

# Narratives of Mass Atrocity

Victims and Perpetrators  
in the Aftermath



**Edited by Sarah Federman and Ronald Niezen**



# NARRATIVES OF MASS ATROCITY

Individuals can assume – and be assigned – multiple roles throughout a conflict: Perpetrators can be victims and, vice versa, heroes can be reassessed as complicit and compromised. However, accepting this more accurate representation of the narrativized identities of violence presents a conundrum for accountability and justice mechanisms premised on clear roles. This book considers these complex, sometimes overlapping roles, as people respond to mass violence in various contexts, from international tribunals to NGO-based social movements. Bringing the literature on perpetration in conversation with the more recent field of victim studies, it suggests a new, more effective, and reflexive approach to engagement in post-conflict contexts. Long-term positive peace requires understanding the narrative dynamics within and between groups, demonstrating that the blurring of victim-perpetrator boundaries, and acknowledging their overlapping roles, is a crucial part of peacebuilding processes. This title is also available as Open Access on Cambridge Core.

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VANESSA LIU completed her JD at Harvard Law School and for the past twenty years has worked at the intersection of media and technology. She joined forces with Andy Russell to build and launch a digital media venture fund, Trigger Media, and to co-found its two portfolio companies, InsideHook and Fevo (formerly Host Committee). She now heads SAP.iO Foundries in North America, which are SAP's accelerators for B2B enterprise startups. She is also now looking to make a major social impact in areas typically underinvested in by businesses and governments, such as clean tech, global health, and the elder care market.

NAYANIKA MOOKHERJEE is a professor of political anthropology in Durham University and Co-Director of the Institute of Advanced Studies. Based on her book *The Spectral Wound: Sexual Violence, Public Memories and the Bangladesh War of 1971* (Duke University

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*génocide*, Hermann/PUL, 2014). In Canada, she documented how the Crees of Eeyou Istchee remembered forced residential schooling in the context of Canada's Truth and Reconciliation Commission (*Power through Testimony: Residential Schools in the Age of Reconciliation*, UBC Press, 2017). Her current project is on how the colonial history and decolonization processes of the Maya-Mam and of the Crees are differently encoding their practices of engagement with mining.





## PREFACE

There is a fundamental difference between words spoken into a microphone and those shared off-stage, such as across a kitchen table. Microphones imply an audience, a judgmental futurity. We say that words are “captured,” suggesting their imprisonment in the medium. They may be “played,” listened to at a later time, but once spoken there is no going back. There is something performative about any recorded testimony, something pre-redacted, with deference toward listeners, present or imagined.

Kitchen tables are something else altogether. They are the quintessential site of intimacy. In the absence of a public, one can reveal more of oneself, without the sense that what one says will be subjected to judgment. There is a greater indulgence toward time, more room for silences, moments for reflection. There is also a sense that whomever one is talking to can be somehow included in a social world. There is an “ingroupness” to kitchen conversations. Whether or not complete trust is there, some security can be found in the absence of direct accountability. Even if one’s words are later reported, there may be no direct attribution to the speaker. Experienced interviewers know to be ready, pen in hand, when the recording function is turned off. When this happens, the interviewee will relax and be more forthright. “What I really meant to say was . . .,” and the secrets and discomfiting opinions unfold. The combination of intimacy and unaccountability produces greater honesty – maybe not a complete absence of performance, but a greater correspondence with convictions. Long meandering conversations, replete with pauses and breaks, also create opportunities for self-reflection and to share stories that show multiple sides of an important moment. At a microphone, the gaze is rarely inward.

There is something else that each of us noticed during our fieldwork as we moved between microphones and kitchen tables: The relative absence of binary thinking in the kitchen and its erection and patrol before microphones, in formal spaces. The recorded statement seemed to

produce stories in which the characters formed into stereotypes, pure victims, evil perpetrators, spotless heroes; but told from behind the rising steam of a warm cup of coffee the categories broke down. Victims also caused harm. Perpetrators were motivated in ways we could understand. Heroes had their impure motives, their dark sides. And the boundaries shifted. Corruption and falls from grace made storylines more complex and, dare we say it, more interesting for their complexity.

Ron followed a pathway that went from a truth commission through digital justice campaigns to digital witnessing and archiving platforms. His starting point in a truth commission – published in *Truth and Indignation: Canada's Truth and Reconciliation Commission on Indian Residential Schools* (Niezen, 2017) – made clear the blind spots of “victim centrism” through truth telling in the absence of close attention to perpetrators; or rather, in the absence of their visibility, other than in what was said *about* them. In this Truth and Reconciliation Commission (TRC), sexual abuse became the dominant testimonial subject matter, taking hold of the audience's emotions and capturing their sympathetic attentions in ways that abstract claims about treaty rights and sovereignty could never do. In the process, the commission elaborated simplified, stereotypical qualities of victim and perpetrator. The public statements that Survivors (with a capital “S”) offered in the Commissioner's Sharing Circles were overwhelmingly about the worst conceivable experiences of abuse, focusing on the sexual sadism and cruelty perpetrated in “total” institutions with unchecked control over children. But with a mandate that explicitly and intentionally gave it no judicial authority, including no powers to compel testimony, the commission learned little about the motivations of perpetrators. It heard neither from the priests, brothers, and nuns who ran the schools (who boycotted the commission events *en masse*), nor from ordinary representatives of the government of Canada, the ultimate implementers and overseers of a cruel policy of forced assimilation. With sympathetic attention focused on the Survivors, and with indignation concentrated toward the clergy, the state escaped the spotlight.

Ron's work took a different turn when he turned his attention more fully to the digital campaigning and outreach made possible by new information technologies (ITs). The work of Syrian Archive, described in [Chapter 9](#) included here, involves an entirely different kind of witnessing, one that relies more heavily on digital recording and forensics than public statements.

Sarah's study of the French National Railways' (SNCF) overlapping roles in World War II and its post-war journey to make amends, brought

her into the homes of dozens of Holocaust survivors. These ninety interviews with survivors revealed complex feelings about the trains and many remaining questions about their pasts. Informal interviews with historians, archivists, lobbyists, legislators, lawyers, SNCF executives, Jewish leaders, and others revealed more complexity than she heard during legislative hearings, in media reports, and in press releases. She mapped the discursive landscape in *Last Train to Auschwitz: The French National Railways and the Journey to Accountability* (Federman, 2021), recounting the history and atonement efforts while noting the differing reactions to these events.

Yet she was haunted throughout her research by a recurrent question of “why trains” and “why French trains?” Of all the individuals and groups who have (and continue) to cause harm, how did this French railroad conflict keep making the news? France was not an instigator of World War II or an enthusiastic supporter of the Nazi regime. The train company participated in the murder of 75,000 but what about the millions of others? She began exploring how publics respond to various victim and perpetrator groups. Certain groups have more traction.

When Harvard University’s Weatherhead Center invited Ron as a visiting professor and requested that he organize a workshop, Sarah swept in. This workshop enabled her to invite scholars studying complex actors in mass atrocity and examining public response to these parties. In April 2019, the Victims and Perpetrators in the Aftermath of Mass Atrocity workshop met over several days. Together, we considered the ways in which discourses about violence frame how we understand, story, and then respond to mass atrocity. All the papers included in this volume (with the exception of Samantha Lakin’s, which we solicited later) were first presented at this workshop. What emerged from this meeting was a surprising thematic unity, centered on the unintended consequences of binary responses to mass atrocity. Our colleagues, coming at the topic from different places and routes of exploration, found significance in the stories told about violence and their related perpetrators, victims, heroes, and bystanders. We wish to thank them for engaging in what is sometimes an uncomfortable inquiry.

Thank you to Arthur Kleinman and Ajantha Subramanian for initiating the visiting professorship. Michelle Lamont and Ted Gillman offered an institutional and intellectual home at the Weatherhead Center. Timothy Colton, Chair of the Weatherhead’s Canada Program, and Hellen Clayton, its administrator, were patient with us as we skirted the boundaries of permissible Canada-focused research. We also wish

to thank the reviewers and editors at Cambridge University Press who saw this as an important and unique contribution to the study of mass harm.

Collectively we and our contributors wish to thank those hundreds of individuals with whom we met during our respective fieldwork. We met with them at their kitchen tables and in various other informal settings, while also listening whenever they offered official testimony. In these settings, they shared with us some of the most painful moments, not only of their own lives, but for humanity more generally. Their openness helps us better understand our greatest failings as a species. Some revealed sorrows and lingering confusion about moments many had not spoken of in decades, if they had spoken of them at all. Their trust in us as listeners allows us to carry some of the weight of what they suffered while we seek ways to prevent its reoccurrence.

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## ABBREVIATIONS

ACSU	Asociación Cultural y Social del Uruguay (Social and Cultural Association of Uruguay)
ADACAU	Asociación de Arte y Cultura Afro Uruguaya (Association of Afro-Uruguayan Art and Culture)
AL	Awami League
ANC	African National Congress
BBC	British Broadcasting Corporation
BNP	Bangladesh National Party
CA	Catholic Action
CALAS	Centro de Acción Legal, Ambiental y Social de Guatemala (Centre for Legal, Environmental, and Social Action, Guatemala)
CDR	Coalition pour la Défense de la République (Coalition for the Defense of the Republic)
CEH	Comisión de Esclarecimiento Histórico (Historical Clarification Commission)
CEO	chief executive officer
CIA	Central Intelligence Agency
CONADEP	Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons)
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia
EGP	Ejército Guerrillero de los Pobres (Guerilla Army of the Poor, Guatemala)
EGP	Ejército Guerrillero del Pueblo (Guerilla Army of the Villages, Argentina)
ERP	People's Revolutionary Party, Argentina
FAR	Forces armées rwandaises (Armed Forces of Rwanda)
FARG	National Fund for the Neediest Genocide Survivors (Rwanda)
FFM	Fact Finding Mission
GAM	Grupo de Apoyo Muto (Mutual Support Group)
GAMA	El Grupo de Apoyo a la Mujer AfroUruguaya (Support Group to AfroUrugayan Women)

HRC	Human Rights Council
IBUKA	Do Remember (umbrella organization for survivors of the Rwandan genocide)
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IICI	Institute for International Criminal Investigations
ILO	International Labour Organization
IMT	International Military Tribunal
IT	Information technology
ITU	International Telecommunications Union
KGB	Komitet Gosudarstvennoy Bezopasnosti (Committee for State Security, security agency of the Soviet Union)
LRA	Lord's Resistance Army
LSE	London School of Economics
MCA	Movimiento Campesino del Altiplano (Peasant Movement of the Highland)
MIT	Massachusetts Institute of Technology
MK	Umkhonto weSizwe (spear of the nation, armed wing of the African National Congress, South Africa)
MRNDD	Mouvement Républicain National pour la Démocratie et le Développement (National Republican Movement for Democracy and Development)
NGO	Nongovernmental Organization
NIOD	Instituut voor Oorlogs-, Holocaust- en Genocidestudies (The Netherlands Institute for War, Holocaust, and Genocide Studies)
ODHAG	Oficina de Derechos Humanos del Arzobispado de Guatemala (Office of Human Rights of the Archdiocese of Guatemala)
OPCW	Organisation for the Prohibition of Chemical Weapons
ORPA	Organización del Pueblo en Armas (People's Organization in Arms)
OSINT	Open Source Intelligence
PAC	Pan African Congress
PSVI	Prevent Sexual Violence Initiative
PTSD	Post-traumatic stress disorder
REMHI	Proyecto de Recuperación de la Memoria Histórica (Recovery of Historical Memory Project)
RIB	Research Initiatives Bangladesh
RIT	Relational Identity Theory
RJOY	Restorative Justice for Oakland Youth
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RT	<i>Russia Today</i>

SCM	Syrian Center for Media and Freedom of Expression
SNCF	Société Nationale des Chemins de Fer Français (French National Railways)
TRC	Truth and Reconciliation Commission
TUS	Tarjeta Uruguay Social (Uruguay Social Card)
UK	United Kingdom
UN	United Nations
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UNTAET	United Nations Transitional Administration in East Timor
USHMM	United States Holocaust Memorial Museum







# Introduction

## Narrative in the Aftermath of Mass Atrocity

SARAH FEDERMAN AND RONALD NIEZEN

### I.1 Conflict Narratives

During the apex of many incidents of mass violence, those involved could not be more intimately connected: A woman encounters her childhood sweetheart as a killer; a child soils his clothes with the blood of relatives; families that lived side by side peacefully for generations are persuaded to turn on one another; a dominant group persecutes and drives out their politically marginalized neighbors. Lives ended or overturned become defined by that violence as much as those wielding its tools – and all suffer the wounds.

What could possibly inspire people to turn on one another this way? Surprisingly often, the spark that ignites such destruction-among-the-intimate is simply narrative persuasion, wielded as a weapon, thrown on the tinder of long-cultivated animosities. Radio Mille Collines in Rwanda infamously broadcast messages to the populace that dehumanized the Tutsi minority and encouraged their killing, preparing the ground for genocide planners to move in and make the genocide a reality (Power 2013). Today, social media platforms serve as a new venue to create monsters – Twitter, by encouraging simplicity, impulsivity, and incivility (Ott 2017) and Facebook (and Instagram), through its enclosures of opinion and failures in addressing strategic disinformation (see Sunstein 2018; Vaidhayanathan 2018). An important example of the way that social media narratives can translate into genocide comes from a damning UN report on atrocities committed in Myanmar. The Human Rights Council found that Facebook had significant responsibility for the violence:

Facebook has been a useful instrument for those seeking to spread hate, in a context where, for most users, Facebook is the Internet. Although improved in recent months, the response of Facebook has been slow and ineffective. The extent to which Facebook posts and messages have led to real-world discrimination and violence must be independently and thoroughly examined. The mission regrets that Facebook is unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the adequacy of its response.

(UNHRC 2018, para 74)

Following publication of this report, Facebook banned the account of the country's top general, Min Aung Hlaing, along with seventeen other accounts, an Instagram account (also owned by Facebook), and fifty-two Facebook pages originating from Myanmar's military. Taken together, these social media accounts had twelve million followers (McLaughlin 2018).

To illustrate the power of conflict narratives, we do not need to focus exclusively on the perpetrators of genocide but can draw an example from the ideological underpinnings of the allied struggle for freedom in World War II. The US government used comic book mythology to boost military enlistment and augment popular support for US participation in the war overseas, while depicting a nation of racial harmony back at home (Hirsch 2021). Comic books served as perfect vehicles for these messages because of their "broad popularity, comprehensibility, emphasis on raw emotion and a distinct lack of subtlety" (Hirsch 2004, 449). The government exerted influence through a quasi-official agency called the War Writers Board. This Board commissioned stories, reviewed plots, and helped construct many of the well-known superheroes known today (now largely circulated via Hollywood blockbusters). The Board sought to galvanize support for the war by amplifying the wickedness of Axis powers. In 1944, the War Writers Board worked to ensure that Americans saw Japanese and Germans as "incurably hostile" (Hirsch 2004, 462). Consistent with this goal, when the authors of the original storyboards distinguished between Nazi leaders and the average German person, the Board intervened, requesting that both leaders and ordinary German citizens be portrayed as paradoxically sub- and/or grotesquely super-human.

The simple trope, common to propagandists and political analysts alike, of associating entire peoples with their governments can have far-reaching consequences. Simply put, associating citizens inseparably with their criminal states makes it easier to kill them. The brutality of a war

closely follows the success of propaganda that first makes a government a political enemy and then connects an entire people to their government. This connection, once implanted, has a persistent afterlife.

As the world has seen to its horror again and again, stripping people of narrative agency is often but a first step toward their physical annihilation. Regarding large group conflict, John Paul Lederach (2010) writes, “A people’s story is marginalized or, worse, destroyed by the dominant culture, and by this act, meaning, identity, and a place in history are lost” (p. 146). In the context of war, those in power target certain groups as unworthy of consideration, beyond even humanity, while narrating themselves as noble and decent, embodying a pure, uncorrupted nation, assuming the mantle of liberators. These mythologies remind and reassure the story-creators and their followers of their inherent goodness, while justifying violence. Once the mythology takes hold, “the rules for everyday life change,” and torture, killing, ethnic cleansing, rape, and the imposition of hunger, once viewed as incomprehensible and abhorrent in peacetime, become legitimate responses to violence (Jabri 1996, 6–7).

It is abundantly clear that narrative can be used as a tool to construct enemies and facilitate violence; but what about the *aftermath* of mass atrocity? Does everyone put down their narrative weapons when the physical destruction has stopped? In this book, we argue that narratives continue to be deployed by groups coming to terms with the aftermath of mass violence. For regimes, the stories at the end of violence are as strategically crafted as those that legitimate its onset. Believing that clarity brings stability and peace, those struggling with the legacies of violence erect and patrol narrative boundaries. Legalism thrives on these binaries and needs to sort parties into categories to enact justice. The most self-evident way this sorting occurs is through the requirement of precisely defining the parties to a claim; the plaintiffs of a class action lawsuit, for example, must each formally enact their participation with notarized signatures on a page, bringing into being an unambiguous category of “victims,” and the defendant(s) must be similarly identified with as little ambiguity as possible. But post-atrocity boundary-making goes well beyond the courts. A new regime deepens binaries when it reinforces its legitimacy by doling out services to those labeled victims, punishing those deemed perpetrators, and pinning medals on heroes. Just as it is possible to see narratives deployed in the onset and justification of violence, there are ways to evaluate storied narratives in the aftermath of mass atrocity, with implications for both resilience and potential returns to violence.

Rooted originally in semiotics and in literary theory, narrative analysis provides a crucial lens through which to understand and engage with conflict (Federman 2016). Listening to how groups describe themselves, others, and their conflicts informs us about how people might act.<sup>1</sup> Conflict discourses differ from resilience discourses. So long as the former remains dominant, positive peace remains elusive. Understanding the “narrative architecture” of a conflict need not be overly difficult just because we have entered the supposedly haphazard world of story (Bruner 1990). Conflict environments involve the simplest of all narratives: Polarized characterizations of victims and victimizers, binary value frameworks (good/evil), false (but on rare occasions, accurate) attribution of bad intention, and thin plot lines that refer to only a few events, while pointedly omitting others (Cobb 2013). These narratives emphasize linear causality and their tellers demonstrate little or no reflexivity. In psychiatric terms, they have marked tendencies toward narcissism. In societal terms, they can result in carnage.

Scholars participate in these dynamics when they create victim studies and then make a separate field for perpetrator studies. These realms of scholarship enrich our understanding of victimhood and perpetration in their distinct terms but, unless we keep participants of mass violence in conversation, we entirely misunderstand and miscommunicate the systemic dynamics of mass violence. Furthermore, can we be confident that our designations are correct? Young black men targeted in the United States for decades by prejudice and policy are only now slowly receiving a backstory and a new narrative framing. Every regime and each generation exudes tremendous confidence in its categorizations of groups, past and present. Yet, over time, they almost all come crumbling down, usually after tremendous damage has been done.

What is the alternative? Scholars, practitioners, and citizens alike can interrupt cycles of violence by generating “better-formed stories,” those that recognize the interconnectedness of all parties (Cobb 2013). This book advances such work. By illuminating the narrative structures that set the stage for war, we can catch ourselves when our aftermath studies follow the same trends.

The deeper challenge of peacebuilding involves, as Lederach (2010) puts it, “how to reconstitute, or re-story, the narrative and thereby re-story people’s place in history” (p. 146). When a regime topples, it

1 See Cobb (2013), Ross (2007), and Sluzki (2004).

loses its narrative control. In the aftermath of the fall, individual, familial, and cultural stories have been interrupted or destroyed. Then transitional justice swoops in and, with it, justice frameworks, stories, and vocabulary fill the void once occupied by violence. We bring attention to these post-violence settings because the clarity and certainty that oversimplified stories provide can also come at a cost, including the possibility of refueling the discord, stereotyping, and dehumanization at the origin of violence.

## I.2 Post-conflict Narrative Landscapes

Post-conflict stories can thrive on binaries as much as the pre-war and wartime stories, with often unexpected and usually disastrous consequences. In an effort to make things right for those who have suffered and to hold accountable those responsible for the violence, justice narratives can inadvertently lay the groundwork for the next violent episode. The perpetual sorting and re-sorting of societies and groups into neat categories of victim, perpetrator, and hero flatten the complexities of violence and the conditions in which it occurs (Enns 2012).

We all-too readily evoke public sympathy for the victims, anger or hatred toward the villains, and fear for ourselves (Loseke 2017). Hannah Arendt (1998) warns that these binary depictions of conflict lead back to totalitarianism via total responses toward those who enacted the harm. Once villains are seen as pure evil, any response we have to their actions is justified. Primo Levi (2017) was also concerned with such flattening and took great care to articulate the complexities of his experience as a victim of the Holocaust. Louis Kriesberg (2003) makes this argument pointedly: “If people in the enemy collectivity are viewed as subhuman, even denigrated as vermin, they are more easily subjected to gross human rights violations and even extermination attempts. If enemy people are regarded as evil, then extreme methods are justified to destroy them.”

These authors, and others, emphasized these points because they knew that publics embrace simplicity more readily than complexity. Publics tend toward stereotyping, misapprehension, and oversimplification. We like to think that as a whole humanity has become wiser today than it was during World War II, yet studies show that we are just as (if not more) susceptible to gross exaggerations and lies. An MIT study published in *Science* revealed that between 2006 and 2017, “fake news” reached more people on Twitter than factual information. To be specific, tweets based on disinformation reached 1,000–100,000 whereas factual tweets rarely

reached 1,000 individuals (Vosoughi et al. 2018). Fake news inspired emotions of “fear, disgust, and surprise” upon reaching its audiences, reflecting the dramatic constructions of the reality the stories portrayed.

Simplified narratives portray groups as uniform, bounded entities, with a coherent structure of decision-making and shared political aspirations. When peacemakers promote more nuanced understandings to build bridges between groups, their efforts may be rebuffed. A claim for collective rights or a peace agreement gains no traction if the public on which it depends for sympathy and activist outrage sees in the claimants a flaw or a failure to correspond with an ideal. These efforts then have no effect in changing conditions of violence and oppression. Moreover, as Niezen (2020a, ch. 5) shows with reference to the Tuaregs of northern Mali, popular images and stories surrounding justice claimants can readily lump them together with their oppressors. A misdirected, ideal-seeking response to justice claims can cast human rights activists and peace brokers in the same mold as violent insurrectionists or, at the very least, as their apologists (Niezen 2020a, 198).

Legalism encourages this framework through an adversarial process that orients us toward locating and punishing singular perpetrators (see Osiel 1999). The energy that moves legal processes forward, Drumbl (2016) observes, derives from the binaries of legal iconography: “Victims are to be pure and ideal; perpetrators are to be unadulterated and ugly. International criminal law hinges upon these antipodes which, in turn, come to fuel its existence” (p. 218). The cleaner the binary, the easier the legal task.<sup>2</sup> Judges and juries struggle less with their decisions and receive more public support for them when good and evil remain clearly delineated.

In clear-cut cases, meting out punishment may lead to celebrations over justice done, and victims may feel further legitimized by the perpetrator’s capture, but has any of this helped ensure future security? Are communities in a punitive aftermath to mass atrocity necessarily more resilient? Have those who caused harm been called upon to help those they harmed? Retributive justice has, as Lederach (2010) puts it, “an abysmal record for destroying rather than rebuilding the very thing most needed for sustaining the platforms capable of delivering dynamic, just peace: public confidence and authentic public dialogue” (p. 60).

2 See Janicki (2015) and Tannen (1998). Courtroom discursive norms particularly reflect these dynamics; witnesses are asked yes/no questions that invite binary characterizations (Philips 1998).

Retributive justice has its place; perpetrators of war crimes must be stopped. But expecting their trials to heal intergroup fractures expects too much.

Even truth and reconciliation commissions oriented toward mitigating some of the limitations of trials by offering amnesty and a platform for testimony tend to promote the binaries of truth/not truth and of victims/perpetrators. The result could well be a wider repertoire of narrative possibilities; however, these environments often find themselves bound and framed by the same neat delineations as legal process. Rather than adding complexity, they often simply turn our attention from the perpetrator to the victim. The recent turn toward “victim studies” reflects a will toward certainty through this shift of interest from one category of actor (the perpetrator) to another (the victim). In 2016, for example, the *International Journal of Transitional Justice* dedicated an entire issue to victims.

Yet as victimhood amplifies publicly, so too does the perceived wickedness of the perpetrator, even though scholarship continues to demonstrate the ordinariness of most perpetrators of mass violence (Fujii 2009; Owens et al. 2013). The public need for a perpetrator who is every bit as evil as the victim is innocent drowns out the ordinariness of those who called for violence.<sup>3</sup> In other words, the more sympathetic the victim, the more villainous the perpetrator, and the more unrelenting the hero must become. Groups jockey for position, trying to push back on narrative frames that omit their role (hero or victim) or demonize them as the perpetrator. Even genocide and transitional justice studies readily mold to the limitations of transitional justice in practice. This means that scholars and practitioners alike must be vigilant regarding how binaries operate in their own field as much as among violence-ravaged communities.

This is important, albeit treacherous, work. Understandably, our responses to horrific violence include those of shock, outrage, and disgust, often followed by feelings of revenge. It is a healthy reflex and one we often associate with virtue. Only an evil person would abide this horror. To lead societies beyond revenge cycles, however, requires moving beyond the feelings of revenge into disappointment and perhaps pessimism about humanity’s potential, but then eventually on to curiosity and compassion, which generate productive responses.

3 See Christie (1986), Federman (2018), and Harré and Van Langenhov (1991).

We are aware that our work is fraught with the risk of being (possibly strategically) misconstrued. The attempt to address complexity, to point out dangerous oversimplifications, and to elevate emotional responses to mass violence can be seen as based in sympathy with those who caused harm. We reply to critics who wish to argue along these lines that conflicts *have become* violent only with the help of these polarizations. While one may feel righteous in the belief that one has located and punished the perpetrator, this punitive response may be paving the way back to violence. We need to find better ways to show our concern for victims. Otherwise, in the post-atrocity narrative mayhem, culpable parties too often find themselves expunged, victims feel pressured to present themselves as pure, and perpetrators struggle for sympathy as they attempt to complicate their storylines. Whatever the reasons for the stereotypical discourses emerging from violence, discourses about participants in conflict will either help interrupt their cycles of violence or hasten their entry back in.

In other words, collective frameworks for each role – victim, perpetrator, and hero – tend to narratively sort people into categories in post-conflict contexts. When stories of complexity disrupt these frameworks, the ideal types pull the story back into a stereotypically recognizable shape. Of course, narrative traditions may vary in terms of story genres and ways of recounting roles, but if a group seeks international recognition, the predominance of western legalism in the spaces providing recognition encourages conflict parties to articulate their experiences in terms of simplified binaries.

A discussion of these three primary conflict roles (victim, perpetrator, and hero) makes visible some underlying narrative conceptions that guide how we understand and respond to violence.

### I.3 Victims

The concept of the victim, according to the *Oxford English Dictionary*, made a migration at some point in the seventeenth century from the Latin origin, *victima*, or a sacrificial animal, to a meaning that is more recognizable to contemporary ears, referring to a person who has been oppressed, ruined, or seriously injured by a power beyond their control. Things shifted again, more dramatically this time, with the late twentieth century's politics of identity and the prominence of the idea that being called something, a name or designation that is not one's own, is itself a source of oppression. The concept of the "victim" has sometimes



acquired agency and been replaced by the term “survivor” (sometimes written as “Survivor” with an honorific upper-case “S”). The word took on this meaning in the post–World War II era with reference to those who were subjected to the horrors that define the time, events like the Holocaust, the Vietnam War, and more personalized, stigma- and isolation-inducing traumas like rape and incest. More than the term “victim,” it tends to be self-referential – as in, “I am a Survivor, not a victim” – making it a positive source of personal and group identity. (We will show later in this Introduction that the perpetrator identity lacks this narrative progression.) The migration from “victim” to “Survivor” is much more than a footnote in conceptual history; it plays out in the now-global politics of recognition that accompany efforts toward post-atrocity acknowledgment, apology, and restitution.

Public reception of images and testimony is central to victim–Survivor transitions. Sympathy acquires currency and political authority when it responds to “ideal victims,” those who are innocent and vulnerable, and has more difficulty attaching to more politically adept survivors (Christie 1986; Duggan 2019). Those who move beyond victimhood to Survivorship activism may be admired for their fortitude or even resented, but in either case they can no longer be idealized as voiceless victims. In renditions of violence, “women and children” became almost one word. Yet, in recent decades, women have emerged as a political force. They challenged Portland police in the United States, the power grab by Belarus President Alexander Grigoryevich Lukashenko, and took up arms alongside men against the Russian invasion of Ukraine. Polish women positioned themselves as agents, not victims, when they protested the Polish court’s uncompromising anti-abortion ruling by marching down cathedral aisles wearing long red dresses and white hats to represent characters in *The Handmaid’s Tale*. Those screaming, “My uterus is not your playground” cannot easily be storied as passive victims and as such they may find themselves labeled as perpetrators or terrorists. This is exactly what occurred: Jaroslaw Kaczynski, the deputy prime minister and leader of the ruling Law and Justice party in Poland, called these women criminals and enemies of the state while simultaneously mobilizing militias against them (Santora et al. 2020). But these movements, even if targeted at home, have transnational power. Many around the world have watched in admiration as Afghani women stood in front of the Taliban taking over their cities holding signs that said, “Education, Work, Freedom” and “We Are All Together, We Broke Oppression,” referring to their previous overthrow of the regime. Their efforts are not

without risks, as evidenced by the violent crackdowns that followed. Even influential mass protest has its costs.

Moving from victim to survivor is widely seen as critical for personal resilience, but publics prefer helplessness in their victim narratives. The most idealized victims are voiceless, like the Syrian child (Aylan Kurdi) on the beach or, really, almost anyone dead because they cannot story themselves. Any *collective* shift to survivor identity re-stories them as agentic, and hence as potential political rivals.

So, what is the alternative? To stay a victim? Remaining in, or maintaining focus on, the victim role is costly to any movement. In her work with Palestinians in Israel, Fakhira Halloun (2019) notes the cost to the community of its refusal to move from victim to agent. Without agency, she argued, the community surrenders its power to shape its own future. Victimhood as a political strategy leaves communities unable to see their own potential, waiting to be saved, or used in a proxy war, in this case between the Middle East and the West.

Victims – so identified by self or others – can become the subjects of compassion, but also of fundamental misunderstanding. They become subjected to what Miranda Fricker (2007) refers to as epistemic injustice, that is, they are wronged in their capacity of knowing, subjected to assumptions, biases, and stereotypes that take away their visibility and voice. Their ability to take part in epistemic practice – to convey knowledge to others and to discursively make sense of their experience – is compromised. They constitute a focal point for persistent myths about the aftermath of mass atrocity, unable to story the violence as they see fit. When presenting the words of Holocaust survivors shared during interviews, Federman (2021) found that even scholars challenged their words, making comments like, “I know survivors and they don’t say things like that.” In fact, they did make these comments – and many others that made people uncomfortable simply because they did not conform to norms.

The ideas and inclinations of victims who experienced the same mass atrocity are sometimes assumed, without evidence, to follow a particular trajectory, based purely on thought about what it must be like for them. Some story formulas are created by well-intentioned groups like the Shoah Foundation that, through the mass collection of testimony, prescribed the Holocaust survivor narrative. The quick training of interviewees and the formulaic questions asked created a Holocaust narrative norm. You can see inexperienced interviewers rush survivors through what seem like meandering stories to what they have been told is

important. When this happens, we suppress what they want to tell us, treating them more as specimens than experts. The interview as recorded may generate tremendous sympathy but at the cost of narrative agency. This impressively large testimony project then informs how people hear and tell other stories.

Most of us assume that sympathy is, without qualification, beneficial to the recipient but, from the perspective of narrative, it can have inimical effects on the effort to understand the experience and consequences of mass atrocity. A starting point in sympathy for victims stimulates imaginaries about the horrors they must have endured and what their suffering must be like, then and now. Ideas are readily projected onto them about what it means to experience, suffer, and heal from mass collective violence. Sympathy leads observers to exercise their imaginations, to spin out fantasies about what it must be like for victims but, at the same time, from this point of imaginary authority, to speak over and repress their agency.

Listeners may assume that survivors developed emotional connections to others, such as siblings, with shared experiences. But family and community relationships are often dramatically strained, if not torn apart, by the common experience of violence and memory of violence. Sometimes they see their loss, their powerlessness and suffering, in each other's eyes. Violence ruptures relations between victims, in ways that are difficult to overcome, even in the transition to Survivorship.

Victim narration offers an anchorage to what many assume to be truth, over and against the distortions of official histories and unofficial subterfuge. Victims are sometimes assumed to possess the collective means for overcoming the effects of violence through their testimony and insights into reconciliation. Having lived, surviving the extremes of human depravity, they hold the key to redemption for others. They inspire the idea that victims – and nations – heal through public narrations of traumatic experience. Addressing this point, Dian Million (2013) points to an “internationally recognized economy of justice” in which “the victims of traumatic events suffer recurrent wounding if their memory/pain is not discharged” (p. 2). Through public unburdening, especially in truth commissions, the injuries to individual and collective psyches are widely assumed to be overcome and restored to health or at least eased. Victims are assumed to heal, if not flourish, through the cathartic effects of giving testimony. And from this point of personal redemption, they are able to heal others, to redeem communities and nations. They impel their listeners toward constructing a new national

history/memory and creating a testimonial foundation for national reconciliation (Niezen 2020b, 154).

But the lines of communication between victims and sympathetic listeners are of necessity broken from the start, because no words sufficiently close the distance. This makes survivors particularly vulnerable to the imposition of stories *about* them, presented as narratives *by* them. Sujatha Fernandes' *Cultivated Stories* (2017) shows how various narrative constructions are privileged and advanced while other stories that don't fit the narrative are sidelined. Ronald Niezen's *Truth and Indignation* (2017) illustrates this point with examples drawn from Canada's Truth and Reconciliation Commission on Indian Residential Schools, in which film screenings and model testimony made up the "templates and exclusions" that produced preferred narratives by those giving testimony for the first time. If, for example, the survivor dwelled on their experience of unrelenting horrors and did not close with a story of redemption, of rediscovering language and traditions, finding religion, reconnecting with family, or even simply entering a twelve-step program, a commissioner might well intervene before they left the microphone with encouragement for them to seek some form of professional help. This recommendation then substituted for the survivors' own narration of hope. Leaving one's listeners with something positive and ideally personally redemptive was an essential part of the template of testimonial practice.

The most direct challenge that victims face is not being storied by their sympathizers but silenced by those who stand opposed to their coming-into-prominence. Those who, one way or another, position themselves politically in opposition to victims will often try to undo sympathy toward them with a rival narrative. One of the ways this occurs is through what we refer to as the *hegemony of the single instance*. This involves acts of persuasion that isolate an incident and apply it generally to all who would be included under the rubric of "victim" from a specific context of violence. Former Italian interior minister Matteo Salvini was particularly adept at this form of narrative. Undoing the tremendous sympathy that followed from images of the death by drowning of five-year-old Aylan Kurdi in 2015 (whom we just mentioned as a silent victim), for example, Salvini focused attention on a rape committed by a group of immigrant youths. The single instance, the one act of violence, then stood in for refugees in their entirety, without situating the incident in the contest of national crime statistics, which reveal a lower incidence of violent crime among refugees than for the general population. The hegemony of the single instance re-stories refugees, adds a "yes, but" to

anything they might have to say, and smothers the publics' inclinations toward sympathetic response with concerns about safety. Even child-victims become suspect: "Yes, they may be innocent and suffering now, *but* what will they become when they're older?"

Imposing a shift in public perception from seeing a group as victims to treating them as perpetrators is a longstanding political stratagem, but a risky one, that could easily skid out of control. The agents of this transformation could well be themselves the subject of public rejection, if not criminal prosecution. We shall see how the Polish government fares in its attempts to target thousands of Polish women as terrorists when they advocate for themselves non-violently. We shall see how Belarus President Lukashenko and Russia's Vladimir Putin fare in the face of thousands of protestors in the streets. To most of the world, their transition to the status of war criminals is now – with good reason – complete. What remains to be seen is how wide the narrative field of perpetration will extend beyond them, and with what consequences.

#### I.4 Perpetrators

Our common understanding of perpetrators is diminished by two tendencies. One is the inclination to see perpetrators as inhuman monsters. Hollywood, or, better, the human response to the stark simplicity of much Hollywood storytelling, may be partly responsible for the heightened imaginaries surrounding evil. Plotlines driven by unthinking, unfeeling perpetrators standing in comforting contrast to the struggles of a sympathetic hero, are repeated in countless forms in popular entertainment. Cumulatively, this creates and feeds public expectations of what a perpetrator *should* be. Once confirmed by authorities, the perpetrator label justifies a variety of responses. This could include incarceration, execution, or other court-mandated restrictions of life and liberty.

The structural conditions of impunity for mass atrocity in international law constitute a major obstacle to understanding perpetrators. Under circumstances in which senior officials responsible for war crimes, crimes against humanity, and genocide escape indictment, attention turns instead to the instruments at the end of their orders, the bombs and "ordinary" killers that lay waste to civilian lives. Certain images then get anchored to represent this unnamed, abstract perpetrator – a railway, a machete, a chemical weapon – leaving invisible the humans responsible for their deployment.

There is resistance to considering the stories of perpetrators as valid under circumstances in which victims have – at long last, some say – been given voice. Perpetrators, as Saira Mohamed (2015) aptly puts it, “have no need to bear witness; they are the ones who have controlled the narrative and silenced the oppressed” (p. 1177). A blind spot follows from this compensatory narrative of historical voice, which presents victims as having emerged out of hegemonic conditions of invisibility. To give perpetrators attention in these circumstances is to undo the hard-fought emergence of survivors as active agents in their re-telling of (usually national) histories. Sometimes, when we hand over the proverbial mic to perpetrators, we are asked: “Why do we devote any sympathetic attention to the individuals responsible for unjustifiable bloodshed, and what right do they have for their pain and their wounds to be recognized and respected?” (Mohamed 2015, 1164). Yet, there is a growing literature on perpetrators and their trauma.<sup>4</sup> Mohamed, for example, pays close attention to the concept of trauma to shift attention from the close association of trauma with victimhood to include perpetrators in the experience of trauma. She depicts perpetrators “as fully thinking beings” who often experience their crimes as traumatic. The “commission of the crime itself causes a psychological injury to the perpetrator, which can result in particular adverse physical, social, or emotional consequences” (Mohamed 2015, 1162).

While scholars increasingly turn their attention to perpetrator studies, we must not overlook the documentarians who, no doubt inspired by Claude Lanzmann’s *Shoah* (1986), offer us some of the most haunting and intimate looks at those who commit genocide. Rob Lemkin and Thet Sambath, for example, directed *Enemies of the People* (2010), which shares interviews with various perpetrators of the Cambodia genocide. Joshua Oppenheimer, Christine Cynn, and an anonymous Indonesian directed *The Act of Killing* (2012) and later Oppenheimer directed *The Look of Silence* (2014), which introduces viewers to some of the perpetrators of the Indonesian genocide in 1965. *Fambul Tok* (2011), directed by Sara Terry, shares local ceremonies in Sierra Leone that bring together victims and perpetrators to share their experiences. The popularity and impact of these films seem to qualify Mohamed’s point when she says, “as much as perpetrators may have the capacity to bear witness, it is not clear that anyone wants to hear them” (Mohamed 2015, 1168).

4 See Knittel and Goldberg (2019). In this volume, see Hinton (Chapter 6), Payne (Chapter 10), and Federman (Chapter 2).

But it remains true that our knowledge of perpetrators tends to be thin. When post-conflict contexts reject the voices of perpetrators, they ironically produce conditions that allow those who enacted the harm to escape public attention, to slip through the net and evade consequences for their actions. The separation of the world into victims and perpetrators, with sympathy and curiosity directed to victims, leaves the perpetrators to quietly remove themselves from the spotlight and escape into the shadows. Unseen, their motives are readily imagined, and take on whatever ideas are projected into their invisibility. In retributive justice systems, if perpetrators are portrayed as flesh and blood, human and flawed, one risks relativism and impunity.

Restorative justice models provide greater flexibility here. These models focus more on identifying and responding to the harm with the participation of all involved parties. Restorative processes offer opportunities for personal growth, healing, and meaningful responses to violence in the aftermath, yet they cannot guarantee these outcomes. What they can offer is a commitment to keeping each actor in the story and to sidestep the binary constructions that invite new ruptures.

## I.5 Heroes

Heroes are arguably critical for social functioning. They tell us what values to espouse and what actions to emulate. Simply put, they can be a lighthouse. Heroic icons give us hope for humanity's potential, especially in the face of countless human failures. Because of their potential and magnetism, they are also ripe for manipulation.

There is something almost lazy and self-comforting in the way that publics recognize the qualities of heroism. They don't emulate heroes. Instead, as with victims and perpetrators, they make them abstract and idealized, perhaps to avoid being called upon to perform the extraordinary themselves. We call young men heroes when we send them to war. This helps parents surrender their sons, wives surrender their husbands, and men to offer the ultimate sacrifice of their lives. We see this dynamic in other contexts as well. Calling medical workers "heroes" in the COVID-19 pandemic became an expression of gratitude, but also a means to encourage them to keep going in the absence of state responsibility for their working conditions and personal risk. Some teachers balked at being called "essential workers" for a similar reason. Labeling some as heroes can mask the cowardice of others, including those whose faults they make up for through personal sacrifice. Said another way, the



hero label can distract from those who acted in ways that were decidedly unheroic.

Who names the heroes? Heroes may be self-cultivated, state-cultivated, publicly named, or some combination of these. The art of heroism in this sense involves self-styling, situating oneself as a great and forceful intervenor in a conflict in such a way (the would-be hero hopes) that publics, eager for validation and identity-affirmation, take up their story and elevate their reputation. Churchill's deft handling of print and radio journalists early in his career and through the World War II is a classic example of an effort by someone who pushed themselves into prominence, a type that the British once commonly referred to disparagingly as a "self-publicist." Over and above such disapproval, the positive value given to these efforts is the prize being sought. In the realm of adversarial legal contests, *justice heroes* combine self-promotion with the strategic public outreach that goes with elevating the profile of a legal contest.

When successful, heroes can count on their narratives for only so long. Publics bore, fame dilutes, and a crabs-in-a-bucket re-shifting of narratives pulls down the once victorious and vainglorious, sometimes to the point that they are subjected to categorical repositioning and become *perpetrators* in the historical imagination. The guiding lights of a resplendent nation become the standard-bearers of imperialism.

This dynamic promotes two narrative frames. One is a model of blind devotion, in which those adding complexity to collective narratives are deemed unpatriotic or ungrateful. This encourages cultish behavior around heroes, obscuring for too long decades of sexual predation, embezzlement, or other crimes. Or, we actively seek the faults of every heroic person, placing them upon a pedestal with a trap door, ready at any moment to drop them into a pit of social shame. Be forewarned if you find yourself on one.

What might be possible if knowledge of heroic actors was cumulative instead of subtractive? Monuments and counter-monuments could stand side-by-side, representing contested heroes and histories, rather than leaving us caught in a cycle of erasure and replacement. We could understand Dr. Martin Luther King Jr., for example, as simultaneously one of the strongest voices on justice in human history and a man who plagiarized much of his dissertation (Associated Press 1991). Mahatma Gandhi was one of the greatest voices for non-violence and a man who molested his nieces and other girls and women under auspices of maintaining his own sexual purity (Grenier and Schaeffer 1983). This kind of



discordancy makes us uncomfortable. We may wonder if quoting Gandhi means we condone his treatment of these women.

Beyond our personal inquiries, heroic titles have political and economic uses. When regimes cast themselves as heroes, they influence how a conflict is understood by future generations. The heroism of US troops who brought down the Axis powers created space for stories told many times and in many ways. Each of these stories, however, quickly passes over the many horrors committed by allied forces, including detonating two atomic bombs in Hiroshima and Nagasaki, the bombing of Dresden, and refusing early intervention in the Holocaust. War heroism in particular often occludes much bloodshed.

Those political powers that have not yet engaged in a conflict often define the conflict in such a way that they can resolve it. In other words, victors define what a win means. We see this when powers sign peace accords that are not embraced by local populations. Too soon, they find their solution undone because it was someone else's solution, that of a dominant power, and not the one that would garner legitimacy or lead to lasting peace.

Then we have a third group, those for whom being cast a hero may save them from being cast the perpetrator. The stakes are high at times, not just in terms of tarnished legacies, but in the form of prison sentences. Slobodan Milosevic upended the International Criminal Court with his lawyerly skill and desperate bombast, portraying himself for an audience in Serbia as a great liberator and hero of the nation.

## I.6 Digital Inhumanities

Whereas restorative justice environments resist labels, online spaces propagate them. These labels usually begin prior to and outside of any form of due process when the mere deployment of "perpetrator" (and its various related terminology) leads to the loss of political and economic participation, loss of stature and/or social capital, or even loss of life. In contemporary parlance, this is "calling someone out" or "canceling" them. Accusations alone punitively tarnish reputations.

Even well-intentioned justice campaigns enter dangerous territory when they engage in naming and shaming. The mere label of perpetrator, seen as integral to the justice quest, becomes a blunt instrument that can inflict wide damage. Applied unscrupulously, instead of a descriptor of one's participation, the term becomes a political weapon. Even before

trial, social shaming may annul a lifetime of good works and social or economic contributions.

The label can be further weaponized by those looking to undercut potential threats to power, with social media generating mass audiences for disinformation, distraction, and strategic confusion. Those seeking power will often create “perpetrators” where they factually don’t exist. Examples, unfortunately, abound: Jews, Palestinians, male African American youth, or those labeled “communist,” “gay,” or “unpatriotic.” Syria’s online disinformation campaign against the “White Helmets” – the rescuers who worked in the aftermath of bombing raids – demonstrates such an effort to delegitimize heroic efforts that threaten state power (see [Chapter 9](#) by Niezen). The Syrian/Russian disinformation campaign against the White Helmets zeroed in on bookkeeping irregularities in a context in which trade and services were paid for in cash. The binary logic of narratives means that all one has to do is to score one superficially plausible point – one questionable act by a hero or one positive contribution by an accused perpetrator – and the whole edifice of persuasion wobbles on its foundations.

Those who feel they have (or have historically had) no legitimate political voice also sometimes resort to such tactics. The movements that bring these dynamics to light are critical for advancing social justice and equity. Yet they also create opportunities to leverage the labels of “racist” and “rapist” in order to bring down those who represent the forces that historically held them back. Of course, there *are* racists and there *are* rapists, in all-too great abundance. But when we apply perpetrator categories indiscriminately, we create new victims, individuals targeted for their ethnicity, gender, political affiliations, power, or wealth. We also make accountability of the truly guilty more difficult: With only two choices before us – victim or perpetrator – asserting that the accused “did some good things” can dismantle or distract discussions about the harm they committed. The point being, through the power of social media, *any group* can wield powerful discursive weapons. Anti-social media’s call out culture locks us all in the panopticon as both guard and prisoner. Escaping this mutually imprisoning dynamic requires calling everyone *into* conversation.

Those ultimately responsible for mass crime have the most vested interest in destabilizing victim narratives. One of the best ways to prevent this is to avoid creating fragile narratives from the start. Victims painted as caricatures are relatively easy to diminish. To discredit claims against them, those who called for the violence simply create public mistrust in

victim narratives. Conspiracy theories, fake news, and other forms of propaganda raise suspicions about the reliability of testimony. Erasing or discrediting stories of harm not only casts doubt on the stories, but on the reliability of information more generally. How can we expect survivors to publicly narrate their experience in a media environment that facilitates strategic confusion and activist paralysis? Politically motivated disinformation, of course, has long been with us, including as essential strategies of the Cold War. In *Shamanism, Colonialism, and the Wild Man*, Michael Taussig (1987) adeptly reveals the epistemic confusion created by colonial control of knowledge, and hence the overturning of society's moral foundations: "When 5,000 slum dwellers were rounded up and held in a stadium, a high official denied that the event had even happened. 'what stadium?' 'what slum dwellers?'" (Taussig 1987: 4).

Just as colonial officials denied evidence in order to discursively erase violent events, social media platforms and other new information technologies (ITs) have now all but universalized the schizophrenia-inducing experience of regular subjection to official lies, to the words, "It wasn't there" and "It never happened." Many find themselves caught between their senses and sense of reason.

Big tech corporations influence what we consume over digital media while, at the same time, facilitating the pollution of our communications ecosystem. The faster and farther spread of falsehoods and vituperations than reasoned discourse on social media is one aspect of this phenomenon (Vosoughi et al. 2018). Readily available apps make "deepfakes" a tool for the masses. Those who bathe in the informational torrent of social media struggle to find the truth they seek; and out of fatigue and despair they all too often allow the current to take them where it will. Comforting narratives position them as a victim or a hero, but never part of the problem. Few people seek narratives that reflect back on them as perpetrators. (Would you?) As a result, we tend to consume authors or media (or leaders) who cast us in the best light. Yet, a deeper part of us knows we have consumed a story half told.

How can we expect victims or survivors to publicly narrate their truths and give listeners insight into their suffering when they must speak from a position of deep informational insecurity? Social media platforms contribute to acts of mass atrocity and their troubled aftermath by facilitating this insecurity. They have served as channels for narratives of inhumanity that (almost predictably) precede acts of genocide. Facebook's involvement in the Myanmar genocide as the platform of choice by which hate crimes were committed, leading up to the mass

killing, dispossession, and displacement of the stateless Rohingya people, is a prominent case in point.

Social media platforms act independently in their capacity to tell stories, or at least certain *kinds of stories*. There are common logics of connectivity, datafication, and convergence at work in social media generally, while each platform controls, coordinates, and mediates “participatory culture” and content in a specific way (Burgess and Green 2018). To retain user engagement, these platforms strategically augment emotional involvement with their content. YouTube, for example, is driven by an algorithm that builds on visual material with increasingly heightened emotions in its subject matter, making it an instrument of *amplification*. Facebook brings together communities around core symbols that act as monuments to collective belonging, creating solidarities and enclosures of belief and knowledge of the world. And Twitter forms networks of shared belief that then become pitted against one another in a pattern described by Brian Ott as “the repeated production and consumption of simple messages, which endlessly redirect our attention elsewhere via hyperlinks, reshapes human cognition in ways that nurture simple-mindedness and promote short attention-spans,” ultimately resulting in “mean and malicious discourse” (Ott 2017: 61). For its part, Google’s PageRank algorithm identifies sites that already have broad attention and connections to other websites, making it an ideal tool for *retelling*. Platforms, in other words, tell stories through their structurally designed preferences and selectivities.

Whereas, on the one hand, these platforms encourage and proliferate binaries, they also offer tools for counternarratives. When protestors turn their cameras on police, for example, states struggle to control the story. Now known as “digital witnessing,” these tools record and disseminate evidence of war crimes (Dubberly et al. 2020). With these new tools, we now see an emerging form of NGO-with-teeth, which has overlapping roles in criminal investigation and witness affirmation, in opposition to ongoing mass violence and media manipulation. Technologies, like people, cannot easily be declared unconditionally good or evil.

### I.7 Toward a New Narrative Ecology

We embrace our fields’ inquiries into victimhood and recognize that this shift has helped counterbalance fields’ earlier focus on merely identifying victims and punishing perpetrators. We also embrace the new interest in perpetrators that grapples with their motivations, trauma, and paths to

reckoning. We assert, however, that the polarities produced when we separate fields of study risk distorting the origins of conflict and increasing the possibility of repeating cycles of violence. Creating separate fields of study both reflects and perpetuates the ruptured relations caused by violence, including the separation of those who were once neighbors and maybe even lovers, caught up in atrocity. Narrative complexity is a fundamental condition of post-conflict resilience. The blurring of victim-and-perpetrator boundaries and greater acknowledgement of their overlapping roles are crucial parts of the peacebuilding process.

In this volume, we offer cases as integrated wholes. We want to understand conflicts' narrative ecologies. The harmed and those who enacted the harm were pitted against one another by forces too often obscured. Keeping these parties as well as the bystanders and heroes all in conversation with one another offers a different path toward the cessation of conflict.

This path helps decolonize our research, making room for interpretations of events and motivations not readily recognized by western frameworks. Alex Hinton's [Chapter 6](#) shows this powerfully and poignantly in his study of the international criminal tribunals in Cambodia. Targets of the genocide tried to offer interpretations of the events unrecognized and even expelled by the courts. Together, we find that a great deal can be learned through attention to transitions and ambiguities in the actions and identities of participants in violence.

In fact, we see no other viable path. A singular focus on victimhood obscures the complexity of perpetration and vice versa. Again, understanding does not mean impunity; it means focusing on generating resilient spaces that offer bulwarks against totalitarianism and radicalization, a primary concern in post-conflict contexts. Complexity offers access to greater truth and to a much-needed sense of community to people fractured by violence (Minow 2001). A healthy narrative ecology can be developed through better-formed stories, above all stories that promote inclusion (Sluzki 2004).

Mass atrocity is a mosaic within a mosaic. Each tile represents an actor in the drama; and we need everyone together to see the full scale of the events. Each actor is also a mosaic composed of various (often competing) values, intentions, and actions. By keeping the tiles together, we contribute to a systems analysis that makes visible intentions and actions that led to various, sometimes calamitous, outcomes. Treating conflict as a systemic whole promotes the insight that exclusion is only a discursive fiction. We are bound to one another.

For this reason, above all, the contributors to this volume all pay close attention to how people talk about conflict in the aftermath of atrocity. This includes not only how people talk about participating groups and individuals, but how those individuals and groups talk about themselves and others. Even the most ideal (innocent and pure) victims are not incapable of harm. Even the most horrific perpetrator has the potential to contribute to social restructuring or, at the very least, to our understanding of violence. We avoid these truths at our peril. The road we traverse after mass violence will never be smooth, but at the very least it should never take us back to where we started.

## I.8 Contributions

The chapters are arranged in such a way that they do two things: First, they present case material that, taken together, offers a panoramic picture of the fraught terrain of efforts to deal with mass atrocity in its aftermath. One of the advantages of the case study approach of the edited volume genre is that it allows us to illustrate from various angles just how narratives of victims, perpetrators, and heroes are constructed and what consequences they have for post-atrocity transitions.

Second, and more unusually, the contributions to this volume present individual steps of an argument, bringing the reader through different stages of persuasion in the book as a whole, while being anchored to the case material at hand. The unifying argument runs something like this: Post-conflict processes aim to construct a bridge between a period of violence and one of just peace. But the seductive appeal of victim identities tends to entrench social divisions and skim over the deeper identity conflicts that served as the conflict's original raw matter ([Chapter 1](#)). A series of case studies then illustrates the need to shift away from calcified articulations of involved parties and makes visible the dynamics that keep them entrenched. A study of the French National Railways' (SNCF) struggle to make amends for its role in the Holocaust shows how archetypal prototypes of conflict parties act as attractors, affecting how we understand and respond to harm ([Chapter 2](#)). Even though they can be a steadying force in the aftermath of mass violence, trials cannot consistently promise unbiased judgment, both because of their preference for binaries and because they are often influenced by political interests and thus fail to address the root causes of conflict. Studies of the trials that followed the Ugandan ([Chapter 3](#)) and Cambodian ([Chapter 6](#)) conflicts demonstrate how legal proceedings

solidify these categories and struggle when individuals cannot be easily presented as victim or villain. Studies of post-conflict Guatemala (Chapter 4), Uruguay (Chapter 5), and Rwanda (Chapter 7) demonstrate how changes in state power alter the categorizations of conflict parties. States, however, cannot fully control the destructive effects of popular narratives, as we see in Bangladesh (Chapter 8), where attempts at presenting the estimated 200,000 women raped in the Bangladesh war of 1971 as *victims* received pushback from many who portrayed them as sexually promiscuous traitors. New information technologies might seem to be an answer to narrative contests and allow for more real-time, accessible evidence in the occurrence of mass crime. As states increase their surveillance of their populations, civilians are more often recording and publicizing state crimes. Digital video evidence, however, does not in itself contribute to boundary transcending insight but can inflame indignation and counter-lobbying, pushing us further from understanding the motivations behind mass atrocity (Chapter 9). We are not always ready to see or hear what does not match our shared understandings or visions of ourselves. We see a similar phenomenon in Argentina, where confessions by the armed left became a source of in-group conflict (Chapter 10). Rather than simply leave readers with a robust explanation of the troubles in our subject matter, we conclude with an identity-based pathway to positive peace, returning to the theme introduced by Enns in Chapter 1 with a prescriptive model for reconciliation that engages groups in the co-construction of complex accounts of the past while looking toward a shared future (Chapter 11).

Let us now briefly review these contributions in more detail: Diane Enns navigates the effects of contemporary shifts toward victimhood *as* identity in Chapter 1, using as her site of study some of the Indigenous struggles in Canada that have unfolded in ways that closely parallel contemporary race-based discourse in the United States. Current trends favor oversimplified and fixed conceptions of victims and perpetrators. The resultant discourse shuttles us back and forth between expressions of resentment and comforting platitudes that foreclose possibilities for the kind of rich dialogue needed for political and social transformation. Listening to others becomes a betrayal of one's group. Enns argues that such oversimplification obstructs the very possibilities for social justice that it claims to pursue, leaving those uninvolved in racism and forced assimilation consumed with guilt and inclined to expressions of sentimentality that allow them to feel noble or virtuous. In the resulting cacophony of opinion, social justice advocates fail to notice those with



a direct hand in oppression (past or present) or the fact that they express no remorse. The ensuing moral confusion conceals the difference, say, between an overtly racist leader and a white person who has yet to give racism much thought. Reducing groups to monolithic entities erases the possibility of a “we” that is capable of change and can engage in reconciliation. We lose a sense of the transformative action necessary to set the world right. Those accepting their victimhood as a fixed identity can become addicted to its moral power and begin policing discourse at a cost to their own liberation. Frantz Fanon warns us how the bitter rage expressed as a way to equal the colonial playing field offers fleeting satisfaction, imprisoning all in “a bitter brotherhood.” When this happens, history confines and absolves us from co-creating a shared future. An enriched understanding of the intersection of moral responsibility and identity invites us to listen when we want to pull back, think when we want to simplify, and take the brave step of replacing rage with trust where it never existed.

Pulling out our focus to include a wider field of history and of legal contest makes it easier to see the transformations that take place in narratives about victims, perpetrators, and heroes. In [Chapter 2](#), Sarah Federman’s overview of the stories centered on the complicity (or its absence) of the French National Railways (SNCF) in deportations of Jews from French occupied territory to German death camps offers a clear illustration of such transformation. The comforting story is the one first told. The rail company and the political leadership of the immediate postwar period coopted the heroism of the railway workers (*cheminots*) who risked their lives in sabotaging the transport of German goods and personnel to the front lines following D-Day, making this compelling storyline that of the corporation as a whole, essential to its identity. Another narrative became possible in the 1990s with the widened recognition of the Shoah and the engagement of Jewish leaders and organizations in litigation, pursuing regimes of compensation that remained unaddressed or incomplete in the immediate aftermath of the war. With such contest comes a retelling of the SNCF as an actor, from hero to perpetrator. Then again, the defense against litigation aligns with the argument that the railway company was dominated by the Germans in ways that made it a victim of the occupation. The voices of the survivors share this complexity and refusal to be pinned down to a single story. In an entity as complex as a major corporation and its place in a morally vexed occupation, such diversity of narratives is all but inevitable. What Federman offers above all is a panoramic view of the contested



narratives – in the corporation, the political class, and among the survivors – and the strategic choices that lie behind one narrative being advanced in favor of another.

The difficulties of fitting the moral ambiguities of violent conflict into the neat victim/perpetrator binaries of international criminal law are center stage in Ayodele Akenroye and Kamari Maxine Clarke's discussion of the trial of Dominic Ongwen in the International Criminal Court in The Hague in [Chapter 3](#). The trial centered on the culpability of a man whose horrific acts of violence in the Ugandan civil war of the early 2000s led the ICC to issue seventy counts of war crimes and crimes against humanity against him. The ambiguities of the case and the reference point of the trial's arguments centered on Ongwen's recruitment as a child soldier under the notorious Lord's Resistance Army headman, Joseph Kony. If a boy who is recruited and taught to kill at a young age is not guilty of the crimes he commits (lacking the *mens rea* or "guilty mind"), at what point does his transition into adulthood change the conditions of his responsibility for crime? What are the circumstances in which he can be understood to be acting freely? At what point is a child soldier expected to repudiate his or her superiors and escape the scene of atrocity? And if repudiation and escape are called for in this and other cases of this kind, how might this example extend to other forms of aberrant socialization, the "brainwashing," for example, that can lead an entire nation to accept and act on ideas of the inhumanity and need to eliminate a national minority? For our purposes as editors, the Ongwen case perfectly illustrates the constructed nature of perpetrators and their victims. The brutal techniques by which children's natural sympathy for others was broken down, for example by forcing them to eat while sitting on corpses, makes them at one point clearly both victim and perpetrator, subjected to atrocity while being trained to commit it, with a shifting background of criminal responsibility as they mature and are expected to acquire the faculties of reason and compassion. The foundational concept of *mens rea* in criminal law emerged around the thirteenth century in English courts, long before we understood the social construction of identity and began grappling with the question of mass crime. Only retributive models still demand that we resolve the perhaps unsolvable question of whether intent emerged from an individual mind or a socialized one. Restorative and transformative frameworks, in contrast, focus attention on the harm and how to address the harm. These models sidestep the ontological problems altogether. As a result, they accept more freely that an individual can be a victim of a regime and a

perpetrator of violence, requiring both rehabilitation and responsibility to care for those they have harmed.

Narratives that shape the roles and values attributed to people in (or subjected to) conflict can also be found in the ways that conflicts are framed and justified on a grand scale. In [Chapter 4](#), Karine Vanthuyne and Marie-Christine Dugal illustrate just such a shifting terrain of mass violence and its narrative underpinnings in highland Guatemala. Their close reading of testimony from peasants and the documentary record of public pronouncements thus brings out several major shifts in the dominant idioms of heroism and villainy. The rural mobilizations of the 1970s and 1980s were oriented toward “turning personal battles into sacred struggle,” framed in the idiom of Christian ideas of martyrdom and resurrection. Catholic missionaries working in the Guatemalan highlands came to side with the communist movement, with “liberation theology” overlapping with the communist goal of uplifting the poor and creating a more just society. With these common goals, the clergy was caught up in the government’s violent repression, acted on through the “disappearance” and arbitrary execution of all presumed revolutionaries and their allies, including church leaders. The truth commission that resulted from the peace accord of the 1990s was oriented toward a reframing of the Church’s role in the conflict, from “subversives” to “good Christians,” and “martyrs” embodying examples of self-sacrifice as a pathway of salvation for humanity’s sin. Leftist insurrectionists and their supporters in the Church, once demonized for their opposition to the state (armed and otherwise), became recast as heroes whose struggles inspire those resisting the forced impoverishment and displacements caused by transnational mining ventures. Narratives have clearly shifted in sync with Guatemala’s changing economic and political alignments. The one constant in Vanthuyne and Dugal’s account is the highland peasantry’s subjection to political and industrial violence, even as its causes and narrative justification have profoundly transformed.

In the aftermath of atrocity, certain victim groups find public recognition far easier to attain than others. Those groups that align with a country’s imagined national identity are legitimized more readily than those who remain excluded. Sometimes it is ultimately the hard-won recognition of their suffering that leads to their fuller social integration. We see this dynamic play out in Debbie Sharnak’s [Chapter 5](#), which examines Uruguay’s radical shift from an almost complete denial of its Afro-Uruguayan population to official state recognition. While Uruguay follows a larger Latin American movement for multiculturalism that

began in the late twentieth century, Uruguay is unique in the specific path it took to overcome the invisibility of its black population, a change critically tied to the military government's treatment of Afro-Uruguayans from 1973 to 1985. Sharnak's piece argues that the push for legal visibility occurred because of the twin pressures of Afro-Uruguayan mobilization in the aftermath of the dictatorship, combined with a larger global shift toward support for state-sponsored ethno-racial recognition. Using interviews and sources from Uruguayan and international archives, she locates the importance of official recognition in the context of building a powerful civil rights movement that has had tangible policy outcomes, such as the inclusion of race in the census and an affirmative action law.

In a powerful synopsis of the central material from his book, *The Justice Facade: Trials of Transition in Cambodia*, Alex Hinton (2018), in [Chapter 6](#), offers a close view of the fit, or lack thereof, between the legal approach to roles and responsibilities in mass violence and the more open, fluid moral cosmologies of those caught up in conflict. The proceedings of the Extraordinary Chambers in the Courts of Cambodia (ECCC) is the site of his close analysis of the "affordances and constraints" that determine what can be said and done in the trial, and hence how conflict can be (mis)understood. Hinton approaches these limits through the central character of Bou Meng, a former prisoner of the notorious S-21 Khmer Rouge torture center. The unspeakable suffering inflicted on the inmates of this center forms the background of the trial. What Hinton wants us to focus on, though, is the judicial process itself, one that structures witness narrative through such mechanisms as the regulatory apparatus of the microphone's on/off button, the process of translation, the way that witnesses are required to sit, and, more consequentially, the ways that Bou Meng's testimony itself is shaped, trimmed, and disciplined. The picture that eventually emerges is one completely at variance with Bou Meng's own interpretation of his ordeal, which is deeply informed by a Buddhist understanding of the "wrong thinking" at the origin of mass atrocity, the karmic justice that obviates the need for retribution, and the urgent necessity to care for the souls of the dead. The court and its witness could not be at greater odds in terms of what they hoped to achieve from the trial, with their differences ultimately traceable to their knowledge of the world. The knowledge of the judiciary is situated in its push to position Bou Meng as an ideal victim, masking his earlier involvement in the violence. Trimming away the creeping undergrowth of his perpetration does not lend clarity to the conflict but occludes the complexity of victims who also participate in atrocity.

In [Chapter 7](#), Samantha Lakin turns our attention to the role of commemorative spaces in formulating and constraining identities. Through in-depth interviews conducted with 100 Rwandan genocide survivors, former perpetrators, ordinary citizens, and key informants, Lakin finds that people perform their experiences and recall their identities differently in national, local, and private commemorative spaces. A contest plays out between national narratives and local commemoration of the 1994 Rwandan genocide, a genocide that resulted in the murder of between 800,000 and 1,000,000 individuals. The post-genocide context of Rwanda provides a salient site for this study precisely because the government “engaged in unprecedented and ambitious state-building and transitional justice projects in the aftermath.” State-sanctioned narratives often defined the victims in bounded terms, not always aligned with local experiences and forms of truth telling. The Tutsi, for example, were the primary victim group, but some Hutu, Twa, or people with one Hutu and one Tutsi parent also suffered under the violence. Commemorative spaces, in their intent to heal and acknowledge, can become sites that entrench the narrative binaries that can lead us back to violence.

In [Chapter 8](#), Nayanika Mookherjee considers the dynamics of state-sanctioned narratives of rape in the aftermath of war. Moral revulsion toward rape as an instrument of power might lead one to assume that responsibility for this form of violence would be fairly easy to assign; but, as Mookherjee shows, matters are rarely so straightforward. The rape of some 200,000 women by the West Pakistani army and its local East Pakistani collaborators (*Razakars*) during the Bangladesh war of 1971 resulted in a difficult aftermath to the conflict, in which the moral essence of the raped women (*birangonas*, meaning “brave women” – a public title given by the state) was publicly characterized and contested, largely to the exclusion of their own complex life trajectories. Mookherjee aptly describes a “double helix of attraction and repulsion,” in which the Bangladeshi state tries to promote a narrative of the *birangonas* as war heroines – expressed and policed by social workers and doctors intervening in the processes of abortion and adoption – that eulogized them as victim–heroines who suffered and struggled in the course of the war. This was a narrative with a political and emotional purpose in the face of a catastrophic number of rapes. Women needed to be able to take up their roles as citizens and workers, wives, and mothers. Disciplining public sentiments toward those who had been subjected to rape became an essential part of the post-war project of state-building. Agents of the

state, however, were unable to suppress a popular and persistent counterpoint to their narrative, one that depicted the *birangonas* as figures of mistrust and suspicion, that associated rape with promiscuity and prostitution, and ultimately casts them as traitors, whose sexuality and whose wombs acted in opposition to the project of the nation. As a result of this ambiguous formulation, they stand somewhere between – or beyond – victims and perpetrators. The missing feature of both these strands of narration is women's own capacity to communicate their experience, a project to which Mookherjee herself contributes.

The essays included in this book offer a variety of accounts of how narratives in the aftermath of mass atrocity are created and contested; to these, Ronald Niezen adds a consideration of the digital landscape of contested knowledge, with the state-sanctioned weapons of disinformation, censorship, and hacking pitted against digital witnessing, meta-data analysis and authentication, and legally-oriented digital archiving, in [Chapter 9](#). Niezen presents this phenomenon with a focus on Syrian Archive, a digital platform for the collection, verification, and storage of visual evidence of war crimes in the Syrian conflict and a precursor to more intense and immediate digital witnessing efforts now taking place in Ukraine. The Syrian Archive's mission takes on the monumental task of exposing crimes as they happen, collecting, verifying, and preserving digital evidence of genocide, war crimes, and crimes against humanity, and in the process, systematically undoing state campaigns of disinformation and denial. The Syrian Archive project continues to gather evidence of war crimes in the heat of the conflict. It is as though the reference point for this contest is an imagined future criminal trial that assembles competing stories of guilt and innocence, victim and perpetrator. But the accused in this case are the Syrian and Russian governments, intent on sowing confusion, polluting the knowledge ecosystem, and making it all but impossible for public consumers of information to distinguish fact from fiction. In these circumstances, the Archive serves another purpose: The affirmation of witnesses. Although the store of digital material the Archive has assembled cannot be used against those responsible for Syria's war at the highest level (who are protected by conditions of impunity in international law), it takes some of the burden away from witnesses of struggling against torrents of disinformation and, in doing so, makes room for them to narrate the experience and costs of a war that targets civilians. At the same time, gruesome footage, a powerful tool of accountability, understandably encourages simplified accounts of armed struggle. Are we asking too much of those viewing digital visual

evidence to consider the finer points of history and of *mens rea*, the motivation behind conflict, while watching a video of a child struggling for breath after a chemical attack?

Sometimes hints about how shifts in narrative can effectively address violence can be found by analyzing efforts at post-conflict intervention that did not fully get off the ground. In [Chapter 10](#), Leigh Payne offers an account of the unsettling effects of confessions of violence by armed left guerillas or revolutionary fighters in Argentina. By confessing to the abuses that they committed or condoned, the two former revolutionaries that Payne profiles aimed toward a full accounting on the left for its role in past violence. Curiously, however, these confessions did not unseat dominant narratives of the left's innocence and victimhood. Any impact they had was short-lived. Why? Payne explains that the *timing* of the confessions limited their effect. Contentious debate over the left's violence was possible in the past and not in recent years because the early period of post-conflict was safer – the left did not fear that admitting to atrocities would fuel backlash from the right. Time, in this sense, did not heal all wounds. Paradoxically, in the later period, under circumstances in which the right had reconsolidated its political power, the confessional narratives from the Argentine armed left had a tendency to reinforce, rather than reduce violence as a solution. The prescriptive dimension to this observation highlights the need for urgency in thinking self-critically, to reflect broadly on the motives and consequences of violence, and to use circumstances of political advantage to condemn those parts of the (temporarily) dominant power's past that deserve condemnation.

To provide a line of flight out of these conundrums, in [Chapter 11](#), Dan Shapiro and Vanessa Liu direct our attention to underlying identity conflicts, specifically to the challenge of negotiating emotionally charged disputes over symbols. These conflicts often turn into zero-sum battles over identity. To escape this problem, the authors emphasize the importance of creating an inclusive narrative in which parties reshape their relational identity – who they are in relation to one another. This entails building new forms of affiliation with each other while respecting each other's autonomy. This paradoxical move toward and away from each other creates the context needed to generate an inclusive narrative. Case studies of the Macedonia Naming Dispute and the US Confederate statues controversy illustrate this practical method for intervention in symbolic conflict, demonstrating that the pathway to positive peace requires relational transformation and an inclusive narrative that promotes mutual connection and security.

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## Guilt, Responsibility, and the Limits of Identity

DIANE ENNS

In the aftermath of World War II, two German philosophers, Karl Jaspers and Hannah Arendt, addressed the question of guilt and responsibility for Nazi atrocities. Though their analyses differ in some respects, they both insist on the distinction between these concepts and their applications: Guilt is a pronouncement of wrongdoing and refers only to an individual act, whereas responsibility is a collective accountability for deeds that occur in a shared world. I am interested in the implications of this distinction for dealing with the legacies of other historical tragedies such as colonialism and slavery. The question of who is guilty and who is responsible is never simple when past violations continue to haunt the present – materially and psychologically – and when those guilty of the original violation are long dead. When the institutions they built to systematize and legitimize oppression remain very much alive and managed by members of succeeding generations, someone must be held accountable for the past and its present effects. And when many live on the advantaged side of a society divided by injustice and inequality, it is tempting to assign widespread, collective guilt, and ignore responsibility altogether.

In what follows, I will explore the implications of Jaspers' and Arendt's complex understanding of responsibility for contemporary emancipatory movements. Reading their work in the context of our current attempts to deal with past atrocities and their ongoing legacies exposes a monumental shift in scholarly and public discourses concerning guilt and responsibility. This is due, in large part, to the pronounced increase in value bestowed on identity and victimhood in recent decades – essentially, victimhood *as* identity – in the social, political, and even ethical dimensions of our lives. Identity has come to determine who is innocent and who is guilty, who can speak and who must stay silent. Though my particular interest is to examine the effects of this shift on Indigenous struggles in Canada, I will draw from recent discussions of anti-black racism, since many of the dominant voices representing, or supporting,

both of these struggles place identity at the core of political engagement. I argue that the powerful role identity now plays in social justice movements leads to moralism rather than political transformation, which means expressions, or judgments, of guilt come at the expense of a robust sense of collective responsibility.

Public discussions of the Indigenous fight for recognition, rights, and improved living conditions in Canada – officially subsumed under a paradigm of reconciliation – have changed dramatically in recent decades. This is in large part due to the Canadian Truth and Reconciliation Commission (2008–2015), which brought to light the suffering caused by the residential school system.<sup>1</sup> Other factors include an increased awareness of violence against Indigenous women, an intensification of Indigenous activism (especially against environmental degradation), and the recent flourishing of Indigenous writing, art, and scholarship, all of which have helped to reverse the effects of hundreds of years of cultural denigration and ignorance about Indigenous experience. But increased awareness is only a beginning. We must take seriously the need to deal with the past and present in ways that will alter the future. I maintain that the current focus on identity in the call for reconciliation and decolonization poses troubling obstacles to this objective.

### 1.1 Guilt and Responsibility: Distinctions

In a series of public lectures given in Germany at the end of Nazi rule in 1945, Jaspers bravely broached the subject of German guilt. He began with a passionate defense of reconciliation for a nation in ruins, urging his audience to listen to one another. We must “hear what the other thinks,” he advises, not simply cling to our own opinions. Moreover, we must seek out opposing views, for disagreement is more important than agreement when it comes to finding the truth. There must be trust, not rage, and thinking, not comforting platitudes. These comments are made in full view of the extreme differences in what Germans had “experienced, felt, wished, cherished and done” during the Nazi period.

1 The residential school system was a Canadian government-sponsored, church-managed program of aggressive assimilation that removed Indigenous children from their families and communities and forced them into schools in which they were prohibited from speaking their own languages and practicing their cultural traditions. Neglect, mistreatment, and sexual and physical abuse occurred. The program was fully established by the 1880s and the last residential school closed in 1996. Approximately 150,000 First Nation, Inuit, and Métis children were removed from their communities to attend these schools.

"We belong together," Jaspers insists, "we must feel our common cause when we talk with each other" (Jaspers 2000, 5–7, 11).

The lectures are Jaspers' response to the world's indictment of the German people as a whole for Nazi atrocities. Guilt is not as simple as this broad accusation implies. In Jaspers' account there are four types: Criminal, moral, political, and metaphysical. Criminal guilt is the only type legally punishable, because it applies strictly to the person whose actions have violated unequivocal laws, and whose crime is objectively proven. Moral guilt is personal, a matter for each individual conscience, and, Jaspers believes, judged by God alone. Political guilt means that every citizen is liable for the deeds done in their name by the state, and, for this reason, it is collective. Jaspers cautions his listeners: Liability does not equal criminal guilt; the politically guilty must answer for the acts of their leaders – they pay the price of being co-responsible for what happens in their national home – but only individuals can be charged with crimes. This type of guilt may give us pause; we might object that we do not always sanction the decisions of our leaders, let alone vote for them, and are powerless to prevent their actions. But Jaspers is unequivocal: The German people must accept the "fearful consequences" of their liability, and this includes poverty and "political impotence" for some time to come (Jaspers 2000, 56). He asks,

Are we Germans to be held liable for outrages which Germans inflicted on us, or from which we were saved as by a miracle? Yes – inasmuch as we let such a régime rise among us. No – insofar as many of us in our deepest hearts opposed all this evil and have no morally guilty acts or inner motivations to admit. To hold liable does not mean to hold morally guilty. (Jaspers 2000, 55)

We might conclude from this point that political guilt in Jaspers' discussion is better understood as responsibility.

The most intriguing type of guilt under Jaspers' consideration is "metaphysical" guilt. He describes it as the inescapable "guilt of human existence" that arises from the fact that all individuals live "enmeshed in the power relations" of their times (Jaspers 2000, 28). He is obviously alluding to his own indelible feelings of guilt as one among those who survived when many others did not. As he explains: "We preferred to stay alive, on the feeble, if logical, ground that our death could not have helped anyone. We are guilty of being alive" (Jaspers 2000, 66).<sup>2</sup> Metaphysical guilt is a concept relevant for any historical period; it evokes the solidarity unique to

2 It is worth noting that Karl Jaspers was married to Gertrud Mayer, a German Jew, and as a result was forced to leave his academic post in 1937, though he was able to remain in

human life, that makes each of us “co-responsible” for all the injustices in the world, according to Jaspers, especially when we know they are happening, and when they are happening in our presence (Jaspers 2000, 26). This type of guilt alludes to a responsibility that always exceeds our capacity to respond, and thus evokes an overwhelming sense of powerlessness in the face of injustices we do not personally suffer but are forced to witness. When we experience this powerlessness, we may feel a sense of guilt though we have not personally committed a wrong.

Jaspers’ classifications attest to a slippage between responsibility and guilt. On the one hand, guilt is unambiguous, based on whether we have engaged in wrongful action or not, and punishable if we have. On the other hand, we may feel guilty for actions others have done even if we have not participated, simply by virtue of the fact that we are part of a human world. That we *feel* guilt in this case, though we are not guilty or deserving of punishment, speaks to a profound sense of responsibility for our fellow human beings, generated by an empathic identification with our own species. Thus, one understanding of guilt has to do with actions, the other with emotional responses to others’ actions, others to whom we are necessarily connected. It is worth emphasizing the root of the term responsibility. Human beings are responsive: The solidarity implied in Jaspers’ understandings of guilt and responsibility is evidently necessary for the reconciliatory sentiments he urges his audience to consider.

Some fifteen years later, Jaspers’ onetime student and lifelong friend, Hannah Arendt, made further observations on guilt and responsibility, inspired by the same historical events. She was struck by the fact that those Germans who were active participants in wrongdoing did not express guilt or remorse, while those who did no wrong confessed to feelings of guilt. The unintended result, she notes, was “a very effective whitewash” of those who had participated in evil. Arendt elaborates:

The cry “We are all guilty” that at first hearing sounded so very noble and tempting has actually only served to exculpate to a considerable degree those who actually were guilty. Where all are guilty, nobody is. Guilt, unlike responsibility, always singles out; it is strictly personal. It refers to an act, not to intentions or potentialities. It is only in a metaphorical sense that we can say we *feel* guilty for the sins of our fathers or our people or mankind, in short, for deeds we have not done, although the course of events may well make us pay for them. (Arendt 2003: 147)

Germany with his wife throughout the war. See *The Stanford Encyclopedia of Philosophy*, available at: <https://plato.stanford.edu/entries/jaspers/>, last accessed March 1, 2022.

There are a number of insights in this passage worth drawing out. First, like Jaspers, Arendt is assuming that guilt must be assigned for wrongful actions *actually* carried out, not for acts that could have been carried out, or that someone intended to carry out but did not. This means that blame cannot be assigned to a collective, since every individual is solely responsible for what he or she has done. Those who did not carry out Nazi crimes themselves were not guilty, whether they knew of these crimes or not, and despite any guilt they may have *felt* – guilt that Jaspers might call metaphysical, but Arendt calls “metaphorical.” Those who experienced this metaphorical guilt were, for the most part, powerless witnesses to a historical tragedy.

Most importantly in this passage, Arendt argues that to blame the witnesses would absolve those who did commit atrocities. A declaration of collective guilt is therefore “devoid of risk” because it renders judgment superfluous, but it is also harmful in itself (Arendt 1977, 297, as quoted in Schaap [2001, 752]). To admit guilt on the basis of group membership demands little of us; the individual in this case is not judged and punished accordingly. But if the actual culprit is let off the hook, judgment ceases to be meaningful.

Finally, Arendt points out that the expression of guilt on the part of those who did no wrong attests to a baffling moral confusion: Those who did no wrong identify with the guilty. This response might tempt us because the expression of guilt makes us feel noble or virtuous. Arendt refutes this temptation in the strongest of terms: “It is as wrong to feel guilty without having done anything specific as it is to feel free of all guilt if one actually is guilty of something” (Arendt 2003: 28). No doubt this stunning equivalence has to do with the adverse effects of a disingenuous guilt that Arendt describes as “phony sentimentality” (Arendt 2003: 148) – namely, political impotence and the abdication of moral judgment. Identifying as a perpetrator when one is not guilty, she maintains, is no reliable indicator of right or wrong, but an indication of “conformity or nonconformity” that obscures the real moral and political issues at stake (Arendt 2003: 107).

To clarify the distinction Jaspers and Arendt make between guilt and responsibility: Guilt is purely individual, a judgment based on one’s wrongful actions, whereas responsibility is both individual and collective, related to obligations and the effects of our own and others’ actions. We are responsible for our own actions, meaning that we are liable or accountable for what we have done of our own volition (which would entail guilt if we committed a wrong), but we are also responsible *with*

others for the world we build together through our collective actions. An individual is guilty of past wrongdoings, but we are all together responsible for the future. What complicates this responsibility is that we inherit a world not of our own making; each generation is burdened or blessed by the deeds of its ancestors (Arendt 2003: 27). We suffer or we benefit from what was decided and done before us. One dimension of collective responsibility, then, is to “set the time aright,” as Hamlet feels destined to do (Arendt 2003: 28), in the never-ending process of renewing the world. This necessarily includes redressing past wrongs, for though we can never undo evil deeds, we can mitigate their harmful effects. Collective responsibility is therefore a “vicarious responsibility,” Arendt argues, it is “the price we pay for the fact that we live our lives not by ourselves but among our fellow [human beings]” (Arendt 2003: 157–158). She warns, however, that the past cannot be mastered; “the best that can be achieved is to know precisely what it was, and to endure this knowledge, and then to wait and see what comes of knowing and enduring” (Arendt 1968, 20).

It is important to note that, in Arendt’s view, responsibility may be the price we pay for human togetherness, but the price we pay for being without responsibility is worse. The only persons bereft of this burden would be those stripped of a place to which they belong: outcasts or pariahs who are deprived of the public voice and political agency that give rise to responsibility (Arendt 2003, 150). We have no choice in this accountability, though we can deny it or hide from it; responsibility simply accompanies the social nature of human existence.

## 1.2 Hard-won Identities and the Moral Power of Victimhood: Limits

Kwame Anthony Appiah argues that a century ago our national, ethnic, racial, sexual, or religious identities were not given much thought, yet now they determine the narratives of our lives (Appiah 2018, 3). This means that *what we are*, rather than *what we do*, becomes the criterion for blame or exoneration. When the always provisional nature of *what we are* is denied, identity is pinned to a particular essence. We come to identify fully with this essence until we are one with it, forgetting all other possible identifications. This fulfills a very human desire to belong and justifies a demand for recognition, but the satisfaction of this demand entails an erroneous *misrecognition*. Appiah puts it bluntly: Identities are “the lies that bind” us – they do not resolve conflict but arise from it (Appiah 2018, xvi). We could argue, in fact, that a politics founded on identity is



profoundly *anti*-political, if we concur with Arendt's view that political life is founded on pluralism. It is difference that preserves the capacity to speak and act together on the public affairs that concern us all. If the source of solidarity is a fixed identity, rather than a need for transformative action, then the substance of political life is bound to the twin practices of allegiance and exclusion, which lead – perhaps inevitably – to sectarianism and orthodoxy. Politics quickly turns into its antithesis: policing.

At present, we are witnessing in emancipatory struggles everywhere an aggressive emphasis on identity, particularly as it pertains to the racial, ethnic, or national groups to which we belong, and which we perceive to be under threat. Gender and socioeconomic status have taken a backseat for a number of reasons, but perhaps first and foremost because they are not so easily homogenized, or, in the case of class, visible. We need only consider the fact that there have never been protests against the murder of women by men as global or outraged in scale as occurred against the murder of Black men by police officers in the spring of 2020.

The attachment to a politicized ethnic or racial identity has intensified in tandem with the moral power of victimhood. To identify as a victim is to lay claim to the virtuous innocence associated with suffering and, in this respect, victimhood – as a permanent identity rather than an experience one survives and hopefully overcomes with time – infuses a victimized life with meaning. Claiming victimhood may even instill a “perverse pride” as Thomas Chatterton Williams puts it, writing of his own comfort in an essentialized, rebellious black identity while growing up in New York City. To reject this comfort is not easy. For an oppressed person to relinquish a “hard-won identity,” he writes, entails the “terrifying” prospect of becoming “responsible for creating [oneself] anew” for “finding new ways of belonging to each other, new values, new ways of construction” (Williams 2019).

Identities are indeed hard-won, and we must keep this in mind when we examine the effects of their politicization on emancipatory movements. If oppression operates on the basis of identity, we can reasonably assume it must be fought on that basis. But then we tend to maintain the lines initially drawn between oppressor and oppressed, the distinctions and definitions, the stereotypes and qualities fabricated in order to justify domination. Since the feminist and gay movements, and the anti-colonial and anti-racist struggles of the latter half of the twentieth century, this quandary has dogged us. But now we are witnessing the anti-political, and, I would add, anti-social, effects of having exaggerated the role of identity in the fight for rights and justice.



One of these effects Williams already hints at in his reference to personal responsibility, which parallels Arendt's collective responsibility for the renewal of the world. His point flies in the face of current discussions regarding the victims and perpetrators of injustice, in which responsibility is not defined in terms of a collective liability for the effects of past or present wrongs, or concern for the future and of the individual's place within it, but as synonymous with guilt. The blaming of a perpetrator *group* is justified by the claim that a select population benefits from systemic injustice; whether or not they helped to carry out the original harms (slavery, or colonization, for example), or actively participate in any ongoing wrongdoing is immaterial. From this point of view, benefit is equal to committing a wrong; to be a member of the privileged group is to be guilty. In this moral universe, no distinctions are made between, let's say, a president who aggressively promotes racism and misogyny through word and deed, and a white person who has never given racism much thought, or has become too confident in her progressive worldview. One of the more popular representations of this approach is Robin DiAngelo's (2018) best seller, *White Fragility*, an attempt to re-educate white people who are unaware of, or refuse to admit, their inherent racism. Describing the author's relentless "self-mortification" and "agonizing soul-searching" as entailing an "elaborate and pitilessly dehumanizing condescension toward Black people," John McWhorter complains that *White Fragility* manages to teach white readers "how to be racist in a whole new way." To what end, he wonders, for DiAngelo fails to say anything about how to achieve constructive change on "issues of import to the Black community" (McWhorter 2020).

A trail of pernicious effects is in evidence here: The political use of identity leads to the assumption of collective guilt, which demands a broad base on which to allocate blame. Individual actions cannot implicate an entire group but benefit and privilege can if we do not examine the criteria too closely. It is all too easy from here to induce ideological conformity, for all those on the side of the privileged – members of the oppressor group – who either do not support the unjust treatment of others or want to appear as though they do not, are anxious to be exonerated. The political use of identity leads conversely to collective innocence, granting blanket immunity to the victimized group for expressing the very hostility or hatred that we would agree constitute racism when turned against them.

We see this dynamic at play in what is officially promoted as a reconciliation process between Indigenous and non-Indigenous peoples

in Canada. First, we are forced to resort to fixed terms of identity – settler and colonized – that correspond to assignments of guilt or innocence. The question of who exactly constitutes these groups is not simple, given that neither designation represents a unified voice or one historical set of circumstances. Once again, we face the identity quandary for, *as a group*, however loosely defined, Indigenous peoples in Canada share at least some commonalities that non-Indigenous Canadians do not; identity seems a critical point of departure. But in the fight for recognition and redress, settler and colonized are reduced to monolithic entities, which erases a multitude of distinctions between cultures, languages, and histories *within* both Indigenous and non-Indigenous populations. With this watering down of pluralism, the “we” disappears and, with it, an interest in anything we might call “reconciliation.” This is another effect of a fierce attachment to identity, a point to which I will return.

The work of securing a hard-won identity is challenging and demands a high degree of conformity among both settler and colonized groups. Homogeneity must be fabricated, continually reinforced, and performed. The inescapable guilt Jaspers evokes, of living “enmeshed in the power relations” of our times, comes into play here; the privileged feel guilty for enjoying what others cannot, or for sharing membership in an identity category with those who abuse their power over others. These are fertile conditions for conformity, especially for those who care about matters of justice and equality and given that we live in a time of easy recourse to public shaming.

In forums, classrooms, and scholarly writings on Indigenous issues, we find non-Indigenous individuals accepting, even embracing, the designation of settler, or, more often, “white settler,” and confessing personal guilt as individual beneficiaries of colonial relations. In a recent journal article that addresses how to “unsettle” settler colonialism, for example, Corey Snelgrove writes that like his European immigrant ancestors, he is also “a white settler, a colonizer,” an admission he insists does not “signal any innocence” as “there are no good settlers; there are no good colonizers.” He adds: “For myself, as a white, class-privileged, temporarily able-bodied, heterosexual, university-educated cis-male, the social world really is crafted in my image” (Corntassel et al. 2014, 6).

Such self-positioning is now a required exercise in the world of social justice politics, but it seems more appropriate to classify it as a moral exercise, one that Arendt might describe as morally *confused*, an echo of the sentimentalism she observed among post-war Germans. Despite Snelgrove’s protest to the contrary, his statement seems an apt example

of virtue-signaling, since it identifies him as one willing to face his own complicity and guilt in the power structures of colonialism. He is thus claiming the status of an “ally”, a third term that offers some relief from the stark oppositions of oppressed versus oppressor, or victim versus perpetrator. But we might well ask, as McWhorter does when he questions DiAngelo’s call for the self-mortification of white people: To what end do we declare our positions? A statement of guilt is devoid of risk, it asks nothing of the confessor beyond an admission of guilt, admittedly at a time when the stakes of such confessions are high. As Ibram X. Kendi makes clear, there are only racists and anti-racists; the claim “I’m not racist” has no validity and must be eliminated from our daily parlance. The implication is, to be anti-racist one must be an active participant in the struggle and never deny that one is racist. If, as he puts it, “the heartbeat of racism has always been denial,” the largely symbolic gesture of confessing our racism is suddenly invested with significant moral import (Kendi 2020). But symbolic gestures do not, on their own, accomplish political change. If the heartbeat of racism is, rather, the material and psychological subjugation of a group of people selected according to superficial characteristics that mark them as distinct from their oppressors, then transformation requires more than symbolic gestures.

Perhaps the best example of this claim in the context of Indigenous reconciliation is the land acknowledgement attached to an email signature or recited at the beginning of a public event. To expose the token nature of this gesture, one might reasonably ask: Why merely acknowledge we live on aboriginal land, why not give it back to them? The practice engenders noble feelings for the person who carries it out, and mitigates the feeling of metaphorical or metaphysical guilt, but it is politically impotent. Lamentably, we have arrived at a point at which public statements are judged before actions, and the beliefs that inform them, are even considered. We might notice how much easier it is to do so, despite the fact that a statement taken out of context is more readily misjudged than an action whose context is generally apparent. Once again, responsibility is neglected in favor of blame.

One of Snelgrove’s co-authors, Rita Kaur Dhamoon, inadvertently exposes the absurdity of assigning guilt based on the facts of one’s birth – facts about which we have no choice – rather than on our actions. She stipulates that her birth in India to a family of anti-colonialists means that her “structural location” as a settler in Canada is different from that of Snelgrove’s. “Being anti-colonial is in me,” she states, in a move that

seeks exemption from membership in the perpetrator group on the basis of individual moral and political positions (Corntassel et al. 2014). The term “white settler” evidently fails to capture the multi-ethnic composition of Canada, a nation of immigrants. But on this basis, others could also claim exemption, including Snelgrove himself, given his obvious commitment to decolonizing practice; it is his European ancestry that makes exemption difficult. Despite his intentions, he has no recourse other than to admit his guilt and, in doing so, hope for some vindication. These are convoluted steps we must take – theoretical fancy footwork – in the service of deference to identity and the power of victimhood.

If the guilty are judged so on the basis of skin color rather than actions and beliefs, they are trapped under their skins, while those deemed innocent are trapped under the burden of a victim’s resentment and the task of policing. Blame risks as little as symbolic confessions of guilt, for it neglects the work of assessing who is guilty of an abuse of power, exploitation, violence, the implementation of discriminatory policies, and so forth, and who is living as a witness to the injustices of the world with limited capacity to change them. If actions do not matter in this judgment, one only needs to decide which group has benefited and which has suffered. In terms of moral power, collective innocence may triumph, but it proves to be an unsatisfying compensation for the lack of all other forms of power. This lack often means that the headiness of empowerment turns into the bitterness of resentment; they are two sides of the same coin.

I call resentment a “burden” despite its recent appropriation as a positive and vital feature of the fight for social justice. In the name of outrage against the forces of injustice – an entirely reasonable and justified response – the expression of anger and resentment is given free rein, even if it targets a group on the basis of superficial characteristics. To raise one example, in a widely-read recent iteration of “Dear White People” letters, Sandra Inuitiq paints an unflattering portrait of white residents and their “whitesplaining” habits in her city of Iqaluit in Nunavut, where Inuit people – once the majority – now comprise approximately 50 percent of the population and are struggling to maintain the city as a center of Inuit culture and governance under exceptionally harsh conditions (Inuitiq 2019). With a view to making “a better white person,” Inuitiq reprimands white residents for their arrogance, apathy, and insensitivity, and their loud, incessant talk. Her recommended corrections to white behavior include listening to those who experience racism on a daily basis, refraining from making judgments

about what is racist or culturally insensitive, suppressing a defensive reaction in the face of criticisms, and recognizing in this defensiveness a desire to maintain power. As if to head off an anticipated objection, Inutiq insists that “racism against white people does not exist.” She does not provide reasons to support this claim; perhaps she feels that given its popular acceptance, none are needed.

It isn’t difficult for a reader to imagine the arrogance and sense of superiority she describes among a transient workforce arriving from the southern provinces, but what troubles me is Inutiq’s condescending tone, and her mockery of “white fragility,” ignorance, and ineptitude. She inspires precisely the kind of self-recriminations we find in Snelgrove’s confession and DiAngelo’s re-education plan (Inutiq 2019). A white reader may feel a sense of shame and embarrassment for simply sharing the same skin color as the residents Inutiq criticizes. We might ask whether the shame rightfully belongs to arrogant people, not to everyone with white skin.

Inutiq’s letter attests to the imperviousness of the victim to critique. Despite her stated hope that the letter will inspire discussion, I question what response is left to the white person. There is no possibility of defense from the charge of guilt without at once reinforcing that guilt. Any critical analysis of the letter, such as my own, would be perceived as a manifestation of power and privilege and the attempt to maintain it, an outcome of my white skin rather than my thought process, since, as Inutiq states, whites are “socialized to be unconsciously invested in racism.” She adds that being a “good” person does not redeem the white person, because “all white people are racist to some degree” having been “born and raised in a system made by white people, for white people” (Inutiq 2019). This is precisely Snelgrove’s argument when he insists that the social world “really is crafted in [his] image.” But if the world is crafted in the image of white (racist) people, what room is there for any of us to craft other images? And, to reiterate William’s point, how do we take up the responsibility to create ourselves anew?

No one more effectively describes the complicated interaction of empowerment and resentment than Frantz Fanon, perhaps our most astute and eloquent twentieth-century thinker of decolonization. In his account of the colonized man’s struggle to reclaim subjectivity (he has a more problematic account of the colonized woman), he describes an encounter between a black man and a white woman and her child, who is evidently frightened of his black body, charged as it is with racial stereotypes. They have “sealed” him into a “crushing objecthood,” until

he frees himself by defiantly telling the woman: “Kiss the handsome Negro’s ass” (Fanon 1986, 114–115). It is a moment of shame for her and euphoria for him that demonstrates the allure of empowerment for the victimized. Fanon’s own desire for it is palpable. But he later warns of the regressive effects of an impulse to celebrate such a fleeting joy, for any identification with an essentialized identity will imprison them all in “a bitter brotherhood” (Fanon 1986, 124) that can explode into resentment and violence. The colonized, Fanon famously said, simply wants to take the settler’s place (Fanon 2004, 16).

When identity is the basis on which we make judgments of guilt or innocence, perpetrator and victim are settled into immovable positions that render both incapable of responding to the needs of the times. Whether frozen into innocence or guilt, the status quo remains unchanged. In other words, our overvaluation of identity allows *all of us* to avoid responsibility, if by that we mean *collective* political responsibility that both redresses the historical crimes committed by “our people” or our nation’s leaders, and fulfills our obligation to create a future world with a better inheritance.

### 1.3 Responsibility and Reconciliation

Arendt’s observations are all relevant here. In the rush to proclaim one’s innocence or guilt there is ideological conformity in evidence, but no moral criteria for judgment. In those who identify with the perpetrator group there is sentimentality, and a sense of guilt for tragedies they did not cause, but it is a self-indulgent guilt that offers consolation for the one who expresses it, absolving those who are actually guilty. From this point of view, we cannot be guilty for events that preceded our births (like colonialism) or in which we were not personally involved (like the residential school system), though we must bear the consequences of those deeds and the burden of liability. The consequences are not equally shared – the victim’s and the bystander’s experiences of historical tragedies are incomparable – but the burden *and the privilege* of responsibility rests with everyone because of our common humanity. If the victimized were stripped of their responsibility, they would be reduced to the condition of those without agency, without a place to belong, where their voices and opinions matter; they would be doubly dehumanized.

What does it mean to take up this burden of liability, to be co-responsible for setting the time aright? I don’t think there is a

satisfying answer, given our responses to injustice, past or present, are context dependent. There is no plan to follow. We respond as we are able, as personal and social resources allow, always frustratingly cognizant of the infinite need for response and the impossibility of meeting it. Some of us have the economic means to accomplish change, others have the political or legal power to do so, and still others have passion, determination and necessary skills. Privilege has multiple uses and should not be wasted.

We are all “guilty of being alive,” as Jaspers put it in the context of a very different time, and this means we must be worthy of those who have lived before us and who left the work of building a future to us. The “we” I employ is intentional. When discussion across the borders of enclosed identities is silenced, thought and critical judgment are suspended, destroying the very political habits needed for reconciliation, if by reconciliation we mean learning how to live together, collectively responsible for renewing the world. Recall Jaspers’ words: We must listen to one another, we must trust, not indulge in rage; we must think rather than hide in platitudes, we must listen to those who disagree with us. These are what I am calling the political habits that inspire solidarity and action. The spirit of reconciliation in Jaspers’ account is thus profoundly political, bound to a collective responsibility for discovering the truth of a tragic past without homogenizing experience or demanding the conformity of opinion. For Arendt, responsibility is inherently political because it is both the price we pay for living in a human community and a gift for the privilege of this togetherness.

Jaspers’ call to “feel our common cause” and “hear what the other thinks” may sound quaint to our contemporary ears. Reconciliation as a concept and practice is out of fashion, evidence that emancipatory struggles founded on identity and solidarity, fostered through blame and resentment, are divisive strategies. This does not mean we should remain uncritical of reconciliation paradigms such as the one currently promoted in Canada. As an official national policy, reconciliation is merely programmatic and superficial; it demands little of us. It raises awareness of Indigenous issues, but it fails to take into account the vast geographical and social diversity of Canada, which is ironic given the increasing demand to acknowledge one’s “place-based” political position.

The institutionalization of reconciliation between Indigenous and non-Indigenous is also criticized by Taiaiake Alfred, who argues that reconciliation is politically impotent. He alludes to its “emasculating” effects, not an insignificant comment given his recent public apologies for



harboring an attitude of “toxic masculinity.” This perception hints at the gendered nature of an aggressive identity politics that feminizes reconciliation. Alfred favors an approach known as Indigenous “resurgence,” characterized by a rejection of what he calls “the assimilative reformism of the liberal recognition approach.” Resurgence is focused instead on revitalizing traditional Indigenous political values and practices; respect for these values, according to Alfred “is the only lasting solution to the political, economic, and social problems” of Indigenous peoples (Alfred 2014, quoted in Coulthard [2014], 154–155).

No one could intelligently argue against the necessity of respect in the work of redressing past wrongs and addressing present injustices, but to conflate reconciliation with assimilation reinforces, once again, deference to a fixed identity and the victimhood that gave rise to it. Does the past – even a traumatic past – determine the future? Joseph P. Gone questions the association between psychological trauma and historical oppression when he argues that those who promote historical trauma as an “explanatory frame” for the social problems that plague Indigenous communities in the United States – substance abuse, violence, and suicide, for example – “inadvertently” misrepresent the extraordinary range of Indigenous responses to colonization, and to a complicated, multi-century history. It is a paradigm that “pathologizes Indigenous identities as essentially wounded or damaged by history,” and this pathologizing lends itself well to “oversimplified” resentment and blame (Gone 2014, 274, 286).

Gone seems to echo Fanon here, who, despite his sympathetic understanding for the refuge and euphoria an essentialized identity provides, and for the desire to embrace the history and culture that nurtures this identity, ultimately refuses this path. He concludes his analysis of the colonized subject’s fight for recognition with a different kind of resurgence:

My life should not be devoted to drawing up the balance sheet of Negro values.

There is no white world, there is no white ethic, any more than there is a white intelligence.

There are in every part of the world men who search.

I am not a prisoner of history. I should not seek there for the meaning of my destiny.

I should constantly remind myself that the real leap consists in introducing invention into existence. (Fanon 1986, 229)



What surges – or resurges – in this passage, is a longing for a future that is not imprisoned by the past, or maimed by what Fanon (1986, 140) calls the “amputation” of victimhood.

Gone’s alternative is faithful to this mandate; he insists on the value of rigorously undermining all attempts to simplify histories of oppression and the identities rooted in them, in order to foster the “intergroup exchanges” necessary for the future of Indigenous and non-Indigenous relations (Gone 2014, 275). Given the effects of the politicization of identity that I have briefly described, his description of a “renewed politics of relationality” is a breath of fresh air, even if it is a return to a reconciliation paradigm familiar to anyone working in the field of political conflict and atrocity and their aftermath. A politics of relationality, according to Gone, is reliant on “ethical generosity” that permits the space needed for solidarity with others. Most importantly, for my purposes, this generosity and solidarity, he adds, is an “obvious responsibility of *non*-Indigenous citizens of the United States and Canada, but Indigenous peoples (for our part) would likewise appear to fall under and to benefit from this sweeping ethical mandate as well” (Gone 2014, 287).

A robust understanding of responsibility thus extricates us from the dilemma posed by fixed identities when grappling with the vexed legacies of oppression. The collective, relational, and generous foundation of responsibility allow us to escape the traps of moralism and policing. Most importantly, they highlight the agency of the victimized. This is poignantly illustrated by Ronald Niezen, in his analysis of a tragic series of cluster suicides that occurred at Cross Lake First Nations Reserve in Manitoba, from 1999 to 2000. Corroborating Gone’s argument about the limits of a historical trauma paradigm, Niezen suggests there is more to the high rates of suicide in Indigenous communities than the experience of trauma. Given that every Indigenous community experiences the legacy of a colonial history, yet reports widely uneven suicide rates, present sufferings cannot be attributed exclusively to colonial trauma (Niezen 2009, 134). He urges us to consider, rather, the presence or absence of political agency (Niezen 2009, 147); to ask whether these youth and other members of their communities “are included in the processes of shaping and making use of new institutions” (Niezen 2009, 138). The most important features of collective life are “political accountability, accessibility, and responsibility” – these are what Niezen argues “promote resilience among youth and act as a hedge against self-destruction” (Niezen 2009, 138). Cluster suicides occur when political life is

stymied, leaving a vulnerable population feeling powerless “in nearly every aspect of their lives,” and without prospects or futures.

In other words, when robbed of responsibility, victims of injustice and oppression become like outcasts, and therefore pay a worse price than the burden the rest of us must accept for belonging to a human community. We must all be burdened – and gifted – with responsibility for a shared future.

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## Victim, Perpetrator, Hero

### The French National Railways' Idealized War Identities

SARAH FEDERMAN

#### 2.1 Post-conflict Narrative Landscapes

Mass violence relies on stories about who must die. These stories emerge first as propaganda that promotes dehumanization and exclusion of the targeted group. Narratives of exclusion even circulate in children's books, as they did in Germany prior to World War II, telling stories about Jews as poisonous mushrooms. Several survivors I interviewed recalled seeing these books, now commonly on display at Holocaust museums. These kinds of messages now circulate through social media platforms at an unprecedented pace. Divisive discourses come from within as well as from the outside by foreigners looking to destabilize a community. Those propagating the narratives suggest the need to eradicate or at least respond forcefully to evil others. In so doing, they position themselves as the potential heroes.

Maintaining authoritarian control requires controlling information and interpretation of that information. Citizens subjected to government-sanctioned media campaigns struggle to discern constructed threats from real ones. Through social media platforms, torrents of disinformation produce paralysis. Other messages are more carefully calibrated, strategically oriented toward producing shifts in public sympathies (Krafft and Donovan 2020).

Are these messages attempts to grab power, or genuinely harkening to a time (or time to come) when group cohesion was (or will be) necessary for survival, or some mixture of both? Regardless, the out-group finds itself labeled the "perpetrator," those with real or perceived threats to this group become the "victims," and those challenging the regime's exclusion attempts find themselves labeled "terrorists."

In post-conflict contexts, the roles that change the dynamics of inclusion and exclusion continue to exert influence. If the regime loses, the so-called perpetrators are recast as victims and the self-proclaimed heroes during the violence become the perpetrators. During World War II, members of the Nazi regime proclaimed the Jews were poisoning Europe, but after the war found themselves labeled perpetrators. While many times this reframing corrects distortion, Hannah Arendt (1998) warned us that these binary constructions invite totalizing responses to the named perpetrator, paving the road to totalitarianism.

In this chapter, I demonstrate how idealized or exaggerated conceptions of conflict parties (victim, hero, and perpetrator) act as attractors, returning us to the binary constructions that lead us back into violence.<sup>1</sup> I then propose an alternative construction. To make this argument, I use a case study of the conflict over the French National Railways' (SNCF's) multiple roles in World War II to show how polarizing discourse limits responses to harm.

While many consider how propaganda contributes to violence prior to and during war, fewer consider story construction in the aftermath. German philosopher Karl Jaspers observed that "the cast has changed," but the dramatic casting continues. Those labeled the enemy (or perpetrator) during violence become the victims and those allegedly saving others from this enemy become perpetrators. Enemies can even become heroes. Members of the French Resistance, for example, labeled "terrorists" by occupying Germans, became heroes after World War II. The newly assigned roles become truth as quickly as the old ones are discarded, making this post-violence period fragile and prone to distortion. How the new regime distributes accountability, roles, and guilt ultimately influences whether the society will experience lasting, positive peace – a peace that includes justice and equity as well as an absence of violence.<sup>2</sup> To interrupt cycles of violence without offering impunity, Karl Jaspers and Raul Hilberg encourage us to resist the stereotypes that produce violence and instead focus on the relative guilt and innocence of each person or group.

The ashes of the Nazi collapse had barely cooled when Jaspers began this work on collective guilt. He offered a series of lectures in Germany expressing his concern that a focus on a small group of complicit individuals obscured the implicit guilt of all German people. Published

<sup>1</sup> For more on "attractors," see Coleman (2021).

<sup>2</sup> For more on "positive peace," see Galtung and Fischer (2013).

under the title, *The Question of German Guilt* (1946), Jaspers (2009) proclaimed that German political and cultural renewal would require self-reflection by the entire populace. He urged each person to assess his or her own guilt relative to their own participation. In doing so, he believed, all levels of perpetration could be accounted for without burying Germany in a quagmire of guilt from which it could never emerge. He argued that every role was crucial in creating the catastrophe, but also in helping people emerge from it. He understood that idealizations of victims, perpetrators, and heroes in the aftermath of war would thwart the transformative potential of national reckoning in post-conflict contexts.

Jaspers, however, stopped short. After people have discussed and grieved their roles, what happens next? The individuals who participated via direct action, distant action, or inaction can do more than reflect; they can engage in the active work of restoration. They lost this sense of self-governance while under authoritarian rule. There is another consequence of post-conflict narratives that privilege idealized roles and sideline the average person: Older generations may pass on stories that warn the youth to avoid victimization without teaching them how to guard against the influence of propaganda and eventually reigniting old, politically storied grievances and participating in renewed violence.

To clarify, advocating for complex understandings is not the same as saying that “there were good people on both sides.” In differing degrees, harm can be inflicted by an ordinary individual as well as by a sociopath with power. We can demand accountability for harmful acts without seeing those who caused the harm as purely evil, either individually or collectively. Yet, in this age of accountability, significant collateral damage can result from hurtling unquestioningly forward, guided by binary constructions of victim and perpetrator (Hinton 2016). More restorative and re-integrative approaches to post-conflict intervention liberate the victim from having to demonstrate angelic purity or prove that the accused is irredeemably evil.

## 2.2 Case Study: The French National Railways

To demonstrate these dynamics, I will discuss the French National Railways (SNCF), an entity with approximately 400,000 wartime employees that performed multiple roles during World War II. The SNCF can be narrated as a victim of the German occupation, a perpetrator in the Holocaust, and a hero in the resistance. In the multi-decade,

transnational debates over the company's obligation to make amends for its role in the Holocaust, binary representations constrained debates over the SNCF's wartime operations. I will illustrate this phenomenon of role idealization and how it can thwart meaningful amends-making. Long-term positive peace – a peace defined by equity and inclusion as much as by the absence of violence – requires that we resist these idealized abstractions and instead increase our comfort with the complexity of the human experience, the moral shifts, and shades of gray (Bouris 2007).

The findings I present here emerged from my work tracing the company's wartime activities using archival research as well as through 130 interviews with SNCF executives, ambassadors, lawyers, Jewish leaders, legislators, historians, and archivists, including 90 Jewish individuals who survived persecution in France during the war. I used participant observation during key legislative and commemorative events to trace these narrative dynamics. Working *pro bono* for the US House of Representatives, the US State Department, and *The Washington Post* while following national and international media coverage also gave me access to the different social constructions of the SNCF. I then constructed a narrative map of the conflict that noted the different constructions of the company and the SNCF's response to these constructions. The comprehensive findings can be found in *Last Train to Auschwitz: The French National Railways and the Journey to Accountability* (Federman 2021). In this chapter, I focus on how the social constructions of ideal victims, ideal perpetrators, and ideal heroes affected the recent debates over the company's need to atone for its role in the Holocaust.

Debates over the SNCF culminated in what may be one of the last Holocaust-related compensation settlements. In February 2019, forty-nine Holocaust survivors received almost a half million dollars for losses that occurred more than seventy years previously. Roughly thirty individuals received \$100,000 for the deaths of their spouses, while others received smaller sums for harms deemed less consequential. This settlement developed out of a multi-decade conflict about the actions of the SNCF in World War II that began first in France and moved to the United States. After lawsuits that called on the SNCF to compensate survivors for its role in deporting them or their families reached a dead-end in French courts, the debates moved to the United States where the company's business interests brought the conflict to Virginia, Florida, Maryland, New York, and California. Lawsuits, legislation, and boycott campaigns prompted the French government and US Department of State to intervene.

What kept the SNCF debates alive for so long was that the conflict lent itself to idealized social conceptions of victims, perpetrators, and heroes.<sup>3</sup> These ideals contributed to what Donileen Loseke (2003) calls “formula stories,” the kinds of stories that are of great interest to mass media because of the evocative popular appeal of their gruesome details, the extreme nature of the harm, and the unquestioned innocence of the victims. The SNCF debates fit into a subgenre that I will call the *justice story*. In justice stories, parties in the conflict are positioned (and position themselves) relative to ideals that lead to highlighting certain individuals or groups, while expunging others. This case study demonstrates how the company’s wartime roles lend themselves to such idealization.

The French National Railways became a national conglomerate just two years before the Germans occupied France – a “national railway” in the nation’s consciousness only twenty-four months before it became a tool of the German occupier. The armistice with Germany signed on June 22, 1940 placed the railway company under German control (Convention Franco-Allemande d’Armistice 1940). During the occupation, the SNCF transported – for a fee – German soldiers, munitions, coal, and other goods necessary to support the war effort, as well as transporting fleeing refugees, paying customers, and the goods necessary to keep the French people alive. The Germans paid a fraction of the amounts invoiced. The company struggled under the demand, employees were carried off to forced labor, and the war took a toll on rail tracks and rolling stock.

While in many ways a *victim* of the Occupation, the SNCF could also be portrayed as a *perpetrator*, responsible for transporting, without resistance, roughly 76,000 deportees crammed horrifically into merchandise cars (often referred to as “cattle cars”) headed for the German border. Members of the Nazi SS and other Nazi officials met these deportation trains near the German border, replacing SNCF drivers with other drivers who then drove the deportees to Auschwitz. Most were murdered either in the gas chambers, through forced labor, or died from other complications of abuse or starvation. Only around 3,500 returned alive.

Yet, the SNCF was long storied solely as a hero of the war. It received its government-awarded designation as a wartime hero for the actions of a number of brave railwaymen who helped sabotage trains filled with German armaments as the allies landed on the beaches of Normandy. Their efforts aided the liberation of France. Throughout the war, well

<sup>3</sup> For more on ideal types, see Weber (2017 [1903–1917]).



over 1,000 SNCF employees (of the 400,000 employees) thwarted the German efforts through coordinated and independent acts. These acts, however, occurred in direct opposition to the orders of SNCF executives, who more often sought to appease the occupier. The more surveillance imposed by the Germans, the less freedom they had to go about their work. Resistance activities threatened this independence.

So, was the SNCF a victim, hero, or perpetrator during World War II? With so many employees spread throughout the country, engaged in so many different activities, pinpointing a singular identity for the SNCF is difficult. Like most French people, most SNCF employees simply tried to survive the war. Some risked their lives to help others in dire need, but most did not. The French government and SNCF strategically amplified the hero narrative after the war, hoping to use the SNCF as a site upon which to rebuild French pride. The following considers the shifting public articulation of these competing identities in the decades following the war.

## 2.3 Narrative Dynamics: French National Railways Debates

I saw a train pass by; at the head of the train, a wagon containing the French military police and the German soldiers. Then, came the cattle cars, packed. The skinny arms of children clinging to the bars. A hand outside flapping like a leaf in a storm. When the train stopped, voices cried, "Momma!"

Édith Thomas, bystander

### 2.3.1 *Ideal Victims*

Sociologist and criminologist Nils Christie (1986) coined the term *ideal victim*, as the injured party for whom the public feels immediate sympathy. He illustrated this concept with the somewhat fanciful example of a little old lady on her way home from tending to an ill sister, robbed at gunpoint in broad daylight by a drug addict. Her innocence (no mixed intent), purity (caring for her sister), vulnerability (advanced age), and common sense (walking in broad daylight) rest uncontested in this short narrative. For these reasons, she demands our sympathy. Socially we consider someone to be deserving of this sympathy when no responsibility can be attributed to the victim and the individual or group is deemed morally upright (Loseke 2003). Ideal victims are not necessarily the most harmed by an event, but those who receive unquestioned

recognition of their victimhood (Christie 1986). That the violence struck the most innocent of beings ignites the sense of our own vulnerability. We empathize with them while we fear for ourselves.

Ideal victims also exist in the context of mass violence. Groups and individuals jockey for this coveted position because perceived purity and international sympathy can come with a number of crucial benefits. Firstly, they achieve immediate social recognition.<sup>4</sup> People may receive compensation, refugee status, or other victim services. To make visible the narrative architecture of ideal victimhood is not to deny that victims exist as sufferers of very real violence but is to say that many may pay a price for their coveted position. When speaking of the harm they experienced (and from which many continue to suffer), Martha Minow observes that individuals “often adhere to an unspoken norm that prefers narratives of helplessness to stories of responsibility and tales of victimization to narratives of human agency and capacity” (Minow 1996, 33). Victims who do not fit this norm may be sidelined in various ways. As victims find their power – shaping their roles, for example, as “survivors” with voice and political power – they lose some public sympathy. Publics tend to prefer their victims without agency.

For decades, Holocaust victims, in this sense, served as a benchmark for “ideal victims” in the context of mass atrocity (Bouris 2007; Van Wijk 2013). This took time. For the first decades after the war, Holocaust survivors were not identified as a separate victim group. When the atrocities became widely known – due in part to television programs and films – many felt great pity for the victims. When Kaminer (2004) produced a hierarchy of suffering, Holocaust survivors topped her list. Transitional justice scholars increasingly express concern about these hierarchies of suffering.<sup>5</sup> Competing with other groups for legitimacy detracts attention from those who enacted the harm. The killing fields of Cambodia need not be compared to Holocaust death camps for their collective victims to be worthy of our care and attention.

Survivors of these and other sites of hell on earth ought not be required to demonstrate an unsullied past to prove their victimhood. Yet, the image of the purest victim still garners more of our sympathy. The quote that opens this section describes children’s arms extending from openings of railcars headed to death camps as they call out for their parents. This image cannot easily be forgotten. Likely every child in that convoy

<sup>4</sup> See Enns (2012) and McEvoy and McConnachie (2012).

<sup>5</sup> See Fletcher (2015) and McEvoy and McConnachie (2012).

was murdered in a gas chamber. These children become the benchmark victim against whom others must measure themselves.

Over time, some groups who received less recognition developed “Holocaust envy” (Novick 1999). Armenians, Bosnians, Rwandans, Indonesians, and Cambodians have all suffered genocides, as have Indigenous peoples in the Americas, Australia, Africa, and elsewhere. And to this list we now add the Rohingyas in Myanmar, the Yazidis in northern Iraq, and the Uyghurs in China.

Amidst the enormous suffering caused by these past and on-going genocides, how did the SNCF capture so much public attention decades after the events? The conflict made front-page news in the 1990s in France and again in 2014–2016 in both France and the United States. Firstly, by the 1990s, the remaining Holocaust survivors had been children at the time of the war and were now quite elderly and frail. In other words, they represented the “vulnerable child” and “little old lady” all in one.

Survivors’ stories struck a chord with the public and helped convince legislators that the SNCF had not sufficiently made amends for its role in the Holocaust. Leo Bretholz’s story in particular moved Maryland Governor Martin O’Malley to sign legislation requiring the SNCF to digitize its wartime archives before bidding for contracts in the state. As a child, Bretholz escaped out of a moving railcar headed toward Auschwitz. Who could deny his last wish for the SNCF’s transparency, apology, and accountability? And, in fact, he did die between Maryland House and Maryland Senate meetings in which lawmakers were deliberating how to handle new SNCF bids for state projects.

His death made his requests all the more poignant. In life, Bretholz was more complex. The day of his memorial, family members say he begrudgingly joined the fight against the SNCF and toward the end of his life became “Holocausted-out.” Some family members had also tired of hearing incessant talk of the Holocaust. He was, in fact, human. Formulaic stories, however, rely on caricatures of almost angelic purity.

It is often easier to do this with the dead or the silent. Violence interrupts speech. I met a number of survivors who still could not say much about the past. In that vacuum, the justice story takes over. In the presence of silence, the work becomes, “to make more present the life that was taken and to vocalize the suffering the murder caused” (Gewirtz 1996, 867). In death, victims become larger than life. Silences can amplify their victimhood and thereby shape responses to violence (Murphy 2017).

### 2.3.2 *Ideal Perpetrators*

... SNCF carried out its transports with precision, cruelty and deception. On each convoy, we were packed into 20 cattle cars, 50 people each. For the entire multi-day trip, we were given only one piece of triangular cheese, one stale piece of bread and no water. There was hardly room to stand or sit, and in the middle of the train was a single bucket to relieve ourselves.

Of the 1,000 people on my train, only five survived the war. I was one of the lucky ones. I jumped out of the moving train, managing to pry open the bars on the window just enough to slip through.

I even have a copy of an invoice SNCF sent the French government, seeking payment for the services it provided. They pursued payment on this after the liberation of Paris, after the Nazis were gone. They even charged interest for late payments. This was not coercion, this was business ...

Survivor, Leo Bretholz (2014)

The sustained debate over the SNCF's need to make amends was not just a result of public sympathy for victims. This conflict also had an ideal perpetrator. In his later work, Holocaust historian Raul Hilberg differentiated between perpetrators. Of course, the Final Solution had its chief architects but it also had what he called functionaries, newcomers, non-German government, non-German volunteers, and a cadre of lawyers and physicians (Hilberg 1993). Although Hilberg and others expanded public attention beyond the chief architects of the Holocaust, certain individuals and entities found themselves in the spotlight more than others. What attributes did these favorite perpetrators embody?

Clearly not every corporate participant faced such scrutiny. In Washington, DC, those fighting the SNCF in legal and legislative battles might throw on a Hugo Boss coat as they headed out the door, ride a Thyssen-Krupp elevator down to the metro, where a Siemens Corporation advertisement tried to catch their attention. They might pass their time waiting for the train by checking their JP Morgan investments on their smartphone. Market volatility might bring on a headache that could be soothed with a Bayer Aspirin chased down by a sip of their Peet's Coffee. Upon entering their office, they might grab a Krispy Kreme donut left in the lobby by a thoughtful employee to stave off hunger until noon when they might head to Panera Bread for lunch for a sandwich and a Fanta soda. No one thought to challenge any these companies with Nazi roots and involvements. Why not? What was it about the trains, and, for that matter, these *French* trains, that fueled this conflict for the past two decades? France did not initiate World War II.

This became a driving question of my research, why the SNCF and not other companies? I found that the SNCF was not just any perpetrator, it was an *ideal* perpetrator (Federman 2018). While the ideal victim framework has circulated since the 1980s, the corresponding perpetrator framework had been understudied, making it hard for those of us studying those who committed the acts. Christie (1986) offered, in passing, that ideal offenders must exist in equal proportion to their ideal victims.<sup>6</sup> In the context of transitional justice, McEvoy and McConnachie (2012) agreed, claiming that the “innocent” victim should be the binary opposite of the “Bogeyman,” an evil spirit who commits murder. To suffice in this role, perpetrators must transcend banality. Only inhumanity can destroy humanity.

Through the study of the SNCF conflict, I identified specific attributes of the ideal offenders that juxtapose the attributes of the ideal victim identified by Christie. Ideal perpetrators are perceived as (1) strong, (2) abstract, (3) representative of the nature of the harm, and (4) publicly identified by a justice hero who keeps them and their victims in the spotlight (Federman 2018).

The SNCF fits this perpetrator framework perfectly. As an international, world-class rail and transportation company that generates over \$40 billion in revenue each year, the SNCF can be perceived as strong. As mindless machines that do as instructed, trains are easily abstractable and represent the dehumanization of modernity. Thirdly, the SNCF represents the nature of the harm. Raul Hilberg (1993) argued that while many organizations contributed the destruction of Jews in Europe, the railroads were “indispensable at its core” (p. 40). Trains remain the prominent symbol of the Holocaust (Marrus 2010). We see this today in the thousands of Holocaust-related books, films, museums, commemorative sites, and fictional stories in which trains figure prominently. Survivors interviewed for a new Holocaust Museum in South Africa voted almost unanimously for trains to stand as *the* symbol.

The last attribute of ideal perpetrators is that of being pursued by a justice hero. With so much competition for public attention and so many participants in mass atrocity, keeping any singular villain in the public eye for a sustained period requires someone or some group to dedicate their time and talents to the cause. Beate and Serge Klarsfeld did this kind of work in post-war Germany and France, making visible again and again

<sup>6</sup> See also Harré and Langenhov (1991).

the still unaccounted-for Nazi perpetrators.<sup>7</sup> In the SNCF conflict, New York lawyer Harriet Tamen served in this role. She worked first for two decades *pro bono* to pressure the SNCF to settle with survivors. She kept the SNCF in the press and galvanized support. These champion opponents can also be considered *justice heroes* (as I will discuss in [Section 2.3.3](#)) for their role in identifying and condemning perpetrators.

With everyone cast in their siloed roles, legal and legislative forums that promised an open space for deliberation operated more like a chessboard. The “ideal victim” moves like the Queen, able to say anything. The ideal perpetrator, the King, with the most limited, short-range discursive mobility. The Maryland State Senate checkmated the SNCF. At the hearing, a room of sympathetic delegates, lawyers, lobbyists and victims pummeled the executives present. The SNCF’s head of Corporate Social Responsibility, Bernard Emsellem, handed a piece of paper to SNCF America CEO Alain Leray, with “Nazis?” scribbled as a question.<sup>8</sup> The note expressed his confusion about why the legislators treated the SNCF like a living Nazi organization. The Maryland legislators set the rules of the game, allowing those attacking the company to speak at length and repeatedly interrupting the company’s responses. This left the SNCF in a frozen or fixed position (Greiff 2017).

When the company tried to improve its image by speaking about its heroism and its victimhood, the words were rejected by survivors and others. These defenses made the company seem as though it was resorting to moral equivalencies; the loss of rolling stock to the loss of life. Or, that the scales of justice can be balanced by the heroic efforts of a few brave railway workers. The narrative architecture of the event kept the SNCF frozen. The SNCF found itself in a “double bind,” damned if it acted, damned if it didn’t (Sluzki et al. 1976). If the company refused to acknowledge its role in the Holocaust it was seen as a heartless liar. When it spoke of this history, some condemned the company for only responding to secure contracts.

Those Holocaust survivors spoke on both sides. One wore a sign around her neck with her father’s convoy number. One Auschwitz survivor spoke with a heavy accent for over twenty-minutes; few understood much of what he said. The survivor who spoke in defense of the

<sup>7</sup> In France, the couple pursued Paul Touvier, Klaus Barbie, René Bousquet, Jean Leguay, and Maurice Papon. In Germany, they pursued Kurt Georg Kiesinger and Kurt Lischka. They pursued other Nazi collaborators residing in South America and throughout Europe.

<sup>8</sup> A. Leray, personal communication, November 4, 2014, Bethesda, MD.

SNCF found himself confronted with another survivor after the proceedings. “How dare you!” she said.

Again, to clarify, I am not saying that the company had no obligation to do more. My concern is that this forum provided a very limited space in which to have this discussion. Instead of working together to address the needs created by perpetrators now dead, the whole drama deepened distrust on both sides.

### 2.3.3 *Ideal Heroes*

Social conceptions also create our heroes. Sometimes heroes locate and elevate their stories, at other times they strategically narrate their activities for political purposes. When states decide to intervene in heroic narratives, they highlight its preferred actors. Hero stories easily become forms of state propaganda. In the case of mass violence, we see three types of heroes; *superheroes* and *daily heroes* are active during the events and justice *heroes* emerge in the aftermath. *Superheroes* have “super” powers in the sense of having access to resources well beyond the average person. Swedish diplomat Raoul Gustaf Wallenberg exemplified such a person: Wallenberg saved thousands of Jews by issuing protective passports while serving as a Swedish envoy in Budapest. Owner of munitions factories, Oskar Schindler, is another example. Exploiting his unusually wide network of connections in the business world and the Nazi regime, he was able to hide over a thousand Jews during their persecution.

Superheroes can also be strategically constructed. During World War II, less than 1% of the SNCF’s nearly half a million employees worked with the Resistance, though the company retained the title of unquestioned war hero for five decades. How? After a painful and humiliating occupation, the post-war French government found the SNCF to be a place to locate French pride. A number of brave SNCF workers derailed the trains headed toward D-Day filled with German armaments, helping allies secure their position. Even though deportation trains had continued to depart just two weeks previously, on August 26, 1944, the Conseil national de la Résistance, a resistance organization, congratulated then-SNCF President Pierre Eugène Fournier for the company’s acts of resistance during the war. The same year, the SNCF funded a film about its role in the Resistance. The SNCF also controlled the screenplay and the editing. René Clément’s resulting 1946 film *La Bataille du Rail* secured the SNCF’s place in the national psyche as a wartime hero. In

the 1950s, the SNCF won France's highest medal of honor for its role in the Resistance. In the 1950s, the SNCF commissioned further studies about acts of heroism within the company. Each story contributed to the corporate legend further submerging the company's role in the Holocaust. The stories of SNCF resistance submerged the fact that these brave SNCF workers worked in opposition to the SNCF executive team, which reported saboteurs to the German occupier. Yes, a number of individuals engaged in heroic acts, but it is a flagrant distortion to label the SNCF, as a corporate entity, heroic.

The SNCF employees who engaged in resistance can be categorized as *daily heroes*. Daily heroes (1) are not personally targeted by the regime, (2) have everything to lose, and (3) use props or tools available in daily life to act on their moral convictions. Daily heroes include the SNCF employees in Lille, France, who convinced deportees to entrust their children to them (Célerse 2016). Other employees slowed trains, helped deportees hide, or refused to disclose their location. Beyond the SNCF, we have Cecile Rol-Tanguy who used her children's strollers to transport various materials for the French Resistance, including explosives. Then there's Georges Loinger, who taught children how to sprint and then set up soccer games at the French–Swiss border. Loinger would then throw the ball over the border and tell them to chase the ball and keep going until they reached safe territory. In another intervention, Loinger dressed children up as mourners and took them to a cemetery on the border, from where they could make a ready escape. Loinger saved over 350 children.

The creativity and bravery of such daily heroes challenge us all to do more. Perhaps this speaks to the popular preference for superheroes. The ordinariness of daily heroes, by contrast, serves as a reminder that everyone could be extraordinary, but most of the time we choose not to be. This holds up a mirror too closely and is especially uncomfortable for those who did nothing or who were complicit. A Holocaust survivor and renowned therapist, Dr. Edith Eva Eger tells us that even in the most horrible of circumstances there is always choice (Eger and Weigand 2017).

*Justice heroes*, the third category, emerge in the aftermath of mass atrocity to ensure accountability and other forms of atonement. Ben Ferencz, the young attorney who tried the accused at Nuremberg, counts as one of these heroes. Justice heroes leverage the judicial system in its various forms to advance their efforts. They may work as lawyers, legislators, or advocates, or support the efforts of these individuals.



As noted previously, Serge and Beate Klarsfeld served as justice heroes in France for their remarkable efforts to bring unaccounted-for collaborators to trial. Justice heroes do not always follow a clear path and can end up influencing conflicts in surprising ways. In the early 1990s, Serge Klarsfeld condemned the SNCF and demanded accountability. After more research and after the SNCF contributed to his organization supporting Jewish orphans, he absolved them and provided legal services to the SNCF when they faced Holocaust-related lawsuits. During an interview, French lawyer Corrine Herskovitch, who led some of the legal cases against the SNCF on behalf of numerous survivor clients, reflected on Klarsfeld's complex role.<sup>9</sup> She said Klarsfeld fought any effort that appeared to make Jews rich from the Holocaust, even when those efforts included returning stolen assets housed in banks. Even today, Klarsfeld more or less determines what Jews receive and how the Holocaust is storied. Herskovitch expressed her admiration for Klarsfeld and her simultaneous concern for how he keeps historians and lawyers "caged." In sum, justice heroes affect how conflicts are understood and addressed. They generate the power behind claims, but also frame how those claims are understood and processed.

The SNCF conflict had other justice heroes. New York-based lawyer Harriet Tamen exerted tremendous influence on how the US public perceived the conflict. Other legal teams supported her work. At the conflict's climax, US Ambassador Stuart Eizenstat and French Ambassador Patriziana Sparacino-Thiellay negotiated and signed the \$60 million settlement covering those not compensated by other programs. Because both countries had an interest in seeing the SNCF controversies subside, the agreement was framed in terms palatable to both countries. This made significant compensation possible, but left survivors out of the conversation and foreclosed future conversations about the SNCF's accountability. Before receiving compensation, for example, survivors had to sign documents saying they would not pursue any legal claims against the company. While not unusual in settlements, such agreements can assert hegemonic control over the past. What if new information surfaces? What if survivors desire non-monetary compensation? The justice heroes, buoyed by the predominance of legalism, can frame past atrocities in ways that foreclose deeper, more reflective processes. When we sort everyone into idealized categories without making

<sup>9</sup> C. Herskovitch. Personal communication, phone, July 28, 2020.

room for the contradictions and we mask the narrative destruction at the heart of communities and individual lives, this masking can create further silences, asking those who witnessed to further repress what they saw.

## 2.4 Danger of Idealized Roles

When deep narrative structure is broken, the journey toward the past that lies before us is marginalized, truncated. We lose more than just the thoughts of a few old people. We lose our bearings.

John Paul Lederach (2010, 147)

War destroys both narrative and physical architectures. Those surviving persecution live out their lives as (and with) different people, pursue different careers, and find different partners than they would have in the absence of violence. Sophie, whose parents were murdered when she was five years old, told me that her birth certificate lists a first name she has never heard. “Who is that person?” we wondered together.<sup>10</sup> When this narrative rupture occurs, narrative repair must occur alongside physical repair. These post-violence narrative structures, however, prove far harder to repair than buildings or railroad tracks. Sophie divorced herself from that mysterious other person and from the nuclear family that felt like a group of strangers. She married a good man and feels she has lived a wonderful life. Left behind, however, are the two brothers who tried to connect her with the world destroyed, the un-lived life. To this day, eight decades after the events, she continues to resist their attempts. She also resents when her children try to make these kinds of connections. Sophie does not fit the ideal type for victim or even survivor. She is resentful of her brothers and disinterested in the Holocaust. She feels the SNCF had no choice. She is not alone in her views.

Few scholars or journalists report the stories of these very real individuals who do not share lessons learned or pursue justice the way many expect. Formula stories and idealizations offer clarity in chaotic times. Those wielding them do not consciously delete the Sophies of the world. But because she opts out of the post-war conversation, she is just not very useful for the justice pursuit and she will not offer inspirational words of wisdom to help others with their own struggles. We need to make room

<sup>10</sup> This survivor requested anonymity. Personal communication, Nice (France), July 19, 2018.

for these survivors/victims too. Otherwise we misunderstand the needs violence creates and perpetuate the false assumption that going through horrific experiences automatically makes one a wiser, kinder person. War breaks people, in ways large and small. They reemerge as someone else, and these lives may have much beauty. But from my many conversations with those who lived, survivorship seems the harder path.

Binary framings can also promote cycles of revenge, delegitimize the speech of groups who may not fit prescribed roles, encourage self-fulfilling prophecies, and obscure culpable actors. When ideal victims cannot be found, the justice story requires at the very least, “concrete victims” (Murphy 2017, 26). This narrow focus obscures many others victimized by violence.

The same goes for perpetrators. The perpetrator identity, once assigned, becomes difficult to overcome (Klapp 1954). This masks others, whose responsibility for violence does not fit accepted story lines and can further ignite justifiable feelings of revenge that perpetuate shaming cycles.<sup>11</sup> Such labeling also *silences* perpetrators. Scarry (1987) expressed concern that their perspectives must be voiced, or they lead to latent, potentially violent conflicts. Accountability matters; we just want to pursue this accountability fully and in a way that does not lead back into violence.

Unfortunately, our justice system provides few pathways to reintegration. We ostracize and isolate, feeding into violence and social deviance. Furthermore, socially prescribed roles exert tremendous force on our behavior (Bruner 1990). Lois Presser calls this acting “for the sake of the story” (2018, 13). Knowing this, we would be wise to consider how we treat those who enacted harm.

Idealization of roles has other costs. Obsession with past, deceased perpetrators distracts us from the challenges of our time. Many of the survivors with whom I had spoken urged me to turn my attention to contemporary problems. What about those harmed today? I too noticed that Maryland legislators seemed curiously uninterested in vetting *all* companies bidding for state contracts to ensure good business practices. I asked Maryland delegate Sandy Rosenberg, who sponsored the original bill targeting the SNCF, why the Maryland legislator did not draft legislation that would vet the human rights records of all companies bidding for business, instead of just the SNCF. Rosenberg said to me,

<sup>11</sup> See Braithwaite (2004), Loseke (2003), and Minow (1999).

“Well, that’s what the people came to me about.”<sup>12</sup> This highlights the important role we can all play in our responses to harm. Had more Maryland residents urged legislators to make human rights standards critical throughout the state, they may have complied. Instead, the bill died, and no standards were upheld.

Several Holocaust survivors pointed out another challenge of the construction of ideal victims: States using their suffering to defend policy. Daniel, an Auschwitz survivor, for example, expressed mixed feelings about Israel, “On the one hand, I have to support Israel, on the other it’s very painful to see Jews hurting other people.”<sup>13</sup> Liliane Marton, whose parents were murdered, interrupted our dinner interview at her home to turn on the television news: “I just want to see if the Palestinian and Syrian children are doing okay.”<sup>14</sup> Others too related more to the targeted Palestinians than to the state of Israel.

Using idealized victims to support policy occurs in many other contexts. I saw this dynamic emerge again when working with young adults whose parents were killed in the World Trade Center on 9/11. One told me that she says to those discriminating against Muslims, “Stop using my pain to justify your hatred.” Those who lost parents in the attacks are no longer young children, they are college-aged adults who can now speak for themselves. Some have become a voice for peace, making it harder for the state to use their victimization to justify its agenda.

The narrative dynamics of the justice story can also distract us from equally dangerous, albeit less visible, forms of participation in massive human rights violations. Hannah Arendt pointed to bureaucratic rule as a perpetrator of the worst sort because no one accepted responsibility (Minow 1996). Arendt called these people “desk murderers” (*Schreibtischtäter*). SNCF executives can best be understood this way whenever they reported to the Germans their own workers engaged in subversive activities, when they did not transfer Jewish SNCF employees to the Free Zone, and when they wrote letters to the Germans demanding payment but appeared to never write any letters resisting the deportation trains.

The SNCF was primed to be a site of this kind of bureaucratic participation. To start, the SNCF’s wartime president Pierre Eugène Fournier was a technocrat rather than an engineer. The complex

<sup>12</sup> S. Rosenberg, personal communication, March 19, 2014, Maryland.

<sup>13</sup> D. Urbejtél, personal communication, July 22, 2016, Versailles, France.

<sup>14</sup> L. Marton, personal communication, July 28, 2014, Paris, France.

network of trains and rolling stock required adherence to bureaucracy to run smoothly. In these environments, people focus on the details of the job versus the meaning (Kelman 1973). This was very much the case for the SNCF railway workers who prioritized duty to the railways over country (Broch 2016). Under these conditions, people can also keep themselves intentionally uninformed (Bandura 1999). Contexts that numb our ethnical sensibilities ought to be worrisome. Corporate decisions that poison the planet or use forced labor far away, for example, are not always visible to employees. Nevertheless, their careers and our consumer purchasing decisions contribute to the harm. Idealizations of evildoers in a boardroom (while they sometimes exist) obscure this kind of daily participation. Much of mass violence is far more mundane.

## 2.5 Toward Interdependence

What alternatives exist to these binary constructions? While victims and perpetrators remain inextricably linked by violence, we can resist amplifying one role in proportion to the other. For example, the victimized need not demonstrate angelic purity in order to receive compensation or services. The perpetrator need not be constructed as inhuman in order to be held accountable.

Uncoupling the proportional pairs (ideal victims and ideal perpetrators) also interrupts how we think about punishment. Murphy sees retributive justice as following the close pairing of victims and perpetrators, in which, “the amount of suffering should be proportional to the wrong committed” (2017, 8). How can harm possibly be quantified and then equally imposed? What madness that invites! Responding to irreparable harm with irreparable punishment leaves everyone broken. Interrupting the relations between these roles gives us room to identify and respond to the harm, wherever it lies. Mohamed (2015) reminds us that even those who wielded the harm suffer the effects of their violence. We see this trauma in Vietnam War veterans: First victims of the draft, many young men went on to perpetrate great harm against the Vietnamese. In the aftermath, many died by suicide or turned to alcohol while others suffered other forms of psychological damage resulting from the violence they enacted. Today, soldier trauma is more widely understood, treated, and increasingly destigmatized in the West. We are slower to extend this new awareness to our understanding of Nazis, Hutus, Serbians, former Khmer Rouge, and others who similarly found themselves drawn into and traumatized by violence. The psyche responds to

the violence regardless of the political justifications or lack thereof. Excluding perpetrators from treatment satisfies feelings of revenge at a cost: We misunderstand mass violence and thwart the move toward positive peace.

Disrupting the proportional relationship between victims and perpetrators facilitates the reflective judgment that facilitates moral learning (Lara 2007). Understanding the full scope and nature of evil, she says, requires visiting the past in various ways. Embracing versus flattening complexities enriches this exploration and learning. In these spaces of reflective judgment, more productive and widespread forms of accountability can emerge.

After World War II, most of those who participated in harm went back to work and daily life. Engaging those who enacted harm in restoration activities provides an alternative to either punishing them or expunging their culpability. In restorative justice, those who enacted the harm respond to the needs their participation created. Murder someone? Meet the financial needs of the family. Blow up a town square? Rebuild it. Fund militias to protect your mines? With your own hands, help rebuild the schools and community infrastructure. The billions that fund carceral compounds can be redirected to support these types of efforts. This approach to justice facilitates reintegration. They create new identities, or additional identities, as contributors.

Yes, a solid argument can be made to incarcerate charismatic individuals who are likely to galvanize support for their ideologies and call people to arms yet again. Yet more participated in the violence than can be held accountable by incarceration and the need created by the harm will take many hands. Can more be done with the tens of thousands of those caught up in the insanity of their times? Our current approach to post-atrocity justice impedes their engagement with the myriad of problems the violence created. Responding directly to harm they inflicted offers individuals a deeper opportunity to reflect on their actions and to walk a path back home. The Fambol Tok organization, for example, works in Sierra Leone to facilitate apologies in villages where local members had become killers during the war and now wish to return home. These apologies contribute to integration and create possibilities for direct action. Restorative approaches have tremendous untapped potential in the contexts of mass violence, even when engaging corporations.

In the case of the SNCF, contemporary executives now attend, as well as fund, commemorative events. Seeing contemporary executives

standing side-by-side with the harmed models a pathway to healing rarely seen in other contexts. This is good for business and good moral work: Such goals are not always incongruent. Through these efforts, they model for other corporations some of the ways to participate in restoration and historical integrity, even decades after the violent events.

Engaging all culpable parties in the long-term work in the aftermath of violence moves us away from discursively idealized constructions and toward what Murphy (2017) calls “relational transformation,” focused on treating others with dignity, inspiring reciprocity, and promoting freedom to support larger societal transformation. Recognition of the fact that victims and perpetrators frequently have overlapping roles further facilitates this shift. David Gray points out how overlapping roles stabilize healthy societies, counterbalancing the weight of each group. He offers the example, “Some Democrats are Presbyterians; some Presbyterians are investment bankers; some investment bankers are Republicans; and so forth” (2010, 83). These overlaps feel less offensive in peacetime than they do in the aftermath of violence, during which pointing to overlaps is often targeted as apologist behavior. We can accept a democratic investment more easily. Understanding overlapping roles and acknowledging that socio-political contexts gave rise to the violence supports resilience.<sup>15</sup>

## 2.6 Survivors Embrace Complexity

Transitional justice-supported societal transformation must set about “creating or reconstituting the network of overlapping identities reflective of a dynamically stable society” (Gray 2010, 56). Ironically, survivors may articulate this vision better than those entering the aftermath to care for them. Holocaust survivors expressed greater comfort with overlapping roles than the many more “educated” individuals engaging in legal and legislative battles involving the SNCF. True, the media focused on those who understandably demanded that the SNCF pay for the transport of their families during the Holocaust, but of the ninety survivors I interviewed (all individuals who escaped persecution in France), less than 20 percent took a hardline position on the conflict. André was born Adolph but changed his name to distance himself from the Nazi regime that deported his father from France and subsequently murdered him at

<sup>15</sup> See Adorno (2012), Alexander (2006), Arendt (1998), Enns (2012), McEvoy and McConnachie (2012), Murphy (2017), Roseman (2013), and Tannenbaum (2002).

Auschwitz. His mother barely survived persecution and was ill much of her post-war life. After the war, they had no apartment, no money, and no work. About post-war justice André said, “You cannot want everything. You have to understand the time period,” he explained. “People were selling people all the time; Jews, communists, Resistants, others. People had very little money. It was a complicated time, but there were a lot of *justes* [good people].”<sup>16</sup> Numerous survivors living in France made similar arguments.

Julius also appreciates some of these complexities, namely the difficulty and complexity of the resistance. An 89-year-old Bay Area resident at the time of our interview, Julius’ parents were carried off by SNCF drivers, “so was my little brother, six-years-old, and my little sister, eleven-years-old.” Despite Julius’ ineffable losses, his description of the SNCF’s position shows an appreciation of complexity and subtlety.

It was all of France that helped, including the train company. I very much doubted anything would come out of [the SNCF lawsuits]. And nothing did . . . You can dream that a driver could have said “I will not drive the train” but he would have been shot. If I had time, I could come up with several things they could have done but they didn’t. They just did their jobs. The trains ran very nicely. They did not think what the train was transporting. It was their job, you know, 8–5. They could have done a few things – because at the end 1944–1945 the resistance started waking up a bit. There was no resistance in France; 85 percent was collaborating if not actively – passively. If they thought maybe Americans would win, they switched. At the end of the war, at the liberation, 85 percent was in the Resistance. They blew up military trains – they could have done the same thing – that was the story with the SNCF and the deportations. They could have blown up the railroad tracks and the Americans could have bombed Auschwitz . . . <sup>17</sup>

Julius’ statement holds the French and American governments accountable, along with the SNCF and others.

In their homes, perhaps, many embraced complexities, but when the act of talking about the war challenged their professional identities or ambitions, the binaries returned. Here we see the difference between the “kitchen table” conversations and the microphone introduced in the preface of this book. Offering much more complexity when we met in informal environments, at official events people moved into binaries. For

<sup>16</sup> A. Zdroui, personal communication, August 4, 2014, Paris.

<sup>17</sup> Personal communication, July 7, 2014, phone. Name changed.



example, I attended the Maryland Senate Hearing on the question of the SNCF's obligation to compensate local survivors before bidding for state contracts. Seated outside the event, waiting for the hearing to begin, the man seated next to me on the red plush bench asked casually,

"Whose side are you on?"

I said, "I'm here to study the conflict."

"Oh," he replied sounding disappointed, "You're on the train company's side."

I tried to correct him, but it was too late – he had already cast me in a role. Any response other than "I'm fighting the SNCF" was perceived as coming from an apologist or against the survivors. He was a representative of Holocaust survivors for the US Holocaust Memorial Museum (USHMM) and, though he admitted to knowing little about the SNCF's role in the war, its efforts to make amends, or what the survivors thought, he felt assured of his position.

I sometimes had more subtle conversations with SNCF executives, survivors, and lawyers. Even the most ardent advocates occasionally softened their hardline when given the space. Harriet Tamen, the lead justice hero bringing the SNCF to its proverbial knees, said during an interview, "Let's be honest, it's not like they had a choice."<sup>18</sup> By this she meant that the SNCF could not easily resist the Germans during the war.

Binary constructions do the dangerous work of shutting off our vigilance. I had been through the museum many times, but survivor Harry Markowicz wanted to take me on a private tour so that he could share his personal memories in context. Midway through the second floor, he teared up, turned to me, and said "You know, I really think this could have happened anywhere." He went on, "The conditions were right in Germany, but it could happen in the United States."

## 2.7 Conclusion

Harry died while I was working on this chapter. So too did Jacqueline, Stanley, Ester, and Giacomo. Daniel's daughter recently called to tell me that he and his brother will likely pass any day. They are already beyond my reach, unable to communicate on the phone. Each year fewer survivors attend commemorative events. Those remaining continue to share warnings about resurgent fascism. The SNCF carries on, facing tremendous business challenges of today without quite being free from

<sup>18</sup> H. Tamen, personal communication, May 30, 2011, phone.

integrating the overlapping wartime roles of hero, victim, and perpetrator. While incomplete, their efforts exceed those of many complicit companies that ignore, obscure, or strategically distort histories.

The fire behind the SNCF conflict may have cooled with the treaty signing. The SNCF now offers a more complex story of its wartime role. Yet, these idealized roles continue to drive justice discourse around the world, directing responses to violence. Inhuman depictions of the victimized and victimizer eventually become like rusty hinges, too stiff to allow the flexibility needed to respond to the messiness of moral collapse. Moving away from static roles facilitates more complete responses to harm as well as greater inquiry into structural violence, historical legacies, and the effects of transgenerational trauma. Rather than direct all collective disdain toward one or several evildoers, we can examine the variety of participants.

A transformative approach to justice depends upon our ability to discuss and respond to collective accountability. Criminal courts struggle with how notions of collective responsibility intersect with an individual's *mens rea* (Gray 2010). Restorative social processes need not be hampered by such legal limitations. John Paul Lederach says that a transformative orientation requires that we develop our moral imagination, an imagination that "refuses to frame life's challenges, problems, and issues as dualistic polarities" (2010, 62).

Understanding cultural proclivities toward totalitarianism requires understanding how totalitarian regimes appeal to the average person, rather than the more unique psyches of charismatic authoritarian leaders (Jaspers 2009). When narrative depictions of mass violence focus attention on the most egregious offenders, the most sympathetic victims, and the most astonishing heroes, we lose our way. The story that soothes us, entraps us. In its extreme form, this narrative genre serves as a kind of "therapeutic history" in which we tell stories about ourselves that make us feel good while obscuring the damage caused by past actions (Niezen 2009, ch. 7).

Just as no country is safe from sliding back, any country with a retributive justice system that thrives on idealized characters distracts us from accountable parties hiding in the shadows and from the desk murders occurring now. Arendt (2006) warned us not to romanticize the courtroom forum, which she said resembled a play. Legal processes, like public narratives, thrive on simplicity, succeeding only when they can deny the complexity of the real world (Loseke 2003). So long as we believe we can simply remove and ostracize those who do harm, we will

perpetuate cycles of violence. Instead, Lederach challenges us to imagine a future “that includes our enemies” (2010, 5). Building resilience requires accepting the possibility that atrocities can happen anywhere and involve regular people, like ourselves, in ways we shudder to imagine.

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## Deconstructing the Complexities of Violence

### Uganda and the Case against Dominic Ongwen

AYODELE AKENROYE AND KAMARI MAXINE CLARKE

#### 3.1 Introduction

On February 4, 2021, the trial chambers of the International Criminal Court (ICC) delivered a landmark judgment in the trial of Dominic Ongwen for 70 counts of crimes against humanity and war crimes allegedly committed in Northern Uganda after July 1, 2002. This judgment was a watershed moment in international criminal justice, especially in its quest to hold accountable child soldiers for crimes they might have committed for which they are equally victims. Dominic Ongwen's trial at the international criminal court is morally complex, riddled with paradoxes, evoking strong emotive responses from the same constituents the international criminal justice appeals to and represents.

Dominic Ongwen was abducted on his way to school by the Lord's Resistance Army (LRA) when he was ten years old, by most estimates. He was trained and armed as a "child soldier" to launch an insurgency against the Ugandan Government and he quickly rose through the ranks, becoming the second in command. During his trial, he was presented in a logic of extremes – for the prosecution, he was portrayed as a murderer and rapist, a fearless terrorist and senior commander in the LRA, who was powerful, proud, happily "gratifying his desires" in the bush, and fully responsible for the crimes he was charged with (*Prosecutor v. Dominic Ongwen [Prosecution Opening Statement]* 2016). For the defense, he was represented as a child soldier who was abducted, victimized, orphaned, imprisoned, initiated, indoctrinated, and incorporated into the LRA and held spellbound by the spirits called upon by the LRA headman Joseph Kony, therefore making him a madman with suicidal tendencies (*Prosecutor v. Dominic Ongwen [Defence Opening Statement]* 2018). While spirituality claims have been raised in the past in

international criminal trials and addressed while determining individual criminal responsibility, the Dominic Ongwen trial is unique in the way that spiritual cosmology occupies the most prominent role in the history of international criminal justice (Nistor et al. 2020, 2).

Dominic Ongwen represents the complex status of thousands of child soldiers in different conflict zones who were “forcibly” abducted or who “willingly” joined armed militias or insurgent groups and eventually assumed command positions as adults, eventually committing the same international crimes of which they were once victims. Nonetheless, his predicament raises troubling international criminal justice questions and reveals that, while child soldiers could engage in the victimization of others, their victim’s status *is not* and *should not* be diminished by these acts. Determining the moral and legal threshold when a victim becomes a perpetrator, or when innocence transforms into culpability, is ambiguous and problematic.

At the core of the argument in this chapter is the confrontation of some of the complexities and tensions surrounding the constructions of the victim/perpetrator dyad within the field of international criminal justice with a focus on Dominic Ongwen and the situation in Northern Uganda. In so doing, the chapter assumes a dual focus: The construction of blame and blamelessness regarding victim and perpetrators of child soldiering as well as the moral complexities concerning the victim/perpetrator divide. In relation to the former, we demonstrate there is a deep discord between much of the *constructed* identities of child soldiers (as victims or perpetrators) and the *actual* identities and lived experiences of child soldiers (both as victims and perpetrators). It will also briefly explore the use of spiritual cosmologies to rectify injustice by both the ICC and the members of the communities in which Dominic Ongwen and the LRA wreaked havoc.

In exploring these issues, we will argue that the discourses on “blame” and the associated notions of “innocence”/“good” and “guilt”/“evil” shapes and informs respective hierarchies of victimhood that are culled through “legitimate” and illegitimate measures. Both the victim/perpetrator categories themselves and the dichotomous nature of them produce a “hierarchy of blame” which cannot easily accommodate “deviant” victims or “vulnerable” perpetrators such as girl child soldiers or children born in captivity who lie in the middle ground between the polarities of the accepted victim and perpetrator status. We argue that the fundamental relationality between victimhood and perpetrator status leads us to a sometimes functional and sometimes highly volatile effort at a definition

that pushes analysts to want to parse distinctions. For example, if we can only know who victims are by knowing who perpetrators are and vice versa, then a certain circularity is involved. This circularity suggests that the dichotomy is much more central to the enigma of international criminal justice than is commonly thought.

### 3.2 The Construction of the Victim–Perpetrator Dichotomy

The legal status of individuals and the extent to which they are subjects of international law has been a contested issue. This can be traced to the eighteenth-century positivist school, whose ideas dominated international law and firmly held the view that international law only governs relations between states and sovereigns, with individuals at best third-party beneficiaries (Ratner and Abrams 2009, 4). However, this traditional view has undergone significant changes with the increasing visibility of the fragmentation of international law. It is now generally accepted that individuals are “limited” subjects with rights and corresponding duties, and protecting victims and punishing perpetrators are now construed as integral elements of the international criminal law regime (Findlay 2009). The Rome Statute of the ICC typifies this paradigm shift. Due to this paradigm shift, it is paramount to explore the way international legal orders construct the person of a “victim” and “perpetrator” as legal entities.

Centrally located in international law is a productive power of discourses, which establishes a version of social reality as an objective truth from international processes and practices, which also has a repressive side (Clarke 2009), as it entails the simultaneous marginalization of alternative meanings. The position of a “victim” or “perpetrator,” for instance, are discursive categories which offer individuals the opportunity to identify with a place in the social structure that tells them who they are and what they can do. Subjects then constitute themselves if and when they “step into” and identify with the positions carved out by a discourse (Epstein 2008, 93–95). However, beyond the discursive, these categories are propelled and concretized through political, legal, economic, and emotive processes that are key to understanding<sup>1</sup> the performative and didactic acts performed by international criminal trials.

1 See Brunnée and Toope (2010) and Clarke (2019).



International law characterizes a “victim” as a helpless individual who possesses human rights and the “perpetrator” as a person who is criminally accountable for breaches of international law, rules, and principles. These two legal persons are continuously projected as autonomous individuals; however, the narrative also grounds them as members of groups that international criminal norms seek to protect or punish. The normative tension that arises between individual and collective forms of legal rights and responsibility is resolved in international law by reconstituting the idea of a legal person (that is a victim or a perpetrator) through a conception of the universal community of humans. It has been argued that the idea of a “legal person” relies on the idea of “humanity” to hide the problematic conceptual basis of the rights and duties of victims and perpetrators in international law (Campbell 2011, 326).

Arguably, the conception of a legal person in international law implies that it “is the formal subject of rights and duties: a legal idea or construct not to be mistaken for the real natural being” (Naffine 2009, 1). Therefore, it is imperative to locate the constitution of the victim and perpetrator as entities to which international law attributes rights and duties to understand their construction.

Over the centuries, the image of a legal person, be it a perpetrator or a victim, in international law has been cast in problematic ways by recognizing certain persons as existing in legal relationships of rights and duties to other persons (as individuals or members of groups) and excluding others. Historically, the legal person of a victim is traditionally cast as that of an alien who has been subjected to abuses in a foreign land and who needs his sovereign to demand reparation on his behalf for these abuses.<sup>2</sup> Further constructions of a “victim” include those of a slave or ethnic minorities in the east in the nineteenth-century legal scholarship, combatants during World War I, civilians during World War II, and generally certain individuals as victims of war crimes and crimes against humanity under the current international law framework.

In this evolving construct, the doctrine of individual criminal responsibility establishes a relationship of legal obligation and benefit between the perpetrator and the victim. The victim possesses legal rights (such as the right to dignity, right to a fair trial, right to sexual autonomy, and so on), while the perpetrator bears legal duties (such as compliance with binding

2 See Partsch (1995); and “The only notable exception to this general pattern concerned attempts to abolish slavery, which were based on an abhorre.”

international rules).<sup>3</sup> In this way, legal rules and practices *construct* relationships between legal persons and symbolize particular forms of intersubjective relations (Campbell 2011). They do not reflect the actuality of social relations. Rather, they epitomize ideas of subjectivity and intersubjectivity, in the sense that they *represent* social subjects and relations in legal form. In this approach, international criminal law is a representation of social relations between (individual and collective) legal persons. It determines which social relations will be legal (and which will be illegal), which persons will be legal subjects (and which will not), and which social relationships will be legal relationships (and which will not) (Campbell 2011).

Identifying the conceptual basis for the construction of victims and perpetrators, in the context of massive violence in Northern Uganda, requires closer engagement with both the international legal principles and prosecutorial practices that are key elements of this process of constitution.

### 3.3 Constructing the Perpetrator in the Context of the Conflict in Northern Uganda

The problematic delineation of a perpetrator comes to an acute relevance in Northern Uganda where minors have been used to inflict massive violence and constructing those minors as perpetrators in strict legal terms. While child soldiering is a global problem, its manifestations in third world countries such as Uganda have been endemic, complex, and devastating, and offences perpetrated by and against child soldiers have been litigated in both international and internationalized courtrooms. To date, only a few minors have been prosecuted due to the problem of determining the age when tribunals and courts should start investigating, charging and prosecuting, and holding accountable minors for international crimes.

The LRA is notorious for recruiting and using child soldiers to wage a campaign of violence against the Government of Uganda, particularly in Northern Uganda, and, to this day, child soldiers form an integral part of the LRA (United Nations Human Rights Office of the High Commissioner and Uganda Human Rights Commission 2011, 44). The LRA is an insurgent group that has been involved in a brutal cycle of

3 When these rights and duties are directly enforceable under international law can be considered as separate issues (Clapham 2010, 25).

violence against the Government of Uganda and the Uganda Army since 1987 (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). The LRA is known for cutting off the ears, lips, and noses of civilians (*Prosecutor v. Ongwen – Confirmation of Charges* 2015) and more than 2.8 million people have been displaced due to LRA attacks (Worden 2008). In 2018, a survey of war-affected youth was conducted in Northern Uganda, more than one-third of male youth and one-fifth of female youth in Northern Uganda reported abduction by the LRA (United Nations Human Rights Office of the High Commissioner and Uganda Human Rights Commission 2011); and, as of 2015, more than 60,000 children had been forcefully abducted and conscripted into the LRA (Refugee Law Project 2015, 3). Dominic Ongwen was one of these abductees.

The depiction of Dominic Ongwen as a fearless and ruthless commander of the LRA was not represented as being disputable during his confirmation of charges hearing at the International Criminal Court. Rather, the prosecutors presented to the judges the chronology of violent attacks he led resulting in thousands of murders, rapes, and other atrocious crimes (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). It was also alleged that Ongwen engaged in the practice of abducting children, supervising their military training, and deploying LRA units that included children under the age of 15 (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). In contrast, determining his status has involved arguing that he was embedded in a system whose principle is “kill to survive.” For instance, Anthony Akol, who was a former LRA abductee, testified that within the LRA one simply had to obey orders or get killed (*Prosecutor v. Ongwen – Confirmation of Charges* 2015). After abduction, children went through initiation rituals which included beatings, long marches, and being forced to kill relatives; others were made to taste or roll in blood or eat while sitting on dead bodies (Baines 2009, 170). These rituals were intended to disorient and brainwash new abductees into obedience, and a former LRA abductee reported being in a “confused state” for a week after being forced to cut his sister (Schauer and Elbert 2010, 321–322, 330).

As is clear in the literature, the complexities of Dominic Ongwen, like most LRA abductees, contradict the binary nature of the perpetrator typology in international legal principles on which the ICC indictment is based, that focuses on Dominic Ongwen’s individual criminal responsibility, liability, and his agentic role in causing mass violence, and this typology largely ignores the circumstances surrounding his abduction, indoctrination, and victimization in the process.

The liability of individuals, such as Dominic Ongwen, for despicable conduct toward other human beings, is not a new phenomenon in the domestic criminal justice system. However, the hegemonic nature of states under international law shielded individuals from criminal liability until the ashes of World War II<sup>4</sup> prompted the reconsideration of individuals as perpetrators of war crimes. Only states could be held responsible in international law and the responsibility of individuals was viewed as a matter of domestic law, even if at times the state could be obliged under international law to enforce such individual responsibility under domestic law. The unity of the state in international law mandated such a solution, and the whole international law system hinged on such a fundamental tenet (Kaufmann 1935, 398). In the same vein, individuals acting under the authority of a state could not be held personally accountable. This principle, characterized as a “principle of public law sanctioned by the usages of all civilized nations” by the US Secretary of State Webster in 1841 during the *McLeod* case, remained a leading reference for shielding from judicial scrutiny states’ organs acting under color of authority (Jennings 1938). In fact, the International Criminal Tribunal for the Former Yugoslavia (ICTY) said in *Blaskic*, “... under international law States could not be subject to sanctions akin to those provided for in national criminal justice systems.”<sup>5</sup> And for centuries there has been an elusive “search” for the “perpetrators” of international crimes.

Due to the nature of international crimes, it is very difficult to distinguish between the numerous participants and label their responsibility accurately. A similar characteristic of the participants of international crimes in comparison to its domestic counterpart is the collective aspects for both the perpetrator and the victims (Akhavan 1998; Fletcher 2002; Fletcher and Weinstein 2002). While the perpetrator of a crime against humanity or international crime is individually culpable, they invariably commit this crime on behalf of or in furtherance of a collective criminal project, whether of a state or some other authority (Sloane 2007). The hypothetical figure of the lone *Génocidaires* rarely exists in practice: The perpetrator is part of, and acts within, a social structure that influences his conduct, in conjunction with other people (Sloane 2007). Similarly, the victims of international crimes are mostly chosen not based on their

4 Some commentators would argue that it was earlier.

5 *Prosecutor v. Tihomir Blaskic*, IT-95-14-T, Final Judgment March 3, 2000. See also ILC Draft Articles, Second Reading (1999).

individual characteristic, but because of their actual or perceived membership of a collective (Drumbl 2005, 571).

For instance, genocide is defined as performing certain acts such as killing or causing serious harm, “with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such” (78 UNTS 277, UN 1948, Article 2). International crimes are also collective in the sense that they are committed with the consciousness on the part of the individual perpetrator that he is part of a common project. While it would be far-fetched to say that there is a “corporate *mens rea*” (Sloane 2007, 58) at work in all international crimes, what can hardly be disputed is that crimes such as crimes against humanity that are committed as a systematic and widespread attack against a civilian population cannot be understood solely in terms of the mental state of each perpetrator. Rather, one must address the social structures and group solidarity that render them possible, as reflected in the intent requirement of international crimes – whether that is based on fear of violence, ethnic hatred, or religious intolerance (Osiel 2009).

A further distinctive aspect of international crimes is that the individual crimes do not deviate from, but conform to, the prevailing social norm (Fletcher 2002, 1541; Tallgren 2002, 575). In this sense, they are indeed “crimes of obedience,” as coined by Kelman: They are acts carried out under explicit instructions from makers of official policy, or at least in an environment in which they are sponsored, expected, or tolerated by them, and which are considered illegal or immoral by the larger community (Kelman 2009, 26, 27). Mark Drumbl uses the terminology of *jus cogen* norms and the basic conception of human decency when speaking of this larger community (Drumbl 2005, 567). This is regardless of whether the crimes are also committed for personal motives or with zeal (Akhavan 2001, 7; Kelman 2009, 27).

No doubt, the perpetrator of an international crime acts within a moral and cultural universe where his actions correspond to the values of the group to which he belongs. He may conceive himself as being in the right and working to prevent injustice, or even in self-defense (Alvarez 1999, 396–397; Drumbl 2000, 1221, 1243, 1245). The victims are transformed into the guilty parties, and the group dynamic is reinforced by a myth of ethnic, religious, racial, or national superiority that is under threat from the victims (Alvarez 1999; Drumbl 2005; Tallgren 2002). This internal constitution of a perpetrator takes place through an active process of identification: “an identity requires an individual actively embracing it. It demands active recognition on behalf

of the individual” (Epstein 2008, 169). Identification in the context of international crimes occurs through the act of articulation, that is, where a perpetrator participates in a series of activities ranging from formulation of a plan, deciding on the mode of its execution, setting up a framework to achieve the intended outcome, and ordering subordinates to ensure its implementation.

This identification process was aptly captured in the judgment of the Nuremberg International Military Tribunal (IMT): “International law violations are not committed by abstract entities but by individuals acting for the state.”<sup>6</sup> As a result, the IMT Charter provided for individual criminal responsibility for violations of the laws and customs of war, as well as other egregious acts in connection with the war under the rubric of “crimes against humanity.”<sup>7</sup>

In the global construction of perpetrator in the international criminal law regime, the individual criminal responsibility incurred by the perpetrator can be traced to the prohibition of the criminal conduct such as war crimes, crimes against humanity, and acts of genocide, and the inherent authority of International Criminal Law to punish the perpetrator of these crimes, thereby constituting a direct relationship between international law and the individual (Morris and Scharf 1995, 92). Under contemporary international criminal law, the “foundation of criminal responsibility is the principle of personal culpability.”<sup>8</sup> It has been argued that this “personal culpability” principle draws upon two related notions and presupposes the idea that a person cannot be held criminally liable for acts: (1) perpetrated by other persons or (2) for which s/he did not have the requisite state of intention (Antonio 2003, 136).

Also, the construction of a perpetrator in international law projects a person to be an autonomous individual, whose liability for their actions derives not from their ethical or social relationship to others but from their individual will to action.<sup>9</sup> This model of individual criminality is

6 “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provision of international law be enforced” (*Trials of the Major War Criminals before the International Military Tribunal*, Nuremberg, 1947, at 223).

7 IMT Charter, Art. 6(a).

8 Judgment, *Prosecutor v. Tadic*, Case No. IT-94-1-T, ICTY, Appeals Chamber, 1999, para 186

9 This Kantian model of autonomy has been subjected to numerous feminist critiques, most notably those relational critiques drawing upon the work of Carol Gilligan. For an overview of notably these debates, see Graycar and Morgan (1990, 194–195).

reflected in the principle of *nulla poena sine culpa*: that “nobody may be held criminally responsible for acts or transactions in which they have not personally engaged or in some other way participated.”<sup>10</sup> Therefore, to become a perpetrator of international crimes, the individual must consciously will the criminal action. This assumption is reflected both in the *mens rea* requirements of the criminal offences, as well as the incapacity defenses.<sup>11</sup> This model of the autonomous moral agent as the subject of criminal liability links the juridical person and the “Kantian, retributive philosophy of punishment” (Norrie 2000, 3). In this Kantian model, the perpetrator’s intentional commission of a wrongful act ties together legal and moral liability.

While there is a presumption in international law that the perpetrator is an autonomous individual who is solely responsible for his/her actions, the individual or collective nature of the legal person of a perpetrator has been a contentious issue (Drumbl 2005). As early as 1942, Kelsen identified the relationship between individual and collective responsibility as a key dilemma in the punishment of war criminals. For him, the doctrinal and normative issues turned on whether individuals could be criminally liable under a legal order founded on the authority of the State, and hence upon the collective responsibility of its members (Kelsen 1943, 534).

However, developments in international law emphasized individual rather than collective criminal liability. For instance, the Genocide Convention imposes responsibility only on individuals, and not on political organizations or other non-natural persons, with the possible exception of states. Also, in 1994, the United Nations Secretary-General’s report on the establishment of the ICTY described the principle of individual criminal responsibility as an “important element” of its competence *ratione personae* and rejected the Nuremberg notion of collective criminal liability based on group membership.<sup>12</sup>

It can be argued that the footprints of collective criminal responsibility have not been totally wiped out from the doctrine and prosecutorial practices of international law. International criminal law does recognize notions of conspiracy, complicity to commit genocide (Van der Wilt

10 Judgment, *Prosecutor v. Tadic*, Case No. IT-94–1-T, ICTY, Appeals Chamber, 1999, para 186.

11 For a discussion of the general principles of the two main categories of excuses under international criminal law: Incapacity and absence of criminal intent, such as duress, see Antonio, *supra* note 34 at 224.

12 UN Doc. S/25704 (May 3, 1993), Report of the Secretary-General pursuant to paragraph 2 of resolution 808 of the Security Council.



2007, 95), co-operation, command theory, and joint criminal enterprise, thereby inculcating individuals who may not have served as the immediate perpetrators of the crimes. As noted by the ICTY in the *Tadic* Appeal Judgment: “most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality.”<sup>13</sup> The doctrine of joint criminal enterprise, in particular, has been subject to much criticism for introducing a form of collective criminal responsibility and for failing to adequately ascribe the individual responsibility of the accused (Badar 2006; Haan 2005). The construct of these collective modes of participation has been highly contested and remains contentious.

Furthermore, in constructing the perpetrator, international law utilizes the concepts of “human” and “humanity” in framing the perpetrator as an autonomous, willing, and rational actor who can distinguish between right and wrong and posit that a perpetrator of international crimes is an immoral person who chooses to act wrongfully. This was aptly described by Justice Jackson with the argument that: “It is not because they yielded to the normal frailties of human beings that we accuse them. It is their abnormal and inhuman conduct which brings them to this bar.”<sup>14</sup>

Subsequent judgments of the International Criminal Tribunals have utilized the concept of humanity in describing the perpetrators’ actions as “inhuman” and “evil.” Constructing the perpetrator as inhuman provides a means of separating the actions of the perpetrator from the values of their society and thereby prevents that sociality from being classified in terms of collective guilt (Norrie 2008). Punishing the perpetrator is therefore based on the idea of “humanity” shared by all people that transcend geographical boundaries or limitations. Grotius argued that the enemy of all mankind “has renounced the ties and laws of nature [and] are subject to attack and punishment by anyone with an interest in maintaining those ties” (Greene 2008, 695). The echoes of this conception of the enemy who has renounced their ties to the community of all persons can be heard in the model doctrine of universal jurisdiction, whereby States are “authorized to prosecute and punish, on behalf of the whole international community” international crimes “with a view to safeguarding *universal values*” (Antonio 2003, 284–285). The perpetrator

13 *Tadic* case, at para 191.

14 Justice Robert Jackson Judgment, *Trial of the Major War Criminals before the International Military Tribunal*, Nürnberg, IMT, November 14, 1945–October 1946, V. 1 (1947).



is then constructed and projected as breaching the fundamental obligations owed to all humanity, in that his criminal actions repudiate the universal social contract between all humans.

Paradoxically, a perpetrator is constructed as inhuman in terms of his capacity for evil while at the same time cast as a human in terms of being an autonomous and willing agent who can be held responsible for his actions (Arendt 1963). International law resolves this problematic position of the perpetrator by reinscribing them within the universal community of mankind. International law constitutes the perpetrator's action as inhuman, but the perpetrator is not thereby rendered an exception to the international legal regime. Rather, international law's system of punishment is designed precisely "to rehabilitate the person/perpetrator, remove the infection of inhumanity, and heal the body politic by reintegrating the perpetrator through the performance of a (period of) punishment" (Anonymous, cited in Campbell 2011). However, this reintegrative resolution of the inhumanity of the perpetrator's actions operates not just by subjecting the individual lawlessness of the perpetrator to rule of law. Instead, it invokes universal ethical norms of all humanity to replace group violence within the legal regulation and to recreate the sociality destroyed by that violence (Campbell 2004).

From the foregoing analysis of the difficulties in constructing the perpetrator in international law, it is glaringly obvious that there are deeper conceptual problems with the different notions of the perpetrator, especially that of child soldiering which Dominic Ongwen typifies. For instance, Kantian "orthodox subjectivism" separates individuals from "the broader social and moral context within the law" (Norrie 2000). Subsequently, the principles of international law separate the responsibility of the perpetrator from the social context of their action and agency. However, maintaining the separation between legal responsibility and social realities in the context of international crimes, especially in the situation in Northern Uganda, which usually involves collective norms and actions, is very difficult to sustain, and this is the core of the dilemma in constructing a victim or a perpetrator in societies emerging from deep complexities of armed conflicts, and massive violations of human rights, such as Uganda.

Most commentators and those victimized by violence in Northern Uganda have strongly argued that child soldiers like Dominic Ongwen who commit extraordinary international crimes are forced by commanders and, hence, operate under extreme duress. They insist that they are incapacitated by use of narcotics and alcohol; they are brainwashed and

(re)socialized by the endemic violence that swallowed them, and they are plagued by the fears of brutal punishment. Therefore, moral responsibility for committing these grievous crimes should be excused (Drumbl 2012, 15). While such claims of duress might be true, Benjamin Gumpert, the Senior Trial Lawyer prosecuting Dominic Ongwen at the ICC, argued that Dominic Ongwen having suffered victimization in the past is not a justification or an excuse to victimize others and that the ICC should rather focus on if he is guilty of the serious crimes he committed as an adult in Northern Uganda, instead of focusing on the morality of Dominic Ongwen's goodness or badness and if he deserves sympathy or not. This (re)casting of Dominic Ongwen as a perpetrator symbolizes international criminal justice representational iconography of guilty or not guilty, and finality.

Notwithstanding how international criminal law frames a victim or a perpetrator, our research has shown that Ugandans seriously wrestle with Dominic Ongwen's dual victim/perpetrator status, leading to initial debates on whether he should be prosecuted or not, and if convicting him for the alleged crimes will produce meaningful justice to the people in Northern Uganda who have experienced mass violence at the hands of the LRA.<sup>15</sup> The stakes are very high for both the affected constituents and for the legitimacy of the international criminal justice project. On one hand, some Ugandans have argued that the LRA leadership, particularly Joseph Kony, who ordered Ongwen's abduction, should be responsible for Ongwen's crimes and that the ICC should devote its energy and resources in prosecuting Joseph Kony, and set Dominic Ongwen free. On the other hand, some Ugandans argued that Dominic Ongwen, like other abductees, reached an adult age where he ought to have made a decision to quit the LRA and he must be held accountable for the crimes he committed as an adult (Refugee Law Project 2015, 6). This re-echoes the ICC key motif for seeking to hold Dominic Ongwen individually accountable. Indeed, the Trial Chamber of the International Criminal Court in her judgment rejected the idea that Dominic Ongwen suffered from a mental defect which made it difficult for him to quit the LRA. Instead, the Trial Chambers held that Dominic Ongwen was a methodical commander who could have escaped from the LRA if he wanted, but he chose not to do so (*The Prosecutor v. Dominic Ongwen* [Trial Judgment] 2021).

15 (Refugee Law Project 2015). Also see Stauffer's (2020) arguments on this issue and also Baines (2008).

The underlying assumption of the doctrine of responsibility in international law is that the responsible agent is free, committing a deed without restraint or compulsion, knowingly, and deliberately. The ICC charges against Dominic Ongwen therefore focus on his individual criminal responsibility, distinct from that of his Commander – Joseph Kony. Attributing responsibility for crime becomes difficult in situations in which the actions normally known to be a crime are committed by agents whose freedom to control their actions or whose capacity to make fully informed and reasoned decisions are debatable – that is, the case with Dominic Ongwen. Generally, in cases in which serious criminal acts are committed and it can be proven that the act was unintentional or that the agent did not have the mental capacity to understand the nature and consequences of the act, the agent is often rightly exonerated or excused of responsibility because he or she lacked the necessary *mens rea* or intentionality. Intention is a key element in determining if a crime was committed or not and is the difference between charges of murder or manslaughter, or between a conviction for acting with malice, for negligent homicide, or exoneration for acting out of justified self-defense. Determining mental capacity for Dominic Ongwen in the violence committed by the LRA in Northern Uganda is problematic and the Trial Chambers of the International Criminal Court wrestled with it and found that Dominic Ongwen did not suffer a mental disease or defect. The Trial Chambers held that Dominic Ongwen was a methodological commander, with full mental capacity in place, and that the trauma he suffered when he was captured as a 9-year-old did not lead to a mental disease or defect and therefore had no lasting consequences on him (*The Prosecutor v. Dominic Ongwen (Trial Judgment)* 2021).

Furthermore, child soldiers and the contexts in which they usually operate present a challenge to conceptualizing responsibility with a number of factors that can each separately be seen to diminish individual responsibility. Coercion, a feature in the lives of a majority of child soldiers in LRA's custody, is a condition that is quite aptly regarded as diminishing or absolving personal responsibility for actions if a reasonable person could be understood to see no alternative to committing the criminal act when faced with a serious and credible threat. That has been the central argument canvassed by Dominic Ongwen's legal defense team and was rejected by the Trial Chambers of the ICC.

The fact that an act was committed as part of collective wrongdoing rather than against a backdrop of a well-ordered and peaceful environment also affects how acts of atrocity and their perpetrators ought to be

judged. Collective action seen as a diminishing factor is not grounded in general domestic criminal law principles – indeed, domestically, the fact that action is committed as part of collective wrongdoing can be considered an aggravating factor, such as in regards to gang participation – but takes on a different meaning when the collective action is widespread and systematically part of the contemporary social order. The mitigating condition of collective action, given too little attention in debates of international criminal law, is particularly significant to a discussion about child soldiers because young people, as a category, are arguably inherently more easily influenced by social norms and pressure (Fisher 2013, 63).

Given that these three factors exist in combination for many child soldiers, it is critical to discuss the personal responsibility of young contributors in the context of these heinous atrocities. This dilemma was captured in the mandate of the Special Court for Sierra Leone to try “persons most responsible.” This term is meant to include political and military leadership, as well as people selected due to “a sense of the gravity, seriousness or massive scale of the crime(s) committed.”<sup>16</sup> The former Secretary-General of the United Nations – Kofi Annan – made it clear that the term “most responsible” need not exclude children between 15 and 18 years old, noting that the severity of the crimes they have committed qualifies them to be under the jurisdiction of the court. The Court’s jurisdiction over child soldiers was the most contentious aspect of the report. The Secretary-General recognized that “the possible prosecution of children for crimes against humanity and war crimes presents a difficult moral dilemma.”<sup>17</sup>

Despite the widespread use of child soldiering, which could be said to be a phenomenon that gained momentum in the 1970s, the issue of child soldiers, for the most part, was overlooked by the main texts in the laws of armed conflicts. The Geneva Conventions focused on children as civilians and not as combatants. While children are not specifically included in the special protection provision,<sup>18</sup> multiple references to

16 See the Report of the Secretary General on the establishment of a Special Court for Sierra Leone, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf>, at 7, last accessed December 31, 2016.

17 *Ibid.*

18 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949 [Hereafter ‘Fourth Geneva Convention’], Article 16: “The wounded and the sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.”

children throughout the articles<sup>19</sup> ensure their inclusion, however implicit. In all the Geneva Conventions, no definition of “child” or “children” is given, but in a number of articles an age limit of fifteen is specified<sup>20</sup> and the implication seems to be that for the purposes of the Convention a child is a person under fifteen years of age. Children under fifteen years of age who participate in hostilities are not necessarily “unprivileged belligerents.”<sup>21</sup> Age is not the criteria used to determine their status, rather the same criteria used to determine whether any other persons are entitled to participate directly in hostilities or not. Children under the age of fifteen years are not prohibited from participating in hostilities, as are civilians<sup>22</sup> or mercenaries,<sup>23</sup> although, if they fulfil the relevant criteria, children may be civilians or mercenaries or members of some other group of unprivileged belligerents, such as spies, whose activities, although not amounting to direct participation in hostilities, render them liable to punishment under the domestic law of an adverse party. However, a child cannot be punished simply for having borne arms in an international armed conflict (Happold 2005).

There seems to be an emerging international legal consensus that fifteen years is the determinative age for criminal responsibility for recruiting child soldiers, though the Rome Statute did not specifically address the culpability of child soldiers for war crimes. Pursuant to the Rome Statute of the International Criminal Court, it is a war crime for any national army or other armed groups to conscript or enlist children under the age of fifteen, or to use these children to actively participate in hostilities.<sup>24</sup> Similarly, the Statute of the Special Court for

19 Specifically Articles 14, 15, 17, 23, 24, 38, 50, 51, 82, and 89. Article 14 provides for “safe spaces” for children; Article 17 provides for the evacuation of children from war-torn areas; Article 50 provides for the proper identification of children.

20 See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

21 For a description of the distinction, see Baxter (1951) and Draper (1971).

22 Who lose their protected civilian status if they directly participate in hostilities and who may, subject to the limitations imposed on an occupying power in GC IV, be punished for doing so under that party’s municipal law.

23 Who, under Article 45 of AP I, are not granted POW status on falling into the power of an adverse party and may similarly be punished for their activities. The customary status of this provision has, however, been doubted.

24 Rome Statute of the International Criminal Court, art. 8(2)(b)(xxvi), July 17, 1998, 2187 U.N.T.S. 90. Article 8(2)(b)(xxvi), relating to international conflicts, prohibits “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.” *Id.* Article 8(2)(e)(vii), relating to conflicts not of an international character, prohibits “conscripting or enlisting

Sierra Leone criminalizes the recruitment of child soldiers below age fifteen.<sup>25</sup>

Apart from the prosecution of Dominic Ongwen, humanitarian and human rights groups were successful in preventing the prosecution of any child soldier under age eighteen (Grossman 2007, 358). The Rome Statute does not have jurisdiction over war crimes committed by anyone under the age of eighteen years.<sup>26</sup> In Sierra Leone, where both sides to the civil war used child soldiers extensively and many of these children committed terrible war crimes, the prosecutor of the Special Court declined to prosecute any person below the age of eighteen, even though the Statute of the Special Court allows for the prosecution of persons between the ages of fifteen and eighteen years; but if the child soldiers were convicted, they could not be imprisoned.<sup>27</sup>

Other than Sierra Leone, the Court of the UN Transitional Administration in East Timor (“UNTAET”) was authorized to try offences committed by minors between ages twelve and eighteen. Under the Court’s rules of criminal procedure, minors between twelve and sixteen years of age were liable to prosecution for criminal offences in accordance with UNTAET regulations on juvenile justice. However, they could only be prosecuted for the most serious offences, such as murder, rape, or a crime of violence in which serious injury is inflicted upon a victim.<sup>28</sup> Minors over sixteen years of age were subject to prosecution under adult rules of criminal procedure. However, in accordance with the CRC, this was mandated to safeguard the rights of minors

children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.” Id. art. 8(2)(e)(vii).

25 Statute of the Special Court for Sierra Leone, art. 4(c), January 16, 2002, 2178 U.N.T.S. 145. Article 4(c) prohibits “[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.”

26 Rome Statute of the International Criminal Court, art. 26, July 17, 1998, 2187 U.N.T.S. 90.

27 In testifying, Special Court Prosecutor David Crane stated, “when I was the chief prosecutor at the International War Crimes Tribunal in Sierra Leone, I chose not to prosecute child soldiers, as it is my opinion that no child under the age of 15 can commit a war crime.” Subcomm. on Int’l Hum. Rts. Of the Standing Comm. on Foreign Affairs and Int’l Development, 2d Sess., 39th Can. Parl., I (May 13, 2008), available at [www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3494571&Language=E&Mode=2&Parl=39&Ses=2](http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3494571&Language=E&Mode=2&Parl=39&Ses=2), last assessed December 14, 2015. In fact, he declined to prosecute anyone between fifteen and eighteen as well.

28 Transitional R. CRIM. P. § 45.1, U.N. Do. UNTAET/REG/2000/30 (September 25, 2000).

and to consider their status as juveniles in every decision made in a case.<sup>29</sup>

In the domestic criminal forum, child protectionism initiatives did not gain more traction unlike in the international criminal forum. In the wake of the 9/11 attacks, the United States of America held at least twelve juveniles at Guantanamo Bay, Cuba (Worthington 2008). These twelve juveniles included Omar Khadr, a fifteen-year-old child soldier, which was widely publicized. Khadr was captured and detained as an unlawful combatant after a firefight with American troops in Afghanistan which led to the death of an American soldier. Khadr was quickly classified as an unlawful combatant, was charged with murder and attempted murder under the Military Commissions Act,<sup>30</sup> and spent nearly 13 years in detention. The Military Commissions Act provides for the death penalty in cases like that of Khadr.<sup>31</sup> Since the US did not ratify the Protocols Additional I and II to the Geneva Conventions, Khadr's only legal protections were under Common Article 3 of the Conventions. Common Article 3 does not preclude the death penalty for child soldiers classified as unlawful combatants. Because Khadr is a Canadian citizen, however, the Canadian government successfully pressured the US not to pursue the death penalty in this case.<sup>32</sup>

In 2002, the Ugandan government brought treason charges against two boys, aged fourteen and sixteen, who were members of the LRA (Human Rights Watch 2003). In a letter to the Ugandan Minister of Justice, Human Rights Watch urged that the government drop the treason charges and release the boys to a rehabilitation center (Human Rights Watch 2003). Human Rights Watch also requested that the government issue a public statement that children would not be subject to treason charges (Human Rights Watch 2003). The Ugandan government decided not to proceed in these cases, neither did the government establish a national policy. However, in 2009, the Ugandan government charged another child soldier with treason (Human Rights Watch 2009); he was a child who, according to Human Rights Watch, was abducted at

29 *Ibid.*, § 45.4

30 Military Commissions Act of 2006, Pub. L. No. 109-366, §948(a), 120 Stat. 2600, 2601 (2006).

31 *Ibid.*, § 948(d) ("A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.").

32 See Farley (2007) and Happold (2008).



age nine by the rebel forces of the Allied Democratic Front and was arrested at age fifteen (Human Rights Watch 2009).

From these discussions, acquiring the label of victim or perpetrator in international law and policy, and how and when this occurs, depends not only on the attributes of victims themselves but also on the reactions of states who might prosecute them (Holstein and Miller 1990; Rock 1994). However embedded, perceptions of the victim status of child soldiers remain somewhat contingent upon the nationality of those persons injured by their conduct. Child soldiers who commit violence – for example, terrorist attacks – against Western targets are seen less like deluded children and more like menacing adults (Drumbl 2012, 3).

### 3.4 Constructing the “Ideal Victim” in the Context of the Violence in Northern Uganda

The “ideal victim” is the representation of society’s view of what a victim should be. The ideal victim reflects a common conception of a person who is innocent, vulnerable, very young or a woman, and a good citizen who has been attacked by a big, bad perpetrator. The society’s construction of the “ideal victim” serves to contrast the “wicked” perpetrator who requires punishment and fits into retributive discourses, simplifying and distorting the reality of crimes where such identities do not always exist in practice (McEvoy and McConnachie 2013, 502). Furthermore, the construction of the “ideal” victim serves to present victims as passive and vulnerable (McAlinden 2014, 22). This conception robs victims of their autonomy and agency and, following Miriam Ticktin (2020), it emphasizes innocence rather than culpability.

The ideal victim construction as “innocent” is widely disseminated by the media and plays an important role in the constant staging of good against evil (Elias 1983, 1986, 1993; McShane and Williams 1992; Viano 1992). This construction has influenced not only public opinion but also the law. For instance, German victim compensation law allowed compensation only to victims of violence who had satisfactorily cooperated with the police and who had not been involved in any reprehensible activities (Tampe 1992, 188–189). The use of the victim label within conflict and post-conflict societies can perpetuate a very powerful moral conception of the victim. Participants in conflicts can portray themselves as collective victims to get recognition of the victim label and its corollary benefits of being seen as the “good guys” in the conflict who are deserving of sympathy and support, and innocent of any crime (Bar-Tal et al.



2009). There is also a danger of “moral relativism,” particularly with international crimes, whereby an individual or group blame their situation, context, or structural factors for committing such crimes, and as a result legitimize the violence committed against individuals and deny recognition of certain victims (McEvoy and McConnachie 2013, 502).

In the context of the massive violence in societies such as Northern Uganda, the baseline argument for framing child soldiers as “ideal victims” is principally based on an argument that the society failed to protect them from being abducted by the LRA, and the notion of child soldiers as victims is fundamentally dependent on the idea that children are “the weakest members of society and thus entitled for special protection” (Vaha 2008, 13). However, this is not without some controversies. Some argue that if child soldiers are not legally responsible before age 18, children are morally responsible (Vaha 2008, 18). Brocklehurst concurs, articulating that focusing on child soldiers as only victims strips them of their agency as moral and political beings (Vaha 2008, 18). Sometimes, child soldiers choose to willfully “suppress their morality to survive or gain a sense of power and control over their lives” (Baines 2009, 178). Some former child soldiers recall going on “autopilot” or “outside of their bodies” when forced to kill; others recall committing atrocities because they were curious if it would “appease spirits,” as they were told by their commanders (Baines and Ojok 2008, 15).

The innocence and the vulnerability of the child soldiers are the dominant themes in the contemporary humanitarian discourse on child soldiering and their victimhood. These contemporary social, political, and legal constructions of victimhood status of child soldiers tend to criminalize particular military campaigns. The image of the child as created and burnished by international humanitarian groups, agencies of the United Nations, and the emanating international law policies are heavily premised on the omnipresent predatory adult recruiter, and this characterization is targeted particularly at rebels and insurgents – the armed groups that are most reliant on child soldiers whose military activities are thus vilified.

In advancing this claim, it is frequently argued in a contradictory manner that children under the age of eighteen associated with rebels and insurgent groups were either abducted or conscripted through force or threats of serious imminent injury; or the child soldiers joined the insurgent groups as a means of survival; or they were born into the insurgent group. In this discourse, it is vigorously advanced that no child soldiers have the capacity to volunteer or to consent to serve with rebel or

insurgents. Child soldiers are not capable of exercising any real measure of choice about recruitment and, therefore, volunteering is merely an illusion (Hart 2006, 7).

The dominant explanatory account is that child soldiers, like Dominic Ongwen, who commit extraordinary international crimes are forced by commanders and, hence, operate under extreme duress; they are incapacitated by use of narcotics and alcohol; they are brainwashed and (re)socialized by the endemic violence that swallowed them, and they are plagued by the fears of brutal punishment. Therefore, moral responsibility should be excused for committing these grievous crimes (Drumbl 2012, 15).

The LRA is tagged as a deranged militia that steals innocent children from their families and communities. And in the hands of the LRA, abducted children are no more than “instruments of war” and “the weapon of choice” (Ogunnu 1999). In this explanatory account, child soldiers are constructed as victims, albeit *faultless, passive victims*. In the barest caricature of this imagery, child soldiers or children associated with armed forces are depicted as pawns of powerful warlords. Child soldiers are constructed as “traumatized children,” “permanently scarred,” “lost young souls,” and are generally cast as wholly dependent, helpless, and victimized, therefore deserving not condemnation but our deep compassion and sympathy (Denov 2010, 8). Dominic Ongwen’s early life experience would fit this explanatory account well. He was abducted at an early age and was “brainwashed.” In the opening statement of the Prosecutor in the case against Dominic Ongwen, Ongwen was characterized as a sadistic leader of the LRA who ruthlessly implemented the rebel’s group policy of abducting children to use as labor, soldiers, or sex slaves. Of course, the “victimhood” of Ongwen was not raised by the Prosecutor in her opening statement and the Trial Chambers of the ICC in her judgment ignored his victimhood by making a clean break between his victimhood when he was abducted as a young boy and his perpetration of international crimes as an adult. In fact, the Trial Chambers recognized Dominic Ongwen’s suffering while in captivity as a child and youth but at the same glossed over the impact of captivity on him by dismissing its legal relevance, stating that “this case is about crimes committed by Dominic Ongwen as a fully responsible adult and as a commander of the LRA in his mid to late twenties” (*The Prosecutor v. Dominic Ongwen [Trial Judgment]* 2021)

The preceding narrative on child soldiering demands further interrogation. We also note that the vast majority of child soldiers are not

forcibly recruited or abducted into rebel/insurgent groups. Some child soldiers may join rebel or insurgent groups for reasons ranging from economic advancement, the pursuit of political or ideological reforms, to inclusion in occupational networks. In Liberia, children were among the first to join the armed groups and in the Palestinian intifada they have been the catalysts of violence (Cohen and Goodwin-Gill 1994, 23). The experiences of child soldiers contrast sharply with the international legal imagination as carefully crafted, packaged, and advanced by humanitarian organizations. In many interviews conducted by social scientists, former child soldiers often said that they volunteered for service, yet these statements are usually excluded by interviewers because they do not fit the pre-existing theory on child soldiering (Drumbl 2013, 133). Even the Machel report argues that not all children in combat should be seen merely as victims (Machel et al. 1996, 2). Indeed, perhaps for children, as well as adults, it may be true that the “least dangerous place to be in a war today is in the military” (Nordstrom 1992, 271).

The relatively few published studies with current and former child soldiers carried out by anthropologists in the field argue that the experience of children at war has little connection with the depictions in the humanitarian literature. For instance, Paul Richards’s interviews with male and female child combatants in Sierra Leone show that “many under-age combatants choose to fight with their eyes open, and defend their choice, sometimes proudly. Set against a background of destroyed families and failed educational systems, militia activity offers young people a chance to make their way in the world.” Krijn Peters and Paul Richards further argue that, given these circumstances, child soldiers should be seen as “rational human actors” who have a “surprisingly mature understanding of their predicament” (Peters and Richards 1998).

Despite different attempts by different interest groups to portray one or other of a few fairly uniform depictions of child soldiering, the concept and the individual experiences of child soldiers are far from being consistent or standardized. The manner of recruitment, the level of identification with the cause and the fighting group, and what it means to be a child soldier differs drastically from context to context and from individual to individual within the same environment (Fisher 2013, 18). Therefore, no simple model can account for the presence of children on the battlefield or the conditions under which they fight. The specifics of history and culture shape the lives of children and youth during peace

and war, creating many different kinds of childhood and many different kinds of child soldiers (Rosen 2005, 132).

The construct of a perpetrator and a victim in international law therefore draws from the notion of belonging to a group or acting individually and being a direct victim or indirect victim as envisaged by the institutional norms. However, these different categorizations do not resolve the deep problem that characterizes international criminal law – that of protecting victims and punishing perpetrators.

### 3.5 The Constructive Tension in the Victim–Perpetrator Dichotomy in Northern Uganda

In the context of mass violence, victims and perpetrators are usually framed as two completely separate and distinct groups of people. Generally, there are the victims and there are the perpetrators with no grey areas in between. Also inherent in this narrative is the assumption that both groups are homogeneous: Victims and perpetrators are referred to as if they are all the same. *The* victims and *The* perpetrators. Further, in the worst cases, the two are set up as diametrically opposed – that is, victims versus perpetrators (Borer 2003). This has especially been the case in the debate surrounding amnesty in Northern Uganda and other societies emerging from conflicts. However, what may be considered a factor of victimhood in Northern Uganda also possesses elements of perpetrator-hood, and vice-versa; the categories overlap, revealing the impossibility of distinctly framing former LRA members into the social constructs of “victim” and “perpetrator,” and these factors demonstrate the complexity of former child soldiers abducted by the LRA in Northern Uganda.

The divide between a “victim” and a “perpetrator” is sometimes blurred when individuals are forced to comply and commit certain crimes under a direct threat. For instance, new abductees of the LRA have to go through an initiation and spiritual rituals where they are forced to kill, maim, and inflict violence on a friend or family member and fellow abductees who attempted to flee (Wessells 2006, 14), to prove their loyalty to Kony and, in the process, they become desensitized to atrocities and normalize LRA’s violent tactics. The penalty for not doing so was often that they themselves were raped, mutilated, or killed. Testimonial evidence shows that many abductees who did not comply with such orders were killed. The initiation process is intended to perpetuate fear among the abductees and reinforce the importance of

obedience (Boothby 2006, 248; Schauer and Elbert 2010, 321–322). After undergoing this initiation process, some child soldiers stated how violence became “normal” and even “arousing” as they acclimated to their environment (Hermenau et al. 2013, 2).

Beyond the initiation process, abductees are equally brainwashed by the LRA to support its ideologies. Most brainwashing occurred during prayer time and is laced with references to the Holy Spirit by Joseph Kony. Most LRA members believed that Joseph Kony was possessed with evil spirits which protected him and enabled him to accurately predict the future. Since most new abductees were children, brainwashing was more effective, and unwilling abductees were transformed into eager fighters who believed that every command from Joseph Kony was divinely inspired and must be immediately obeyed.

The complexity of the victimhood or perpetrator-hood of child soldiers come to the fore when tracked by the time spent in and their dedication to an army or an insurgent group. In a survey of child soldiers abducted into Mozambique’s rebel group Renamo, all the child soldiers who had been in the rebel group for less than six months identified themselves as “victims” rather than “members” of the rebel group, whereas those who had spent more than a year with the rebel group tended to identify more with the group itself. The second group of children expressed pride in their rank and power in the rebel group (Boothby 2006, 249–250). However, the idea of a chronological progression of child soldiers from victims to perpetrators has been critiqued. Such linear progress does not fully represent the complex, intertwined, and mutually reinforcing acts of violence of which they were both victims and perpetrators (Baines 2009, 16).

A nuanced view ought to be taken to Dominic Ongwen, as the Government of Uganda and the international community failed to protect him and an estimated 60,000 others during the LRA war in Northern Uganda. Dominic Ongwen’s indoctrination and mistreatment during captivity was a punishment in itself and can be seen as double jeopardy for the ICC to further punish him after being a former child soldier (Refugee Law Project 2015, 10). Bishop Mark Baker Ochola II framed the double jeopardy argument this way: “Ongwen is a victim of circumstances; so if the world wants to punish him twice, then that is another injustice. What we know is that when LRA abducts a child, the first thing they do to that child is to destroy his/her humanity so that he/she becomes a killing machine in the hands of the LRA” (Refugee Law Project 2015, 10–11). During the sentencing hearing, Dominic Ongwen

spoke extensively for more than one hour where he gave chilling accounts of how he was made to kill people, drank human blood, was forced to commit inhumane acts while a minor, and the life changing consequence on him. Yet, the ICC judgment failed to deal with the impact of trauma and Dominic's "loss of humanity," and instead found him not to be damaged and that immediately he turned eighteen he had the agency to decide what is morally right from what is morally wrong, including choosing not to escape like other abductees (*The Prosecutor v. Dominic Ongwen* [Trial Judgment] 2021).

Most LRA abductees, including Dominic Ongwen, lived in captivity under daily threats and scare tactics and, in the process, they were transformed into unwilling perpetrators who committed crimes to live (Fox 2016, 34). While some may have chosen to be martyrs by confronting the LRA leadership or attempted to flee and sacrificed their lives for their morals, a vast majority, who are victims of constrained choices, succumbed to LRA's threats and remained behind in the jungle committing more heinous crimes (Fox 2016, 34).

The local communities in Northern Uganda affected by LRA's atrocities are also implicated in the construction of the complex victimhood and perpetrator-hood of child soldiers including Dominic Ongwen. Importantly, most of the local communities lost their children to LRA's abduction, and these children are now weaponized to harm them. Their construction of the victimhood of the abducted children constantly shifts depending on the political interest at stake. During the conflict, when the paramount need was peace, most local communities constructed LRA members solely as victims with the belief that amnesty for LRA members would lead to peace (Agger 2012, 1; Baines 2009, 10). Now in peacetime, the affected local communities offered a nuanced view on the complexity of the LRA members.

Members of local communities are conflicted on how to frame the status of children "born in the bush" or those who came of age there. Opinions are sharply divided on their victimhood or perpetrator-hood status. Some believed that this category of child soldiers are victims as their existence in the bush was through no fault of their own (Fox 2016, 49), while others are unwilling to consider the complexity of children born in the bush but firmly believe that those born in the bush are nothing but a perpetrator of the highest level because they know nothing beyond a life of violence (Fox 2016, 49).

The local construction of the victimhood or perpetrator-hood of Dominic Ongwen is complicated and reflects each community's unique

relationship to him. For instance, the community members in Lukodi – the direct targets of Ongwen’s alleged crimes – see him as a perpetrator and nothing more (Fox 2016, 51). The Lukodi community members were also promised reparations if Dominic Ongwen was convicted at the International Criminal Court. For the Lukodi community members, healing, forgiveness, and justice will be achieved if Dominic Ongwen is convicted by the ICC. Whereas, for members of the Tyena Kaya there exist personal stakes in the prosecution of Ongwen at the ICC, as many see his complexity uninhibited by a self-interested social construction (Fox 2016, 52).

In the discourse on the complexity of victimhood or perpetrator-hood of child soldiers in Northern Uganda is the invisibility of girl child soldiers. Despite their seeming invisibility, girls are currently used in fighting forces far more widely than is reported. Between 1990 and 2003, girl child soldiers were associated with fighting forces in fifty-five countries and were active in conflicts in thirty-eight countries around the globe (McKay and Mazurana 2004). While girl child soldiers appear to be present most often in armed opposition groups, paramilitaries, and militia, they are also present in government forces. These females continue to be involved in fighting in forces in Central African Republic, Chad, Colombia, Cote d’Ivoire, the Democratic Republic of the Congo, Nepal, Philippines, Sri Lanka, and Uganda (Child Soldiers International 2008). While the proportion of females in armed groups and forces varies according to geographic region, it generally ranges from 10 to 30 percent of all combatants (Bouta 2005). In recent conflicts in Africa, girls are said to have comprised 30–40 percent of all child combatants (Mazurana et al. 2002, 105).

Girl child soldiers in armed conflicts deploy a variety of strategies to protect themselves and negotiate their security while associated with fighting forces. Such strategies include the use of small arms, through “marriages” to powerful commanders, through the perpetration of severe acts of violence, or through subtle and bold acts of resistance (Denov 2004, 15). These strategies challenge the common views that female child soldiers are mere victims of conflict and instead demonstrate girl child soldiers’ unique capacity for agency, resourcefulness, and resilience. Further, because they live in a culture of violence, girl child soldiers, through a combination of indoctrination, terror, de-sensitization, and military training, often become active participants in conflicts (Denov and Maclure 2006, 73). It has been argued that girl child soldiers are sometimes simultaneously victims and perpetrator and continually drift



between committing acts of violence and being victims of violence perpetrated by others. As a result of the complexities of their experience, they sometimes embrace the power of being a perpetrator and the rewards associated with their violent actions through extreme acts of violence which seem to ensure the girl child soldiers' survival, reducing their own victimization, and at times assuring them a higher status in the military ranks (Denov 2004, 15).

Despite the historical account of girl child soldiers participating in military activities, in current discussions and analyses of armed conflicts, the invisibility of girls has remained firmly intact. Girls' experiences of war have accounted for "the smallest percentage of scholarly and popular work on social and political violence" (Nordstrom 1997, 5) and the diverse roles girls play both during and following the war have been barely acknowledged (Coulter 2008; Denov and Maclure 2006; Fox 2004; Kearns 2003; McKay and Mazurana 2004; Park 2006; Schroven 2006; Veale 2003). Indeed, officials, governments, and national and international bodies frequently cover-up, overlook, or refuse to recognize girls' presence, needs, and rights during and following armed conflicts (McKay and Mazurana 2004).

Even when girls within armed groups are analyzed, whether in the realms of academia, policy, or the media, there has been a tendency for them to be depicted predominantly as silent victims, particularly as "wives," in tangential supporting roles, and as victims of sexual slavery (Coulter 2008). While these gendered portrayals undoubtedly represent the experiences of some war-affected girls, to characterize girls solely as victims of sexual violence and/or "wives" presents a distorted picture of their lived realities. Moreover, although highlighting girls' victimization is critical to advancing the understanding of girls' experiences of armed conflicts and the profound insecurities, human rights abuses, as well as the challenges they face both during and following armed conflicts, a danger is that girls become personified as voiceless victims, often devoid of agency, moral conscience and economic potentials (Denov 2010, 13).

No doubt, the reliance on fixed imagery reveals the limitation of adequately capturing the complexity of girls' and boys' involvement in armed conflicts. Furthermore, the dynamic of abstracting children from their historical, cultural, and political location, as already inscribed within dominant ideologies and cultural representations of childhood, is unhelpfully reproduced in international law and policy discourse.

As our analysis has shown, there has been a muddying of the waters in the divide between the two concepts and we argue that the current binary divide provides critical challenges for international law scholars and



theorists. Also, these two categories of persons are highly problematic for countries that have been battered by years of armed conflicts or authoritarian regimes, and policies toward these two categories are difficult to determine and sometimes constitute constraints on the formulation and implementation of peace agreements regarding amnesty, accountability, memorialization, etc. It can be argued that the crux of divergence in peace settlements is the question of how to deal with victims and perpetrators, which is important in the negotiations leading up to a successful peace process, and international law has not offered any concrete solution other than the binary approach to the concepts.

### 3.6 Conclusion

The culpability of child soldiers for their actions has been highly debated: Should they be responsible or simply seen as innocent tools of their superiors. A very important question to be asked is where the line between childhood and adulthood starts and how the international criminal justice project locates that line. But it is also to what extent the responsibility of the state to protect Ongwen renders his situation one in which he has already served his punishment.

It is clear that child soldiers are problematically constructed through the logic of extremes – either as extreme victims, extreme perpetrators, or extreme heroes. This chapter has problematized the concepts of victims and perpetrators in Northern Uganda with a focus on Dominic Ongwen. No doubt, Ongwen's trial and subsequent conviction at the International Criminal Court raises vexing justice questions which we have explored in this chapter. It may be easier and more gratifying for international law criminal lawyers and scholars to think in terms of absolutes rather than in many shades of grey. However, this case study shows that most victimization, particularly the victimization of child soldiers, is rarely a simple process with only discreet, easily recognizable perpetrators and victims. The categorization of these two notions remains much more complex and contested than is typically acknowledged. In many ways, the imposition of an either/or framework can be the source of an epistemic violence that problematically rests on the ability to produce a clear victim/perpetrator dichotomy. Instead, their experiences and identities fall within the messy, ambiguous, and paradoxical zones of all three sides of that triangle, which proves to be one of the challenging aspects to contend with in rebuilding their lives after armed conflicts. Therefore, nuances and complexities must be brought to the narratives of victimization in the international criminal justice project because these narratives

matter in shaping the afterlife of violence, the world in which people must continue to live and deserve to thrive.

Crucial to this discourse is how international criminal justice produces extremely polarized outcomes depending on where one is located. Does international law need to be more nuanced to capture the complexity that is inherent in situations of political violence? If “truth” is the first casualty of war, then complexity must surely be the second (Smyth 1998, 45). Ongwen represents the complex status of many other child soldiers like him: young boys and girls who grew up in insurgent groups and assumed command positions, perpetuating the same crimes of which they are victims. Unfortunately, none of their unique statuses are recognized in current international criminal justice debates, yet they occupy a center stage in justice pursuits that, if they are excluded, might have far-reaching repercussions for the next generation of perpetrators – generations who have nothing to lose from participating in armed conflicts. Thus, recognizing their complex status opens up room for identification of others. This includes children born of rape who have been raised within insurgent groups and who are now child soldiers who carry out gruesome attacks on others.

Dominic Ongwen is not and should not be treated as a case of one person in one exceptional circumstance, but rather an illustration of the moral complexities imbued in the “victimhood” of child soldiers. In enhancing the legitimacy of the international criminal justice project, a contextual based discussion of how the victimization of child soldiers occurs will potentially reveal that victim or perpetrator status of child soldiers is not a useful organizing rubric. Rather, an approach that balances the political context of violence and failure of the state to protect its citizens alongside the agency of an individual’s acts is a more useful entry point into how we consider questions of responsibility. Ultimately, the communities in question should be central to the deliberation of categories, contexts, and moral compasses used to determine how to understand who should bear responsibility and how that should be determined. This is where international criminal law needs creative solutions that take into account the way that histories of violence are much bigger than measuring the capacity of individuals to act and their individualized culpability.

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## Rehabilitating Guerillas in Neo-Extractivist Guatemala

KARINE VANTHUYNE AND MARIE-CHRISTINE DUGAL

We do not want to forget  
Even when we forgive and reconcile  
The memory of what happened  
It will always be the reference  
Of our present and future life  
In the testimony of so many martyrs  
We will find hope and strength  
To open new paths  
As it happened with the first Christians  
Who found in the martyrdom of their brothers  
The strengthening of their faith.

(Bishop Juan José Gerardi, 1995, quoted in ODHAG 2006,  
103–104 [our translation])

### 4.1 Introduction

At a 2014 meeting of anti-mining activists, organized and sponsored by a human rights non-governmental organization (NGO), the *Centro de Acción Legal, Ambiental y Social de Guatemala* (CALAS, Guatemala's Centre for Legal, Environmental and Social Action), a middle-aged male, Alberto,<sup>1</sup> declared: "From a very young age, 17 years old, I was a revolutionary" (our translation). The audience of fellow leaders of Central American anti-mining organizations boastfully applauded and cheered his revelation. From his first days in the *Ejército Guerillero de los Pobres* (EGP, Guerilla Army of the Poor), Alberto continued, he "struggled for the rights of (. . .) my people, given the way they mistreated Indigenous peoples, discriminated against us, enslaved us, never listened

<sup>1</sup> When the full name is cited, it refers to the person's real name; when only a first name is cited, it refers to a pseudonym.

to us” (our translation). In the 1990s, however, fearing for his life, he took refuge in Victoria, Canada, with fellow guerillas. Twenty years later, after hearing about the construction of a mine in his hometown against his people’s will, he decided to return to Guatemala. In his words: “My conscience did not leave me free, hearing about all the injustices that my people still faced in Guatemala, so I decided, following a communication with God, to come back” (our translation). Alberto knew that, in coming back, he was risking his life again. During Guatemala’s internal armed conflict (1960–1996), “thousands [of my companions] were disappeared. Nothing was ever found out about what happened to their bodies, (...) because they were executed as ‘XX’” (our translation). Yet, risking his life was a sacrifice he was willing to make because it was for truth and justice. “Dr Yuri,” Alberto concluded: “. . . knew that at any moment they were going to threaten his life. Because it has always been that way, how they killed Jesus Christ. Thousands of men have died for truth and justice. Who am I not to die for truth and justice?” (our translation).

The CALAS 2014 meeting took place just outside Guatemala’s capital in Mixco, at the progressive Catholic *Instituto Mixto Intercultural Santiago* (Mixed Intercultural Institute Santiago, formerly the *Instituto Indígena Santiago*, Indigenous Institute Santiago). It began with the presentation of a seventeen-minute-long documentary featuring Yuri Melini, then director and founder of CALAS. In September 2008, Melini, a medical surgeon by training, was shot seven times as he was leaving his home. The documentary shows Melini celebrating his survival and recovery with close friends and family members at his neighborhood church, one year after his attack. Standing by the altar, with the priest beside him, Melini states:

I spent 22 days in an intensive care unit. I survived 4 surgeries, 18 blood transfusions. (...) The Lord has given me this new life to give his testimony. To fight impunity, to continue building a better country, to defend nature. Not one step back. I can’t be a coward, be thinking about leaving the country. I have a lot to do here. I am called to participate in this country. We cannot allow impunity and violence to destroy this country, and interest groups entrenched within [our democratic] institutions to destroy us as a society. (Caminos del Asombro 2009, our translation)

The documentary presentation was followed by panels featuring male and female activists who, like Alberto, were leading local opposition movements to mining in El Salvador, Guatemala, and Honduras. They

denounced the stigmatization, threats, violence, and criminalization they all faced as a result of their political work. In so doing, many of them referred to Melini's testimony to underline not just the legitimacy, but also the sacredness of their political struggle and divine calls to go on. For instance, Anita, a young Guatemalan female activist, declared:

In comparison to what happened to Yuri Melini, what happened to me is nothing, but (...) even if I were to suffer graver consequences, I would continue to fight to defend life, for this is why we are here, what God put us in this world for. (...) Many have ended up on the cross for the same cause, and as Dr. Melini said, (...) as brave men and women we must keep going. We can't stop, we must keep going (our translation).

The themes of divine callings, martyrdom, and calls to go on that Alberto, Yuri, and Anita mobilized, as Peterson and Peterson (2008) note, provide meaningful frames for agency. Not only do they connect people to a common good, by turning personal battles into a sacred struggle that transcends them as individuals, but they also identify "divine power and intentions as acting in human history," thus providing a target towards which their personal battles are moving: "the kingdom of God" (Peterson and Peterson 2008, 512). In addition, Christianity's worship of a god who dies in apparent defeat, yet resuscitates, resonates well with activists like Alberto, Yuri, and Anita who experience state repression. As Peterson and Peterson (2008, 518) argue: "It enables them to view setbacks and painful losses not as evidence that their cause is either unjust or ill-fated, but rather that they are on the correct path, following in fact the trajectory of Jesus who told his disciples to expect difficult times."

In the late 1970s and early 1980s, at the peak of Guatemala's internal armed conflict (1960–1996), these themes were widely mobilized by progressive sectors to both orient and motivate collective action in the name of a sacred revolution for the liberation of the oppressed (Konefal 2010; McAllister 2013). Following the negotiated peace, however, and more particularly humanitarianism's claim on Guatemala's genocide (1982–1983), they were removed from public testimonies of the war. As McAllister (2013) noted in the mid-1990s, and Vanthuyne (2014) later observed in the mid-2000s, "trauma" instead became the dominant frame of genocide survivors' testimonies; their accounts "described the atrocities people had experienced, witnessed, or heard about" (McAllister 2013, 100). As Trouillot (1995) cogently reminds us, silences are as meaningful as what is accounted for in narratives of history. When

McAllister and Vanthuyne much later gained the trust of the survivors they respectively conducted their doctoral research with, they began to hear stories of political mobilization. However, these accounts, as McAllister (2013, 101) notes, “ultimately failed to obey the critical conventions of revolutionary *testimonio*,” since “they treated the revolutionary moment as past rather than future; they were tales of loss rather than appeals to ‘go on’.”

As Weld (2012, 35) explains, Guatemala’s revolutionary movement was seen to “drown (...) in its own blood” by the scorched earth policy of the militarized Guatemalan government (1982–1983). Further, in order to eradicate “any seeds of oppositional thinking,” the government also resorted to discrediting the country’s organized Left both in wartime and afterward by distinguishing between two kinds of Guatemalans: “honorable, patriotic supporters of the counterinsurgency; or else godless, gutless subversives [who] deserved what they got” (Weld 2012, 36). Flyers found in the mid-1980s in the Department of El Quiché, where the EGP was most active, portrayed the insurgents with horns, tails, and claws, blood dripping from their mouths, with words like “death,” “destruction,” “terror,” “treason,” or “deception” accompanying the drawings (Zur 1998). Such processes of demonization, as Ducharme and Fine (1995) note, are difficult, if not impossible to reverse. Rather, they oftentimes become internalized, as Weld, McAllister, and Vanthuyne observed in their respective work. Many ex-guerillas they met in the 1990s and 2000s, as Weld (2012, 44) explains, “had internalized the state’s disdain for their ideals,” and therefore kept silent about it. In the context of the harsh repression their insurrection triggered, several had also become skilled in public secrecy, “knowing what not to know” (Taussig 1999) – to the extent, sometimes, of fully assuming the identity they had borrowed while living clandestinely (Nelson 2009). Hence Vanthuyne’s surprise when, at the 2014 CALAS meeting, she heard revelations of revolutionary past followed by boastful cheers, as well as testimonies of divine callings, martyrdom, and calls to go on. To be sure, some of the activists gathered at the meeting were, like Alberto, ex-guerillas, confirming Bastos and Camus’ (2013) claim concerning the revolutionary origin of Guatemala’s anti-mining movement. Others, however, weren’t, including opponents of the Marlin Mine in San Miguel Ixtahuacán, San Marcos. During Guatemala’s internal armed conflict, many of these opponents or their parents had in fact persecuted the guerillas after joining the Guatemalan Army’s Civil Patrols, labeling them malevolent “thieves.” What had provoked what Serrano-Moreno (2012)

calls a “memory rupture” among the Marlin Mine opponents? What had encouraged them to re-identify Guatemala’s ex-insurgents as “war heroes,” rehabilitating in this way the brutally repressed, and generally silenced revolution as a struggle for the “defense of life”?

Peterson and Peterson (2008, 513) claim that the sacred struggle narrative that progressive sectors mobilized in Central America in the late 1970s and early 1980s was tied to a particular conception of power: the worldly forces that killed martyrs, such as Archbishop Oscar Romero in 1980, were “specific, locatable and identified with structures of sin and injustice.” However, the notion of “structural sin,” they continue, became obsolete following the socioeconomic policies of deregulation, decentralization, and privatization that accompanied Central America’s peace process. Discursively, the causes of postwar social ills stopped being clearly identifiable responsible agents, such as the state or the army, instead becoming depoliticized forms of violence, such as homicide. Yet, we claim that Guatemala’s version of Latin America’s “extractive imperative” (Arsel et al. 2016) has revived the notion of structural sin and the sacred struggle narrative it was historically tied to. In Guatemala, the state’s involvement in facilitating the activities of the extractive industry (Fox 2015), while criminalizing those opposing it (Rasch 2017; Sibrián and van der Borgh 2014), combined with the Catholic Church’s participation in sustaining the opposition movement to mining (Holden and Jacobson 2009), have encouraged a remobilization of both the structural sin and the sacred struggle narrative frameworks. In turn, this process has, in locations like San Miguel Ixtahuacán, provoked what Weld (2012) calls a “rehabilitation” of the revolutionary past, with locals participating for the first time in Guatemala’s Catholic Church’s truth commission, the *Proyecto de Recuperación de la Memoria Histórica* (REMHI, Recovery of Historical Memory Project), and reclaiming in the process the legitimacy of the guerillas’ struggle, or at the very least, reframing guerillas as “not thieves.”

The analysis in this chapter draws on documentary analysis and collaborative ethnographic fieldwork that Vanthuyne and Dugal conducted separately between 2014 and 2018 with anti-mining activists in San Miguel Ixtahuacán.<sup>2</sup> In what follows, we first retrace the Catholic

<sup>2</sup> Vanthuyne conducted collaborative ethnographic research with anti-mining activists in San Miguel Ixtahuacán both in Guatemala (December 2014, March 2016, and April 2018) and Canada (October–November 2015 and May 2018), when some came to Ottawa to raise awareness about their plight amongst government officials, the NGO sector and the

Church's involvement in Guatemala's revolution, focusing specifically on its activity in San Miguel, and the brutal repression of Catholic leaders by the Guatemalan Army in the region. We then examine how public memories of the revolution and its violent annihilation have changed in the wake of mobilization against the Marlin Mine. Through documenting the narrative ecologies that have accompanied the Guatemalan internal armed conflict and its aftermath, we show how past and ongoing sociopolitical conflict hinders the narrative complexity required for long-lasting peace.

#### 4.2 From Eradicating Communism to Adopting a Preferential Option for the Poor

In the 1930s, following six decades of a governmental anticlerical program, Guatemalan Catholic Church officials undertook to reconquer the mostly Indigenous Guatemalan Highlands with the support of the Vatican (Hernández Sandoval 2018). In that region, numerous expressions of popular religiosity, locally identified as *costumbre* (custom), had developed autonomously from the Church in the absence of Catholic priests. Contingents of foreign missionaries were thus sent by Rome to Guatemala to work toward the Romanization and revitalization of rural Catholicism through different initiatives, including Catholic Action (CA). CA was a lay Catholic organization of European origin that, in the context of the Guatemalan Highlands, sought to incorporate Indigenous communities into the devotional and sacramental life of the Church as a means to defeat *costumbre* and, following the 1954 coup orchestrated by the Central Intelligence Agency (CIA) (Glejises 1991), "communism." In a pastoral letter published just a few days after the coup, Archbishop Mariano Rossell y Arellano (1939–1964) declared, "the fight against Communism is not over, it has just begun ..." (Rossell Arellano 1954, 6), thus signaling the Church's commitment to the new military government's fight against "communists."

In our interviews with opponents to the Marlin Mine in San Miguel Ixtahuacán, however, participants remembered not so much the anti-communist but the anti-*costumbre* stance of CA. Crisanta Perez, for

general public. As Vanthuyne's research assistant and for her own doctoral research in history on Maya Peoples' struggles and memories in Guatemala, Dugal conducted collaborative ethnographic research with anti-mining activists in San Miguel Ixtahuacán in May–June 2015.

instance, a middle-aged woman now involved in the revitalization movement of *costumbre* within the Catholic church of San Miguel, shared in an interview with Dugal (June 19, 2015, San Miguel) that whenever her grandmother talked about her former beliefs and practices, she did so secretly, as if transgressing the established order. Convinced that it smacked of paganism, CA strove to undermine *costumbre* and the authority of *costumbristas* (Hernández Sandoval 2018). Yet, while this attack challenged local power structures, it eventually encouraged new forms of emancipation.

Following the 1954 coup, and with the financial support of the US Alliance for Progress (Streeter 2006), the Guatemalan militarized state combined repression and developmentalism to stop the expansion of “communism.” While engaging in the modernization of the rural economy, it arrested, imprisoned, tortured, and oftentimes killed the political leaders it presumed were “communists” (CEH 1999). The Catholic Church got closely involved in the first component of this program, but eventually became the target of the second one (Hernández Sandoval 2018). In seeking to develop the Highlands, the Church first sought, like the militarized state, to assimilate Indigenous peasants to the market economy. However, confronted with the multitude of social and economic injustices Indigenous peasants faced, its missionaries came to give priority instead to creating a more just society – a progressive approach, claims Hernández Sandoval (2018), that the Second Vatican Council did not initiate, as some scholars argue (see for example Cleary 1990), but strengthened. Inaugurated by Pope John XXIII (1958–1963), the Second Vatican Council encouraged clerics and lay Catholics to engage people’s spiritual and social realities. In Latin America, this new orientation coalesced in 1968 during the second meeting of the *Consejo Episcopal Latinoamericano* (Latin American Bishops’ Council) in Medellín, where a “liberation theology” based on a “preferential option for the poor” was born (Gutiérrez 1972). Inspired by Paulo Freire’s (1970 [1968]) pedagogical approach, this theology moved away from the historic paternalistic approach of the Church toward the indigents, to instead focus on their “conscientization.” Following the Freirean “judge–see–act” method, it more specifically aimed, in the words of a former CA leader involved in aiding parishioners’ group discussions in the Guatemalan Highlands, “to facilitate their gaining of consciousness of reality, their problems, and the need to develop solutions” (cited in Konefal 2003, 35). In addition to these study groups, the missionaries began to offer literacy workshops and leadership training in local,

regional, and national educational institutions, such as at the *Instituto Indígena Santiago*, where the CALAS 2014 meeting took place. As part of the Catholic Church's anti-communist crusade, the Instituto was created by Archbishop Rossell y Arellano to "modernize" the Highlands through the training of Indigenous rural teachers. In the 1960s, however, it was turned over to the progressive Catholic La Salle Order and as a result, became the "center of an emerging [I]ndigenous consciousness," as "committed priests, nuns, and young *indígenas*" discussed issues of social injustices (Konefal 2003, 35). This development contributed to the emergence of Guatemala's first organizations of Indigenous peasants, such as the *Movimiento Campesino del Altiplano* (MCA, Peasant Movement of the Highland) in the department of San Marcos.

The MCA was a laic movement that aimed to "improve the peasant family in all aspects of life" (MCA brochure, cited in Gutiérrez 2011, 265). Organized in *cuadrillas* – the groupings that Indigenous peasants had been forced to form until 1944 in order to provide "free" labor to the government or plantation owners (McCreery 1994) – its members met weekly in each of San Marcos's municipalities (Gutiérrez 2011), including in San Miguel Ixtahuacán. These meetings were complemented by intensive courses at a school in Tejutla, a municipality adjacent to San Miguel, the Catholic Church's *Centro de Capacitación e Investigación Campesina* (Peasant Training and Research Center) in Quetzaltenango, the capital of a neighboring department, as well as the *Centro de Adiestramiento de Promotores Sociales* (Training Center for Social Promoters) of the *Universidad Landívar*, a Jesuit university in Guatemala's capital. By training health and education promoters, as well as future administrators of credit and agricultural production cooperatives, the MCA sought to develop self-sufficient farming communities that would no longer need to temporarily migrate each year to San Marcos's *Costa* (Pacific Coast) coffee plantations to make ends meet. MCA leaders, however, soon suffered harsh armed repression.

### 4.3 Catholic Church Leaders Become "Subversive"

The rise of Marxist-inspired guerillas in the Guatemalan Highlands in the mid-1970s led to the growing militarization of the region and the "disappearance" and arbitrary execution of all presumed revolutionaries, including members of MCA and CA (CEH 1999). As late Archbishop Próspero Penados del Barrio recalled while discussing the brutal armed repression his priests and catechists (lay CA leaders) suffered during the



years he served as San Marcos's Bishop (1971–1983): “A good catechist named Napoleon – who did not know the great musician of San Miguel Ixtahuacán! – they disappeared him; I intervened for him at the military base, because [his neighbors] had seen how they took him, but [the militaries] never gave any reason” (ODHAG 2005, 5, our translation). In his travels to San Marcos parishes, the bishop recalled that he was frequently stopped by the Army to have his identity papers inspected. Once, at one of these checkpoints, a colonel warned him: “Look, Monsignor, we do not forbid you to say Mass, to baptize, but imitate the evangelical pastors. They only talk about God. You talk about cooperatives, unions ... It's all politics ... It's subversive.” (ODHAG 2005, 5, our translation).

For the first time in Latin American history, Catholic Church leaders became the target of political violence for their work on behalf of the faith. The military government considered their consciousness-raising efforts to be “subversive.” While some CA members and residents from San Miguel joined the ranks of the *Organización del Pueblo en Armas* (ORPA, People's Organization in Arms), the guerilla movement that was active in the region (Forster 2012; Gutiérrez 2011), others, according to our interviews with them or their relatives, refused to do so. They either disapproved of the insurgents' use of violence to meet their political ends or disagreed with the rebels' reading of their situation. They were not, as the guerillas claimed, exploited by the owner of the *Costa* coffee plantations they worked at seasonally, but rather believed they were well treated there. Nonetheless, one's positioning toward the insurrection movement did not matter; in the eyes of the Army, all of those who carried a Bible were considered “subversives.”

When Dugal asked Maudilia López Cardona, a middle-aged Mayan-Catholic nun who led the opposition movement against mining for a few years in San Miguel, what she remembered about those years of armed repression, she shared:

It was dangerous to go out, to walk at night, to go out on the roads. (...) [The Army was looking for] the catechists, because they handled liberation theology as a way of denouncing injustices. So, the catechists were the ones who were wanted. In my house, (...) we made a hole big enough to bury the Bibles that my parents had. Because if the army came to search (...) a house (...) [and found] a Bible, they would kill [its residents]. So a lot of people hid their Bibles. (June 9, 2015, San Miguel, our translation)

With the arrival of General Romeo Lucas García (1978–1982) as President, the repression's death toll increased dramatically. Not only

did the daily disappearances and arbitrary executions of political activists double (Manz 1988) but, in 1981, Lucas García adopted a “scorched land policy” to exterminate the supposed guerilla bases of civil support: the Indigenous villages of the Guatemalan Highlands. His successor, General José Efraín Ríos Montt (1982–1983), carried on this policy. Between 1981 and 1983, 440 Indigenous villages were erased from Guatemala’s map (CEH 1999). San Miguel’s villages were spared this tragic end, but, according to our interviews with anti-mining activists, these “acts of genocide” (CEH 1999, §122) nonetheless led to the exodus of most of the remaining MCA and CA members to Mexico, and the involvement of those who stayed behind in the Army’s counterinsurgency operations. They were forced, along with all the other Indigenous peasants from the Highlands that survived the scorched earth policy, to form Civil Patrols in order to keep watch at the entrances to their villages and report any “suspicious activity” to the military.

#### 4.4 Claiming the Truth, Re-sanctifying the Church

The “disappearances” and other “deniable forms of repression” that took place in Latin America during the Cold War stimulated growing mobilizations around the “right to truth” (Ross 2006). In Guatemala, social protests for claiming this right began in 1984, with the formation of the *Grupo de Apoyo Muto* (GAM, Mutual Support Group) – an association which gathered family members of the “disappeared” (Wilson 1999). However, the visible protests GAM organized in front of the National Palace, with pictures of missing relatives, were rapidly repressed; two of its founding members were assassinated in 1985. It was only when the Cold War ended and American support for Central American governments shifted toward calls for negotiated settlements that the movement for “the truth” gained momentum (Ross 2006).

The guerillas negotiated peace accords with the Guatemalan government between 1991 and 1996. During those negotiations, civil society groups, including GAM, pressed the revolutionaries to request the conduct of a truth commission. Of all the issues debated during Guatemala’s peace process, however, the creation of a truth commission was the one that encountered the most resistance from the Guatemalan Army and government (Mersky 2007). The Army, on the one hand, opposed the idea that human rights violations were subject to investigation. The government, on the other, did everything it could to ensure that the agreed commitments were weak enough to elude them. The guerillas, for

their part, were losing the war, and thus in a very weak position to push for a strong commission (Jonas 2000), or not inclined to do so for their own strategic reasons (Ross 2006). Whatever the case, the Peace Accords that resulted in June 1994 provided the UN-mandated truth commission they were to create with a very weak mandate and a very short timeline. The *Comisión de Esclarecimiento Histórico* (CEH, Historical Clarification Commission) would lack the power to search, seize, or subpoena. It would also not be allowed to reveal the identity of the authors of the human rights violation it would document, nor to prosecute them. Besides, it would only have six months to complete its mandate, with just one possible six-month extension.

Many human rights and victims' organizations were so disappointed by the CEH's mandate as it was defined in the Peace Accords, reports Mersky (2007), that they declared themselves against it even before it had begun its work. It is in this context that late Bishop Juan Gerardi Conedera, who was heading the *Oficina de Derechos Humanos del Arzobispado de Guatemala* (ODHAG, Office of Human Rights of the Archdiocese of Guatemala), sought the support of Guatemala's bishops in order to promote an alternative truth-seeking project: the *Proyecto de Recuperación de la Memoria Histórica* (REMHI, the Recovery of Historical Memory Project).<sup>3</sup> Established in October 1994, just a few months following the signature of the truth commission peace accord, the REHMI Project had two central objectives: (1) the psychosocial support of victims, through the recollection of their testimonies and (2) the production of a scientific report on Guatemala's internal armed conflict, to help the CEH achieve its goal of "clarifying the truth" in record time (ODHAG 2006). REHMI, therefore, not only embraced the therapeutic goals that the growing number of public truth-telling initiatives that have since been launched throughout the world have adopted (Moon 2009). It did not solely seek, through listening to victims speaking their truth about the tragic loss of their loved ones, to relieve them of their trauma. It was also concerned with reclaiming the sanctity of the Catholic Church's struggle for the liberation of the oppressed through "venerating our martyrs and dignifying our dead" (ODHAG 1997, 18). In other words, it aimed to transform those who had been accused of being "subversives" back into "good Christians."

<sup>3</sup> The ODHAG was created by Guatemala's late Archbishop Próspero Penados del Barrio (1983–2001) in 1990.

To enable it to reach this second objective, the REHMI Project employed an array of professional techniques and tools of collection and systematization of data in order to guarantee the authenticity of its results, such as different types of forms, and the use of recorders and numbered field books (ODHAG 1997). Of the eleven (out of fourteen) dioceses in Guatemala that agreed to participate in REHMI's Project, the Diocese of San Marcos was one of six that promoted it the most (ODHAG 2006). Nonetheless, when some of REHMI's 600 "animators of reconciliation," as the parish workers who were trained by ODHAG to collect testimonies were called – 83 percent of them Indigenous and 33 percent female (Azmitia 1998) – came to San Miguel Ixtahuacán, no one agreed to speak with them. ODHAG expected this kind of reluctance and had therefore organized a national awareness campaign to help mitigate it. This campaign included: television and radio ads; posters in Spanish and Guatemala's six most widely spoken Indigenous languages (including Mam, the Indigenous language spoken in San Miguel); and a 15-minute radio show that involved two characters, *Doña REHMI* (Mrs. REMHI) and *Don Olvido* (Mr. Oblivion), who discussed to what extent it was suitable to remember the history of atrocious events (ODHAG 2006). This campaign, however, did not manage to break the wall of silence in San Miguel Ixtahuacán among the relatives of those who, like Napoleon, had been "disappeared" by the Army. When REHMI's animators came in 1996, most of these relatives were still in exile in Mexico, and the few that remained were too scared to share their stories. According to our interviews with them, they had been warned by the Army that they too would be brutally arrested, tortured, and "disappeared" if they pronounced their family members missing.

Based on the 6,493 testimonies it ended up collecting by 1997, REHMI concluded in *Guatemala: Nunca Mas* (Guatemala: Never Again), the final report it published in 1998, that the Guatemalan Army was responsible for 85 percent of the human rights violations that had been committed during the internal armed conflict, while the guerillas were responsible for 9 percent (ODHAG 1998). The report also named some perpetrators and military structures responsible for these violations. A year later, the CEH (1999) confirmed these proportions but augmented the Army's responsibility to 93 percent, decreased the guerillas' to 3 percent, and only identified the military structures responsible for the violations. Two days after launching REHMI's report in Guatemala's cathedral, on April 24, 1998, Bishop Gerardi was brutally murdered by military personnel, transforming him into a new key martyr for the

Catholic Church's sacred struggle for the liberation of the oppressed. In his 2000 homily at the mass that commemorated the assassination of Bishop Gerardi in Guatemala's Cathedral, Monsignor Cabrera Ovalle (Bishop of El Quiché between 1986 and 2001) stated:

What happened to Monsignor Gerardi happened to Jesus: his mission in favor of the life and dignity of the people, above all, of the poorest and those that suffer the most, led him to death, meticulously planned. His death was perpetrated, and impunity was planned. But we know the end, it is the good news of Easter – it is not written in a sepulcher but is proclaimed with the most liberating action of all: Jesus has risen! (FAMDEGUA 2000, 11, our translation)

As Nelson (2009, 77) notes, the assassination of Bishop Gerardi had a chilling effect: “Gerardi’s murder was terrifying for many people, especially those who had participated in REHMI, often against their family’s wishes. They fully expected to be murdered too.” To counter that effect, we argue, the Catholic Church reframed the premeditated murder of Monsignor Gerardi and its impunity into elements of a divine history. The sacrifice of the life of such a devoted man as Gerardi, proclaimed Monsignor Cabrera Ovalle in his homily, would necessarily be followed by the “good news of Easter” – humanity’s salvation from sin. The earthly path toward that salvation, however, would from now on not focus on raising people’s consciousness about the socioeconomic causes of their plight (their exploitation in the *Costa*’s coffee plantations) in order to encourage them to address it (through organizing cooperatives), as was the case during CA’s years. As Vanthuyne (2014) has detailed, it would instead focus on raising their consciousness about the politico-legal causes of their misfortune (impunity for the internal armed conflict atrocities) in order to bring them to claim truth and justice. At the end of his homily, Monsignor Cabrera Ovalle stated: “The Catholic Church ask[s] the justice system, (...) the instances that have the serious duty to facilitate this process, that they thoroughly investigate this crime. Our people will be strengthened when impunity is banished from our soil and justice shines like the sun.” (FAMDEGUA 2000, 13, our translation). In 2001, following years of seriously flawed investigations and twisted plots (including imprisoning a dog that prosecutors claimed had taken part in Gerardi’s murder), three Guatemalan justices sentenced four people, including three military officers, for the Bishop’s assassination despite very little evidence that they were in fact guilty (Miller 2001). The killing in a 2016 prison attack of one of these officers, Captain Byron Lima Oliva, raised suspicions that the actual culprits, or at least some of them, had not been found. Before his

killing, Lima Oliva “had reportedly started to talk about the involvement of the son of Álvaro Enrique Arzú Yrigoyen, who served as president of Guatemala from 1996 through 2000, in the Gerardi murder” (McVicar 2018). Since Lima Oliva’s conviction, several additional militaries have been sentenced for atrocities committed during the internal armed conflict, including Rios Montt in 2013. These sentences have nonetheless been repeatedly challenged by the accused, and the struggle against impunity in Guatemala remains one of the Catholic Church’s key struggles.

#### 4.5 “Defending Life” from Extractivism, Becoming “Terrorists”

En la época de la conquista nos llamaban “Indios”, en la época de la guerrilla, nos llamaban “comunistas”, y ahora nos llaman “terroristas”. ¡Pues, si por ser defensores de derechos humanos, somos terroristas, somos!

(female anti-mining activist, CALAS meeting, December 10, 2014, Mixco)

In the wake of Guatemala’s internal armed conflict, the right to truth and due process has been the new battle horse of not only the Church, but a growing number of local and international human rights organizations in Guatemala (Vanthuyne 2014). The same organizations, however, were quickly asked by the genocide survivors they mobilized for justice to also help them defend their “right to life” against Guatemala’s extractive imperative. Just a few months following the signing of the final Peace Accord, the government adopted new mining legislation. The 1997 Mining Code reduced the royalty rate from 6 percent to 1 percent, eliminated the previous prohibition on 100 percent foreign-owned mining operations, implemented a series of tax exemptions for mining companies, as well as established a very weak system of environmental and public health impact assessment (Nolin and Stephens 2010). Under the 1997 Mining Code, mining companies are put in charge of leading impact assessment studies but given no specific instruction as to what such studies should cover. Moreover, Guatemalan environmental authorities are only granted thirty days to review a mining project; once this delay is passed, the project is automatically approved, and the company is granted an exploitation license. From 1998 to 2008, metal mining and exploration licenses in Guatemala increased by 1,000 percent (Dougherty 2011), the majority of licenses being granted in Indigenous territories. Meanwhile, given the general lack of recognition of the Indigenous right to consultation and Indigenous land rights, and the high risk of mining’s

negative impacts on subsistence agriculture (still a key economic activity in Guatemala's Indigenous Highlands where San Miguel is located), social protest against mining has grown exponentially (Aguilar-González et al. 2018), including in San Miguel Ixtahuacán, where the Marlin Mine operated between 2006 and 2017.

From its very beginning, the anti-Marlin Mine movement took on a multi-scalar character (Urkidi 2011). As similar anti-mining movements throughout the world (Kirsch 2014), it mobilized individuals and organizations in different geographical locations, various types of political spheres, and multiple social processes and regulations. Yet, while this upscaling gave way to "increased flows of information and resources between scales" (Urkidi 2011, 557), its main actors nonetheless remained San Miguel residents and the local Catholic Church (Holden and Jacobson 2009). The Diocese of San Marcos was the first organization to provide information workshops on mining's ill environmental and health impacts. San Marcos's bishop, Monsignor Alvaro Leon El Ramazzini Imeri (1988–2012), also sent a letter to every municipality in the department to raise awareness about the risks of cyanide leaching and desertification around the Marlin Mine. Further, the Diocese helped residents denounce to the International Labor Organization (ILO), the violation by the mining company of the Indigenous right to consultation enshrined in ILO 169. They also assisted in the organization of demonstrations to condemn this violation. In a 2005 press conference that followed one of these demonstrations, Bishop Ramazzini justified the Church's political work in this way: "We cannot remain silent when we see that in the very near future, this type of metal exploitation will cause an ecological catastrophe in Guatemala, with fatal consequences for life and health."<sup>4</sup> In San Miguel's parish, the Belgian priest, Padre Erik (1983–...) and Maudilia López Cardona, the Mayan Catholic nun quoted in Section 4.3, also began integrating consciousness raising about the ill impacts of mining in their activities. During mass, for instance, they circulated pictures showing skin diseases caused by mine contamination, as well as sang songs the parish choir composed to denounce them – including the following one:

*Could it have been You who sent the miners?  
They rape the womb of the Mother Earth  
They take the gold, destroying the mountains;  
A gram of blood is worth more than a thousand kilos of gold.*

<sup>4</sup> Available t: <https://larepublica.pe/economia/315188-iglesia-catolica-de-guatemala-critica-mineria-a-cielo-abierto/> (last accessed May 21, 2020).



*What is happening with my people?  
 And you, my god, where are you hiding?  
 Fear has paralyzed us,  
 My people have been sold and we don't even realize it.*

*The water is drying up, it's the same color as hell;  
 The air we breathe is already polluted;  
 We seek miracles, but it is too late;  
 We seek to cure the sick and the mortally wounded.*

*A poor people are easy to buy,  
 Gifts quiet suspicions and doubts;  
 Paychecks disappear in the town's cantinas,  
 Homes grow dark and my people live divided.*

*You created a garden and not a desert;  
 We want progress but with respect for the environment;  
 Hunger for gold consumes more and more of the earth,  
 And You, my god, you wonder, What are my people doing?*

(as translated from Spanish by Nelson 2015, 190)

This song illustratively summarizes how the Marlin Mine's oppositional movement analyzed its plight (see Vanthuyne and Dugal submitted). The movement's main concerns and sources of mobilization were the mine's environmental, social, and health consequences – the desertification (“You created a garden and not a desert”), the air and water's contamination (now the “same color as hell”), the social division between those in favor and against the mine (“my people live divided”), increased alcoholism (“paychecks disappear[ing] in the town's cantinas”), children neglected (“homes grow dark”), and local residents now sick or “mortally wounded” as a result of the mine's pollution. While enumerating these negative impacts, the song contests the Marlin Mine's claim to be a source of “progress.” When opposition mounted against the mine, its owners launched an important publicity campaign that claimed it was socioeconomically and environmentally benefiting not only San Miguel, but the whole country. Under the slogan “valuable development,” giant, colorful posters erected in Guatemala's capital and its main highways boasted about taxes paid, jobs created, and trees replanted by Goldcorp Inc., the Canadian company that then owned the mine.<sup>5</sup> Opponents to Marlin, Padre Erik included, have continuously been accused of being “anti-development” by those in favor

<sup>5</sup> The Marlin Mine first belonged to Glamis Gold, which was then acquired by Goldcorp in 2006.



of the mine's presence in their municipality. The song repudiates that accusation, asserting, "We want progress." In so doing, it challenges the valuation system that equates progress with "rap[ing] the womb of Mother Earth," "tak[ing] the gold, destroying the mountains," to argue instead that "a gram of blood is worth more than a thousand kilos of gold." The song also identifies who the main culprits of this violation and destruction are. While it suggests, at its beginning, that God may have "sent the miners," it soon clarifies that it rather is "fear [that] has paralyzed us," and "my people" having been "sold out" without "even realiz[ing]" it, that have allowed the Marlin Mine to be built and to pursue its exploitation activities in San Miguel despite growing evidence and awareness of its negative impacts. In an interview with Vanthuyne, another Catholic nun working for the parish theorized: "The mine found a good environment to enter [the municipality of San Miguel]. (...) People were very afraid. (...) With the war, they learned to cover their mouths and to not defend themselves. This atmosphere was like an environment prepared for the mine to freely enter with no one to bother it." (Catholic nun, March 14, 2016, San Miguel, our translation). Hence the focus of the Diocese of San Marcos and the Parish of San Miguel on raising awareness about the mine's ill impacts among the local affected population, using the same "judge-see-act" method that the Catholic Church missionaries and CA leaders employed in the 1970s. In an interview with Holden and Jacobson (2009, 161), Bishop Ramazzini explained that his purpose in attempting to inform the villagers about these impacts was "to help them see the reality in which they find themselves, help them to judge the reality in which they find themselves and help them act to try to change the reality in which they find themselves."

The petitions, demonstrations, *consultas populares* (community plebiscites), direct actions, and legal activism that this conscientization work gave way to, however, did not halt the Marlin Mine's construction and subsequent operation. As in the rest of Latin America (Rasch 2017), it instead unleashed a new cycle of stigmatization, criminalization, and violence in the region (Sibrián and van der Borgh 2014). In San Miguel, as in other municipalities affected by the extractive imperative, numerous mining opponents have been assaulted or murdered in impunity by the state or private actors, accused of "terrorism," "sabotage," or "aggravated usurpation" by the judicial authorities, or demonized by the press. From the oligarchy's point of view, the dominant voice in the Guatemalan media, popular mobilization against extractive development

projects is proof that “Guatemala’s internal enemy, the violent and retrograde leftists, still operates” (Roy Grégoire 2019, 691). This elite even claims that mine opponents ought to be “neutralized” through “the same decisive and ‘courageous’ methods employed during the [internal] armed conflict” (Roy Grégoire 2019, 691). Activists, as we have seen in the introduction, have for their part denounced this repression, stigmatization, and criminalization. They have also decried the arbitrary use and application of the law to their disadvantage, as the following excerpt from the CALAS 2014 meeting illustrates. During a panel featuring female anti-mining activists, Crisanta Pérez Bámaca, a middle-aged woman from San Miguel Ixtahuacán and active opponent to the Marlin Mine, detailed the numerous legal actions she and fellow opponents had initiated to claim justice for the violation of their right to consultation and a clean environment. For the last decade, she explained: “We haven’t been quiet. We didn’t stand by. Why? Because the government, together with the municipality and the company have violated our rights. (. . .) So we keep rising up. We keep filing complaints [with the judicial authorities]” (our translation). Yet, remarked Crisanta, “justice, it’s not for us. Justice is for the rich, the businessmen” (our translation). In 2008, as a result of direct actions she initiated to defend her proprietary rights from being violated by the mining company, Crisanta was accused of “aggravated usurpation.” Threatened with arrest and imprisonment by the police, she lived in hiding for six months, pregnant, only returning home to give birth, where she lived in fear until the warrant was dropped in 2012, thanks to the legal aid of the *Movimiento de Mujeres (Tz’unija’* Women Movement). When the legal actions are against us, Crisanta continued at the CALAS meeting: “. . . justice is expedited but quickly. But when they are against the businessmen, when they are against the state officials, justice is not expedited at all. Instead, it is resting [descansando]. As if there were no lawsuits. As if everything was fine” (our translation). Despite this injustice, Crisanta claimed that she and the fellow activists present at the CALAS meeting ought to continue standing up for their rights as it is their divine calling to do so. As she put it, “This is the work that God, the Creator of the universe, destined us to do, from the beginning [of our lives] in our mothers’ womb” (our translation).

#### 4.6 Rehabilitating Guatemala’s Revolutionaries

In the wake of both experiencing state persecution as a result of standing up for their rights and remobilizing the Church’s sacred struggle

narrative to make sense of their plight, some anti-mining opponents in San Miguel began revisiting their experience of the internal armed conflict, as well as reinterpreting, in the process, the guerilla struggle. In contrast with most official and non-official truth projects (Bickford 2007; Hayner 2011), REMHI did not disband following the publication of its final report. Rather, it continued to have a strong presence in Guatemala's Highlands, pursuing its campaign for truth and reconciliation through the distribution of pamphlets and posters, the organization of meetings led by locally trained "animators of reconciliation," as well as the commemoration of Bishop Gerardi's murder. In San Miguel, however, it was only in 2011 that residents (around forty in total) agreed to participate in REMHI's meetings. At these meetings, they were introduced to the plain language version of REMHI's final report (ODHAG 2000). Moreover, while commemorations of the Bishop's assassination commenced right after his passing, it was only in 2013 that they began being celebrated in San Miguel with local radio testimonies about Miguelenses' experience of the internal armed conflict.

In a 2015 interview with Dugal, Doña Eulalia, an opponent of the Marlin Mine who participated in San Miguel's REMHI meetings, shared the powerful impact they had for her.<sup>6</sup> During the internal armed conflict, she had been told by her parents that the Army was forcing an increasing number of young men to join its ranks because their communities were rampant with "thieves." Hearing in REMHI's meetings that it was not "thieves" that had plagued them but the Army itself, she was deeply hurt, became very sad, and then enraged:

... how is it possible that our people [believed it]? (...) The government declared that there were many thieves and that it was necessary to kill them, but it was not like that, it was the other way around. (...) Here in San Miguel, there were orphans without fathers, without mothers (...), and I discovered that many died, many were tortured, [by the Army] and what hurts me the most is that when women were pregnant and the Army passed by, they raped them (...) and then they would tear these women to pieces, and they would tear the children to pieces (...) That's what hurts me the most. (Doña Eulalia, June 10, 2015, San Miguel, our translation)

Interestingly, Doña Eulalia's reinterpretation of Guatemala's internal armed conflict happened around the same time she became involved in the opposition movement against the Marlin Mine. Doña Eulalia had

<sup>6</sup> This section is further developed in Dugal's PdD dissertation (to be submitted).

moved to Guatemala's capital for work. While residing in the city, she regretfully confided to Dugal, she was heavily influenced by the television news in how she saw those who opposed mining in her hometown. On TV, these opponents were portrayed as "animals" or "troublemakers" (*bochincheros*) working against "development," and Doña Eulalia therefore came to identify them herself as "bad people" (*mala gente*). However, increasingly concerned by the mine's potential ill health impacts following her return to San Miguel in 2010, she eventually joined the ranks of its resisters. Distancing herself from the prevalent discourse about mine opponents as a result of embracing their cause, she came to condemn the insurgents' stigmatization. While the mine opponents were not *mala gente*, the Army, not the guerrillas, had been the "thieves."

The experience of state repression as a result of their mobilization against mining led other Marlin Mine opponents to reinterpret the insurrectionary movement as legitimate. Don Enrique, for example, suggested in a 2015 interview with Dugal that it was thanks to being engaged in the struggle against mining that he eventually re-examined what happened during the internal armed conflict, and came to very different conclusions as a result. "... these people who were in the URNG<sup>7</sup> at that time. I [now] believe that these brothers too were in a struggle in defense of rights and territory" (Focus group, June 2, 2015, San Miguel, our translation). Following the Army's scorched earth campaign, Don Enrique had to serve in the Civil Patrols. As a member of these patrols, he explained, he believed that he was ensuring the safety of his neighbors against guerrilla attacks. Since his involvement in the opposition movement against the mine, however, he had come to the realization that he had not been fighting enemies, but "brothers" who were, like him, "in a struggle in the defense of rights and territory." "By enrolling us in civil patrols," reckoned Don Enrique: "... the state got us to defend the rights of the rich. Because here, we ought to be clear: they made us defend capitalists' interests." From the vantage point of experiencing state repression as a result of his opposition to the violation of his people's rights by capitalists' interests, Don Enrique came to reidentify the insurgents as "brothers" who, as he described in that same interview, "had started to understand the country's issues like those we are seeing now."

Don Manuel, another opponent of the Marlin Mine who served in the Civil Patrols during the internal armed conflict, also deplored to Dugal

<sup>7</sup> The separate guerrilla organizations in Guatemala, including the EGP and the ORPA, formed the URNG in 1982.

the fact that he and his neighbors had sided with the Army, not the guerillas. The insurgents, he acknowledged, were fighting for his people's "rights to be respected in the country." Yet, while reappraising the legitimacy of the revolutionaries' struggle, Don Manuel lamented their use of guns; it created a situation where "the same people from Guatemala" ended up "clashing" with each other.

It's too bad people didn't understand at that time that the revolution (...) [was] for [our] rights to be respected in the country. But [the revolutionaries] handled guns. And the same people from Guatemala [ended up fighting] against people from Guatemala. Because the [Army] soldiers are our people. And those who went to war [as guerillas] [we]re also our people. So, there was a clash between them.

Don Manuel did not specify how his opinion about the insurgents came to change. He just referred to his new interpretation of Guatemala's armed conflict as something him and the other San Miguel residents involved in the opposition movement against the Marlin Mine were now "studying" in their meetings. We hypothesize that his own experience with criminalization also played a role. In 2003, a year before the construction of the Marlin Mine began, Don Manuel was hired as a community relation officer by Glamis Gold, the Canadian mining company that then owned the mine (see footnote 5). Tensions between him and the company, however, grew quickly, as Don Manuel became increasingly vocal about the mine's negative impacts in his municipality. In 2006, when San Miguel residents blockaded the mine's entrance in protest, Don Manuel was not only accused by his employer of having organized the action, he was soon charged by Guatemala's *Ministerio Público* (Public Prosecutor Office) with "abandonment of work, threats, coercion, incitement to commit a crime, [as well as] minor and serious injuries" (March 19, 2016, San Miguel, our translation). Yet, whatever the source of his rupture of memory about the insurgency, Don Manuel remained critical of how they struggled to defend his people's rights. When Dugal asked him if he would have joined their ranks if they hadn't carried guns, he enthusiastically replied: "Without weapons! (...) Like now, we are challenging [the state and its commercial allies] (...) with wisdom, we are not challenging [them] with weapons." While rereading his country's revolutionary past from the critical point of view of his current struggle against the extractive imperative, Don Manuel regretted not having sided with the guerillas. Yet, in so doing, he maintained his disapproval of their use of "weapons" instead of "wisdom" to revolutionize the country.

## 4.7 Conclusion

In this chapter, we have examined the narrative ecologies that have accompanied the Guatemalan internal armed conflict and its aftermath, focusing more specifically on the stories that have circulated in San Miguel Ixtahuacán, San Marcos. The demonization of the organized Left during the war, a key component of the Army's counter-insurgency strategy, succeeded in delegitimizing the insurrection movement in the eyes of most of San Miguel's residents; they were "thieves" that, as Civil Patrols, they ought to eliminate for the good of the nation. One of Guatemala's two truth commissions did not at first manage to challenge that narrative. It is only in the wake of San Miguel's mobilization against mining that the "thieves" became rehabilitated as "brothers," or at the very least, like in the case of Dona Eulalia, as not the "thieves" the Army accused them of being.

In his work on the politics of memory of Spain's civil war (1936–1939), Serrano-Moreno discusses how various Spaniards came to critically reinterpret their country and their own family history and, as a result, change their relationship to politics – a process he calls "ruptures of memory." According to him, it was following their meeting with some of the war's witnesses, or reading critical historical essays, that some people radically changed their understandings of that violent past and engaged themselves in progressive struggles. In this chapter, we have identified similar processes of rupture in San Miguel Ixtahuacán regarding the memory of Guatemala's insurgent movement. However, in this case, it is not so much as a result of having become acquainted with alternative readings of the violent past that this rupture happened. It mainly took place, as we have shown, through Miguelenses' political mobilization against the extractive imperative. Experiencing stigmatization, threats, violence, and criminalization as a result of their fight against the Marlin Mine, some opponents, like Don Enrique or Don Manuel, came to strongly identify with the guerillas' struggle. For Don Enrique and Don Manuel, the guerillas, like the mine opponents, were children of God who had been called to defend their people's rights from being violated by capitalists' interests. The different layers of oppression Miguelenses have faced – the negation of their rights to consultation and a clean environment, as well as the demonization of their oppositional actions – have all aligned in favor of rehabilitating the insurgents as "brothers" or "not thieves."

Weld (2012) has documented similar processes of rehabilitation of the revolution in her work on the participation of former Guatemalan insurgents in another truth-seeking initiative, the Project for the National

Police Historical Archives. These ex-guerillas, she explains, were spending hours painfully reading police surveillance activity records not with the sole objective of finding the compromising information that would allow them to prosecute those responsible for their brutal repression. Their main goal, Weld (2012, 42) argues, was *reivindicación* (rehabilitation, recognition, vindication), the “retrospective conferral of dignity and agency upon historical actors tarred as traitors engaged in subversive activity.” To reverse their ongoing demonization by the Guatemalan army, government, and oligarchy, these ex-insurgents amassed documentary proof of the state’s abuses to demonstrate “that their fight against the dictatorship and social inclusion had been commendable, not criminal” (Weld 2012, 43). Yet, in so doing, continues Weld, they did not seek to paper over the past, but to learn from it, hoping that, by sharing their histories and opening them for debate, “they could help future progressives avoid repeating their mistakes” (Weld 2012, 45). In this chapter, we have documented similar processes of critical *reivindicación*, with Don Manuel’s acknowledging the legitimacy of the guerillas’ struggle while questioning their resorting to weapons to realize the revolution. It is important to note that in critiquing the insurgents’ use of “guns,” while praising the mine-opponents’ focus on “wisdom” (consciousness raising), Don Manuel was not merely idealizing the revolutionaries’ capacity to enforce the respect of his people’s rights through peaceful means; in his interview with Dugal, he acknowledged that the Guatemalan state and their commercial allies would never become “conscious,” since they never had the “poor’s” wellbeing at heart. In the aftermath of a genocide that “disappeared” or killed so many of his people, Don Manuel rather claimed that consciousness raising was, in hindsight, the *only* viable option. This is a conclusion that, through its ongoing conscientization work in the region, the Catholic Church has prominently participated in articulating.

Peacebuilding, as this volume argues, requires “narrative complexity,” or “better formed stories (...) that make visible intentions and actions that led to various, sometimes undesirable, outcomes” (see the [Introduction](#), 27–28). This complexity, as we have seen, was definitely present in San Miguel, with Don Manuel’s critical rehabilitation of the guerillas’ struggle. However, in a post-war, extractive imperative context marked by the remobilization of the “Leftists as internal enemies” narrative by the Guatemalan state and mass media, this complexity tends to be downplayed, giving way instead to the counter-narrative of both revolutionaries and anti-mine opponents as having been/being called on to build God’s kingdom on earth.



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## The Road to Recognition

### Afro-Uruguayan Activism and the Struggle for Visibility

DEBBIE SHARNAK

#### 5.1 Introduction

In 1912, the American paleontologist William Jacob Holland traveled to Uruguay. As director of the Carnegie Museum, his job included installing replicas of sauropod dinosaurs around the world. Holland kept a journal of his adventures, commenting on notable aspects of the nations he visited. Uruguay seemed to particularly capture his imagination, and his commentary on race in the nation was of particular note. In *To the River Plate and Back*, he explained that one of the “matter[s] of remark” about Uruguay was the “absence of negroes . . . there were no people of African races visible.” In fact, he noted that “Uruguayans pride themselves upon the fact that racial questions are not likely to trouble their republic in the future. ‘Ours,’ they say, ‘is a white man’s country’” (Holland 1913, 94).<sup>1</sup>

Although just a visitor, Holland picked up on a longstanding aspect of Uruguayan identity that denied racial difference and extolled the country’s heritage as stemming from European descent.<sup>2</sup> This myth of

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<sup>1</sup> Brazilian anthropologist Dacey Ribeiro also classified Uruguay, in 1969, as part of the “transplanted historico-cultural configuration” which was based on the idea that its population came almost entirely from Europe and thus, created a European-based culture in the country. See Ribeiro (1969), as translated in Sans (2011, 195).

<sup>2</sup> This claim was repeated time and again, including in Fitzgibbon (1954, 265–266), where he claimed that the “Negro population [was] small . . . Uruguay escapes whatever problems would be presented by the presence of that large, ethnically alien element. The country has few Negroes, Montevideo almost none.”

homogeneity persisted long past Holland's trip. In fact, until 2011, official statistics cited Uruguay's Afro-descendant population as a mere 4 percent of the country. It was only after the census conducted that year explicitly asked citizens whether they self-identified as "Afro o Negra" that these estimates changed.<sup>3</sup> The results revealed the actual numbers were more than double previous projections, at 8.1 percent (Uruguay Instituto Nacional de Estadística 2011).

This chapter argues that the remarkable path that led from an overwhelming denial of Afro-Uruguayans as part of the country's national identity to a census that officially recognized the demographic makeup of almost a tenth of the population was the result of grassroots mobilization from the Afro-Uruguayan community, combined with a more progressive left-leaning government that responded to domestic and international pressure. While scholars have noted the extraordinary nature and outcome of the 2011 census, they have not yet explored the history of how the census was linked to a larger push for recognition within a country that, for over a century, extolled its European heritage and promoted a myth of homogeneity (Arocena 2013). Overall, scholarship on Afro-Uruguayans is relatively scarce, reflecting their invisibility for much of the country's history. When studied at all, works tend to focus on either Afro-Uruguayans' recent contributions to literary works, socio-economic disparities, or the deeper connections between Afro-Uruguayans and *candombe* – a Uruguayan dance with rhythmic music adopted from slave traditions.<sup>4</sup> A historical analysis of the road to the census law and its aftermath in both a national and global context, however, offers an important addition to this emerging scholarship on Afro-Uruguayans from a political mobilization standpoint.<sup>5</sup> This chapter argues that the 2011 census in Uruguay is part of a three-decades-long organizing effort that pushed against a hegemonic narrative of whiteness, and finally found a receptive audience when it combined with

<sup>3</sup> The exact question was "¿Cree tener ascendencia ... afro o negra; asiática o amarilla; blanca; indígena; otra?"

<sup>4</sup> Bucheli and Porzecanski (2011), Lewis (2003), and Persico (2015). An exception is the historical monograph by Andrews (2010b) and recent work by Mónica Olaza in Spanish, by Olaza (2009, 2017) and in English, Townsend-Bell (2021).

<sup>5</sup> In addition, integrating Uruguay into the more voluminous history of race in Latin America offers a distinct story that analyzes the specific treatment of Afro-Uruguayans during the dictatorship and a hard-fought process of overcoming invisibility. For some of the foundational texts on race and Latin America, see Andrews (2004), Chasteen (2004), de la Fuente (2001), Fox (2006), Hooker (2005), Wade (1997), and Yashar (2005).

a larger global push for state-sponsored multiculturalism in the twenty-first century.

In many ways, efforts for official recognition stem from the depths of the country's military dictatorship, which lasted from 1973 to 1985, as the military government targeted Afro-Uruguayan communities in ways that were particular to the small Southern Cone country.<sup>6</sup> During the dictatorship, the military sought to eliminate perceived leftist subversives, often exerting its control through political imprisonment, torture, and disappearances. Afro-Uruguayans were victims of these endemic human rights violations that affected the entire nation; but they also suffered high rates of internal displacement as the military targeted historic Afro-descendent communities as part of the capital city's gentrification process. In these cases, the military forced Afro-Uruguayans out of their communities, oftentimes with no compensation, dispersing them to the literal and figurative margins of the country. This systemic displacement was largely excluded from the human rights definition and advocacy that emerged in and about Uruguay during this time period (Sharnak [forthcoming\[a\]](#)).

With the fall of the regime in the mid-1980s, however, black civic mobilization surged. As debates raged over what a newly reconstituted democracy would look like, Afro-Uruguayan leaders organized against the conditions that had rendered them vulnerable both during the dictatorship and more broadly during so much of the country's history. They formed organizations, founded newspapers, and protested against racism and discrimination – injecting a discourse about race into the national conversation that had previously been confined to the Afro-communities. In this way, the Afro-Uruguayan push for visibility led to the creation of a vibrant civil rights movement that empowered its citizens and argued for inclusion and racial equality. In subsequent decades, these efforts produced tangible changes in governmental policies, including measures like the inauguration of a Black Heritage month and an affirmative action law. These initiatives were promulgated from the country's legislative bodies which, starting in 2006, had a leftist coalition majority in the form of the *Frente Amplio* (Broad Front). As this chapter will show, though, these changes can be more closely linked to a longer history of pressure from below, in the form of Afro-Uruguayan mobilization in the aftermath of the dictatorship, and from

<sup>6</sup> See Loveman (2014, chapter 7).

above, as a result of a larger global shift toward support for state-sponsored multiculturalism in the twenty-first century. Thus, this chapter situates Uruguay within the regional and global trends of state multicultural recognition, but specifically looks at Uruguay's unique path that stemmed from its treatment of Afro-Uruguayans during the dictatorship and a larger centuries-long history of denying the existence of *Afro-descendientes* and their influence in the country.

This chapter explores this transformation by, first, analyzing the myth of Uruguayan whiteness against the country's strong Afro-descendent history that rendered Afro-Uruguayans to the margins of the nation's identity for much of the country's history. It then examines how the country's military government specifically targeted Afro-Uruguayan communities during the dictatorship. Lastly, the chapter considers the period of mobilization against continued marginalization during the country's transition back to democratic rule in the 1980s, finding the roots of current advocacy in this period of contentious democratic politics. While notable for the immediate impact this organizing had in mobilizing Afro-Uruguayan voices as part of a national project, the biggest effect of these late 1980s efforts can be found in the last decade when domestic activism combined with a global push toward multiculturalism. Ultimately, this chapter spotlights Uruguay's distinct path toward official recognition of its Afro population, understanding the reasons that visibility was so important to Afro-Uruguayans based on the country's history of promoting whiteness and marginalization during the dictatorship.<sup>7</sup>

## 5.2 Denial and Erasure in Uruguayan History

Travel books and historical monographs often describe Uruguay as the "Switzerland of South America" (Gillespie 1991, 19; Latin America Bureau 1980, 22; Roniger and Sznajder 1997, 57; Weinstein 1975, xiii; 1988, xv; Weschler 1998, 92). This exceptionalist label derives from the country's social welfare history, which dates to the first half of the twentieth century when Jose Batlle y Ordoñez was president. Batlle

<sup>7</sup> This chapter largely focuses on both discrimination and activism in the capital, Montevideo. While a large number of Afro-Uruguayans live on the border with Brazil, particularly in the Department of Rivera and Cerro Largo, the research and sources focus on Montevideo where 50 percent of the Uruguayan population resides. That being said, research on Afro-Uruguayans in the interior is much needed.

ushered in a strong centralized state that aimed to protect its citizens. His progressive policies included measures such as the separation of church and state as well as promoting women's rights, educational opportunities, and eight-hour work days (Bértola 2008; Churchill 2014, 29; Ehrick 2005, 70–88; Weinstein 1975, 90–91, 1988, 23–25). With these advances and protections for traditionally vulnerable populations, Uruguay acquired a reputation as a place of relative acceptance of different genders, religions, and races that held remarkably consistent until the nation's dictatorship began in 1973.

This narrative of tolerance, though, often rendered problems of discrimination and racism “invisible” within the nation's borders by denying the very existence of diverse populations (Arocena 2013, 140; Rodríguez 2003).<sup>8</sup> Throughout the first half of the twentieth century, Uruguay promoted a process of “*blanqueamiento*” or whitening of its population – an image that stressed its large population of immigrants from Western and Southern Europe as proof of its modernity and racial progress (Arocena 2013, 140; Cottrol 2013, 16–17, 113–142; Hernández 2013, 20; Loveman 2014, 208–209; Quijano 2000, 562–563)<sup>9</sup> Official histories of the country largely ignored the tens of thousands of slaves brought to its shores from Africa as well as its Indigenous groups (Bucheli and Porzecanski 2011, 113).<sup>10</sup> These populations were referred to as small or non-existent, pushed to the margins of national consciousness.<sup>11</sup> This characterization of a “white” Uruguay has proven remarkably persistent. History textbooks used in primary schools in Uruguay as late as the 1980s reinforced a strong European lineage and the whiteness of Uruguay's population, relegating Afro-descendants and Indigenous

<sup>8</sup> Even famous Uruguayan writer Eduardo Galeano noted the origins of this invisibility dating back to the country's origins when he wrote in his vignette-laden historical overview of Latin American, *Faces and Masks*, “From Buenos Aires come the first settlers, fifteen young people, nineteen children, and a few slaves who do not figure on the list – black hands for the ax, the hoe, and the gallows, breasts to give milk, a voice to cry wares” (Galeano 1987, 21).

<sup>9</sup> Latin America was impacted by negative discussions of race and society in the United States; for some discussions of the transnational effects, see Hooker (2017) and Wade (1993, 12).

<sup>10</sup> The current number of Indigenous in Uruguay is about 5 percent. Indigenous groups were subject to physical erasure during the nation's founding due to diseases, wars, and aggressive campaigns to expel them from the territory, see Cabella et al. (2013, 16), Abella (2010), and Sans (2011, 197–198).

<sup>11</sup> Anecdotally, time and again, people refer to the enduring idea that Uruguay, until very recently, was characterized as “a white, European country that did not have a black population.” See Cottrol (2013, 124) and Laviñ (2013, 113).



groups to the fringes of society and historical memory (*Brecha* 1985a). Many scholars studying this phenomenon have concluded that Uruguayans tend to accept the myths of “racial democracy, homogeneity, and equality of opportunity” (Bucheli and Porzecanski 2011, 116). The construction of the nation’s white identity fit both Indigenous and Afro-Uruguayans into what anthropologist Peter Wade has called “structures of alterity,” an otherness that in different ways produced discrimination and ignored their historical and cultural contributions to the country (Wade 1997, 36–37).<sup>12</sup>

Despite this dominant narrative, Uruguay has a rich African heritage. Starting in the colonial period, Montevideo was the official port of entry for African slaves for the entire Rio de la Plata region. While many slaves were shuttled to Argentina, approximately 20,000 stayed in Uruguay. Other slaves came by way of Brazilian ports and made their way to Uruguay by various methods that included attempting to escape from slavery in Brazil where the institution lasted decades longer than anywhere else on the continent (Sans 2011, 198). On the eve of independence in 1825, almost 25 percent of the country was estimated to be African or Afro-Uruguayan (Andrews 2011). As almost a fourth of the population, Afro-Uruguayans came to influence the city’s cultural fabric in a myriad of ways (Borucki 2015). For example, at the beginning of the nineteenth century, *candombe* was an integral part of the city landscape. Many of the more well-to-do families would go watch *candombe* on Sundays in the city center, viewing it as a destination or “spectacle” to partake in (Chasteen 2000, 48).

The slave trade ended in 1830 and slavery itself was abolished in 1842. At the turn of the next century, a massive wave of Southern European immigrants arrived. These three developments ultimately resulted in the relative dwindling of the relative Afro-Uruguayan population. Although some younger Afro-Uruguayans sought to assimilate in the latter part of the nineteenth century, many continued to face pervasive discrimination and prejudice (Chasteen 2000, 48). These conditions frequently relegated Afro-Uruguayans to low paying employment opportunities such as cleaning out latrines, ragpicking, and garbage collectors. These were jobs

<sup>12</sup> Jeffrey Gould has studied the “myth of mestizaje” in Nicaragua, explaining how the demise of Indigenous ethnic identity had a devastating effect on the surviving Indigenous community through the creation of a culture of repression. Gould explains how, by ignoring these groups, local and national governments in Nicaragua were able to ignore rights to land and inclusion in social policies by deeming Indigenous communities non-existent. A similar phenomenon occurred in Uruguay, not only to the Indigenous communities but, as this article shows, to Afro-Uruguayans as well (Gould 1998).

that had traditionally been occupied by slaves and, by the 1860s, remained associated with Africans or Afro-Uruguayans (Borucki 2015, 27–28). Even in the military, an institution that had historically afforded leverage for claims of citizenry and equality, Afro-Uruguayans often faced violent forced conscription rather than opportunity for social advancement (Andrews 2010b, 32–34).

A lack of opportunity produced high percentages of Afro-Uruguayans who faced poverty in the twentieth century. Further, there were few routes out of these poor living conditions. Even those who attended university often struggled to find jobs afterwards as they faced discrimination in various professional fields such as law (Andrews 2010b, 40–42). Political organizations and businesses regularly excluded Afro-Uruguayans. Further, Afro-Uruguayans were frequently barred from places of public amusement (Andrews 2010b, 43). Such informal and formal segregation compelled Afro-Uruguayans to create parallel political and social clubs, as well as a black press. These important institutions allowed for a vibrant and important community to develop, but it also meant that Afro-Uruguayans continued to operate at the physical, social, and economic edges of society.

Despite persistent marginalization, the community maintained a vibrant Afro-Uruguayan culture. As early as the mid-nineteenth century, Uruguay boasted one of the most active black presses in Latin America (Andrews 2010a, 83–84). For instance, *Nuestra Raza* (1917, 1933–1948), one of the longest running black newspapers, fostered black consciousness and attacked the norms of the period. They published creative and critical pieces by black authors and created space to celebrate black achievements in Uruguay and advance the black community (Lewis 2003, 28–31; Young 2002, 87). *La Conservación* (1872), another prominent paper, highlighted everyday instances of racism that Afro-Uruguayans endured, painting a complex picture of Uruguayan society and identity through the lens of its black citizens (*La Conservación* 1872; Young 2002, 84, 2004, 33). Meanwhile, *Bahía Hulan Jack* (1958–1999) was a long-running black newspaper that advocated against racism, discrimination, and segregation in the country (Young 2004, 91). Indeed, throughout the twentieth century, black organizations, social clubs, recreational groups, as well as the country's first black political party, surfaced across Uruguay.<sup>13</sup> While these organizations played

<sup>13</sup> It must be acknowledged that white poet and anthropologist, Ildefonso Pereda Valdés in many ways established Afro-Uruguayan studies in the 1940s as a reaction to the

a significant role in establishing an Afro-Uruguayan identity, it was a segregated community, and not recognized as part of the broader Uruguayan national identity whose self-image privileged the country's Eurocentric heritage. As Carroll Mills Young notes, when acknowledged at all, Afro-Uruguayans were considered a source for low paid labor or at best "a toy of the elite to be played with during carnival" (Young 2002, 84). Overall, discrimination and marginalization proved the norm.

Mario Benedetti, one of the country's most famous writers, acknowledged this broader problem. In 1960, he published a famous essay, *El país de la cola de paja*, which explained that, in Uruguay, "we repeat the chorus that here, there is no racial discrimination, without paying notice to the movie theaters and bakeries in the center of the country that do not allow negros to enter" (Benedetti 1970). Benedetti explained that the state embraced a discourse that denied official racism in the twentieth century and helped "create the impression that Afro-descendants were not a distinguishable or meaningful social group or category that had its own specific problems and dynamics" (Bucheli and Porzecanski 2011, 116). While voices around the country acknowledged that this legacy left problems of discrimination and racism "invisible" within the nation's borders, there was little recourse (Rodríguez 2003). Meanwhile, Afro-Uruguayan communities demonstrated the economic implication of structural exclusion, recording a poverty rate more than double the rest of the population even before the country's military rule began. Therefore, from the turn of the century until the dictatorship, claims of racial acceptance in Uruguay crumble under close scrutiny.

### 5.3 Forced Displacement and Dictatorship

The nature of this discrimination and segregation, however, changed during the country's dictatorship, which lasted from 1973 to 1985. In this period, Afro-Uruguayans endured the same treatment as the rest of

*blanqueamiento* movement, which helped elevate the presence and work of Afro-Uruguayans. Yet, overall, the dominant narrative of invisibility and exclusion remained. See Andrews (2010b, 99–100), de Carvalho Neto (1954, 235–238), Holmes (1944), and Valdés (1941, 1965).

the population, which included torture and political imprisonment as the military regime's main modes of repression against the entire population.<sup>14</sup> In addition, Afro-Uruguayans were victims of internal displacement as a result of the military's demolition of historic Afro-Uruguayan-occupied housing.<sup>15</sup> Most Afro-Uruguayans in Montevideo had settled in *conventillos*, a type of planned housing tenement building in neighborhoods such as Barrio Sur and Palermo. Thus, a majority of Afro-Uruguayan residents within the capital city lived in a concentrated area, particularly in comparison to the rest of the city.<sup>16</sup> Former residents of *conventillos* also describe the housing in terms that often stressed their cultural importance. As Vannina Sztainbok notes, many Afro-Uruguayans remember them as "a site of family solidarity, hardship, and very humble beginnings ... cultural heritage sites" that featured frequent candombe and were places of Afro-community and culture (2009, 2–3).<sup>17</sup>

The military threatened these traditional living quarters. As part of the regime's neoliberal policies, it promoted massive gentrification projects in the central part of the city as a way to attract foreign investment and private capital (Ruetalo 2008, 39–40). The military government held particular interest in these primarily Afro-Uruguayan neighborhoods because, over time, they had become prime real estate. Prices for land in these areas increased and many stood to benefit from the construction of new homes in the neighborhood that would enhance the city and further Montevideo as a banking center. Rent in these buildings had also been controlled since 1947, and thus remained artificially low (Andrews 2010b, 142). This dynamic produced a situation where landlords decided not to invest or maintain these buildings, leaving decaying housing structures Afro-Uruguayans occupied, many of who had a strong cultural connection to the area and oftentimes could not afford to leave.

<sup>14</sup> See, for example, da Luz de los Santos in Laviñ (2013, 21–22).

<sup>15</sup> For more on the effect of authoritarianism and the rollback of rights and freedoms more broadly, see Franz (2018, chapter 7), Haggard and Kaufman (2016), Meng (2017), and Svoblik (2012).

<sup>16</sup> These tenements were mixed race and integrated but stood out for their strong Afro-Uruguayan presence and the cultural importance that Afro communities place in the housing structures.

<sup>17</sup> Other descriptions of *conventillos* explain them as "a community and culture" for Afro-Uruguayans (Ortuño 2008).

With the permission of the military government, the city responded to both the decay and the potential real estate opportunity by passing laws in 1978 that allowed landlords to evict tenants from buildings that were in a “state of emergency,” which the government defined as being “covered with filth and moral degradation.” This racialized discourse was based on long-held prejudices that dehumanized Afro-Uruguayans by linking them with racist stereotypes of decay, filth, and unsafe conditions. Scholars such as Joao Costa Vargas have shown how, even in the absence of mentioning race explicitly in these contexts, these tacit descriptions reinforce stereotypes and justify discrimination.<sup>18</sup> This phenomenon occurred in Uruguay, which allowed the military to target these areas for eviction as part of the economic plan and “civilizing mission” of the dictatorship’s practices (Benton 1986, 35–52). Newspapers, which were heavily censored by the military government, explained that the buildings were a “danger to the occupants,” attempting to frame the removal as protection for a community unwilling or unable to protect itself. Instead, these papers justified the removal as a “community decision” rather than a policy by the military to remove the Afro-Uruguayan population from the city’s center by decree.<sup>19</sup> As a result, the *conventillos* were destroyed – literally bulldozed – and their residents were displaced. These evictions often occurred through brutal force (Rodríguez 2001). As activist and politician Romero Jorge Rodríguez notes, more than 1,200 people were evicted during this project, the majority of them Afro-Uruguayans (Rodríguez 2003, 61). Beatriz Santos Arrascaeta, a writer and activist, also explained that the experience of eviction felt connected to her ancestors’ similarly dehumanizing removals from the continent of Africa.<sup>20</sup>

Scholars debate the intent behind the military’s intervention in these neighborhoods. Historian George Reid Andrews argues that the *conventillos* had been in extremely poor condition, and thus there was “little if any direct connection to questions of race” that prompted residents’ eviction” (Andrews 2010b, 142–144). Other scholars, however, such as Sztainbok, locate the importance of *conventillos* as Afro-Uruguayan

<sup>18</sup> For a comparative study of how this occurs in favelas in Brazil that shines light on this process in Uruguay, see Vargas (2006, 49–81). Costa Vargas explains how this racial discourse gave voice and support to structural discrimination against Afro-Latin populations.

<sup>19</sup> “Último candombe en el “Medio Mundo”: por decisión comunal será evacuado el martes,” *El Diario*, December 2, 1978, 20, Archivos de Biblioteca Nacional.

<sup>20</sup> Author interview with Beatriz Santos, September 8, 2014, Montevideo, Uruguay.

spaces of blackness within Uruguay, and thus offer a window into the way that their destruction by the military government can be understood in both effect and memory as a fundamental removal of a minority population from the center of the city to the peripheral margins (Sztainbok 2009). This analysis is particularly poignant considering that, after displacement from cultural centers and communities in the *conventillos*, tenants were not offered adequate housing or any other compensation. These historic centers of Afro-Uruguayan life were gone, its residents dispersed to far-flung neighborhoods scattered on the margins of the city, which created a sense of double exile from both their African heritage and also their Uruguayan birthright (Lewis 2003, 124). Many of these new “homes” also lacked many basic services. In one case, former residents were brought to what had once been stables, a group of sheds in Barrio Sur. In a play about the eviction, Afro-Uruguayan playwright Jorge Emilio Cardoso depicted a character explaining that the dictatorship had sent former tenants of the *conventillos* “to the corrals where for a long time, beasts had slept” (Cardoso 1996, 41). Cardoso here makes the connection between how the military government viewed and treated Afro-Uruguayan citizens, like animals. Once in this new “housing,” conditions did not improve. Afro-Uruguayans were told to make new homes “out of cardboard and other found materials” (Benton 1986, 44–45). In another case of the razing of a *conventillo*, Afro-Uruguayans were kicked out of their homes and taken to an abandoned factory that some scholars have described as having concentration camp-like conditions. These actions erased blackness from the city center and further segregated an already marginalized population (Sztainbok 2009, 73).<sup>21</sup> While transnational human rights groups focused on the military dictatorship’s violations of political imprisonment, disappearances, and torture, these injustices that Afro-Uruguayans suffered remained outside the narrow, emerging human rights definition or any advocacy efforts (Sharnak forthcoming[a]). They remained hidden and ignored.

Without anyone protesting the harsh treatment, the military regime continued to deny that any racial problems existed. The president, Juan Maria Bordaberry, reinforced the myth of racial homogeneity by first claiming that Indigenous people were “nonexistent” in Uruguay. He then ignored the nation’s history of slavery and denied any conflict with what

<sup>21</sup> It is important to note, though, that periodic evictions had occurred before the nation’s military rule. Blaming the treatment of the Afro-Uruguayan community solely on the dictatorship elides a much longer history of marginalization of this group in Uruguay.

he called the small Afro-Uruguayan population.<sup>22</sup> In 1973, the military government shut down *Negrocán*, an Afro-Uruguayan musical project that celebrated Afro-culture with candombe shows and music (Olaza 2009, 22). The military government did allow a historic black organization, the *Asociación Cultural y Social del Uruguay* (Social and Cultural Association of Uruguay [ACSU]), to remain open throughout the dictatorship, but this was done mainly to boost the military's own image (Andrews 2010b, 145). The ACSU was traditionally conservative, did not challenge the military, and posed little threat to the government.<sup>23</sup> Bordaberry cited its continued operation as evidence of the nation's acceptance of its Afro-Uruguayan population. In reality, however, the military governments' actions and rhetoric during its rule pointed to the contrary.

Ultimately, during the dictatorship, Afro-Uruguayan discrimination and marginalization was amplified. Although the population had largely been denied and excluded throughout the country's history, this invisibility had new implications during the military's rule. Citizens endured eviction from their homes and communities, and they had no recourse through domestic activism because of the repression nor support from international pressure. The international human rights movement was focused on a narrow set of violations taking place under the military government – disappearances, torture, and political imprisonment. Internal displacement and forced evictions were not on the emerging transnational human rights network's radar. When the military finally fell after twelve years, this experience motivated many Afro-Uruguayans to advocate for a way to be visible, in part so that this treatment could not occur again, and in part to address historic structural violence and inequities that continued to affect their communities. This push for visibility ultimately found full expression in a vibrant civil rights movement that advocated for inclusion in the cultural citizenship of the country.

#### 5.4 Activism in the Post-Dictatorship Period

After more than a decade of repressive rule, Uruguay transitioned back to democratic rule in March 1985, opening up new opportunities for organizing and activism among Afro-Uruguayans. Without the brutal

<sup>22</sup> Bordaberry, letter to Kenneth Golby, February 12, 1975, reel 5, NACLA Archives, University of Connecticut, Storrs, CT.

<sup>23</sup> The ACSU membership was also generally drawn from a small group of wealthier Afro-Uruguayans. See Uriarte (in Laviñ 2013, 35) and Rodríguez (in Laviñ 2013, 41).



dictatorship that had enveloped the country for so long, citizens shifted their focus to discussing the contours of who was included in the definition of citizenship in the renewed democratic state (Tulchin and Ruthenburg 2007; Yashar 2007, 60).<sup>24</sup> While social and welfare rights were not achieved as part of the transition, they were hotly debated among activists. It was during this time that there became a greater space for public articulations of ethnic identity and demands on the state against continued invisibility and discrimination (Yashar 1996, 87).

Indeed, in the post-dictatorship period, many younger and more politically left-leaning Afro-Uruguayans organized in response to the plight of those who had been displaced during the dictatorship and the continued racism their communities faced (*Brecha* 1985b, 2).<sup>25</sup> Across the Southern Cone, a growing black consciousness was a critical part of discussions about democratization in the region and the renegotiation of the relationship between states and citizens in these newly reconstituted democratic state (Kenny 2018, 64–65; Loveman 2014, 266–267). Afro-Uruguayans visibility grew during these larger conversations in the 1980s as citizens utilized the transitional environment to vocalize collective dissent and to advocate for a broad range of social, political, and economic inclusion. Many were influenced by international movements. For example, some activists brought their ideas for how to improve the lives of Afro-Uruguayans back with them from their time abroad during the dictatorship. Romero Jorge Rodríguez had been jailed and tortured by the military regime and, after his release, fled into exile in Brazil in the mid-1970s.<sup>26</sup> In Brazil, he studied with professors who focused on ethnicity, race, and African civilizations. These classes first exposed him to organizing around racial consciousness. During his time in exile, he was part of a black activist movement advocating for a decolonized, anti-imperialist, and Pan-African political agenda which included declaring a Black consciousness day in Brazil. Rodríguez drew on this experience upon his return to Uruguay from exile as he began to advocate for an Uruguayan racial consciousness.<sup>27</sup> Similarly, Beatriz Ramirez, *una desalojada* (a

<sup>24</sup> Yashar, however, has also argued that Indigenous movements during this time questioned whether the nation-state was a legitimate basis for extending and defining citizenship rights and responsibilities.

<sup>25</sup> “Las dificultades para insertarse en una sociedad blanca” (*Brecha* 1985, 2).

<sup>26</sup> Author email from Rodríguez, January 24, 2019.

<sup>27</sup> Author interview with Rodríguez, October 9, 2014, Montevideo, Uruguay, see also Rodríguez (2003); for more on Brazil’s racial consciousness during this time, see Cottrol (2013, 241–265).



woman evicted from the *conventillos* by the military dictatorship) studied the US civil rights movement and the South African anti-apartheid struggle which informed her ideas of organizing around racial identities. Both of them were deeply influenced by international movements and ideas, utilizing their experiences abroad, transnational connections, and the study of Pan-Africanism to focus on recognition in an Uruguayan context (Sztainbok 2009).

Activists such as Rodríguez and Ramírez were also part of an emerging group of organizers who paved the way for a resurgence in black mobilization as Afro-Uruguayans discussed ways to rescue their own histories, culture, and identity in this transitional period (Brecha 1986, 12). At particular stake was the historic absence of an Afro-Uruguayan population in the way that the state promoted the nation's image as historically homogenous, European, and white (Ferreira 2003, 7). In response, this new generation of Afro-Uruguayan activists rejected the white-washing of their contributions to Uruguayan civil society and reclaimed identities that more directly drew a connection to their African heritage. After seeing the effects of this erasure during the dictatorship, activists focused on ways of promoting their visibility and recovering their historic contributions to the country. At a time in the nation when debates raged about the future of what democracy would look like, activists utilized the shifting and precarious political environment to advocate for inclusion (Ramírez 2011). For example, they founded new organizations in 1988 that invoked their identity as Afro-descendants. Most prominently was *Organización Mundo Afro* (Organization of Afro World), a group that also published a newspaper of the same name. Mundo Afro served as an important advocacy and organizing center for Afro-Uruguayans, while the paper served to publicize *candombe* performances, African art exhibits, and talks, while also publishing articles on the history of Afro-Uruguayans and global issues facing African populations from the formation of the Organization of African States to the plight of Afro-Haitians (Mundo Afro 1988). Fundamentally, Mundo Afro was formed to be, in the words of Rodríguez, one of its main founders, "an Afro-Uruguayan voice, which analyzes and communicates the thoughts and feelings of an essential component of our national formation. A voice which expresses the desires of the black community of Uruguay, our existence, its particular role in the projection of a national reality" (Rodríguez 1988, 3). Other important groups formed under the umbrella of Mundo Afro. These affiliated groups focused on particular populations within the community, such as *el Grupo de Apoyo a la Mujer Afrouguaya* (Support Group to AfroUruguayan

Women [GAMA]) and *Movimiento Juvenil Afro* (Afro Youth Movement) (Andrews 2010b, 146–147). In the subsequent years, even more organizations surfaced which centered on specific issues such as black education or black cultural identity through *candombe*, such as UAFRO, Mizangas, Asociación Civil Africanía, and the Asociación de Arte y Cultura Afro Uruguaya (ADACAU) among others. These groups organized parades, protests, and ultimately worked to bring Uruguay's Afro-population to a broader national conversation about discrimination and structural racism.

Centrally, these groups focused on measures to address the historic invisibility of Afro-Uruguayans, as well as continued economic and social disparities as a response to their experiences during the dictatorship (Uriarte in Laviñ 2013, 35). For much of the country's history, the absence of Afro-descendants as a legitimate force within the country had allowed for false claims of racial tolerance and homogenization to exist. It is part of what had led to the displacement of these groups during the dictatorship and these groups were determined to challenge this status quo. Due to the sustained organized political activism which emerged, these denials were no longer possible. And much of it began with the pressing need to address these inequities after military rule had brought them into such stark focus. As Romero Jorge Rodríguez notes, the basis for the movement “came out of the dictatorship . . . its excesses, its horrible [policies] that left black neighborhoods empty.”<sup>28</sup> Similarly, singer and activist Chabela Ramírez explains that, after the dictatorship left her community with nothing, she decided “to be an activist” so that people could know what Afro-descendants had gone through and she could begin to work to solve some of the most pressing problems facing Afro-Uruguayan communities (Brown 2013, 183). The experience of invisibility and violence during the dictatorship, combined with a propitious political climate during the transition and influences from abroad, fomented the emergence of a strong and vibrant Afro-Uruguayan activist emergence in the country.

## 5.5 International Influences

While originating from this domestic impetus in the 1980s, Uruguayan racial activism also connected with a larger movement and discourse dedicated to issues of racial equity that emerged on a global level, amplifying their concerns and placing additional pressure on the state to institutionally

<sup>28</sup> Author interview with Rodríguez, October 9, 2014, Montevideo, Uruguay.

respond to these concerns. The first influence at a global level came from transnational activists' exchange of ideas. As described in [Section 5.4](#), many activists in exile had been exposed to ideas and organizing abroad, and they brought these ideas and connections back with them to Uruguay in the aftermath of dictatorship that continued over the following decades.<sup>29</sup> In groups of friends, activists such as Alicia Esquivel Rodríguez recounts that they discussed and shared information about Brazil, South Africa, apartheid struggles, and US notions of black power. These experiences oftentimes became inspirational to a new generation of activists in Uruguay to fight for their own struggles (Rodríguez in Laviñ [2013](#), 40).

In the twenty-first century, these ideas were also amplified by a growing concern by states and multilateral organizations, such as the United Nations, as multiculturalism became a global cause célèbre. Shifts in this thinking emerged, first, through an expanded definition of human rights. Although human rights were narrowly defined during the 1970s and 1980s as largely focusing on torture, political imprisonment, and disappearances, by the twenty-first century, the international human rights regime had evolved and developed in a way that addressed a range of social, economic, and identity rights, which included espousing protection of minority rights as one of its central tenets (United Nations Minorities Declaration [1992](#); Kaclem [2008](#), 531–552; Loveman [2014](#), 267). Implementation of these ideas reached a key apex in 2001 when, under UN auspices, Durban, South Africa hosted the World Conference against Racism. The UN High Commissioner for Human Rights, Mary Robinson, hosted the conference as delegates from around the world came to discuss the unfair treatment of minority groups. Romero Jorge Rodríguez represented Mundo Afro as part of the Uruguay delegation to the conference, arguing forcefully for Uruguay to officially address Afro-Uruguayan invisibility and exclusion from the state.<sup>30</sup> Here, Romero and other activists who had been working domestically for fifteen years, connected with activists from around the world and raised the issue not just domestically but internationally. This work also garnered support from global agencies and networks, in addition to inspiring the production of international reports, documents, and support of

<sup>29</sup> Yashar explains that this is the globalization approach as one component to understanding the rise of ethnic mobilization (Yashar [2005](#), 15–19).

<sup>30</sup> Other attendees included the Minister of Education and Culture, Antonio Mercader. For an articulation of what Rodríguez presented to the conference, see Rodríguez ([2003](#), 109–115).

multiculturalism within states that recognized and supported diverse populations (Carballo in Laviñ 2013, 121; Loveman 2014, 274).<sup>31</sup> After the conference, the Uruguayan state was motivated to acknowledge its Afro-Uruguayan history both due to a larger trend in the region and internationally to celebrate its multiculturalism as part of promoting its status as a civilized state in a community of nations, as well as for fear of being embarrassed on an international stage by continuing to deny the country's minority populations. Activists had brought complaints to the international stage and Uruguay began to respond.

This change started in a substantive way soon after the conference. In 2003, the capital of Montevideo passed a municipal law that created the *Unidad Temática por los Derechos de los Afrodescendientes* (Thematic Unit for the Rights of Afro-Descendants), aimed at investigating and creating programs that would focus on racial equality in the city. At a national level, in 2004, Parliament adopted Law 17.817, which declared it a national interest to combat all forms of discrimination. Furthermore, the law provided for the creation of an Honorary Commission against Racism, Xenophobia, and all forms of discrimination which listed its responsibilities as monitoring and reporting on anti-discrimination and developing proposals to create greater compliance with anti-discrimination.<sup>32</sup> In this way, one can see an immediate response at the local and national level to recognize the country's Afro-decedent population and make rhetorical commitments to securing equality.

One of the most tangible outcomes of this renewed organizing and international pressure found its expression in efforts at including race in the national census. The only time a Uruguayan census had taken account of race was 1852 – a mere ten years after slavery was abolished. Since then, no official part of the census sought to account for the ethno-racial component of the population.<sup>33</sup> This allowed the state to make

<sup>31</sup> Some of these reports include, UN Human Development Report: Cultural Liberty in Today's Diverse World, 2004, available at: [http://hdr.undp.org/sites/default/files/reports/265/hdr\\_2004\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/265/hdr_2004_complete.pdf), last accessed October 16, 2020, and National Human Development Report Brazil: Racism, Poverty, and Violence, 2005, available at: <http://hdr.undp.org/en/content/national-human-development-report-brazil>, last accessed October 16, 2020.

<sup>32</sup> "Lucha Contra el Racismo, la Xenofobia y La discriminación," Ley N. 17.817, available at: <https://legislativo.parlamento.gub.uy/temporales/leytemp1016698.htm>.

<sup>33</sup> Loveman explores how early censuses were part of modern state-building projects of the early republics, but that race fell off as a category of inquiry with the discrediting of race as a scientific concept (2014, 28, 41).

claims for over 150 years about its “nonexistent” Afro population. By the turn of the twenty-first century though, Afro-descendent civil society groups across the Americas launched concerted campaigns to increase their visibility through disaggregated data which could improve recognition of distinct identities as a way to combat inequality, fight discrimination, and protect vulnerable populations (*Mundo Afro* in Romany 2001, 179–181; Lennox and Minott 2011; Loveman 2014). The movement stemmed from the idea that being included in official surveys was a way to denote recognition and citizenship in an era when social scientific surveying grew in prominence.<sup>34</sup> Within Uruguay, many organizations that were founded in the dictatorship’s immediate aftermath hoped that a consciousness about the complexity of Uruguay’s racial demography could overturn the notion of Afro-Uruguayans absence in the country. A census was seen as a tool to erase the social invisibility that manifested in Afro exclusion from culture, participation in politics, and unrecognized contributions to the nations’ social and cultural fabric (Lennox and Minott 2011; Loveman 2014). Further, studies have traced social invisibility to economic marginalization and disproportionately high levels of poverty and unemployment, as well as lower levels of education – statistics which all bore out in Uruguay. Afro-Uruguayans argued that if a census could recognize these disparities, it could also help combat the entrenched inequality and spur action to address these issues. Activists succeeding in having race be included on the 1996 and 2006 household surveys – representative sample surveys across the nation that collect information about the population. Previous estimates had placed the Afro-Uruguay population at only 4 percent of the population, but these surveys pointed to a higher percentage of the population. The first recorded 6 percent of the population identifying as Afro-Uruguayan, and the second was 9 percent (Bucheli and Cabella 2006; Cabella and Porzecanski 2015). This incomplete but illustrative information provided activists with data to advocate for inclusion of the question on the full census to get a more complete accounting of the ethnic makeup of the country.

Due to this evidence and joining a chorus of voices across Latin America that argued for the importance of accounting for ethno-racial classification of citizens, Afro-Uruguayans made a concerted effort to have the government include race in the long-planned 2006 census.

<sup>34</sup> For two regional comparisons about the importance and challenges of being “counted,” see Igo (2007) and Nelson (2015).

Yet, the nation's planning for the census lacked any racial accounting, and therefore Afro-Uruguayans staged protests and lobbied to postpone the census until it took account of the racial makeup of the country. Bolstered by a post-Durban international movement for multicultural recognition, the mobilization succeeded in stopping another year of non-inclusion (Bucheli and Cabella 2006; Cabella and Porzecanski 2015). The census was delayed for five years to develop a tool to ask about the country's racial-ethnic composition.

In the meantime, other measures were taken to increase Afro visibility through different avenues. First, in 2005, Edgardo Ortuño became the first Afro-descendent elected to Parliament since 1932.<sup>35</sup> He had grown up as an activist in the aftermath of the country's dictatorship, advocating for the liberation of political prisoners and fighting against the country's 1986 amnesty law for members of the military. This activist experience ultimately led him into politics (Oronoz 2015). His election to Parliament coincided with a national leftward sweep, when his party, the Frente Amplio, won the presidency for the first time.<sup>36</sup> In office, he worked with this new left majority and a vibrant group of activists to shine a light on the history and culture of a long-denied population. For example, he helped establish a "National Day of Candombe, Afro-Uruguayan Culture, and Racial Equality," which he believed could be similar to Martin Luther King Jr. Day in the United States or the Brazilian Black Consciousness Day (Casa de la Cultura AfroUruguaya 2012). Ortuño explained that the law aimed to reclaim Afro-Uruguayan identity and culture after a long history of discrimination (Ortuño in Laviñ 2013, 56). The day was also intimately linked to the displacement of Afro-Uruguayans during the dictatorship – it is celebrated on December 3. That was the day in 1978 that the dictatorship violently forced residents of the famous *conventillo Mediomundo* to leave for good. Now every year on December 3, there is a national celebration of Afro-Uruguayan culture with parades, lectures, shows, and *candombe*.

Pushes for visibility also occurred through various modes of using public events and controversies to mobilize national debates about race

<sup>35</sup> There is some evidence that suggests that Alba Roballo, who served as a senator from 1958–1968 and 1971–1973, was also black (Andrews 2010b, 164–165). Afro-Uruguayans, however, remain under-represented in Parliament (Riguetti 2019).

<sup>36</sup> The Frente Amplio was created in 1971 as a challenge to the political deadlock prior to Uruguay's official period of military rule. It started as a coalition political party of Communists, Socialists, Christian Democrats, leftist independents, and those leaving the two traditional parties. See Luna (2007, 5).

in the country. For example, in 2011, this process involved using the country's favorite sport, *fútbol*, to promote a race-based consciousness. During an English Premier League game, Luis Suárez, Uruguay's most popular and best player, engaged in a physical and verbal dispute with Senegalese-born Manchester United player, Patrice Evra. Evra filed a complaint against Suarez for using the word *negro* in the fight, which violated league rules of using "abusive and/or insulting words and/or behavior contrary to FA [Football Association] rules" that included "a reference to the ethnic origins and/or colour and/or race" (FURD 2011). Suarez's defense against the complaint rested on his claim that *negro* was a "descriptive and sometimes affectionate term for blacks or even for people with dark hair or dark complexion" (Renfrew and Snyder 2016, 32).<sup>37</sup> The explanation proved unconvincing and the decision ultimately resulted in an eight-match ban and £40,000 fine. Afro-Uruguayans saw the international controversy as a way to shed light on the ways that racism existed in the country. Ernesto Rodríguez, a member of Mundo Afro, told anthropological researchers that, while some Uruguayans think of racism only in terms of slavery, whippings, and lynchings, those categorizations elide structural racism within societies (Renfrew and Snyder 2016, 336). In Uruguay, prejudice was often expressed in daily forms of public discourse and discrimination. The Suarez controversy was one way for Afro-Uruguayans to begin to discuss this topic and bring implicit racism to the fore of national dialogues and advocate for the importance of policies to address this discrimination.

The year of this incident also coincided with the results of the updated 2011 census and activists utilized the controversy as a way to center the conversation about the results. After Afro-Uruguayans successfully mobilized to include race on the questionnaire, the census itself reflected Afro-Uruguayan visibility, stating that the inclusion of the question to self-identify "represented another fundamental step towards the recognition of minority populations as subjects of rights, enabling the construction of a more just and inclusive society" (Instituto Nacional de Estadística 2011). Further, when the results of the census became public, it recorded that instead of the long-assumed 4 percent of the population, Uruguay actually had a population of 8.1 percent Afro-descendants –

<sup>37</sup> Suárez offered another defense based on a misunderstanding of the Spanish language in his memoir. See Suárez (2014).



more than double official previous estimates.<sup>38</sup> The census also reflected significant gaps in the socioeconomic statuses between Afro-descendants and the rest of the Uruguayan population. Immense disparities existed in terms of the average number of years completed within the education system, wage discrepancy, illiteracy, higher education, and poverty rates (Cabella et al. 2013). These stark differences, finally brought to light in their full form from the census, demonstrated that inequality was linked to race in each and every department across the country. With the census thus came newfound visibility and data which civil society groups could use to advocate for meaningful policy changes to address these issues.

Advocacy efforts on behalf of the census transitioned into mobilization to address the inequalities that the census laid bare. One of the most notable outcomes came in the form of an affirmative action law in 2013, which had three main provisions.<sup>39</sup> First, the law mandated teaching about Afro-Uruguayan history which, until the law, had been completely left out of public schools' curriculum, to account for Afro visibility. Second, it granted Afro-descendants more scholarships and access to vocational training to help produce higher rates of graduation. Lastly, the law set up a quota in government employment, requiring that 8 percent of vacancies be set aside for Afro-Uruguayans (Carrillo 2012, 2). It also gestured toward the need for private industry to do the same. These measures were instituted to last for 15 years. The bill passed both chambers of Parliament unanimously. Explicitly noting the reasons for the law, the first article states that the "the Afro-descendent population that has inhabited this country has historically been the victim of racial discrimination and stigmatization since the time of slave trafficking and the slave trade . . . this law contributes to making amends for historical discrimination" (Parlamento Uruguay 2013).

Debates in the Senate similarly focused on correcting the historical injustice, which acknowledged the structural racism that had been ingrained in Uruguayan society since the slave trade. However, some senators, responding to the fears of opponents of the law, questioned

<sup>38</sup> As scholar Robert Cottrol notes, there is a long history of individuals across Latin American that attempt to minimize or deny African heritage, so census numbers might actually significantly undercount in a self-reporting system such as Uruguay (Cottrol 2013, 274).

<sup>39</sup> The idea for an affirmative action law dated back well over a decade as a way to redress student access to education, discrimination in industry, and a lack of representation in higher education and professional jobs. See Santos (2003) and Rodríguez (2003, 117–126).



whether positive discrimination might occur in new hiring practices, or whether there might be potential for the policy to create a stigma around the hiring of Afro-Uruguayans.<sup>40</sup> Despite these reservations, others claimed that doing nothing would be more detrimental. Rodríguez stressed in his testimony before the Senate, “The absence of a policy would itself be a policy,” where the government would continue to endorse pre-existing structural discrimination. Afro-Uruguayans viewed an affirmative action law as a way to transform law from being a tool of oppression and racial subordination into one that would help dismantle a historic system of racial hierarchy and invisibility. The argument clearly had force, as the bill finally passed the senate in August 2013 (Olaza 2017). It marked a clear victory for Afro-Uruguayans that began in many ways in the transition back to democratic rule in the 1980s but had finally found official recognition and redress almost thirty years later. Over this period, Uruguay’s evolution on multiculturalism and equal rights initiatives had been gradual and influenced by a confluence of grassroots activism, a rising international minority rights regime, and governmental responses to both factors that eventually resulted in marked policy changes.<sup>41</sup>

## 5.6 Conclusion

In the six years since the affirmative action law passed into law, there have been few studies that evaluate the effects of the affirmative action law. However, vast disparities still exist. While Afro-Uruguayans equal 8.1 percent of the population, they are 26 percent of those who qualify for Tarjeta Uruguay Social (TUS) benefits because they live under the poverty line. In addition, quotas were established to have 8 percent of government jobs go to Afrodescendants. The state’s five-year report indicated that through 2018, numbers reached 3.29 percent, which, when broken down by state agency, equaled fourteen out of thirty-eight

<sup>40</sup> Quotas have indeed been politically explosive, particularly in Brazil. Historian George Reid Andrews notes their “questionable constitutionality” and that they can “do the anti-racism cause more harm than good” (Andrews 2009, 191–210). For more on pushback against the law, see Sharnak (forthcoming[b]).

<sup>41</sup> It should be noted that explicit references were made to international standards and the Durban conference in Parliamentary debates that argued for the importance of the law. See “Diario de Sesiones de la Cámara de representantes,” 59th session, October 17, 2012. Available at: <https://legislativo.parlamento.gub.uy/temporales/70784335268641.PDF#pagina18>, last accessed April 8, 2020.

organizations managing to reach the 8 percent quota (Isgleas 2019; *La Diaria* 2017). Uruguayan government officials noted that “there was still a long way to go before [the quota] was fully achieved.” Thus, they sought to implement awareness campaigns and trainings for 20 percent of state agencies on how to increase their numbers (Committee on the Elimination of Racial Discrimination considers report of Uruguay 2016). So far, the law’s biggest success came from the number of grants awarded to attend school, which helped keep students in the educational system instead of being forced to leave at an early age to contribute to making money for their households (Committee on the Elimination of Racial Discrimination considers report of Uruguay 2016). It remains to be seen whether official recognition will make a substantial impact on discrimination or significantly impact standards of living. These early statistics demonstrate the difficulty of implementing these laws and early limits of legislative policy to change long-standing structural discrimination. Scholars such as Charles Hale have demonstrated how neoliberal governments embrace limited forms of multiculturalism to control broader or more radical forms of empowerment, and it is still to be determined whether Uruguay’s affirmative action law was a form of control and impression management or an earnest attempt to change the lived experience and material wellbeing of the Afro-Uruguayan population (Hale 2002, 2006, 47–82).

Despite these lingering problems, the sustained activism of Afro-Uruguayans has provided a unique and powerful example of rising racial visibility, transnational activism in the Western Hemisphere, and its effects in one country. Afro-Uruguayans’ contributions to the sociopolitical progress and cultural fabric of their country had largely been denied for the majority of the nation’s history and this invisibility was exacerbated during the country’s military rule. Yet, as a result of that particular experience, Afro-Uruguayan mobilization surged during the country’s transition back to democratic rule. Advocacy for visibility and inclusion in the national narrative, which can be traced to this period, ultimately found some success in the twenty-first century, when combined with a global movement for ethnoracial recognition, a politically left-leaning state implemented far reaching measures such as days of recognition, inclusion in the census, and an affirmative action law.

In many ways, Uruguay has been a beacon of social progressivism in the region. The government not only addressed affirmative action, but it also passed laws to legalize abortion, same sex marriage, trans-rights, and

the sale of marijuana – leading some observers to call the country a “utopia” (Goni 2016). It is easy to see some of the abovementioned steps taken on race as part of the socially liberal policies of this broader leftist platform of the Frente Amplio government. However, when examined closely, it becomes clear that these important steps are the result of a combined set of factors, including decades of concerted advocacy by the Afro-Uruguayan community that finally got political purchase under a leftist government with the added effect of an international push toward multiculturalism. Perhaps most notably, this overturned a national narrative of whiteness that dates back two centuries. Afro-Uruguayans brought visibility about their contributions to the country, which existed since Uruguay first adopted *candombe* as a national tradition, but until recently were ignored. It is this change that provides a radical shift in terms of thinking about previous national histories of complete invisibility to one where there is official recognition and celebration of Afro-decedents and their influence in the country. While disparities and discrimination still exist, sustained mobilization created a road to recognition and a path for change in policy – one that stemmed from the depths of dictatorship but ultimately provided opportunity and impetus that is finally bearing fruit.

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## Justice in Translation

### Uncle Meng and the Trials of the Foreign<sup>1</sup>

ALEX HINTON

#### July 1, 2009, Extraordinary Chambers in the Courts of Cambodia

“The scar marks from the beatings, do they still remain to this day, Uncle?” Judge Non Nil, the President of the Khmer Rouge Tribunal, asked civil party Bou Meng. “Or are they healed and all gone?”<sup>2</sup>

On July 1, 2009, Uncle Meng had taken the stand during the first case being held by the Extraordinary Chambers in the Courts of Cambodia (ECCC or “Khmer Rouge Tribunal”), an international hybrid tribunal established to try the surviving leaders of the Khmer Rouge.<sup>3</sup> Elevated on a raised dais in front of Uncle Meng sat the Trial Chamber, comprising two international and three Cambodian jurists, one of whom was President Nil.

To Uncle Meng’s right sat defendant Duch, the former commandant of S-21, the secret interrogation and torture center where Uncle Meng had been imprisoned and tortured during Democratic Kampuchea (DK), the period of Khmer Rouge. Over 12,000 people perished at S-21, a former high school that was at an epicenter of a campaign of mass murder, terror, and repression that resulted in the death of perhaps 1.7 million of Cambodia’s 8 million inhabitants (Chandler 1999; Hinton 2016; Kiernan 2008).

Sixty-eight-year-old Uncle Meng, a short balding man with a raised chin and face marked by deep furrows cascading down from his outer eye – a sign of hours spent farming under the sun that also gave the appearance of perpetual grief – was one of a small number of S-21 survivors. Uncle Meng survived because he could paint, though not

<sup>1</sup> This essay is adapted in revised form from Hinton (2018).

<sup>2</sup> “Transcript of Proceedings – ‘DUCH’ Trial (Trial Day 37),” July 1, 2009. Hereafter “*Day 37*.” *Day 37*, 37, 32, and 25 [Khmer version], Available at: [www.eccc.gov.kh](http://www.eccc.gov.kh), last accessed March 17, 2022.

<sup>3</sup> On the ECCC, see Hinton (2018).

before he had been tortured, an experience he had just finished recounting to the court.

"[They've] healed already. But there are scars all over my back, Mr. President," Uncle Meng replied to Judge Nil, motioning toward different parts of his shoulders and back. "You can even see them on the back of my arms." He continued, "They lashed me with the end of a whip while I lay face down on the ground. They beat me one by one, switching when they got tired." Bou Meng paused and then said, his voice barely audible, "Five of them were there, beating me at the same time."

"Can we please see the scars briefly?" Non Nil asked, motioning to Bou Meng to come forward. "Yes," Uncle Meng replied. "[You] can."

As the court waited, Uncle Meng's German lawyer, Silke Studzinsky rose to intervene. "Mr. President, I would like [us to take a] break now before Mr. Bou Meng shows his scars and to decide if this is appropriate."

It was the second time Studzinsky had intervened on behalf of her client that morning. As the proceedings had commenced, Studzinsky had asked to "make some observations." The previous day, she noted, another civil party and S-21 survivor "was overwhelmed sometimes when he [re]counted his story and he had to cry, and he could not control his emotions any more." Glancing up at the judges as she read from her notes, she continued, "He shares his traumatization" as well with "[Uncle Meng], who is my client."<sup>4</sup>

Accordingly, Studzinsky requested the court assure witnesses "that if they need time to cope with their emotions . . . that they can be sure to have this time before they continue with their testimony," perhaps including "a short break" in which "to recover." In addition, the court should offer assistance from psychological support staff.

Uncle Meng felt "strong" and looked forward to testifying, Studzinsky concluded, but "at some points of his story, [might become] very weak and will be moved very much by his emotions." At such times, it would be appropriate to give him time to "relax" before proceeding.

Studzinsky's intervention was linked to the larger backdrop of civil party representation. She was the international lawyer for civil party Group 2, which included Cambodian local non-governmental organizations offering counseling and assistance for distressed witnesses and civil parties.<sup>5</sup> This larger backdrop of mental health services and concern about trauma was

<sup>4</sup> Day 37, 1.

<sup>5</sup> See "Justice & Relief for Survivors of the Khmer Rouge Program," TPO website. Available at: <http://tpocambodia.org>, last accessed March 17, 2022.

behind Studzinsky's initial remarks and suggestion that Bou Meng be offered psychosocial support if distressed.

"The Judges," Judge Nil replied to Studzinsky, were "monitoring and observing the proceedings" and had noted the survivors were "very emotional." Mental health support staff were on hand to assist. The Trial Chamber had also observed that the witnesses were able to compose themselves and get "under control to respond to further questions."<sup>6</sup> The court did not want to "incite the emotions of the witnesses until he or she cries," but if it happened the judges would "take immediate action" to ensure the witness could "control their emotions." Then he called Bou Meng to the stand.

"Uncle," Non Nil instructed, "Could you please tell the court about your experience[s] during the Khmer Rouge regime from April 17, 1975 to January 7, 1979?"<sup>7</sup>

This chapter explores Bou Meng's reply and what his experience testifying at an international hybrid tribunal says about the ways in which justice is translated across different epistemological and cultural domains. Bou Meng's experience, I contend, involved both desire and exile.

### 6.1 The Testimony of Uncle Meng: A Traumatized Survivor Who Painted Pol Pot amidst Screams for Help

In 1977, Uncle Meng and his wife were working, like many Cambodians during DK, on a rural cooperative, building dams and digging canals. The labor was difficult, pushing him to the limits of his physical abilities.

One day he was told that he was being sent to the University of Fine Arts in Phnom Penh to teach. He was pleased. When he realized that their car was not headed in the direction of the university, "I felt uneasy and I felt a bit scared and I felt I was dizzy." Uncle Meng and his wife were driven to a house by S-21 and suddenly ordered to "put our hands behind our backs and they cuffed our hands. Then my wife started crying and said, 'What did I do wrong?'"<sup>8</sup> Their dehumanization was immediate. A guard replied, "You, the contemptible, you don't have to ask. Angkar [the Organization] has many eyes, like pineapples, and Angkar only arrests those who make mistakes or offence." Uncle Meng thought

<sup>6</sup> Day 37, 5.

<sup>7</sup> Day 37, 9.

<sup>8</sup> Day 37, 11.



**Figure 6.1** Bou Meng and his wife blindfolded before the gates of S-21. Painting by Bou Meng.

Image courtesy of DC-Cam/SRI.

about his work at the cooperative and “could not think of any mistake that my wife and I made.”<sup>9</sup>

They were blindfolded and led into S-21 to be registered (as illustrated in Figure 6.1). “After they photographed my wife,” Uncle Meng told the court, “they photographed me.” He never saw her again. Today, the only photograph of his wife that he has is a copy of her S-21 mugshot. “I would like to show [it] to the judges,” he stated. “Her name was Ma Yoeun alias Thy,” Uncle Meng said as her black and white photograph was displayed on the court monitor. Her hair is cropped short, revolutionary style; a white tag with the number “331” is pinned to her black shirt. “She was about 25 years old.”<sup>10</sup>

Uncle Meng was taken to a cell “in which about 20 to 30 detainees were placed. They all looked like hell because their hair grew long . . . I felt dizzy when I entered the room and I was so confused.”<sup>11</sup> He was stripped to his underwear and shackled by the ankle. The prisoners’

<sup>9</sup> *Day 37*, 17–18.

<sup>10</sup> *Day 37*, 45–46.

<sup>11</sup> *Day 37*, 21.

speech and movement was restricted; they had to request permission even to relieve themselves into an old ammunition can or plastic jug. Guards beat prisoners who made too much noise with a stick.<sup>12</sup> Uncle Meng recalled that a guard once stomped on the chest of the prisoner lying next to him. The prisoner coughed blood and died.

Food was minimal. "I was always hungry," Uncle Meng recalled. "When I saw the lizard crawling on the ceiling I would wish that it dropped down so that I could grab it and eat."<sup>13</sup> The prisoners were bathed infrequently and hosed down. "I used to raise pigs," Uncle Meng noted. "When I washed my pigs, then I water-hosed my pigs and I used my hands to clean my pigs. But [at S-21] I was even lower than my pigs or my dog because no soap was used, no scarf was used to change or dry my body."<sup>14</sup> The guards, Uncle Meng recalled, made jokes about the prisoners' naked bodies, mocking the size of their private parts.<sup>15</sup> The prisoners became thin, grew weak, and got "skin rashes and a lot of skin lice. It was so itchy."<sup>16</sup>

Worse was to come. Prisoners disappeared. Uncle Meng had an idea of what happened since the guards threatened that they would "peel my skin." A prisoner who slept next to Uncle Meng explained this meant "you will be beaten during the interrogation and I felt so horrified in my mind. I was so shocked. I thought, what mistake did I make."<sup>17</sup>

Four or five months later, Uncle Meng, in a severely weakened state, was interrogated. He was led, blindfolded and handcuffed, to a room where he was ordered to lie, face down, on the floor, his ankle shackled to a bar. His interrogators asked if he was CIA or KGB. "I told them I did not know anything," Uncle Meng told the court.<sup>18</sup> "They had a bunch of sticks and they dropped [the pile] on the floor and it made noise," Uncle Meng continued. "And I was asked to choose which stick I preferred. And I responded, 'Whichever stick I choose, it is still a stick that you will use to beat me up so it is up to you, Brother, to decide'."

Then Mam Nai, one of Duch's top deputies, "stood up and grabbed a stick and started to beat me."<sup>19</sup> Uncle Meng recalled "He asked me to count the number of lashes. When I counted up to 10 I told him, and he

<sup>12</sup> *Day 37*, 23.

<sup>13</sup> *Day 37*, 66.

<sup>14</sup> *Day 37*, 76.

<sup>15</sup> *Day 37*, 26.

<sup>16</sup> *Day 37*, 76.

<sup>17</sup> *Day 37*, 12.

<sup>18</sup> *Day 37*, 29.

<sup>19</sup> *Day 37*, 12.

said 'It's not yet 10, I only hit you once'. And I can remember his word . . . I can always remember his face, the person who mistreated me."<sup>20</sup>

As many as five interrogators took turns beating Uncle Meng. "I felt so painful," Uncle Meng went on. "There were wounds – many wounds on my back and the blood was on the floor flowing from my back. Whips were also used to torture me. I was so shocked and painful."<sup>21</sup> Uncle Meng kept telling his interrogators that he didn't know how to answer their questions: "I could not think of any mistake that I made. I did not know what the CIA or KGB network was; then how could I respond. So they just kept beating me. In my mind, I thought of my mother."<sup>22</sup> His back was covered with wounds, which his captors would sometimes pour gravel into or poke.

Uncle Meng's torture continued for weeks, during which he slept in a tiny individual cell. Uncle Meng was tortured in various ways, including being given electric shocks so severe he lost consciousness. Despite the torture, Uncle Meng claimed he never confessed. "I gave the same response every day," he testified. "I did not know who was the leader or who introduced me into the CIA or KGB." In the end, his interrogators wrote up "a false confession and ordered me to sign. I can not recall the content of that confession," but "inside my heart I of course did not approve."<sup>23</sup>

After signing his confession, Uncle Meng was returned to a communal cell. One day, toward the end of 1977, a young cadre asked, "In this room, who can do the painting?" Uncle Meng was an artist, "So I raised my hand. I said, 'yes, I can do the painting'."<sup>24</sup> He was unshackled and tested. "They wanted to know whether I was really a painter," Uncle Meng said, so "they gave me a paper and a pencil so that I could draw."<sup>25</sup> After Uncle Meng had proved his ability, he was transferred to a small artisan workshop (illustrated in [Figure 6.2](#)). The artists were given better food and allowed to sleep without chains. And they survived. Almost every other S-21 prisoner, including Uncle Meng's wife, was executed.

Uncle Meng's first assignment was to paint a large portrait of Pol Pot based on a photograph of the Khmer Rouge leader. As Uncle Meng worked, Duch sometimes sat "nearby me, watching me, sitting on a chair with his legs crossed," even offering suggestions.<sup>26</sup>

<sup>20</sup> Day 37, 74.

<sup>21</sup> Day 37, 13.

<sup>22</sup> Day 37, 13.

<sup>23</sup> Day 37, 53, 85.

<sup>24</sup> Day 37, 18.

<sup>25</sup> Day 37, 67.

<sup>26</sup> Day 37, 19, 36.



**Figure 6.2** Painters and sculptors in the S-21 artisan workshop, painting by Bou Meng.

Image courtesy of DC-Cam/SRI.

If he did not personally harm Uncle Meng, Duch made threats, including a warning that, if his portrait of Pol Pot was flawed, Uncle Meng would be used as “human fertilizer.”<sup>27</sup> As for the abuse of other prisoners, Uncle Meng recalled an incident involving a Vietnamese man who claimed he could make wax molds. The man “was tested and Duch saw that he could not do it. Then he ordered the interrogators to kick him like kick[ing] a ball.”<sup>28</sup> The man disappeared. Another time, while painting, Uncle Meng witnessed an incident in which female guards kicked a pregnant woman because she was not walking quickly enough.<sup>29</sup> On another occasion, two guards passed his office carrying a “very thin man” whose arms and legs were tied to a pole like a pig.<sup>30</sup> While Uncle Meng never witnessed torture, “I heard the screams; people crying for help all around the compound.”<sup>31</sup>

<sup>27</sup> Day 37, 64.

<sup>28</sup> Day 37, 38.

<sup>29</sup> Day 37, 50, 78.

<sup>30</sup> Day 37, 48.

<sup>31</sup> Day 37, 46.



After the defense challenged him on this point, Uncle Meng swore “right before the iron genie” that if he was “exaggerating anything, then I would be run over by a bus.”<sup>32</sup> The defense also noted there were inconsistencies in Uncle Meng’s testimony, a point Uncle Meng acknowledged, explaining “it is because I have been severely tortured . . . if I made any mistake in my testimony it is result from the very poor memory of mine; resulted, of course, from such torture.”<sup>33</sup> As he finished, he was close to tears.

Indeed, Uncle Meng’s suffering, past and present, was a central theme during his testimony, displayed most visibly in his description of his torture, the many times he lost his composure, and his scars. Besides memory problems, Uncle Meng said that his torture and imprisonment had resulted in ailments such as hearing loss, poor eyesight, and premature aging. He had consulted with mental health professionals and was given medication “so that I would not have insomnia, and I take two types of tablets.”<sup>34</sup>

In many ways, the emotionality of Uncle Meng’s testimony peaked when he posed a question to Duch through President Non Nil near the end of the day. “Mr. President,” Uncle Meng requested, “I would like to ask him where did he smash my wife.” Uncle Meng explained that he had searched for her after DK to no avail and assumed she had been executed. He just wanted Duch to “tell me where she was killed or smashed. Then I would go to that location and just get the soil . . . to pray for her soul.”<sup>35</sup>

Duch replied that he was particularly moved by Uncle Meng’s testimony and wanted “to respond to your desire, but it was beyond my capacity because this work [was] done by my subordinate, but I would like to presume that your wife might have been killed at Boeung Choueng Ek.” Duch added, “Please accept my highest assurance of my regards and respects toward the soul of your wife. That’s all.”<sup>36</sup> Uncle Meng began to cry (MacDonald 2009) (Figure 6.3).

If this brief synopsis provides an overview of Bou Meng’s testimony, it is a particular type of account, as the discussion that follows will demonstrate. This account is redactic (Hinton 2016), editing out information that is less relevant to – or even threatens the integrity of – the juridical articulation in the making. Nevertheless, traces of the editing process

<sup>32</sup> Day 37, 93.

<sup>33</sup> Day 37, 94.

<sup>34</sup> Day 37, 74.

<sup>35</sup> Day 37, 88.

<sup>36</sup> Day 37, 89.



**Figure 6.3** Bou Meng attending the Supreme Court Chamber’s final decision in Case 001, when Duch was sentenced to life imprisonment, ECCC courtroom, February 3, 2012.

Photo courtesy of ECCC.

remain, both obvious (the juxtaposition of quotations from the trial transcript with my summary indicating the text is truncated) and more indirect (the sometimes odd court translations of Bou Meng’s quotations). These traces suggest an excess of meaning that has been elided as well as the juridical disciplines that produce legalistic narratives and subjectivities, ones foregrounded in what I have elsewhere called “the justice facade” (Hinton 2018; see also Hinton 2022). This productivity was evident at moments such as the deliberations over Bou Meng’s scars, Studzinsky’s remarks about civil party emotion, and Bou Meng’s very entrance into the court, a moment to which I now return.

## 6.2 Translation and the Trials of the Foreign

“Court officer, bring the survivor, Bou Meng, into the courtroom,” Non Nil had instructed at the start of the proceedings.<sup>37</sup> A moment later, Uncle Meng, wearing an untucked dress shirt, top buttons unfastened,

<sup>37</sup> Day 37, 6; Khmer version, 5.

entered the courtroom. Clapsed in both hands, he carried an enlargement of his wife's S-21 mugshot, which he carefully set on the desktop of the witness stand. The court official who had led Uncle Meng into the courtroom helped him put on a headset, which almost everyone in the courtroom wore.

"Uncle, What's your name, Uncle?" Judge Non Nil began.

"[My] name," Bou Meng said, bumping the microphone set on his desk as he rose to his feet. "Bou Meng."

"Uncle, you can sit down, because the proceedings will be really long and we will have a full day to hear your testimony," Non Nil instructed. "The Trial Chamber judges give you permission to sit." As Bou Meng quickly sat down, an illuminated red band at the bottom of the head of his microphone ceased to glow.

"Second. Uncle, before you respond to my questions," continued Non Nil with a slight smile,

Uncle, could you please wait until you see the red light on the head of microphone before Uncle begins speaking. If Uncle speaks when the red light is not on, the sound will not reach the interpreters. As a consequence, the translators won't be able to translate and thus the international colleagues in the proceedings and public gallery would not hear what you are saying.<sup>38</sup>

Finally, Non Nil noted that, since Bou Meng had hearing problems, "when you listen to any questions you should be quiet and wait until the red light is on. Then you can respond."

With these words, delivered less than thirty seconds after Uncle Meng had settled into his seat, President Non Nil introduced Uncle Meng to the disciplines of the court. His remarks centered on this issue of translation and a related technology: The microphone. Like other international tribunals, translation is simultaneous at the ECCC. The primary language, projected into the public gallery by a speaker-system, is Khmer. Everything that is said in Khmer is immediately translated into English, then from English into French. All the participants must speak one of these three official languages. Bou Meng's headset included channels for each language.

The words Bou Meng had spoken, "[My] name . . . [is] Bou Meng," had taken a journey from the microphone on his desk to the headsets of those listening in other languages. Non Nil had quickly summarized this

<sup>38</sup> Day 37, 6, Khmer, 5–6.

semantic flow as Bou Meng's "message" was sent to the translators who then conveyed it to the international participants, who otherwise "wouldn't hear or understand." The translators sat out of sight in an enclosed second floor room at the back of the public gallery.

For translation to take place, Bou Meng had to act in specific ways. In the aforementioned sequence, Non Nil told Bou Meng that he had to wait until the red band on the head of his microphone illuminated before speaking. If he spoke out of order, his voice would not be heard. Just a few minutes later, Non Nil would repeat these instructions, adding that Bou Meng should "not answer too quickly, Uncle, watch for the light before [responding]. Uncle, speak a bit more slowly. Watch for the light until you see [the red light] on my microphone is off."<sup>39</sup> As Bou Meng's testimony proceeded, he continued to be coached on how to speak and what to say, instructions part of a larger process in which Bou Meng's speech and behavior were regulated by juridical disciplines and technologies.

If this sort of courtroom "translation" refers to the particular "process of turning from one language into another," the term has a more abstract meaning of "transference; removal or conveyance from one person, place, or condition to another," an action that involves "transformation, alteration, change" (OED Online 2014b). This general sense of transportation from one state to another is captured by the etymological connection of "translation" to "transfer," which comes from the Latin *transfere*, "to bear, carry, bring" (*transfere*) "across" (*trans*-). The Khmer term Non Nil used, *bok brae*, has a roughly similar sense, suggesting a removal (like peeling the bark off a tree) and a transformation into a different form (Headley et al., 1977, 459, 600). In both cases, there is a suggestion of something "stripped away" from one context and transformed as it is introduced into another.

In non-literary contexts, such as translation at a tribunal, it is often assumed that, while everyone recognizes a "loss," the task of translation is a more or less straightforward technical exercise. Within the field of translation studies, however, there has been much debate about what happens during the "transfer," as "the text" is translated into another language (Venuti 2012, *passim*). Even if there are key differences in the translation of a literary text and trial testimony, the two converge in the centrality of translation in the courtroom on both linguistic (translation

<sup>39</sup> Day 37, 6.

into a foreign language) and discursive levels (a translation into juridical form). Discussions in translation studies therefore provide a way to re-approach the disciplines that structured Bou Meng's testimony. Accordingly, I now make another return, a re-examination of Bou Meng's testimony as, to use translation theorist Antoine Berman's term, a "trial of the foreign" (Berman 2012), involving justice as exile, desire, appropriation, and de/formation.

### 6.3 Justice and Trials of the Foreign

#### 6.3.1 *Justice As Exile*

Justice entails exile. The departure leads to change; change means that there can be no return to the origin. A secondary sense of "exile" captures this fact: Exile as "waste" and "ruin." What was familiar becomes strange, but uncannily so since it bears the trace of its origin, the "home" for which the translation longs. The translation is a look-a-like, a double that can never duplicate the original, a double that is itself further doubled, replicated, parsed, fragmented.

The temporality of what I have elsewhere called the "transitional justice imaginary" (Hinton 2018) is illustrative as a post-conflict society is imagined as one of transformation whereby, through the transitional justice mechanism, it moves along a linear trajectory from an original state of "ruin" to one of liberal democratic change and "development." Inflecting this trajectory as one of "exile," however, highlights the point that the process is not just one of emancipation but also loss, and perhaps even "ruin" – a lack that infuses the process, a disjuncture between what is seen, desired, and imagined. Bou Meng's testimony also illustrates this point, beginning with the very act of translating his testimony in court.

As Bou Meng speaks into the microphone, his words are converted, first into electrical signals that travel to the translation booth, then into English, and from English into French. The glowing red band on the microphone signifies the exile-in-the-making of his testimony; then the light darkens and is gone, like his words that have been carried across to the headsets of those listening in different languages. The words cannot return. Back-translation is impossible even if the trace of the origin remains in the de/formation, awkwardness, and gaps in the translated text.

For instance, when Studzinsky spoke of the "emotional difficulties" of her client, the English term she used was translated as *sâtarama*, a

Khmer term linked to Buddhist mindfulness and the proper focus of consciousness versus the turbulence of a consciousness out of balance. Indeed, idioms of balance are central to understanding Khmer ethnopsychology and have humoral dynamics and somatic manifestations that are glossed over in a straightforward translation using a biomedical category like PTSD. In this sense, Bou Meng's emotive disposition is "exiled" in translation, becoming something "other" that points "home" to his emotional disposition but is unable to return to it since it involves a complicated semantic network, the "bushy undergrowth" (Berman 2012, 244) of a particular context that is masked by the justice facade. *Sâtarama* becomes "emotion," stripped of its Buddhist connotations and filtered into a Global North biomedical frame suggesting PTSD.

This frame is deeply enmeshed with the transitional justice imaginary, which asserts a traumatized and wounded victim awaiting the healing provided by the transitional justice process (Hinton 2018). Bou Meng is portrayed in a similar manner, as illustrated by Studzinsky's comment that Bou Meng "shares his traumatization" with other "survivors, victims, civil parties and witnesses" in need of mental health services.

To highlight Bou Meng's traumatization, as part of a larger legalistic frame of "suffering" required for civil party participation, Cambodian civil party lawyer Kong Pisey asked Bou Meng if he had sought "psychological support." Bou Meng replied affirmatively, explaining he previously "had consultation with psychological support" and received "two types of tablets" to help with insomnia.<sup>40</sup> This juridical framing of Bou Meng's emotional states glosses over the ways he copes with his suffering, including praying for the souls of the dead.

Accordingly, this framing elides key aspects of Cambodian ethnopsychology. In Khmer, for example, Bou Meng explains that he takes three pills, including vitamins. These pills help his "nerves" (*brâsae brâsat*), a term that is difficult to translate because it refers to internal vessels that help maintain a bodily flow that, if obstructed or disrupted, may result in idioms of distress – ones that are again difficult to translate. In his testimony, Bou Meng mentions two of these somatic manifestations of psychological disruption, "thinking too much" and having difficulty sleeping, which the medicines are meant to help.<sup>41</sup> Of course, Cambodians have a wide variety of non-biomedical ways of treating such conditions and facilitating bodily flow, ranging from using tiger balm to

<sup>40</sup> Day 37, 74.

<sup>41</sup> Day 37, 58.

pinching key parts of the body – many of which I observed Bou Meng do at the ECCC.

This “bushy undergrowth” of his understanding is “clipped away” from Bou Meng’s testimony as it is refashioned to accord with juridical order. This sort of justice as exile can be seen throughout Bou Meng’s testimony. At times, for example, Bou Meng, like other Cambodians who testified, invoked Cambodian proverbs to highlight a point. Sometimes these proverbs were translated and sometimes – as was frequently the case with trial dialogue and testimony more broadly (indeed, the English-language translations often leave out significant portions of text, especially when the translator considers it repetitious) – they were not.

Even when such idioms were noted and translated, they often didn’t make much sense. Thus, when Bou Meng tried to explain why he didn’t remember a S-21 episode another survivor had recounted (about Bou Meng having been taken away, tortured, and then forced to apologize to the other prisoner-artisans), Bou Meng replied, “I cannot recall or maybe I forgot, because I never offered my apologies to anyone . . . As the Khmer proverb says, ‘The elephants with four legs would have collapsed sometime and the wise person would forget anyway’.”<sup>42</sup>

Bou Meng’s invocation of this “old Cambodian proverb” also suggests how he, like many Cambodians from rural backgrounds, often invoke agrarian metaphors, idioms, and experiences that are difficult to translate and considered irrelevant in the context of the court, particularly for foreigners unfamiliar with rural life. Bou Meng’s testimony was sprinkled with such references, such as his likening of how the prisoners were treated worse than the pigs he took care of at home.

When describing how the Khmer Rouge treated his wounds after he was whipped, Bou Meng explained that there was “no medicine, just a bowl of salt water that they poured on my back. I jerked violently. Oh, it was beyond pain, hurting more than even the beating.”<sup>43</sup> As an example of the enormity of his pain, Bou Meng referred to what happened when salt was poured on a frog, an analogy difficult to translate into English and for speakers less familiar with rural life. He added that he was also given “rabbit pellet tablets,” another term that doesn’t translate easily. Bou Meng explained, though it was not translated, that the tablets were called this because they looked like “rabbit feces.” Taking them gave Bou Meng a headache and made him feel dizzy, symptoms that again suggest

<sup>42</sup> Day 37, 64; Khmer, 51. See also, Day 37, 38.

<sup>43</sup> Day 37, 31; Khmer, 24–25.

a disruption in proper bodily flow according to Cambodian ethnopsychology. While this “treatment” healed his open wounds, Bou Meng said, invoking a Buddhist idiom, he experienced “enormous suffering” (*veto-neā nas*).

### 6.3.2 *Justice As Desire*

Bou Meng’s invocation of “suffering” returns us to that glowing light, a reconsideration of it as the flame of desire. Desire involves a longing as well as unconscious process, something tucked out of sight – like the cord of Bou Meng’s microphone that trails away into an underground circuitry carrying the current of his speech to the overhead translation booth that remains largely unseen, where it is transformed again, and transmitted once more, this time via radio waves, into the headsets of those listening to the translation.

If justice as exile focuses on banishment, justice as desire directs us toward the vehicle of that banishment, the circuitry that is glimpsed but then passes out of sight as the translation takes place. On one level, desire is on display, foregrounded like the illumination of the microphone’s red light. But it is also “unconscious,” largely out of sight like the translation booth and the electrical currents that transmit sound underground.

There are many ways to approach this “unconscious” process, including as a psychoanalytic current. Along these lines, one might examine the psychodynamics of testimony in terms of what is said, heard, and repressed. Here I focus on a different and largely unconscious current of justice as desire, translation in terms of juridical order, translation as a disciplinary ordering and classificatory process producing subjectivities.

Bou Meng may recount his experiences in a variety of forums: At home, to his children, through his art, to the media, by memoir, during lectures, and so forth. His speech act may vary across these contexts as through time. The court is a particular field in which speech and action are constituted within a terrain of affordances and constraints that canalize what is said and done (Hinton 2022).

While this process began with legal consultation and socialization long before Bou Meng arrived at the courtroom, the impact of juridical canalization is immediate as Bou Meng enters the court and is subjected to a legal regimen. He is shown where and how to sit and symbolically hooked up to the translation apparatus of the headset and microphone. When he stands and bumps the microphone, Non Nil instructs him on how and when to speak. In doing so, Non Nil invokes the power of the



juridical regime, noting that the Trial Chamber authorizes Bou Meng to sit and expects him to watch the light on the President's microphone – indirectly referencing the power of the Trial Chamber to regulate and even cut the sound from the participant's microphones, one dimension of the court's regulatory and monitoring role.

The court's canalization of Bou Meng's testimony further emerged in Non Nil's initial background questioning. Soon after instructing Bou Meng on the use of his microphone, Non Nil asked Bou Meng to describe his experiences during the DK period, noting "If you can, describe all those accounts. If you cannot, then the Chamber would put some questions to you" regarding DK and S-21.<sup>44</sup> "My apology if I cannot recall the exact date due to the serious torture that I received," Bou Meng replied, "My memory is not in great shape." He went on to note his hard labor in the re-education camp, the shock of arrest, and his torture. "[T]hey just kept beating me," he testified. "I had a lot of scars on my back as evidence from that torture."<sup>45</sup> Then he began to cry, at which point Non Nil encouraged him to fortify his consciousness (*satarama*) so he could tell his story.

Soon thereafter, however, the discursive mode shifted, as the judges and then the different parties had the opportunity to question Bou Meng. If Bou Meng emphasized his suffering, the Judges asked questions directly linked to the legal facts of the case, ones defined by the criminal allegations and applicable law. In this frame, Bou Meng's replies became much shorter and were "clipped," as illustrated by the following exchange:

- PRESIDENT NON NIL : "Do you think [your wife was] killed at S-21?"<sup>46</sup>  
 BOU MENG : "Your question reminds me [of] the question that I would like to ask to Mr. Kaing Guek Eav. I want to know whether he asked his subordinates to smash my wife at S-21 or at Choeung Ek [killing field] so that I could collect the ashes or remains so that I can make her soul rest in peace" [45]  
 JUDGE NON NIL : "You have not answered to my question ..."

Later, Non Nil would state more directly, "... A witness is not supposed to give a kind of presumption because it is not really appropriate ... [I]f the question is put to you whether you say that you saw it or you didn't see it, you should just say 'yes' or 'no' and please try

<sup>44</sup> Day 37, 9; Khmer, 8.

<sup>45</sup> Day 37, 13.

<sup>46</sup> Day 37, 44–45.

to avoid giving your presumption.”<sup>47</sup> Here we catch yet another glimpse of justice as desire, the often unconscious undercurrents that shape “the said” to fit into the juridical discursive order.

Indeed, my initial description of Bou Meng’s testimony was directly modeled after the summary of Bou Meng’s testimony done by a lawyer working as a trial monitor (MacDonald 2009). I even took the first section heading from her account to structure my account according to a legal framing. The legal monitor’s remarks, like other juridical accounts including the verdict, which ultimately emerge from such testimony, focus on tropes of victimhood, inhumane treatment, and suffering, which directly tie to his status as a victim and civil party and the larger factual allegations of crimes against humanity.

As the testimony is canalized and later recategorized (as it is summarized and added to the legal databases of the parties), it is pruned and clipped in accordance with juridical “desire.” We return to the notion of “exile,” as well, as Bou Meng’s testimony is “borne across” to another modality of being, words that are no longer his own, but now part of the court record.

### 6.3.3 *Justice As Appropriation*

“[D]ecide if this is appropriate.”<sup>48</sup>

Just as Bou Meng was about to remove his shirt and display his scars in the courtroom, Studzinsky intervened and requested the Trial Chamber to reconsider. Studzinsky’s actions likely had to do with her earlier remarks about the need for the court to be more attuned to the emotions and trauma of her clients as well as the fact that Bou Meng’s scarring was extensive and would require taking off his shirt and publicly revealing his torso.

After the break, President Non Nil announced that the Trial Chamber had cancelled its “request to show the scars on the survivor’s back.”<sup>49</sup> Non Nil said photos of the scars could be used. “Mr. President, I do not have any photos of the marks,” Bou Meng informed him. “I only have the marks on my body.” Bou Meng agreed to have photos taken after the hearing (Trial Chamber 2010, 85 [note 44]).

<sup>47</sup> Day 37, 95.

<sup>48</sup> Day 37, 32.

<sup>49</sup> Day 37, 33.

This exchange regarding Bou Meng's scars revealed a moment of what might be called "justice as appropriation." If justice as exile involves a departure from which there is no return and justice as desire an attempt to "carry across" what is being translated in a particular way (to accord with the juridical discursive order), then "justice as appropriation" points toward the culmination of the process, as the translation is relocated to "the other side" to which it has been borne.

This appropriation takes place in at least two ways. To "appropriate" something is to take possession of it, to make that thing, as the etymology of the term suggests, "one's own" (OED Online 2014a). As an adjective, "appropriate" suggests that which is proper or suitable to a given person, place, or condition. Justice as appropriation involves both of these senses.

Through its actions related to Bou Meng's scar – as well as its regulation of Bou Meng's emotion and suffering – the court "takes possession" of them, the exile becoming complete. His scars are appropriated in the juridical process, which renders them as "evidence" of his trauma and suffering. This process involves a doubling, as the original "scar" is photographed and then inputted into and redisplayed in the court record. As the trial process proceeds, Bou Meng's scars are recast to fit with juridical desire, eventually finding ultimate re-expression as a piece of evidence supporting Duch's conviction in accordance with the court's legal classificatory order.

Thus, in the Duch verdict, "scars" are listed as one of a number of outcomes of "beatings" that constitute "torture techniques" (each category and sub-category being given a number, in this case "2.4.4.1.1"), which is itself a sub-category of "The use of torture within the S-21 complex" (2.4.4.1) and "Torture, including rape" (2.4.4). The sub-categories are part of the broader criminal category of "Crimes against Humanity" (2.4), which also encompasses "Murder and extermination" (2.4.1), "Enslavement" (2.4.2), "Imprisonment" (2.4.3), "Other inhumane acts" (2.4.5), and "Persecution on political grounds" (2.4.6). Bou Meng's display of scars is referenced in a footnote and includes a specific court record number for the photographs (Trial Chamber 2010, 85 [note 444]). His experience is also described in a number of paragraphs illustrating "Specific incidents of torture" (2.4.4.1.2) (Trial Chamber 2010, 88).

This appropriation is not a simple, one-sided imposition of power, since Bou Meng has chosen to participate in the trial process. But his agency and actions, as illustrated by micro-interactions such as Non Nil's directions about the use of the microphone and what can and cannot be

said (or found relevant), are constrained by the juridical process and authority (Hinton 2022).

More broadly, the tribunal itself might be viewed as an illustration of justice as appropriation in the sense that Cambodia's history – and the lived and remembered experiences of Cambodians like Bou Meng – and “transition” are in a way appropriated by “the international community.” This appropriation is manifest in the aesthetics of justice and also symbolically enacted in outreach materials (Hinton 2013, 2018; Khmer Institute of Democracy 2008).

These exiles and appropriations are naturalized in the juridical process, as the court's work is positively inflected by the Public Affairs Section and other people linked to the court to assert that the ECCC provides “justice, national reconciliation, stability, peace, and security” as the 2003 Agreement establishing the tribunal puts it. If the ECCC provides benefits for Cambodia, it is also an institution enmeshed with power, ranging from the Cambodian government's use of it for legitimacy to the international community's desire to integrate Cambodia into, and thus legitimate the larger project of, the “new world order” of neoliberalism and liberal democratic practices – even as it redacts the international community's complicated role in the conflict before, during, and after DK.

This connection to neoliberalism and democracy brings us to the second sense of justice as appropriation, or what is “fitting” or “suitable.” In addition to the appropriation of his words and his scars, Bou Meng himself is appropriated as he is transformed into a particular type of subject “suitable” to the courtroom context. Studzinsky's intervention on behalf of Bou Meng and other victims reveals a great deal about the “appropriate” subject position into which people participating in such transitional justice mechanisms are cast. Thus, Studzinsky identifies Bou Meng as a “kind” of person (victim and legal client/civil party) characterized by a disposition (emotionality and trauma) and, implicitly, invested with certain rights and status (someone entitled to sensitivity and care).

Studzinsky's questioning of the “appropriateness” of having Bou Meng display his scars likewise involves assumptions about his subjectivity as a liberal democratic participatory being invested with given rights, including the right to privacy and not to be partially exposed in public. Bou Meng's symbolic entry into this realm of justice as exile, desire, and appropriation is linked to his being given a set of headphones, which symbolically render possible a translation of the juridical process.

### 6.3.4 *Justice As (De)Formation*

Through such appropriations, the legal process produces a facadist articulation of reality according with a broader set of discursive forms and classificatory orders associated with the transitional justice imaginary. All such articulations involve the redactic, an editing out of that which does not accord with the larger discursive formation in-the-making.<sup>50</sup> Traces of what has been redacted remain, emerging in given moments of slippage, breakdowns in translation, and sudden eruptions of the uncanny. These traces, threaded throughout Bou Meng's testimony, suggest alternative desires and classificatory orders that have been redacted. If there is justice as formation, in the sense of the creation of a juridical articulation, then there is justice as "deformation" in the way that there is a surplus of meaning in circulation that is inevitably distorted and elided by this articulation.

What, we therefore need to ask, is "clipped" away in this juridical process of (de)formation? The moments of slippage are usually quickly pushed out of sight. Thus, Bou Meng's initial entry into the court and his unease using court technologies and procedures does not appear in the monitor's account. Nor does it appear in documents like the verdict. Instead, the moment passes largely unnoticed, recorded in the official court transcript but otherwise assumed to be unremarkable despite, as we have seen, being imbued with a surplus of meaning that is revealing about the justice facade naturalized at the court.

If there is justice as desire in terms of the discourses and classificatory orders that structure the juridical formation, there is also Bou Meng's desire. This desire, due to his legal socialization, may dovetail to an extent with juridical discourses. Thus, at one point during his initial description of his DK experiences, Bou Meng noted he was happy to be giving testimony at the ECCC, which he hoped "would find justice for me."<sup>51</sup> While testifying, Bou Meng made a number of such statements, as he did during media interviews and meetings with me.

But these juridical framings were basic, reflecting discursive strands linked to the transitional justice imaginary, such as the importance of the tribunal for justice, prevention, reconciliation, and educating the next generation. At the start of the trial, Bou Meng told Non Nil, "I'm not really sure whether I understand your question," and asked the judge to

<sup>50</sup> See Hinton (2016).

<sup>51</sup> Day 37, 13–14.

phrase things in more “simplified Khmer.”<sup>52</sup> With the exception of Bou Meng’s references to “justice,” these notions were backgrounded in his Khmer testimony and mixed with other sorts of discourses, particularly those linked to his deep Buddhist belief.

#### 6.4 Buddhism and Desire

In Buddhism, the notion of desire is complicated, as desire is linked to the “three poisons” (attachment, ignorance, aversion) and the resulting cravings that lead to suffering. The path to Enlightenment involves recognition of the reality, origins, and path to end suffering. To diminish suffering, then, a Buddhist should let go of craving and act ethically, performing good deeds that will condition one’s future being.

From such a Buddhist perspective, justice is bound up with this karmic principle of cause and effect. The Khmer term that Bou Meng used and that was translated into English as “justice” is etymologically linked to Buddhism and religious idioms that are deemed largely irrelevant to secular law and the justice facade.

Thus, when Bou Meng told the court that, while imprisoned at S-21, he was so hungry that he wanted to eat the lizards crawling on the cell walls, he immediately shifted into a Buddhist frame to describe his plight. “I pondered what sort of bad deeds (*bon*) I had done in my life to end up like this,” Bou Meng told the court, speaking slowly and looking down. “I wondered what sort of karma (*kamma*) from my past life was impacting me and linking me to these people. But I couldn’t see my mistake, what had led to these karmic consequences (*kamma phal*).”<sup>53</sup> Then Bou Meng, consciously contrasting the Buddhist and juridical discourses on “justice,” noted, “This is if we are speaking of the consequences of karma. If we speak we are speaking of law, then I had no fault at all.” When he proclaimed his innocence to his captors, they told him “Angkar has the eyes of a pineapple” and didn’t arrest people mistakenly.

In this courtroom sequence, Bou Meng’s Buddhist understandings suddenly burst forth in a line of juridical questioning about “inhumane acts.” His comments about karmic justice are thinly translated into English, leaving a gap in meaning that is ignored. From a legalistic perspective, the primary significance of this passage is given to the fact that Bou Meng was so hungry he wanted to eat a lizard, a comment noted

<sup>52</sup> Day 37, 8.

<sup>53</sup> Day 37, 66; Khmer, 52.

by the tribunal monitor and referenced indirectly in the verdict in a footnote as one of the “facts” demonstrating the “Deprivation of adequate food” (2.4.5.1) and supporting conviction for “Crimes against Humanity Committed at S-21” (2.4) (Trial Chamber 2010, 95 [note 501]).

If Bou Meng’s comments about karma are edited out of the juridical formation, they are central to his conception of justice and story about S-21. During this part of his testimony, Bou Meng interpreted his incarceration in terms of karmic justice, which holds that one’s actions in the present condition one’s situation in the future. The Khmer word that is often glossed as “justice,” *yutethoa*, literally means “in accordance with” (*yute*) dhamma (*thoa*). A Cambodian Buddhist monk, Venerable Sovanratana, told me that *yutethoa* is that which “fits into the way of nature ... the consequences of [an act] rebound upon the doer ... Whatever he receives is just because of the consequences of his past actions.”<sup>54</sup>

Venerable Sovanratana went on to explain that there is not necessarily a need for an external punishment because the perpetrator’s bad deeds naturally condition the future, which is “in accordance with dhamma.” When I asked if a tribunal accorded with Buddhism, Venerable Sovanratana replied, “Well, it’s difficult to say.” If some might say that, regardless of a trial, perpetrators suffer the karmic consequences of their action, others might say that the tribunal “is part of the result and consequences of [their karma].”

Invoking Buddhist rationalism, which emphasizes the analysis of evidence (*ceak sdaeng*) to discern truth from falsehood (*khos-treuv*) and moral right from wrong (*bon bap*),<sup>55</sup> Venerable Sovanratana continued, “whatever generates knowledge and awareness about right and wrong,” including a tribunal, “is welcome in Buddhism.” For him, the trial, as long as it is “just and fair,” is in accordance with Buddhism since “it is part of the result [of karma].” Venerable Sovanratana noted that Buddha did not oppose courts during the time that he lived and that, when a monk violated monastic rules, he might be brought before a monastic court. “So Buddhism does not teach us to wait for the ripening of karma to produce a result ... From that point, [a court] is not contrary to the Buddhist teaching.” Venerable Sovanratana explained that he had visited the court with some of his novice monks to learn more about “what

<sup>54</sup> Author interview with Venerable Sovanratana, Phnom Penh, March 13, 2011.

<sup>55</sup> See Ponchaud (1989, 154, 173).

happened during the Khmer Rouge regime” and to observe how the court was functioning.”<sup>56</sup>

This Buddhist emphasis on correct understanding, which is central both to the Four Noble Truths and Eightfold Noble Path in the sense of understanding the reality of things, was also invoked by Bou Meng during his testimony as he noted the importance of understanding right and wrong and telling the truth. In an interview, he told me “I always tell the truth,” explaining “I’m really scared of sinning.”<sup>57</sup>

During an interview, Bou Meng also noted the importance of perpetrators learning to distinguish “right from wrong,” since, he told me, their actions were the result of “wrong thinking.”<sup>58</sup> The court, he said, could help them in this regard. Nevertheless, as Venerable Sovanratana suggested, from a Buddhist perspective there is no absolute need to try perpetrators since they will inevitably suffer the consequences of their actions. To hold perpetrators accountable in a court of law, Venerable Sovanratana pointed out, also runs the risk of promoting vindictiveness: “it must not be done for retribution” but instead to determine what “happened in reality.”

Bou Meng sometimes struggled with conflicting emotions about perpetrators. When asked about his feelings toward senior Khmer Rouge leaders, he stated that, according to Buddhism, it was necessary to pity them in their old age. He also sometimes noted the importance of ending the cycle of vindictiveness, telling me, “Buddhists can’t hold grudges. If a person sins, they will always receive sin” as a karmic consequence.<sup>59</sup> At the same time, Bou Meng acknowledged that he sometimes “overwhelmingly” desired revenge, a feeling amplified by his scars, which reminded him of the abuses (Huy 2008, 9 [119f]).

Thus, Bou Meng’s scars had a range of associations, including ones that strongly diverged from the juridical appropriation that occurred at the court. His scar signified social suffering, memory, somatic distress, anger, and a personal struggle between a desire for revenge and a Buddhist sanction on vindictiveness and emphasis on detachment as a means of ending suffering and cycles of revenge. Such conflicting emotions are edited out of the juridical process, with the Trial Chamber strongly warning parties against expressing hostility, anger, and malice

<sup>56</sup> Author interview with Venerable Sovanratana, Phnom Penh, March 13, 2011.

<sup>57</sup> Author interview with Bou Meng, Phnom Penh, July 2, 2008.

<sup>58</sup> Author interview with Bou Meng, Phnom Penh, July 2, 2008.

<sup>59</sup> Author interview with Bou Meng, Phnom Penh, July 2, 2008.



toward defendants, emotions that are nowhere mentioned in the judgment that the court renders except to note that its goal “is not revenge” (Trial Chamber 2010, 201).

These Buddhist principles were visually depicted on the walls of Venerable Sovanratana’s pagoda, Wat Mongkulvan. Throughout Cambodia, one finds murals that depict the story of Buddha’s life and related legends. In fact, Bou Meng, whose parents sent him to be educated at a pagoda when he was five, developed his love of painting at the pagoda, where he would try to draw pictures depicting such Buddhist tales.<sup>60</sup> Bou Meng’s education at the pagoda – barely mentioned in his trial testimony – revolved around Buddhist teachings, including learning about the ten lives of the Buddha and about doctrine related to dhamma, merit, and sin.

Bou Meng later learned to paint murals of the Buddha’s life that included scenes similar to those on the walls of Mongkulvan pagoda. This Buddhist aesthetic included depictions of the Buddhist hells that depict future torments that parallel past sins, such as drunks having their mouths stuffed with flaming torches, gossiping women having their tongues pulled out with tongs, and a perpetrator who used a blade to kill a man being sawed in half.

Venerable Sovanratana explained that the murals symbolized “the concept of rebirth or rebecoming in Buddhism,” since what happens in the “next life depends on what men are doing in this life.” The paintings suggest what happens when people perform “unwholesome acts, like adultery, drinking alcohol, and telling lies, especially as Buddhism prescribes in the five moral principles.”<sup>61</sup>

This Buddhist aesthetic put into relief the key Buddhist notion that one is bound by one’s im/moral acts. This sense of ethical connection also informs one’s relationship to the dead to whom, at least in lay conceptions, merit may be transmitted through prayers and offerings to monks, who act as conduits between the living and the dead. The dead, particularly those who have died violently and are not yet reborn, are thought to circulate amongst the living, sometimes appearing as apparitions or in dreams. This was especially true of DK victims, including those tortured and killed at S-21.

This belief was also critical to Bou Meng. He had nightmares and dreams about his wife. In one, “my wife appeared leading a large group of

<sup>60</sup> The details in this paragraph follow Huy (2010, 25f); see also Huy (2008).

<sup>61</sup> Author interview with Venerable Sovanratana, Phnom Penh, July 1, 2011.

prisoners who had been executed [at S-21]. They were dressed in black and she led them in front of my house . . . She said, ‘Only Bou Meng can help us find justice’.”<sup>62</sup> Another time, when visiting Tuol Sleng, his new wife had seen a door suddenly open and shut. Bou Meng interpreted such visions as evidence that “the spirit of my wife is not calm (*sngop*). Therefore I want reparations to hold a big ceremony and send merit to [the spirit of] my wife.”<sup>63</sup>

One of the early tensions between the civil parties and the court concerned the desire of some, like Bou Meng, to have individual reparations. The court was only mandated to provide “collective and moral reparations,” however, which meant that they would not receive funds to support such commemorations for the souls of the dead.

From the start of Bou Meng’s testimony, it was clear that the meaning of his participation was more deeply linked to his Buddhist beliefs and his relationship to his wife’s spirit than to any of the ostensible goals naturalized in the ECCC’s justice facade. Given this excess of meaning, a number of slippages and translation problems ensued. He entered the courtroom carrying an enlargement of his wife’s S-21 mugshot, face-forward so everyone would see her. He began mentioning her as soon as Non Nil started his questioning, a pattern that persisted throughout the day, regardless of whether Bou Meng was being asked about her. Bou Meng often stated his desire to ask Duch where his wife had been killed.

At one point, a civil party lawyer asked Bou Meng, “Today how do you feel about the fact that you are a survivor?”<sup>64</sup> Bou Meng’s replied that he was “so happy” and that by telling his story to the court his body and chest “felt lighter,” another ethnopsychological idiom linked to well-being that didn’t translate smoothly into English. He then shifted and began to talk about the almost incalculable suffering he had endured. “But it wasn’t just that I wasn’t able to help save my wife,” he continued. “Why did my wife have to die?”

It was because of his wife that Bou Meng became a civil party. He explained that he wanted to ask the Accused where his wife died so he could “take earth from that place as a commemorative symbol to be used to hold a ceremony to light incense and send merit to her spirit so that her heart can be calmed.” Again, invoking an idiom that did not translate

<sup>62</sup> Author interview with Bou Meng, Phnom Penh, July 2, 2008.

<sup>63</sup> Author interview with Bou Meng, Phnom Penh, July 2, 2008.

<sup>64</sup> Day 37, 85; Khmer 68.

easily, Bou Meng noted that, ultimately, only the Spirits of the Earth, Wind, and Water knew where the victims were killed and buried.

When Bou Meng was finally given the chance to ask Duch where he had “smashed and discarded” Bou Meng’s wife, Duch replied that he didn’t know for certain since his subordinates executed her. But given the date of her arrest, Duch continued, he presumed she had been killed at Choeung Ek.

This question and Duch’s reply ultimately had little relevance to the court’s desire for evidentiary fact and the juridical formation in the making. Such “justice as desire” diverged from Bou Meng’s desire to gather soil from the site of his wife’s execution so he could transfer merit to help her spirit be calmed and have a better rebirth. These sets of understandings are “clipped” by the court’s desire for a particular type of legal formation that accords with the transitional justice imaginary.

### 6.5 The Lord of the Iron Staff

Yet another rupture occurred near the end of the day when Bou Meng was being questioned by Kar Savuth, Duch’s Cambodian defense lawyer. Kar Savuth suggested that Bou Meng had contradicted himself by saying that the detainees couldn’t speak while also stating that he heard their screams. Part of Bou Meng’s reply was translated in English as “I’m not here to talk or to implicate anyone. I’m talking here, right before the iron genie, and if I talked something exaggerating anything, then I would be run over by a bus.”<sup>65</sup>

In Khmer, Bou Meng had referred to the local court guardian spirit, or *neak ta*, known as the “Lord of the Iron Staff.” While dropped from the translation, Bou Meng had said, “I am speaking according to justice (*yutethoa*). The spirit (*neak ta*), the Lord of the Iron Staff, if I’m not telling the truth, may he let a car strike and kill me.”<sup>66</sup> As he spoke, Bou Meng raised his voice while pointing toward where the shrine of the Lord of the Iron Staff is located on the ECCC compound.

If the “iron genie” translation made little sense in English, some foreigners familiar with the court likely understood the reference to the *neak ta*. For some who did, a reference to such spirit beliefs may have been noticed momentarily but viewed as irrelevant, a local superstition ultimately is at odds with the (hyper-rational) juridical enterprise. Thus,

<sup>65</sup> Day 37, 93; Khmer, 74.

<sup>66</sup> Day 37, Khmer, 74.

while there were exceptions, when I mentioned the *neak ta* to international court personnel, they suggested it was quaint or expressed little interest. Some may have even considered having a *neak ta* in a court complex inappropriate but to be tolerated, since all Cambodian's courts have *neak ta* before which oaths are sworn.

Most Cambodian observers would have immediately understood the reference to a *neak ta* in Khmer and that Bou Meng was swearing an oath as proof of the truth of his testimony. *Neak ta* are part of a folk cosmology of animistic beings circulating among the living in Cambodia (Ang 1987; Ebihara 1968; Guillou 2012). Almost every village has *neak ta*, local guardian spirits sometimes said to be the spirit of the founding ancestors of the village, who are nevertheless feared and to whom offerings are made. When offended or disrespected, *neak ta*, including the *neak ta* found in Cambodian court complexes, may inflict sickness or hardship. While the depth of belief and knowledge about *neak ta* varies, for many Cambodians *neak ta* are highly significant. This was true for Bou Meng as well as the ECCC Public Affairs Section head, Sambath Reach.

Sambath's strong belief may be why senior ECCC administrators asked him to establish the court's *neak ta*. They told Sambath, "We have to build a spirit house because every court in Cambodia has one." Sambath began by inviting a renowned holy man from Takeo province to the court. "It was a sunny day and very hot. He poured water on every part of the compound," asking how the different buildings would be used. "He asked where the trial would take place," Sambath recalled. "I told him 'over there'," indicating the courtroom building. When the holy man poured water in an area by the court, smoke began "coming out, powerful, very strong. Then he said 'this is the best place to build'."

Sambath asked what sort of spirit house they should construct. The holy man closed his eyes and invited the spirits to come. "Because this is a big job he invited many spirits," before informing Sambath that the court's *neak ta* was the Lord of the Iron Staff. "The job is too big," Sambath recalled the holy man saying to him, so they had to have "the strongest one." Having found the court's *neak ta*, Sambath enlisted the services of a well-known professor at the School of Fine Arts to construct the sculpture of the Lord of the Iron Staff. The process began on March 31, 2006 on a day when the moon was full. Sambath organized a large religious ceremony in honor of the Lord of the Iron Staff, including food, prayers, and offerings.

Every witness, Sambath noted, had to swear an oath before the *neak ta*. Sambath had done this. If someone did so and failed to tell the truth, then

the *neak ta* might afflict them in some manner, as illustrated by Bou Meng's remark.

Given the resonance of *neak ta* for many Cambodians, especially villagers, it is not surprising that there have been attempts to use the *neak ta* as a communicative bridge between local and legal vernaculars. The official ECCC booklet includes a photograph of the *neak ta*, and it is featured in other outreach material. The *neak ta* was clearly of importance to Bou Meng. During an interview shortly after he testified, I asked Bou Meng if he had sworn an oath. Bou Meng replied, "The President didn't have me swear an oath. I don't know why and have wondered about this. All of the witnesses swear oaths. But not me. Perhaps the judges thought that I only tell the truth. It was only different for me."<sup>67</sup> Bou Meng didn't realize that civil parties don't have to swear an oath before testifying.

At another point, Bou Meng said, "Let me tell you a story that illustrates that if you don't tell the truth the Lord of the Iron Staff will make you have an accident."<sup>68</sup> When Mam Nai, one of Duch's top S-21 deputies, had testified, he had proclaimed his ignorance of and lack of involvement in the abuses, including the beating of Bou Meng. It was Mam Nai, Bou Meng testified, who had asked him to count the lashes he was being given.

After Mam Nai's testimony, Bou Meng told me, Mam Nai's son had picked him up and, perhaps a kilometer from the court, had a car accident. This was, Bou Meng surmised, a result of his swearing an oath to the *neak ta* and then lying in court. Bou Meng noted the moment when Kar Savuth suggested Bou Meng was not being fully honest with the court. "Last month," Bou Meng recalled, "Kar Savuth questioned if my words were true. I replied 'I have the Lord of the Iron Staff as my witness.' If I had not been telling the truth, then I wouldn't have sworn the oath."

The truth of his statements, Bou Meng stated, was demonstrated by the fact that he had sworn to the *neak ta* that, if he were lying, he should be "hit and struck dead by a car. But I was not hit. Only the car of Mam Nai had a collision because he had not told the truth."<sup>69</sup> Given his deep Buddhist beliefs, Bou Meng told the truth. He feared the karmic

<sup>67</sup> Author interview with Bou Meng, Phnom Penh, August 12, 2009.

<sup>68</sup> Author interview with Bou Meng, Phnom Penh, August 12, 2009.

<sup>69</sup> Author interview with Bou Meng, Phnom Penh, August 12, 2009.

consequences of lying. This “bushy undergrowth” of Bou Meng’s understanding of the world and testifying in court, one in which Buddhism and animism were both highly salient, erupted for a moment in the “iron genie” translation, a slippage that passed by without much notice.

If Bou Meng’s invocation of the *neak ta* provides an illustration of a momentary slippage suggesting that something highly meaningful is being edited out of the juridical formation in-the-making, other slippages are directly in tension with this juridical formation despite being more apparent and interwoven into the proceedings. “Justice as desire” seeks to employ and order the narrative flow so that it accords with the victim–perpetrator binary naturalized in the transitional justice imaginary.

Within the frame of the court, Bou Meng’s subjectivity is appropriated into the category of victim, though one of a particular sort – a rights-invested liberal democratic victim subjectivity. This subjectivity was not the only one circulating in the court even if it predominated. There was also a Buddhist subjectivity that emerged at times, such as during Bou Meng’s references to how he wondered what bad acts he had done in the past that had led him to suffer so much at S-21. From this Buddhist perspective, the victim also bears a degree of blame since, by implication, one’s life is conditioned by one’s past acts. This Buddhist view on suffering is different than the liberal democratic one that was part of the juridical formation in-the-making, which assumes a victim’s blamelessness and innocence in contrast to the intentionality of the criminal perpetrator.

There is another manner in which Bou Meng’s testimony was in tension with this juridical subjectivity. As a legally recognized civil party and S-21 survivor, Bou Meng had victim status. His questioning proceeded along these lines, which constituted the borders of “the appropriate.” But his case and that of a number of S-21 victims and civil parties are not so simple since they were themselves Khmer Rouge – cadre and soldiers, perhaps at one time even perpetrators.

Bou Meng, for example, joined the revolution in the early 1970s, but this “grey zone” of his past was barely mentioned in court, in keeping with the “clipping” of the complicated geopolitical past. Thus, during his preliminary questioning of Bou Meng, President Non Nil asked, “Before the 17th of April 1975, where did you live and what was your occupation back then?” Bou Meng replied, “I went into the jungle to liberate the country and to save King Norodom Sihanouk.” Non Nil then immediately shifted the discussion to the temporal jurisdiction of the court,

asking Bou Meng about his experiences from “April 1975 until the 7th of January 1979.”<sup>70</sup>

Yet, this statement that Bou Meng had been a Khmer Rouge revolutionary passed by largely without comment. Judge Lavernge asked a few related questions, including one about the extent of Bou Meng’s devotion. Bou Meng replied, “I wore a black shirt, but my mind was not black. I did what I was instructed.”<sup>71</sup>

Yet, if the other parties largely ignored Bou Meng’s past, the Defense did not. International Co-Defense Lawyer Canizares ended the day by seeking to establish a parallel between Bou Meng and Duch, whose defense partly centered around the idea that Duch had quickly become disillusioned with the revolution but had to reluctantly carry out his orders or be killed. Thus, Canizares asked Bou Meng about his lack of confidence in the regime and the necessity of nevertheless complying. Bou Meng affirmed this was the case. “[Was it] fear that made you follow 100 percent the orders that were given to you?” Canizares asked as she posed the final question of the day. Bou Meng replied, “In fact, that was the case.”<sup>72</sup>

Here again we return to a doubleness that pervades the juridical process, as what is asserted as an ideal (the pure innocent victim) comes up against a more complex reality (the victim stained by association with the impure perpetrator category). This doubleness reveals an excess of meaning and a lack in the justice facade being asserted, one suggesting that “justice as deformation” is simultaneously taking place as alternative, complex local realities are clipped away and edited out by the disciplines of the court.

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<sup>70</sup> Day 37, 9.

<sup>71</sup> Day 37, 58.

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# Memory and Victimhood in Post-Genocide Rwanda

Legal, Political, and Social Realities

SAMANTHA LAKIN

Genocide survivors are bound together through a blood pact when the blood of genocide victims was mixed in the waters of the Nyabarongo River. But it is an accidental blood pact, a terrifying twist on the traditional blood pacts in Rwandan culture, pacts that indicated lasting friendship and the strongest of social ties. This pact binds genocide survivors together for the rest of history.

Jean Paul,<sup>1</sup> Bugesera, Rwanda (2018)

## 7.1 Introduction

Widespread and systematic violence targeting minority groups is not a new historical phenomena. However, with the rise of global interconnectedness throughout the twentieth and twenty-first centuries, instances of war crimes, crimes against humanity, mass atrocities, and genocide have become increasingly visible in people's daily lives. Narratives portrayed in news and television reporting bring once distant images of the graphic realities of war and conflict into people's living rooms, shifting social awareness that seemingly distant conflicts had the potential to impact people's lives and futures. Social media documentation and advocacy campaigns have further revolutionized global citizen responses to atrocity situations. These changes raise new challenges regarding the ways global publics respond to post-atrocity situations, at times by engaging, and sometimes by retreating to protect the comfortable status quo. Furthermore, the plethora of narratives and perspectives promoted in real time on social media can be counterproductive to understanding

1 Name changed as interviews provide anonymity, as per IRB regulations.

important nuances in a post-atrocity setting, nuances that are essential to designing and promoting efforts for sustainable peace.

Post-genocide Rwanda is characterized by contradictions and competing “truths” about the genocide that coexist at the same time and place. These multiple truths are not always harmonious, even though they coexist and can be true for different people. These truths also shape group narratives (Ingelaere 2016). After mass atrocities and genocide, people have different needs and goals. National narratives will always be subject to contestation and desire for change. As such, national justice processes can never be wholly satisfying enterprises.

This chapter explores the dual reality that genocide memorialization in Rwanda is both a nation-building project and a way in which citizens, especially genocide survivors, seek justice based on their lived experiences of genocide. In particular, the ways in which states and societies frame a conflict affect who is defined as a victim. Political agendas, power dynamics, and past harms suffered also influence how victimhood is defined, and by whom. Definitions of victimhood affect the ways in which people express grief, mourn past losses, seek justice, and access limited resources. This chapter shows how definitions of victimhood at times foster collective narratives of reconciliation, and at other times exclude the experiences of some Rwandans whose victim identity does not fall within official recognized definitions. Interviews with Rwandans who lived through the genocide in 1994 further capture narrative complexity around diverse notions of victim identity.

Genocide memory is essential to Rwandan national identity. As such, the current Rwandan government has attempted to create national consciousness through the practice of genocide commemoration. However, when some individuals feel this national memory project does not represent or speak to them and their experiences, the problems of long-term social division might increase.

As Rwandan society grows and reflects on the past, including what went awry, having harmony regarding interests and expectations between the government and the Rwandan people will benefit the future of the country. Rwandans interviewed for this research identified serious consequences for not meeting essential needs for healing, meaning, justice, or peace after the genocide. Some fear further mistrust, social division, and a potential of future violence. In a post-genocidal state like Rwanda, the potential of new social divisions and violence reinforces negative cycles of poverty, human rights violations, exploitation, corruption, and militia recruitment. This chapter documents aspects of the dual

reality of genocide commemoration practices in Rwanda as engendering national unity and attempting to reflect and remember diverse victim experiences. One Rwandan interviewed captured an essential component of reconciling the above situation. He said, “Rwandans were in a terrible place in 1994. Sure, we have problems today. But no one wants to go back.”<sup>2</sup>

## 7.2 Meaning and Justice after Genocide

On April 7, 1994, genocide unfolded in nearly every prefecture and village in Rwanda. Some 800,000–1,000,000 civilians were massacred,<sup>3</sup> both Rwandans of Tutsi identity, and Hutu citizens who opposed extremist genocidal ideology and actions (Prunier 1995). Capitalizing on fear, chaos, and crisis, narratives were used as a tool to construct enemies and facilitate genocidal violence (Des Forges 1999).

July 1994 marked a significant transition in Rwanda. The country experienced two major societal upheavals during four short years, the genocide that targeted Tutsi people (April–July 1994), and a four-year civil war between the Rwandan Patriotic Front and Habyarimana government, led by the Mouvement Républicain National pour la Démocratie et le Développement (MRNDD) (October 1990–July 1994). To address crimes “so serious that [a] normal justice system [cannot] provide an adequate response,” (International Center for Transitional Justice n.d.), Rwanda engaged in unprecedented and ambitious state-building and transitional justice projects.<sup>4</sup> International justice scholars and practitioners commonly acknowledge that no perfect system exists to facilitate meaning and justice after genocide. Nothing can bring back the dead, or the futures they might have had. As restoring each individual victim to their pre-conflict status is clearly impossible, reparations can only be a good enough response to mass atrocities and genocide (De Greiff 2008; Hamber et al. 2010; Theidon 2009).

2 Key Informant Interview 002. Audio Recording. Kigali. December 5, 2018.

3 Different sources cite genocide in 1994 in the range of 500,000 to more than 1,000,000. For further discussion on genocide deaths, see: Guichaoua (2020); McDoom (2020); Meierhenrich (2020); Outreach Programme on the 1994 Genocide against the Tutsi in Rwanda and the United Nations (2014), and Verpoorten (2005).

4 Examples include the International Criminal Tribunal for Rwanda (ICTR), national court proceedings, *Gacaca* courts, public apologies, mass arrests and individual prosecution, establishing and building memorial sites, reburials of victims in memorial sites, establishing official days of genocide commemoration, among others.

Facilitating meaning is one way in which victims move forward after atrocity crimes and genocide. Collectively, victim groups organize around shared histories of violence when seeking material and symbolic redress, which may include public apologies, financial assistance, and recognition. Individuals also create meaning, which they identify as essential aspects of restoring trust in neighbors and the new state to provide stability, safety, and resources necessary for a positive future (Park and Ai 2006).

Through in-depth interviews conducted with 106 Rwandan genocide survivors, former perpetrators, ordinary citizens, and key informants, this chapter explores the role of narratives in shaping victim identities in post-genocide Rwanda. When analyzing the interview data, I considered salient themes that expressed a collective of experiences. The case of Rwanda presents a particularly complicated and dynamic situation of victim identity and justice. Understanding the ways in which narratives influence the construction of victim identity in Rwanda helps practitioners and scholars support meaningful symbolic justice practices in post-atrocity contexts. Additionally, the defined boundaries of victimhood hinders reconciliation. In Rwanda, as in other post-atrocity contexts, when individuals feel disconnected, marginalized, or excluded from the national collective and accepted definition of victimhood with which it is accompanied, they dismiss or avoid it.

One central question frames this chapter: What is the role of narratives in the post-genocide construction of victim identity? Narratives are the stories people tell themselves about their group. Narratives shape group identity, by identifying the things that “we” believe, “we” value, “we” do or do not do. Similarly, common experiences and grievances are also diffused through a group via narrative recalling of the past (Barkan 2000; Fassin and Rechtman 2009; Mutua 2001). Post-atrocity narratives also include ideas of the other that are not sanctioned by the state. Narratives promoted after the genocide in Rwanda continuously shape various understandings of victimhood. For example, certain narratives are shared among survivor families, who were targeted because of their Tutsi identity, and grievance and grief around the genocidal violence shapes their group identity.

Similarly, state entities use narratives to shape accepted versions of history. Since 1994, the Rwandan state, led by the Rwandan Patriotic Front (RPF), has embraced the narrative of the RPF as pure heroes who stopped the genocide. In this rendition of the liberation story, RPA soldiers were benevolent saviors (Mutua 2001), and any past or present

crimes they might have committed fall outside of what can be questioned by international law and external actors. As such, this narrative solidifies official ideas of victimhood as linked to innocent Rwandans who were targeted during the genocide because of their Tutsi group identity.

These different uses of narrative are shared publicly, like during national genocide commemoration ceremonies, and privately, among the late-night whispers of family members within the gated confines of their personal *urupango* (Kinyarwanda term for a private home compound). Just as narratives shaped the violence that took place during the genocide, narratives also serve to shape significant issues in post-atrocity and post-genocide contexts.

### 7.3 Defining Victim Identity: Literature

In Rwanda, public genocide commemoration ceremonies, called *Kwibuka*, take place between April 7–13 every year, during the officially mandated period of genocide commemoration (Lakin 2016; Wolfe 2013). At the national level, genocide commemoration is organized in the capital of Kigali. Sector level community commemorations also take place throughout Rwanda, in addition to most Rwandan diaspora communities. Local and personal *Kwibuka* ceremonies continue after April 13, especially among communities of genocide survivors. Some public ceremonies commemorate massacres that took place in certain locations in Rwanda after April 13. Private ceremonies often mark specific days when family members were killed.

Interview respondents overwhelmingly cited the importance of victim identity when creating meaning through genocide remembrance. Victimhood has a significant impact on most Rwandans' daily lives. Recognition as a "victim" is one salient factor that determines eligibility for social and financial assistance, psychological support, and medical care. Additionally, victimhood based on losses suffered because of the genocide impacts social and family networks to provide financial safety nets, family care for elderly and sick survivors, and opportunities for recommendations and professional networks when job seeking. These factors influence significant life considerations in post-genocide Rwanda. As such, recognizing who is considered a victim, when, and of which specific crimes (genocide, war crimes, etc.) has become essential to healing and meaning-making after the genocide. To best understand the nuances and texture of the memorialization landscape in the Rwandan context, this chapter focuses on complexities and

contradictions expressed by interview respondents around notions of victim identity, as many individuals consider themselves victims of multiple harms.

Thomson (2013) considers a “continuum of violence” in Rwanda, as the decade of 1990–2000 was one of turbulence, violence, and sorrow for most Rwandans. According to Thomson, “One’s existence, both during the genocide and now, is shaped by broader historical patterns that result in one’s continued sociopolitical marginality, or power” (Thomson, 2013: 78). These factors continue to influence people’s agency and ability to negotiate victim identity after the genocide (Burnet 2012; Thomson 2013).

Legal, political, and social realities externally shape and define who is recognized as a victim in post-genocide Rwanda. Additionally, many individuals interviewed for this research identified as a victim in ways that did not match external or state promoted definitions of victim. Interview respondents stressed the importance of meeting needs for validation, meaning, justice, and “effective truth” (Lederach 1995), whether through national processes or elsewhere. Some interviewees from a range of backgrounds included in this research (genocide survivors, former prisoners for crimes of genocide, ordinary citizens) expressed concern that if a range of individuals experiences are not validated, discussed, and shared, Rwandan society risks consequences, including heightened social mistrust and the potential of future violence.

Additionally, victim groups often need recognition to access limited resources (Staub 1989). In Rwanda, these include government and NGO funds for education, rebuilding houses, and medical care.

Victimhood in post-genocide Rwanda is complex, especially for individuals whose grievances or experiences of loss are not officially recognized. In this way, national genocide memory is less inclusive and meaningful when it only considers one main form of victimhood, which is tied to Tutsi group membership. Reframing victim identity to be multifaceted and pluralized provides a more accurate picture of victim identity and how it is used and understood in post-genocide societies, by both outsiders and by the victims themselves.

Existing literature on victimhood is both significant and extensive, spanning multiple academic disciplines. Research on victim identity has also been at the forefront of interdisciplinary inquiry. Significant work by Berry (2017), Bouka (2013), Butler (2016), Fujii (2009), Krystalli (2021), and Viebach (2019) recognizes that victim identity is fluid and can be defined differently depending on the perspective of who is defining it. In

Rwanda, victim identity is both a political and social construction. Victim identity becomes especially important during the genocide commemoration period each year. The strong government influence in Rwanda makes it particularly challenging to recognize and validate other instances of victimhood. By focusing on the case of Rwanda, my research parses out how accepted victim identities are formed and reinforced. This chapter also puts forth conclusions about opportunities and consequences when victims whose identity diverges from accepted notions of victimhood seek recognition.

Studies by Borer (2003), Fujii (2009), Jacoby (2015), McConnachie and McEvoy (2012), and Straus (2006) analyze the role of politics in the construction of victimhood, applicable to the case in Rwanda. According to McConnachie and McEvoy, “true” or “legitimate” victims are identified via their relationship with the perpetrator. The authors conclude that defining victimhood via a “victim–perpetrator” relationship can result in a hierarchy of victimhood based on the innocence of the victim group and the guilt of the perpetrator group.

In Rwanda, categories of perpetrators, bystanders, and victims are fluid, and are rarely homogenous (Borer 2003; Fujii 2009; Straus 2006). Grievance and trauma are common foundations for collective identity construction, where victimhood can result in collective and organized processes that help victims claim rights and recognition (Jacoby 2015). The innocent, “deserving victim” (Hearty 2019: 6) is worthy of being remembered.

In post-genocidal societies, “the victim” is not a pure category divorced from power and politics. Kevin Hearty further describes how political motivations in which state leaders desire to promote what they deem as acceptable interpretations of the past can reinforce victim–perpetrator binaries. He says, “More often than not, this [political motivation] involves attempts at constructing binary categories of victim and perpetrator that fail to reflect the complex reality of political violence” (Hearty 2019: 6).

Ibreck’s (2012) research on memorialization in Rwanda further shows the complicated realities of defining victim identity in post-genocide Rwanda and asserts that many victims do not fit into politically acceptable categories. One example is a Rwandan child who had a Hutu father and Tutsi mother. In her discourse analysis of Rwandan President Paul Kagame’s public speeches during commemoration periods in Rwanda, Ibreck states that Kagame tries to separate the civil war and genocide in all public discourse. Yet, for many ordinary Rwandans, their memories of

the war and the genocide, as distinct historical events with distinct patterns and intentions, were highly linked in their minds and memories.

Consistent with the examples given, Rwandan victim identity does not fit neatly into legal, social, and political boxes. King (2010) categorizes victimhood in Rwanda via the following typology: (1) recognized Tutsi memories; (2) somewhat recognized Hutu memories; (3) unrecognized Hutu memories; (4) unrecognized Tutsi memories; and (5) unrecognized memories of ethnically mixed Rwandans.

Several interview respondents similarly confirmed that national commemorations exclude entire categories of victims from recognition. Some interviewees who identified as genocide survivors noted that one of their main fears was the potential of revenge and future violence if non-Tutsis do not have any way to mourn their loved ones. Some felt that exclusion has created heightened tensions, which respondents described as a feeling of resentment, not publicly expressed, but festering beneath the surface. By legal definition and political positioning in Rwanda presently, genocide victimhood is based on the fact that Rwandans were targeted because of their Tutsi identity in 1994. As such, those who were not Tutsi (i.e., Hutu, Twa, or people with one Hutu and one Tutsi parent) might not have died as targets of genocide, but they did perish during the decade of violence.

#### 7.4 Defining Victim Identity: Interview Analysis

Many interviewees' perspectives on victimhood differed from official narratives. These interviewees did not see recognizing the deaths of non-Tutsi because of war, migration, or retaliation as a threat to the country's security. However, thus far, conversations between Rwandans who suffered different losses and the government regarding when, where, and how to create a space to recognize victims of other crimes have yet to occur. Many interview respondents also acknowledged that Rwandans have different perceptions of and ways of engaging in genocide memory. These varied relationships show how genocide remembrance practices can, at times, reinforce official definitions of victimhood, or can create opportunities for multiple meanings of "victim" to be articulated and expressed.

Some respondents expressed a desire for genocide memorials that represent a fuller picture of the history of the genocide. According to



Theo,<sup>5</sup> a young man from Kibeho who self-identified as a genocide survivor, “It is not only me who feels pain, we are many in this country. For example, during meetings and other activities of IBUKA,<sup>6</sup> I met many other survivors of genocide.”<sup>7</sup> Theo, among others, recognized that the genocide and the surrounding years influenced every Rwandan. Several respondents shared that more inclusive memorial sites and genocide commemoration events help them feel that justice had been accomplished. In expressing these desires, interview respondents identified remembrance as necessary to rebuilding social ties among Rwandans.

Lillie,<sup>8</sup> an older widow living in Kigali, shares her perspective of genocide memory. Lillie’s husband was a Hutu accused of sympathizing with Tutsi neighbors. He fled his home during the genocide, and Lillie has not heard from him since. She said,

There’s an impact of genocide in the life of every Rwandan. A Hutu is frustrated by what happened by his parents, brothers, and sisters. For a Tutsi, he is a victim of lost parents, brothers, and sisters. Each one in this country has symptoms of the genocide. So, memorials are there to show us the reality of the genocide, on both sides.<sup>9</sup>

Central to meaningful memory is the process of creating a common understanding among Rwandans about the significant scars that past crimes have left on every Rwandan.

In post-genocide Rwanda, citizens continuously navigate a complicated interplay between national forms of memorialization and local remembrance practices. Alongside national genocide commemorations, the emergence of local practices addresses needs and gaps in meaning-making that are not sufficiently met by national memorial processes. For example, some AERG and GAERG<sup>10</sup> families go on an overnight retreat during *Kwibuka*. Each person shares memories about those who died, recalls how they survived, and discusses their hopes for the future. One

5 Name changed to provide anonymity.

6 IBUKA is an umbrella organization representing fifteen genocide survivors’ groups in Rwanda.

7 Kigali Local 005. Audio Recording. Kigali, Rwanda. June 12, 2015.

8 Name changed to provide anonymity.

9 Kigali Local, Audio Recording, Kigali, Rwanda July 10, 2015.

10 *Association des Étudiants et Élèves Rescapes du Génocide*/Association of Genocide Survivor Students; *Groupe des Anciens Étudiants Rescapés du Génocide*/Group of Former Genocide Survivor Students, artificial families of genocide survivors, usually orphans.

GAERG member shared, “It [the retreat] is exhausting and sad. Each person talks for a long time, and we listen. But it is also necessary to know what our brothers and sisters survived. We all support each other that way.”<sup>11</sup> Within the complexities of post-genocidal society, different symbolic remembrance practices allow Rwandans to make sense of what happened to them, to their communities, and to their nation in 1994.

### 7.5 Legal, Political, and Social Approaches to Victimhood

For the purpose of this research, I define legal identification of victim identity as what is codified in Rwandan and international law. Examples include the 1998 law establishing the National Fund for the Neediest Genocide Survivors (FARG),<sup>12</sup> the 2016 Rwandan National Law “Governing Ceremonies to Commemorate the Genocide against the Tutsi and Organisation and Management of Memorial Sites for the Genocide against the Tutsi,”<sup>13</sup> and the 2006 case at the International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Karemera, et al.*, where the ICTR judged that genocide was committed in Rwanda, and the court established this as a legal fact of common knowledge.<sup>14</sup>

Political definitions of victimhood rely on narratives through which the Rwandan government defines and promotes notions of “accepted” victimhood. This includes those who receive government services because of their past suffering during the genocide in 1994, including reparations from *Gacaca* proceedings<sup>15</sup> and payment for educational fees. Additionally, political definitions of victimhood impact which victims are permitted to speak during national ceremonies or in highly public spaces about their victimization during the genocide. Their stories

11 Key Informant 011. Audio Recording. Kigali, Rwanda. December 24, 2017.

12 *Fonds National pour l'Assistance aux Victimes les Plus Nécessiteuses du Génocide et des Massacres Perpétrés au Rwanda Entre le 1 Octobre 1990 et le 31 Decembre 1994*.

13 Loi No 15/2016 du 02/05/2016 (Régissant les Cérémonies de Commémoration du Génocide Perpétré Contre les Tutsis et Portant Organisation et Gestion des Sites Mémoires du Génocide Perpétré Contre les Tutsis). *Journal Officiel de la République Rwandaise* No. 22 (2016).

14 See Karemera, Case No. ICTR 98-44-I, 35.

15 In 2001, Organic Law N° 40/2000 of 26/01/2001 governing the creation of *Gacaca* Courts. According to Human Rights Watch, “Since 2005, just over 12,000 community-based *gacaca* courts – deriving their name from the Kinyarwanda word meaning ‘grass’ (the place where communities gather to resolve disputes) – have tried approximately 1.2 million cases. They leave behind a mixed legacy.” See Human Rights Watch (HRW) (2011).

and experiences align with the political view of what took place during the genocide. Referring to King's (2010) analysis, these would be mostly recognized Tutsi memories.

Socially, definitions of victim identity are the most diverse and capture the widest range of experiences. Neighbors define victimhood during the genocide based on innocence and guilt of the actions of fellow Rwandans, especially those who were targeted because of their Tutsi identity, those who participated willingly in crimes of genocide, and those whose actions fell somewhere in between. Additionally, many Rwandans socially recognize that others suffered loss before and after the genocide in 1994 and privately or personally recognize the significance of these experiences of victimhood, especially between neighbors who have known each other for a long time. Membership and acceptance in survivors' organizations, including IBUKA, GAERG, and AERG in secondary school and university also helps to socially define who is seen as a victim.

Some Rwandans interviewed identify themselves as victims of loss but realize that their self-definition does not match legal and political definitions of genocide victimhood. When asked whether he feels like a survivor, Claude,<sup>16</sup> a young man who had one Hutu and one Tutsi parent in 1994, said,

In my mind, yes, I do consider myself like a survivor, but the law does not allow it. That is what disturbs me, because to consider someone as a genocide survivor, [they] see if you fled, [or] if the father and mother are Tutsis . . . I never fled, and one of my parents is a Hutu and another a Tutsi. Those are the conditions to determine genocide survivors and I am not among [them].<sup>17</sup>

Personal accounts of victimhood operate and change within the official legal and political climate. For justice to be achieved via memorial efforts, it will be necessary for the memorials to represent a complete version of history, one with limited political influence.

Official and accepted definitions of victimhood after the genocide have changed over time. According to scholarly literature that addresses the intersection between state-making and victimhood in Rwanda (Burnet 2012; Longman 2017; Thomson 2013; Waldorf 2006), the creation and imposition of a singular national narrative has served to bolster the Rwandan government's legitimacy without properly representing all

16 Name changed to provide anonymity.

17 Kibeho Local 009b. Audio Recording. Kibeho, Rwanda. July 20, 2018.

groups of victims of the genocide (Bekken 2011). Longman (2017) describes how states use past histories of violence to justify new changes in leadership, government, and institutions. States can also use history as a tool to cope with past traumatic events. Longman makes an important distinction, stating that even the most effective states can control history but cannot completely control collective memory. If a group uses symbols (monuments, memorials, museums, language) to establish memory, it becomes collective to a degree, though its members may hold diverse views. This collective recognition of symbols contributes to the formation of dominant memory. He concludes that this is especially the case when there are strong state-sponsored memory projects that aim to adopt elements of the history, align with, and promote meaning and values of the post-conflict state.

Several interview respondents discussed their complicated relationship to victim identity in a legal and social sense. Most respondents attributed these complexities to the fact that they had one Tutsi and one Hutu parent. Shyaka,<sup>18</sup> an interview respondent of mixed parents, shared that he did not feel comfortable sitting next to “pure Tutsi” victims at annual genocide commemorations. He felt that he was not perceived as enough of a victim through a political and social lens.

During the genocide, Shyaka fled to the *Zone Turquoise*<sup>19</sup> in Gikongoro with his Hutu father, who was then killed with other Hutu fleeing imminent RPF attacks in that region. Shyaka feels as if he is a victim of genocide, having lost his father because of war and his mother being considered as a genocide survivor. Yet he was defined as a perpetrator, imprisoned for committing crimes of genocide. After the genocide, Shyaka did not receive educational assistance from the National Fund for the Neediest Genocide Survivors (FARG) even though his mother died as a Tutsi victim of genocide. As compared to people who were granted victim status, he felt that he had very different opportunities. His thoughts are indicative of essential issues of psycho-social and material consequences of victimhood in post-genocidal contexts.

18 Name changed as interviews provide anonymity, as per IRB regulations.

19 Between June and August in 1994, France controlled a “humanitarian safe zone” (*Zone Turquoise*) in the southwest of Rwanda. In response to escalating genocidal violence in Rwanda in April 1994, France launched *Opération Turquoise* for ostensibly humanitarian purposes. However, much evidence has implicated this mission, and France, in the genocide and subsequent violence. For more information, see Wallis (2006).

## 7.6 Genocide Commemorations: Spaces of Reconciliation and Exclusion

The interviews further highlight one inherent challenge of post-genocide commemorative spaces, which is that they tend to honor some and exclude others. Additionally, state-led commemorations are not particularly restorative by nature. When national commemoration processes accept certain memories and narratives about the past and silence others, they reinforce a binary consideration of victimhood that does not fully reflect the diverse experiences and cross-cutting identities of many Rwandans. Genocide commemorations and ceremonies are only sometimes spaces of reconciliation. At other times, they are spaces of exclusion. Local constructions of victim identity are highly dependent on accepted legal and political narratives that define victimhood.

Engaging in genocide remembrance is one way that a post-genocidal country can build a cohesive national and collective conscience after a life-altering event like genocide. As shown through the interviews conducted, commemoration processes are essential to helping the state maintain stability, peace, and security, and to minimize threats to its power. However, when citizens perceive commemoration efforts as spaces of exclusion, disconnected from their needs and lived realities, rather than spaces of reconciliation, then the state risks creating the very situation it desires to avoid – further group division and threats to existing power. Accepting, recognizing, and expressing narrative complexity about victim identity can help create more inclusive genocide commemoration and other memory practices that more completely represent Rwandans' diverse lived experiences before, during, and after 1994.

Respondents like Theo<sup>20</sup> articulate narrative complexity when reflecting on their experiences with post-genocide victim identity. Theo describes his situation, saying, "My father was Hutu, and my mother was Tutsi, and they asked my father to kill my mother, he refused so they killed them both."<sup>21</sup> In contrast with other respondents who had one Hutu and one Tutsi parent, the National Fund for the Neediest Genocide Survivors (FARG) considered Theo as a victim of genocide and assisted in paying his school fees.

20 Name changed to provide anonymity.

21 Kigali Local 005. Audio Recording. Kigali, Rwanda. June 12, 2015.

Sarah,<sup>22</sup> an elderly genocide survivor from Muhanga, spoke of challenges, highlighting her victimhood and focusing on her losses during the genocide commemoration. She said, “You see, in my family I am the only one who survived. All members of my family were killed. So, when we go to *Kwibuka*, I remember that I am alone, I do not have any relatives, all that is hard for me.”<sup>23</sup> Fidèle, an older man from Muhanga, who did not identify as a genocide survivor, spoke further about existing challenges of *Kwibuka* and reconciliation. He said,

... *Kwibuka* every year does not favor reconciliation ... Because we talk about killings even though we want to be reconciled. For us to be reconciled, there are things that we need to put aside; the past is the past, you want the future. So, when you say for example, “last time you beat me,” if you want to reconcile, you try to forget what happened. But if you say, “even though we are friends and we live together, you have beaten me” and you say it often, it shows that there is something hidden. It hurts me because I thought that you had forgiven me. But you still remember it though we had to put it aside, because I apologized, and you forgave me. If you have forgiven me, you do not have to keep saying, “but you have beaten me.” It is contradictory.<sup>24</sup>

Fidèle and Sarah highlight an important paradox of reconciliation efforts via genocide commemorations. Challenges over who has the right to remember, and what aspects of the past are acceptable to talk about in public commemorative ceremonies have resulted in genocide memory processes as spaces of semi-reconciliation, and semi-marginalization and exclusion. This is especially the case for Rwandans whose memories are unrecognized (King 2010) by official legal and political entities.

In this research, I asked respondents if they self-identified as victims or survivors, and also if they felt others (the Rwanda government, the FARG fund, their *umudugudu*, or local community) consider them so. In many cases, the official notion of what a victim is shapes their opinion, and they adapt their perspective to the structures of victimhood communicated through official and formal channels. In other interviews, however, individuals stated that they were victims, but also noted when their self-identification as a victim did not match the official notions. This lack of coherence can cause cognitive dissonance and a sense of uncertainty of the individual’s position in the social and political construction

22 Name changed to provide anonymity.

23 Muhanga Local 002. Audio Recording. Muhanga, Rwanda. June 11, 2018.

24 Muhanga Local 001. Audio Recording. Muhanga, Rwanda. June 11, 2018.

of the post-genocide society, including the new order of social hierarchy in Rwanda.

According to those whom I interviewed, when Rwandans attend public commemorations, they find that others mostly accept the value of the commemoration as a symbolic public good. Although they might not agree with every speech or everything taught during the commemoration, or they may think about other things than the Tutsi victims during the commemoration, there is a common understanding that commemorating genocide is good for Rwandans.

Several Rwandans interviewed who self-identify as Tutsi victims expressed concern if other Rwandans, especially former Hutu, do not have opportunities to remember their lost loved ones. Citing buried feelings of resentment and lack of belonging, several respondents stressed that other Rwandans should be able to hold a church mass service in memory of those they lost during the “decade of violence” between 1990 and 2000 (Thomson 2013). The main concern from survivors was not that individuals should suppress these memories or not be allowed to mourn their losses. Rather, the main issue raised was about what would be an appropriate time of the year, place, and way to recognize these victims. Interview respondents did not feel that remembrance of non-genocide victims should take place during the genocide commemoration period from April to July each year; they felt that remembering another time would be more conducive to repairing trust in local communities toward lasting reconciliation, by creating shared identity of past losses.

## 7.7 Narrative Complexity and Restorative Commemorative Spaces

Given the paradox that genocide commemoration at times fosters reconciliation while at other times is a spaces of exclusion, what can be changed to make commemorative spaces more restorative?

First, acknowledging and representing narrative complexity during genocide commemoration ceremonies can create symbolic justice processes that are representative of the diverse identities and experiences of Rwandans in 1994 and since. Interviewees expressed numerous ways in which they personally and communally engage with memorial sites and processes. Some interview respondents expressed narrative complexity by depoliticizing victim identity, showing keen awareness and aspirations that different perspectives of the past can all be accepted and shared during genocide commemorations.

Second, integrating personal remembrance practices, including private prayers, family gatherings and meals, holding a mass at a church service in honor of victims, or going with neighbors and family to visit a memorial site where a loved one is buried, can bridge state-led remembrance ceremonies with meaningful and personal cultures of memory that often operate in parallel but do not intersect.

For example, many families find meaning by meeting during the *Kwibuka* period, inviting their neighbors and close friends to share a meal and listen to the testimonies of a surviving member of the family, or of someone who saved members of that family during the genocide. This is not a selfish act; rather, it is done so that the people close to the family can bear witness to the family's history, and so that the history is not forgotten. At the small gathering, those invited discuss the merits of those who passed, those who survived, and those who assisted the family in the hardest of times. What is discussed among the family often occurs inside a home where the windows and curtains are drawn closed, so the outside world cannot see. Personal secrets of sacrifice, fear, loss, sadness, grief, financial challenges, and other "unspeakable" things are discussed in this setting, and they include topics and memories that are not acceptable to discuss at public commemorations. Integrating these practices and broadening what is deemed acceptable to remember can make commemorative spaces more restorative.

Third, many Rwandans interviewed for this research, including those legally and politically recognized as victims (i.e., Tutsi who were in Rwanda during the genocide in 1994 and who survived targeted killing by perpetrators), said that crimes other than genocide should be recognized and those victims given a space to remember their lost loved ones. Many Rwandans whom I interviewed expressed their concern about unacknowledged grievances or future desires for revenge if those who did not formerly identify as Tutsi are not able to remember their loved ones lost during instances of war and counterinsurgency. If individual experiences of victimhood of war crimes and crimes of revenge remain unrecognized, then memory efforts in Rwanda will continue to marginalize citizens whose narratives do not currently fit.

## 7.8 Conclusions

Victim identity in post-genocide Rwanda is defined in diverse ways which influence whether it is recognized by legal, political, or social entities. This research found that victims with multiple and diverse



identities have constructed varied forms of memorialization that sometimes diverge from officially sanctioned practices.

Interviewees identified multiple notions of victimhood, creating opportunities to conceive of senses of victimhood that both align with and are contrary to official and accepted definitions. Hierarchies of victimhood are brought into being after conflict and extreme cases of human rights violations like the genocide in Rwanda. They are often counterproductive to the project of rebuilding and seeking justice, with profound consequences for individual people, especially those situated counter to the regime. At times, victims compete for reparations, resources, validation, and acknowledgment that they are the true victims of the crimes of the past. While “victimhood” might not be finite, and victims do not always compete, when resources are limited, when political decisions and compromises must be made in the post-genocide society, or when certain victims’ experiences are denied or threatened into extinction, victims claim their rights and status, oftentimes at the exclusion of other victims. Therefore, hierarchies of victimhood develop in a practical sense; and at times, some victims claim that their suffering is greater than others. These are some of the lasting questions about the constructions of victimhood and how memorial sites reinforce or break down rhetorical narratives of victimization.

Some members of victim and survivor communities whom I interviewed were careful to note that the genocide commemoration period did not feel like an appropriate or “right” time for others to mourn publicly. They explained that *Kwibuka* is a sacred time for them to focus on their losses and unique experience of being targeted for genocide, based solely on their group identity. *Kwibuka* is one of the only times that they can publicly express their sorrow, grief, trauma, and demands for recognition and redress.

Many of these respondents also stressed that other Rwandans should have a chance to remember their loved ones publicly, something they see as important for fellow Rwandans to make meaning of different past experiences of violence, a process that is viewed as necessary to creating sustainable trust in Rwandan communities.

The data presented relies on narrative complexity and variegated situations when considering legitimacy of the government among Rwandans in Rwanda. According to some interviewees, it is possible that the politicization of memorials and official commemoration practices at times undermines the legitimacy of the government, at least in the eyes of

a substantial portion of the population (non-Tutsi) and even including some genocide survivors.

Complexities around victim identity in post-genocide Rwanda impact meaning-making and the potential for justice, especially during national commemoration, where legal and political definitions of who is a victim are prioritized and accepted. At present, national remembrance practices do not fully account for the diverse experiences of Rwandans in 1994. Through the creation and promotion of an accepted narrative, stories of Tutsi victims of the genocide are most highlighted during public and state commemorations. However, many Rwandans felt victimized at different times during the decade of violence between 1990 and 2000. As such, hierarchies of victimhood have proven to limit the perceived effectiveness of salient symbolic justice and meaningful genocide memory processes in Rwanda, as they have in other post-atrocity settings like Northern Ireland and South Africa.

Memorialization and commemoration are not static processes. Rather, they reflect political, legal, and social realities at a particular moment in time, especially as government and community priorities shift. By identifying the diversity of experience and how Rwandans' relationships to these existential issues change over time, it becomes possible to comment on the ways in which Rwandans view and respond to the diverse memorialization landscape at different scales in their post-genocide society. The ways in which states and societies frame a conflict affects who is defined as a victim, further affecting who is allowed to remember and which memories are acceptable to speak about publicly. These dynamics play out in different forms during genocide commemoration ceremonies in Rwanda. Listening to the narrative complexity as described by those closest to the genocide yields salient patterns, themes, and recommendations of how Rwandans see themselves addressing the inherent challenge of commemorative spaces which honor some memories and exclude others. Understanding and applying their perspectives has the potential to positively transform genocide memorialization efforts to be more restorative and meaningful for Rwandans with diverse experiences and perceptions of victimhood.

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## Imaging “Traitors”

### The Raped Woman and Sexual Violence during the Bangladesh War of 1971

NAYANIKA MOOKHERJEE

‘What do you think you are doing here’ ‘Go home you shameless Korean hag and prostitute.’ (*Apology* 2018)

#### 8.1 Introduction

A crowd of young men shouted out these and numerable other profanities at an elderly Korean comfort woman as she arrived to testify in Tokyo in 2010. I was watching clips of the film *Apology*<sup>1</sup> (2018) made by Canadian Taiwanese director Tiffany Hsuing for my lecture on *Apology* for my third-year undergraduate module. Released in 2018, the film traces the lives of three “comfort women” who were among the 200,000 girls and young women who were deceived into going for a job and thereafter forced into military sexual slavery by the Japanese army during World War II.<sup>2</sup> Comfort women prefer to refer to themselves as Japanese rape victims, a name through which the perpetrators and their brutality are not hidden. In 1991, they decided to testify about their horrendous experiences after seventy years of not divulging their accounts. They also demanded an apology from the Japanese government. That these profanities were being hurled at the elderly Japanese rape victims from Korea by a group of young men only a decade ago is shocking. It also shows that this topic is one of national and inter-generational concern – if not shame – in Japan. The use of the term prostitutes<sup>3</sup> by these young men

1 [www.pbs.org/pov/watch/theapology/video-the-apology-trailer/](http://www.pbs.org/pov/watch/theapology/video-the-apology-trailer/).

2 Illustrations of this genre include Amnesty International (1993), Brownmiller (1975), Stiglmeier (1994), and Tanaka (1996).

3 I prefer to use sex worker (instead of prostitute) in keeping with feminist theorizations. My use of the term prostitutes in this chapter highlights its use by actors in the research.

toward these elderly women also showed that these youths were fearful that the women's testimonies would serve as powerful evidence of how Japan had perpetrated sexual slavery during World War II.

Survivors of sexual violence during conflict commonly become categorized as sex workers in post-conflict contexts, even within one's own community and nation. Hearing these profanities in the video immediately took me back to my own research among the survivors of wartime sexual violence of the Bangladesh War of 1971 (Mookherjee 2006, 2015). Since the 1990s, many of the survivors of wartime sexual violence have been talking publicly about their violent experiences in Bangladesh. However, four of the survivors I worked with were confronted by sanctions and *khota* (sarcastic/censorious remark which reminds one of an unpleasant event) after testifying in various public forums in the capital city of Dhaka or in local towns. These events were organized by different members of the civil society as well as feminist and human rights activists. The activists would often give survivors some meagre financial and material (a bag of rice, lentils, a saree, blanket, or towel) support for being present at these events. The survivors and their families were subjected to varieties of *khota*, predominantly through everyday squabbles. Whenever there were any arguments arising from children fighting, disputes over the share of the harvest, if one's goat strayed into another's courtyard and started eating the grains set out to dry, or when any other difference arose, the disagreeing party (usually extended family members, neighbors, villagers, and other acquaintances) would raise the issue of the rapes. Their main reason for *khota* was the worthiness of talking about something which was a public secret all these years. What had happened to the women is not unknown to the villagers, as many have testified as to the state of the women after their rapes and recognize this could have happened to anyone in the area. Nonetheless, *khota* is evoked on the assumption that the women are getting enormous material and financial compensation at these civil society events in exchange of their public testimony.

The giving of testimonies of the survivors is thus often deemed by their communities to be doing *babsha* (doing business akin to sex work), that "they are selling their words." This highlights the social ramifications of testimony and how such testimonial accounts are received according to various historical, political, social conventions, and relations of power. These profanities, however, need to be set in the context of the relative poverty of these communities and the economy of envy that has emerged

as a result of the national attention received by the testimony of the survivors.

The *birangonas* would explain that the main reason for scorn is jealousy. “After all, everyone here is in a state of *obhab* (destitution),” reasoned Rohima. The fact that raped women might be receiving material benefits is difficult for the villagers and local, poor liberation fighters to accept, within the “violence of inequality” (Harvey and Gow 1994), characterized by the villager’s struggle to have access to resources in the context of devastation caused by cyclones, floods, loss of lands by river erosion, and disease. The villagers compare their relative deprivation – the gap arising from their actual life conditions with their legitimate expectations – which is exacerbated by corrupt, local leaders. Poor liberation fighters and their responses should be contextualized in the atmosphere of intense competition and claims for rehabilitation that predominantly falls on deaf ears or fills the pockets of powerful, rich local leaders and liberation fighters. Community members (local leaders, extended family members, neighbors, villagers, and other acquaintances of the survivors and their families) sometimes also assert that, since the Pakistani army, as the perpetrators, cannot be tried for their atrocities, the survivors should not talk about their public secrets, their experiences, after all these years. A survivor narrated: “They say we should not put our words in newspapers as we have grown-up children, married daughters and *kutumb* who would come to know these things. My sister-in-law warned me that because of this publicity I would have no place in *behest* (heaven) and would go to *dojok* (hell).”

My ethnographic research (Mookherjee 2015) has also highlighted that the stigma and shame that are inflicted on the survivors through the attribution of *babsha*/prostitution are not given concepts of the community. Rather, the process and contexts in which these concepts are evoked need to be understood through attention to various economic, political, and historical circumstances. Hence, the survivor I just cited explained to me that since all the neighbors are poor, they are assuming she is becoming rich. Also, she realizes that using *khota*/scorn of her rape against her is a way to belittle and humiliate her in the context of the land disputes that exist between the families.<sup>4</sup> These ethnographic insights show how the political–historical and socio-economic contexts of silence, honor, shame, and stigma are significant for understanding the

4 See Mookherjee and Keya (2019) for a visual elaboration of this point in our graphic novel.



post-conflict context of survivors; one should not assume that these concepts are inherent in "Muslim" societies.

The codes of secrecy vis-à-vis the perceived intentionality on the part of the women who talk publicly about their experience of rape influences the construction of their varied subjectivities as victims, liberation fighters, or *birangonas*. Some of the younger men in the village have expressed disbelief as to whether the women were actually raped. The key paradox here is that these youths reason that someone who has "truly" been raped would "attempt to conceal it." For the young men, a raped woman who refuses to acknowledge and speak about her account of sexual violence indicates her shame, and this makes her authentically raped.

Local liberation fighters have similarly disbelieved the women. To them, the yardstick of being authentically raped is based on hiding one's history and masking it through marriage. They explained that raped but unmarried women hid the rape so as to get married, while already-married women who had been raped kept quiet about their wartime experience to avoid familial rejection. Here, "silence is of all signs the one regarded as most indicative of full intention" (Gilsenan 1976, 216) and is the marker of an authentically raped woman and a moral being.

The community seems to suggest, in line with Taussig, that "truth is a revelation which does justice to it" (Taussig 1999, 2) or, in other words, truth is only worth evoking if one can seek justice through it. To community members, it is fruitless for the women to reveal the truth of rape, as they cannot punish the rapist. The action of the women in talking about the rape, particularly for the purpose of receiving money in exchange, is therefore "sinful." The "rightful" action of the victim, weak and tabooed, is to be quiet, to remain covered and invisible, and not to protest against the wrongs done to her. Community leaders have also claimed to me that it is okay for the nation to talk of rape but not in society as it is not socially progressive.<sup>5</sup> This highlights the complex dynamics within which sexual violence is articulated by one's community and collective and how these readings are projected onto the figure of a "traitor."

This chapter seeks to engage with the figure of the traitor and the relationship to the women raped during 1971 to go beyond the binary of victim and perpetrator with the attempt to map its implications in

5 For an elaborated discussion see Mookherjee (2006, 2015).

“transitional justice” settings of the mass violence of 1971 in contemporary Bangladesh. It examines the construction of the survivors of sexual violence as sex workers, akin to being traitors and collaborators with the enemy forces. An identification of traitors allows us to go beyond the blurring of the boundaries of the binaries of being a victim and perpetrator. If supporting long-term positive peace requires understanding the narrative dynamics within and between groups (Federman and Niezen, [Introduction](#)), then we need to understand the narrative dynamics not only through the binaries of perpetrator and victim. The figure of the collaborator/traitor through the image of the survivor of sexual violence does not only allow a greater acknowledgment of the overlapping roles of the perpetrator and survivors. Instead, the seething ambiguity and suspicion toward the raped woman also allows us to interrogate the processes of “peacebuilding.” In this, I follow Zizek’s (1989, 127) analysis of how “the block” is projected onto the figure of the “Jew” and want to explore here how this block is applied to the figure of the survivor of sexual violence about whom there is a constant suspicion of being a traitor. I also draw on the theorizations from the excellent volume on treason edited by Toby Kelly and Sharika Thiranagama (2010: 3). In this, they argue that the relationship between treason and the fragile nature of state-building as nation states rely on various intimate relationships to draw the moral boundaries of the people and the state. In fact, their point that betrayal is the ever-present dark side of intimacy resonates with the traitorous constructions of the *birangonas*.

This chapter is based on two decades of research on the public memories of sexual violence during the Bangladesh war of 1971. It outlines the sexualities of war by exploring the juxtaposition of sexual violence and discourses of prostitution. A further examination of the historical context in Bangladesh allows us to explore the *constitutive performativity* of the public discourses surrounding the figure of the raped woman as a traitor. Here, I refer to constitutive performativity in the strict Butlerian sense, which I would paraphrase as naturalization through stylized and exclusive repetition – how the idea of a traitor has been “made” in order to be “found.” I will attempt to highlight the various “natural” connotations of “traitors.” By discursively engaging with the three life trajectories of the “enemy within,” through the speculation and rumors of the raped woman as a traitor (as explored in a graphic novel [Mookherjee and Keya 2019]), “we understand, story, and then respond” to how the idea of the traitor straddles the positions of victim and perpetrator. Through this, the themes of citizenship,

belonging, and exclusion are explored in the context of the fifty years of “transitional” justice in Bangladesh. In [Section 8.2](#), I turn to a discussion on the sexuality of war which is foundational to understanding the interpretation of perceiving and linking survivors of wartime rape to prostitution and in the process to image them as traitors.

## 8.2 The Sexuality of War

In her insightful essays, “The Prostitute, the Colonel and the Nationalist” and “When Soldiers Rape,” the feminist political theorist Cynthia Enloe describes the entire sex industry (Enloe 2000) created with every military operation. The significance of the sex industry to the modalities of war is important to understand in order to contextualize the development of the comfort stations in Japan and also why survivors of sexual violence are given the label of prostitutes and hence of traitors. Brothels and the sex industry in spaces of conflict are meant to serve as a source of entertainment for soldiers who are away from home. Brothels in areas of conflict are also apparently meant to reduce instances of sexual violence during wars. During the World War II, in the Comfort Stations of the Japanese troops, rape became a metaphor for Japan’s occupation and establishment of racial and economic superiority in the world and Asian politics.<sup>6</sup> Enloe also shows how, in the case of the Vietnam War, there were different brothels for US soldiers of different races, thereby retaining in Vietnam the racial divisions prevalent in the United States. In 1991, when Japanese rape victims started speaking about their horrific experiences in the comfort stations, the movement gathered momentum to demand an apology from Japan. Soon, in the UN Beijing Declaration of 1995, rape during war was declared a war crime. The Japanese Government also apologized to the comfort women, with the aim that Japan would not be criticized anymore on this issue.<sup>7</sup> In 2016, Japan and South Korea agreed to no longer contest the issue and to stop future generations of Japanese leaders from having to apologize. However, this agreement fell through in 2018 due to Japan’s insistence on removing the Peace statue – a memorial dedicated to Comfort women across the world.

6 See Tanaka (1996).

7 [www.seattletimes.com/opinion/japans-apologies-on-comfort-women-not-enough/](https://www.seattletimes.com/opinion/japans-apologies-on-comfort-women-not-enough/).

Japan also objected to the latest statue unveiled in Berlin in September 2020.<sup>8</sup>

The continued prevalence of sexual violence alongside the persistence of sex work in spaces of conflict also reminds us to think through Catharine MacKinnon's (1987, 127–154) conception of sexuality as a set of practices that inscribes gender as unequal in social life. Thus, rape may not just be a matter of individual lust but also an affirmation of women as objects of pleasure and thereby underlining the power of men. If women as a gender are defined as sexual beings and violence is eroticized, then men violating women has a sexual component. I have also written about the silence relating to violation of men (Mookherjee 2012) and how it is easier for states to talk about the rape of women than of men. Thus, sex work in contexts of conflict as well as sexual violence show how sexuality is intrinsically tied up with the modalities of conflict. That the transgressions of sexuality are of continued significance in post-conflict contexts highlights the need to examine the figure of the traitor through the experiences of survivors of wartime sexual violence. It allows us to examine the dynamics of peacebuilding in the contexts of suspicion toward the survivors of sexual violence and to go beyond the overlapping binaries of perpetrators and victims. In Section 8.3 I turn to the context of Bangladesh and its “war at home” to explore these issues in more detail.

### 8.3 The War at Home (*Grihojuddho*)

In 1947, the independence of India from British colonial rule resulted in the creation of a new homeland for the Muslims of India by carving out the eastern and north-western corners of the country, which came to be known as East and West Pakistan, respectively. In the formation of Pakistan, Islam was the sole principle of nationhood unifying two widely disparate units, separated not only geographically but by sharp cultural and linguistic differences. The practice of Islam in Bengal was also conceived as too “Bengali/Hinduized.” Thus, reluctant to rely on religious allegiance, West Pakistan’s administrative, “military,” civil, and economic control over the years led to the nine-month long liberation war in 1971. The war was triggered when West Pakistani authorities refused to accept the overwhelming electoral victory of the East Pakistani

8 [www.dw.com/en/japan-comfort-women-korea-berlin-sexual-slavery-world-war-ii/a-55117648](https://www.dw.com/en/japan-comfort-women-korea-berlin-sexual-slavery-world-war-ii/a-55117648).

leader Sheikh Mujibur Rahman in the elections in December 1970 and it became clear that he would lead Pakistan. The Pakistani Government refused to transfer power to the newly-elected representatives. In response to Sheikh Mujib's Non-Cooperation movement, a premeditated Pakistani military crackdown ensued from March 25, 1971. Over the subsequent nine months, the Pakistani army, with the assistance of Bengali and non-Bengali collaborators, raped women and killed Bangladeshi men and women from all walks of life and social classes, ranging from intellectuals, journalists, students, workers, and villagers. India also provided support (for varied interests) to the Bengali guerilla fighters and formally joined the war in December 1971. Thereafter, East Pakistan became independent from West Pakistan and Bangladesh was formed based on the ideals of democracy, secularism, nationalism, and socialism. Formed in the midst of various cold war geopolitics, the Bangladesh war of 1971 has not been recognized as a genocide in any international forum. With the end of the Liberation War, Bangladesh was faced with the staggering number of 3,000,000 dead and 200,000 women (contested official numbers)<sup>9</sup> raped by members of the Pakistani army and by the *Razakars* (local Bengali collaborators), all in a span of nine months. Recent scholarship (Saikia 2011) has also highlighted how the non-Bengali "Bihari" communities (who are considered to be collaborators) were killed and Bihari women were raped by liberation fighters during and after the war.

In an unprecedented move, the Bangladesh government attempted to reduce social ostracism of the raped women through a public policy of referring to them as *birangonas* (war-heroines). Rehabilitation centers were set up for the women by the government with a four-pronged program to enable abortions, adoptions, marry off women, as well as provide them with jobs. This overt government policy had various intended and unintended consequences (see Mookherjee 2015). There exists a public memory of the history of rape through government announcements, photographs, advertisements, rickshaw art, films, rehabilitation center photographs, and government documents. While being the focus of press and government speeches in the early 1970s, the issue of rape during the war was relegated to oblivion through the latter half of the 1970s and 1980s, only to re-emerge again in the 1990s. The process of historicizing narratives of sexual violence of 1971 took place

9 The number of women raped varies from 25,000 to 100,000 to 200,000 to 400,000 in different contexts (Genocide Issue 1972; Hasan 2002).

again in the 1990s within the international context of the declaration of rape as a war-crime and varied historical and political contingencies in Bangladesh.

In the meantime, since 1975, Bangladesh had been under a military government and in the 1990s following democratic elections, a government led by the Bangladesh National Party (BNP – deemed to be more Islamicist, right wing, and militaristic) came to power and in 1996 an Awami League (AL – deemed to be more secular, more pro “people” and left-liberal) government came to power. In 2008 again, AL won the elections on the promise of setting up the aforementioned war crimes tribunal to bring to justice those who collaborated with the Pakistani Army in 1971 and have had political impunity under military and BNP governments for the last forty years in Bangladesh.

After forty years of Bangladeshi independence, this national tribunal (Shaon 2018) charged seventeen individuals for their role in the Bangladesh war of 1971, arrested and detained fourteen, charged two in absentia, and executed six. An International Crimes Tribunal was formed on March 25, 2010, which delivered judgments in thirty-four cases against eighty-three war criminals. Among them, fifty-two were sentenced to death. Many of these individuals were linked to Jamaat e Islami party and the opposition Bangladesh National Party and all were deemed to be collaborators with the Pakistani army in 1971.<sup>10</sup> The situation of partisan influence on justice has been exacerbated by the Pakistani National Assembly, which passed a resolution on December 17, 2013, saluting one of the collaborators as a “friend of Pakistan,” condemning his execution, and warning Bangladesh against “resurrecting 1971.” This in turn has led to fresh demands to try the Pakistani army personnel for their roles as perpetrators in 1971.

As we see in the case of Bangladesh, the issue of transitional justice and reconciliation has not been seen as relevant, particularly given that the issues relating to the genocide in 1971 have not been addressed by Pakistan or at the international level. While the war crimes tribunal has had enormous support among Bangladeshis and has strengthened the government, it has also opened “a can of worms,” created a *grihojuddho* based on unresolved issues from the past. Bangladeshis would often ask

10 [www.dhakatribune.com/bangladesh/war-crimes/2018/08/18/eight-years-of-war-crimes-trials](http://www.dhakatribune.com/bangladesh/war-crimes/2018/08/18/eight-years-of-war-crimes-trials).

“Peace for whom?” “Reconciliation for whom?” While my earlier work dealt with the public memories of sexual violence during the Bangladesh war of 1971 (Mookherjee 2015), in this chapter, I am exploring the figure of the *birangona* as a collaborator within Bangladesh’s post-atrocity trajectory.

#### 8.4 The Birangona as a Traitor

In examining the figure of the *birangona* as a traitor, I attempt to highlight the various “natural” connotations of “traitors.” The naturalization in the context of *Razakars* is highlighted in Bangladesh through their relationality to Islam (marked by his beard and cap) and Pakistan (marked by the moon and crescent on the cap). I have written at length about the figure of the *Razakar* as a collaborator (Mookherjee 2009). It is this naturalization of the collaborator through the stylized and exclusive repetition of their link to Islam and Pakistan, the *constitutive performativity* of the public discourses surrounding the collaborators, that shows how the *Razakars* have been made in order to be found. The presence of the collaborator is on one hand a sign of weakness and an attack on the sovereignty of Bangladeshi nation-state. By exploring this in various socio-historical moments, ideas of belonging, citizenship, and exclusion are traced. On the other hand, central to the affective interstices of mistrust, suspicion, hate, and loss, stands the figure of the raped woman and her womb, which became the traitor in the first place.

I came across the following account of rape in nearly all parts of Bangladesh: A *Razakar*, who used to provide women to the Pakistani army, falls prey to his own deeds. On a day when there were no available women, the *Razakar*’s own daughter gets raped by the Pakistani general. Another sequence of events narrates how the Pakistani general on visiting the *Razakar*’s home avails himself not only of the collaborator’s hospitality, but also rapes his daughter. The daughter commits suicide in both accounts after disclosing her father’s role to the villagers. This account of rape reoccurs as a local narrative in almost all the places in Bangladesh I have been. I first heard it narrated in Enayetpur, a village in western Bangladesh, where I did some of my fieldwork, in the nearest sub-town of Bhashkhal, in Sylhet (a north eastern province), Dinajpur (a northern province), and also among human rights lawyers in Dhaka. In each of the cases, the narrative of rape is claimed as part of the local account of the atrocities of the war. I found the same account in books published in the 1990s documenting the narratives of torture and

genocide.<sup>11</sup> Syed Shamsul Haq's famous play, *Payer Aoaj Paoa Jai* (footsteps can be heard), written in 1976,<sup>12</sup> also focuses on this account of rape, which I found to be the content of various dramatized plays on stage and televised serials. The uniformity with which this account of rape emerges in different spaces might suggest that this account enables people to suggest ideas through which a collaborator might have been punished. The nature of the audience in these accounts varies from that of the urban, suburban, rural literate, middle class or economically well off as well as the urban or rural poor. This highlights how the idea of the collaborator and the search for justice is based on the circulation of these local events as well as accounts in newspapers, word of mouth, television serialization of well-known plays, poetry reading session on television (which are watched collectively by poorer men in Enayetpur), and the spectacle of literature and films.

In various representations, particularly in films, the encounters in 1971 between the Pakistani army and the Bengali women are often portrayed with an "erotic" subtext of the experience of rape and direct us to the perceptions of ambiguity toward the sexuality of the war-heroines. This highlights how the erotic modality and sexuality of the *birangona* are intrinsic to the bulwark of nationalism. That there exists an ambiguity toward the *birangona* in Bangladesh is evident if we revisit the earlier-mentioned anecdote of the rape of the collaborators' daughter. The "come-uppance" of the *Razakar* is that they offer other women to be raped, and then in the end punishment against them occurs when the amoral Pakistani soldier rapes their daughter too. Sexual violation of their daughters here seems to be the appropriate punishment for their activities, even when it is told by people condemning the rape of women. Treason, sexuality, and betrayal are intrinsically imprinted on bodies of the *birangonas*. They are invested with an ambivalent combination of emotions. Beyond the conceptual domain of the *birangona* as a national signifier of loss and victimhood, I explore in Section 8.5 how identification with the *birangona* as an intriguing unknown is caught in the double helix of attraction and repulsion – the war-heroine is deemed to be a traitor and is always suspect. In the film *Bagha Bangali* (1972), the

11 In Bangladesh, the events of 1971 are considered to be genocide based on mass killings, impositions on culture, language, religion, and national feelings. For varied accounts of the Bangladesh War of 1971 see Ahmed (1973), Hasan (2002), Islam (1992), Muhith (1992), Totten et al. (2012), and Williams (1972).

12 As cited in Haq's, *Payer Aoaj Paoa Jai* [written in 1976] (1991).



collaborator is the Chairman and his daughter Keya tries to stop him from helping the Pakistani army. When she is unable to do so, she shoots and kills him. Thereafter, the Pakistani soldier visits her and the scene ends with him looking at her lustfully, suggesting a possible encounter of rape to follow. The punishment for a collaborator (whether alive or dead) is only feasible through the rape of his daughter. In one of my rural field sites, there were similar rumors about the commander of the Liberation Fighters Council of Bangladesh in 1998: that his father-in-law was a collaborator and his daughter, the commander's wife, was raped. That the raped woman also provided a source of entertainment for the Pakistani officers (Bagha Bangali 1972; Roktakto Bangla 1972) through provocative dancing, drinking alcohol, wearing "revealing" clothes, as portrayed in many of the films in the 1970s, further reiterates the suspicion toward the *birangonas* as traitors and the possibility of rape as an erotic encounter.

That rumor becomes the site of activation of popular memory in the making of history is evident in the speculations about the possibility of having been raped during the war, particularly in the case of young, attractive women. Central to the ambiguous feelings of mistrust, suspicion, pain, and loss toward the *birangona* stands the figure of the raped woman and her womb, which became a traitor in the first place. The women, however, needed to be absorbed back in the nation as their motherhood arising out of legitimate sexual congresses had to be made available to the nation-state.

The emotional policing of the raped women by those assisting the women in the processes of abortion and adoption, namely the social workers and doctors, became particularly significant. Various social workers were involved in the rehabilitation center in the post-conflict context. Their main responsibility was to enable the rehabilitation of the *birangonas* dependent on the condition of the survivors. This rehabilitation involved processes of abortion, adoption, marrying off the survivors, and also helping them with securing jobs. Many of the *birangonas* were refusing marriage and demanding jobs which the government had promised. To the social workers, abortion and adoption were necessary to "protect women from the emotions of motherhood and return them to society."<sup>13</sup> This disciplining of sentiments alone can enable their citizenship in the new nation and is pivotal to state making. Protection from

13 Social worker who was in the Rehabilitation Centers in 1972 with the *birangonas*, Interview with author in 2005.

their own maternal emotions further ensures that the *birangonas* can be married off and instituted in motherhood within an acceptable sexual congress.

This state-sanctioned care, however, does not stop the rumors as to who was where during the war and how long they were staying “away” at an “uncle’s” place, since their womb itself had become a traitor. This is also evident in the urgency with which abortion and adoption were carried out. The rumors were such that if the women were away for a considerable time, it was widely assumed that they were raped, had become pregnant, and then had to give birth to the baby. Further, women’s absence from their communities of origin is linked to the kind of professions various women took up after the war. Professions like film actor and air stewardess are stereotypically considered jobs that require women to be “promiscuous.” Often, the rumor of rape surrounding a woman and the profession that she took up after the war would be cited as inevitably interconnected. The argument runs as follows: not only did women who joined such professions have to be promiscuous, but women who were raped during the war were destined for these professions, as if being raped makes one susceptible to promiscuity. Establishing this link between the experience of sexual violence and promiscuity itself suggests the slippage that exists in the popular understanding of the violence of rape and the ambivalence and desire of the forced encounter. Here, sexuality represents the precise point at which the disciplinary and regulatory, the body and the population, are articulated. Here the pregnant, raped women can be a traitor not only against the family but also against the sovereignty of the state. So, she needs to be hastily absorbed.

### 8.5 Traitorous Lives

After the publication of my book, *The Spectral Wound: Sexual Violence, Public Memories and Bangladesh War of 1971* in 2015 and of its South Asian version in 2016, I was invited to have a book launch event at the Centre for Women, Peace and Security at London School of Economics (LSE) in October 2016. The panelists for the launch included academics as well as NGO leaders and government officials. I was also invited to speak at the Dhaka Literary Festival in November 2016 about the book and also launch the South Asian edition of the book. *Spectral Wound* was written in the context of a worldwide focus on recording testimonies of sexual violence during conflict that started in the 1990s. However, my research in Bangladesh highlighted that the conditions under which

statements were recorded showed that many survivors consider the testimonial process to be retraumatizing, with negative consequences. I took this invitation to the Dhaka Literary Festival to be an opportunity to initiate the first collaborative workshop (among five others) with my partners Research Initiatives Bangladesh (RIB) as well as invited participants, who included survivors who were in the public eye, academics, researchers, government officials, policy-makers, NGO representatives, feminists and human rights activists, journalists, filmmakers, and photographers. The aim of this workshop was to co-develop a set of survivor-led guidelines for those seeking to record testimonies of wartime sexual violence. The ten guidelines co-developed through these workshops include a list of ethical practices, visualized with various illustrations in the graphic novel format to make it more accessible. Before the first workshop, I started developing story boards and was collaborating with Najmunnahar Keya (a Bangladeshi visual artist) to develop this graphic novel. Before the November 2016 workshop, I pre-distributed a set of guidelines based on my monograph and this was developed further, based on feedback from participants in the workshop. In the second half of the workshop, the initial plans for the graphic novel were developed.

Over a span of two and a half years, with support from the UK's Economic and Social Research Council's Impact Acceleration Account, Durham University's Research Impact Fund, and after five consultative workshops in Research Initiatives Bangladesh (RIB) and the UK (Centre for Women, Peace and Security, LSE), we co-produced the guidelines, graphic novel, and an animated film, in collaboration with various stakeholders in Bangladesh and the UK and with support and participation by the Ministry of Liberation War Affairs of the Government of Bangladesh and the Foreign and Commonwealth Office's Prevent Sexual Violence Initiative (PSVI). The graphic novel, film, and guidelines can be used by those who record testimonies of sexual violence in conflict (researchers, human rights activists, feminists, lawyers, filmmakers, photographers, journalists, writers) and future researchers and activists. It would also generate interest in sexual violence during conflict and enable sensitization of these issues among children (twelve-years old and above). The guidelines and graphic novel were launched by survivors, their families, and the Ministry of Liberation War of the Government of Bangladesh in August 2018 and April 2019, respectively.

Drawing on the research in my book, the graphic novel also portrays the ambivalences captured in the life trajectories of three *birangonas* whom I profile next. I highlight here the speculations and rumors about

the possibility of being a traitor as brought out in our graphic novel (Mookherjee and Keya 2019). In 1998, when the sculptor Ferdousy Priyobhashini (Figure 8.1) acknowledged her violent experience of rape during the war, there was scant mention that, in 1971, a relationship with a Pakistani general stopped her ongoing rape by other Pakistani generals and local collaborators. Her complicated history during the war and as a single woman are considered by her extended family as indications of prostitution. They have continued to dissociate themselves from her over the years, particularly after her disclosure in 1998.

A similar rumor exists about Khaleda Zia, the leader of the opposition, the past Prime Minister of Bangladesh, and the widow of General Zia. Significantly, those in the Awami League do not highlight Priyobhashini's relationship with the Pakistani general (though it is widely known) as she has become one of the foremost voices among the left-liberal activists demanding the trial of collaborators. On the other hand, the rumor about Khaleda Zia has been repeated to me, predominantly by members of the Awami League. All over Bangladesh, various pro-Awami League individuals would whisper, nudge, or tell me aloud that I should go and talk to Khaleda Zia as she had been "taken" to the cantonment during 1971 by the Pakistani army, alluding to rape.<sup>14</sup>

People would say that, on Sheikh Mujib's insistence, Zia accepted her back. Again, many suggested that Khaleda Zia had "gone off" to the cantonments with a Pakistani General during 1971, a point also raised by Sheikh Hasina during parliamentary debate in January 2000. These jokes and gossip about Khaleda Zia, on the one hand, would refer to the possibility of rape in an attempt to deride and shame her. On the other hand, her complicity with a Pakistani general implies that she was a collaborator and harbors "anti-Liberation" emotions. Her inclusion of collaborators within her cabinet is considered proof of her relationship with the Pakistani general and her role as a traitor during 1971.

The collapsing of the distinction between collaborator and war-heroine is made possible in all these instances. There are similar instances in the case of World War II. At the end of World War II over 20,000 French people who were accused of collaboration with Germany endured a particularly humiliating act of revenge: Their heads were shaved in public, which was referred to as *tonte* (shearing) and *epuration* (purging). Nearly all those violently visibilized by this form of expiatory punishment

14 The *Dolil* (Rahmana 1982–1985, 476) states that Khaleda Zia was attacked by the Pakistani army.



### FERDOUSY PRIYOBHASHINI: SCULPTOR

During the war of 1971, Pakistani military and her colleagues at work raped her for many months. She had to go to work as she was responsible for the sustenance of her widowed mother and young siblings. After the war she was mistakenly referred to as a collaborator by her neighbours. As a result, she and her husband (who was a liberation fighter) had to constantly change their home and cities to escape these rumours. Only in 1999 she told her daughter about 1971. She used to say, "If the end of your finger is touched without your consent, the finger would burn. Imagine how it would feel if it is the rest/whole of your body." Her story and sculptures inspired many in Bangladesh, particularly the younger generation. She died in March 2018.

Figure 8.1 *Birangona* Ferdousy Priyobhashini (Mookherjee and Keya 2019).

for their romantic involvements during the occupation were women. Here collaboration was judged according to how visible the relationships were, variedly referred to as “relationships with Germans,” “sexual relationships,” “amorous,” or “sleeping” relationships, commonly known as “horizontal collaboration” (Virgili 2002: 15). Instances of French male sexual relations with a German man or woman remained unpunished and a matter of silence.

Often the rumor of rape surrounding a woman and the profession that she takes up after the war would be cited as inevitable. The argument is that: Not only women who joined these professions had to be promiscuous, but women who were raped during the war were bound to be so within these professions. This assumes being raped makes one susceptible to promiscuity. Professions like film actors and air stewardesses are stereotypically considered jobs which require women to be promiscuous. Priyabhashini’s profession as a sculptor is, however, not stereotyped with “immoral” sexual promiscuity as in the case of a *birangona* who is a prostitute, film actress, singer, or an air-stewardess, professions that might likely lead to a different construction of a woman’s subjectivity. I refer to an air-stewardess in view of the comment made by an upper middle-class woman who was interested in the issue of war-babies. While referring to her friend who was raped during 1971, she said to me during a phone conversation that her friend, an air-stewardess, is continuing to do professionally what she did in 1971. This points to the professional stereotype about sexual promiscuity among air-stewardesses in South Asia and also expresses her ambiguity about rape as coercion or an erotic encounter. Similarly, a famous photographer referred to a well-known singer who was given a lifetime achievement award by the Pakistani authorities. He had taken various photographs of her at her place and knew she was intimate with the Pakistani authorities. While feminist activists would conclude that more women were to be seen in public places after the war, the photographer, Naibuddin Ahmed, linked the rise of prostitution and the presence of “public women” in Dhaka to those women raped during 1971. Establishing this link between the experience of sexual violence and promiscuity itself suggests the slippage that exists in the understanding of the violence of rape and the ambivalence and desire in that encounter.

It is important to note that the word *baran-gona* is also a term for women who are always outside and carries the connotation of prostitution. Nehal Adel argues (*Banglabajar* January 12, 2000) that the term *birangona* refers to a woman who does not stand by her liberation fighter



husband. Instead, she provides pleasure in the enemy camp, a seditious crime. So, she should not be called a *birangona* and sent back to her husband. Here, sexuality is central to the collapsing of the collaborator in the raped woman. In this section, I outline the narratives of two women who encountered the violence of wartime rape: Chaya, the sex worker, and Morjina, the "collaborator." In each of their accounts, the absence of family members who can protect them determines their life trajectory leading up to the war time rape and the events thereafter. Yet it is these absent patriarchal protections that police them in a post-conflict context and casts them as traitors and prostitutes.

The experience of Chaya Rani Datta (Figure 8.2), a sex worker, is worth elaborating here. I met her at a time when she was the "madam" of minor girls in the red-light district. Introduced to me via an NGO that worked with the sex workers in the red-light district, Chaya narrated how she became alone and vulnerable when her mother died during the war. Taking advantage of this vulnerability, local collaborators in her village gang raped her. She started crying when speaking about her mother's death, as she feels her mother would have protected her and she wouldn't have been raped. She was skilled in mathematics and, hence, after the war she started a business supplying potatoes to restaurants. Sometime later, she decided to take up sex work herself. She follows both Hindu and Muslim religions. As a result of the rapes, she gave birth to a girl, a war baby, who is today 50 years old. Chaya says: "I feel the incident of rape during '71 is totally responsible for where I am today." This is because, since she was alone in the village with no family and since everyone knew that she had been "made *noshto*" (spoilt) by the *Razakars*, nobody took any effort or cared to marry her off and she had to then fend for herself. Here, the transgression of her sexuality become what Žizek has referred to as the block, whereby Chaya is excluded from the possibilities of marriage and having a household in the post-conflict context.

A similar block is applied to the life trajectories of the hospital cleaner Morjina Khatoon (Figure 8.3). During the war, Morjina's brother went away to fight. Since he had recently married, he asked his sister to look after his newlywed wife. As a result, when the Pakistani military came to their house, Morjina hid her sister-in-law and another beautiful cousin and put herself forward. For four months, every night a military jeep came and picked her up to be raped and dropped her back in the morning. Her parents cried for her every night she was picked up but also knew she was protecting the other women in the family. Nonetheless, like Ferdousy's experience, after the war, neighbours



### CHAYA RANI DUTTA ( ANNONYMISED ) : A SEX WORKER

During the war Chaya's mother died and Chaya became alone and vulnerable. Taking advantage of this vulnerability, local collaborators in her village gang raped her. Chaya feels sad when thinking of her mother as she feels her mother would have protected her and she wouldn't have been raped. She was good in mathematics and hence after the war she started a business of supplying potatoes to restaurants. Sometime later she decided to take up sex work herself. She follows both Hindu and Muslim religions. As a result of the rapes she had a girl, a war baby who is today 46 years old.

Figure 8.2 *Birangona* Chaya Rani Datta (Mookherjee and Keya 2019).

referred to her as a collaborator and so she left for Dhaka to find work. When she heard that she was being called *birangonas* she did not tell anyone but she glowed with pride. Eventually, she married, had children,





Figure 8.3 *Birangona* Morjina Khatoon (Mookherjee and Keya 2019).

later got separated from her husband. Today her children have government jobs. She worked as a cleaner in a government hospital and has recently retired. As she poignantly and powerfully says: “The military took me by force but they got nothing from me.” While Morjina’s continuous rape enabled the protection of other women, this protection and nurturance was not extended to her after the war. Ferdousy, Chaya, and Morjina all fended for themselves and those dependent on them in the immediate post-conflict life world of Bangladesh. This precisely becomes an identifier – the constitutive performativity of the *birangona* becomes coded through the increased number of single working women in the immediate aftermath of the war. Here, the suspicion about the *birangona* is constructed through finding her in these kinds of life trajectories: those of being away from the family after the war and the professional choices. It is true that not only moral boundaries of failed patriarchies are drawn in ways that exclude *birangonas*. It is also resonant that the more communities personally knew the *birangonas*, the more they suspected the women of betrayal – betrayal being the ever present dark side of intimacy (Kelly and Thiranagama 2010, 3).

## 8.6 Conclusion

The non-recognition of the Bangladesh war as genocide, the UN declaration of rape as a war crime in 1995, and the offer of an apology by the Japanese government to the comfort women – these interconnected events led various Bangladeshi feminist and human rights activists to document histories of sexual violation committed during the 1971 war so as to provide supporting evidence and enable the trials of the collaborators.<sup>15</sup> Examining the seething ambiguity and suspicion that exists toward the raped woman and the narrative dynamics that construct her as a traitor and prostitute allows a greater acknowledgement of the overlapping roles of the perpetrator and survivors – a complexity that fails to be captured by the transitional justice framework.

This chapter has explored the constitutive performativity (in the strict Butlerian sense), which I would paraphrase as naturalization through stylized and exclusive repetition – how the idea of a traitor has been “made” in order to be “found” through rumors about their whereabouts

15 See Akhtar et al. (2001), Guhathakurta (1996), and Ibrahim (1994–1995).

after the war, how the women looked, their professional choices, and their life trajectories as single working women in the immediately independent Bangladesh. The attempt I am making is to highlight the various "natural" connotations of the traitorous *birangonas*. By discursively engaging with the three life trajectories of the "enemy within," through the narrative dynamics of speculation and rumors of the raped woman as a traitor (as explored in my graphic novel), "we understand, story, and then respond" to how the idea of the traitor straddles the positions of victim and perpetrator. The chapter has followed Žizek's (1989, 127) analysis of how "the block" is projected onto the figure of the "Jew," which I extend to examine how this concept of the block can be applied to the figure of the survivor of sexual violence, about whom there is constant suspicion of being a traitor. Žizek shows how society is prevented from achieving its full identity by its own antagonistic nature, by its own immanent blockage. In the cases I examine here, the block is a powerful obstacle in the lives of survivors of sexual violence. Conceptions of survivor of sexual violence as traitorous help to map out not only the boundaries of the collective subject, they also lay claim to a moral and political certainty, the fantasy of a full Bangladeshi identity in the face of wartime complicity. I also elaborate an argument about exclusion through language in this chapter as it allows us to unpack the semantic dynamics of exclusion and inclusion when the survivors are referred to as prostitutes and as traitors. The emphasis on the need for justice highlights the legitimate inheritance through which the nation's wound is to be kept alive. But the wound is also kept open through the figure of the raped woman – the illegitimate presence of other – who has to be evoked for the reiteration of legitimate inheritances.

The raped woman as the collaborator, as the prostitute, however, places desire and sexuality at the center of the making of traitors. The rumors about young women during the war make them potential conspirators who were "attracted" to the Pakistani army. Her citizenship is guaranteed under the Bangladeshi state, although through her absent presence. The Islamic collaborator who is granted citizenship under military governments poses a threat to the potential of secular nationalism of the left-liberal community. The raped woman is thereby actively evoked to highlight the continued presence of the Islamic collaborator on the political landscape of Bangladesh. The subtext of justice in terms of making the *Razakars* accountable through the rape of the collaborator's daughter seem interlocked in various webs of complicity from all fronts. The various roles of the *birangonas* – as mothers, lovers, and professional

women – come to be viewed through suspicion, speculation, a poisonous knowledge, and a burden of distrust that the women always carry.

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## Open-Source Justice

### Digital Archives and the Criminal State

RONALD NIEZEN

#### 9.1 Transitional Justice in the Absence of Transition

There is a complex interplay of political domination and emancipatory possibility in the newest era of human rights, international criminal law, and transitional justice. New information technologies are now centrally involved in every mass conflict. They are deployed by those in power as information-weapons of censorship and surveillance; and they are used by activists in response, mainly in the form of digital witnessing and investigative tools. In this new information ecosystem, the phenomenon of *open-source intelligence* (OSINT) or (as many prefer) *open-source investigation* has emerged as a global collective endeavor, in which networks of professional and amateur sleuths are making creative use of publicly available digital platforms as investigative resources.<sup>1</sup> There is a wide array of tools available to anyone with a computer, an internet connection, and a bit of curiosity-driven determination, things like the satellite imagery of GoogleEarth Pro, the tracking platforms that follow air and sea traffic, and the downloading/archiving platforms for YouTube, Facebook, and Twitter, among many others. Taken together, these platforms and their users have important implications for the climate of disinformation and impunity that have become prevalent in international law. The use of digital evidence in prosecuting mass crime is going mainstream.<sup>2</sup>

1 For useful introductions to the origins and methods of open-source investigation, see Dubberley et al. (2020), Higgins (2021), Karpf (2016), Land (2016), Land and Aronson (2018), McPherson (2018), and Niezen (2020, ch. 3). Ball et al. (2000) offer an early discussion of the potential of digital investigation.

2 An important indication of the acceptance of open-source data as evidence comes from the release of the Berkeley Protocol on Digital Open Source Investigations, produced by



The specific politics I consider here have to do with war crimes, more specifically how they are being evidenced, how that evidence is archived, and what the archival and verification process tells us about the difficulties and opportunities of coming to terms with mass violence in conditions of impunity. As this book goes to press, the 2022 Russian invasion of Ukraine is the subject of an unprecedented amount of digital visual documentation. War crimes are being captured by witnesses, uploaded to social media, and investigated in ways that make the veil of war thinner and more transparent than ever before (see, for example, *BBC News* 2022). My specific focus here, however, is on Syrian Archive, an NGO started in 2014 in Turkey by a team of citizen journalists and technologists with backgrounds in digital security, mixed-method and applied research, and human rights (Deutch and Habal 2018, 48–49). They began working with mainstream journalists, human rights defenders, lawyers, and investigators in the International Criminal Court with the goal of creating an evidence-based tool for reporting, advocacy, and accountability relating to the Syrian conflict (see Ristovska 2021).

In their investigative and archiving endeavors, they drew motivation both from the horrors of the conflict and the impunity with which the al-Assad regime flouted international law. A series of reports by the Human Right Council (HRC) and the Organisation for the Prohibition of Chemical Weapons (OPCW) fact-finding missions confirms that during the Syrian war almost every peremptory norm of international humanitarian law was violated with impunity, with the crimes most likely attributable to the Syrian government of Bashar al-Assad and its close ally, Russia (HRC 2013, 2020; OPCW 2020). The Syrian–Russian bombing campaign struck hospitals and schools in a strategy that specifically selected them as targets. (This strategy of bombing civilian targets, to the world’s horror and condemnation, was later repeated in Russia’s invasion of Ukraine.) Syria’s use of chemical weapons in the conflict was the subject of international outrage, but not of a kind that the international community could meaningfully act on or prevent. Impunity extended to Syria’s ability to thwart investigations, for example, by barring access by members of the UN’s Fact Finding Mission (FFM) to the sites of chemical attacks. Syria, in other words, has also committed

scholars in the Berkeley Center for Human Rights in collaboration with the Office of the UN High Commissioner for Human Rights (OHCHR). Available at: [www.ohchr.org/Documents/Publications/OHCHR\\_BerkeleyProtocol.pdf](https://www.ohchr.org/Documents/Publications/OHCHR_BerkeleyProtocol.pdf), last accessed April 1, 2022.



acts that in different contexts would constitute the further crime of obstruction of justice. The UN Security Council (UNSC), meanwhile, failed to apply meaningful sanctions or initiate pathways to prosecution in this conflict, with Syria protected by Russia's unconditional veto on the Security Council.<sup>3</sup>

In this chapter, I look at how the effort to document mass crimes in Syria from technical experts in Europe and the United States – a kind of reckoning-at-a-remove – occurred with a focus on the work of Syrian Archive, its parent organization Mnemonic, and other data archiving projects oriented toward documenting human rights violations through digital visual evidence. Other organizations overlap with Syrian Archive in the goal of providing a safe haven for witnesses and their digital data. For example, Witness, with its motto, “see it, film it, change it,” works to “help individuals document abuses safely and use footage effectively to create positive change in their communities”;<sup>4</sup> The Whistle, working out of Cambridge University, aims to “amplify the voices of witnesses” and help human rights organizations gain access to their materials “through secure, and simple and trustworthy technology”;<sup>5</sup> and Yazda, representing the persecuted Yazidis of Iraq under the leadership of the internationally prominent barrister Amal Clooney, has undertaken a Documentation Project that collects, stores, and preserves evidence of the mass crimes committed by ISIS during its occupation of their territory in 2014<sup>6</sup> – a brutal occupation that led to the conviction of a former ISIS member of the crime of genocide in a court in Frankfurt, Germany (*BBC News* 2021).

Some of these digital archiving organizations are producing and making use of *hyper-authenticated information*, digital data that has been subjected to chain of custody verification and metadata analyses that go beyond the usual standards of journalism to form the basis of direct, courtroom-ready dossiers for the prosecution of international crimes. This form of information is the main innovation that forms the basis of a new kind of NGO, one that goes beyond the usual emphasis on consciousness raising and applying the “disinfectant of sunlight.” A form of

3 Schia (2013) offers a close view of the UN Security Council at work, with the veto of the Permanent Five (P-5) members only part of the way these states are able to control the agenda of the UNSC. Trahan (2020) provides a close study of the legal limits of the veto in the context of mass atrocity crimes.

4 Available at: [www.witness.org/our-work/](http://www.witness.org/our-work/), last accessed April 1, 2022.

5 Available at: <http://thewhistle.org/>, last accessed April 1, 2022.

6 About Yazda. Available at: [www.yazda.org/about-us](http://www.yazda.org/about-us), last accessed April 1, 2022.

organization has emerged, armed with innovative techniques and forms of digital data, that actively *polices* and (where possible) *prosecutes* criminal states and their agents.

Syrian Archive is distinct in its close connection to a specific cause, the cultivation of already intimate personal networks, and the long-term goal of transitioning through the aftermath of mass atrocity. As such, it goes beyond the usual prosecutorial mission oriented toward justice through fines and imprisonment and takes on some of the trappings of transitional justice. The organization's "About" page articulates the expectation that its documentation project "can humanise victims, reduce the space for dispute over numbers killed, help societies understand the true human costs of war, and support truth and reconciliation efforts."

Syrian Archive applies new techniques of data collection and analysis toward undoing the strategic falsehoods that conflict-driven states use to deny the occurrence of events, cast doubt on material evidence, and denigrate the victims of violence to undermine the affect and effectiveness of their testimony. In a way, the archive itself stands in for international judicial process. Digital visual evidence, given truth-value as it is subjected to systematic procedures of authentication, attempts to clear the "fog of war" and its accompanying troll-farmed, bot-fueled propaganda campaigns. Ultimately, what these efforts come down to is a new orientation to uncovering "truth in a post-truth world,"<sup>7</sup> in which those who were the victims of mass crimes are themselves assembling the evidentiary record of their experience.

At the same time, Syrian Archive is a microcosm of a much wider field of conflict and justice claims centered on issues of truth and selfhood, in which information technologies are reconfiguring the boundaries and meanings of social belonging. To understand what Syrian Archive is and does, it isn't enough to view the images it collects and respond to their horror. The technologies that produce those images, that download them, archive them, securitize them, and make them publicly available, constitute another, perhaps even more important, part of the story. They inform us about the new and still-emerging information ecosystem and our possibilities for finding justice within it.

My way into this subject matter has been, first, by nibbling around its edges. I participated in two training workshops on the methods open-source investigation, one sponsored by the investigative "collective,"

7 "Truth in a Post-Truth World" is a motto of Bellingcat, a digital forensics NGO based in the United Kingdom and the Netherlands.

Bellingcat, and another by the Investigations Lab of the Technology and Human Rights Program at Berkeley Law School. Then I delved further into the techniques and topics of this field while teaching the course, New Information Technologies and Law, in McGill University's Faculty of Law. I had conversations (or "unstructured interviews," if you prefer) with a dozen open-source investigators whose main affiliations were with Syrian Archive, the International Criminal Court, Bellingcat, and the Visual Investigations Team of the *New York Times*. Some of my research would fall under the rubric of "digital ethnography." This includes following step-by-step some of the investigative techniques that members of Syrian Archive and other open-source investigators use to document crimes through digital evidence and following the information they post on social media. Taken together, this multi-stranded exploration brought out some of the key qualities of a new source of prosecutorial power and transitional justice, one that has emerged alongside the technologies that brought it into being.<sup>8</sup>

I now turn to an account of Syrian Archive's struggle, based in a digital arms race for truth-control in the context of an information-technological revolution. The context of this arms race is the relative impunity of criminal states in international law, which raises the stakes of the technology-driven efforts to investigate and expose crimes in international law.

## 9.2 Impunity and the Information Wars

In the Syrian war, the transition that created a need for transitional justice involved mass exodus from the site of conflict, with refugees fleeing the country, leaving the conflict behind, active and raging. The then German Chancellor, Angela Merkel, staunchly defended an open-door policy, with a "we can do this" (*wir schaffen das*) public assurance, resulting in Germany's admission of over a million refugees by the end of 2018, more than half of whom were from Syria. Those who fled the conflict – some overland via Turkey, others by boat in the Mediterranean – formed communities of refugee-compatriots and fellow sufferers with similar experiences of the war, its destruction, insecurity, loss, the hardships of migrating to Europe, and impotent outrage at the

8 More obliquely still, my approach to victim centrism in transitional justice is informed by my long-term study of Canada's Truth and Reconciliation Commission on Indian Residential Schools (Niezen 2017).

impunity of the government that they fled. They brought with them a deep, ranking sense of injustice and a determination to see justice done.

Despite the deep sense of outrage that it inspires, the civil war in Syria has been particularly susceptible to conditions of impunity in international law. Early in the conflict, the Human Rights Commission documented “patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children’s rights” (UNHRC 2011, 1). The findings from a 2013 inquiry implicated Syrian president Bashar al-Assad in an appalling range of war crimes (HRC 2013); this was followed by a UN-sponsored Joint Investigative Mechanism, which concluded in 2017 that Assad’s government was responsible for the Khan Shaykhun chemical attack. Most recently, the Commission found “reasonable grounds to believe that the Government of Syria, in pursuance of a continued State policy, has continued to perpetrate the crimes against humanity of enforced disappearance, murder, torture, sexual violence and imprisonment. In certain cases, these acts may also constitute war crimes” (HRC 2020, para. 35; see also Syrian Accountability Project 2017). In spite of these findings and a host of other evidence implicating the Syrian government in the most consequential crimes in international law, the Assad government survives politically and acts as though it is undeterred by the accusations and ineffectual sanctions leveled against it.

In some ways, the new media ecosystem deepens and extends these conditions of impunity to the public forums of judgment and shame for the criminal actions of states. The government of Russia, for example, stands out for its refinement of the techniques of disinformation as a political tool. “Refinement” seems an odd word choice to describe a process that on the face of it seems untidy and chaotic, but behind the disorder of state-sponsored disinformation is a carefully calibrated manipulation of the psychology of consumers of mass information. In some ways, governments, through their propaganda efforts, are making use of proven “branding” techniques by which loyalties are cultivated, techniques that have long been developed and deployed in corporate advertising. Disinformation by states that commit mass atrocities, however, is not oriented toward motivating people toward a particular goal but attempts to achieve cognitive paralysis, sowing confusion, and interrupting decision-making processes, and hence criticism.

Narrating the individual experiences of war crimes, even many times over, does not always convince skeptical audiences of government responsibility for them. The pollution of the knowledge ecosystem by

criminal states is all-pervasive, making it difficult to establish context and point to responsibility for a crime. Not even the Syrian opposition's famous civil defense organization, known as "the White Helmets," has been immune from strategic misinformation, with Russian sources accusing the organization of working undercover for jihadists and faking attacks (Bellingcat 2018). Officially known as the Syrian Civil Defense, the White Helmets had become famous as a volunteer organization working in opposition-controlled Syria and Turkey, whose members risked their lives, most visibly in medical evacuation and urban search and rescue in the aftermath of bombings. Images of the rescuers, with cameras mounted on their helmets to record scenes of destruction, pulling innocent civilians from the rubble of recently bombed apartment complexes, resonated globally. The White Helmets received fame, accolades, and donations for their work. Russia and Syria, in corresponding measure, gained an international reputation as war criminals.

Then came Russia's deployment of the kind of strategy characterized by Krafft and Donovan as an "arsenal of tactics that exploit the structure of social media" (Krafft and Donovan 2020, 196). The disinformation campaign against the White Helmets consisted, in part, in identifying and cultivating the voices of those already predisposed to circulating and consuming conspiracy theories. As Eliot Higgins, founder of Bellingcat, explained to *The Guardian*, "The core of the provocateurs was a fringe anti-imperialist community that existed for a while alone. Russia took these people under their wing and used them to start lying constantly about the White Helmets." The Russian news outlets, *Russia Today* (RT) and *Sputnik*, using disinformation as a media "hook," engaged in repetition and amplification. The multiple-venue saturation of the media ecosystem with disinformation was ultimately highly effective, driving the co-founder of the White Helmets, James Le Mesurier, to suicide. Taking a direct approach of denial cannot succeed in undoing such strategic disinformation. As Higgins explained, "the more you engage with them, the more people were hearing what they were saying" (Chulov 2020). Denial is a trap that feeds directly into speculation that there must be some measure of truth behind the accusations. Even when stories have been later debunked, confusion lingers about the intentions and origins behind the stories (Lim et al. 2019). Taking advantage of the moral ambiguity that often surrounds participants in conflict, the Syrian government tried to shift public perceptions of those against whom it was committing war crimes. Persistently repeated falsehoods eventually reframed those civil defenders who had once been received as heroes in

a global public narrative; in the retelling, the White Helmets became violent insurrectionists given to corruption. Whether this narrative was persuasive or not is beside the point. The purpose of disinformation is *not* to convince the skeptical. The blatant lies and contradictions put out by state information agencies might even give an appearance of weakness, of their inability to handle basic facts, as though stricken by a form of institutional dementia. Appearances notwithstanding, however, a strategic goal is still often achieved by these efforts: to undo the effects of damaging information and take control of the narrative surrounding state crimes. At the very least, disinformation produces confusion and opinion-paralysis in consumers of online news, diminishing the sense of indignation that lies behind activist-oriented public judgment.

Under these circumstances, justice campaigners need some other, more convincing, and irrefutable kind of evidence. But what? In many truth commissions this has involved historical records, the documentary evidence that can be gleaned from archives. Hence the “history wars” that involve contestation of the impact of colonization, for example, the contest that focused on the British in Australia (Darian-Smith and Hamilton 1994), or the legacies of World War II in Germany, Japan, and the United States (Hein and Selden 2000). Under circumstances of historical contest, the tools of state censorship sometimes come into play: The lawyer and the shredder – the lawyer to impose and enforce legal regimes of censorship and the shredder to destroy compromising archives when access can’t otherwise be blocked. And when all else fails, there’s always the blunt historical tool of casting doubt on the context, returning to disinformation in the form of repetitive denial, ultimately shaping the narrative that surrounds the archival record.

Disinformation resonates especially powerfully in conditions of insecurity. There is no such thing as an antidote for the effects of informational toxicity. But there is still an important place for campaigns of truth-telling based on trustworthy stories that have the potential to cumulatively shift public perceptions. Witnesses and dissidents have also been empowered by new digital tools. In particular, a form of digital witnessing has been developed that collects evidence of war crimes and intervenes politically by seeking “to create a space that promotes narratives about justice, accountability and future reconciliation” (Ristovska 2019, 344). Many of the same technologies – above all those derived from social media platforms – that states use to weaponize disinformation are being used by dissidents to create armatures of reliable information, digital archives of genocide, war crimes, and crimes against humanity,

new forms of evidence that credibly attribute these crimes to those responsible, with more solid grounding in reliable evidence than ever before.

### 9.3 War Reporting, Then and Now

While the advent of open-source technologies in international law has every appearance of being entirely unprecedented, there is still an aspect of déjà-vu in its origins and consequences. The history of open-source intelligence is surprisingly long, traceable to the parsing of “enemy” daily newspapers for clues about troop movements in World War I (Pieter Van Huis, personal communication, February 3, 2019).

It has equally deep philosophical roots. In the aftermath of World War I, a controversy arose surrounding the susceptibility of the public to propaganda and its implications for democracy. The Dewey-Lippmann debate turned on essentially the same question with which many are now concerned: the influence of political manipulation of knowledge through new information technologies. John Dewey (2016 [1927]) had faith in the democratic process and its public participants, with education as the key to cultivating an informed base of voters, not readily susceptible to the knowledge manipulation of those seeking power through the (then) disruptive technologies of radio and large-circulation newspapers. Lippmann (1965 [1922]), in contrast, was far less trusting of the public, with his major work, *The Public*, oriented largely toward the propaganda of the Great War and its consequences for the war’s historically unprecedented mass violence. The corollary of his focus on public susceptibility to propaganda was his advocacy of reliance on experts in shaping public policy, without necessary recourse to popular opinion. Very likely Lippmann would approve of the Syrian Archive project, representing as it does exactly the kind of evidence-based war reporting – sidestepping the biases of journalists and state-sanctioned information systems – that he advocated.

One central difference between the World War I era forms of espionage and propaganda and social media-based investigations today resides in the numbers of witnesses and willing participants in investigative efforts. There are new forms of allyship between victims and investigators. A spate of digital tools and platforms is operating through the



additional dimension of “the crowd” or “participatory web cultures.”<sup>9</sup> Digital witnessing has gone together with new powers of analysis, above all through the extended range of expertise afforded by crowdsourcing, or “the productive potential of millions of plugged-in enthusiasts” (Howe 2006). To this we can add the contributions of those who combine the qualities of whistleblowers and investigators by leaking secret databases. An example is the anonymous individual who made available the Russian motor vehicle registry that proved useful in a recent Bellingcat (2020) investigation that exposed the identities of forty-nine individuals who are likely hackers working for Russian military intelligence (GRU). There is an inherently democratic impulse in “the crowd,” oriented as it is toward applying readily accessible digital tools toward the interests of justice. By collaborating with a network of anonymous grassroots investigators, organizations like Syrian Archive, Bellingcat, the Institute for International Criminal Investigations (IICI), and the International Criminal Court are bringing new information technologies and their enthusiasts squarely into the investigation of international war crimes.

Training workshops are producing a body of internet-savvy investigators who stand at the service of both journalism and international criminal prosecutions. Bellingcat, in particular, is focused on offering workshops for those new to open-source investigation. The only strict stipulation is that participants must not be working for any secret service organization, which would tend to have an inhibiting effect on others who might want to participate. Those participating in the workshop I attended in Amsterdam included a handful of journalism students, a retired couple looking for a new activity, a young man looking for tools to advance the investigation of a murdered relative, and the head of security for a major oil company. With workshops taking place in major cities in Europe, North America, and, more recently, Latin America, the crowdsourcing base of expertise from which Bellingcat and other digital investigation organizations – including Syrian Archive – can draw is extensive and steadily growing.

The sheer number of devices with sophisticated cameras in the hands of potential witnesses has changed the possibilities for witnessing the crimes of states by those subjected to them. In 2019, the number of mobile phone users worldwide had exceeded five billion, with more than

9 The term “crowdsourcing” was coined by Howe (2006) in a now-famous article in *Wired*. The concept has since been elaborated and subject to analysis in, for example, Fish et al. (2011) and Greenberg (2016).



half of their devices being smartphones (Statistica.com 2019). The International Telecommunications Union (ITU) of the United Nations finds that the overall trend has been toward rapidly increasing internet access, with more than half (51 percent) the world's population connected as of June 2017 (ITU 2017). Worldwide, the speed of connectivity is getting much faster too, with fixed broadband services (those having speeds of 256 kbits/s and above) increasing by 183 percent between 2007 and 2017 (ITU 2017). This means that in less than a decade after the release of the first iPhone in 2007, together with other, more financially accessible smartphones, there has developed a global public with the technological capacity to engage in recording war crimes as they happen, constituting a revolution in "digital witnessing" or "participatory fact finding" (McPherson 2018).

All of which is to say, the victims are watching back. Cities everywhere are saturated with smartphones, multi-sensored witnessing-and-memory devices, with some recording and uploading video images to social media, while others find their way more directly to major media outlets. The raw data now being used to bring states to account is "user generated" (Deutch and Habal 2018), "eyewitness media" (Wardle 2018, 300), in the hands of ordinary "citizen witnesses." Whereas in the past journalists vetted every cause and put their words into every story that received public attention, these journalistic filters are now often bypassed, bringing images from the streets directly to social media platforms and from there to the world.

The communication behavior of states responsible for mass crime has shifted in response. State-sponsored disinformation campaigns should be seen as both an offensive exploitation of the exponential growth of instant mass audiences, and a defensive reaction to conditions in which incidents involving state crimes can be readily recorded and the evidence shared with a global audience.

This new knowledge base, in turn, is significantly adding to the protocols and procedures for international investigations. It was, for example, a crowdsourced geolocation led by Bellingcat that contributed to the ICC's indictment of Mahmoud Mustafa Busayf Al-Werfalli, Axes Commander of the Al-Saiqa Brigade in Libya, for the war crime of murder (rendered void by Al-Werfalli's death in battle in 2021). The Court's justification for pursuing the indictment stemmed in part from "The posting on social media of the videos depicting the executions, and the frequency and particular cruelty with which they are carried out" (ICC 2017, 15; see also ICC 2018). Al-Werfalli's very troubling pursuit of

notoriety via social media also provided the means for the crime's location to be verified by an anonymous community of online investigators.

The visual record of the Syrian conflict is unlike the Al-Werfalli case in that the videos made available to investigators and analysts have been uploaded by *witnesses* rather than perpetrators of violence. The volume of this material is unprecedented, with more hours of videos documenting the Syrian conflict than there have been hours in the conflict itself. As of 2019, there were more than fifty videos uploaded to YouTube each day, almost all depicting the acts and consequences of violence. This material has been accumulating since the conflict began in 2011, making it, taken together, "an 'accidental archive' that arguably allows anyone in the world to witness a conflict for the first time in history, practically in real time."<sup>10</sup>

## 9.4 Origins

The Syrian Archive project can be traced to the two-year period 2012–2014, when several informal investigative projects emerged and, tentatively at first, started going about the work of collecting, geolocating, verifying, and archiving evidence of war crimes. It was only then that the platforms were developed that made open-source investigations a viable, widely available, uniquely powerful, source of knowledge and evidence.

The archiving process taken up by Syrian Archive (among other archive-oriented organizations) began as a largely journalistic project, with new types and levels of collaboration emerging between activist-investigators and professional newsrooms. The need for this collaboration followed from extreme conditions of censorship and repression of information, which were imposed early in the conflict, after unrest began in Dara'a in March 2011 and the Syrian government largely barred foreign media from operating within Syria's borders. In response, many Syrians, both those witnessing the conflict on the ground and those who had gone abroad, took up the role of "citizen journalists" (Andén-Papadopoulos and Pantti 2013, 2186). While it is true that citizen journalism was also significant in the Tunisian, Egyptian, and Libyan uprisings, the thing that sets the Syrian uprising apart from other regions caught up in the Arab Spring is the professionalism of the

10 "Syrian Archive's work on content taken down from social media platforms." Available at: <https://syrianarchive.org/en/lost-found>, last accessed April 1, 2022.

revolutionaries' media efforts. With the Syrian revolt, "activism and reporting have become one" (Reporters without Borders, 2012).

The collaboration between Syrian diaspora activists and newsrooms is characterized by the role of networks of activists who act as brokers, "packaging" footage shot by local videographers and submitting or "selling" it to major news organizations through social media platforms or direct submission. News organizations approach crowd-sourced content with suspicion and see verification as a prevailing concern. In response to these concerns, Syrian activists cultivated two key qualities in their network: first, the multimedia strategies that they developed in recording and transmitting video material and, second, the networks of personal knowledge and trust that lent authenticity to eyewitness material. These two qualities came together in the form of workshops that have trained over a thousand people in the techniques of recording and archiving, things like how to film a scene – for example, by focusing less on victims on the ground and giving more attention to a panoramic 360-degree view for purposes of geolocation. That is to say, Syrian Archive, through trust-building and professionalization, has cultivated social capital and expertise within specific information networks that lend eyewitness videos their initial credibility (Ristovska 2019, 341). In some cases, this has allowed them to form close individual working relationships with national, pan-Arab, and global newsrooms (Andén-Papadopoulos and Pantti 2013, 2201). Their personal network allows Syrian Archive to mediate between witnesses on the ground and a wide network of collaboration. It has partnered with over 400 journalists, lawyers, and human rights defenders in Syria along with a number of international and nonprofit organizations, including the UN High Commissioner of Human Rights, WITNESS, Human Rights Watch, Amnesty International, UC Berkeley's Human Rights Center, Bellingcat, the Tactical Technology Collective, Inquiry on Syria, the Syrian Institute for Justice, and others (Deutch and Habal 2018, 49; Ristovska 2019, 339).

Occasionally Syrian Archive's networks of collaboration produce opportunities to go beyond journalism and to pursue justice. A 2019 investigation by Syrian Archive in collaboration with the Flemish magazine *Knack*, for example, used the UN's trade database, Comtrade, to uncover flows of isopropanol (used in making sarin gas) and other chemicals to Syria without the required export licenses. Combing through trade records was a different kind of challenge than the usual open-source visual investigations, but it was consequential all the same. The investigators discovered that between May 2014 and December

2016, there were 24 deliveries to Syria containing 168 tonnes of isopropanol, 219 tonnes of acetone, 77 tonnes of methanol, and 21 tonnes of dichloromethane. These shipments came from three companies working together: AAE Chemie Trading, Anex Customs, and Danmar Logistics. The companies and two of their managers were found guilty in the Penal Court of Antwerp for their participation in these trades. Rolf Rippen, a manager at AAE Chemie Trading, was sentenced to four months in jail, while Herman Van Landeghem, a manager for Anex Customs and Danmar Logistics, received a twelve-month sentence (Marks 2019). The companies themselves eventually went bankrupt.

Syrian Archive has also lent its expertise and evidence to state-sanctioned prosecutions of individuals accused of war crimes. Germany, with its commitment to “universal jurisdiction” – which creates legal space for the prosecutions on German soil for war crimes, crimes against humanity, and genocide – has occasionally facilitated arrests and trials relating to mass atrocity. In 2020, for example, the Higher Regional Court in Koblenz tried two Syrian security officers with crimes against humanity for their abuse and torture of prisoners early in the civil war, which the indictment characterized as “a crime against humanity as part of an extensive and systematic attack on the civilian population.”<sup>11</sup> One of the accused, Anwar Raslan, was a colonel in a Syrian intelligence service, making him the first high-ranking official to be tried for state-sponsored torture in Syria. Significantly, the charges were brought against officials whose government remains in power, another first in international criminal law. Legal campaigners have described this case as a breakthrough for international efforts to hold perpetrators accountable for the crimes committed in the Syrian conflict (Hubbard 2020).

On October 6, 2020, Syrian Archive, the Open Society Justice Initiative, and the Syrian Center for Media and Freedom of Expression (SCM) jointly filed a criminal complaint to the Office of the German Federal Public Prosecutor on behalf of the victims of two chemical weapons attacks: the use of sarin gas on the Damascus suburb of al-

11 “Mittäterschaftlich durch eine Handlung im Rahmen eines ausgedehnten und systematischen Angriffs auf die Zivilbevölkerung ein Verbrechen gegen die Menschlichkeit.” Anklage gegen zwei mutmaßliche Mitarbeiter des syrischen Geheimdienstes wegen der Begehung von Verbrechen gegen die Menschlichkeit u.a. zugelassen. Available at: <https://olgko.justiz.rlp.de/de/startseite/detail/news/News/detail/anklage-gegen-zwei-mutmaessliche-mitarbeiter-des-syrischen-geheimdienstes-wegen-der-begehung-von-verbr/>, last accessed April 1, 2022.

Ghouta in 2013, which killed more than 1,500 people, and the northwest village of Khan Sheikhun in 2017, which killed around 100. Both attacks were accompanied by strikes on nearby medical facilities, which had the effect of impeding the emergency medical response. In a press release, Hadi al Khatib, founder and director of Syrian Archive, indicated that the two-year long investigation had compiled extensive evidence that senior Syrian government officials were responsible for the attacks “as part of a widespread and deliberate pattern of targeting opposition-held areas with chemical weapons since 2012.”<sup>12</sup> By gathering evidence and identifying witnesses able to provide testimony to prosecutors, the complainants hoped to advance the eventual arrest and prosecution of Syrian officials responsible for the attacks.

Yet, promising as these developments may be, the prosecution of two corporations and their executives, two Syrian officials in Germany, and the indictment of officials *in absentia* does not nearly match the extent and severity of the crimes committed in Syria. The targeting of civilian neighborhoods and hospitals, the use of cluster munitions and chemical weapons, and the routine practice of torture in prisons and interrogation centers throughout the regions of government control, all remain, relative to the severity of the crimes in international law, effectively unpunished in a political vacuum of impunity.

## 9.5 Building a File

These conditions of impunity and the tantalizing possibilities of future prosecutions lend energy to Syrian Archive’s central activity: the creation of a new kind of virtual archive, one that collects and preserves eyewitness videos of a conflict in which the main perpetrators cannot (yet) be held accountable. In this context it stores footage, authenticates it when possible, labels it, and posts it to create an information infrastructure that is searchable in future human rights work.

While Syrian Archive cannot claim originality in any one activity or technique it applies to digital data, it combines the available methods of data collection, analysis, and preservation in what amounts to a distinct approach to the investigation of mass crime. Its procedures for handling digital evidence involve four main steps:

12 Syrian Archive, Press Release: Criminal complaint filed on behalf of sarin attack victims, October 6, 2020. Available at: <https://syrianarchive.org/en/investigations/sarin-complaint>, last accessed April 1, 2022.

(1) *Content acquisition*: Syrian Archive takes a “collect-it-all” approach to digital material, based on the principle of not knowing what might eventually be useful. It now holds some three million items in its archive, though only around six thousand of these have gone through the painstaking process of verification. Acquiring visual content that can serve as a record of events in a conflict involves much more than simply collecting video material. Without identifying the source of the material and verifying its authenticity, visual material cannot serve as a credible record of the conflict, never mind as evidence.

Credibility is first determined by analyzing whether the source is familiar to the Syrian Archive or to its existing professional network of Syrian journalists, media activists, human rights groups, and humanitarian workers. With the conflict shifting focus in 2020, Syrian Archive began working closely with media groups in Idlib, with a particular concern being to get data out of the country and onto secure servers. Part of the determination about whether material is reliable begins with the question of who the source is and whether the content and reporting they provided have been reliable in the past. This is usually determined by evaluating how long the source has been reporting and how active they are (Deutch and Habal 2018, 56).

Several things stand in the way of content acquisition, one of the most significant being barriers erected by the Syrian government. Targeted internet shutdowns, sometimes timed to take place in the aftermath of significant events to prevent evidence from being uploaded, are only the beginning. The Syrian Electronic Army, a group of pro-Assad hackers, is responsible for cyber-attacks against opposition groups, news organizations, human rights NGOs, and even foreign governments that are critical of the Syrian regime (Ristovska 2019). Content is not at all secure, even when it finds its way to social media platforms. A strategy used by pro-Assad hackers has been to manually “red flag” content on social media (especially on YouTube) to ensure it is taken down by content moderators before it can be downloaded and preserved by investigators.

Much more consequential than Syrian-backed hackers, however, has been the loss of human content moderators from YouTube, Facebook, and other platforms due to the COVID-19 pandemic and their replacement with machine learning algorithms that, lacking human skills of perception and judgment, have removed thousands of items depicting war crimes more or less indiscriminately. In May 2020, Syrian Archive discovered that over 350,000 videos documenting violence in Syria had disappeared from YouTube, including videos depicting aerial attacks,

violent intervention in protests, and destruction of civilian neighborhoods (Ristovska 2021, 32). Meanwhile, policy-makers' attention to content moderation remains single-mindedly focused on issues of violent content and electoral disinformation, while neglecting to seriously consider the problem of *removal of evidence*. Social media's content moderators are, with little fuss or attention, erasing evidence of war crimes from their platforms, without giving thought to removing them into an archive for purposes of later investigation. It is a bit as though hotel chains were to collectively adopt a policy of cleaning up evidence of murders in their rooms so as to avoid upsetting their guests. Members of Syrian Archive brought their problem to the attention of YouTube and convinced the platform managers to replace some half-million items that were removed via algorithm, but the problem continues.<sup>13</sup>

The process of downloading material from social media, in other words, is a race against time. The action of troll-farms (if red-flagging content can be considered trolling) and machine-learning-driven content moderation create conditions of inevitability to the loss of visual data that could otherwise potentially serve as evidence of international crime.

(2) *Verification, cataloguing, and metadata enrichment*: The Syrian Archive project has also made advances in the standardization of metadata – the information necessary to identify the when, where, and what happened in a particular incident. To this end, it has made a review of practices followed by Bellingcat and other open-source investigators as well as the NIOD Instituut voor Oorlogs-, Holocaust- en Genocidestudies (The Netherlands Institute for War, Holocaust, and Genocide Studies), which revealed that a wide range of information can be applied toward contextualizing raw visual evidence to make it much more credible and useful. Standard measures of the video recording itself – the location, date, and time of recording, and date of upload – and establishing a chain of custody are the places to start. To this can be added *content metadata*, things like weather, landmarks, plants (including species and stages of seasonal growth), insignias on uniforms, dialects spoken, and the target of the attack (was it directed against journalists, civilian infrastructure, cultural property, or against humanitarian relief

13 Allissa Richardson (2020) offers a discussion of “ephemeral social media platforms” with a focus on police violence and the Black Lives Matter movement.



personnel and objects?).<sup>14</sup> This information is accompanied by a geographical map of the country that shows the specific areas where the videos have been filmed. The metadata schema and classification categories used to collect and verify the videos then guide the creation of the databases (Deutch and Habal 2018; Ristovska 2019, 342).

The sheer volume of material it collects has made it necessary for analysts at Syrian Archive to use machine learning algorithms to sort through the data to find specific features in the material they are looking for. For this purpose, it has applied the open-source tool VFRAME toward automated content-based object detection and scene summarization (compressing content into the most representative frames to facilitate analysis). Machine learning algorithms have been trained, for example, to look for cluster munitions, illegal for use in civilian areas. The telltale munitions are subclassed into different visual states (at the most basic level, exploded and unexploded) and then assembled into a hierarchical detection model.<sup>15</sup> Automated content analysis makes it possible to compile a much more comprehensive record of war crimes than would be possible by human viewing of large video datasets.

(3) *Securing long-term preservation*: With Syrian-backed hackers maintaining an interest in the destruction of Syrian Archive's data, members of the organization saw the need for secure backups of their files. But this is in itself problematic. The retention rates for digital storage devices such as external hard drives vary according to a number of factors – things like whether the device is used or “exercised” at regular intervals or whether it has a steady and moderate storage temperature. Then there is the roughly 1 percent rate at which permanent magnets lose their strength every year, leading to the corruption of data. All these factors combine to make the preservation of digital data for more than twenty years an uncertain venture. To address this problem, Syrian Archive has worked with the Institute for War, Holocaust, and Genocide Studies in Amsterdam to overcome the eventual loss of hard drive data by transferring their material to more permanent offline forms of digital data preservation, a task in which the Institute specializes. In particular, it has instructed Syrian Archive in the use of an offline

14 Interview with Jeff Deutch of Syrian Archive, October 1, 2020. See also Bellingcat's explanation of Syrian Archive's metadata collection methods. Available at: <https://yemen.bellingcat.com/methodology/metadata-scheme>, last accessed April 1, 2022.

15 VFRAME, Research: Cluster Munitions Detector. Available at: <https://vframe.io/research/cluster-munition-detector/>, last accessed April 1, 2022.



magnetic tape storage technology similar to that commonly used in the 1950s (revamped and released by IBM and Sony in 2017), but with a longer lifespan than other mediums, up to thirty years.<sup>16</sup>

Ensuring the permanence of the digital record is vital for the goals of Syrian Archive for several reasons. First, the power of the visual material depends on its capacity to last for the duration of any possibility of reckoning, remaining available for as long as there is a possibility of a change in the conditions of impunity. The data must last because the archive might eventually perform its ideal function: as a source of evidence in the prosecution of war criminals. As a historical record, the mountain of evidence of war crimes and crimes against humanity is meant to serve as a reference point for knowledge of the war, as a bulwark against revisionism and a slide toward a “both sides” understanding of atrocities. As for the victims themselves, their sense of the significance of their witnessing, of truth-telling against the flood of state-sanctioned disinformation, calls for their visual data and the narratives that go with it to be durable. The words we use to describe the loss of digital data – corruption, erosion, decay – apply equally to the loss of both political freedom and memory (how interesting that the two are in some ways indistinguishable) experienced by the survivors of mass atrocity. Somehow the conceptions all seem to fit. Failures of democracy and corruptions of digital data and memory are inextricably connected.

(4) *Accessibility and raising awareness*: Under circumstances of selective impunity in international law, which favors powerful states and their allies, accountability is left largely to public opinion, informed by journalism. Syrian Archive has engaged in mediation between on-the-ground witnesses and journalists in ways that make the information coming out of conflict areas reliable and useful. Its metadata techniques and standards for authenticating visual evidence mean the items it labels as trustworthy (quite literally, with an authentication stamp) are more likely to be seen and persuade. It has taken on a mediating role between witnesses on the one hand and, on the other hand, the journalists, advocates, prosecutors, and investigators whose work requires reliable visual information. Through its verification and mediating efforts, “visual

16 For information on this storage technology, see Comp Sci Station, Magnetic Tape Storage: Advantages and Disadvantages, April 12, 2018. Available at: [https://compscistation.com/magnetic-tape-storage-advantages-and-disadvantages/#Generally\\_Longer\\_Lifespan\\_than\\_Other\\_Mediums](https://compscistation.com/magnetic-tape-storage-advantages-and-disadvantages/#Generally_Longer_Lifespan_than_Other_Mediums), last accessed April 1, 2022.

information attains prominence, meaning, and relevance across institutional and legal contexts” (Ristovska 2019, 341–342).

The volume of authenticated data documenting mass crimes has the further effect of pre-empting the falsehoods issued by Syria and Russia or at least – since they issue denials and sow confusion even in the face of incontrovertible facts – of putting the lie to them as historical accounts of the conflict. In this sense, Assad’s legacy as a war criminal is assured, even if he is never prosecuted. As Syrian Archive investigator, Jeff Deutsch, put it, “You can’t do historical revisionism because there’s a mountain of content.”<sup>17</sup>

## 9.6 Digital Evidence Databases and Transitional Justice

What does justice-seeking by the victims of international crime look like in circumstances of ongoing conflict? How do victims narrate their experience and pursue remedy while the intruder is still in their house? There is one significant way that the Syrian refugees’ efforts to document their experience is unlike any truth commission: They are still actively engaged in bringing about the political transition as a step toward post-conflict reckoning. The Syrian expatriates and their allies in Germany, the United Kingdom, and the United States are active in their efforts to identify the crimes of the al-Assad government and its Russian ally, not only as a way to document and come to terms with the past, but in efforts to expose the crimes as they happen. Ultimately, the collaborative efforts of witnesses and data analysts are aimed at bringing the regime’s war criminals to justice. It is a form of post-conflict work being done from a position of active engagement in the conflict.

The usual way of seeking justice is to first look backward to the act(s) of injustice, starting with attempts to find the answers to the universal questions of investigation: who, what, when, where, why. Only then, when the facts are established, is it fitting to seek remedy, whether it be punishment of perpetrators, compensation for victims, or publicly coming to terms with traumatic memory. The pure form of this kind of justice-seeking can be seen in what is widely known as the Perry Mason moment (with its own Wikipedia entry, no less), in which information is suddenly introduced to the courtroom that dramatically changes the perception of the past events surrounding a case, and of

17 Interview with Jeff Deutsch of Syrian Archive, October 1, 2020.

course the culpability associated with them. Even in the victim-witnessing of transitional justice, those who suffered the effects of mass crime are expected to offer something revelatory, to provide new insight into past events, even if what they have to say only adds cumulatively to what was narrated by others before them.

What happens when this order of things is disturbed, when justice-seeking happens while acts of crime are ongoing? Of course, it would be absurd to ask someone to tell their story of victimization while they are still being subjected to bombing raids, torture, the imposition of hunger, and forced displacement. Yet scenarios not too different from this exist in international law, mainly because of the impunity of powerful states and the individuals sheltered by them.

In the Syrian conflict, the need for transitional justice is being felt first at a geographical remove from the usual scenarios of justice. It is taking the form of an uprooted community of war refugees, mostly in Germany, far from the violence raging in Syria, where many still have friends and family. From the relative security of their new homes, concentrated in the German capital Berlin, many have felt a need that is common to truth commissions: to document their experience, to put their stories to work, to collectively assemble a historical record as a way of undoing the campaigns of mistruth being used to cover war crimes. In the longer term, some see truth-telling as a way of preventing similar atrocities from happening again. They are also compelled to respond to Syrian and Russian campaigns of denial through disinformation. If anything, the need for justice in these circumstances of ongoing crime are greater than in the usual circumstances of post-conflict regime change.

Truth and reconciliation commissions are usually designed as a tool to help in the reconstruction of post-conflict societies that have been torn apart by mass atrocity. They are, as in Rwanda's *Gacaca* courts, intended (whether they succeed is another question) to transition people toward the possibility of living with perpetrators, in circumstances in which there are too many to imprison. Or they are intended, as in South Africa, to aid in the construction of a new nation on a radically transformed constitutional foundation.

The justice seeking that occurs through digital witnessing and open-source investigation is unlike any of these previous models of transitional justice. Instead, the efforts toward post-conflict justice and nation building occur *while the conflict is ongoing*. Under conditions of ongoing atrocity, the narratives of perpetration take on a particular character. There is no apology or even admission of responsibility of the mass

crimes. Instead, there is witness affirmation and accumulation of evidence in conditions of criminal impunity and political impasse.

Syrian Archive began its work collecting and verifying digital evidence of war crimes – and connecting that evidence to the lived experience of the people who produced it – even before the smoke (including that from banned chemical munitions) had cleared from Syria's cataclysmic civil war. The then German Chancellor Angela Merkel's 2015 open-door policy on refugees from the war produced both a headline-attracting backlash and a less widely noticed community of Syrian-origin professionals based in Berlin committed to addressing the conflict. This professional community's connections to both those left behind in Syria and various hubs of human rights and technical expertise in Europe made it ideally positioned to facilitate the collection and analysis of a vast archive of digital material relating to the Syrian War, even while the Syrian government and its Russian allies continued to commit a grim panoply of war crimes.

### 9.7 A New Heroic Role

Who are the heroes in all this? The computer literati mediating between the specialized knowledge networks of open-source investigation and the untrained consumers of information do not take a publicly prominent, heroic role in exposing the crimes of the state. For one thing, their knowledge is comparatively unfamiliar and inaccessible to non-specialists, which makes their actions and inventions known only to those in a small circle of the initiated.

This is not to say that the work they do is without danger. Not only are there the repressive measures of unscrupulous governments to take into consideration, the videos depicting collective violence on which investigators and analysts work have their own violent power. Thousands working as content moderators for platforms like YouTube, Facebook, and Instagram experience high levels of stress and trauma from constantly witnessing violence and hate speech, and the same goes for analysts who not only view violent images briefly, but go through them again and again in the processes of verification and analysis. The public sometimes experiences this too: Social media-posted footage of police brutality – the death of George Floyd being arguably the most widely seen video of this kind – has been an unintended cause of trauma for activists and members of those communities most affected by police violence and, of course, anyone else whose sympathies and curiosity led

them to view it. A data technician once told me of having to vomit immediately on seeing a video depicting an Iranian protester being killed instantly by a tear gas canister fired at close range that struck him in the face, then having to return to that image to do his work of analysis. The same powerful emotions these videos evoke are key to the way they provoke collective indignation. Hateful language and violent videos are vehicles for trauma as well as weapons of accountability, and there is an element of heroism in purposeful exposure to their effects.

Yet, this form of heroism is not publicly recognized, at least not very widely. There is a notable tendency to recognize the courage and resilience of those who are proximate to violence and risk physical injury from it more than those who risk their well-being in pursuit of justice before a computer screen. Why? Psychological harm is no less painful and debilitating than physical injury, perhaps more so. But publics tend to reward particular kinds of heroism – and the particular forms of risk that go with them – in the same way that preference is given to children as ideal victims. The visceral impacts of violence and the deep emotions that provoke sympathy also come into play in attributions of heroism.

Use of the methods of open-source investigation to document ongoing war crimes has gone together with a profound shift in the knowledge base of human rights advocacy. The model that is well described in the human rights literature involves what Sally Engle Merry famously referred to as the *vernacularization* of the universal norms of human rights, the process by which globally generated ideas and strategies are adopted locally (Levitt and Merry 2009). This process entails all sorts of problems, not least of which is the imposition of unwanted norms and practices on those who do not share the same values as the missionary agents of global justice (Merry 2006). The central challenge for advocates was how to bring about compliance at the local level without heavy-handed interference in longstanding cultural practices. In its pure form, efforts toward vernacularization followed from a basic condition of hegemony: The yawning gap between the power and cultural capital of those advocating universal norms and those being subjected to them.

The Syrian Archive model of universal normativity involves transformation at both ends of the divide between rights advocates and local communities. With regard to war crimes, there is no ambiguity about the universality of the basic principles of justice in question. Intentionally targeting hospitals for systematic air strikes and attacking civilian populations with banned chemical munitions are only the more prominent of the peremptory norms violated by the Syrian government and its Russian

ally. They are *without question* war crimes. And with this as a foundation of the justice claims there is no dynamic of hegemonic intervention by human rights universalists in local practice. There is at base common cause across the spectrum of those committed to justice.

With this shared commitment to opposing war crimes and crimes against humanity, the main goal of vernacularization has shifted from universalizing human rights norms to the technical means of gathering and presenting digital evidence. In terms given to us by Greek philosophy, moral virtue (*arete*) has been replaced by technique (*techne*). Activist engagement focuses on such things as the importance of geocoding, including buildings and other landmarks in video evidence of mass atrocities to facilitate geolocation; how to upload videos on social media in such a way that vital metadata, such as date and time, are preserved; adding geographical identification metadata to videos to facilitate later analysis (geotagging); and uploading videos to secure sites to prevent their removal by social media platforms' content moderators, who systematically (usually within hours or days of their initial posting) remove videos depicting violence. The divide between rights defenders and "civilian witnesses" now centers on the technical means for documenting the crimes to which these witnesses are subjected.

## 9.8 Witness Affirmation

Disinformation campaigns leave consumers of information to their own devices, without adequate guidance or preparation to delve into forensic digital evidence in a critical way. Even judges sometimes have difficulty understanding the steps by which a "deep fake" can be uncovered and distinguished from legitimate evidence. This is enough to introduce sufficient doubt into the minds of enough consumers of information that the story of state crime loses at least some of its persuasive power. How is an ordinary consumer of news expected to tell the difference between the truth and a strategically planted falsehood? Disinformation campaigns leave witnesses largely on their own, unprotected from government-sanctioned efforts at censorship, counter-narrative, and strategic doubt. From another direction, the adversarial form of courtroom evidence finds its way into history wars (or more accurately and awkwardly, "war crime wars"), with witness testimony pitted against the monuments (literal and figurative) of official history.

The kind of digital evidence used by Syrian Archive offers an important form of affirmation, one based in more secure confirmation of

witness narratives than the readily contested content of archives. The meaning produced by its efforts goes further than the creation of a digital archive and its forensic results. Conceptions of victimhood–survivorship, perpetration, and heroism undergo transition as they shift from a field of active violent conflict to a digital-media-struggle over evidence from that conflict. Analysts give witness accounts of mass atrocity coherence and consistency, bringing out the persuasive power of digital evidence, cumulatively amassed and presented in step-by-step accounts of what happened, where, and when. Witnessing is given weight and substance by such things as geolocation of bomb craters to show a pattern of air strikes intended to target civilians and rescue workers attending to victims of an initial attack; by apparent bloodstain patterns visible in satellite imagery that confirm the approximate time and exact location of a mass extra-judicial execution; or by the whistleblower-leaked cockpit recordings of Russian fighter pilots as they drop bombs on Syrian hospitals.

The Syrian Archive initiative differs from the usual witnessing of transitional justice in that it is able to provide *both* the kinds of emotionally evocative witness narratives that are central to victim-centric truth commissions *and* compelling and voluminous evidence that the crimes they are narrating took place. If anything, Syrian Archive begins with the digital evidence, building the foundations of a case against the governments and individuals responsible for crimes in international law. There are two contradictory qualities to digital witnessing. The standards of evidence are so high in international criminal law that witnesses can too easily be overlooked or sidelined as sources of truth. The need for rigorous authentication of visual digital evidence can compromise the legitimacy of unadorned storytelling as a way to narrate experience.<sup>18</sup> At the same time, with the support of digital visual evidence and especially once authentication is complete, witnesses are no longer compelled to narrate their experience into a cloud of skepticism. Their primary goal is not to persuade public audiences. Instead, they have the freedom to talk about what they witnessed and experienced and continue to feel from an unassailable base of knowledge-affirmation.

Affirmation does have its limits, however. In the absence of international prosecutions, what happens to the *perpetrators* of mass violence? What happens to those who caused the harm? What does digital

18 I am grateful to Ella McPherson for leading me toward this insight (personal communication, March 10, 2021).

archiving do to the ways *they* are understood? One thing that digital data can almost never do is provide insight into the motivation of crime. While the commission and consequences of crime are sometimes revealed with remarkable clarity, the *mens rea*, the mental elements that explain the intention to commit a crime, are more often than not entirely absent from the picture. Bombing raids are seen in the devastation they cause, sometimes informed by cockpit audio recordings as the weapons are unleashed, but the source of the order remains a mystery, as does the strategic calculus and emotions behind that order. There is no substitute for compelled testimony to shed light on this dimension of mass crime. In its absence, perpetration is remote – not *banal* in Hannah Arendt's terms, but faceless and inscrutable. This inscrutability remains, even if we know the identity of the individual who gave the orders.

In insidious ways, the unanswered questions of *mens rea* can redound back to the victims. The absence of apparent motivation for acts of atrocity inspires speculation, filling in the blanks. Maybe there's a reason for the atrocity. Maybe there's something they did, something about them, that made them deserve it. The massive accumulation of evidence is another, better way than these kinds of speculations to answer the mysteries of perpetration. The victims' claim to humanity, like state-sanctioned disinformation, is made by repetition, by seeing (or having the possibility to see) the events of atrocity again and again, from this angle and that, in this event and another, until, at last, it becomes unquestionably clear that there is nothing a people could ever do to deserve what one sees in the evidence. The victim ideal is reified.

Yet, this still leaves the perpetrator unknown – and *unknowable* in the absence of their testimony. This makes it difficult to understand the violence suffered, the ideas that underpinned it, and the ways that lethal hatreds might still be there, latent, even when the violence appears to have ended.

The heroic role of exposing these crimes is also diminished for another reason entirely: By the embodiment of heroism in keystrokes, with heightened reputations limited to the small circle of those who understand the game and can appreciate the technical virtuosity in documenting crimes through digital tools. If anything, digital witnessing, while giving greater voice and authority to victims, diminishes the roles of both those who cause the harm and who respond to it. Digital investigations make visible only the weapons of war, their powers of destruction, and those whose lives are destroyed by them. Those responsible for



committing the crimes of the state operate at a remove, invisible behind the bare facts of the destruction and suffering they cause.

### 9.9 Conclusion: Digital Visual Evidence and the Criminal State

Efforts to document war crimes like those occurring in Syria, Yemen, Sudan, and Ukraine affirm the experiences of survivors in much the same way as the accumulations of testimony that go into truth commissions. They put the lie to state-sanctioned propaganda and false reporting, giving greater clarity to the pathways of responsible journalism and public indignation.

The close focus of digital fact finding on victims makes possible a new kind of witnessing, one closely focused on both the instruments and experiences of suffering. There is an emotional immediacy to visual digital evidence. It is one thing to hear from a mother about the experience of losing a child to a chemical attack and another thing altogether to see her child with pleading and confused eyes, looking at the camera as she struggles for breath. Visual digital evidence does something that documents could never do: reach the sentiments and sympathies of their audiences. Persuasion through this kind of evidence occurs as much through appeals to emotion as to reason.

Reason and honesty in approaching the truth are qualities that drive digital archival efforts. The collection and verification of digital evidence using the tools of open-source investigation are creating evidentiary records of war crimes by states that otherwise would go unconfirmed and unpunished. Witnesses are taking countless images, supported by an array of tech savvy analysts and developers dedicated to protecting them and their evidence. Meanwhile, those with the power to wield the tools of surveillance, censorship, and disinformation are, in fact, as much on the defensive as they are succeeding in their goals. Digital witnessing constitutes the newest frontier in an information technology arms race. Accountability is beginning to extend to the states and corporations that are, for their part, using new technologies of surveillance, control, and strategic disinformation to counteract the effects of exposure.

Taken together, the kind of material assembled and archived by digital visual investigators constitutes a new form of hyper-verified information, a distinct ingredient in the emerging information ecosystem. Such information goes well beyond the usual standards of journalism in its rigor and replicability, to the point that some leading news outlets, the *New York Times*, *Washington Post*, and *BBC* among them, make use of it in

their own “visual investigations” teams as a way to add to their reach and credibility. When subjected to the kind of architectural mapping and analysis offered by, for example, SITU Research and Forensic Architecture, it enters a realm of truth value that is more on the level of a well-constructed and persuasive scientific article. Statements from witnesses are not merely reported; their images are captured, traced in their chain of custody, and subjected to painstaking metadata analysis.

If the goal of hyper-verified information is public persuasion, it has a central weakness: It is difficult to read. More than this, in outreach efforts, it may come across as elitist. It acts a bit like the virtuous, politically alienated cousin of disinformation. Yet, even from a distance, disinformation is there as a foil of its persuasive efforts, pressing analysts forward in their efforts to undo its worst effects.

While some have made efforts to add a compelling storytelling dimension to the articles based on digital visual material, the process of unfolding evidence, step-by-step, in a report based on it does not always lend itself to public entertainment. The visual material on which it is based can be grainy, poorly lit, shaky, or, worse, clear but gruesome in its content. The steps analysts take to verify the material are often highly technical. Meanwhile, disinformation, with its high volume and simplicity, sophisticated only now and then in carefully calibrated appeals to the emotions, wins the day.

A major part of the appeal of hyper-authenticated information is self-referential, giving credence to the witnesses who are at the origin of the material, technologically amplifying their truth. Digital witnessing and forensic archiving provide an answer to the dismal effects of propaganda of the kind first documented by Walter Lippmann after World War I, that has since morphed into another, more pervasive and sinister form with the advent of digital platforms. Official denials and efforts to sow confusion by governments plausibly accused of war crimes and crimes against humanity cannot hold back torrents of evidence, verified by experts and made ready for the courtroom. The efforts of Syrian Archive and other gathering sites of digital evidence point to something powerful in the way their crimes are being exposed and given public attention, a power of persuasion that has vindicating and truth-affirming qualities. Digital evidence takes the burden from witnesses of having to account for the facts of their experience. Rather than have to prove the occurrence of harm, they are able to process it, to do the work of narrating their experience and recovering from loss. Those who want to learn more about the harm itself also benefit from the diminished role

of persuasion. The task of witnesses in these circumstances is not to persuade, at least not in the sense of having to somehow prove the occurrence of harm. Rather, they are given the chance to humanize the evidence, to give it color and context, to make their losses come to life. Meanwhile, the archives are in place, like prosecutorial time capsules, inspired by hope, however faint, in the emergence of a just world order.

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## Left Unsettled

### Confessions of Armed Revolutionaries

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On March 24, 1976, I was twenty years old. I belong to a generation that believed it possible to establish a truly just order. For the sake of that belief, many killed and many died. Many more died than killed.

(Hilb 2013, 9)

With these words, Argentine sociologist Claudia Hilb begins her set of partially autobiographical essays on her role in the armed left in the 1970s. She takes responsibility for the violence that the left carried out before and during the civil-military regime implanted with the 1976 coup. The confession set off something of a controversy. While Hilb was not the first to confess to past violence, her timing raised concerns about the impact of such admissions. Right-wing supporters of the past regime had begun to challenge the human rights trials aimed at their military colleagues, friends, and family for atrocities carried out during the regime. In their view, equal treatment was not meted out to the armed left who provoked the military coup and its authoritarian regime.

This chapter thus asks: What happens when armed left guerilla or revolutionary fighters confess to past violence? Can these admissions to wrongdoing contribute to building stronger democracies or human rights cultures by sharing blame – with the state repressive apparatus – for violent acts in the past? Or do they deepen polarized views about the past? This chapter focuses on one important factor in how such confessions are viewed: timing. It argues that how these confessions are made,

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heard, understood, and shape memory of the violent past depends on the political context in which they emerge. In this chapter, two confessional moments by the armed left to Argentina's violent past are analyzed, focusing on timing. The controversy regarding Claudia Hilb's confession to violence is the second moment.

### 10.1 The Confessional Framework

The project builds on an earlier work on confessions to past violence from authoritarian state perpetrators, *Unsettling Accounts* (Payne 2008). This chapter will contribute to a follow-up book called *Left Unsettled* that explores confessions made by the revolutionary left to their use of violence. Both types of perpetrators make confessions that are unsettling in content, specifically terrorist violence against civilians and even the use of violence against members of their own armed groups. Both types of confessions “unsettle, or break, the silence imposed over the past by forces within democratic societies that wish to leave the past behind, to close the book on it” (Payne 2008, 2). With this rupture, confessions by the right and left fail to settle accounts with the past; they unsettle them. They disrupt a narrative that has settled in about that past undermining strongly held beliefs about good and evil. “Conflict erupts over confessions as social actors dispute interpretations . . . and compete for power over whose interpretation will shape the political agenda, the terms of public debate, and the outcome of that debate” (Payne 2008, 2). When the left speaks out about its own use of violence, those who consider the left to be innocent victims, not perpetrators, of past atrocity become unsettled by these truths. The term “left” in the title of the new project refers to the stated ideology of the revolutionary groups – on the left-wing of the political spectrum. It also refers to what is “left out,” or silenced from memory politics, what remains or is “left behind,” in analyses of past violence. Strong pressure – on the left and the right – exists for “gag rules” (Holmes 1995, 202) to keep such narratives censored or silenced; to retain and protect existing settled narratives over the past.

Efforts to silence, or suppress, confessional narrative have not always succeeded. Instead, a deep dialogic conflict erupts that those promoting gag rules view as threatening to the fragile post-transition democracy. I argue in *Unsettling Accounts* that “contentious debate enhances democratic practices by provoking political participation, contestation, and competition. Through those processes it makes possible public challenges



to prevailing antidemocratic attitudes, behavior, and values in society. Contentious coexistence, in short, offers a more realistic understanding of dialogic practices in democracies, as well as a better alternative to reconciliation processes that suppress political talk” (Payne 2008, 3).

What does it mean, then, when those who are suppressing democratic debate, who are imposing gag rules, are those who have most fiercely defended democracy and human rights? In the *Left Unsettled* study, it is the human rights community and political figures on the left side of the democratic system who sometimes attempt to impose gag rules to safeguard the transition from authoritarian rule and armed conflict. Is there a way in which confessions on the armed left, like confessions by state perpetrators, can engage an audience to positively benefit democracy and human rights through “contentious coexistence”? *Unsettling Accounts* considered dialogic conflict over past violence as useful for putting into practice essential democratic values – participation, expression, and contestation (Dahl 1971) – that sharpen, refine, and promote widespread support for human rights norms. That positive effect is not a typical outcome for armed left confessions, however. Instead, fearful of how the right-wing might exploit these confessions to demonize the left, silencing and not contentious coexistence has resulted. Yet one factor that may contribute to a positive outcome is timing.

This article considers timing as a factor shaping the impact of left confessions on democracy and human rights. It looks at two different historical moments in which the armed left confessed in Argentina. The more recent set of confessions (Confessional Act II) – such as the one by Claudia Hilb – occurred during the presidency of Cristina Fernández de Kirchner. Two former members of the armed left made public written confessions, followed up by televised interviews, about their past, condemning the acts of violence in which they had participated. Claudia Hilb was a former student militant who confessed after she had become a professor at the University of Buenos Aires. Another confession also took place in this era by Héctor Ricardo Leis (2012), a former Montonero leader. He confessed as a Philosophy professor in Brazil where he had fled as a political exile in the 1970s. An earlier set of confessions (Confessional Act I) began at the end of 2004 on the pages of the Córdoba political left magazine (*La Intemperie*), later published in part in a book called *No Matar* (2007). The dialogue began with reactions to an interview of the former member of the Ejército Guerrillero del Pueblo (EGP), Héctor Jouvé (2004). While both sets of violent events confessed to occurred at about the same time, in the late 1960s through the 1970s,

the confessions themselves occurred at different political moments. Those political moments – timing – shaped the engagement provoked by the confessional acts.

## 10.2 Confessional Act I

The earlier confessional moment did not engage the right-wing. Perhaps for that reason, these confessions to past violence did not provoke a call for gag orders on the left. There were few efforts to silence them. Instead, contentious coexistence emerged among the left in which different individuals, sometimes within the same armed left group, took positions on the past and openly – and sometimes harshly – entered in a dialogue about the violent past.

Jouvé (2004) explains that he joined the armed left due to an intellectual commitment to end poverty and injustice and his awareness that mainstream political parties lacked the will to bring about change. He expresses regrets about that past, however. In particular, he has misgivings about an acceptance on the armed left of a tendency toward authoritarian leadership and abuses of power. He uses as examples the executions ordered by the leaders of the movement of two rank and file members (Adolfo Rotblat a.k.a. “Pupi” and Bernardo Groswald). Jouvé takes responsibility for witnessing those acts and failing to speak out against them. He thus became, in his view, an accomplice to murder. His confessional text calls for language, speaking out and asking questions, as a political weapon: “culture is a web of conversations . . . more than defining ourselves, we need to ask good questions . . . if not, we will continue to repeat the same mistakes.”

His words begin a dialogue. Oscar del Barco (2004) wrote a letter stating that Jouvé’s interview “moved” him to become conscious, albeit very late, of the serious tragedy within the EGP. He says that “by supporting the activities of this group, I was as responsible as the murderers.” He goes on to say, “There is no explanation that makes us innocent.” There are no causes or ideas that remove our guilt. He calls on everyone to accept the commandment “thou shalt not kill,” to recognize that all human beings are sacred, that no one, no matter what they did, should be killed. He refers to the left around the world (Russia, Romania, Yugoslavia, China, Korea, Cuba) as failing to uphold this commandment and, as a result, becoming “serial assassins.” He calls for ending the silence about the left’s involvement in atrocities, “truth and justice should be for everyone.”

Barco is not silenced. His response to Jouvé's confession, moreover, provokes deep dialogic conflict. For some, the issues that Jouvé and Barco exposed were not new. As one commentator states, "Nothing said is new to me; but it has a particular intensity." For others what emerged was "previously silenced themes and problems." The aim of the magazine, and those who confessed, to generate debate and contention over the past within the left, succeeded on the pages of subsequent issues of the same magazine and in other news outlets.

On the positive side, those who supported Jouvé and Barco mentioned how their confessions played a role in presenting a more nuanced version of the past that fell in between the existing narratives of the left as in the "two-demons theory" or a devils–angels theory. By that "theory," they refer to the civil–military regime's recognition that it had used violent acts to suppress the violence of the armed left. In this sense, both the left and the right were "demons." The National Truth Commission's CONADEP's original report included the two-demons theory in its opening chapters. Later, under President Nestor Kirchner, this section of the report was removed. Some suggest that a "devils–angels" theory replaced it such that all criminal violence would be associated with state perpetrators against an innocent, or angelic, left. The debate over the Jouvé and Barco confessional texts emphasized the danger that occurs when the movements' goals and its actions are disconnected and inconsistent. Those supporters of the confessions endorsed a position that the left and the right should adhere to the commandment "thou shalt not kill," to halt the legacy in the country of using killing as a way to do politics, as an acceptable means to achieving political ends. As an alternative, these supporters of the confessional act proposed – and put into action in response to the confession – the value of talk, dialogue, and speaking out as the best weapon in the war against political injustice. They did not see the confessional act as needing to be suppressed, but quite the opposite.

Those who criticized these confessional acts concentrated on Barco's text. Some agreed that mistakes were made by the left, but they felt that Barco went too far in demonizing the whole left for those mistakes, particularly in his reference to "serial assassins." A common criticism was the view that Barco constructed a moral equivalency between the violence on the left and right. In particular, the confessional text emphasized a few terrible events on the left that created a distorted version of the past (*una moral distorsionada*), more likely to politically polarize society than find common ground. The criticisms also reflected on the

notion of “thou shalt not kill,” as on the surface unimpeachable but not sufficiently contextualized. It fails to recognize how, throughout history, violence and counter-violence was required to address gross injustices. The very independence of Latin America from Spain’s tyranny depended on a willingness to kill and be killed. To diminish the struggle of the armed left to the act of “serial assassins,” furthermore, takes away the dignity of those who sacrificed their lives for a better world, turning them instead into “senseless deaths” (*muertes sin sentido*).

This contentious debate could be seen as healthy for democracy, putting into practice its essential elements of political participation, expression, and contestation. It could be said that Jouvé and Barco achieved their goal by stimulating dialogue, the art of doing politics through talk, speaking out, raising difficult questions, critical analysis, and overcoming authoritarian adherence to a single perspective.

### 10.3 Confessional Act II

When Claudia Hilb (2013) and Héctor Ricardo Leis (2012) made their confessional acts, they intended to have a positive impact on democracy. They hoped their words would spark national reflection on the past, critical thinking, dialogue, and a recognition that violent means do not lead to positive ends. Rather than putting these democratic values into action, Hilb’s and Leis’s confessions were met with rejection by the very communities they aimed to engage: the left, the human rights communities. The timing was inconvenient for this kind of dialogic discussion about the past.

Claudia Hilb (2013) contends that she was motivated by the search for Goodness when she joined the armed left. When she later reflects on her involvement in the armed left, she contends that she has to take responsibility and accept that taking up arms – however positive the intention and goal – led to catastrophe. By recognizing responsibility for that catastrophe, she feels the left will contribute to building a firmer foundation upon which human rights and democratic cultures in Argentina can be constructed. Instead of prompting that deep reflection on the past, Hilb faced severe criticism and efforts to silence her by the very groups she hoped to reach.

Hilb was wrongly accused of evoking the “two-demons theory” in her book on Argentine memory.<sup>1</sup> In fact she explicitly rejects the two-demons theory. To compare the two sides as equal misses the differentiation in the numbers of victims and the type of victimization, something Hilb clearly recognizes in her testimonial text. She mentions the widespread disappearances, systematic torture, baby kidnapping, and death carried out in the state’s torture and extermination camps (37). Hilb also states unequivocally that the violence by the state cannot be justified, even though the Argentine regime attempted to do so by pointing to the armed insurrection.

The elimination of any norms or types of restraint – judicial, civil and ethical – in the persecution of the enemy by the political power, whose function is precisely to guard over the existence of shared norms to control conflicts within a regulatory framework [as distinct from] an insurrectionary force, [and] whose violating actions can be judged within the framework of the law . . . State terrorism causes damage to the very possibility of political life and is therefore incomparable to the harm caused by insurrectionary action – which, I insist, can always be held accountable in the courts.

(Hilb 2013, 37)

While Hilb rejects the two-demons theory, she contends that the narrative that replaced it is equally problematic. The notions of innocent victims, devils, and angels, or good-versus-evil, ignore the role the left played in promoting violence as a political solution to national problems. Understanding the dynamics of past political violence also requires an understanding of the “ideology of violent action” that was promoted by the Montoneros and the ERP during the period before the dictatorship from 1969 to 1976 (26). To ignore that period gives a distorted view of the past. As she states:

A significant number of the victims of the Armed Forces’ criminal action were militants of armed organizations that were made illegal before 1976 who were often pursued not only for their mere alliances within these organizations, but also for their participation in specific actions – crimes, robberies, assaults on banks, takeovers of military installations, etc . . . Their previous opposition to a legal government makes it difficult to designate them exclusively as “innocent victims.”

(Hilb 2013, 18–19)

1 García (n.d.). For other critiques of Hilb, see Starcenbaum (2013) and Lynch (2013).

Hilb worries that the failure to expose and condemn left-wing violence perpetuates a 1970s view that such violence is justified in the name of obedience to implementing the “free expression of popular will” (20). She senses that the success that the left had in the 1970s in fomenting the revolutionary spirit has re-emerged in the aftermath of the dictatorship because of the absence of critical analysis of it.

[F]or some time, perhaps enflamed by the deepening of inequality and the rebirth of a more critical view of social injustice, many social sectors, particularly the youth, developed a favorable reinterpretation of the ideals and commitment of popular militance of that decade, which tends to crystallize into an interpretation of national historical values identified by “the good guys” against “the bad guys.”

(Hilb 2013, 18)

A careful analysis of past violence on the left would recognize, Hilb holds, the dangers of “the militarization of language, the exaltation . . . of the values of war – one’s own and those of the enemy – and [the adherence to unquestioning] discipline and sanctions (that could even lead to murder) (40). Hilb attributes these outcomes to “Argentina’s armed organizations’ [moral] decay” (40).

For Hilb, the lack of critical thinking about the left’s involvement in violence limits the possibilities for democracy. Exaltation of left-wing violence leads to a justification of violence and totalitarianism as necessary for “radical egalitarianism” (49) and any opponent of the political strategy – even if they support the objective – is censored (82–83). As she states, “Cuba, for the Argentine left, [is] almost a taboo subject, to the point that when I write ‘four decades of totalitarian rule’ I have to restrain myself from the impulse to soften that view” (47).

This kind of one-sided and uncritical assessment leads to the perpetuation of political violence itself. Hilb describes the era of state terror as

the culmination of a long period of trivializing and legitimating political violence and political assassination, of a long period of contempt for the value of political institutions in a republican democracy, for which the armed organizations of the left hold a responsibility that we cannot ignore. State terror was not an inevitable consequence . . . but trivializing violence created the conditions that made it possible.

(Hilb 2013, 102)

With the truth about left-wing violence, Hilb believes that Argentina can overcome “the cover-up [of violence] on the left and the repeated arrogance of [a form of] ‘epistemic moral elitism’” (102). She further

considers that the focus on trials of state perpetrators deepens the mis-conceptualization of the past in terms of good versus evil. The trials “impose a consensus behind what has become our legacy [in Argentina]: The recent dictatorship [el Proceso] perpetrated Evil, which must never happen again” (104). She suggests that the trials of state perpetrators give the left a pass; they enshrine the notion that the left is innocent of wrongdoing. A South African Truth and Reconciliation Commission style model would, in contrast, encourage individuals who committed violence “to assume responsibility for the future on the basis of individual recognition of past responsibility . . . to erect a new form of engaging the past [in which] those who participate become the founders of a new beginning” (104). Such a process could initiate a critical exploration of the past – the wrongness of the violence on the left and the right – a rejection of black and white, right and wrong, left and right, innocent and guilty, misinterpretations of that past. These truths, Hilb suggests, would lead not only to a greater understanding but also to specific knowledge. If individual perpetrators were encouraged to confess, families might find their missing children and grandchildren. The left might also begin to confront its past and condemn the violent path to social justice, and instead embrace democratic values of rights and expression. In this way the firm foundations will be built within society to find democratic and human rights pathways to economic, social, and political justice. Against criticism she has faced from the human rights community, Hilb says that she is in favor of “Never Again,” but she argues that there is a need for greater clarity on what should not occur ever again (*La Capital* 2013).<sup>2</sup> She is in that sense arguing for a national commitment to defend human rights and to condemn violations regardless of who carries them out and the conditions they claim justify those actions.

Very much like Hilb, Héctor Ricardo Leis (2012), an Argentine philosopher in exile in Brazil where he lived and taught until his death in 2014, began his *trabajo analítico y testimonial* with his background: “I was born in Avellaneda, Argentina, in 1943. In the 60s, I was a Communist and Peronist militant. This experience led me to participate in the armed struggle. I spent a year and a half in jail, [then] was granted amnesty in 1973. I was a Montonero combatant until the end of 1976.”

Leis’s confessional work explores what he sees as betrayal of the left’s collective project for social change and social justice and its replacement

2 See also a review of Hilb in Hernán Eduardo Confino (2014); Hilb (2013).

with terrorism. He contends: "The history of terrorism shows that it is not bound by an ideology. Violent action aimed at killing and terrorizing for political ends is a practice that spans the spectrum from the left and the right alike." His testimony unsettled the left and the human rights community. As in the case of Hilb's text, efforts were made to silence it rather than engage it in a thoughtful debate.

In his confessional text, Héctor Ricardo Leis does not use the language of "Never Again." Neither does he endorse an institutional alternative to the human rights trials for state perpetrators underway in Argentina. He does, however, recognize the importance of the left in taking responsibility for wrongdoing. As he says, "we all – and when I say all I mean all – did things we never imagined we would do."

About his own acts, he states: "Like my companions, I was a terrorist with a beautiful soul. The truth is difficult to accept not only for those who were guerillas, but for the majority of Argentines." The narrative of "innocent victims" on the left, he claims, ignores the guerilla terrorist attacks in the period between May 1973 and March 1976 when the country was under a democratic government. He admits to these terrorist acts in which he was involved. His testimony is interspersed with specific references to acts in which he participated, witnessed, or discovered. He summarizes the violent nature of the movement in this way: "The Montoneros emerged and consolidated their organization in a cult of violence. They were able to kill anyone who turned against their political will, regardless of who they were, whether Peronists or anti-Peronists, military, politicians, or trade unionists."

While in comparison with the dictatorship, the level of violence was lower, it was as high as the non-military right-wing violence prior to the coup: 1,000 by the Triple A, 1,000 by the revolutionary movements, and 8,000 by the military during the Videla dictatorship. The motivations behind left-wing violence were different, however:

I am a witness to our noble motivations. I still hold on to happy memories of my life in those years. There were somber times, but also moments full of compassion, joy, and love. I know that our intention was not to do evil for evil's sake, but the cunning of reason, ironic and perverse, turned even good men into bad, without enough time to realize that it was happening.

He explains the use of violence as a lack of effective leadership within the Montoneros: "Today I know that the leadership of the Montoneros did not know how to do politics; they only knew how to use violence for political ends – which is the best definition of terrorism that exists."



Indeed, he feels that with a different leadership, terrorist violence could have been avoided: “Che Guevara died in 1967. A shame. Although he encouraged the senseless guerilla wars in Latin America and the world, he might have been able to prevent the terrorist turn in our continent. He was the only one who had the moral authority to do so.”

According to Leis, the Montoneros lacked the leadership to restrain terrorist acts or even to listen and discuss alternative strategies to advance the movement’s goals. In this way, Leis recognizes the similarity in both left- and right-wing armed groups and their leaders that will not abide challenges to their authority. These leaders, he argues, order the soldiers to carry out atrocities, convincing them that such acts are necessary to achieve their political goals. The soldiers, and not the leaders, tend to pay a very high price for the acts, he suggests, since the leaders abandon soldiers when and if they are caught. Those soldiers who stand up to their commanders and attempt to resist committing violence, as he found out first-hand, will likely lose their positions within the movement and maybe their lives.

The character of the leadership of the Montoneros became evident in a program of assassinations that was not thought through from a political perspective, but rather from desire, transforming in the end into a game of Russian roulette. Deaths occurred not after political debate or rigorous analysis of reality, but from a calculus based on magical thinking . . . no public self-criticism was ever made for the strategic errors of this terrorist policy. They believed themselves infallible, like the Pope. They did not dwell on the innocent victims [of these tactics].

Leis sees the Montonero approach to violence as ends justifying the means. But he does not attribute this to a flaw of the organization alone. He instead recognizes in Argentina’s history of conflict the concept of violence as a political strategy that is shared by the left and the right: “I do not agree with the theory of the two demons, much less with that of a single demon . . . My thinking is that the nation was immersed in a civil war that became internalized in the collective unconscious. Argentines grew so used to living in a state of permanent war, whether declared or hidden, that peace bored them.” In the case of the left-wing, there was a, “romantic idealization of the Cuban revolution [that] extended to both models [rural and urban guerilla], when in reality the urban model is much more terroristic than [rural] guerilla [warfare]. Its members would pay dearly for this mistake.”

Leis attempts to promote an alternative to the national cultural and historical repetitive pattern of using violence to do politics. In his view, this involves understanding the responsibility for violence on all sides, rather than promoting one-sided justice. He argues that Argentines are resistant to looking back fully and acknowledging blame for the escalation of violence as political solution used by actors on different sides:

The “museums of memory” built during the Kirchner government only registered the victims on one side, but not on the other. And in an attempt to strengthen the claim of the military’s supposed crime against humanity, victims were transformed into innocents, without a guerrilla identity or any link to guerrilla organizations. In some cases, this link may not have existed. But when it does, the government is suppressing the revolutionary identity of “comrades” in the name of human rights. This does not do justice to history, nor to the comrades, who are remembered as students or workers, who might have died with the rank of Montonero leader.

As his use of statistics of violence show, Leis does not equate the level of violence on both sides of the ideological divide. But he does consider both sides equally responsible: “Although [guilty] to a lesser degree, all those who collaborated in one way or another became accomplices and, therefore, should also be tried in a court of law.” He calls the one-sided version of past violence “intellectual dishonesty and moral opportunism”:

The suppression of the “dark” side of the revolutionary past was complete. On the altars of the “democratic atrium,” it is now recorded that the guerrillas always fought against military dictatorships and in defense of democracy. In the same way, it is recorded that civil society never engaged in terrorism, only the State did. The construction of that memory was a fine piece of work, facilitated by the fact that the military is not as nihilistic as the revolutionaries in relation to their role in history.

He goes on to suggest that one-sided justice fails to put a stop to the use of violence as a political strategy:

If there is an amnesty, it must exist for everyone. If there are trials based on individual responsibility, they must exist for everyone equally. Historical memory that justifies the application of the Marxist-collectivist paradigm by excusing the revolutionaries and adopts liberal-individualism to blame the military is not innocent. It is intentionally perverse within the community as a whole.

He advocates a response something along the lines of Hilb, a process by which political violence is condemned and not only the political violence of ideological enemies. His proposed strategy is reaching an

understanding about political violence and attempting to end it through confessions and forgiveness. But he also suggests that such a strategy is unlikely to emerge because, “In Argentina, accusations and punitive justice are encouraged and rewarded, not confessions and restorative justice.” There is not, in his view, a desire to put the past behind and to move on without political violence. Instead, violence is accepted when used by the group you support ideologically and condemned when used by your enemies. His discussion of one of the founding members of the Mothers of the Plaza de Mayo represents this view:

Hebe de Bonafini was a courageous mother who in difficult times knew how to advocate for the disappeared. But when the lights of democracy blinded her, she went on to defend terrorism in her country and in the world. A simple woman, though capable of doing the impossible, she subordinated the defense of human rights to the causes of various terrorist groups.<sup>3</sup>

Leis contends that without a national soul-searching about political violence that extends beyond who uses political violence and why, violence will continue. The motto of “Never Again” in this sense is only a condemnation of the use of violence by “the other side” and not a condemnation of the abuses of human rights by any group, including those with whom one sympathizes ideologically.

To condemn that violence on both sides, former combatants must admit to what they have done, Leis contends. He rejects the one-sided nature of the accountability process in Argentina. He does not advocate a formal judicial process against those on the left involved in the armed struggle since the movement paid the price with torture, disappearance, and execution. But, like Hilb, he opposes an approach that glorifies terrorism by the armed left and demonizes that carried out by state actors. Both uses of terrorist violence must be condemned to advance a moral and human rights agenda and to protect future generations.

3 Leis is referring to Hebe de Bonafini’s statements in support of the Basque Separatists group ETA (see [www.infobae.com/2007/04/25/313242-hebe-bonafini-volvio-apoyar-terroristas-eta/](http://www.infobae.com/2007/04/25/313242-hebe-bonafini-volvio-apoyar-terroristas-eta/), last accessed March 28, 2022), the attacks on the World Trade Towers in New York on 9/11 and other comments (see [www.lanacion.com.ar/politica/hebe-de-bonafini-y-sus-10-exabruptos-mas-recordados-nid1543174/](http://www.lanacion.com.ar/politica/hebe-de-bonafini-y-sus-10-exabruptos-mas-recordados-nid1543174/), last accessed March 28, 2022).

## 10.4 Confessional Drama

These two confessional moments and confessional acts provoked a drama. Audiences responded as much to what was said (script) how it was said (acting), by whom (actor), and where (the institutional stage). But what distinguishes audience response to these two confessional acts is best explained by *when* the confessions occurred (timing), the political context at the moment of the confession.

### 10.4.1 Actor

Those who confessed (actors) in both moments were very similar. All established their credentials to confess to left-wing violence. Hilb implicitly takes responsibility for the acts she committed as part of the armed left movement (FAR and PRT): “What burden should we impose on those of us who participated in movements – Peronists, leftists – for which political violence was an acceptable and common practice?” (17).

Leis’s testimony was more explicit:

I thus conclude this text by confessing that I contributed to Argentina’s suffering with luminously blind thoughts and actions. I apologize to the victims of the events in which my participation was direct . . . I also apologize to the innocent and the generations after mine, who, even without being responsible for the events of Argentina’s recent history, continue to be punished by ignoring their common sense, preventing them ending the perpetual cycles (*yira-yira*) of our national karma.<sup>4</sup>

Jouvé and Barco also do not hide their involvement on the armed left or the responsibility they accept for their acts and the acts of others on the armed revolutionary left.

In addition to who they were in the past, the actors in both confessional moments could be seen as legitimate voices in the present. Jouvé and Barco, in addition to those who responded to their confessional acts, were writing on the pages of a literary magazine, as public intellectuals in that sense. As scholars who had previously participated in armed left movements and were not previously perceived as having betrayed it, Hilb and Leis may have felt that they had the appropriate background to be heard. They produced books that blended scholarly analysis, philosophy, and personal accounts. The staging of their testimony in book form offered an opportunity to elevate the public debate. Yet, in that endeavor,

4 “Yira,Yira” is a Carlos Gardel tango (1926).

they mainly failed. Even when they attempted to take a more public stage in the print media and in online videos, they could not fulfill their goal to engage in an in-depth discussion about the left's responsibility for violence.

#### 10.4.2 *Script*

The script – what was said – certainly was the aspect of the confessional performances that brought silencing for Hilb and Leis. Yet silencing was not the response to the earlier confessional act, despite very similar scripts.

Script refers to the specific content of the confessions, the authors' interpretations of the past, not the type of confession. In *Unsettling Accounts*, I refer to eight different types of confessions.<sup>5</sup> All of the confessional scripts by the armed left in Argentina analyzed here could be seen as remorseful, regretful of violent acts in which they participated or supported in the past. They could also be interpreted as betrayal confessions in which they condemn others in leadership positions, as well as themselves, for these acts of violence. In *Unsettling Accounts*, I analyze some heroic and denial confessions from members of the armed left who subsequently joined, voluntarily or under coercion, the armed forces on the right. Yet silence, the absence of confession, is the prevailing confessional form for the left and right. While the forms of confessions on the left resemble those from state perpetrators, audience responses to them are distinct. For Hilb and Leis, an active effort was made to silence their confessions, to refuse to hear them, to resist engagement with them, and, hence, to fail to generate the kind of contentious coexistence that puts democracy in practice that I observed in the reactions to state perpetrators' confessions. In the case of Jouvé and Barco, there was little effort at silencing them. The critical engagement of their confessional acts could be said to have prompted contentious coexistence, but only as an internal debate within the left. There was no engagement by the right-wing with the earlier confessional act.

The Hilb and Leis testimonial essays provide insights into why these confessions are silenced. They upset a particular narrative about the past that is perpetuated by truth commissions and trials. In these narratives, the tortured, disappeared, or killed are identified as victims, and not

5 These include remorseful, heroic, sadistic, denial, silent, fictional or untrue, amnesia, and betrayal confessions.

perpetrators of violence. Even if not “innocent” of acts of wrongdoing, crimes against humanity are never permissible. No one, regardless of who they are or what they did, should face torture, death, or disappearance carried out by state forces with impunity. In this narrative, what victims did is insignificant and irrelevant. When confessions on the armed left emerge in this context, they disrupt and unsettle the narrative over the past.

Although rare, when members of the armed left confess to violence, they tend to deem their acts as heroic. Violence is justified as the only effective way to bring social, political, and economic justice. The revolutionary left took up arms to defend the powerless against oppression using the only possible weapons to do so. Certain kinds of confessional texts, such as the remorseful and betrayal ones presented here, disrupt and unsettle a narrative about heroism and social justice, reducing the actions on the left to wrongdoing that must be addressed. As long as these discussions are kept within the left – as in the case of Jouvé and Barco – they do not need to be silenced. It is when they are exposed to a broader audience that efforts to silence them occur.

These unspoken truths about the past, therefore, could have a profound impact by unsettling accounts. But they do not. Their impact is ephemeral. When they are engaged, they tend to be discounted and silenced. They fail to have a transformative effect, to change beliefs about the past, to build a stronger democracy with full freedom of expression of political views, or to construct a human rights culture on a rejection of all forms of violence. These confessions are viewed, instead, as inconvenient, self-serving, and harmful to the justice culture evolving.

They present three main unsettling versions of the armed left. First, *the left committed terrorist acts*. There were fewer such acts, and they used different methods, than those carried out by the military, but the left nonetheless committed violence against unarmed citizens during the democratic period prior to the 1976 coup and the dictatorship it installed. The left paid a heavy price for these acts when the repressive apparatus kidnapped, tortured, killed, or disappeared them. But, the existence of the armed left and its terrorist acts provided a justification for the military coup and dictatorship to commit atrocities. And, in the effort to eliminate insurgent groups, others who had not committed violence faced state terror.

Second, *the left justified violence as the political means to achieve social justice*. Violence was not only defensive; it constituted a political path to bring about the revolution. Failing to condemn the violence on the left is

thus an acceptance that certain forms of political violence are acceptable and other forms are not. Violence in itself is not condemned, but rather the use of violence by political enemies is condemned.

Third, *one-sided justice – in which only one violent actor faces accountability – misses an opportunity to develop a stronger basis for rejecting political violence of any type.* This sort of justice system fails to recognize the importance of building a human rights and democratic culture that rejects all forms of violence and promotes tolerance for a range of views about the past. Criminal justice may not be the best mechanism for advancing these goals.

These three qualities of unsettling confessions on the left are interwoven in the texts offered by Hilb and Leis. These three features may reflect their timing and the efforts by the two former members of the armed left to distance themselves from the political uses of memory that perpetuate, rather than overcome, misunderstanding and the appeal of violence as political solution. As observed in the earlier confessional moment, a different response emerged.

#### 10.4.3 Timing

Hilb contends that, in the immediate aftermath of state terror, a critical reflection on left-wing violence was not possible. As she states, “the horror of the National Reorganization Process dictatorship drowned in blood any possibility of critical reflection on what happened.” But she argues that, “Today, twenty-five years later, it is our responsibility to pass on to the generations that have succeeded us an uncompromising reflection on our past responsibility” (41), which she hopes will advance the values of “justice, liberty and equality” (41). Leis reflected on personal reasons for his delayed confession:

I know that my text is coming late. I needed a sign to write, and it finally arrived. As I neared 70 years of age, inertia was transformed into an urge to write my memoirs ... I discovered that I was an active part of a historical dynamic that I could have avoided if I had found within me enough moral and intellectual reserves to face the dark side of the spirit of my generational moment.

Political reasons also motivated Leis from revealing the “dark side” of the past until Argentine democracy was sufficiently secure to think critically about it:

The new memory had to unite Argentines against the past dictatorship and against the armed forces of the time, which still felt empowered to threaten the future. At that time, there was no time or place for anything else. But the current moment should advance toward replacing instrumental memory, the product of circumstance, with memories that gradually approach the truth. In Argentina, the opposite seems to be occurring; as time goes by, historical memories become more instrumental and further from the truth.

The timing could also be said to have hinged on the Kirchner presidency. The Kirchners had succeeded in using political memory as political capital. This is perhaps best represented by the removal from the 1984 CONADEP report the “two-demons theory” prologue. The theory is seen to represent equivalency between the violence on the left and the violence on the right: “During the 1970s, Argentina was convulsed by a terror that came from both the extreme right and the extreme left.” In 2006, President Nestor Kirchner (2003–2007) publicly rejected the theory by removing it from the CONADEP report: “It is necessary to clearly establish, because the construction of the future on firm foundations requires it, that it is unacceptable to try to justify State terrorism as a kind of game between two opposing violent groups, as if it were possible to find a symmetry between the action of individuals on one side and the sovereign Nation and State, with its own ends, on the other” (Galak 2006). Debate ensued with the head of the Madres de Plaza de Mayo-Línea Fundadora, Hebe de Bonafini applauding the action of silencing the “two-demons theory” and members of the CONADEP challenging the view that the report had justified violence by the Proceso de Reconstrucción Nacional civil–military dictatorship, blamed the victims, and misrepresented the past.<sup>6</sup> While few members of the human rights community supported the two-demons theory, an increasing uneasiness emerged with the politicization of memory by the Kirchner governments, their alliances with certain extreme views in society, and the absence of critical engagement with others.

6 A petition circulated in 2016 to remove Minister of Culture of the City of Buenos Aires, Dario Lopérvido, from the office due to his reference to the two-demons theory and mischaracterizing the motives of the human rights community in counting the disappeared. Available at: [www.change.org/p/presidencia-de-la-nacion-argentina-loperfido-debe-renunciar-carta-abierta-al-presidente-mauricio-macri-y-a-larreta-a9d62b76-67bb-4313-b9d1-caf3b1e3e46d?recruiter=459642198&utm\\_source=share\\_petition&utm\\_medium=email&utm\\_campaign=share\\_email\\_responsive](https://www.change.org/p/presidencia-de-la-nacion-argentina-loperfido-debe-renunciar-carta-abierta-al-presidente-mauricio-macri-y-a-larreta-a9d62b76-67bb-4313-b9d1-caf3b1e3e46d?recruiter=459642198&utm_source=share_petition&utm_medium=email&utm_campaign=share_email_responsive), last accessed March 28, 2022.



Why was contentious debate over the left's violence possible in the past and not in recent years? One of the historians who participated in the earlier debate emphasized the political climate in 2004–2005 when the news media reported on these confessions. He argued that the period of time was less threatening than in the years following the transition. The climate was more conducive to open and public debate than in those earlier times. In addition, there was a catalyzing moment, a triggering event, that those on the left responded to in different ways. In the texts, references are made to a Mariano Grondona television program in which a widow of army captain Viola speaks of the cruelty of the People's Revolutionary Party (ERP) in killing her husband. Grondona evoked – “without any subtlety” – the image of the two devils. This highly contested view of the past promoted by the authoritarian regime was back in circulation. Rather than simply rejecting it out of hand, in this less polarized moment, those on the armed left who had engaged in or witnessed cruelty by their own forces were willing to take a moral stand against it.

Another part of the debate focused on a different aspect of the political moment. This debate followed the “*que se vayan todos*” (throw the bums out) protests in which large numbers of Argentines took to the streets against politicians. Argentines were claiming their voice, their citizenship, their right to have rights. In this context, the closed and unresponsive state was challenged. It is in this context that the authoritarian regime of the past is identified as a terrorist state, and not merely a dictatorship. Thinking critically, challenging top-down views, questioning authority, became part of the political climate of the time. A period of democracy in the streets that seemed to have a contagious effect among the left. In this context, some members of the armed left were willing to reflect on the hierarchies within their own movement that had lost touch with the base, the rank and file, and the goals of social justice, where ends justified means.

Despite this propitious political moment, there were still efforts at silencing these unsettling truths about the left. Some suggested that Barco himself had closed off the possibility of dialogue through his use of “unbridled violent language aimed at all protagonists” on the left. Because of this, some on the left called for censoring Barco.

Another form of silencing occurred with the publication of the book *No Matar* (2007). The book was meant to present the full contours of the debate triggered by Jouvé's and Barco's 2004 confessional texts. Certain positions in that debate were excluded from the publication, however. In

particular, those who agreed with Barco were left out. One had sided with Barco against his critics, referring to their positions as using “historical contingency” to excuse past violence by the left. Another text excluded from the book questioned the view of the left’s “mistakes,” contending instead that, “executions are not errors. They tend to follow a long period of planning.” A third excluded commentary shamed the left for “hiding in silence,” failing to address a moral duty to victims, because of fear of how the right might exploit the truth about left-wing violence.

### 10.5 In Defense of Gag Orders?

Hilb and Leis suggest that the left has not had to account for its wrongdoing and that it should. Anything short of a full accounting by the left will fail to fulfill the goals of peace, democracy, and human rights. The gag orders imposed on the left by a society attempting to create a single narrative of good versus evil have undermined the very goals they aimed to achieve: a rejection of human rights violations, a commitment to peaceful co-existence, and the promotion of democratic values of freedom of expression and debate. In the interest of democracy, human rights, and long-term peace, Hilb and Leis call for an end to gag orders and a full accounting on the left for its role in past violence. They have contributed to this goal by confessing to abuses they committed themselves, witnessed uncritically, and even supported at the time.

These confessional texts failed to catalyze a debate. They did not have the “Scilingo effect” (Feitlowitz 1998) of inspiring others to come forward and confess to their own engagement in left-wing violence. But even when former Naval officer Adolfo Scilingo began his confessional journey with journalist Horacio Verbitsky, there were voices of protest against letting the perpetrators of state crimes control the narrative about the past. Against this view, others called for “many more Scilingos” since for the first-time perpetrators were admitting to wrongdoing. The truths from the perpetrators not only provided evidence of wrongdoing but could even contribute to the discovery of the fate of the still disappeared victims and the stolen babies born in captivity (Payne 2008, 52).

What is the value of confessions to violence from the armed left? The gag orders have protected against the two-demons theory and its implicit equivalency between state terrorism and guerilla terrorism. They further countered the notion that circulated during the dictatorship that if individuals disappeared “*por algo será*” (there must be a reason), hinting that certain transgressions warranted a violent response. The gag orders

attempted to eliminate those misconceptions from national discourse. Hilb and Leis could be seen in this context as re-stigmatizing victims as perpetrators of aggression, blaming the victims.

Both Hilb and Leis recognize that at an earlier phase of democracy, truths about the armed left could not be exposed. But they suggest that now is the time to deal with this past. They argue that the failure to examine the left's violence perpetuates political dogmatism and thwarts critical thinking. To promote analysis is to begin to erode the beliefs in violence as a solution to injustice and not an injustice itself.

Arguing against that view is the notion that the dignity of victims is prior to critical analysis of the past. Arguments in favor of gag orders and democracy have been made by Stephen Holmes and others. Certain deeply contentious issues can trap democracies, making it impossible to move forward. These issues may need to be put "off the conversational agenda of the liberal state," to deepen democracy through "conversational constraint" (Ackerman 1989, 16). When Hilb and Leis violated this constraint, they opened up an old wound in society that had not fully healed. The danger in allowing such speech is to resurrect old views of the victims as responsible for the violence against them, stigmatizing them and justifying political violence. An argument could be made that such a view damages the progress made on advancing human rights norms and accountability for states' human rights violations: a setback for democracy.

In my earlier work, I have argued the opposite: "Contentious coexistence . . . is stimulated by dramatic stories, acts, or images that provoke widespread participation, contestation over prevailing political viewpoints, and competition over ideas. Contentious coexistence, in other words, is democracy in practice" (281). The confessions by Hilb and Leis have presented two challenges to my argument.

First, these confessions failed to catalyze debate. This might have resulted from the particular timing of the confessions. Perhaps it is still too soon to hear and discuss these dramatic stories and political viewpoints, to allow competition over certain ideas. It was not unwarranted to fear that the right could use these confessions to resurrect old myths and halt the human rights trials. It may also be that the form that the confessions took – as semi-scholarly books – might have failed to trigger a broad debate in society. When Scilingo confessed to death flights, he provoked widespread reaction in Argentine society. Neither Hilb nor Leis evoked similar imagery of left-wing violence that might have catalyzed widespread debate.

Second, Hilb and Leis assume that confessions on the left – like theirs – would express remorse, thereby contributing to a rejection of the uses of political violence in Argentine history and culture. Comparative analysis suggests that confessions on the left, like confessions on the right, may justify violence rather than condemn it. Such justification may reinforce, rather than reject, violence as a political solution. Consider South Africa. The military wing of the ANC, the MK, mainly testified in the Amnesty Commission as victims, and not as perpetrators. And yet in my interviews with them, and in some cases in the TRC hearings, they invoked their view of themselves not as victims, but as heroic fighters against the injustices of the Apartheid state. Many of these interviews revealed a resistance to be seen as victims, because such a label robbed soldiers of their protagonism in a legitimate struggle. Some even equated their behavior with those who had tortured them:

I was trained to kill. It was my job. I had to really think through whether this was something I could do or should do. I decided that I needed to do it and so it became my job. He [the apartheid policeman who tortured] also had a job . . . he was doing his job. And I survived it. He did his best to do what he had to do. And I did what I had to do.

(Payne 2008, 138)

Various commissioners struggled to get anti-apartheid liberation fighters to confess to wrongdoing, and when they succeeded to do so it did not come easily. The well-known exchange between Archbishop Desmond Tutu and Winnie Madikizela-Mandela in the TRC reflects efforts to convince the left to accept responsibility for their own wrongdoing. Against Madikizela-Mandela's "denial, defensiveness, and evasion" to take responsibility for a killing, Tutu entreated her to apologize. He received a canned apology; one in which she merely repeated the words he gave her without sincerity.

Tutu: There are people out there who want to embrace you. I . . . I still embrace you because I love you and I love you very deeply. There are many out there who would have wanted to do so, if you were able to bring yourself to say: "something went wrong." And to say: "I'm sorry. I'm sorry for my part in what went wrong." I beg you! I beg you! I beg you! Please! You are a great person and you don't know how your greatness would be enhanced if you had to say: "Sorry. Things went wrong. Forgive me." I beg you.

Madikizela-Mandela: I am saying it is true. Things went horribly wrong. For that, I am deeply sorry.

(Payne 2008, 70)

Already divided opinion of Winnie Mdikizela-Mandela and her football club remained and perhaps the schism further deepened. This did not affect the quality of the debate over the past. Yet Tutu remained disappointed that so few ANC were willing to come forward and accept responsibility for their acts. When they did, they seemed to deliver apologetic scripts provided to them, simultaneously defending their decision to take up arms. This can be seen in the encounter between the husband of a woman shot in St Andrews Church and her Pan African Congress (PAC) killers.

Dawie Ackerman: I would like to hear from each one of you, as you look me in the face, that you are sorry for what you've done. That you regret it and that you want to be personally reconciled.

Amnesty Applicant: We are sorry for what we have done. Although people died during that struggle, we didn't do that out of our own will. It's the situation that we were living under. We are asking from you, please do forgive us.

(Payne 2008, 72)

In these cases, the armed left was able to explain to South Africans that they were fighting a just war, yet they could still apologize for the civilian deaths in that war. Why was that possible in the earlier confessional moment in Argentina and not in the later one?

Hilb and Leis suggest that – in contrast to the ANC – the armed left in Argentina is not democratic; they do not play by the democratic rules of the game. Violence is still a political strategy used by the right and the left. The logic of their argument, however, suggests that if those on the armed left were to come forward, they, like their right-wing counterparts, would justify their use of violence as heroic and necessary, rather than condemn and express remorse for it. Moreover, Hilb and Leis recognize that the social justice objectives of the armed struggle continue to have broad appeal in Argentine society. This claim suggests that, within the left, such a contentious debate can occur – as it did in the earlier confessional moment. But exposing such a truth to a broader public, particularly at the moment in which the right-wing was gaining leverage within the political system, prompts the demand to silence debate over the role of the left in the past.

In the later period, as the right increases its political power again, a confessional process from the Argentine armed left might reinforce, rather than undermine violence as a solution. The urgency of a radical redistribution of wealth and resources, the absence of responsible and

representative political leaders with a social justice agenda, the nostalgia for a more egalitarian society or political agenda, might mean that the confessional processes would backfire. This is particularly the case, as demonstrated in *Unsettling Accounts*, if audiences fail to contest the confessional script and its meaning and instead accept uncritically the heroic notion of armed struggle. In this context, are gag orders justified?

## 10.6 Conclusion

Political timing is important, even crucial, to contentious coexistence. The other elements of the confessional performance did not vary much between the two historical moments. Hilb's and Leis's confessional scripts resembled the earlier ones by exposing unsettling aspects of the armed left's past violence. They were similar kinds of actors, having been members of the armed left who had witnessed atrocity. Their confessional stage was not significantly different. They too had published their texts and were interviewed in the media. The audience – the right and the left – were similar in each set of confessions. The main difference that helps us explain the possibility of opening up debate is the timing of the confessions. The earlier period was a safer moment for the left to admit to these atrocities without the same level of fear about backlash.

But even in the most propitious moments, as in the earlier confessional era, there is still too much polarization to freely debate the left's violent past. As one of the commentary's states about the confessions, "They unsettled me." Yet one of the most unsettling parts of the confessional performance for him was the failure on the left to hear. As he stated, "We have opted not to listen." Thus, even when a debate is opened up, there is an effort to shut it down. In this, the left has failed to live up to its own ideals and theories, to think critically, to reflect, to condemn those parts of the left's past that deserve condemnation.

If it is the case that even in the best of times, left confessions to violence face silence, what does this mean for contentious coexistence? If, even during the periods of broad consensus to reject violence as a way to do politics, the left cannot reflect on its own role in the past, then what are the possibilities of building a strong, democratic, peaceful future that respects human rights? More poignantly, during the current period, as the right-wing and former supporters of state violence become empowered again, can debates render the kind of contentious coexistence that is positive to democratic dialogue and building a stronger human rights culture? Or will they provoke a further rollback of rights and the

delegitimization of the left? Is there a way in which the left can play a constructive role, in these unpropitious and propitious political environments, in building stronger human rights regimes?

Timing does not do all of the work of turning confessional performances into contentious coexistence and democratic practice. How timing affects audience responses is significant. Until audiences on the left feel it is safe to talk freely about the past – without fueling political polarization and playing into the right's efforts to demonize the left – it is unlikely that these confessions will have their intended effect of rejecting violence as a political strategy. And yet, without broad consensus against the use of violence by the right or the left, it is uncertain whether countries can emerge from the legacies of the past and build democratic and human rights futures.

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## Negotiating the Symbolic

### A Systematic Approach to Reconcile Symbolic Divides

DANIEL L. SHAPIRO AND VANESSA LIU

Years back, Professor Roger Fisher delivered a lecture about the Harvard Negotiation Project's advisory role in the historic negotiations that resolved the longstanding border conflict between Ecuador and Peru. The dispute had revolved primarily around a small piece of land – known as Tiwintza to the Ecuadorians and Tiwinza to the Peruvians – that held important historic and emotional meaning to each side. Upon learning that the land was in an area of the Amazonian jungle bereft of inhabitants and oil reservoirs, a puzzled student raised his hand and asked, “Why, then, were they fighting over the land? It’s *just* a symbol!” Professor Fisher looked back at the student and replied, “You are right, it is a symbol. But I would scratch the word ‘just’.”

Symbols matter. People sacrifice their lives for a flag, a monument, or sacred land – yet it is not the object unto itself that drives their sacrifice. A symbol is a psychological stamp – a mental and emotional representation of our stance on an issue – that ties us to a fixed identity narrative. To threaten the symbol is to threaten our identity, which raises the question: How can we negotiate a solution to conflicts over deeply meaningful symbols?

These disputes – which we call *symbol conflicts* – are typically dealt with through brute force or political advocacy, providing a “solution” that serves one side’s interests but fails to reconcile the underlying divide. *Brute force* uses muscle power and military might to strongarm the other’s compliance: The Ecuadorian and Peruvian militaries fought many wars over the land, but each side’s victory stoked the other to return to battle. *Political advocacy* is the act of campaigning for a policy. While activists may successfully persuade a politician to change position on a law, such actions are likely to provoke the political opposition to fight

The authors contributed equally to this article.

harder for a reversal of that position. In short, the use of raw power and political advocacy fails to reconcile deeper relational gaps and, conversely, may intensify the conflict.

Drawing on our research and international consultation in large-scale conflicts across the continents, we offer an alternative approach to negotiate when symbols are at the heart of the matter. First, we examine two very different types of symbol conflicts – the Macedonia Naming Dispute and Confederate Statues controversy – to illuminate the complexities of resolving these types of situations. While symbols can be lightning rods for violence, we chose the Macedonia Naming Dispute as a case study of how to handle a symbol conflict in a way that avoids mass brutality; lessons on prevention are crucial to avert future atrocity. We chose the Confederate Statues controversy case to explore the role of symbols in helping societies come to terms with historical atrocity. Second, we present a conceptual framework from which to understand the symbolic dimensions of negotiation and how to use symbolism productively. Third, we propose a practical method to address symbol conflicts. Finally, we return to our two case examples and offer insights on how to resolve them via the proposed method.

### 11.1 The Problem: Conflict over Symbols

Conflict over symbols can seem non-negotiable, because each side claims sole rights to the symbol. Consider the following disparate examples and contemplate what advice you would offer to move the parties toward reconciliation.

*What's in a name?* When it comes to sociopolitical identity, there is perhaps nothing more defining than a name. It gives immediate context to how we want to present ourselves in the world, and how the world should interact with us. For nations, a name is not only a reflection of their people's identity but also their sense of security. Leaders use names as emotional triggers to invoke pride and rally support. So, when "Macedonian" Yugoslavia declared independence in 1991 during the breakup of Yugoslavia – naming itself "the Republic of Macedonia" – this was met with fierce resistance from Greece, whose northern region had long been called Macedonia and whose citizens refer to themselves as Macedonians.

For Greece, the newly formed neighbor to the north presented a threat to their national security simply by how they named themselves. As

explained by Matthew Nimetz, the United Nations mediator in the dispute, “Greeks viewed Macedonianism as a conceptual unity that could not be shared. If the northern neighbor was to gain recognition as ‘Macedonia’ and its people as ‘Macedonians,’ then the name and identity would be lost to the Greek side through what they perceived as wrongful appropriation by the northern neighbor” (Nimetz 2020, 210). For the new nation, they too identified themselves as Macedonian, as previous generations had, and in fact had been known as the Socialist Republic of Macedonia since World War II. Being Macedonian was at the core of their identity as well, and they felt it was their right to determine their own name. The Macedonia Naming Dispute was not a simple semantic dispute; it got to the heart of the symbolic significance of the name. How should this situation be untangled to promote sustainable reconciliation?

*Erasing history or pain?* In the American south, more than 1,700 Confederate symbols – monuments, place names, and other images – mark the landscape in towns and cities, erected after the Civil War ended in 1865 (Southern Poverty Law Center 2020). A number of white Southerners view statues of Confederate military leaders as preservation of their heritage, a source of pride and remembrances of a valiant effort to defend their region from Northern oppression. State laws protect a number of these monuments. Supporters view removal of the monuments as an erasure of history. But for other citizens, these symbols represent systemic, ongoing racism and white supremacy, a painful reminder of slavery and segregation. Many of these statues were in fact erected well after the Civil War during two key periods – the 1920s in the era of Jim Crow laws and in the 1950s and 1960s during the civil rights movement – to further segregation and black disenfranchisement (Southern Poverty Law Center 2020). Former New Orleans mayor Mitch Landrieu noted, “These statues are not just stone and metal. They are not just innocent remembrances of a benign history. These monuments purposefully celebrate a fictional, sanitized Confederacy; ignoring the death, ignoring the enslavement, and the terror that it actually stood for” (Landrieu 2017). As grassroots efforts to remove these symbols increase in the wake of racial struggles and protests, residents in southern communities are clashing over the meaning of these symbols and what to do with them. How should these opposing parties deal with this conflict?

## 11.2 Relational Identity Theory: A Conceptual Framework to Navigate Symbols

Disputes over symbols are as prevalent in larger societal situations as they are in family living rooms – for instance, during the COVID-19 global pandemic, the wearing of face masks became a political symbol that polarized societies and had serious implications on how to handle the crisis. As visible markers of a divide, symbols can easily trigger an “us-versus-them” reaction that makes negotiation seem futile. In this section, we examine the essential features of symbols and present Relational Identity Theory, a conceptual framework that serves as the foundation of a strategy for resolving these conflicts.

Symbols are people, places, or things (“objects”) that represent an idea “by reason of relationship, association, convention, or accidental resemblance” (Merriam-Webster 2020). They have been used for thousands of years to enable people to communicate – language itself is a symbolic medium – but what these markers signify does not come automatically. A symbol’s meaning is constructed over time within a social system and its deep emotional charge is rooted in its connection to identity (Blumer 1969; Mead 1934). If a student curses softly at us in a language we do not speak, we may think little of it; but should the individual say those same words in our primary language, we will feel concerned. We are part of the sociopolitical system and recognize the emotional potency of those words.

The process of turning a person, place, or thing into a symbol requires us to psychologically inject aspects of our identity into that object. We *create* the symbol by projecting meaning onto it. In turn, we infuse that object and its meaning into our identity, defining the symbol that defines us (Cooley 1902). The more society embraces that symbol, the deeper its collective emotional significance. The symbol comes to define the identity of the people. Thus, to better understand how to negotiate symbols, we need to understand the complex landscape of identity in situations of conflict (Ross 2007).

Relational Identity Theory (RIT) provides a conceptual framework from which to understand the symbolic dimensions of negotiation and how to use symbolism productively (Shapiro 2010, 2017). RIT differentiates between two major types of identity: Core identity and relational identity. *Core identity* is the spectrum of characteristics that define who we are as a person or member of a group. This aspect of identity is relatively fixed and includes our beliefs, rituals, allegiances, values, and

emotionally meaningful experiences – those intense events in our lives that define who we are. To understand the symbol's meaning, we must uncover the *core identity narrative* infused into the object: What beliefs, rituals, allegiances, values, and emotionally charged experiences define the symbol? The power of a national flag or coat of arms resides in the story it represents.

*Relational identity* is the spectrum of characteristics that define who we are in relation to another person or group (Shapiro 2017). This aspect of identity can easily change as we interact with others, providing a powerful mechanism to negotiate seemingly intractable symbol conflicts. In the immediate aftermath of mass atrocity, for example, a group who had storied themselves as “heroes” may now be viewed as “perpetrators.” Their core beliefs and values may remain fixed, but the characteristics defining their relationship to other groups alters. Ideally, it is best to help opposing parties break free of *us versus them* polarities *before* mass violence erupts, thus constructing relational identities that foster peaceful coexistence.

There are two major levers to transform relational identity: affiliation and autonomy. *Affiliation* refers to the emotional connection between individuals or groups (Shapiro 2010). We feel closer or more distant to people depending on how we treat them and how they treat us. For instance, if disputants listen respectfully to each other, they are likely to view each other more favorably and may be more inclined to listen to each other's stories (Deutsch 2006). Conversely, if disputants disparage each other, strong resentment can arise and be particularly difficult to unseat in the context of multigenerational conflict and in the wake of mass harm. Symbols become powerful tools for building affiliation – and rejecting outsiders. Leaders often mobilize supporters by imbuing a story of group pride or trauma into a flag, geographical location, or other object. The group affiliates around the symbol and gains cohesion through shared disaffiliation with the other side.

*Autonomy* is the freedom to make decisions without imposition from others, and crossing that line can lead to serious conflict (Shapiro 2017). In the context of war and mass atrocity, parties in conflict tend to perceive the bounds of their autonomy through partisan narratives: Perpetrators of violence view their actions as justified assertions of autonomy while victims of violence experience those same actions as violations of their humanity. The bounds of autonomy are open to interpretation and those who justify violence with claims of oppression may find themselves storied as the oppressor in the aftermath. A deep

understanding of the symbolic dimensions of conflict can help to interrupt this on-going cycle in which identities are simply swapped but rarely transformed.

Relational identity is more malleable than core identity and can be a powerful mechanism to resolve conflicts around symbols. The key is for parties to shift their relational mindset. If parties have a *negative relational identity*, they (1) see their affiliation as adversarial and (2) view their autonomy as being imposed upon. If parties have a *positive relational identity*, they (1) see their affiliation as partners and (2) feel greater autonomy to express their views. The more parties can move toward a positive relational identity, the more they can constructively negotiate symbol conflict.

### 11.3 Addressing Symbol Conflicts

There are multiple approaches to deal with politically sensitive issues like statues. One approach is political advocacy, through which political groups seek to influence political decisions within a political system. Another approach is to work toward reconciliation through mutual understanding. That is what we are exploring in this paper. Political advocacy may make political change, but the durability of that change is uncertain, because political advocacy tends to exacerbate polarization. As one side fights for their beliefs, the other side takes up arms to fight back. Advocates may succeed in pressuring a political system to remove a statue, but opponents now are likely to work even harder to get that statue back. If a society seeks harmonious coexistence – whether in the aftermath of mass atrocity or at the precipice of emergent violence – governmental and non-governmental institutions would be wise to convene opposing parties to engage in civil discourse. The purpose would be to understand each other's core identity narratives and envision ways to satisfy shared and non-competing concerns, while still committing to political advocacy to address incompatible differences.

We are not suggesting that political advocacy is “bad” or should be sidelined. To the contrary, we believe in the crucial importance of political advocacy. But it can be helpful to “fit the forum to the fuss” (Sander and Goldberg 1994). Political advocacy has its time and place, as do alternative methods such as that which we are proposing to address symbolic conflict. These methods are not mutually exclusive. Parties with differing views on statue removal may engage in dialogue to understand each other's identity narratives and *still* politically advocate for their

political positions. But they now do so with a deeper understanding of the multiplicity of stakeholder interests, needs, and concerns at stake, thus approaching the issue with a civic mindset (Shapiro 2021).

There are four steps to reconcile differences in a symbol conflict:

1. *Look for conflict over symbols.* Some symbols are self-evident – everyone fighting over a statue recognizes the issue is not about the raw material itself – but symbolic issues are often veiled. Israelis and Palestinians have spent decades negotiating technical aspects of Jerusalem: Who owns it, what should be its geographic bounds, and who should have what types of political, military, and economic control over what parts? Such issues are crucial to determine in a final agreement. But negotiators must also recognize that Jerusalem has extraordinary symbolic meaning for all involved. The word “Jerusalem” will conjure up specific sentiments and different images for the Israeli and Palestinian negotiators. Treating the negotiation as a purely technical issue ignores these deeper symbolic drivers of conflict.

Parties should recognize that time and space can comprise the contours of a symbol. A municipal government may engage in contentious debate over whether businesses should be closed during a religious holiday – a conflict over “cathedrals in time” (Heschel 1951). Bombing an empty warehouse may lead an enemy to retaliate, but bombing a hospital, school, or other “sanctuary of identity” is likely to stir moral outrage and international fury (Shapiro 2017).

2. *Unpack the significance of the symbol.* A symbol is a *narrative envoy*: it is there to deliver a message, a value, a memory. The challenge is to translate the symbol into story, to find out what the symbol represents. Imagine a box filled with photographs of your childhood. When you see the box in your room, you immediately think about memories of your youth. The box becomes a symbol of that time in your life. Every time you see the box, you “see” your childhood. Unpacking the significance of a symbol is, metaphorically, the act of opening the box – the symbol – to discover the emotionally meaningful experiences and collective stories that give meaning to the container.

The meaning ascribed to a symbol can change over time and across geographic locations. The American flag means something very different to an Olympic gold medalist waving it in front of a roaring crowd than to citizens pinning one on their lawn on the days after the September 11, 2001 terrorist attack on New York City’s Twin Towers.

Symbolic meaning shifts as contexts change, and consensus on the significance of an object can evolve.

A facilitator can help disputing parties translate symbol into story. The goal is to make explicit the unsaid narrative wrapped up in the object itself. Illustrative questions to explore include:

- What makes this symbol important to you?
- What images come to mind when you think of this symbol?
- What leaders and groups refer to this symbol? What messages do they attach to it?
- What personal or collective memories do you associate with this symbol?
- What story comes to mind when you think of this symbol?
- What is your understanding of how and when this object took on its symbolic meaning?
- What does that story mean to you, personally?

The aim of these questions is to discover each party's *mythos of identity*, the core narrative defining who one is in relation to the other side (Shapiro 2017). In that narrative, each side may view themselves as victim, scapegoat, the righteous one, or sole arbiter of truth and divine wisdom – roles that automatically paint the other as aggressor, wrongful accuser, thief, or deceiver. The mythos frames the relationship and provides its emotional character. The challenge is to unpack the emotional significance of that emotional blueprint *for both sides*. Understanding each side's mythos sheds light on core motivations, fears, and wishes from which to craft a mutually acceptable path forward.

The mythos of identity weaves present and past into a cohesive narrative of social identity. Through this narrative, groups convey their heroic moments and tragic ones, which Vamik Volkan (2021) calls *chosen glories* and *chosen traumas*. Symbols anchor these moments. They become objectified representations of aspects of the group's identity. If we were the victim or hero, we assume the other group must have been the perpetrator – and we incorporate that mythos into our symbol. Intergroup relations become frozen. But groups do not like being storied as a perpetrator, symbolically or otherwise. By unearthing the mythos of identity in its fullness, narratives can be thawed, nuanced, and complexified.

3. *Bear witness to each side's emotional experience.* Key to reconciling a symbol conflict is to *bear witness* to each other's actual losses and



emotional pain, no matter how hard that reality is to accept (Shapiro 2017). This does not mean we need to acquiesce to the other side's political demands or convert to their belief system, but instead that we work to understand and acknowledge their suffering (Shapiro 2017). When a symbol comes under attack, we crave recognition of the associated mythos and its personal importance, because acknowledgment affirms our identity and provides a forum to contextualize losses.

A major source of emotional pain comes through loss – the dismantling of a valued statue, the forced removal from one's home, the death of a loved one. If we do not talk about that loss and have others bear witness to it, we may feel an attack on our autonomy, which can emotionally compel us to strike back or act out in some other manner. Bearing witness can help us come to terms with the loss – literally putting words to the situation and mourning the fact that what once was, is no more. During the initial stages of the COVID-19 pandemic, Dan's 15-year-old son, Noah, felt depressed and isolated. The two talked about it, and Noah realized that the pandemic symbolized the loss of interaction with friends, the closure of school, and the shuttering of his gym. But he later noted that *verbalizing* those feelings and having Dan bear witness to that loss was empowering – inspiring him to use his time more productively by writing a book on his experiences in the pandemic. It is this same concept that produces the power of psychotherapy and other forms of social healing.

Acknowledging emotional pain comes through asking open-ended questions, listening non-judgmentally, and learning about the feelings experienced in conjunction with that narrative. What emotions does the conflict over the symbol awaken in them and why? What emotions are embedded in the narrative? It is important to listen especially carefully for emotional themes that animate their narrative – fear of a world that excludes them; longing for greater connection or more autonomy; shame at being negatively exposed by others; guilt for acting in ways outside the bounds of personal standards of conduct; and quashed pride.

The process of bearing witness can take many forms. There can be a formal town hall, dialogue program, legislative hearing, or neighborhood conversation. Media can produce documentaries, television series, and movies showcasing the emotional experiences of groups. Leaders can voice the stories of everyday citizens on each side of the conflict. Bearing witness can occur in informal and formal contexts

and in public and private settings. The purpose of this process is not to change people's politics but to help them understand each other's motivations.

Because relational identities feel threatened in a symbol conflict, it is important to surface the ways in which each party's sense of autonomy and affiliation is at stake. In terms of autonomy, parties may feel that the other side is imposing on their freedom to think, feel, do, or be as they would like. People are sensitive to seemingly illegitimate constraints on them, which can lead to backlash. In terms of affiliation, people may feel excluded, emotionally distanced, or treated as an adversary. In the United States, the combination of centralized power and a diverse population creates inevitable feelings of exclusion from various interest groups. Uncovering these types of emotional concerns is essential to create a mutually viable solution to the symbol conflict.

4. *Collaboratively problem solve.* This final step in the process focuses parties on creation of an outcome that addresses each side's needs for autonomy and affiliation. The challenge is to invent an option that respects each group's core identity narrative to the extent possible (Nelson 2001; Winslade and Monk 2000). This task may sound impossible and probably will be *if* parties dive into problem solving without first spending sufficient time surfacing each other's myths of identity and bearing witness to pain.

In our international facilitation work, we guide disputants through several aspects of collaborative problem solving. First, parties invent a wide range of creative options to address their conflict. We ensure that they separate the process of developing options from the process of deciding between them, promoting creating thinking unencumbered by the judgmental mind. To encourage innovative thinking, we invite participants to brainstorm options through the perspectives of varied professions (Fisher et al. 2010). What ideas would occur to an economist, architect, psychologist, social worker, architect, artist, banker, small business owner, lawyer, civil rights activist, skilled tradesperson, physician, politician, peacemaker, chef, comedian, technology specialist, entrepreneur, or youth? Second, parties nominate options that best address each side's underlying motivations. Third, the group decides consensually on a single solution and further refines it to account for each stakeholder's legitimate interests to the extent possible. The final step is for the group to implement the solution.

Few symbol conflicts can be resolved to everyone's full satisfaction. For those conflicts for which no mutually amenable option seems to exist, work harder. Think outside the box. Put yourself into the other's shoes to discover underlying motivations. Keep brainstorming. And remember your walk-away alternative – political action – which can come in the form of a protest, legal case, march, rally, political campaign, referendum, or lobbying for policy change. If dialogue fails to achieve a material solution, the process is not in vain. Each side has learned more about their own values and those of the other side and has gained a nuanced understanding of the symbolic issue at stake. In short, engaging in the reconciliation process prepares parties for peace *and* political action. At a societal level, this means that political advocacy will be more nuanced, based on the merits, and better able to account for diverse perspectives. Given that symbol conflicts are complicated, the passage of time can present new opportunities to resolve the conflict from a more informed starting point. The reconciliation process can be a win even if it initially fails.

Morality plays a role in this process. There are times when a party's fundamental story may conflict with basic human rights and standards of intercommunal coexistence. Should one seek to problem solve symbolic issues with a neo-Nazi? It depends on one's purpose. If the goal is pure justice, legal or political remedies may be the best route to go. But if society seeks to heal emotionally charged differences around a contentious political symbol, dialogue can be an important route to go – with one caveat: Any negotiated outcome must align with a mutually agreed upon framework of basic standards of human dignity and prosocial norms (Hicks 2011). Without this moral foundation, any agreement is a house of cards.

#### 11.4 Symbol Conflicts: Revisited

We now move from theory to practice – revisiting the two symbol conflicts presented at the beginning of this paper and showing how the elements of our method can help to address complex symbol conflicts. We presented our method as a set of “steps,” but the following examples underscore our conviction that resolution of symbol conflicts is a non-linear, dynamic process in which certain steps take on more importance than others at varying points in time.

### 11.4.1 *Macedonia Naming Dispute*

For several years after the former Yugoslavian Republic of Macedonia gained independence, its relations with Greece were strained. The Greek government persuaded the European Community to adopt a declaration laying out conditions for recognizing the country, including a ban on “territorial claims towards a neighboring Community State and . . . no hostile propaganda activities . . . including the use of a denomination that implies territorial claims” (Declaration on Yugoslavia, Extraordinary EPC Ministerial Meeting, Brussels, December 16, 1991). When the new state sought recognition by the United Nations, Greece persuaded members of the UN Security Council that recognizing the country as “the Republic of Macedonia” would increase tensions and be a threat to stability in the region. Subsequently, the UN admitted the new country as the “Former Yugoslav Republic of Macedonia” and agreed that a process would ensue to settle the name dispute.

Thus began a negotiation that lasted for twenty-three years. At the core of the dispute was the sense that an agreement would represent a losing proposition to at least one of the sides. Greece perceived the new state as challenging their autonomy and threatening their security by claiming the Macedonian name. At the same time, the new state desired to do what every other state has done by choosing their own name, and perceived Greece’s refusal to accept their name as a challenge to their autonomy. This appeared to be a classic zero-sum conflict over core identity – with only one victor.

The mediation team took action in ways consistent with Relational Identity Theory. They spent substantial time unpacking the significance of the name as a symbol and searching for a path that fostered affiliation between the two states while respecting each government’s autonomy to determine its own historical and cultural identity. They were able to achieve this by focusing not on who “owns” Macedonian culture and history (core identity) but on the geographical relationship between the two states (relational identity). Matthew Nimetz, the United Nations appointed mediator, said to the Skopje leaders,

Let us talk about geography, not identity. In its resolutions, the UN Security Council was not trying to change the identity of your people . . . Macedonia is a geographic concept, and it is a large area . . . This large region was for centuries under Ottoman rule. And it was divided in 1912–1913 in the Balkan Wars . . . While your territory is a

part of that Macedonian region, it is only a part . . . Thus, it's not so far-fetched to introduce a modifier to your name to more accurately reflect the geographic reality.

(Nimetz 2020, 211)

To the Athens leadership, he said,

Let us talk about geography, not identity. No one is trying to take your Macedonian identity away from you . . . We all agree that Macedonia is a geographic concept and that the Ottoman Macedonian region was divided in 1912–1913 . . . Greece won the largest part by far . . . And your northern neighbor was geographically a part of that division of the Ottoman Macedonian territory . . . So assuming we can agree that the name Republic of Macedonia is too expansive to be appropriate from a geographic point of view, can't we consider introducing a geographic modifier that clarifies the geographic separation between Greek Macedonia and your northern neighbor?

(Nimetz 2020, 211)

Through the conflict resolution process, parties came to better understand each other's mythos of identity – which was crucial in the negotiations. In fact, this was a critical component in the resulting 2018 Prespa Agreement, where the final name, the Republic of North Macedonia, was finally agreed upon. Article 7 of the agreement lays out the understanding that the terms “Macedonia” and “Macedonian” refer to a different historical context and heritage for each party. The agreement notes that, for Greece, these terms refer not only to the area and people of the northern region of Greece, but also to “their attributes, as well as the Hellenic civilization, history, culture and heritage of that region from antiquity to present day” (Prespa Agreement, 2018, Section 7.2). For the Republic of North Macedonia, usage of the terms refer to territory, language, and people distinct from Greece. Moreover, the agreement further stated that the official language of the new state, the Macedonian language, “is within the group of South Slavic languages,” and this language and other attributes “are not related to the ancient Hellenic civilization, history, culture and heritage of the northern region” of Greece (Prespa Agreement, 2018, Section 7.4).

By explicitly recognizing the historical context surrounding the dispute and unpacking the significance of the name for each, both parties shifted their relational identity from negative to positive. The nuanced agreement allowed each side to recognize their cultural and historical autonomy while creating space for constructive affiliation with their neighbor.

The cordial relationship between the two parties during the course of the dispute also contributed to the ability of both parties to come to an agreement. As noted by Nimetz, during the course of the conflict, scores of citizens from each country vacationed in the other; Greek businesses invested in the new country; and there was a desire on both sides to move forward to a stronger relationship. These constructive connections cultivated affiliation and undoubtedly had a great impact on the ability of both sides to accept the agreement.

#### 11.4.2 *Confederate Statues*

In courtrooms, state legislatures, and city councils across the United States, the controversy over Confederate symbols gained significant momentum after George Floyd was killed by Minneapolis police in late May 2020. By August 2020, forty-three Confederate statues had been removed or replaced, and an additional sixteen schools, parks, and other locations were renamed (Southern Poverty Law Center 2020). Some of the monuments were forcibly removed during protests; others were taken down by local governments or institutions. To date, efforts to remove Confederate statues have been difficult due to the legal complexities at the federal, state, and local levels, and the significant public tensions on both sides. Contrary to the Macedonian situation, where there was a centralized process to resolve the name dispute, there is no single plan or process to figure out what to do with the landmarks. Moreover, given that statue removals have been mainly the result of forced actions or one-sided political advocacy, relational tensions have further inflamed.

Our method for addressing symbol conflict can be applied at the grassroots level. To start, everyone must become aware of the symbol at the core of the disagreement. This is readily apparent to communities disputing Confederate statues. Next, unpacking the significance of the symbol can be done through many platforms. Communities may organize dialogue sessions led by professional facilitators who can help parties surface the personal importance of the symbol and who can ensure people listen to each other without judgment and feel heard for their emotional experience. A single session is rarely enough. In the experience of the authors, running at least four-to-five facilitated sessions with the same small group is sufficient to build trust and promote honest, deep conversation. The goal is to discover each side's mythos of identity – coming to understand the fundamental stories, memories, and images driving each side's emotions around the symbol (Kelman 2005).

There are rich examples of grassroots efforts to surface the emotional pain of enslavement and the role Confederate statues play in prolonging the wounds. For instance, schools and universities have organized ceremonies to commemorate slaves. Upon the discovery of over sixty-seven unmarked graves of slaves at its cemetery, the University of Virginia organized a memorial to recognize the historical role of slavery at the institution (Bromley 2014).

Legislative hearings have also provided a forum for parties to bear witness to each other's emotional experience. During a March 2020 debate over a Virginia House bill regarding the removal of Confederate statues, Virginia State Senators shared their emotional experience regarding the symbols. State Senator Mamie E. Locke choked back tears and could not continue after explaining that the statues "were erected as symbols of hatred. They were erected as symbols of Jim Crow." Her colleague, State Senator Jennifer L. McClellan, commented, "I think you all are witnessing the pain that some of these monuments inflicted on Virginia's black community. When you don't talk about trauma, it doesn't go away. It simmers until it can't be held back anymore" (Vozzella 2020). Indeed, the legislators were bearing witness to each other's emotional experience and, in doing so, charted a way forward. Senator Chap Petersen, whose ancestors had fought in the Confederacy, had initially been convinced to vote against the bill but voted to support it after hearing Locke and others speak: "We're coming to grips with a history, and I have my own opinions on it. But the bottom line is, this is part of a journey. And we're going to take a step on this journey. And we're going to hold hands on this journey as brothers and sisters" (Vozzella 2020). Regardless of the policy outcome, bearing witness prior to decision making is crucial to work through symbol conflict.

The last part of the method involves brainstorming approaches to deal with the symbol conflict in ways that respect each side's concerns for affiliation and autonomy. There are countless creative ways to deal with the issue of a statue such as keeping it in place, removing it, replacing it, moving the statue to a history museum, enlisting artists to create visual representations of the complex history, erecting counter monuments, or promoting dialogue groups and educational curricula to engage society in discussions around the significance of the symbol. The most important part of this process is engagement.

Even groups who symbolically represent antithetical conceptions of race relations still may benefit from exploring racial narratives. For example, the nonprofit organization called Coming to the Table seeks

to heal the wounds of slavery through a restorative approach involving uncovering history, making connections, working toward healing, and taking action. This group convenes what they call “family reunions” that bring together descendants of some of the largest slave owners in the South with descendants of those who were enslaved. Their goal is to create meaningful relationships and an environment where healing can occur, overcoming the deep intergenerational alienation and trauma reportedly felt on both sides of the racial divide.

In symbol conflicts, there will always be some people who are dissatisfied with the outcome – there are still individuals who grieve the end of the Swastika and abolition of slavery – but solutions will be more likely to stick if core identity narratives are mutually understood and acknowledged to the extent appropriate and possible.

### 11.5 Summary

Symbol conflicts may be non-negotiable if approached as a fixed-sum negotiation – either the statue stays up or falls down – but Relational Identity Theory opens a more constructive way forward. Parties focus not on the symbol itself but on its underlying emotional significance, creating an environment for collaborative problem solving that addresses each side’s concerns for autonomy and affiliation. Two complex symbol conflicts – the Macedonia Naming Dispute and Confederate Statues controversy – highlight the utility of this approach. The results of this study suggest that, while symbols can be the source of division, a restorative approach can reshape our relations and present a path to reconciliation.

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## Afterword

SARAH FEDERMAN

### 12.1 Fieldwork that Confounds Us

Scholars who spend extensive time in post-atrocity contexts increasingly articulate the messiness they see or experience. They meet people who both saved lives and took lives, maybe in retaliation. The acts do not add up to a singular identity of good or evil. Former child soldiers, taken and drugged and taught to kill before they could develop a moral compass of their own, provide an example of such complex characters. Elderly people searching their memories may recall in detail “good” and “bad” people on both sides of an atrocity. One of my interviewees, Daniel, for example, attributed his survival at Auschwitz to the kindness of a guard who moved him to kitchen work because his twelve-year-old body could not bear the manual labor. The access to soup and exemption from labor saved his life.

For outsiders, the cognitive dissonance one experiences hearing these stories may feel uncomfortable at first. They did not experience violence and suffering firsthand. So, it may be difficult for them to accept, for example, that a few Nazis helped Jews or that some Hutus – who did and did not participate in the Rwandan genocide – experienced torture. A colleague of ours, a Hutu, found himself thrown in a pit and covered in gasoline during the genocide. He was fourteen and not a participant in the killing. Spared the flame, he still bore the scars of war. Even while living in the United States, he received death threats when he shared his story. His fears were not unfounded. There is no room, many felt, for the pain of Hutus after the Tutsis had suffered so greatly.

As outsiders, perhaps we are at first afraid of this messiness, afraid that we too might be seduced by stories that rid us of moral certainty. Many of us came to work in the field of mass atrocity for the certainty and security it seemed to provide. While much of the world seemed ambiguous or apathetic, we land comfortably against genocide. What happens to

that certainty if we develop an understanding of how the act of killing comes to be? Does that make us in some way morally complicit or apologists? Many think yes. So, well-intentioned scholars hesitate to publish morally untidy findings that may hurt communities in need. We also fear being seen as an enemy of those who suffered. Our reasons for holding back are understandable, but the result is the same. We return to the security of binaries.

## 12.2 Survivors and Descendants

Survivors and their descendants also struggle to traverse the binaries of victim and perpetrator. When survivors withhold stories about the messiness of war, either out of shame or to protect their children, the next generation becomes vulnerable to the simplified versions of the past they hear outside the home. They then develop political and social views that reflect the distilled accounts of atrocity. These views, in turn, become part of collective memory through film, school curriculums, museums, and commemorative sites. Descendants of victimized groups may rise up in response to perceived weakness or confusion in their parents. Amidst this, the elders may stay quiet; it is just too hard to explain. They may be confused themselves, never having found a satisfying answer to the questions that haunted them for decades after, “Why me? Why us?” They may also fear retaliation from those in their own group with a sharper agenda. Or fear that speaking will reignite the original cause against them.

If survivors speak, descendants of the group that caused the harm may retract from any implied inherited guilt or responsibility they feel imposed upon them. Such intergenerational misalignments are not sources of mere contretemps but can have catastrophic results: The groups remain polarized, and the community becomes ripe again for violent conflict. The polarization also creates conditions for totalitarian leadership to take hold. Where the people are fractured, tyranny and corruption thrive.

## 12.3 Alternative Discourses

Some democratic leaders try to bridge these kinds of divides with discourses of unity, a shared future, and/or resilience. Unity discourses most often show up directly as calls for reconciliation. In the United States, President Biden offered such a call in his inaugural address, when he said,

“We can join forces, stop the shouting and lower the temperature. *For without unity there is no peace, only bitterness and fury.* No progress, only exhausting outrage. No nation, only a state of chaos. This is our historic moment of crisis and challenge, and unity is the path forward” (Biden 2021).

To discontented groups, calls for unity can sound like a request to give up their fight and join the other side, a group they have been taught to distrust. To those in power, unity could mean a loss of resources or status vis-à-vis the outgroup. Calls for unity encourage silence from those with more to say. Those who say “wait!” may be seen as the ones Steven Stedman called “spoilers,” breaking the peace. Unity can be a hard sell (Stedman 1997).

Along with unity, leaders may urge us to look forward to a shared future. At its best, this can lead to meaningful negotiations and bridging. But it too can backfire. An oft-heard refrain is: “Why can’t they just get over it and move on. They need to put the past behind them.” I overheard nearly these exact words while getting my hair cut in Victoria, British Columbia; it was a conversation about local Indigenous people’s grief over children’s graves discovered at the sites of former Indian residential schools. Letting go and looking forward seems like an obvious solution to those who felt none of the suffering. They haven’t experienced the consequences of on-going marginalization either; in fact, they may benefit from it.

Resilience discourses encourage traumatized groups to draw on their inner resources and develop stronger community ties to forge ahead. Just as militaries quickly repair wounded soldiers so they can serve again, new regimes tell wounded hearts to heal themselves so that the country can rebuild. A constructed, sanitary past is easier to move forward from. Messy truths leave us hobbling, slowing us down for the deeper healing that must occur.

There is no going back. Dialogues, laws to prevent future violence, commemorations, and trials all provide opportunities to hobble toward lasting, positive peace. At the same time, these discourses aimed at reconciliation and collective compassion can widen divides. As statutes topple, new commemorative sites appear, and school curriculums shift, those losing a privileged narrative position may balk. As new parties are added to the story, those who had center stage can feel sidelined, as though cut from a play that can only cast so many characters, under a spotlight that can only highlight one at a time. Not all are willing to step aside and make room. Sometimes advocacy against feared deletion or

marginalization is done quietly, in secret, in person, or online. They tell the stories the way they wish them to be told or say nothing. In doing so, they withdraw and insulate themselves from the larger discussion. They survive underground until the time is right.

## 12.4 The Peacebuilders

Peacebuilders who are engaged in multi-decade efforts know all too well the myths of the binaries. They know that otherwise loving people on both sides perpetuate divides in response to their own pain and on-going fear. Sulaima Khatib, a Palestinian who was imprisoned as a youth for stabbing an Israeli, talks openly about his journey toward collective liberation (Eilberg-Schwartz and Khatib 2021). An organization he co-founded, Combatants for Peace, carries its own inherent contradictions. Engaging in “combat” requires an enemy. The articulation of an enemy divides us yet again. Khatib’s commitment is to non-violent approaches to peace-building, a commitment borne of years of mentorship and study. Once released from prison, he continued to work through his own disappointments with the Israeli government, but just as often with Hamas and militant movements within the Palestinian community, with those whom he saw as perpetuating violence. Building the intergroup relationships necessary for peace took him far from his origins and even, for a time, away from his family. Khatib engaged in processes to help him heal from his own trauma, knowing that the struggle for peace is as much internal as external. You cannot take someone to a place you have never been. Although modeling an alternative to violence earned him a Nobel Peace Prize nomination, some Palestinians see him as betraying their cause. And while he can learn Hebrew, study the Holocaust, and make Israeli friends, he is not accepted by the Israelis either. He is still subjected to checkpoints and military interventions. His Israeli friends cannot protect him.

Those who work for peace often do this work with no guarantee of their safety or the safety of their families. Our friend, Dr. Adal Rhoubaid, special advisor to the President of Niger, remains a critical peacebuilder in the Sahel region. He holds the hands of the grieving, provides health advice, develops interethnic alliances, and even, when called in the middle of the night, helps people find their missing cattle. After a local tragedy, Rhoubaid writes to his people,

This morning I went to offer condolences to the survivors of the barbaric tragedy that hit Bakorat, Intazayen (Tilia Department) a few days ago.

If anyone can think they can transcribe or describe the immenseness of despair, sadness, of this population, they lie. I saw hills covered in graves. Common graves that can hardly be approached because of the smell of death. I've seen inconsolable widows and orphans (Facebook, March 26, 2021).

Knowing that the temptation to retaliate with guns is high and without being able to guarantee their security, Rhoubaid perpetually urges his people to choose non-violence. Peacebuilding is persuasion. Because you cannot influence those you rebuke, he cannot turn away from those who have inflicted harm. He needs them just to choose a different path. Because of this, he remains a threat to jihadist movements. The government cannot always protect him, nor can we.

### 12.5 Introducing Restorative Frames

Peacebuilders everywhere work against enormous odds. Armed individuals, proxy wars, corporate interests, state powers, and abundant arms in circulation leave peacemakers the perpetual underdog. Local peacebuilders who reach out to the other side to build bridges can be storied as traitors by their own communities. They are also extremely vulnerable. In January 2021, Dante Barksdale, a leading violence interrupter working on the streets of Baltimore, Maryland for over a decade was shot in the head and killed. The city mourns still. He was well-loved and not easily replaced. None are.

Embracing restorative approaches to violence can assist active peacemakers and scholars alike. Purely retributive responses to violence expose the acts and punish and often isolate the wrongdoers. Sending them away only increases the chances they and their supporters will further radicalize. Since 2016, the International Center for Counter Terrorism in the Hague has trained seventy-five prison staff in Mali to stymie extremist ideologies that otherwise proliferate among inmates. Restorative frameworks offer additional pathways to transformation. Restorative forms of justice give those who enacted the harm an opportunity to give back to those they harmed. In doing so, they build new identities and begin the difficult, albeit vital, work of re-entry.

Furthermore, if we, in the calm of the aftermath, enact harm on those who found themselves wrapped up in the frenzy of war, are we so much better? Those who visit at the US Holocaust Memorial Museum end their tour with a video of elderly survivors sharing their experiences. One man recalls seeing another pray during their deportation. He asked the

praying man, “How can you possibly still believe in God? And what could you possibly be praying for?” The man said, “I’m thanking God for not making me like them.” This offers a poignant reminder (and warning) not to become what we condemn.

A restorative frame keeps us mindful of the limits of legal justice. Not everyone who enacted harm in mass atrocity can be incarcerated for life, nor would that be ideal. Fania Davis, founder of Restorative Justice for Oakland Youth (RJOY), argues that verdicts alone also cannot heal or stop violence. “True justice,” she says, “means a holistic justice that recognizes harm, takes responsibility for harm, repairs harm and prevents recurrence” (Davis 2021). The truth telling, commemoration, investment, and apologies at the heart of restorative and transitional justice assist in this work. Fambul Tok, an organization in Sierra Leone, does this by working with both the harmed and those who enacted the harm during the country’s civil war. Community organizers engage with both parties to create truth-telling forums and opportunities for apologies.

Our artists, novelists, playwrights, musicians, and dancers give voice when the state blocks speech. In Indonesia, for example, a popular music group wove snippets of genocide survivor testimonies into one of their pop songs. This allowed the stories to circulate even though the Indonesian government still refuses to acknowledge the 1965 genocide. Street art, dance performances, and novels all provide venues for publics to work out the psychic wounds they share.

Colombian novelist Juan Gabriel Vásquez believes that great literature offers us a place to practice this work:

Literature, novelistic imagination, is the place, where we will try to suspend judgement in exchange for a kind of dangerous understanding. We try to understand the other, the enemy ... in a way that shakes our values ... [Novels] do not come out with a clear conclusion of any characters. Instead, they try to make us penetrate the reality of that character. A very particular understanding that doesn’t happen elsewhere ... The human passion for judging is left outside this place ... the answers to the questions happen elsewhere ... literature is content with finding the right questions to ask. (Vásquez 2021)

When I asked him how we get those most committed to violence to read his and other novels of this kind, he confessed that he didn’t know. Those blinded by rage or who construct lives around violence-inducing certainties will not likely curl up with a book and a cup of tea eager for a journey into complexity.



Allowing complexity offers opportunities to sidestep shame without impunity. Many people would rather die than experience the kind of shame and exclusion that follows perpetration of mass violence. Public humiliation and ostracism remain major fears for most people. Restorative processes focus on responding to the harm rather than shaming. This redirects the desire for revenge to individual and communal wounds – a vital shift to prevent on-going hatred and future violence. Process oriented restorative approaches ensure that all are treated with dignity as the community looks for meaningful forms of accountability. Donna Hicks, of the Weatherhead Center for International Affairs at Harvard University, learned from her work in various post-conflict contexts that lasting peace requires addressing dignity violations as well as material harm (Hicks 2011). You cannot gain people's trust, she says, if you do not treat them with dignity. Without trust, there can be no peace. Again, treating others with dignity does not mean impunity. Those who enacted the harm must work to repair the damage. But dignity does put an end to torture, solitary confinement, and execution.

## 12.6 Questioning Stories

Restorative frameworks invite the victimized community and others to reflect on their own hatred and possible contributions to the violence. Without condoning the violence, groups can think together how neighbor came to attack neighbor and what larger structural changes might be needed to prevent future outbreaks. Sorting out *victims*, *perpetrators*, and *heroes* can detract from this deeper work and even make it more difficult. Those storied as perpetrators rail against the cultural framing or live up to societal expectations. Those cast in the role of victim may cede their political power and agency to stay “pure” and worthy of assistance. Overemphasizing individual heroes can mask needed systemic changes.

We can prepare for this difficult post-conflict work by becoming more comfortable with this complexity in our daily lives. Each day we are confronted with opportunities to create, buy into, or dispel simplified stories. Whether on Twitter, in a faculty meeting, or when talking about the news at the dinner table, we either anchor into “Us” and “Them” thinking or explore. The allure of ingroup belonging – the intellectual and physical comfort it provides – tempts us to pick a side. In this mental quest for assurance and firm ground, we mentally delete disquieting information.

This work requires interrogating our certainty and then training others in this work. We ask ourselves, where did I get that information? Do I know whether it's true? What am I not seeing? What reaction does this information evoke in me? What behavior will that interpretation elicit? Who stands to gain if I react this way? What other reactions might be more productive in this moment? Am I adding aggression to the situation or setting us on a pathway to conflict transformation? Narrative approaches to conflict encourage us to pay attention to these questions in ourselves and others as material, because how we tell the story and cast characters tells us the likely next steps we will take (Federman 2016). Trained ears know quickly whether we are on a pathway back to war (verbal or physical) or building other forums to work out conflicts.

If this work is vital, why is it so rare? Whenever we interrogate our own narratives, we may feel lost for a moment. Am I sure this person is evil/wrong/purposefully causing harm/unsalvageable? How do I know? If they are not all evil, what does that mean about my own pain? Is there anything true being said on the other side? The transition from a polarizing framework to a broader one can be disorienting. When we guide others, they can easily become defensive. In the process, egos usually take a hit. Yet this opens new possibilities for alternative responses to post-atrocity peacebuilding. Detached from our certainties and understandable desires for revenge, we are better able to flow and find a better place to land than hate. Here Albert Einstein's words bear repeating, "We cannot solve our problems with the same thinking we used when we created them." We must untether ourselves from our polarities before we can untether others.

## 12.7 Stop the Super Spreaders

This work is not entirely internal. Interventions are possible with those who generate and amplify binary framings of people and groups. Rwanda's Radio Mille Collines broadcast messages advocating violence against the Tutsis. Recent findings show how they influenced others to carry their message for them. David Yanagizawa-Drott's (2014) detailed study of the Rwandan genocide found that "the broadcasts increased militia violence not only directly by influencing behavior in villages with radio reception, but also indirectly by increasing participation in neighboring villages. In fact, spillovers are estimated to have caused more militia violence than the direct effects" (1947). This is not dissimilar to a company launching an advertising campaign for a product in an effort

to eventually spread the message by word of mouth. They know friends and families trust each other more than they trust their company, so the idea is to start the ball rolling and hope others pick it up.

The introduction of social media and online communication creates new spreading opportunities of violent extremist ideas, extending reach at an increasing speed. Advocacy of violence resonates far beyond the boundaries of particular conflicts. In August 2021, for example, western extremists heralded the military success of the Taliban in Afghanistan as consistent with their own fight against liberal values (Scott 2021). Encrypted Telegram channels, online message boards (particularly 4Chan), and more mainstream platforms like Twitter and Facebook actively cross-pollinate hate solidarity, despite the platforms' inconsistent and often desultory efforts at content moderation.

Studies continue to show that disinformation or fake news is shared far more widely than reliable stories (Vosoughi et al. 2018). This occurs not only because of the heightened emotions associated with false stories, but also due to strategic manipulation of attention-grabbing content. Krafft and Donovan (2020, 196) find that, "Disinformation did not just spread on its own because it affirmed people's identities, rather it was the result of an intentional strategy to move the disinformation campaign through the larger media ecosystem." And further, "Open web forums are often used as basecamps for coordinating and planning disinformation campaigns" (197). The main goals of weaponized disinformation campaigns are to amplify already existing resentments and anxieties, "raise the emotional stakes of particular issues or foreground some concerns at the expense of others, stir distrust among potential coalition partners, and subtly influence decisions about political behaviors" (Nadler et al. 2018, 2). There is nothing new about propaganda that advocates hatred and violence, but new technologies lend it dramatically unprecedented speed, reach, and power.

Under these circumstances, it may come as no surprise that very few people tend to be involved at the origin of disinformation. When it comes to COVID, for example, the Center for Countering Digital Hate identified only a dozen people responsible for 65 percent of anti-vaccine disinformation online (CCDH 2021). So perhaps we simply need to interrupt the "typhoid Marys" of disinformation and hate, especially when charismatic leaders reach out to vulnerable populations. These super spreaders are not only dangerous to those they immediately reach, but to those who listen to those they reach. Purveyors of strategic disinformation sew discord and then avoid responsibility for it through

the same methods by which they poison the media ecosystem to begin with. It is not just the structures of platforms that encourage the spread of lies and vituperations; the strategic dissemination of disinformation is intended to create the kind of mass confusion that sends everyone into their bubbles, believing and trusting no one outside of them.

## 12.8 How Do We Know?

How do we know if our interventions entrench binaries or embrace complexity?

Peter Coleman, a social psychologist and researcher in the field of conflict resolution, found that when issues are presented as pro-con, the outcomes are more contentious. In contrast, when issues are presented as complicated and multidimensional, the resulting conversations reflect more balanced understanding of the issues (Coleman 2021). Therefore, we can look at how we are framing the issues we mean to engage. We can also think about how we frame the questions we pose to interviewees. Notetaking and journaling separately about our own feelings helps us process contradictory information without jumping to easy answers. We can ask ourselves and others complicating questions such as, “was there ever a time when these groups got along?” or “was there ever anyone on the other side who helped you?” “Were there any decisions that you would make differently looking back?”

The chapters in this book encourage scholars and practitioners to write honestly about what they find, even when these findings make us uncomfortable or disappointed in a person or a group that we support. We can accept that, yes, in some circumstances, perpetrators can be victims and vice versa. Heroes can be reassessed as complicit and compromised. Accepting this more accurate representation of the narrativized identities of violence presents a conundrum for accountability and justice mechanisms that are premised on clear roles. But this does not mean we have to slip into legalism. International tribunals, truth and reconciliation commissions, rehabilitation programs, and NGO-based social movements create opportunities for richer explorations of mass violence. By bringing the literature on perpetration and the more recent field of victim studies into conversation with one another, we support scholarship at the messy middle. Supporting long-term positive peace requires understanding the narrative dynamics within and between groups. The blurring of victim- and perpetrator-boundaries and greater acknowledgement of their overlapping roles can be a crucial part of peacebuilding processes.

We have much to gain through sustained attention to transitions and ambiguities in the actions and identities of participants in violence. For this reason, the contributors to this volume have each paid close attention to how people talk about conflict. This includes not only how people talk about participating groups and individuals, but how those individuals and groups talk about themselves and others. This discourse tells us what groups might do next. Even some of the most ideal (innocent and pure) victims are not incapable of harm; even the most elevated and ennobled hero can have human flaws or even use their celebrity as a cover for mass crime; and even the most horrific perpetrator may have the potential to contribute to social restructuring or, at the very least, to our understanding of the human proclivity toward violence. How we engage with and talk about them influences how the stories continue to unfold.

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