

LESSONS FROM TRUTH AND RECONCILIATION COMMISSIONS IN SOUTH AFRICA, KENYA, AND THE UNITED STATES FOR TRANSITIONAL AND RESTORATIVE JUSTICE

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This article studies the rhetoric of truth commissions in South Africa and Kenya, as well as a proposal for a commission in the United States, to better understand how truth commissions contribute to the formation of new national communities. Drawing on rhetorical methods and the theoretical perspective of decoloniality, I argue that truth commissions can offer new ways of understanding national community. Along the way, my analysis refigures key terms in the work of truth commissions: truth, reconciliation, justice, and—through all of these—national unity. I conclude by discussing the problems of applying established frameworks – transitional and restorative justice – in disparate contexts. Ultimately, I challenge scholars and practitioners to instead consider how particular cases can transform our understanding of these very concepts and frameworks.

Section I of this paper sets up the above argument. Section II describes the invention and rise in popularity of truth commissions within the framework of transitional justice. Section III reviews the contributions of rhetorical scholarship to the study of truth commissions and describes the theoretical and methodological framework of my analysis. Section IV analyzes the rhetoric of truth

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commissions in South Africa and Kenya and a proposed commission in the United States. Section V discusses the contributions and implications of this analysis for the practice and theory of both transitional justice and restorative justice.

I. INTRODUCTION

In 1993, after almost a decade of negotiations, South Africa passed an interim constitution to facilitate its transition from apartheid to democracy. The interim constitution established the nation's new democratic principles: including a framework for elections, structure for government, parameters and rights of citizenship, and procedures for writing the final constitution. In its postamble, it also called for further action:

“This constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past.”¹

The interim constitution, and the elements of democracy contained therein, provided “a historic bridge” or a “secure foundation . . . to transcend the division and strife of the past,” but achieving the bright future envisioned by the postamble required more; it required “reconciliation between the people of South Africa and the reconstruction of society.” Responding to the postamble’s mandate for reconciliation, the South African parliament passed the Promotion of National Unity and Reconciliation Act (PNURA), establishing the now famous Truth and Reconciliation Commission (TRC). To fulfill the postamble’s vision, the PNURA tasked the TRC with the primary objective of promoting “national unity and reconciliation in a spirit of

¹ S. AFR. (INTERIM) CONST. 1993.

understanding which transcends the conflicts and divisions of the past.”²

With such widely appealing ambitions as unity, reconciliation, peace, and democracy, the TRC has unsurprisingly captivated international attention.³ The TRC was, according to Claire Moon, “a striking paradigmatic moment in the development of what has since emerged as a burgeoning industry, both in theory and praxis, as the politics of reconciliation. . . . Since the TRC’s highly publicized operation, reconciliation is now a popular and widespread discourse governing the various contexts within which regime change or transition from conflict occurs.”⁴ Although truth commissions first developed in Latin America in the 1980s, the TRC has attracted greater international attention than any other truth commission, largely due to its highly public nature and ambitious mandate. Generally speaking, truth commissions are official bodies that investigate and report on a pattern of human rights abuses with the purpose of addressing the past and transforming the present and future.⁵ Although they are not without their critics, truth commissions have become staple mechanisms of transitional justice and are celebrated the world over.⁶ Transitional justice expert Priscilla Hayner writes, “[i]n

² Promotion of National Unity and Reconciliation Act 34 of 1995 § 3 (S. Afr.).

³ See generally UNIVERSITY OF WITWATERSRAND & SOUTH AFRICAN HISTORY ARCHIVE, TRACES OF TRUTH: SELECT BIBLIOGRAPHY OF THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION (TRC) (2006) (including a 43-page list of “select” articles, books, book chapters, and theses published on the TRC as of 2006; however, this does not include the numerous news articles, creative works, and other popular commentary on the TRC, nor anything published in the last decade).

⁴ Claire Moon, *Narrating Political Reconciliation: Truth and Reconciliation in South Africa*, 15 SOC. & LEGAL STUD. 257, 258 (2006).

⁵ PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 11 (2010) (defining a truth commission according to four criteria: “(1) truth commissions focus on the *past*; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these commissions are officially sanctioned, authorized, or empowered by the state.”).

⁶ Indeed, many proponents of truth commissions also discuss their weaknesses and failures and suggest truth commissions should be one part of a more comprehensive strategy. Compare Sharon F. Lean, *Is Truth Enough? Reparations and Reconciliation in Latin America*, in POLITICS OF THE PAST: ON REPAIRING HISTORICAL INJUSTICES 169, 169–92 (John Tropey ed., 2003), and Mahmood

virtually every state that has recently emerged from authoritarian rule or civil war, and in many still suffering repression or violence but where there is hope for a transition soon, there has been interest in creating a truth commission.”⁷

Much of this celebration is surely due to the parallel language of truth commissions and language of liberal democratic culture. Consider again the postamble’s vision the TRC was designed to achieve—“a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans.” Additionally, as Bradford Vivian demonstrates in *Commonplace Witnessing*, “witnesses and institutions of witnessing are normal fixtures of Western public culture.”⁸ More than simply being widespread, bearing witness, Vivian argues, has become a valuable “resource of moral reasoning and public deliberation.” Thus, we see the attraction of both the goals and practices of the TRC in liberal democratic culture.

Responding to the TRC’s own language and to the language of its founding, scholars and practitioners have typically interpreted and evaluated the success of the TRC—and truth commissions more generally—through the terms and parameters of Western liberal democracy. Proponents of truth commissions suggest truth telling “promotes and strengthens democratic institutions, practices, and values.”⁹ Priscilla Hayner argues, “A truth commission can play an important role in a transition, either by affirming a real change in the human rights practices of the government and a respect for the rule of law in the country, or by helping to legitimize or strengthen the authority and popularity of a new head of state, or both.”¹⁰ By

Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa*, 32 *DIACRITICS* 33 (providing a striking and perceptive critique of the TRC), with Michael Ben-Josef Hirsch et al., *Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global ‘Success’ of TRCs in Local Perspective*, 47 *COOPERATION & CONFLICT* 386 (2012) (arguing there is a need for “more critical, interactive, and inclusive mechanisms” to assess the impacts and successes of truth commissions, but not aiming to either promote or criticize truth commissions).

⁷ See HAYNER, *supra* note 5, at 18.

⁸ BRADFORD VIVIAN, *COMMONPLACE WITNESSING: RHETORICAL INVENTION, HISTORICAL REMEMBRANCE, AND PUBLIC CULTURE* 5 (2017).

⁹ David Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?*, 6 *INT’L STUD. REV.* 355, 361 (2004).

¹⁰ Priscilla B. Hayner, *Commissioning the Truth: Further Research Questions*, 17 *THIRD WORLD Q.* 19, 22 (1996).

acknowledging the truth of past crimes and human rights abuses, truth commissions are seen as providing some measure of accountability and justice, especially in contexts in which trials and traditional forms of retributive justice are not possible. “By promoting justice,” David Mendeloff argues, “truth-telling helps consolidate the rule of law, the pillar of democracy.”¹¹ Truth commissions, according to this scholarship, facilitate transition through changing human rights practices, establishing the rule of law, and legitimizing democratic institutions and authorities.

The TRC has drawn the attention of rhetorical scholars precisely because of its contribution to South Africa’s transition to democracy, and it has largely been interpreted according to the values of deliberative democracy and through the lens of public sphere theory—the two subfields of rhetorical studies most aligned with liberalism.¹² Katherine Elizabeth Mack, for example, argues, “The TRC’s attempt to create a public for the new nation—one comprising individual citizens engaging in reasoning about the significance of South Africa’s recent past—reveals much about the relationship of language practices and the formation of publics.”¹³ The TRC, according to Mack, was a “success” because it “provoked contentious debate and thus contributed to the creation of an agonistic deliberative public sphere.”¹⁴ Phillipe-Joseph Salazar goes so far as to argue the TRC turned South Africa into an “African Athens” and “offers a remarkable stage for a *replay* of the great themes of public deliberation and the rise of postmodern rhetorical democracy.”¹⁵

Because the TRC uses the language of democratic liberalism, it has been all too easy to map the assumptions of Western liberalism,

¹¹ See Mendeloff, *supra* note 9, at 361.

¹² The titles of several of these works are indicative of this. See, e.g., PHILIPPE-JOSEPH SALAZAR, *AN AFRICAN ATHENS: RHETORIC AND THE SHAPING OF DEMOCRACY IN SOUTH AFRICA* (2002); RICHARD C. MARBACK, *MANAGING VULNERABILITY: SOUTH AFRICA’S STRUGGLE FOR A DEMOCRATIC RHETORIC* (2012); KATHERINE ELIZABETH MACK, *FROM APARTHEID TO DEMOCRACY: DELIBERATING TRUTH AND RECONCILIATION IN SOUTH AFRICA* (2014); THOMAS A. MORIARTY, *FINDING THE WORDS: A RHETORICAL HISTORY OF SOUTH AFRICA’S TRANSITION FROM APARTHEID TO DEMOCRACY* (2003).

¹³ MACK, *supra* note 12, at 8.

¹⁴ *Id.* at 9.

¹⁵ SALAZAR, *supra* note 12, at xix.

and the rhetorical theory based on these assumptions, onto the TRC.¹⁶ Yet, as Eric Duxtader warns, when assessing the mechanics of transition, “appeals to such goods as collective interest, constitutionalism, justice, and natural rights may indicate theorists have presupposed precisely that which they seek to explain.”¹⁷ In other words, captivated by the ostensibly self-evident virtue of terms such as “justice,” “unity,” and “democracy,” scholars have presupposed that such terms have universal reference, as if they do similar work in the context of apartheid, Athenian democracy, western liberalism, and public sphere theory. For Salazar, the TRC is a “replay” of ancient Athens. This tendency gives expression to a colonial logic whereby phenomena in the majority world become knowable only by western categories.¹⁸ The TRC was meant to be transformative and worldmaking, but interpreting its pursuit of a new society based on pre-determined conceptions of the practices, norms, and values that should define that society risks obscuring its transformative potential. To see truth commissions only as iterations of Athens, exemplars of a public sphere, or late expressions of liberalism is a profound misreading. It is a misreading grounded both in an inattention to the particularity of truth commissions and an over-confidence in the universal applicability of western thought.

The stakes of this slippage between the particularity of truth commissions and the assumed universality of western liberalism are cast in bold relief by the theoretical perspective of decoloniality. While the formal period of colonialism ended through revolutions and

¹⁶ See MACK, *supra* note 12, at 7–8 (noting that the language of the PNURA echoed “the Sophistic emphasis on the role of human perception as the primary source of knowledge, on the significance of speaking before others, and, finally, on the necessity of group deliberation.”).

¹⁷ Eric Duxtader, *Making Rhetorical History in a Time of Transition: The Occasion, Constitution, and Representation of South African Reconciliation*, 4 RHETORIC & PUB. AFF. 223, 224 (2001).

¹⁸ I use the term “majority world” instead of others such as “third world” (which is historically outdated and inaccurate) or “developing countries” (which invokes a hierarchy of developing and developed countries and may imply “developing countries” are developing or want to develop along the same track as those “developed countries”) to call attention to the fact that countries and cultures typically thought of as part of “the west” are a small minority. Many decolonial scholars use the term “global south.” See COMAROFF & JOHN L. COMAROFF, *THEORY FROM THE SOUTH: OR, HOW EURO-AMERICA IS EVOLVING TOWARD AFRICA* 45–49 (2016); Caroline Levander & Walter D. Mignolo, *Introduction: The Global South and World Dis/Order*, 5 THE GLOBAL SOUTH 1, 1 (Spring 2011).

independence movements throughout the nineteenth and twentieth centuries, the concept of coloniality emphasizes that modern paradigms of knowledge and knowledge production are neither universal nor identity-neutral interpretations of an objective reality. Rather, they reflect and extend the power and epistemic violence of colonial domination. On this score, the presumed universality of Western liberalism, and the capacity to read the TRC as a replay of Athens or a paradigmatic instance of the public sphere, extends colonial logics. In addition to recognizing the coloniality of modern paradigms of knowledge, decolonial scholarship also seeks to articulate alternative concepts by privileging the epistemic perspectives of heretofore marginalized positions.¹⁹

Although the TRC frequently invoked the language of democratic liberalism, its practices do not map cleanly onto the liberal democratic framework. In this article, I argue that by studying the rhetoric of truth commissions in particular contexts—South Africa, Kenya, and a proposal in the United States—we might better understand how these institutions have contributed to the formation of new national communities. Truth commissions, I argue, delink the concept of national unity from its dominant understanding in Western liberal thought and within rhetorical scholarship: a nation constituted by individual citizens united by an attachment to democratic institutions, practices, and norms. Walter Dignolo describes delinking as the “means to change the terms and not just the content of the conversation”; it means bringing “to the foreground other epistemologies, other principles of knowledge and understanding and, consequently, other economy, other politics, and other ethics.”²⁰ In my analysis, I suggest how truth commissions imagine other forms of community based on how they articulated their contributions to and pursued national unity. Along the way, my analysis also refigures key terms in the work of truth commissions: truth, reconciliation, justice, and—through all of these—national unity. This argument has

¹⁹ See Nelson Maldonado-Torres, *On the Coloniality of Being: Contributions to the Development of a Concept*, 21 *CULTURAL STUD.* 240, 260–61 (2007); Walter D. Dignolo, *Delinking: The Rhetoric of Modernity, the Logic of Coloniality and the Grammar of De-Coloniality*, 21 *CULTURAL STUD.* 449, 450–53 (2007); Aníbal Quijano, *Coloniality and Modernity/Rationality*, 21 *CULTURAL STUD.* 168, 171–72 (2007).

²⁰ Dignolo, *supra* note 19, at 453, 459.

important implications for the application of transitional and restorative justice frameworks in disparate contexts.

II. TRUTH COMMISSIONS IN TRANSITIONAL JUSTICE AND RHETORICAL STUDIES

There has emerged an enormous and growing body of literature on truth commissions. Jonathan Tepperman remarked in a 2002 article in *Foreign Affairs* that “the truth business, in short, is booming” and “a new academic discipline has sprung up to study the commissions.”²¹ The study of truth commissions, in truth, spans numerous academic disciplines; however, it has largely been centered within the field of transitional justice. Thus, I begin by situating our understanding of truth commissions within the evolution of transitional justice. Understood as mechanisms of transitional justice, truth commissions have largely been understood in relation to the goals, values, and concepts associated with this framework. I then turn to scholarship on truth commissions within rhetorical studies to demonstrate how a focus on the language and symbolic practices of truth commissions can contribute to our understanding of them. While both fields have made important contributions to understandings and practices of truth commissions, within both transitional justice and rhetorical studies, scholars and practitioners have primarily interpreted truth commissions as mechanisms intended to achieve a “transition to democracy.” Thus, in the next section I describe how the theoretical perspective of decoloniality guides my methodological approach, which seeks to delink from this paradigm.

A. *Transitional Justice*

While transitional justice includes “a range of legal regimes and mechanisms,” truth commissions have become central to this field of practice, study, and discourse.²² The conceptual history of transitional justice has largely been shaped by international legal norms, global human rights discourse, and the goal of democratization. Thus, understanding how truth commissions developed within the broader evolution of transitional justice helps explain how they have been

²¹ Jonathan D. Tepperman, *Truth and Consequences*, 81 FOREIGN AFF. 128, 129 (2002).

²² Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'*, 3 INT'L J. OF TRANSITIONAL JUST. 5, 8 (2009).

interpreted in terms of democratic ends and why they have been understood as, or why there has been a push for them to be, global institutions.²³

International law and transitional justice expert, Ruti Teitel locates the origin of transitional justice in the model of justice that emerged after World War II and the Nuremberg Trials.²⁴ This model is characterized, according to Teitel, by two innovations: the turn from national to international law, which was thought to be a better guarantor of the impartiality associated with the rule of law, and the extension of international law beyond the state to the individual.²⁵ Although truth commissions mark a drastic turn from Nuremberg-style tribunals, the legacy of this origin is still evident in contemporary practices of truth commissions and transitional justice more broadly, particularly the emphasis on international legal norms and the rule of law. As Teitel notes, “The profound and permanent significance of the Nuremberg model is that by defining the rule of law in universalizing terms, it has become the standard by which all subsequent transitional justice debates are framed.” Even as national mechanisms of transitional justice have become more common than international trials, “international legal norms serve to construct a perception of continuity and consistency in the rule of law.”²⁶ In addition to direct intervention by foreign governments and donors and international organizations, the influence of international legal norms is perhaps most evident in the dominance of human rights discourse and the “focus on an inherent right to truth in existing human rights law.”²⁷

²³ For a more thorough analysis of the development of transitional justice, see Paige Arthur, *How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RTS. Q. 321 (2009); Bell, *supra* note 22, at 5–27; Neil J. Kritz, *Where We Are and How We Got Here: An Overview of Development in the Search for Justice and Reconciliation*, in THE LEGACY OF ABUSE: CONFRONTING THE PAST, FACING THE FUTURE 21, 21–45 (Alice H. Henkin ed., 2002); Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69 (2003).

²⁴ See Teitel, *supra* note 23, at 72–74.

²⁵ *Id.* at 73.

²⁶ *Id.* at 76.

²⁷ Priscilla B. Hayner, *Fifteen Truth Commissions – 1974 to 1994: A Comparative Study*, 16 HUM. RTS. Q. 597, 611 (1994). See generally Makau wa Mutua, *Hope and Despair for a New South Africa: The Limits of Rights Discourse*, 10 HARV. HUM. RTS. J. 63 (1997) (discussing the influence of foreign and international actors and the dominance of human rights discourse in South Africa’s transition from apartheid); see also Moon, *supra* note 4, at 260.

Although the origins of transitional justice may be identifiable in the post-World War II era, the term “transitional justice” and the field as it is understood today emerged in the late 1980s and early 1990s—the period Samuel Huntington has described as the third wave of democratization—in debates over how new democratic regimes in Eastern Europe and Central America should address the human rights abuses committed by their authoritarian predecessors.²⁸ Paige Arthur explains, “[t]hese political shifts were understood as taking, or were hoped to take, a particular form: transitions to democracy.”²⁹ The understanding of transition as “transition to democracy,” Arthur argues, was “the dominant normative lens through which political change was viewed” and fundamentally “shape[d] the conceptual contents of [the] new field” of transitional justice.³⁰

Arthur gives a detailed genealogical account of how this normative lens of “transition to democracy” developed and what it entails. For the purposes of this article, I will summarize how two major components of this normative lens—democracy and transition—shaped the field of transitional justice according to the colonial logics I described earlier and provide the impetus for delinking from this framework. First, the assumption within transitional justice that democracy is a universal goal “had important effects for the kinds of justice claims that were considered legitimate” in transitional contexts.³¹ Given the political constraints and fragility of these contexts, transitional justice is understood as “imperfect and

²⁸ See generally, SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991). See also Bell, *supra* note 22, at 7 (discussing the origins of transitional justice in this time period). These debates included “interactions among human rights activists, lawyers and legal scholars, policymakers, journalists, donors, and comparative politics experts” and also occurred within a series of international conferences: the 1988 Aspen Institute conferences, “State Crimes: Punishment or Pardon,” the 1992 Charter 77 Foundation conference, “Justice in Times of Transition,” and the 1994 Institute for Democracy in South Africa conference. Arthur, *supra* note 23, at 324–25.

²⁹ Arthur, *supra* note 23, at 336.

³⁰ *Id.* at 324–25. Paul Gready and Simon Robins argue more pointedly, “Transitional justice has become part of a hegemonic discourse that links development and peacebuilding to a liberal statebuilding project that sees liberal democracy as its endpoint.” Paul Gready & Simon Robins, *From Transitional to Transformative Justice: A New Agenda for Practice*, 8 INT’L J. OF TRANSITIONAL JUST. 339, 341 (2014).

³¹ Arthur, *supra* note 23, at 357.

impartial.”³² When forced to choose among imperfect options, the goal of democracy prioritizes reforming legal and political institutions, establishing the rule of law, and protecting the individual rights of citizens. In this view, truth commissions are interpreted as legitimate justice initiatives in so far as they support the rule of law by providing some accountability for the past, fulfill victims’ rights to truth, and make recommendations for future institutional reform. This model risks excluding, or at the least de-emphasizing, other types of justice claims, such as claims for distributive justice or broader social transformation. Paul Gready and Simon Robins argue that because transitional justice-building project that sees liberal democracy as its endpoint,” it prioritizes “the creation of institutions over a contextualized engagement with the welfare of the population, creating ‘empty’ institutions paralyzed by a lack of capacity rather than responding to the everyday needs of the new state’s citizens.”³³ One might imagine instead what types of claims and efforts would be pursued in a transition to socialism, for example, or—thinking beyond a particular form of government—a transition to peace, to equality, or to living together with compassion.

Second, the paradigm of *transition* focuses on a discrete period of time—the time of transition between regimes or establishing the stability of a new regime. The narrow focus on a transitional time obscures continuities of violence. Arthur points out that even “in many long-standing liberal democracies. . . there remain important questions of ‘historical justice,’ which is discussed typically in cases where there has been long-term, systematic marginalization, often over centuries.”³⁴ The legacies of slavery and structures of racism for African-Americans and of settler colonialism for indigenous peoples are notable examples. As transitional justice developed within the context of a wave of countries gaining independence from colonial powers, the focus on a discrete transitional time that marked a break between past and present obscured the enduring violence of coloniality. In addition to ignoring historic and structural violence, the focus on a transitional time also contributes to the emphasis, mentioned earlier, on immediate institutional reforms instead of a longer process of broader social reform. Gready and Robins observe, “Transitional justice mechanisms have not usually investigated

³² Teitel, *supra* note 23, at 76.

³³ Gready & Robins, *supra* note 30, at 341.

³⁴ Arthur, *supra* note 23, at 361–62.

structural inequalities that underpin poverty and conflict, nor provided remedies, redress or accountability for economic and social rights violations.”³⁵

The advent and rise in popularity of truth commissions occurred within this context, along with these debates that founded and shaped the field of transitional justice. Argentina’s National Commission on the Disappeared (Comisión Nacional para Desaparición de Personas, or CONADEP), established in 1983, was the first truth commission to receive international attention and became the basis for many future commissions, including in South Africa.³⁶ As described earlier, the South Africa TRC, established in 1995, was a “paradigmatic moment” in the development of truth commissions and evolving field of transitional justice, as it established a nexus between truth and reconciliation.³⁷ It was only the second truth commission to use the term “reconciliation” in its name, following Chile’s National Commission for Truth and Reconciliation, established in 1990. South Africa’s public hearings—the first of their kind—and controversial decision to offer amnesty in exchange for testimony threw it into the international spotlight. The South African TRC marked a “paradigm shift” in the field of transitional justice; the primary aim shifted from accountability to “a range of political and social goals,” most notably reconciliation, and truth commissions became central to the theory and praxis of transitional justice.³⁸ Truth commissions have since become institutionalized at the global level. Although the exact number of truth commissions established to date varies according to definitional criteria, approximately 30 to 50 truth commissions have been

³⁵ Gready & Robins, *supra* note 30, at 346.

³⁶ The 1974 Commission of Inquiry in the Disappearance of People in Uganda since January 25, 1971 is now widely regarded as the first truth commission, but it received little attention at the time. The commission was established by Idi Amin to investigate disappearances committed by his own military forces. As a result of working under the very government it was investigating, the commission was backed by little political will, none of its recommendations were implemented, and its report was never published. Consequently, the commission was largely forgotten at the time. Bolivia also established a truth commission prior to Argentina, in 1982. However, it also suffered from a lack of political will and resources and had little visible influence, including no final report. See Hayner, *supra* note 27, at 611–15.

³⁷ Moon, *supra* note 4, at 258.

³⁸ Bell, *supra* note 22, at 9.

established across the globe.³⁹ Moreover, leading international human rights organizations, such as Human Rights Watch and Amnesty International, and the United Nations have officially endorsed and advocated for truth commissions in numerous cases. Yet, even as truth commissions represent the expansion of transitional justice to include “a range of political and social goals beyond accountability,” the *transition to democracy* framework continues to influence how transitional justice and its associated mechanisms are understood and evaluated.⁴⁰

A brief analysis of how scholars within the field of transitional justice define truth commissions demonstrates the persistence of this framework. Without question, the most widely cited definition comes from leading transitional justice expert, co-founder of the International Center for Transitional Justice, UN human rights adviser and transitional justice expert, and consultant for several truth commissions, Priscilla Hayner.⁴¹ Hayner defines *past*; (2) they investigate a pattern of abuses over a period of time, rather than a specific event; (3) a truth commission is a temporary body, typically in operation for six months to two years, and completing its work with the submission of a report; and (4) these commissions are officially sanctioned, authorized, or empowered by the state.”⁴² For the purposes of this project, it is less relevant to establish a concrete definition to determine what does and does not count as a truth commission—Hayner herself is inconsistent in her application of these criteria—than it is to reflect on how these definitional criteria demonstrate the dominance of the transition to democracy framework of transitional justice.⁴³

First, regarding Hayner’s first two criteria, truth commissions are established to investigate a pattern of abuses in the past. A focus on

³⁹ See generally HAYNER, *supra* note 5 (providing a comprehensive overview of prominent commissions); see generally AMNESTY INT’L, COMMISSIONING JUSTICE: TRUTH COMMISSIONS AND CRIMINAL JUSTICE 5–28 (2010), <https://www.amnesty.org/download/Documents/40000/pol300042010en.pdf> [<https://perma.cc/M5GC-TX2E>] (listing an approximation of truth commission cases).

⁴⁰ Bell, *supra* note 22, at 9–10.

⁴¹ See Eric Brahm, *What is a Truth Commission and Why Does it Matter?*, 3 PEACE & CONFLICT REV. 1, 3–5 (2009) (providing an overview of how several scholars have adopted this definition, some with slight modifications or elaborations).

⁴² HAYNER, *supra* note 5, at 14.

⁴³ See generally Brahm, *supra* note 41 (providing comprehensive overviews and discussions of these definitional discussions and debates).

patterns of abuses, as opposed to a criminal trial's focus on single acts or events, has the potential to illuminate systemic forms of violence. However, the focus on the past aligns with the notion of a discrete transitional time—a break between past and present, violence and democracy, conflict and post-conflict—and risks ignoring how patterns of abuses or the legacy of these patterns continues in the present and future. The very establishment of a truth commission is intended “to signal a clear break from the practices of the former regime and the new regime's commitment to the rule of law”⁴⁴

Hayner also describes truth commissions as temporary bodies that conclude with the production of a final report.⁴⁵ Again, the temporary nature of truth commissions confines them to a specific transitional time; they are understood as operating in the liminal time between a violent past and a new democratic future, as a stopgap until a more ideal system of justice can be established and pursued. Additionally, the understanding of truth commissions as temporary and concluding with the production of a final report emphasizes only the specific activities undertaken by the commission during its finite time of operation and ignores how its activities and legacy may continue to reverberate and shape a society beyond the life of the commission itself.

Finally, Hayner defines a truth commission as officially sanctioned by the state.⁴⁶ As Eric Brahm observes, this criterion excludes numerous commissions that have been established by civil society groups.⁴⁷ Additionally, it unduly ties the practices and functions of truth commissions to strengthening the state. While the goals of transitional justice and of truth commissions may have expanded from a strict focus on accountability, “above all, truth commissions are [still] associated with multiple democratizing effects” and establishing the legitimacy of the new regime.⁴⁸ The common definitional parameters of truth commissions illuminate how

⁴⁴ Hirsch et al., *supra* note 6, at 387.

⁴⁵ In the second edition of *Unspeakable Truths*, Hayner revises this criterion to state that a truth commission has the *aim* of concluding with a final report. HAYNER, *supra* note 5, at 11–12.

⁴⁶ While Hayner's definition allows some ambiguity, as a state could informally authorize or empower a commission, other scholars who have used variations of Hayner's definition that specifically require the commission to be established by an official authority. Brahm, *supra* note 41, at 4.

⁴⁷ *Id.* at 6.

⁴⁸ Hirsch et al., *supra* note 6, at 387.

the transition to democracy paradigm has led scholars and practitioners to interpret and evaluate truth commissions in diverse contexts according to Western liberal democratic values. Thus, it demonstrates the need to delink from this framework, which drives my methodological approach.

B. Rhetorical Scholarship on Truth Commissions

While scholars and practitioners within the field of transitional justice tend to define truth commissions according to formal and structural characteristics and evaluate their success by the existence of democratic institutions, rhetorical scholars—along with scholars in linguistics, performance studies, English, sociology, and psychology, among other fields—concentrate on the role of language and performance.⁴⁹ Truth commissions are founded on a belief in the transformative and world-making capacity of language, which a rhetorical analysis places at its center. Katherine Elizabeth Mack describes truth commissions as “rhetorical experiments, real-world efforts to enact change in the uncertain realm of contingent human affairs via our primary medium of exchange: language.”⁵⁰ Accordingly, Mack concludes “a rhetorical mode of analysis is especially suitable for a rhetorical situation.”⁵¹ Several rhetorical scholars, including Mack, Erik Doxtader, Philippe Salazar, Thomas Moriarty, and Richard Marback, have made important contributions to the body of literature on the TRC, and James Beitler and Laura Michael Brown have both studied the Greensboro Truth and Reconciliation Commission, a grassroots commission established in Greensboro, North Carolina in 2004.⁵² This scholarship suggests how

⁴⁹ See generally Zannie Bock, ‘Language has a Heart’: Linguistic Markers of Evaluation in Selected TRC Testimonies, 3 J. MULTICULTURAL DISCOURSES 189 (2008); CATHERINE COLE, PERFORMING SOUTH AFRICA’S TRUTH COMMISSION: STAGES OF TRANSITION (2010); Belinda Bozzoli, *Public Ritual and Private Transition: The Truth Commission in Alexandra Township, South Africa 1996*, 57 AFR. STUD. 167 (1998); Pumla Gobodo-Madikizela, ‘Language Rules’: Witnessing About Trauma on South Africa’s TRC, 8 RIVER TEETH: J. NONFICTION NARRATIVE 25 (2007); Moon, *supra* note 4; Mark Sanders, *Truth, Telling, Questioning: The Truth and Reconciliation Commission, Antjie Krog’s Country of My Skull, and Literature After Apartheid*, 46 MOD. FICTION STUD. 13 (2000).

⁵⁰ MACK, *supra* note 12, at 5.

⁵¹ *Id.*

⁵² See generally JAMES EDWARD BEITLER III, REMAKING TRANSITIONAL JUSTICE IN THE UNITED STATES: THE RHETORICAL AUTHORIZATION OF THE GREENSBORO TRUTH AND RECONCILIATION COMMISSION (2013); LAURA MICHAEL BROWN,

a rhetorical approach might contribute to existing legal and policy studies on truth commissions. However, it also demonstrates the dominance and constraints of the transition to democracy paradigm, even within rhetorical scholarship.

Erik Doxtader's rhetorical history of reconciliation's role in South Africa's transition responds to the institutionalization and globalization of reconciliation in the TRC—the tendency of the international community to view truth commissions, modeled after the TRC, as one-size-fits-all solutions to bring about reconciliation. Doxtader traces how “reconciliation preceded, conditioned, and followed the transition from apartheid to constitutional democracy” in South Africa. He demonstrates that reconciliation did not begin or end with the TRC; nor can it be institutionalized and reproduced with truth commissions modeled after the TRC.⁵³ Reconciliation is a rhetorical practice that—like all rhetorical practices—changes with time and place, history, and political and social context. “We cannot do with the banal notion that reconciliation appeared out of thin air, a concept without deep roots or a practice that has not been thoughtfully contested on the South African landscape,” Doxtader contends.⁵⁴ James Beitler, in his analysis of the Greensboro Truth and Reconciliation Commission, demonstrates how the language of transitional justice has become “a transnational rhetorical tradition” that is used by truth commission advocates.⁵⁵ For Mack, recognizing “the TRC was a response to the particularities of a negotiated transition, not the realization of an abstract theory of truth and reconciliation, helps explain the complexities and contradictions of its mandate and process.” Regarding the study of truth commissions more broadly, Mack argues that “analyzing the interplay between the generic form of the truth commission and the specific purposes that are ascribed to it in a given place and time can deepen our

REGION AND REMEMBRANCE: PUBLIC MEMORIES OF CIVIL RIGHTS IN GREENSBORO, NORTH CAROLINA (2016) (unpublished Ph.D. dissertation on file with The Pennsylvania State University); ERIK DOXTADER, *WITH FAITH IN THE WORKS OF WORDS: THE BEGINNINGS OF RECONCILIATION IN SOUTH AFRICA, 1985-1995* (2009); MACK, *supra* note 12; SALAZAR, *supra* note 12; MARBACK, *supra* note 12; MORIARTY, *supra* note 12.

⁵³ DOXTADER, *supra* note 52, at 4.

⁵⁴ Doxtader, *supra* note 17, at 254.

⁵⁵ BEITLER, *supra* note 52, at 6.

understanding of rhetoric in the era of transnationalism” and, I would add, our understanding of truth commissions.⁵⁶

Doxtader admits “it is not clear how [the rhetorical practice of] reconciliation has addressed or engaged the material aftermath of apartheid.”⁵⁷ Nevertheless, a rhetorical perspective nuances evaluations of a truth commission’s success. The question of “success” has vexed scholars interested in the TRC and truth commissions more broadly. Across many disciplines, scholars look for “empirically verifiable effects [of] a truth commission.”⁵⁸ These studies use “rigorous and systematic social science methods” to assess how well a commission fulfilled its assigned duties and contributed to “substantive change,” most often in the form of democratic practices and institutions.⁵⁹ Others take a more philosophical approach and question how well truth commissions fulfilled more abstract moral and political ideals, such as truth, justice, or reconciliation.⁶⁰ “Drawing on a rhetorician’s sensitivity to the productive and interpretive art of a range of argumentative modes and genres,” Mack “answers the question of the TRC’s ‘success’ by arguing that the Commission provoked contentious debate and thus contributed to the creation of an agonistic deliberative public sphere.”⁶¹ Richard Marback argues that because vulnerability is inherent in any democratic society, a shared public life requires rhetoric for managing, rather than eliminating, vulnerability.⁶² Thus, while recognizing “the consequences of

⁵⁶ MACK, *supra* note 12, at 15.

⁵⁷ Doxtader, *supra* note 17, at 254.

⁵⁸ Eric Brahm, *Uncovering the Truth: Examining Truth Commission Success and Impact*, 8 INT’L STUD. PERSP. 16, 19 (2007).

⁵⁹ *Id.* at 18; see also HUGO VANDER MERWE & AUDREY R. CHAPMAN, RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER? (2008) (evaluating the success of the TRC); John Ishiyama & Oluwagbemiso Laoye, *Do Truth Commissions Promote Trust in the Judiciary in African States?*, 51 J. ASIAN & AFR. STUD. 528 (2016) (evaluating truth commission impact).

⁶⁰ See Brahm, *supra* note 58, at 19. See also THERESA PHELPS, SHATTERED VOICES: LANGUAGE, VIOLENCE, AND THE WORK OF TRUTH COMMISSIONS (2004) (evaluating how the testimonies of victims and perpetrators contributes to justice); CLAIRE MOON, NARRATING POLITICAL RECONCILIATION: SOUTH AFRICA’S TRUTH AND RECONCILIATION COMMISSION (2008) (explaining how the TRC’s particular narrative of reconciliation shaped its norms and practices); PROVOCATIONS OF AMNESTY: MEMORY, JUSTICE, AND IMPUNITY (Charles Villa Vicencio & Erik Doxtader, eds. 2003) (evaluating South Africa’s amnesty policy).

⁶¹ MACK, *supra* note 12, at 9.

⁶² MARBACK, *supra* note 12, at 11–12.

persistent material inequality on the quality of South African democracy,” Marback asserts we cannot “disregard . . . the contributions of language to the health of South African society” because rhetoric is “a resource useful in the managing of experiences of vulnerability in South Africa.”⁶³

Finally, rhetorical scholars also demonstrate the importance of looking beyond the institutional confines of a truth commission. Doxtader specifically focuses on how reconciliation shaped South Africa’s transition prior to the establishment of the TRC and how these many beginnings of reconciliation shaped the TRC’s practices and South Africa’s transition. Marback, Salazar, and Moriarty all study the TRC as only one part of South Africa’s transition. Moriarty focuses on the role of South African political leaders in creating a deliberative culture that “moved the country out of the realm of violent conflict and into the realm of rhetorical conflict.”⁶⁴ Mack argues “truth commissions demand attention to the full circuit of responses they generate.”⁶⁵ To do this, Salazar, Marback, and Mack all study a wide swath of “texts,” including typical foci of rhetorical scholars, such as political speeches, debates, legal documents, testimony at the TRC’s public hearings, and the TRC’s final report, but also more “imaginative texts,” as Mack calls them, such as glamour magazines, monuments, novels, movies, and a photographic essay.

Truth commissions also have much to offer rhetorical theory. They renew a “faith in the works of words,” to use Erik Doxtader’s phrase.⁶⁶ Mack asserts, “The valuing of rhetorical deliberation in post-apartheid South Africa places it in the center of twenty-first-century rhetorical studies.”⁶⁷ According to Salazar, South Africa offers “a new political ecology of rhetoric”; it is “a test case for rhetoric” and “for the relevance of rhetoric studies in a postmodern democracy.”⁶⁸ For Moriarty, “South Africa’s transition from apartheid to democracy offers students of civic discourse a wealth of ideas to help fine-tune theories of civic discourse and the public sphere.”⁶⁹

⁶³ *Id.* at 12.

⁶⁴ MORIARTY, *supra* note 12, at 4.

⁶⁵ MACK, *supra* note 12, at 126.

⁶⁶ DOXTADER, *supra* note 52.

⁶⁷ MACK, *supra* note 12, at 11.

⁶⁸ SALAZAR, *supra* note 12, at xvii–xix.

⁶⁹ MORIARTY, *supra* note 12, at 121.

Within these exclamations, however, we begin to see the limits of using a model that “remains centered firmly in Western canonical texts and practices” to make sense of truth commissions, the vast majority of which have occurred in other contexts.⁷⁰ Understanding South Africa as “an African Athens” that can help us “fine-tune” our theories and serve as a “political model for integrating differences within social deliberation” and working towards “the common good” obscures its full transformative, world-making potential, as it assumes to know what that world will or should look like. Salazar, for example, concludes, “South African society is nurturing a political model for integrating differences within social deliberation. This has a name in the tradition of democratic thought: [i]t is called the common good.”⁷¹ Even more so, using South Africa to re-affirm the values and concepts at the heart of the traditional rhetorical canon and impose these values in other contexts is, in the words of Wim van Binsbergen, akin to another colonial “hegemonic assault” on the African continent, “this time in the name of Aristotle and rhetoric.”⁷² While the contributions of rhetorical scholarship demonstrate some advantages of a rhetorical approach to the study of truth commissions, these significant limitations demonstrate the need to delink this approach from the dominant rhetorical tradition and the transition to democracy paradigm of transitional justice.

III. Decoloniality and the Rhetorical Study of Truth Commissions

In the conclusion of a special issue of *Quest: An African Journal of Philosophy* dedicated to “rhetorical approaches to democratic deliberation in Africa and beyond,” in which South Africa’s TRC is a central focal point, van Binsbergen writes:

“The application of Aristotle in a contemporary African context could never be a one-way process, conducted by scholars who know all

⁷⁰ Phil Bratta & Malea Powell, *Introduction to the Special Issue: Entering the Cultural Rhetorics Conversations*, 21 ENCULTRATION, April 20, 2016, <http://enculturation.net/entering-the-cultural-rhetorics-conversations> [<https://perma.cc/4VHD-PMCB>].

⁷¹ SALAZAR, *supra* note 12, at 165.

⁷² Wim van Binsbergen, *Postscript: Aristotle in Africa—Towards a Comparative Africanist Reading of the South African Truth and Reconciliation Commission*, 16 QUEST: AFR. J. PHIL. 238, 264 (2002).

about Aristotle, nearly all about formal legal texts as produced in formal, bureaucratic legal settings under the aegis of the transcendent state—and virtually nothing about the life worlds, the cosmologies, the languages, kinship systems, political and legal institutions, day-to-day struggles, pastimes, religious, artistic, culinary, sexual expressions, etc., of the African people whose life is greatly affected . . . by such formal settings. . . . The continued relevance of African models for African life, and the potential relevance of comparative Africanist models, not only to other parts of Africa but also to the rest of the world, need also be admitted, and explored in concrete terms.”⁷³

Van Binsbergen presents a warning for rhetorical scholars interested in the TRC, but he does not wholly reject a rhetorical perspective. Rather, he argues rhetorical scholars must “sort out how such a perspective could be combined with other valuable perspectives such as the anti-hegemonic and comparative Africanist one.”⁷⁴ Such an approach would, among other things, help us identify and appreciate “African forms of reconciliation,” “technologies of sociability, and “ways of going about democracy.”⁷⁵ In this section, I take up this task and sort out a methodological approach that combines a rhetorical perspective with that of decolonial theory.

Van Binsbergen echoes a common critique forwarded by decolonial scholarship against the elevation of dominant ways of knowing to universal ways of knowing. Decolonial theorists use the concept of coloniality to identify the “long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administrations.”⁷⁶ “Decoloniality,” Walter Mignolo explains, “is a double-faced concept.”⁷⁷ It requires both recognizing coloniality and imagining alternatives to the modern order formed by and through coloniality. The latter is the work of delinking. For academics, and particularly in the context of discussing theory and method, the coloniality of—and associated task of decolonizing—knowledge is particularly relevant. Decolonizing knowledge requires

⁷³ *Id.* at 264–65.

⁷⁴ *Id.* at 265.

⁷⁵ *Id.* at 265–66.

⁷⁶ Maldonado-Torres, *supra* note 19, at 243.

⁷⁷ Walter Mignolo, *Decolonizing Western Epistemology/Building Decolonial Epistemologies*, in *DECOLONIZING EPISTEMOLOGIES: LATINA/O THEOLOGY AND PHILOSOPHY* 19, 20 (Ada María Isasi-Díaz & Eduardo Mendieta eds., 2011) (hereinafter *Decolonizing Western Epistemology*).

a delinking from dominant epistemic traditions that “brings to the foreground other epistemologies, other principles of knowledge and understanding and, consequently, other economy, other politics, other ethics.”⁷⁸ Mignolo writes, “[w]ithout decolonizing knowledge and changing the terms of the conversation, the rules of the game would be maintained and only the content, not the terms of the conversation would be disrupted.”⁷⁹ From this perspective, rather than merely attempting to expand the contextual scope of rhetorical scholarship by applying rhetorical theory to study truth commissions in non-Western contexts, I study truth commissions within their particular contexts to expand the theoretical scope of rhetorical scholarship and our understanding of truth commissions and their operating terms.

A rhetorical approach is especially suited for engaging with decolonial theory as it pays particular attention to ways coloniality is diffused through language.⁸⁰ Ngũgĩ wa Thiong’o describes language as “both a means of communication and a carrier of culture.”⁸¹ The concept of coloniality emphasizes that colonialism did not occur simply through armed conquest and political rulings, but was manifest at the level of national culture and discourse—the level that rhetorical analysis places at its center.⁸² Darrel Wanzer-Serrano—who describes the theoretical framework of his book *The New York Young Lords and the Struggle for Liberation* as “coloniality with a rhetorical inflection”—argues that where decolonial theorists are “often stuck making bigger theoretical arguments justifying their shifts in perspective,” a rhetorical orientation can add a level of specificity through its attention to “practices of radical contextualization, sociohistorical contingency, and the situatedness of public discourses and activism.”⁸³

The decolonial drive also complements the “global turn” in rhetorical studies and the evolution of comparative, transnational, and

⁷⁸ Mignolo, *supra* note 19, at 453.

⁷⁹ *Decolonizing Western Epistemology*, *supra* note 77, at 23.

⁸⁰ I do not refer here to only linguistic forms of language, but to all meaning-making symbols and practices.

⁸¹ Ngũgĩ wa Thiong’o, *The Language of African Literature*, in *COLONIAL DISCOURSE AND POSTCOLONIAL THEORY: A READER* 435, 439 (Patrick Williams & Laura Chrisman eds., 2008).

⁸² EDWARD SAID, *CULTURE AND IMPERIALISM* 12 (1994).

⁸³ DARREL WANZER-SERRANO, *THE NEW YORK YOUNG LORDS AND THE STRUGGLE FOR LIBERATION* 10, 15 (2015).

cultural rhetoric(s).⁸⁴ Over two decades ago, Raka Shome called for a “postcolonial intervention” in rhetorical studies.⁸⁵ “The solution,” Shome argued, “is not merely to do more rhetorical studies on nonwhite people . . . for that only becomes a matter of extending, instead of displacing or challenging, the canon by adding ‘others.’” Rather, the solution is to critically examine and challenge the very value system on which the rhetorical canon and our scholarship is based.”⁸⁶ Cultural rhetorics scholars identify decolonial practices as central to their work. Working from “a desire to change the traditional narratives, canons, and ways of operating in the discipline in order to explicitly open academia to ideas and intellectual affordances from a much broader range of continental and global cultures,” the cultural rhetorics project seeks to “build meaningful theoretical frames from inside the particular culture in which they are situating their work.” Such work requires a deep understanding of the culture’s beliefs and practices, as well as relationships to other cultures, including examinations of power.⁸⁷

I draw on these various literatures to form a decolonial rhetorical approach as the theoretical and methodological framework of this essay. This practice entails four central commitments. First, as a rhetorical scholar, I center the meaning-making symbols and practices of truth commissions in my analysis. In some cases, these are traditional texts of civic deliberation, including legal documents, reports, speeches, and congressional debates. In others, I analyze more

⁸⁴ See generally Wendy S. Hesford, *Global Turns and Cautions in Rhetoric and Composition Studies*, 121 PMLA 787 (2006) (describing the global turn in rhetorical studies); LuMing Mao et al., *Manifesting a Future for Comparative Rhetoric*, 34 RHETORIC REV. 239 (2015) (discussing the evolution of comparative, transnational, and cultural rhetoric(s)); Bo Wang, *Comparative Rhetoric, Postcolonial Studies, and Transnational Feminisms: A Geopolitical Approach*, 43 RHETORIC SOC’Y Q. 226 (2013); See generally Bratta & Powell, *supra* note 70.

⁸⁵ Raka Shome, *Postcolonial Interventions in the Rhetorical Canon: An “Other” View*, 6 COMM. THEORY 40, 49 (1996). Some, such as Wanzer-Serrano, reject postcolonial scholarship for being undergirded by a modernist rationality. I claim a decolonial perspective because it emphasizes the continued and pervasive influence of coloniality. However, I do not outright reject postcolonial scholarship, as many postcolonial scholars, Shome included, advance similar and complementary arguments, even while using the term *postcolonial* instead of *decolonial*. Here, I believe Shome’s call is very much in line with the project of decolonization.

⁸⁶ *Id.*

⁸⁷ See generally Bratta & Powell, *supra* note 70.

“imaginative texts,” to use Mack’s term, including Antjie Krog’s memoir *Country of My Skull* and Michael Lessac’s theatrical production *Truth in Translation*. Additionally, performances of truth telling are central to this project.

Second, I situate my analyses within their particular contexts. While it may seem mundane and unnecessary for a rhetorical scholar to identify contextualization as a key methodological component (of course rhetoric is situated!), a central intervention of decolonial theory is the assertion that all knowledge is geopolitically situated; knowledge cannot be abstracted from the context in which it is produced. While resisting the universal pretensions of Western thought—and particularly the Western rhetorical canon—it is essential to focus on “discourses in their contexts” to “avoid overgeneralizing and making universal claims of our own.”⁸⁸ Moreover, the contextualization of a decolonial rhetorical approach requires more than describing the social, political, and historical constraints attending the rhetorical situation. Rather, it “seeks to be able to listen to what has been silenced”⁸⁹ and involves approaching the context “with an openness . . . that challenges sedimented ways of understanding and acting in the world.”⁹⁰ Nelson Maldonado-Torres writes, “The first and most basic gesture of the critique of Eurocentrism lies in listening to what the peoples on the periphery have to say about truth, justice, love, critique, community life, and so forth.”⁹¹

Such listening is essential for my third commitment: I engage in what Mignolo describes as “epistemic disobedience” and privilege the cultural and epistemological positions of the contexts I study while decentering traditional rhetorical theories.⁹² This does not mean that I wholly reject existing rhetorical theory or, for decolonial theorists, Western modernity writ large; rather, I reject its privileged position. I engage in the “double movement” of denaturalizing dominant knowledge paradigms while “simultaneously affirming the modes and

⁸⁸ WANZER-SERRANO, *supra* note 83, at 7.

⁸⁹ NELSON MALDONADO-TORRES, AGAINST WAR: VIEWS FROM THE UNDERSIDE OF MODERNITY 234 (2008).

⁹⁰ WANZER-SERRANO, *supra* note 83, at 26.

⁹¹ MALDONADO-TORRES, *supra* note 89, at 246.

⁹² See generally Walter D. Mignolo, *Epistemic Disobedience, Independent Thought and De-Colonial Freedom*, 26 THEORY, CULTURE & SOC’Y 159 (2009) (explaining epistemic disobedience).

principles of knowledge that have been denied” by coloniality.⁹³ To reject absolutely Western modern thought, including the rhetorical canon, “would be to use the same logic and pretend that a different universalism will be better than the one that is today hegemonic and dominant.”⁹⁴ Moreover, it would ignore the influence of coloniality, even as it attempts to identify and challenge it. A decolonial approach, Mignolo explains, “presupposes border thinking or border epistemology in the precise sense that the Western foundation of modernity and of knowledge is on the one hand unavoidable and on the other highly limited and dangerous.”⁹⁵ This perspective is important for grappling with the oftentimes contradictory rhetoric of truth commissions as they operate within colonial structures of power and understanding and often invoke the values of Western liberal democracy, while also offering new understandings of key concepts.

Finally, I attempt to see new ways of interpreting the key operating terms of the truth commissions—truth, reconciliation, and justice—and how they form a national community.

Decolonization is a “double-faced concept” that includes both “the analytic of coloniality” and “building decolonial futures” by imagining alternatives to the modernity/coloniality paradigm.⁹⁶ Mignolo admits the second impetus is “utopian,” and I admit that my analysis may at times seem abstract or even idealistic. Thus, it is essential to remember that part of my purpose is to begin to imagine alternatives, even as these alternatives operate within the matrix of coloniality and, thus, cannot be fully realized.

IV. ANALYSIS

My three case studies are organized both chronologically and to build on each other thematically. In the first case, I analyze three texts bearing witness to South Africa’s TRC to consider how acts of witnessing constitute community and refigures understandings of truth—how the TRC conceptualized truth and what truth it provided. The second focuses on Kenya’s Truth, Justice and Reconciliation Commission (TJRC), established as a condition in the agreement ending the 2007/2008 post-election violence in Kenya but with the

⁹³ Mignolo, *supra* note 19, at 463.

⁹⁴ *Id.* at 494.

⁹⁵ *Id.* at 455.

⁹⁶ Mignolo, *supra* note 77, at 20.

intention of investigating a much longer history of human rights abuses in Kenya. I analyze how reconciliation guided the TJRC's approach to national unity and consider how a community formed through reconciliation might be counterpoised to theories about national identity and the national community within rhetorical scholarship. Third, I study Senator Patrick Leahy's proposal for a truth commission, to be modeled after South Africa's TRC, to investigate the Bush administration's post-9/11 counter-terrorism and surveillance policies. While Leahy cited many of the terms and sentiments that are common among truth commissions, a closer analysis of his rhetoric demonstrates his truth commission, had it come to fruition, would function very differently. Leahy's commission was guided by the pursuit of justice, specifically restoring faith in the U.S. justice system. In each case, I consider how the term guiding the pursuit of national unity—truth, reconciliation, and justice—shaped the form the national community might take. Doing so also refigures the meanings and practices associated with these concepts in the work of the truth commissions.

A. *Truth: Witnessing South Africa's TRC*

South Africa's TRC established acts of witnessing, especially in the form of testimony in its public hearings, as its central mechanism of pursuing national unity and reconciliation. Three witness accounts of the TRC—the TRC's final report, Antjie Krog's memoir *Country of My Skull*, and Michael Lessac's theatrical production *Truth in Translation*—demonstrate how witnessing extended beyond the institutional and temporal confines of the TRC and worked towards creating a multi-layered account of the past and constituting the new national community.

Witness testimonies were central to the TRC's work—approximately 21,000 victims and 7,000 amnesty applicants testified in the TRC's public hearings or submitted testimony in writing.⁹⁷ The TRC placed special emphasis on and widely publicized its public hearings, more so than any other truth commission before or after it. Hearings took place throughout the country from 1996 to 1998, and national television and radio widely broadcast them to those who did not attend the hearings in person. The national radio broadcast four hours of hearings daily, and the *Truth Commission Special Report* on

⁹⁷ HAYNER, *supra* note 5, at 42, 99.

Sunday evenings was the most watched news show in the country at the time.⁹⁸ Catherine Cole writes that “for many South Africans,” the hearings “*were* the commission.”⁹⁹

Although the TRC and its hearings have concluded, witnesses’ stories continue to circulate within and beyond South Africa as those who witnessed the TRC continue to testify to broader audiences and future generations. The TRC was tasked, as is common among truth commissions, with producing a final report to provide a comprehensive account of its activities and findings to the public. In addition to this formal account, the circulation of witness testimonies has occurred through numerous cultural and literary forms produced after the TRC concluded its work. Bradford Vivian describes witnessing as disseminative. “The meaning of *witness*,” he writes, “extends, disseminates, in many directions at once. The word serves as a noun and a verb. One can logically say that a witness witnesses before witnesses. Discerning from whence the act of witnessing begins and when or with whom it culminates is difficult.”¹⁰⁰ The TRC can be understood as creating a community of witnesses—those who testified and those who witnessed the testimony—formed through the act of witnessing.

The TRC’s final report offers an official account of the past and a vital resource for accessing and navigating the vast information collected by the TRC. Yet, its attempt to achieve impartiality and objectivity obscures issues of inclusion and exclusion, and its status as the *official* and *final* report risks stifling further engagement with the TRC’s work and closing the book on the past. A focus on truth commissions’ final reports as their ultimate product and final account of the past has also produced criticisms of the limited truth they can offer.¹⁰¹ Within the report itself, however, the commissioners warn against this interpretation of the report and offer guidance for continued engagement with its contents.

Krog’s *Country of My Skull*, a “hybrid work, written at the edges of reportage, memoir, and metafiction,”¹⁰² problematizes any attempt to present a singular narrative of the past. She describes her selection

⁹⁸ *Id.* at 42.

⁹⁹ COLE, *supra* note 49, at xii.

¹⁰⁰ Bradford Vivian, *Witnessing Time: Rhetorical Form, Public Culture, and Popular Historical Education*, 44 RHETORICAL SOC’Y Q. 204, 207 (2014).

¹⁰¹ PHELPS, *supra* note 60, at 119–20.

¹⁰² Sanders, *supra* note 49, at 16.

and representation of witness testimonies as fundamentally rhetorical—influenced by her identity, purpose, and audience. By creatively representing testimonies in various forms and blending testimonies from the TRC with her own testimony of witnessing the TRC, Krog encourages her readers to critically engage with the material and demonstrates how witnessing shifts and forms new identities and potentials for collective life.

Finally, in *Truth in Translation*, Michael Lessac tells the story of the interpreters who worked for the TRC. Recognizing that the English language has historically been a standard form of exclusion in South Africa, the TRC committed itself to allowing witnesses to testify in any of the 11 official languages recognized by South Africa's new constitution. As a result, interpreters played a vital role in the TRC's hearings and in making the official transcriptions that are available in the TRC's archives. *Truth in Translation* vividly depicts the interpreters' struggles to remain professional and uninvolved, as they were instructed, while giving voice in the first person to horrific stories recounted to the TRC with overwhelming emotion. The play highlights the chasm that necessarily exists between witness and audience but also illustrates how interpreters attempted to overcome this distance and difference. The actors' presence and participation reflects the involvement witnessing requires. Vivian worries that "popular forms of witnessing . . . address audiences as historical spectators rather than historical agents."¹⁰³ The TRC commissioners, Krog, and Lessac, however, engage in an active witnessing of the TRC that contributes to a more complex, multi-layered account of the past and constitutes them as actors in creating the new South Africa.

This case also suggests how the TRC contributed to a more comprehensive understanding of the past than many of its critics consider. Mahmood Mamdani, among others, has pointedly criticized the TRC's individualized approach—the approach that placed victims, perpetrators, and their acts of truth telling at the center of the TRC's process—for reducing apartheid to the context or background of the human rights violations it investigated.¹⁰⁴ This analysis takes seriously the gaps and weaknesses of any singular account of the past and suggests that the acts of witnessing set in motion by, but not limited to the institutional confines of, the TRC contribute to a more

¹⁰³ Vivian, *supra* note 100, at 215.

¹⁰⁴ See generally Mamdani, *supra* note 6 (criticizing the TRC).

comprehensive, multi-layered account of the past. The TRC's truth is neither an objective, forensic truth nor a post-modern rejection of truth, but a multi-layered truth. This multi-layered truth teaches an important lesson for how we should engage with the TRC and other truth commissions. Commissions modeled after the TRC have propagated across the globe based on the assumption that this institution is a solution to bring about reconciliation and restore national unity. The *truth* of the TRC—or, more precisely, the truth as it was understood by the TRC—requires us to look beyond the institution, to understand it within its local context and to consider how its activities have been taken up, extended, and circulated by members of its community.

B. Reconciliation: Constructing the National Community in Kenya's TJRC

When Kenya's Electoral Commission announced on December 30, 2007 that incumbent President Mwai Kibaki won the presidential election, despite claims and evidence of fraudulent vote counting, violent riots and protests broke out throughout the country. Initially a reaction to accusations the election was rigged, the protests soon evolved into organized violence, primarily divided along ethnic lines that paralleled affiliations with the major political parties. Although the contested election results immediately incited the violence, the crisis resulted from and called attention to longstanding conflicts that intersected social, economic, political, and ethnic identities. Within weeks of the election, 1,133 people were killed and more than 350,000 displaced.¹⁰⁵ In addition to the thousands of lives destroyed, the post-election violence also shattered Kenya's international reputation as a stable model democracy. It demonstrated that the presence of democratic institutions and procedures and rhetoric of democratic values did not ensure a unified democratic nation. In an address to Kenya's National Assembly, President Kibaki identified the crisis as a "crucial turning point" and called for the construction of a "new Kenya."¹⁰⁶ Like South Africa, Kenya needed to construct the national community anew. Towards this goal, and as part of the peace

¹⁰⁵ COMMISSION OF INQUIRY INTO POST-ELECTION VIOLENCE, REPORT OF THE COMMISSION OF INQUIRY INTO POST-ELECTION VIOLENCE 383 (2008).

¹⁰⁶ KENYA NAT'L ASSEMBLY, 10th PARLIAMENT, PARLIAMENTARY DEBATES 37 (Mar. 6, 2008) (remarks of President Mwai Kibaki).

agreement that ended the violence, Kenya's National Assembly established the TJRC in October 2008.

Kenya's TJRC, like South Africa's TRC, joined its goal of promoting national unity, or constructing a "new Kenya," with reconciliation. In the case of Kenya's TJRC, the articulation of these goals was striking. Indeed, in its final report, the term "national unity" rarely appears independently of "reconciliation."¹⁰⁷ With *reconciliation* guiding the TJRC's construction of its new national community, I argue the TJRC pursued national unity through a reconciliation model that can be productively counterpoised to the citizenship model common in the West. Specifically within rhetorical scholarship, theories suggest communities are formed and maintained through rhetorics of shared political beliefs, values, and practices that define individuals' identities and roles as citizens.¹⁰⁸ According to this citizenship model, the national community is constituted through individuals' abstracted attachment to the nation.

The shift from a citizenship model to a reconciliation model is defined by four principal moves. First, truth telling constructs relational attachments among a community's members, rather than an attachment to political institutions and their defined practices and beliefs. Second, instead of imagining a transcendent national subject to overcome individual differences and other group identities, truth telling actively seeks to incorporate these differences in its construction of community. Third, truth telling assembles a national narrative through witnesses' own stories instead of adopting an elite-authored metanarrative as the standard of inclusion or exclusion from the national community. Fourth, and finally, it expands the scope of democratic communication from the traditional Western ideal of rational, restrained deliberation to include a wider range of more affective and less orderly modes of expression. Studying the role of truth telling within the TJRC and in relation to the particular cultural and political context in which it operated offers a new conceptual and

¹⁰⁷ In Volume III of the final report, the volume devoted specifically to national unity and reconciliation, "national unity" appears independently only once. KENYA TRANSITIONAL JUSTICE NETWORK, SUMMARY: TRUTH, JUSTICE AND RECONCILIATION COMMISSION REPORT 27–32 (2013).

¹⁰⁸ See generally Robert Asen, *A Discourse Theory of Citizenship*, 90 Q. J. SPEECH 189 (2004); VANESSA B. BEASLEY, *YOU, THE PEOPLE: AMERICAN NATIONAL IDENTITY IN PRESIDENTIAL RHETORIC* (2004); Jay P. Childers, *The Democratic Balance: President McKinley's Assassination as Domestic Trauma*, 99 Q. J. SPEECH 156 (2013).

theoretical framework that contributes to decolonizing scholarship on the rhetorical construction of national community and offers the potential for thicker bonds of community through relational attachments and participatory inclusion.

C. Justice: A U.S. Truth Commission to Restore Faith in the Justice System

Claiming inspiration from South Africa's TRC, Senator Patrick Leahy proposed a truth commission for the United States in early 2009 to address Bush-era surveillance and counter-terrorism policies established after 9/11. Leahy's proposal demonstrates how the operating assumptions of truth commissions change depending on how justice is interpreted. *Justice* was the guiding term for Leahy's proposed commission. Specifically, he proposed a commission that would "restor[e] our trust in the justice system" and "our constitutional values and the rights of ordinary Americans."¹⁰⁹ While Leahy used language consonant with the frameworks of transitional and restorative justice, he primarily sought to strengthen the current justice system and national community.

In the wake of 9/11 and in the name of the "War on Terror," the Bush administration implemented sweeping national security reforms, including the USA PATRIOT ACT and other policies that allowed for intrusive surveillance, coercive interrogation tactics, and extraordinary rendition—a counterterrorism policy that allowed suspected terrorists to be seized and transferred to detention facilities in other countries, especially in countries where torture and harsh interrogation of detainees is common.¹¹⁰ At the time, many of these initiatives received widespread approval. The extraordinary rendition in 2002 of Maher Arar to Syria, where he was held and tortured for ten months, generated significant controversy. Then, in December

¹⁰⁹ Patrick Leahy, *Restoring Trust in the Justice System: The Senate Judiciary Committee's Agenda in the 111th Congress* (Feb. 9, 2009), <https://www.leahy.senate.gov/press/restoring-trust-in-the-justice-system-the-senate-judiciary-committees-agenda-in-the-111th-congress> [<https://perma.cc/32XA-S6BQ>].

¹¹⁰ Bush first used the phrase "War on Terror" in a nationally broadcast address to a joint session of Congress on September 20, 2001. George W. Bush, *Address to a Joint Session of Congress and the Nation* (Sept. 20, 2001), http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html [<https://perma.cc/NN5M-3YPN>]. See also Mark J. Murray, *Extraordinary Rendition and U.S. Counterterrorism Policy*, 4 J. STRATEGIC SECURITY 15 (2011) (discussing extraordinary rendition).

2005, the *New York Times* reported Bush had secretly signed an order in 2002 authorizing the National Security Agency to eavesdrop on phone and e-mail conversations within the U.S. without a warrant, generating outrage among many Americans and significant criticism of the PATRIOT ACT.¹¹¹ In 2007, a scandal regarding the politicized firing of eight U.S. attorneys further embroiled the Bush Administration in controversy.¹¹² One of the most notorious incidents was the Abu Ghraib Prison scandal.¹¹³

These events occurred years before Leahy first proposed a truth commission in February 2009. The issue of how to address and provide accountability for these abuses re-emerged, however, when Obama issued four executive orders on January 22, 2009, just two days after taking office, ordering the closure of the U.S. detention camp at Guantanamo Bay and banning the Central Intelligence Agency's secret prisons and use of coercive interrogation methods.¹¹⁴ While providing a resounding condemnation of the Bush administration and its counterterrorism strategies, Obama's executive orders focused on how his administration would act in the future, rather than how to address the actions of the past.

¹¹¹ James Risen and Eric Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES (Dec. 16, 2005), <https://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html> [<https://perma.cc/79J9-MZ39>].

¹¹² Dan Eggen, *U.S. Attorney Firings Set Stage for Congressional Battle*, WASH. POST (Feb. 4, 2007), https://www.washingtonpost.com/archive/politics/2007/02/04/us-attorney-firings-set-stage-for-congressional-battle/d6616cb3-b00d-4605-b9be-385ea870154c/?utm_term=.6c0ac33421b4 [<https://perma.cc/39L6-6PH8>]; Adam Zagorin, *Why Were These U.S. Attorneys Fired?*, TIME (Mar. 7, 2007), <http://content.time.com/time/nation/article/0,8599,1597085,00.html> [<https://perma.cc/HB8K-42A2>]; *U.S. Attorney Firing Scandal Draws Coverage – From National to Local*, EDITOR & PUBLISHER (Mar. 13, 2007), <https://www.editorandpublisher.com/news/u-s-attorney-firing-scandal-draws-coverage-from-national-to-local/> [<https://perma.cc/5EVB-YPVT>].

¹¹³ See generally Maha Hilal, *Abu Ghraib: The Legacy of Torture in the War on Terror*, ALJAZEERA (Oct. 1, 2017), <https://www.aljazeera.com/indepth/opinion/abu-ghraib-legacy-torture-war-terror-170928154012053.html> [<https://perma.cc/ZV2J-MHHK>]; see generally Keith Rohman, *Diagnosing and Analyzing Flawed Investigations: Abu Ghraib as a Case Study*, 28 PA. ST. INT'L L. REV. 1 (2009).

¹¹⁴ Joby Warrick & Karen DeYoung, *Obama Reverses Bush Policies on Detention and Interrogation*, WASH. POST (Jan. 23, 2009), <http://www.washingtonpost.com/wpdyn/content/article/2009/01/22/AR2009012201527.html> [<https://perma.cc/XM4Z-U9V2>]; Scott Shane et al., *Obama Reverses Key Bush Security Policies*, N.Y. TIMES (Jan. 22, 2009), <https://www.nytimes.com/2009/01/23/us/politics/23obama.html> [<https://perma.cc/5V8C-SJ3L>].

Leahy, however, argued the country could not move forward without accounting for the past—a common sentiment of truth commissions. Yet, President Obama had only recently been elected and had won on the promise of ending partisanship and the assertion “that we are not as divided as our politics suggest.”¹¹⁵ A criminal investigation and prosecution of the former administration was both unprecedented and certain to contradict Obama’s promise. Using language that is also common among truth commissions, Leahy proposed a truth commission for the United States as a “middle ground” between “those who resist any effort to investigate the misdeeds of the recent past” and “others who say that . . . we must prosecute Bush administration officials to lay down a marker.”¹¹⁶

Leahy first proposed establishing a truth and reconciliation commission on February 9, 2009 at Georgetown University’s Marver H. Bernstein Symposium on Governmental Reform, in an address titled “Restoring Trust in the Justice System: The Senate Judiciary Committee’s Agenda in the 111th Congress.”¹¹⁷ His primary purpose was to present the Senate Judiciary Committee’s agenda for the 111th Congress, but, as the title of the address indicated, he focused more broadly on the need to restore accountability and trust in the justice system. Towards this goal, he proposed establishing a truth commission. The commission, as Leahy proposed it, would consist of “a group of people universally recognized as fair-minded and without any axe to grind” whose “straightforward mission would be to find the truth,” and “people would be told to come forward and share their knowledge and experiences . . . to assemble the facts.”¹¹⁸

Both the TRC and TJRC understood that in their respective periods of transition, their main contribution to justice was to restorative, rather than retributive, justice. South Africa’s TRC wrote in its final report, “We have been concerned, too, that many consider only one aspect of justice. Certainly, amnesty cannot be viewed as justice if we think of justice only as retributive and punitive in nature. We believe, however, that there is another kind of justice—a restorative justice which is concerned not so much with punishment as with correcting

¹¹⁵ Barack Obama, *Barack Obama’s New Hampshire Primary Speech*, N.Y. TIMES (Jan. 8, 2008), https://www.nytimes.com/2008/01/08/us/politics/08text-obama.html?pagewanted%20=print&_r=0 [<https://perma.cc/L7DE-SNQK>].

¹¹⁶ Leahy, *supra* note 109, ¶¶ 17–18.

¹¹⁷ Leahy, *supra* note 109.

¹¹⁸ *Id.* ¶ 20.

imbalances, restoring broken relationship—with healing, harmony, and reconciliation.”¹¹⁹ Although Leahy’s commission would still not pursue retributive justice, as it would not have the authority to issue criminal indictments and Congress had already granted some immunity, neither would it contribute to the type of restorative justice, shaped by the goals of national unity and reconciliation, imagined by the TRC and TJRC. Rather than contributing to restorative justice, Leahy’s commission would “[restore] trust in the justice system” and “our constitutional values and the rights of ordinary Americans.”¹²⁰

It would do this through its “straightforward mission” to “find the truth.”¹²¹ Truth, Leahy argued, would provide “accountability for what [had] been a disastrous diversion from American law and values” for the sake of moving forward.¹²² Leahy’s truth commission would still promote national unity, but rather than constructing a new community through truth telling, it would promote unity through shared faith in “American law and values.” As such, it would function according to the traditional citizenship model of national community discussed earlier. Reconciliation figured into Leahy’s equation only to the extent of reconciling the political parties. Further, rather than focusing on performances of truth telling, Leahy viewed truth as an assemblage of facts to provide accountability. With justice as the guiding term, I argue, Leahy’s proposed truth commission lacked the transformative potential of truth commissions and sought instead to strengthen the current justice system and national community. This case demonstrates the importance of a rhetorical perspective attuned to the operation of truth commissions in their particular contexts. Leahy cited South Africa’s TRC as a model and used rhetoric common among truth commissions, but his commission would operate very differently.

V. CONCLUSION

This study has several theoretical and pragmatic ramifications for how we understand truth commissions and practices of transitional and restorative justice more broadly. Although some scholars caution

¹¹⁹ 1 TRUTH & RECONCILIATION COMM’N, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 9, ¶ 36 (1998).

¹²⁰ Leahy, *supra* note 109.

¹²¹ *Id.* ¶ 20.

¹²² *Id.* ¶ 14.

against applying the concept of restorative justice within transitional justice frameworks,¹²³ truth commissions, as we saw in the example of South Africa noted earlier, frequently invoke the language and values of restorative justice in their work. As Jonathan Doak and David O'Mahony note, "The conceptual overlap between restorative justice and transitional justice has been widely observed." Particularly, both concepts hinge on "values such as truth, accountability, reparation, reconciliation, conflict resolution and democratic participation."¹²⁴

This analysis also cautions against applying the concept of restorative justice in transitional settings. Going a step further though, it also warns against interpreting these settings and the justice mechanisms established within them according to the framework of transitional justice. Rather, my analysis challenges scholars and practitioners of transitional and restorative justice to consider how particular cases can transform our understanding of these very concepts and frameworks. Ultimately, instead of focusing on what we can learn *about* truth commissions, this analysis suggests how we can learn *from* truth commissions new ways of being together in community.

¹²³ See Kerry Clamp & Jonathan Doak, *More than Words: Restorative Justice Concepts in Transitional Justice Settings*, 12 INT'L CRIM. L. REV. 339, 340, 360 (2012).

¹²⁴ Jonathan Doak & David O'Mahony, *Transitional Justice and Restorative Justice*, 12 INT'L CRIM. L. REV. 305, 305 (2012).