way of festering and fissuring its way to the surface. Today, we are seeing “[t]he unexpected emergence of a belated ‘memory politics.’” Renewed calls for accountability and information are mounting after all this time. Unpacking truth a century after atrocity faces heightened difficulties. Arguably, the closer in time truth collection occurs after an active conflict, the more accurate and detailed the historical record can be.

TRCs advance institutional and societal benefits through the compiling of an “authoritative version,” an officially preserved “record of [the truth],” that disseminates information rather than “myths . . . hatred, stereotypes and unresolved issues” that are passed intergenerationally and contribute to future discriminatory practices, violence, and dehumanization. Centering truth telling can “serve a crucial function for peace building in creating a space for a national conversation after which no one can say ‘I did not know’ or deny the realities of what took place.” Governmental partnership, assent, or facilitation of TRCs can serve as a warning that these behaviors will not be tolerated under this leadership. On a practical level, TRCs also serve as an important tool for culling immediately vital information. During the SATRC, more than fifty bodies of the “disappeared” were located due to VS testimony. In Argentina, truth telling helped enable identification of three

88 Id. at 469 (quoting P.B Hayner, Fifteen Truth Commissions: 1974-1994, 16 HUM. RTS. Q. 597–655 (1994)); Millar, supra note 48, at 482; see also Allan & Allan, supra note 69, at 459 (“[U]ntil recently, there was no organized attempt to deal with the consequences of such abuses to the psyche of individuals, or to the collective psyche of the group, who had survived such events.”).
89 Madeleine Davis, Is Spain Recovering its Memory? Breaking the Pacto del Olvido, 27 HUM. RTS. Q. 858, 863–64 (2005) (“Spain’s way of dealing (or not dealing) with its repressive legacy has been most often characterized as a deliberate, but largely tacit, agreement to forget the past—a pact of oblivion based upon an ‘erasure of memory’ or a ‘collective amnesia.’”) (citing Salvador Cardús i Ros, Politics and the Invention of Memory: For a Sociology of the Transition to Democracy in Spain, in Disremembering the Dictatorship: The Politics of Memory in the Spanish Transition to Democracy 21 (Joan Ramon Resina ed., 2000)).
90 Id. at 862.
91 Id.
92 Allan & Allan, supra note 69, at 463.
93 Brounéus, supra note 12, at 408–09.
94 Id. at 430.
95 Allan & Allan, supra note 69, at 470.
hundred “secret detention centers” and the discovery of numerous “mass burial grounds.”

According to the existing literature, an analysis of TRCs indicates multitudinous benefits for VS, offenders, communities, and ultimately, society. Dialogic exchanges of information can make the implicit, express, providing insight into the needs and emotional well-being of all participants in the process. It can elucidate the thought process of one who harmed another, moving the impression of that person from a flat and “evil” person to one who possesses more nuance. Truth processes also facilitate pathways for bystander community members to reengage with neighbors, meet needs for VS, and help with reintegration efforts for those who have caused harm.

B. What We Are Learning

There is no denying that TRCs engender positive outcomes for some participants. They have become a crucial global tool for responding to entrenched societal ills. However, few empirical studies have been able to capture and confirm the net long-term psychological benefits ascribed to TRCs, as most of the assessment has been anecdotal. Those that do exist are inconclusive and have yet to categorically confirm the pessimistic outlook of some critical scholars or provide unequivocal support for proponents’ positive views. New studies and emergent critical scholarship, however, are providing methodologies for refinement. How should the lessons from past TRCs, along with advancing science and scholarship, influence TRC design moving forward? This is the question the upcoming sections consider.

1. Those Who Create the Process Compose the Narrative

“A process of full truth-telling is necessary... before closure and real healing of individuals can occur. This entails the seeking, receiving, and imparting of information. Non-

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97 Mendeloff, supra note 18, at 365.

98 Id.
recognition or mis-recognition of this need is a form of oppression.”—Allan and Allan

Truth is subjective and difficult to reach. However, if TRCs set their goals around process—attempting to reduce misinformation and deception,¹⁰⁰ and providing meaningful opportunities for psychological safety, healing, and recognition—the challenging task of truth collection becomes far less daunting. The creation of an intentional, effective frame that both centers the physical and psychological well-being of those most affected and one that can hold redemptive space for those wrongdoers willing to take real accountability and begin making amends is laudatory. Evaluating the theoretical and experiential pitfalls associated with attempts to discover truth can lessen its problematic elements and provide opportunities for countering them.

2. Political and State Legitimacy Reinforcement: All Roads Lead to Reconciliation

In postconflict states, TRCs have been viewed as a vehicle to help heal and stabilize—democratization through the re legitimization of the state power that cooperates with the TRC process.¹⁰¹ By their very nature, TRCs are “official” bodies with mandates to investigate gross human rights offenses that are “supported by either an international body or the government.”¹⁰² The postconflict mandate is to move the country forward and to “lay national trauma to rest.”¹⁰³ While in theory, this is an apt metagoal, TRCs ought be wary about the messages this type of framing can send. Democratization and augmenting citizen safety and well-being is paramount for psychological well-being. Typically, the security risk of future violence remains frighteningly high after protracted conflict.¹⁰⁴ The tension hiding in the imperative to “lay the trauma to rest” is a strong push toward a hegemonic reconciliation narrative, at the expense of VS well-being. Because state participation is necessary, their express and implicit needs can easily become dominant. In TRC processes,

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⁹⁹ Allan & Allan, supra note 69, at 463 (citing Nancy Fraser, From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age, 212 NEW LEFT REV. 68 (1969)).
¹⁰⁰ See id. at 469.
¹⁰¹ Moon, supra note 41, at 77.
¹⁰² Allan & Allan, supra note 69, at 460.
¹⁰³ Moon, supra note 41, at 72.
prioritization of state legitimization can override and co-opt processes, thus constricting the nuanced narratives of VS, especially those that do not align with a state trajectory.\footnote{For critique on the SATRC, see Richard A. Wilson, The Politics of Truth and Reconciliation in South Africa: Legitimating the Post-Apartheid State (2001); see also Cohen, supra note 40. Cohen calls this phenomenon the “master patterns” of social control, whereby maintaining peace can become a new source of state legitimacy. In these cases, we do not see a rolling back of the state—we see new terms on which it can re-legitimize itself. Id. at 12–39.}

There are VS who are not ready to speak, who are not ready to forgive, and who do not agree with the amnesty provisions frequently offered to responsible parties.\footnote{See Moon, supra note 35, at 264.} Unfortunately, many of these VS are also economically disenfranchised, suffering and in dire need of resources, acknowledgement, and restitution, all of which require participation and fitting within the framed parameters.\footnote{See, e.g., Therese Abrahamsen & Hugo Van der Merwe, Reconciliation Through Amnesty? Amnesty Applicants’ Views of the South African Truth and Reconciliation Commission 7, CTR. STUD. VIOLENCE & RECONCILIATION (2005) (after interviewing amnesty applicants in South Africa, researchers found “three main motivations for applying for amnesty: to be released from jail (twelve), to tell the truth about the incidents for which they had applied amnesty (eight) and to reconcile with their victims (seven)”)} VS are often faced with the choice of nonrecognition or adaption—contorting their stories to fit within the sanctioned frame. On the other end of the spectrum are the responsible parties, at various stages of contrition, those who genuinely seek atonement, those who simply wish to provide context for their side of the story, or those who merely desire particularized amnesty as the prime incentive.\footnote{See, e.g., Lisa J. Laplante & Miryam Rivera Holguin, The Peruvian Truth Commission’s Mental Health Reparations: Empowering Survivors of Political Violence to Impact Public Health Policy, 9 HEALTH & HUM. RTS. 137, 137–38 (2006).}

This reconciliation ethos, including the discursive categorical, temporal, and colonial framing, can force a storytelling ark that bends toward “a general template-script of what reconciliation should consist of...confession, testimony, forgiveness, amnesty.”\footnote{See Moon, supra note 35, at 264; see also Moon, supra note 41, at 72 (warning that the “traumatic legacies of civil wars, the claim goes, are better disposed to being dealt with by forestalling punishment and instead reconciling and healing individuals and entire nations by means such as truth telling and amnesty”).} For example, scholar Claire Moon critically examines the SATRC, summarizing that the process did not make it possible, nor provide a language within which people could say ‘I am not reconciled’ or ‘I do not forgive you’, or ‘I want you to be punished’, or ‘I do not confess or apologize for what I did’, or ‘I do
not recognize this process’. It did not recognize non-reconciled outcomes as possibilities.\textsuperscript{110}

TRCs are often built rather ritualistically. While reinforcing the formality of a tribunal can be important, the repetitive nature of the “confession, testimony, forgiveness, amnesty” procedure can also become rote.\textsuperscript{111} Truth collection in such a manner can be classified as “numbing.”\textsuperscript{112} Potentially, this type of truth collection could even be viewed solely as a politicized “enactment or performance of ‘inner’ psychological processes such as remorse, forgiveness, and reconciliation.”\textsuperscript{113}

Though more severe in transitional justice settings, this appeasement also arises in stabilized democracies where TRC processes are implemented to atone for “past” atrocities.\textsuperscript{114} While the impetus for state legitimacy is not as heightened, the reinforcement of the state as a benevolent actor—moving the country toward healing—certainly influences the ventilation process. Scholars critical of the CTRC, Corntassel and Holder, rebuke the process: “[S]everal recent apology and truth commission processes professing to deal with wrongs done to native peoples have buried indigenous concerns under a preemptive focus on regime legitimization and national unity.”\textsuperscript{115}

Because the facilitators of TRCs are typically a conglomerate of state actors, community representatives with close ties to the government and politically influential individuals, international non-governmental employees, and

\textsuperscript{110} Moon, supra note 35, at 264.
\textsuperscript{111} See id.
\textsuperscript{112} See Brounéus, supra note 12, at 420.
\textsuperscript{113} Moon, supra note 35, at 266 (“These insights into the relationship between ritual, faith and its institutionalization illuminate the way in which the TRC politicizes the outer enactment or performance of ‘inner’ psychological processes such as remorse, forgiveness, and reconciliation.”).
\textsuperscript{114} See, e.g., Jeff Corntassel & Cindy Holder, Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru, 9 Hum. RTS. Rev. 465, 478 (2008) (“In both Canada and Australia, apologies that were meant to serve as basic building blocks of reconciliation with indigenous peoples ultimately failed to succeed even as apologies, let alone as tools of reconciliation. In Canada, concern over the possibility of undermining the state’s legal position caused officials to stop short of a full apology in their acknowledgement of the state’s implication in the abuse of Indigenous human rights. In Australia, attempts by a civil society movement to compensate for state officials’ unwillingness to acknowledge state responsibility for injustices suffered by indigenous peoples failed to advance the project of reconciliation and may even have impeded it by fueling a popular backlash.”). Although discriminatory practices shift overtime becoming less imminently lethal and expressly hostile, they evolve to be less explicit while continuing to influence the quality of life and lifespan of people of color along every social indicator of success, such as health, socioeconomic, safety and security, etc.; see also MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 13 (2012).
\textsuperscript{115} James, supra note 28, at 183 (citing Corntassel & Holder, supra note 114, at 465–89).
international nongovernmental organizations (NGO), state reification tends to be embedded within the fiber of TRC processes. Additionally, as many facilitators are foreign employees of NGOs, they will likely lack deep familiarity with local ways of being. Awareness of these dynamics, especially as it expresses itself in discursive limitations, is essential for improved TRC design.

3. Framing Limitations

Framing devices are necessary because they set the parameters for the official recognition of cognizable claims. Drawing sufficiently inclusive yet manageable boundaries is deeply challenging work, especially in the face of entrenched tragedy. However, creating a frame that can hold many VS stories is crucial. The consequences of a narrow design include nonrecognition and exclusion from the historical record—a missed opportunity for the country to fully comprehend the scope of and modalities of violence used. It also limits the potential for restitution, should it arise. Thus, to improve future processes, paying specific attention to those limitations is imperative.

a. Categorical Framing Limitations

Political theorists, such as Michael Foucault, have long been concerned with narrative constraints. In particular,

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117 Cognizance of and careful contemplation surrounding who should facilitate these processes is necessary. Lessons from the NGO world demonstrate that the use of facilitators who lack familiarity with local ways of “knowing and being” can significantly undermine local movements to “emancipate themselves from economic, social and political oppression.” Rosemary Nagy, Settler Witnessing at the Truth and Reconciliation Commission of Canada, 21 HUM. RTS. REV. 219, 231 (2020); Firoze Manji & Carl O’Call, The Missionary Position: NGOs and Development in Africa, 78 INT’L AFFS. 567, 568 (2002). For a list of resources on this issue, see Decolonising Aid: A Reading and Resource List, NEW HUMANITARIAN (Aug. 12, 2022), https://www.thenewhumanitarian.org/feature/2022/08/12/Decolonising-aid-a-reading-and-resource-list [https://perma.cc/2L7S-5BE8].


119 See Moon, supra note 35, at 259–63; see also MAHMOOD MAHDIAN, NEITHER SETTLER NOR NATIVE: THE MAKING AND UNMAKING OF PERMANENT MINORITIES (2020). Notwithstanding the emphasis on establishing “as complete a picture as possible” and highlighting a “systematic pattern of abuse,” the Commission made the distinction between two kinds of violations, those emanating from “policies of apartheid” and those from “conflicts of the past,” relegating the former to context and acknowledging only the
Foucault warns that “discursive practices constitute their objects of enquiry rather than the objects of enquiry being prior to the discourses that ‘contain’ them.”120 In essence, we let the frame define the problem rather than allowing the problem define the frame. This concern is heightened in matters of protracted conflict. What wrongs should be included? How can express and implied modalities of violence be addressed? These are immensely challenging questions, yet it is imperative to answer them intentionally with a focus on victim centrality.

The SATRC classified and reclassified the type of violations that would be eligible for inclusion.121 Though thoughtful, the SATRC limited the availability of wrongs that would be permitted for testimony, therefore restricting the recognition and restitution permissible for many VS.122 The “limitations of scope”123 set out tables indicating the range of cognizable claims.124 The most obvious permissible claims were “killing” (in lieu of “murder”) along with others like “abduction, torture or severe ill-treatment of any person.”125 While most terms left little room for interpretation, some like “severe ill-treatment” provided flexibility.126 Although a broad reading was possible, most of the ambiguous terms were construed narrowly despite pressures from civil society organizations to include a more expansive definition.127 For example, “severe ill-treatment” eschewed the more expansive international law interpretation, which allows for both “bodily integrity rights” and “subsistence rights” (such as “coerced labor [or] forced removals”), and instead, solely focused on “[a]cts or omission[s] that deliberately and directly inflict severe mental or physical suffering on a victim.”128 This categorical limitation blocked significant avenues for relief.129

latter as violations that would merit reparations. The result was to narrow the scope of the Commission’s hearings so extraordinarily that the first phase of hearings was confined to individual victims. Id.

120 Moon, supra note 35, at 259 (emphasis omitted).
121 Id. at 260.
122 Id.
123 Mamdani, supra note 26, at 37.
124 See Moon, supra note 35, at 262–63.
125 See S. AFRICA TRC VOLUME 1, supra note 27, at 11. For a general discussion of these categorizations, see Moon, supra note 35, at 259–64.
126 See Mamdani, supra note 26, at 39.
127 See id. (“The debate around the interpretation of ‘severe ill-treatment’ is particularly illuminating. It went through several rounds. Each time, the Commission majority endeavored to justify a narrow definition of ‘victim.’ Every successive attempt attests to the failure of the previous attempt.”).
128 Id. (citing S. AFRICA TRC VOLUME 1, supra note 27, at 80).
129 Id. at 38 (citing S. AFRICA TRC VOLUME 1, supra note 27, at 57, 60) (“The second qualification on acknowledging a violation was that it had to be carried out by a
Understandably, the terms were construed to provide clear boundaries for cognizable claims; however, the Commission’s choice created untenable and confusing outcomes, ultimately leading to a reexamination of terms.\footnote{Mamdani, supra note 26, at 40.} This confluence is well illustrated by the SATRC’s debate over “arson” for inclusion as a gross violation. Originally, this crime was categorically excluded because of its classification under “subsistence rights” instead of “bodily integrity rights.”\footnote{Id.} This was reevaluated due to advocacy from civil society that eventually forced a dialogue. Through conversation, the SATRC came to understand arson as a systematic, “deliberate tool used by political groupings to devastate an area and force people to move away.”\footnote{Id. (citing S. AFRICA TRC VOLUME 5, supra note 26, at 12).} What at first blush appeared to be solely an economic issue came to be understood as a complex scheme for mass-scale familial, community, and psychological destabilization.\footnote{Id. at 40.}

These restrictions not only classified the type of harms, but also augmented constraints by requiring all acts to be politically motivated, further limiting the wrongdoers solely to political activists or state agents directly involved in harms, but never those who created, upheld, enforced, or benefited from apartheid practices.\footnote{Id. at 38.} This construct highlights the Foucauldian issue of “enunciative modalities” of discourse, which constrains who is given permission, voice, or “endowed with the authority to speak.”\footnote{Moon, supra note 35, at 260.} Future TRC conceptualizers, supporters, and participants must be wary of the categorial framing limitations that exacerbate epistemic injustice. Additionally, temporal

person ‘acting with a political motive.’ To qualify for amnesty, a perpetrator not only had to make a ‘full disclosure of relevant facts’ but also had to establish that the violations in question were carried out “with a political objective.”\footnote{Id. at 40.}; see also Moon, supra note 35, at 260 (“As a result, ‘violations perpetrated with a political objective’ were delimited as the common denominator around which a multi-party scrutiny could take place.”).
framing limitations can also produce hermeneutical injustice.\textsuperscript{136} When socially marginalized knowers are excluded from contributing to collective knowledge production, we have incomplete truths, which makes future subjection more likely.\textsuperscript{137}

\textit{b. Temporal Framing Limitations}

First and foremost, we ought to heed the warning: “Time could never be socially neutral.”\textsuperscript{138} Critics of Western conceptions of time identify its problematic intersectionality with class oppression and institutional racism.\textsuperscript{139} Attorney and scholar, Rasheedaah Phillips, draws connections between “[w]estern linear time” and slavery.\textsuperscript{140} “Africans’ bodies and their time, through labor, were commodified . . . the currency in which the workers’ lives—their time, reified—was bought and sold” and “forbidden access to the temporal domain of their pasts.”\textsuperscript{141}

Because TRCs form in response to protracted conflict, an appropriate response must include ongoing relief efforts that acknowledge this temporal significance. Any ethically designed restorative process needs to be locally contextualized and creative if it hopes to meaningfully address the insidious ways violence modernizes into more palatable forms of dehumanization and the multigenerational toll it exacts. “Historical” or “past” injustice is a misnomer.

Phillips evocatively summarizes this point: “Racial time was also used to catalyze and perpetuate systemic oppression, denying Black communities’ access to and agency over the temporal domains of the past, present, and future.”\textsuperscript{142} Her recognition of the limitations of future agency is quite telling, as it indicates that discriminatory practices are not relics. The United States is intimately familiar with this pattern—we can

\textsuperscript{136} Scholar Miranda Fricker defines hermeneutical injustice as occurring when “someone has a significant area of their social experience obscured from understanding owing to prejudicial flaws in shared resources for social interpretation.” For example, feminists’ concerns about how power relations can ultimately constrict a woman’s ability to understand herself fully because of her need to orient into the dominant constrictions of womanhood. See \textit{generally} \textsc{Miranda Fricker}, \textit{Epistemic Injustice: Power and Ethics of Knowing} (2007).

\textsuperscript{137} \textit{Id.}


\textsuperscript{139} Rasheedaah Phillips, \textit{Race Against Time: Afroturism and Our Liberated Housing Futures}, 9 \textsc{Critical Analysis} L. 16, 16 (2022).

\textsuperscript{140} \textit{Id.} at 19.

\textsuperscript{141} \textit{Id.} at 19–20. The author includes other poignant illustrations implicating legal collusion, such as the chilling protection given to localities that exerted temporal control through “Sundown Towns.” \textit{Id.} at 21.

\textsuperscript{142} \textit{Id.} at 20.
follow the sanctified forms of human debasement from slavery to Jim Crow to permissible practices and policies underlying evolving schemes like redlining to voter suppression. If we do not accurately provide the space to account for the myriad harms of enduring oppression, we risk repeating history. Reliance on partial truths creates pathways for continued subjugation.

As nearly all TRCs choose to address “historical” injustices, they fail to appropriately measure the scope and techniques of degradation and the lasting impacts of violence and discriminatory practices that will continue reverberating for generations. A recent economic study considering the loss of Black wealth due to racial terror, which divested Black landowners of compounding wealth, conservatively puts the economic loss in the $300 billion range. Although the importance of constructing a beginning and end date is important, “[o]nce you preclude injustice to the present,” the “mechanisms” of harm repair are severely curbed. Again, the frame shapes the problem rather than the problem shaping the frame.

Additionally, a practical problem of exclusion based on the strict temporal framing is that TRCs unfairly limit both acknowledgement and recovery potentials. These limitations can often be tied to practical considerations regarding the capacity to accommodate numerous VS or descendants of VS, and more political determinations about who should be classified as a VS—especially when the wrongdoer is the state or comprises a large majority of the population. For example, in the SATRC, the Commission mandate was to account for “gross violations of human rights” from March 1, 1960, to May 10, 1994—overlooking the colonial underpinnings of Apartheid which took root in 1948. Here, we see the multilayering impact of categorical and temporal limitations constricting access to any

143 See id. (“Evolving alongside the struggle for emancipation were legacies of de facto and legalized discrimination in public spaces, housing, and land in the United States, always keeping true freedom in check.”); see also ALEXANDER, supra note 114, at 13.


146 Id. at 8 (“The subject of inquiry (i.e., question) for any work will be constructed according to and appear relevant by the knowledge of the time, and as such, the argument procured (i.e., answer) will make sense insofar as it logically responds to said question. Thus, to truly understand any proposition, there must first be an understanding of the paradigm it adopts and the question that it is an answer to.”).

147 Mamdani, supra note 26, at 37; Apartheid, Hist. (last updated Nov. 2, 2022), https://www.history.com/topics/africa/apartheid [https://perma.cc/TCX7-ETXZ].
VS whose traumatic experiences do not fit within the express and enumerated parameters.

If one aim of TRCs is to understand the “why” behind the injustice to prevent repetition—like the famed mantra “never again”—then the value of culling comprehensive, complex truth should rise above strictly-metered limitations. Truth-telling is “a public correction of the historical record, acknowledging the collective ‘history’ in a way that did not exist before.”

Therefore, allowing people to speak their truth—the “when” and “what of the ills” borne unto them—must transcend process goals. This ethos is increasingly important in light of the studies implicating the negative psychological harms of disjointed truth telling and the importance of cohesive narrative identity.

\textit{c. Colonial Framing Limitations}

Indigenous scholars lead the way in critically assessing oftentimes obsequious hegemonic colonial idealization. Gerald Taiaiake Alfred asks a succinct, powerful question that centralizes the importance of using a critical lens when engaging with TRC processes: “What good is reconciliation, if reconciliation is Indigenous peoples reconciling themselves to colonialism?”

The choices we make around framing, both the intentional and the unconscious, are influenced by the status quo values embedded around us. Those choices ontologically inspire and inhibit, painting a picture of what’s possible by defining and limiting the TRC frame. Using Frantz Fanon’s formative work \textit{Black Skin, White Masks}, Glen Sean Coulthard, in \textit{Red Skin, White Masks}, critically assesses the assumption of reconciling Canada’s interests and Indigenous Peoples’ right to self-determination through the “politics of recognition.” In places where colonial rule is no longer reproduced by forceful domination, “specific modes of colonial thought, desire, and behavior,” act as stand-ins, aiding in continuing subjugation. Coulthard sees “colonialism as a form of structured dispossession.” In the past, this divestment has come primarily by domination, force, and sanctified versions of fraud, but its newer iteration is through “so-called ‘negotiation[].”

\footnote{148\ Kamitomo, supra note 145, at 13.}
\footnote{149\ Metis Calgary, supra note 39.}
\footnote{150\ \textsc{Glen Sean Coulthard, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition} 3, 16 (2014).}
\footnote{151\ \textit{Id.} at 7, 16.}
\footnote{152\ \textit{Id.} at 7.}
\footnote{153\ \textit{Id.}}
The end result under any form is the same: states continuing to gain dominant and exclusionary access to Indigenous land and resources. A growing distaste for state violence compelled the transition from overt displays of dominance (i.e., slavery) to an increasingly concealed and “civil” mode of governmentality, which in the end achieves like outcomes. Thus, “recognition” is not actually “a source of freedom and dignity for the colonized but rather . . . the field of power through which colonial relations are produced and maintained.”

Earlier, the discussion drew the reader’s attention to problems that arise when a state’s desired narrative for reconciliation supersedes centralizing VS needs. This dynamic can lead to shallow avenues for addressing wrongs, designing processes that inadequately dismantle the systemic policies and practices undergirding dehumanization that allow discrimination and violence to persist. Ultimately, this undermines the truth-telling endeavor, as “delegated exchanges of recognition occur in real world contexts of domination,” limiting the frame solely to a reflection of the existing dominant power structures. For instance, in the SATRC, drawing a dividing line between “policies of apartheid” (the context within which human rights violations took place) and “conflicts of the past” (the violations that would be given reparations) downgraded the critical importance of state, business, and social collusion that permitted the ongoing, systemic erosion of human rights.

Practically, this reification reveals itself both through complex and simplistic means. Overreliance on the existing paradigm—like the common parlance of TRCs—illustrate this phenomenon. For example, rigidly ascribing to generally utilized linguistic classifications, such as the status quo VS dichotomy, becomes overly exclusionary and limiting. More intentional framing could enlarge the parameters, shifting to more inclusive language that might ensure that a wider range of accountability

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154 See id. at 17.
155 Id. at 16–17.
156 Id. at 17; see also Moon, supra note 35, at 261 (“Subjects do not independently produce, but are constituted by, discourse, and they in turn reproduce the particular assumptions of the discourse within which they are constituted, thus ensuring its hegemony and continuity and also, crucially, the invisibility of its reproduction.”).
158 COULTHARD, supra note 150, at 17.
159 Mamdani, supra note 26, at 37.
160 See Moon, supra note 35, at 261.
Broader inclusive terminology, such as “beneficiaries of apartheid” or “bystander” of violence can transcend the constraints of rigid classifications that miss the large-scale societal and structural web of complicity.\textsuperscript{162} The categorical, temporal, and colonial framing devices employed impact truth collection. Words matter - limiting, enhancing, and framing what is possible. If we want to develop responsive solutions, we must get closer to collective truth. This is better achieved by raising consciousness around the pitfalls of discursive limitations, which are so frequently subconsciously embedded into TRC design.

4. The Evolution of Trauma Studies

Advances in technology have helped us better understand the brain and its innerworkings. New scientific analytical tools have assisted us in developing deeper knowledge about trauma’s longitudinal, physiological, and psychological effects.\textsuperscript{163} The evolving science of epigenetics is proving the generational transmission of stress.\textsuperscript{164} Multiple studies demonstrate that a mother, under stressful conditions, will secrete methyl radicals that, in turn, are absorbed by a developing fetus’s cells, ultimately modifying the fetus’s DNA.\textsuperscript{165} Genetic shifts occurred in Holocaust survivors due to the horrific experiences they endured during WWII.\textsuperscript{166} Those gene shifts, ultimately realized in the higher mortality rates discussed below, were then found not only in the survivors’ children, but also in their grandchildren.\textsuperscript{167} Similarly, the harrowing experiences of Union soldiers in Confederate prisoner of war (PoW) camps toward the conclusion of the American Civil War negatively altered soldiers for life.\textsuperscript{168} Those effects continued

\textsuperscript{161} See id.
\textsuperscript{162} Id.
\textsuperscript{163} See generally Hunter Howie et al., A Review of Epigenetic Contributions to Post-Traumatic Stress Disorder, 21 DIALOGUES CLINICAL NEUROSCIENCE 417 (2019).
\textsuperscript{165} Id. (citing Katherine Margit Erdelyi, Can Trauma Be Passed Down From One Generation to the Next?, PSYCOM (Aug. 31, 2022), https://www.psycnet.net/trauma/epigenetics-trauma).
\textsuperscript{167} Id.
\textsuperscript{168} Martha Henriques, Our Children and Grandchildren Are Shaped By the Genes They Inherit From Us, But New Research is Revealing That Experiences of
showing up in the PoWs’ children and grandchildren, specifically in male lines of families.\textsuperscript{169} This “expression of genes” was not a result of a direct modification of the DNA code, but researchers were able to discern that the sons of PoWs who had been held in Confederate camps, had an 11 percent higher mortality rate than the sons of non-PoW veterans.\textsuperscript{170}

Epigenetic research has also reached scenarios beyond war. Studies on race-based traumatic stress (RBTS), or the development of emotional trauma brought on by elongated exposure and stress reactions to racism, have led to the development of the Race-Based Traumatic Stress Symptom Scale (RBTSSS), which uses a fifty-two item metric, consisting of seven scales: Depression, Anger, Physical Reactions, Avoidance, Intrusion, Hypervigilance/Arousal, and Low Self-Esteem.\textsuperscript{171} A study of 421 adult participants found that RBTS has a strong relationship to trauma symptoms and reactions, leading to “dissociation, anxiety, depression, sexual problems, and sleep disturbance.”\textsuperscript{172}

Researchers are also discovering that untreated trauma creates the potential for a host of serious physical health conditions in addition to mental health concerns, “including

\textsuperscript{169} Id.
\textsuperscript{170} Id. (alteration in original). Interestingly, this study considered the ancillary question of whether a father’s trauma simply made him more likely to abuse his children—which would lead to the long-term health consequences observed. However, findings demonstrated that the timing of trauma matters: “Children born to men before they became PoWs didn’t have a spike in mortality. But the sons of the same men after their PoW camp experience did.” Controlled experiments in animals also replicates this result.

The researchers blew acetophenone—which has the scent of cherry blossom—through the cages of adult male mice, zapping their foot with an electric current at the same time. Over several repetitions, the mice associated the smell of cherry blossom with pain. Shortly afterwards, these males bred with female mice. When their pups smelled the scent of cherry blossom, they became more jumpy and nervous than pups whose fathers hadn’t been conditioned to fear it. To rule out that the pups were somehow learning about the smell from their parents, they were raised by unrelated mice who had never smelt cherry blossom. The grandpups of the traumatised males also showed heightened sensitivity to the scent. Neither of the generations showed a greater sensitivity to smells other than cherry blossom, indicating that the inheritance was specific to that scent.

\textsuperscript{172} Robert T. Carter et al., \textit{Relationships Between Trauma Symptoms and Race-Based Traumatic Stress}, 26 \textit{TRAUMATOLOGY} 11, 11 (2020).
heart attack, stroke, obesity, diabetes, and cancer.”173 As traumatic exposure increases, so too does the risk of a panoply of severe well-being issues.174 Brain scan imagining can now accurately depict areas of the brain affected by post-traumatic stress disorder (PTSD).175 Research confirms that the hippocampus (the center for emotion and memory) shrinks from traumatic exposure, as does the prefrontal and anterior cingulate function (where complex functions like planning and self-development occur).176 Conversely, the amygdala function (where rumination and creativity occur) increases.177 Experientially-informed works by authors such as Bessel van der Kokl and Resmaa Menakem pioneered these truths that science is now able to confirm—namely, that the mind and body store trauma.178 Therefore, the impetus to generate accessible methods for release are vital.

Truth telling has increasingly been seen as producing psychologically positive effects, empowering VS and assisting them in healing and moving through their traumatic experiences.179 However, as scientific tools advance and enable us to learn more about the physical and mental impacts of traumatic experiences, emerging research requires us to investigate these largely accepted anecdotal claims and then improve them.

II. THE LIMITATIONS OF TRUTH TELLING IN ACTION

The claim that truth telling is healing for individuals, and society at large, is theoretically and empirically underdeveloped. It “has not been systematically tested”180 and “remains highly dubious.”181 A transitional justice literature review reveals the two theorized main benefits of truth-telling: (1) democratization—providing a sense of justice and reducing feelings of retribution

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174 Id.
175 Id.
176 Id.
177 Id.
179 See ZEHR, LITTLE BOOK, supra note 67, at 14–15.
180 Bronéus, supra note 12 at 409.
181 Mendeloff, supra note 57, at 593 (2009).
and vigilantism, resulting in a more peaceable society; and (2) healing, or the individualized therapeutic value arising from a responsible party taking accountability.\textsuperscript{182}

A small but growing alternative school of thought posits that the assumed benefits of current truth-telling processes may be overstated, potentially neutral, or even counterproductive.\textsuperscript{183} Theorists supporting this view draw on TRCs past inability to incorporate proven positive therapeutic interventions and practices.\textsuperscript{184} In a 2002 meta-analysis, researchers recommended the cessation of one-session debriefing (where clients only engaged once as opposed to breaking down traumatic experiences over multiple sessions), which was an early psychological intervention that sought to prevent subsequent mental health issues.\textsuperscript{185} There was no evidence demonstrating a connection between single-session debriefing and the reduction of “depression, PTSD, anxiety, or general psychological morbidity.”\textsuperscript{186} TRCs often involve “short and intensive trauma exposure”—a one-time high-stakes, restricted retelling of truth.\textsuperscript{187} This methodology stands in stark contrast to the long-term, smaller-dose exposure that aims to desensitize traumatic stressors and the practice of creating an intimate, private, and protected setting for disclosure, which are both associated with generative restorative benefits.\textsuperscript{188}

At this point, the data lack conclusive evidence to fully support the mainstream assertions regarding the benefits of truth telling—“[t]here are too few rigorous and systematic studies to conclude that truth-telling has the psychological

\textsuperscript{182} See Mendeloff, supra note 18, at 356.
\textsuperscript{183} See id.
\textsuperscript{184} Alfred Allan, \textit{Truth and Reconciliation: A Psychologial Perspective}, 5 ETHNICITY & HEALTH 191, 199 (2000) (alteration in original) (“[A]t its best, the presence of a cathartic release of emotions [via truth telling] represents a very small step in the healing process. For this to be beneficial it must form part of an intensive and sustained therapeutic intervention. At its worse, such a cathartic experience can represent the unskilled opening of psychic wounds that have ‘closed’ to some extent or another. If the ‘closing’ of the wound was in fact functional, the opening of the wounds in this fashion will be unacceptable. In this case it will negate the person’s coping strategies and interfere with the sense of equilibrium the person has established. But, even where the ‘closing’ of the wound was dysfunctional, it is not acceptable to reopen them in the absence of a guarantee that the person’s therapeutic needs will be attended to afterwards.”).
\textsuperscript{185} Brounèus, supra note 12, at 412 (citing Suzanna Rose et al., \textit{Psychological Debriefing for Preventing Post-Traumatic Stress Disorder (PTSD)}, 2 COCHRANE DATABASE SYSTEMATIC REV. 1 (2002)).
\textsuperscript{186} Id.
\textsuperscript{187} Id.
\textsuperscript{188} Id. (“Exposure to the traumatic event gradually leads to habituation or desensitization, that is, the traumatic stressor will no longer evoke high levels of anxiety and fear. If exposure is too short, this learning process cannot be made, and the trauma is maintained or intensified.”).
benefits claimed... or the harms charged by critics.”
However, the research does reflect one steady reality: VS in postconflict societies want to address injustices via truth-telling processes. This knowledge gap juxtaposed against VS desires to share their stories highlights the need for scientists and scholars to be mindful when engaging and critically assessing processes in this field. It also surfaces the need for ongoing research, heightening the responsibility for those supportive of TRCs.

A. Flaws Within Current TRCs Process

Presently, new empirical data are emerging that show elements of faulty TRC process design, some reflect the earlier framing limitations discussed, and others present new problems which can impede long-term VS wellbeing. The following examples provide illustrations of this constellation of challenges TRCs face.

1. Sierra Leone: Performative Memory and Revictimization

For two years, from November 2002 to October 2004, the SLTRC addressed the brutal war between the government and

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189 Mendeloff, supra note 57, at 596.
190 Id. at 594 (“For example, in a number of surveys and interviews of Croatian and Bosnian victims of the Balkan wars of the 1990s, virtually all respondents showed support for the principle of war crimes prosecutions and the vast majority supported the work of the International Criminal Tribunal for the former Yugoslavia (ICTY). Surveys of victims of human rights abuse in Argentina, Chile, El Salvador, Guatemala, South Africa, and Uganda have also found significant demand for justice and accountability in the aftermath of violent conflict.” (footnotes omitted) (citing Sanja Kutnjak Ivkovic, Justice by the International Criminal Tribunal for the Former Yugoslavia, 37 STAN. J. INT’L L. 255, 310 (2001)); see also Eric Stover, Witnesses and the Promise of Justice in The Hague, in My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocities 104–06 (Eric Stover & Harvey M. Weinstein eds., 2004); see generally Victor Espinosa Cueva et al., Ass’n for Prevention Torture, Truth Commissions: An Uncertain Path? Comparative Study of Truth Commissions in Argentina, Chile, El Salvador, Guatemala and South Africa from the Perspectives of Victims, Their Relatives, Human Rights Organisations and Experts, (2002), https://www.journals.uchicago.edu/doi/abs/10.1086/531951?journalCode=ihum (comparing TRCs established in the aftermath of authoritarian regimes and civil conflicts in five countries); Phuong Pham et al., INT’L Ctrl. Transitional Just. & Hum. RTS. CTR. & Univ. CAL., BERKELEY, FORGOTTEN VOICES: A POPULATION-BASED SURVEY OF ATTITUDES ABOUT PEACE AND JUSTICE IN NORTHERN UGANDA (2005), https://chlussi.pdx.edu/sites/hwp1.harvard.edu/files/humanitarianiniitiativies/files/forgotten-voices.pdf?cm=1615500217 (summarizing interviews with Ugandans about their views of TRCs and other transitional justice mechanisms).
191 See generally Mendeloff, supra note 18 (analyzing the relationship between truth telling and peace promotion in the aftermath of civil conflicts).
the Revolutionary United Front (RUF), which put incredible amounts of stress on the country’s social and political systems. The SLTRC coexisted alongside the Special Court for Sierra Leone, which was responsible for the prosecution of “those with the greatest responsibility.” The SLTRC investigated human rights violations that occurred between 1991 and the signing of the Lomé Peace Agreement in 1999, provided a forum for VS and responsible parties, recommended methods of reconciliation, and created a plan for prevention to impede future violence. The SLTRC’s final report and recommendations were included in over five thousand pages and contained versions of the publication appropriate for children.

Scholars have ascribed multiple problems to the generally negative perceptions of the TRC process, many of which integrate those previously asserted in this paper, including several epistemological issues. In retrospect, the results of an intensive, immersive ethnographic case study, along with other reports, found negative perceptions and evaluations of the SLTRC process. Scholar Rosalind Shaw discusses several linguistic construction issues, such as the anthropomorphizing of the nation as a “suffering entity,” the perception of the SLTRC as a front for funneling cases to the criminal “Special Court,” and the failure to recognize and give due weight to the local effective practices of reintegration already in use. Shaw points out that Sierra Leonians already possessed many other nondiscursive means, such as rituals, land, and visionary experiences, for remembering violent

192 Truth Commission: Sierra Leone, supra note 31.
193 Id.
194 Id.
195 Id.
197 Rosalind Shaw, Forgive and Forget: Rethinking Memory in Sierra Leone’s Truth and Reconciliation Commission, U.S. INST. OF PEACE (Apr. 29, 2004, 7:55 AM), https://www.usip.org/events/forgive-and-forget-rethinking-memory-sierra-leones-truthand-reconciliation-commission (“First, the language of national healing anthropomorphizes the nation as a feeling and suffering entity. This is basically a nineteenth century, or Durkheimian, idea that society is like an organism that can be healthy or sick. Violence certainly changes social institutions and practices, but it is not valid to conceptualize these changes in terms of a kind of collective psyche that can be healed through a cathartic process of truth telling.”).
198 Id.
199 Id.
historical atrocities like the Atlantic slave trade and being subjected to colonial authority.\textsuperscript{200}

The SLTRC also witnessed a previously discussed discursive limitation in action—a clash of state and VS goals. The state’s primary objective was to “sensitize[e]” citizens to the “practices and goals” of truth commissions, eschewing the integration of local practices and undervaluing the community’s needs.\textsuperscript{201} Thus, the state shifted resources to promote surface-level commitment to general information dissemination, while failing to secure the necessary infrastructure to do the difficult and ongoing work necessary for creating mass-scale paradigm shifts.

Scholar Gerard Millar’s extensive ethnographic study notes an important divergence between the “educated elite,” members “tied in to the economic, political or traditional registers of power,” and the “[n]on-elite interviewees,” who typically did not speak English and had very little education—homemakers, farmers, and folks who made their living selling at the market.\textsuperscript{202} Those with more access to resources were generally supportive of the TRCs’ work.\textsuperscript{203} They reported that the TRC had psychologically positive impacts both on their individual lives and collectively, and they felt public testimony contributed to peace.\textsuperscript{204} This group was also adept at parroting the “academic or NGO rhetoric” regarding the benefits of peace processes.\textsuperscript{205}

Conversely, almost all “[n]onelite interviewees” viewed the TRC process deleteriously, as unhelpful and unnatural, affirming Shaw’s research on localized customs for reconciliation.\textsuperscript{206} The SLTRC process was like “add[ing] pepper in my wound” or “pouring hot water over your head.”\textsuperscript{207} Others reported that the process was “provocative,” especially because VS were expected to give their testimony but received no tangible support in return.\textsuperscript{208} There was “no packet for people that suffered” and nothing for those who told their stories.\textsuperscript{209} Comparatively, a well-resourced international NGO and a state-sponsored process failed to provide participants with “healthcare, housing, education, rebuilding assistance and

\textsuperscript{200} Id.

\textsuperscript{201} Id.

\textsuperscript{202} Millar, supra note 48, at 487.

\textsuperscript{203} Id. at 487–90.

\textsuperscript{204} Id. at 495.

\textsuperscript{205} Id. at 488.

\textsuperscript{206} Id. at 491.


\textsuperscript{208} Millar, supra note 48, at 489.

\textsuperscript{209} Id.
grants or loans for new businesses.”210 With the exception of the few elites, most viewed the TRC as a failure.211

2. Gacaca Tribunals in Rwanda

Between April and July of 1994, a staggering eight hundred thousand people were killed during an unfathomable “intimate genocide.”212 The newly installed government had the Herculean task of establishing and maintaining a peaceful society. However, more than 130,000 people were imprisoned and accused of human rights violations, which would likely require over a century to prosecute in light of the country’s capacity. In response, the government created more than fifteen thousand localized Gacaca Courts, composed of locally elected lay judges and community members, whose role it was to listen as wrongdoers, victims, and witnesses transmitted their experiences.213

After several pilot studies, “a multistage, stratified cluster random survey” in 2006 of 1,200 Rwandans found “that Gacaca witnesses suffer[ed] from higher levels of depression and PTSD” compared to nonwitnesses.214 This was so even when controlling for mental health disorders and higher levels of trauma exposure.215 Survivors who had witnessed the Gacaca had a 20 percent higher relative risk of having depression and a 40 percent higher relative risk of having PTSD compared to survivors who were not witnesses.216 Additionally, no difference in levels of depression was reported between communities in the earlier pilot

210 Id. at 490.
211 Id.
212 Brounéus, supra note 12, at 413 (citing Ervin Staub & Laurie Anne Pearlman, Healing, Reconciliation, and Forgiving After Genocide and Other Collective Violence, in Forgiveness and Reconciliation: Religion, Public Policy, & Conflict Transformation (R.G. Helmick & R. L. Petersen eds., 2001) (“[The genocide] was orchestrated from the highest political level but performed by the masses; it took place between the people in the villages, between neighbors, within families.”).
213 Id. at 413.
214 Id. at 408–09, 415–16 (“The International Rescue Committee (IRC) in Kigali was contracted to conduct the survey. A team of twenty-one Kinyarwanda-speaking research assistants and three team leaders was selected on the basis of having exemplary interview skills and extensive experience of working with surveys for IRC. Half of the research assistants were women; all three team leaders were men. Particular concern was made—unofficially—to select research assistants of both Hutu and Tutsi descent . . . . A two-day training workshop . . . . was held, in which the aim and contents of the survey were described and discussed in depth, as were the importance of listening, confidentiality, and anonymity when conducting surveys on sensitive topics . . . . During twelve days in late March and early April 2000, the team of twenty-one trained research assistants . . . carried out 1,200 interviews with a structured survey questionnaire in four provinces in Rwanda.”). For additional information about questionnaire development and instruments and detailed information regarding results, see id. at 416–19.
215 Id. at 408.
216 Id. at 421.
program as compared with those communities surveyed a few years later, indicating that the Gacaca had neither a healing effect nor a worsening effect on psychological health.\footnote{Id. at 426.}

In analyzing limitations, scholar Karen Brounéus raises important implications, which are also reflected in other international truth processes: the “abandonment” and “insecurity” felt as a result of testifying where little to no follow-up took place and the failure to implement TRC recommendations for future action.\footnote{Id. at 428–29 (citing David Backer, Victims’ Responses to Truth Commissions: Evidence from South Africa, in SECURITY, RECONSTRUCTION, AND RECONCILIATION: WHEN THE WARS END (Muna Ndulo ed., 2007)).} Similar problems also plague non-restorative processes. Stover, in a study on witnesses in the International Criminal Tribunal for former Yugoslavia, found witnesses related cathartic feelings after testifying but “that any glow quickly faded once they returned home . . . [when many felt] a sense of abandonment . . . [and] when they and their families were threatened.”\footnote{Id. at 428 (alteration in original) (citing Stover, supra note 190, at 107).} In another study, based on the SATRC, Backer found participants felt stigmatized and abandoned by the community and, in some cases, by family members.\footnote{Id. at 411 (citing Backer, supra note 218).} Additionally, in a previous study, Backer found that some prospective witnesses were deterred from testifying after being threatened.\footnote{Id. at 428 (citing Karen Brounéus, Truth Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts, 39 SEC. DIALOGUE 55 (2008)).} Scholar Fortesa Kabashi confirmed comparable results in the Balkan Conflict.\footnote{See, e.g., Fortesa Kabashi, How the Hague Tribunal Failed Wartime Rape Survivors, BALKAN TRANSITIONAL JUST. (Dec. 19, 2022), https://balkaninsight.com/2022/12/19/how-the-hague-tribunal-failed-wartime-rape-survivors/ ("As one [V8] would recount anonymously, years later, after her appearance in court, her identity was revealed at home, resulting in domestic violence and a case of attempted rape that forced her to relocate to another country.").}

Although anger may be a realistic response to wrongs and atrocities committed, the language and expectations frequently set by the TRC processes encourage responsible parties to participate in a “healing” process where forgiveness is pushed as a possibility.\footnote{See Robert I. Rotberg, Truth Commissions and the Provision of Truth, Justice, and Reconciliation, in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 3, 12 (Robert I. Rotberg & Dennis F. Thompson eds., 2000) (explaining that the TRC focused on “understanding not vengeance, reparation but not retaliation, and humanness not victimization”).} These types of implicit assurances of forgiveness are often part and parcel of securing participation. Thus, meaningfully informing participants, and obtaining informed consent about the range of possibilities must become an ethical and essential part of
the process. Neither VS nor responsible parties should ever come into a process without a nuanced understanding of the potential outcomes.

3. Canadian TRC (CTR)

The preceding examples presented describe TRCs derived in transitional justice settings, largely unstable post-war societies. The CTRC process is distinctive, emanating from a class action lawsuit launched by VS. In 2007, after “the largest class-action settlement in Canada’s history,” the CTRC was officially founded “to facilitate reconciliation among former students [of indigenous residential schools], their families, their communities and all Canadians.” The CTRC’s charge was to address the “[C]ountry’s past policy of attempting forcibly to assimilate indigenous children in residential schools,” and the “colonial attempt to eliminate self-governing peoples by replacing their ways and knowledge with those of the settler majority.” Between 2007 and 2015, the CTRC traveled to various regions and took testimony from more than 6,500 VS, creating a historical record of atrocities. In June 2015, the CTRC announced ninety-four “Calls to Action” and in December, they finalized a six-volume report.

Despite its unique formation, many of the previously discussed issues replicated themselves in this context as well. A ban on naming implicated individuals was a categorical limitation that prevented VS from telling their whole truth, creating a “limited sanction of negative publicity for the

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224 James, supra note 28, at 189 (“The TRC is unique among truth commissions in that its mandate emerged not from a process of transition to democracy or from a pact among previously warring parties, but rather from a court-supervised conclusion to a class-action lawsuit launched by victims. The ensuing Indian Residential Schools Settlement Agreement of 2005 suspended the class action of almost 15,000 former residential school students, initiated a global scheme for compensating students based on their years of attendance, provided an independent assessment procedure for victims of specific abuses and, most notably, established the TRC mandate itself.”).


226 James, supra note 28, at 182.

227 Id. at 2.

228 Truth and Reconciliation Commission of Canada, supra note 29.

229 Id.

230 James, supra note 28, at 189–90 (“[T]he TRC lacks subpoena powers and is prohibited from naming any individual accused of misconduct in its report, activities or events, unless the identity ‘has already been established through legal proceedings, by admission or by public disclosure by that individual.’”) (quoting Indian Residential Schs. Settlement Agreement, Schedule N, original website no longer available).
architects and perpetrators of abuses.”\textsuperscript{231} This restriction rings reminiscent of the abstract relegation of beneficiaries of apartheid to the SATRC background. To add insult to injury, at least in that context, it could be argued that this proscription was necessary during the “fragile transitions,”\textsuperscript{232} a condition completely absent in the nontransitional context.\textsuperscript{233}

CTRC critiques cite concerns of overly ritualistic and limiting methodologies that reproduced the problematic reconciliation narratives at the expense of more complex and nuanced truths—“the story of a helpless child abused by unnamed, faceless individuals, in an institutional setting that exists in relative isolation from the wider world.”\textsuperscript{234} Any testimony that did not reinforce this idea and fell outside of the prescribed parameters of this “single narrative” was rendered “unsayable.”\textsuperscript{235}

Yet another process implicates this work’s previous warning warning—beware of the collective narrative that eclipses individual truth.\textsuperscript{236} Political “acknowledgement” that does not allow for a VS’s full truth to emerge is a tool for re-legitimizing state authority without requiring the state to take due responsibility.\textsuperscript{237} The very first line of Schedule ‘N,’ the legal declaration setting out the terms of the CTRC settlement, personifies this reconciliatory narrative discursive tool—a call for the creation of national unity.\textsuperscript{238} It reads: “There is an emerging and compelling desire to put the events of the past behind us so that we can work towards a stronger and healthier future.”\textsuperscript{239}

Another resurfacing problem is the absence of federal accountability.\textsuperscript{240} This sleight-of-hand framework paints the primary perpetrators as the religious individuals who supervised the schools.\textsuperscript{241} Although in part this is certainly true, it obscures the whole story. This abstract absolutism is similar to the

\textsuperscript{231} Id. at 190.
\textsuperscript{232} Id.
\textsuperscript{233} Id.
\textsuperscript{235} Id.
\textsuperscript{236} Id.
\textsuperscript{237} Kamitomo, supra note 145.
\textsuperscript{238} Id.
\textsuperscript{241} See id.
SATRC’s exclusion of apartheid policies placed into the contextual background of the report as a means of limiting responsibility.\textsuperscript{242} In Canada, governmental and business collusion for control of indigenous territories created the policies for boarding schools as a means of systematic dispossession.\textsuperscript{243} Discursive limitations allow for the continued avoidance of the “real source of conflict between indigenous and non-[I]ndigenous peoples—namely, competing, asymmetrical claims to land and resources.”\textsuperscript{244}

Despite the problems replicated across TRCs, VS have repeatedly demonstrated their desire to engage in them.\textsuperscript{245} Though current practices limit TRCs, their potential for establishing more stable democracies is immense. Thus, critically assessment and generative thought toward their improvement is vital.

III. DO BETTER: IMPLEMENTING LIBERATORY AND INTERDISCIPLINARY SOLUTIONS TO IMPROVE TRCs

Narratives have long provided a glimpse into the reality of the subjugated and challenged the status quo. For example, narratives of enslaved peoples have long been an instrument of intervention into mainstream knowledge production by the marginalized, including interventions through legal stories.\textsuperscript{246} Restorative theory also tells us that allowing VS space for ventilation, an opportunity to tell and retell a full, nuanced, and evolving version of how they experienced crime and its impacts, is a powerful tool for psychological health.\textsuperscript{247} Narrative identity formation can be transformative. Thus, TRCs have an immense capacity to provide a national framework that can both acknowledge and support the VS healing process, as well as widen

\textsuperscript{242} COULTHARD, supra note 150, at 127 (“[T]he TRC temporally situates the harms of settler-colonialism in the past and focuses the bulk of its reconciliatory efforts on repairing the injurious legacy left in the wake of this history. Indigenous subjects are the primary object of repair, not the colonial relationship.”).

\textsuperscript{243} Id.

\textsuperscript{244} Morden, supra note 234.

\textsuperscript{245} For example, the SATRC “took testimony [from] approximately 21,000 [VS].”


the hegemonic narrative to include a more comprehensive and accurate scope. TRCs possess the power to alter how we conceive and respond to injustice. However, we cannot achieve these ends without an intentional design built to safeguard the process and the VS who it is intended to serve. TRCs need to be on guard against subconscious and subversive exploitation.

This Part presents prospective solutions to the theoretical and experiential problems previously discussed that currently plague TRCs. However, as this article prioritizes collaborative, community-driven solutions, this is merely a starting point—a challenge to all inclined readers to seek out, experiment, assess with searing honesty, and retool when necessary. Additionally, considering interdisciplinary solutions and amplifying the voices of marginalized folks that have been doing the deep work of self and collective liberation for centuries is vital for the improvement of TRCs. We stand on the shoulders of the resilient VS as well as the artists, psychologists, community activists, lawyers, and scholars employing VS-centered and trauma-informed approaches.

Much of the dissatisfaction around prior TRCs arrives because of VS’s feelings of exploitation. In earnest, after enticements of healing and reconciliation, people offer up their sacred truth and in turn, receive very little. The recommendations of TRCs remain on shelves, restitution is rarely delivered, and the promised healing and reconciliation become a litany of unfulfilled promises. Arguably, the behavior that retraumatizes the most is the secondary betrayal—VS of human rights atrocities becoming VS of a process that overpromised healing for individuals and nations. People are generally aware of the odds stacked against collective healing. Obtaining accountability for such mass-scale atrocities is difficult, especially as power shifts, political will dissipates, and countries face resource limitations, citizen polarization, and passive settler witnessing. Subjugated citizens understand

248 See generally Millar, supra note 48 (discussing the diverging experiences between elite and non-elite interviewees with the TRC); James, supra note 28 (describing the extent to which survivor testimony is heard and valued as well as the shortcomings to truth telling); Mendeloff, supra note 57 (explaining that truth telling can retraumatize victims and may not be as beneficial to individuals who share their truth).

249 See, e.g., Eva Jewell & Ian Mosby, CALLS TO ACTION ACCOUNTABILITY: A 2021 STATUS UPDATE ON RECONCILIATION 5, Yellowhead Inst. (2021) (“And this is during a year when even the most generous measure on Calls to Action progress has Canada at an abysmal 14 per cent completion rate.”).

250 See Mendeloff, supra note 18, at 365.

251 See Nagy, supra note 117, at 231 (‘With regard to audiences, Archibald explains that one cannot be just a ‘passive observer or armchair reader’ . . . There is an interrelationship between storytelling, story, and the listener. To make meaning of what
more than most that outcomes are impossible to control; however, TRCs can and should be responsible for preventing additional harms by setting clear expectations, obtaining meaningful, informed consent, and providing VS with significant support. These pillars should be nonnegotiable in TRCs. Scholars and supporters must pour our energy into artfully designing, conceptualizing, and demanding processes that enhance restoration and wellbeing. We must commit to learning from the past and following the lead and voices of marginalized liberators and the humble and nimble allies supporting them, like movement lawyers, psychologists, and scholars, who have learned to become more responsive to the communities they serve.

A. A Full and Accurate Representation

As movement lawyers have learned to retool their advocacy techniques and take direction from marginalized leaders and liberators, TRCs must also learn to trust civil society and community advocates who are hyper attuned to localized modalities of violence used to harm and oppress VS. Additionally, TRCs must learn to design inclusive opportunities, allowing for full VS narratives to emerge and supporting VS in exercising their agency to participate within them. As movement lawyers have learned to use antipression pedagogy and resources, TRCs can adapt, contextualize, and deploy those tools per locale. Betty Hung defines movement lawyering as "[l]awyering that supports and advances social movements, defined as the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and

has been read or heard, one must be an active participant in the story and think critically about 'one's own historical, cultural and current context in relation to the story being told'. . . . This process involves heart, mind, body, and soul." (citing Jo-Ann Archibald (QUM QUM Xiem), Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit 32 (2009)).


cultural change.” She views the core tenets of movement lawyering as (1) “grounded in a place of humility that recognizes lawyering as but one of multiple strategies,” (2) affirming people’s intersectional humanity and entire communities for collective movement building, and (3) courageous and willing to relinquish the privileges we hold.

Importing the ethos of these tenets is a way to address the recurrent problems discussed throughout this paper. For example, TRCs should be grounded in the spaces they inhabit, proceeding with humility and respect for the localized customs and methods for reconciliation, especially those already ongoing within a region. Moreover, TRCs should strive to recognize the “modalities of violence” used in every locale and the intersectionality of a VS’s developing narrative identity. People are more than the tragedy wrought upon them. TRC processes should endeavor to acknowledge harms, while also celebrating VS resilience and modes of resistance. TRCs should not force VS to shape their narratives to conform to a predetermined process. Instead, VS and those allies who have built up community support and credibility should be an integral part of designing, facilitating, and ensuring subsequent accountability in TRCs. Processes must be experimental, generative, and move beyond the shallow expressions of healing and reconciliation, forcing mere terminology into fruition.

1. Tenet One: Humility and Respect for Alternative Knowledge

Lilla Watson, an Aboriginal Australian activist, poignantly summarized the problem and solution to the replete ethnocentrism ingrained in the international human rights community. She said, “[i]f you have come here to help me you are wasting your time, but if you have come because your liberation is bound up with mine, then let us work together.” The most efficacious ways to meet the needs of the people you are serving is to listen and provide sustainable solutions, which primarily consist of power and resource transfers. This is in an effort not only to right the wrongs that occurred but more importantly, to elevate voices that hold keys to our collective thriving. We must learn from those who survive atrocity and

254 Hung, supra note 50, at 664.
255 Id.
257 Id.
who—despite justifiable rage and incredible heartbreak—move toward reconciliation. That is heroic, that is the raw power capable of fueling societal transformation. These are the folks who hold the keys to transcend the cyclical pattern of subjugation. The future success of TRCs lies with them, and relies on their robust integration.

a. Integrating Localized Rituals and Practices

If the first tenant of movement lawyering had been applied in the SLTRC, scholar Rosalind Shaw theorizes there would have been superior outcomes. Shaw wrote extensively about the grassroots healing and reconciliation methods that were already in use in Sierra Leone when the SLTC began sensitizing and supplanting their values, essentially ignoring local knowledge and “disrupting” effective practices. The process failed to give due weight to the fact that “Sierra Leoneans . . . did not wait for the TRC before working to rebuild their lives and social communities.”

Shaw surfaces the imperative recognition that citizens were making a way out of no way, surviving and even thriving in the face of continued subjugation—and doing as they had for a very long time, without much, if any, external assistance. By way of example, she discusses how Pentecostal healing rituals had been used to bring child excombatants back into the fold. These spiritual practices realigned the offender with community norms and attempted to dissipate the most painful memories of the violence that had been perpetrated. In these practices, people sought guidance, strength, and blessing from ancestors to help heal broken relationships. The TRC missed the opportunity to shape a process that could be more aligned with the cultural practice of “social forgetting,” as distinct from “individual forgetting.” In social forgetting, people maintain their personalized experience of violence but refrain from speaking about that violence because it is seen as bringing something dangerous to the surface that could occur again

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258 Shaw, supra note 197, at 8.
259 Id. at 7–8 (slogans from TRC posters and leaflets include “Let’s tell the truth and join hands” and “Remember what has been”).
260 Id. at 9.
261 Id.
262 Id.
263 Shaw, supra note 197; Shaw, supra note 196, at 9.
264 Shaw, supra note 196, at 9.
265 Id.
266 Id.
imminently. While this seems antithetical to the work of unearthing truth, there are ways to design processes that can work to balance the tensions of social and individual forgetting. For example, a TRC could focus more on the abstract modalities of violence, calling-in individuals who benefited from those practices and that could be the impetus for change and accountability, eschewing the prototypical individual testimony. With due humility, Shaw notes that Sierra Leoneans had “learned to improvise their own techniques of social recovery after conflict” and that those techniques should be respected.

b. No Decisions About Us Without Us

Spokane activist Layne Pavey can oft be heard decrying at meetings and protests: “Those closest to the problem are closest to the solution.” It is time for our systems to recognize the epistemic injustice it continues to wreak by ignoring the lived-experiences and solutions put forward by those who deal with the daily indignities of dehumanization. The majority of discursive limitations previously discussed would disappear if those impacted by violence were appropriately resourced, supported, and meaningfully invited to address the problem. Let TRC supporters and scholars internalize and enact processes that appropriately appreciate the people’s rallying cry “Nothing About Us Without Us.”

In his book, James Charlton captures the origin of this slogan as the powerful paradigm shift which emanated from it and continues to this day. The impetus of this idea developed from folks with disabilities, who managed to change people’s perception into one that would recognize their dignity and worth, shifting the view to “normal, not inferior.” Finally, their demands for self-determination were recognized and set the stage for the most appropriate types of advocacy, which they—the most impact—were best suited to identify. This shift was largely due to the tireless work of those living with disabilities,

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266 Id.
267 Id.
268 See About Us, JUSTLEADERSHIPUSA, https://fjusa.org/about/ [https://perma.cc/PD9V-K6SA].
269 Though now used by many different marginalized groups, author James Charlton discusses the dialectical tool of disability oppression and empowerment as early as 1993. See generally JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT (2000).
271 Id. at 10.
272 Id. at 3–4.
including consciousness raising inside their own communities that altered their personal, political, and societal relationships. The underlying premises of the slogan, which aptly captures the ethos of the movement, requires an accounting of both “individual and collective necessities”—a shift in understanding the issue not as one solely confined to a medical prognosis but to a comprehensive social and political movement as well. The liberatory notions of “independence and integration, empowerment and human rights, and self-help and self-determination,” transcend the shallow trope of VS, advancing a more dynamic, capable, and complex narrative.

These premises apply to TRCs in myriad ways. The recognition of individual and collective needs harkens back to the theoretical underpinnings of restorative justice, rooted in need and relational theories. Need theory posits that a VS cannot heal without fully addressing their needs following a crime or harm, nor can we effectively dismantle and change destructive behaviors falling outside acceptable norms without understanding the unmet needs that created the conditions for wrongs to arise in the first place. In addition to addressing needs, we cannot heal in isolation. Thus, individualized psychological communal care that is responsive to the range of VS postconflict needs is critical. This simultaneous appreciation allows for appropriate treatment—a plan that recognizes individual struggles alongside an approach that appropriately contextualizes that struggle within the reality from which it arises.

Finally, it is vital that TRCs be steeped in a liberatory framework that celebrates the dignity of VS. Their agency and autonomy must exist alongside the recognition of their very real requirements for resources and support. Establishing this type of framework allows for VS to exercise agency in the wake of wrongdoing, to cultivate political power, promoting informal resource sharing, and developing networks with others in like positions. TRCs ought to advance a grand mission to facilitate power transfer to those who have been stripped of it. Reducing barriers to VS engagement in the construction of process,

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273 Id. at 16.
274 Id. at 17.
275 Id.
276 See generally Jennifer Llewellyn et al., Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation, 36 Dalhousie L. J. 281 (2013) (addressing and analyzing the success of restorative justice); see also Laurent, supra note 247, at 1106.

277 Laurent, supra note 247, at 1107–08.
278 See id. at 1119–20.
279 See id. at 1106–11, 1116–23.
creating opportunities for inclusive, dynamic truth telling, and establishing programmatic assessment should all be primary goals of TRCs.

VS-centered scholars recognize that while most TRCs to date have been state and expert-driven, “it takes a more bottom-up . . . approach to addressing injustice.”280 State or expert-directed approaches focus on answering narrow, particular questions under pre-selected parameters that are driven by “primarily perpetrator-centered approach[es] to gathering and conveying truth.”281 Typically, this phenomenon arises alongside the push toward the reconciliation narrative, which values the transition of political power over VS needs. Focusing on politically motivated perpetrators, reinforces state legitimacy instead of confronting state policies and practices that are implicated in ongoing oppression. Conversely, involving impacted folks interrupts the status quo. Elements of victim-centered approaches embedded into TRCs can focus on fostering “grassroots processes of rebuilding” that are “driven by the voices and aspirations of atrocity survivors.”282 Putting needs at the forefront adheres VS goal advancement to process.283

VS are not monolithic. They possess a host of needs and desires that are not necessarily in lockstep. For example, past TRCS have often been willfully blind to the particular atrocities and degradation that women face during conflicts.284 Encouraging women, who have likely been marginalized on multiple fronts, to have active design and facilitative roles could produce alternative testimonial and accountability mechanisms and increase differentiation for forms of restitution and protections.285 Remember, those who compose the process create the narrative. If we want to change the outcome, we must change the voices who shape the process.

281 Id. at 186.
282 Id. at 183.
283 Id. at 183, 186.
284 Id. at 186.
285 See id. at 183–84.
2. Tenet Two: People Are More Than the Tragedies Wrought Upon Them

a. Allowing for Nuanced Truth by Dismantling the Discursive

A counter mechanism capable of pushing back against the state when it slips itself into the role of the primary beneficiary under TRCs is the reduction of categorical and colonial framing limitations. These limitations shift focus to individual actors rather than the policies and laws legitimizing discrimination and violence. The CTRC has had some success in this area, emphasizing that a VS-centered approach allowed for the creation of a process that permitted former residential school students to express their complaints about government indifference and denial. Scholar Matt James captures this begrudging acceptance well: “Over the course of a decade, authorities first rejected the students’ claims of injustice and then attempted variously to resist, evade and callously minimize the country’s reparative obligations in relation to the schools.” Centering the voices of VS expanded wrongdoing from only a narrow category of individual wrongdoer to include those who had the power to intervene and chose to do nothing. This creates a wider spectrum for potential reparative and restorative outcomes. Communities “demanded that Canada open up, listen, learn and start taking responsibility for the damage caused. The Commission is their victory and tribute.”

Temporal interventions can also be integrated to “interrupt the notion of time as a fixed proposition, but a ‘contested notion.’” Through critical analysis, we can name the “temporal structure, times and rhythms of the law… and the impact… on poor… marginalized communities in very real… ways.” Instead of narrowly construing the “when” of oppression—limiting wrongs only falling within an allotted window—TRCs instead should operate from a place of “temporal [and categorical] abundance” within general parameters. This orientation would permit VS the space and dignity to describe the wrongdoing they suffered and allow folks to tell their stories as they see fit, including how they positively responded to their oppression.

286 Id. at 183–84.
287 Id. at 184.
288 Id.
289 Greenhous, supra note 138, at 1633.
290 Phillips, supra note 139, at 16.
291 Id. at 29.
b. Capturing Resiliency

We suffer and yet we find a way forward. Any narrative that fails to capture this dynamism is an incomplete story. People experience atrocities and some still manage to thrive.²⁹² Allowing space to craft cohesive, redemptive narratives is vital to wellbeing.²⁹³ Research reveals that the combination of interconnected neurological and narrative development, in lieu of “fragmented epistemology,” produces positive results.²⁹⁴

Dan McAdams, an expert on “narrative identity,” ascribes to a similar theory.²⁹⁵ In short, narrative identity is the internalized story we create about ourselves.²⁹⁶ Our narrative choices impact how we see ourselves and our wellbeing.²⁹⁷ Research shows that people who are “driven to contribute to society and to future generations . . . are more likely to tell redemptive stories about their lives, or stories that transition from bad to good.”²⁹⁸ “The opposite of a redemptive story is . . . a ‘contamination story,’ in which people interpret their lives as going from good to bad.”²⁹⁹ Resilient folks find meaning in their lives by telling stories that reflect growth, including forms of agency that focus on individual choices made in response to a wrongdoing, which helped to restore safety and dignity.³⁰⁰ This narrative intervention or reshaping of the story enables people to establish control over their lives through an ordered storying that shows them “progressing through life [overcoming] whatever obstacles they have encountered.”³⁰¹ Typically, the goal of a psychotherapist is to help their clients generatively refashion their stories.³⁰² “A review of scientific literature shows

²⁹² See Mendeloff, supra note 57, at 618 (“Despite great hardships, wartime survivors are normal, functioning, highly capable members of their societies.”).
²⁹³ See id. at 104.
²⁹⁴ See id. at 101–07.
²⁹⁶ Smith, supra note 295.
²⁹⁷ Id. (“[F]or example, a childhood experience like learning how to swim by being thrown into the water by a parent might explain his sense of himself today as a hardy entrepreneur who learns by taking risks. For another, that experience might explain why he hates boats and does not trust authority figures. A third might leave the experience out of his story altogether, deeming it unimportant.”).
that this technique has been as impactful as antidepressants and cognitive behavioral therapy.”

The developing science around narrative identity has serious ramifications for TRCs, as narrative identity without redemptive counter-storying has dire implications. Again, we return to the idea that TRCs have principally been concerned with power transfers over VS rehabilitation. They can become fixated on “existing political and social institutions rather than . . . the suffering of ordinary people . . . directly exposed to daily violence and deprivation.”

It is time for this practice to end. We must modify our methods for culling truth.

We can improve processes in several ways. We can reduce the categorical, timing, and colonial limitations that restrict people from telling cohesive narratives. We can also look to interdisciplinary best practices to influence our models. A helpful field to draw guidance from develops out of communication studies and journalism and the principles of ethical storytelling. These evolving industry standards ask us to see people’s stories as “more than emotion-generating machines.” It assigns responsibilities to those tasked with collecting stories—to make a pledge, including some of the following promises to:

“Tell others’ stories the way we want our story told.”

“Always put people first.”

“Explain to constituents the purpose of the story,” including where it will be told and how it will be shared.

Respect wishes for anonymity.

“Truthfully represent a situation or story to educate our audiences of the realities, complexities, and nuances of the issues we advocate for.”

Listen to our constituents’ voices and respect their decisions, story, and journey.

Hold a posture of humility and learning.

303 Id.
304 See Smith, supra note 295; Dan P. McAdams & Kate C. McLean, Narrative Identity, 22 CURRENT DIRECTIONS IN PSYCH. SCI. 233, 235 (2013). The practice of narrative identity now generally includes a second step of redemption. See id.
305 See supra Section I.B.2.
308 Id.
Seek advice.

Take ownership of our responsibilities.\footnote{Adapted from Goble’s ethical story pledge. See id.}

Another way to improve process is to allow for fuller stories to emerge. Attorney-activist Rasheedah Phillips employs Afrofuturist\footnote{The Tate Museum of Modern Art defines Afrofuturism as “a cultural aesthetic that combines science-fiction, history and fantasy to explore the African-American experiences and aims to connect those form the black diaspora with their forgotten African ancestry,” Afrofuturism, Tate, https://www.tate.org.uk/art/art-terms/a/afrofuturism (last visited Jan. 11, 2023). UCLA Newsroom provides a less abstract definition, explaining that Afrofuturism is a space for Black creators to dream up thriving, alternative futures that celebrate cultures of the African diaspora. Afrofuturism is an attempt to manifest an improved future through naming and visualizing the reality of one to enact the words of Angela Davis: “In order to work toward a better future, we need to believe that future is possible.” Delan Bruce, Afrofuturism: From the Past to the Living Present, UCLA Newsroom (Sept. 3, 2020), https://newsroom.ucla.edu/magazine/afrofuturism [https://perma.cc/N98T-EX42].} approaches to temper Western linear constructions of time.\footnote{Phillips, supra note 139, at 16.} Phillips creates opportunities for people to learn the difficult history of housing instability and the impact of cycles of poverty, using tools like “mapping, writing, [and] storytelling.”\footnote{Id. at 30.} She also invites participants to “create a collaborative, multi-pronged action plan for shaping the future of housing justice . . . and solutions for breaking intercommunal cycles of poverty and housing instability using artistic and holistic methods of healing.”\footnote{Id.} This experience allows for hard truths to emerge, while also permitting an arguably more complete record through communal truth ascertainment. It also imbues people to investigate their own resiliency. This is all in an effort to build agency for a sustainable effort of gaining political power, resources, and self-determination. To transform TRCs to be more respectful of the people they serve and the dignity of participants, TRCs need to borrow processes that move beyond extraction and are centered on healing from the people who have been doing the work all along.

3. Tenet Three: Moving Beyond Shallow Definitions of Truth and Reconciliation

In response to the CTRC, the Canadian Psychological Association (CPA) created an “Indigenous Task Force” (TF) to develop “concrete, action-oriented recommendations to improve the field’s services to the First Nations, Metis, and Inuit
populations in Canada.” The TF included leaders from Indigenous communities, services providers, and granting agencies. The TF objectives included recommendations and “guiding principles that acknowledge and respect Indigenous concepts of the person, health, family, and ways of knowing.” This call to action warrants further discussion.

To avoid the trappings of the previously discussed framing limitations, TRC processes should consider using practices that center and respect the marginalized perspective (in the social work field, what are known as “anti-oppressive practices.”) The social-work theory of adopting anti-oppressive practices (AOP) recognizes the multi-layered forms of oppression co-occurring at “micro-, mezzo-, and macro-levels.” This is an academic framing of Burnham’s concept regarding “modalities of violence.” Combatting micro, mezzo, and macro level violence requires critical self and organizational analysis to root out the ways in which we are complicit in reinforcing inequities within existing power dynamics.

Key principles of anti-oppressive practice will likely seem familiar, as they mimic the ethos of the other alternatives already proposed within this section. AOP includes the (1) “critical reflection on self in practice,” (2) “critical assessment of service users’ experiences of oppression,” (3) empowerment of service users, (4) “working in partnership,” and (5) minimization of intervention. While employing this type of methodology in TRCs may seem daunting, the groundwork for AOP integration has already taken root. Valandra and Hokšiša’s revolutionary book, Colorizing Restorative Justice (CRJ), produced a reflective roadmap for AOP integration within the modern restorative justice context.

Using the lived experiences of practitioners of color, mostly women, CRJ served as a “wake-up call” for investigation into the many ways that restorative movements “missed,

314 CAN. PSYCH. ASS’N & PSYCH. FOUND. CAN., TASK FORCE ON RESPONDING TO THE TRUTH AND RECONCILIATION COMMISSION OF CANADA’S REPORT, PSYCHOLOGY’S RESPONSE TO THE TRUTH AND RECONCILIATION COMMISSION OF CANADA’S REPORT 5 (2018) [hereinafter CTRC PSYCH. TASK FORCE].
315 Id.
316 Id. at 6.
318 Id.
319 Fresh Air, supra note 118.
320 WHAT IS ANTI-OPPRESSIVE PRACTICE?, supra note 317.
321 Id.
322 COLORIZING RESTORATIVE JUSTICE (Edward Valandra & Wağbli Wapȟáha Hokšiša eds., 2020).
watered down with romanticism, and in many cases intentionally and unintentionally excluded . . . [people of color’s] voices.” CRJ centers the importance of the acknowledgment that modern restorative justice theory derives from and is rooted in indigeneity. Thus, to most effectively wield the transformative power of the practices, an immersion into Indigenous knowledge and ways of being is required. To be good stewards of TRCs requires a movement that confronts the westernized-dominant mentality to control at the exclusion of alternative, valuable ways of being.

B. Addressing the Physical and Mental Toll of Truth Telling

Scientific advances enable us to experiment and employ new methods for positive psychological interventions in the treatment of those who experience past and ongoing trauma. These advances are extremely important since truth-telling has typically relied on little empirical evidence. That the TRC process might take more of a toll on victims than originally envisioned is a dire topic for exploration. Thus, our responsibility is to evolve alongside the science and apply interdisciplinary techniques, which have been shown to produce superior results.

1. Trauma-Informed Care

We turn then to the developing area of infusing trauma-informed practices into restorative work. Again, the foundation for integration of these practices has already been laid in the context of TRCs. Shanee Stepakoff offers ten guiding principles for a trauma-informed approach to the protection and support of witnesses: establish a caring relationship, maintain a safe environment, stabilize physiological and mental functioning, maximize predictability, maximize choices, affirm dignity and value, affirm the power of speech, promote human connection, instill hope, and foster reconnection with ordinary life. As other scholars have already covered this ground, the author is offering solely to augment the argument with regards to one aspect that can address multiple issues already raised in this article—maximizing predictability.

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323 Id.
324 Id.
325 Id.
326 Id.
327 Id.
The importance of being fully informed about TRC processes, including their potential and limitations, cannot be overstated. Research now shows that VS responses to truth telling are “highly individualized and idiosyncratic.”\(^{328}\) One piece of consistent information does reinforce the notion that VS satisfaction is at its lowest “when the outcome of the process is not commensurate with victims’ expectations.”\(^{329}\) Again, we do not control outcomes, but we do control process. Meaningful participation in TRCs requires informed choice. VS sensitization should include historical knowledge of past TRC processes, including critical awareness about their limitations. Knowing a range of possibilities, including information about evolving science and the potential risks to psychological well-being, allows VS to appropriately assess whether their participation is warranted. And if they should elect to participate, transparent avenues to engage in the process should be provided to help temper expectations. Fears that fewer victims will participate because of full disclosure\(^{330}\) must be subservient to VS-centered and trauma-informed approaches. This inversion of centering VS instead of the state, or the TRC itself, is one way to lessen the pull toward empty reconciliation narratives.

Additionally, TRCs need to create a hierarchy of needs, ensuring that adequate resources can be made available to VS participants. International NGOs and governments ought to stop expecting something for nothing. There is a need to align victim expectations with the realities of what TRCs are capable of giving. Discovering and meeting the short-term stabilization needs of VS is nonnegotiable.

In Sierra Leone, VS voiced this dissatisfaction. “I thought they will help me for daily bread and medical.”\(^{331}\) Ejatu, from a village north of Makeni, explained that she wanted to attend the TRC because “they have said it, anybody that goes to testify, they will help you and your children.”\(^{332}\) The expectations were that the TRCs would “provide resources, not talk.”\(^{333}\) Resources, not talk should be the new rallying cry of TRCs, and Ejatu should be compensated for creating it.

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\(^{328}\) Mendeloff, supra note 57, at 615.

\(^{329}\) Id. at 621 (citing studies).

\(^{330}\) See id. at 622 (noting that although most VS found the ICTY process to be fair, many were generally unhappy with the Tribunal’s ultimate results).

\(^{331}\) Millar, supra note 48, at 491.

\(^{332}\) Id.

\(^{333}\) Id. at 492.
In a searing commentary, Gearoid Millar summarizes the issue:

Isolating and interviewing only TRC public hearing attendees and assuming that the causal effect of the truth-telling performance itself could be identified among and within the complex tapestry of interviewees’ lives, their multiple interactions with the varying aspects of the international development, justice or peacebuilding establishments, was an overly simplistic approach to understanding that tapestry. The local experience of the performance of truth-telling cannot be excised from the local experience of the supply of aid, the administration of justice, the provision of reparations or the ongoing implementation of development plans, no more than it can be separated from local issues of taxation, corruption or service provision. The ongoing reality is experienced as a whole, not in separate pieces. As a result, evaluations of transitional justice mechanisms must take into account the complex reality of life on the ground, among local people.334

TRCs must evolve to see the process of truth-telling as an exchange. Even though resources are limited, VS needs should be prioritized. If the NGO cannot provide support, they should identify and partner with organizations who can. Ethical storytelling guidelines reinforce this point—asking people to consider ways to compensate and protect those who give us their stories.335 In the event support cannot be provided, TRCs owe a responsibility to use language that informs participants, according to local mores and custom, that resources will not be provided.

2. Culturally Appropriate Assessment and Treatment

As we become more aware of the toll of truth telling, TRCs ought to interweave interdisciplinary best practices of well-being care that are culturally sensitive. In the past, this lack of provision has been seen as a factor which limited the TRC’s potential as a therapeutic tool—“the failure of the legislature to give the TRC a mandate, and resources, to attend to the mental health needs of survivors and participants,”336 The SATRC Promotion Act of 1995 did not provide for treatment.337 Though counselors did minimally assist staff during testimony, those restricted services in no way could meet the expansive needs of those who suffered gross human rights violations.338

334 Id. at 495.
335 Id. at 496.
336 Allan & Allan, supra note 69, at 474.
337 Id. at 472.
338 Id. at 473.
reflection, the SATRC did acknowledge this failure to establish an adequate volunteer Corp to provide services.339

Regarding assessment, exemplary work in this field is already well underway. Taking a page from the CPA TF recommendations referenced earlier, they identify that psychological assessments should be culturally appropriate.340 Previously, these types of tools were “misused to further the colonial agenda of cultural genocide through culturally situated definitions of health, including mental health and pathology.”341 For far too long “Western assessments” used “standardized quantitative tools, grounded in Western theory... on non-Indigenous populations and yield[ed] categories that d[id] not resonate with Indigenous world-views.”342 This led to a misapplication of results as the assessments only predicted performance in mainstream school systems—Indigenous knowledge and skills were not assessed. As such, Indigenous children were overrepresented in the categories of lower IQ and disabilities.343 Similar to the way we are now coming to value neurodivergent attributes previously labeled problematic, far too few assessments ever brought to light alternative values. For example, the gifts of people to connect with the spirit world or “contribution[s] to an extended family or collectivist society, or a concrete contextualized description of behavior observed within the home and community.”344

Regarding culturally appropriate treatment, many treatment methodologies center dominant-culture values and require adaptation to colonization. To combat this frequently subconscious hegemony, “is to give greater consideration and empirical investigation of radically cultural-divergent healing approaches that may be more likely to be used by ethnoracial minorities than non-Latino Whites,” including “delivering culturally centered interventions.”345 For instance, Resmaa Menakem develops workshops which are designed around Somatic Abolitionism: “[a] living, embodied anti-racist practice... a way of being in the world” that begins with the body and ripples out to other bodies, and then to the collective.346 The practice’s intention is to heal the body from harmful

339 Id. at 472.
340 Id. at 465.
341 CTRC PSYCH. TASK FORCE, supra note 314, at 15.
342 Id.
343 Id. at 16.
344 Id. at 15.
345 Id. at 21.
discrimination and degradation through individual and communal practices, which build resilience over time. \footnote{Id.} It looks at the ways racialized trauma is embedded inside bodies and transmitted through generations. \footnote{Id.} The practice is meant for everyone, and, for white people, it encourages reflection in moments where energy and feelings arise in reaction to confrontation and brings attention back to the body to sit with the experience and work with it. \footnote{Menakem, supra note 52.} Another example is Tricia Hersey’s ‘The Nap Ministry,’ which is built on the belief that sleep deprivation is a racial and justice issue, where exhaustion derives from the generational trauma connected to slavery. \footnote{Mikeisha Dache Vaughn, Rest as Resistance: Why Nap Ministry and Others Want Black People to Sleep, COMPLEX (May 20, 2021), https://www.complex.com/life/black-power-naps-rest-as-resistance [https://perma.cc/556V-84RZ].} Hersey defines ‘rest’ as a disruptive tool involving connecting the mind and body, “a deep unraveling from white supremacy and capitalism.” \footnote{Tricia Hersey, Rest is Anything That Connects Your Mind and Body, NAP MINISTRY (Feb. 21, 2022), https://thenapministry.wordpress.com/2022/02/21/rest-is-anything-that-connects-your-mind-and-body/ [https://perma.cc/2D5F-BNPM].} The Rest is Resistance movement uses “performance art, site-specific installations, and community organizing to install sacred and safe spaces for the community to rest together.” \footnote{About, NAP MINISTRY, https://thenapministry.wordpress.com/about/ [https://perma.cc/6UVF-7T66].} They also facilitate workshops and performance art. \footnote{Id.} We must take cues from communities that have found countless ways to thrive despite systemic marginalization, violence, oppression, and degrading hegemonic narratives to support them in their liberation and improve TRCs. There is a danger lurking for those fashioning and facilitating transitional ren restorative justice who are outside the conflict and thus unable to grasp the nuances, myriad forms of pain, and dehumanization existing within the context. Human rights advocates can easily fall into the traps of viewing themselves as beneficent, knowledgeable, and practical actors with the sole responsibility to usher in new realities. This can produce an “othering” effect that can alienate the possibility for solidarity. \footnote{See David Kennedy, The International Human Rights Movement: Part of the Problem?, 15 HARV. HUM. RTS. J. 101, 112 (2001).} The aim is to have all people see themselves and be seen for their own capacity to create and sustain meaningful change. A
condemnatory critique of the international human rights movement is that it “promotes emancipation by propagating an unbearably normative, earnest, and ultimately arrogant mode of thinking and speaking what is good for people, abstract people, here and there, now and forever.”355 The most efficacious way to avoid this mistake is to be in solidarity with VS who have suffered the most. We must transfer back power which has been stripped by providing voice, agency, resources, and opportunities for healing and growth.

CONCLUSION

Commitment to the well-being of participants must become the primary motivating ethos of TRCs. The emphasis on moving beyond shallow notions of healing and reconciliation must be central. The panoply of interdisciplinary suggestions in this paper should be considered and appropriately embedded into certain TRC process. This article merely provides an entrée into the myriad examples of liberatory, culturally relevant practices of healing, consciousness raising, and social and legal empowerment movements. TRCs have a responsibility to the people they serve. With mindfulness, generative thought, a commitment to being led by the communities suffering from oppression, and the adoption of interdisciplinary, evolving best practices, we have viable pathways for improving processes. In exchange for receiving people’s sacred truths, this is what we owe.

355 Id.