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Truth and “Truth”: The Social Construction of Truth and Memory and International Human Rights

by Rachel May, Visiting Fellow, Transitional Justice Project

Transitional justice is a rich area of inquiry. The literature and the academic discourse surrounding the phenomenon of transitional justice are at the forefront of human rights scholarship. Much of this discourse focuses on questions of the functional choices: restorative or retributive justice. A “restorative” approach to justice focuses on the idea of reconciliation while the “retributive” approach focuses on the punishment of perpetrators. The idea of truth telling, which encompasses truth commissions and historical memory, is most closely connected to a restorative approach to justice, although seeking the truth is also an implicit and explicit goal of criminal courts which serve a primarily retributive function.

Nevertheless, the standards of evidence and the uses that are made from established truths are not the same in restorative projects as they are in criminal courts. Truth fits into these distinct processes in markedly different ways. The truth telling project has been a flexible and dynamic process that can be highly controversial and perplexing. Much of the confusion is rooted in the very idea of truth. Even where commissions avoid the language of truth telling – by instead focusing on “disclosure” or “historical clarification” – the idea of Truth looms large.

The Need for Truth

The political and social construction of truth as it occurs in the formal processes, which often follow atrocities, state-sponsored terrorism or authoritarian regimes, is intimately connected to memory. It is dependent upon individual and social memories for data, sometimes long after events have transpired. And the task of truth commissions is at times explicitly referred to as the construction of an official historical memory, necessitated by the official denial – and the resultant distortion of reality and history – that often accompanies state-sponsored terror.

The systematic implementation of terror by the state affects both individual and societal conceptualizations of reality. Primo Levi, in *The Drowned and the Saved*, discusses how Auschwitz isolated and alienated the prisoner: “One entered hoping at least for the solidarity of one’s companions in misfortune, but the hoped for allies, except in special cases, were not there. There were instead a thousand sealed off monads, and between them a desperate covert and continuous struggle.”¹ Because the context of a terrorist state inhibits the ability of the



individual to verify his experience of reality by comparing it to the way others perceive things, she or he becomes unsure of what she or he is actually experiencing. Meaning itself becomes problematic because it is, of course, contingent upon shared perceptions.

Jaime Malamud in *Game Without End: State Terror and the Politics of Justice* beautifully dissects the nature of “disarticulating power,” which eliminates the possibility for any kind of collective action or even discourse. Malamud argues that state terror atomizes society in a way that manipulates the individual’s concept of reality. Individuals convince themselves that they are outside the realm of political danger by rationalizing the activities of the state.² This phenomenon is, in fact, widely observed by psycho-social theorists and researchers. When an individual observes a person being abducted, or notice that a person has disappeared, he commonly rationalizes “she must have done something,” even if there is evidence to the contrary. When individuals were in situations that clearly placed them at risk, they would choose to believe absurd scenarios that minimized the risk: “the person on the phone who made the death threat probably dialed the wrong number”, for example. In places such as Argentina and Guatemala, it was and is quite common for the military and other agents of the state to consciously manipulate citizens’ perceptions of reality – and later historical memory – through fear and confusion. The classic case is that of the torturer telling the victim that no one will believe her story if she tries to talk about it.

Levi also addresses the question of the intentionality of this distortion or denial of reality in Auschwitz – the conscious effort of the Nazis to force their victims to internalize the irrational, incomprehensible horror of the death camp. “At any rate, the entire history of the brief millennial Reich can be reread as a war against memory, an Orwellian falsification of memory, falsification of reality, negation of reality.”³ There is something universal about this observation. It is in the nature of terrorist power to alter reality and to attempt to manipulate memory. Reestablishing reality (truth), and legitimizing memory, then, are essential to any post-atrocity reconciliation. Reconciliation is on some basic level about reconnecting individuals to a rational social reality. It can be as much about reconciling individuals to their own experiences and memories as it is about reestablishing relationships between individuals or between social and political factions.

Objections to Truth Telling

Despite the demonstrable need for truth telling, especially in cases of official denial, the work of truth commissions rarely satisfies a society’s hunger for retributive or even restorative justice. Although trials also seek to uncover truths, truth is really only one of the necessary conditions for establishing innocence or guilt in specific cases. Truth in the trial setting is therefore limited by its relevance to the guilt or innocence of the criminal defendant. Moreover, standards of evidence are well defined. Much of the truth about what has occurred during a crime is irrelevant or inadmissible in a courtroom. Restorative justice focuses primarily on the reconciliation between victim and perpetrator. This generally involves giving both parties access to more contextual information about the other. This sharing of information is also a kind of truth telling, but truth in this process is also limited by relevance. If truth doesn’t really contribute to the restoration of the broken relationships, then presumably it won’t be revealed.

Evidence gathered by truth commissions can in some cases be used for criminal prosecutions. More commonly, the findings of truth commissions can be used to heal social relationships in societies that have been torn apart. Or, as the experience of South Africa demonstrates, the process of truth gathering itself can be turned into a kind therapeutic social dialogue. Despite the fact that truth has enormous utility for the seekers of justice, truth in and of itself

does not constitute justice. Because truth commissions operate within the larger context of transitional justice, they are often held accountable for a lack of justice. This can be simply a problem of inappropriate expectations. The goals of truth commissions vary, but the overall goal of establishing truth is always primary. Truth commissions seek to establish the truth for its own sake. It is assumed to be a reasonable, important and necessary project.

Occasionally truth and justice are seen as opposing goals. The construction of this misperception of the dichotomous “choice” between truth and justice finds its model in the amnesty for disclosure policy of South Africa’s Truth and Reconciliation Commission (TRC). Richard Goldstone and others have pointed out that the perceived trade-off in the South Africa case is more myth than reality. In perhaps the most contested case, the murder of Stephen Biko, Goldstone has argued that it would never have been possible to prosecute Biko’s killers since, without confessions, there was not enough evidence for any kind of criminal prosecution. So despite the fact that amnesties leave the victimized largely dissatisfied, the real choice, in Biko’s case as well as others, was not between truth and retribution – the real choice was between truth and nothing. Moreover, South Africa is an extremely important but also atypical model. It is the only case in which amnesty was explicitly tied to full disclosure. Most scholars and analysts now agree that there is no real trade off between truth and justice, and nothing inherently oppositional about these goals. Prioritizing truth should not make justice less attainable.

Why is the idea of truth problematic?

My analysis assumes that truth is possible, generally desirable, and indeed that there is a right to truth. I am concerned with how the idea of truth in this context is understood, since the hotly contested notion of truth stands at the center of human rights discourse. The relationship between this constructed idea of truth and a more absolute notion of truth is problematic. And the resolution of this problem is a very high stakes affair.

Truth and memory are by their very nature thorny concepts. Even an avowed opponent of post-modern skepticism could rightly be skeptical of the idea of “official” truth and/or official memory. Certainly, while we can all acknowledge that Holocaust deniers are promoting lies and falsehoods, we must also acknowledge that individual experiences are limited and contextualized. The construction of a shared memory from individual accounts is quite complex. The assumption that this kind of clearly constructed truth is synonymous with a more absolute notion of Truth seems clearly problematic and misguided. The relationship between absolute Truth and the work of truth commissions becomes even more problematic when we consider what is known about the nature of individual memory and trauma.

The controversies surrounding Rigoberta Menchú, the Benjamin Wilkomirski story, and several other less political examples of fabricated memory that served a social and/or psychological purpose raise important questions. Rigoberta Menchú, the Guatemalan indigenous rights activist, is accused of manipulating the details of her personal story so that it would more effectively serve a broader political agenda. Wilkomirski is accused of completely fabricating a personal history in which he claims, falsely, that he was a child survivor of Auschwitz. His fabrication seems to be a symptom of his own mental frailty which results from actual traumatic childhood experiences that took place far from Nazi death camps. While neither Menchú nor Wilkomirski testified before truth commissions, their stories for a time became part of the standard canon in the historical records of genocide in Guatemala and Nazi Germany. Menchú’s testimony is still considered by many to be an important document which contributes to a “truthful” understanding of what transpired in Guatemala. And some even argue that Wilkomirski seems to have articulated the reality of Auschwitz in way that contributes to our understanding of the Holocaust. These cases raise some serious questions about the relationships between memory, testimony and absolute truth.

Even in cases which are less controversial, individual experience is essentially positioned and limited. Conflicts between individual perceptions and experiences are inevitable.

Different models for truth telling

There are many different models of truth gathering that reflect a wide range of potential objectives. Truth commissions are often limited to the fairly straightforward task of gathering testimony – from a specifically defined subset of potential witnesses and survivors about very specifically defined kinds of abuses – and recording and reporting these carefully chosen accounts. And in other cases, the scope of the investigation is broadened to include different kinds of evidence about a broader range of abuses committed by various political actors and factions. The truth gathering process can be connected to criminal trials, or prohibited from contributing evidence to criminal prosecutions.

In some cases, truth commissions are called upon to do more than just gather and report testimony and evidence. More complex objectives, such as memorialization and reconciliation, can be part of the explicit mandate of a truth commission. In the Guatemalan case, the UN-sponsored truth commission called itself the commission for “historical clarification,” and the Archbishop’s committee took the task one step further in its parallel commission dedicated to the “recuperation of historical memory.” Disclosure alone is complicated and contentious, but these more complex objectives add to the difficulty of truth telling.

The conscious construction of official memory has an even more tenuous relationship with absolute Truth than a more straightforward recording of “just the facts.” South Africa’s TRC is probably the most ambitious truth-telling process of them all, both in terms of the breadth of its objectives (social healing and reconciliation) and its methodology of public forums in which victims and perpetrators confronted one another. These more ambitious projects raise even more complex sets of questions. Perhaps these projects also have the unintended consequence of raising expectations to a level that inevitably leads to disappointment and cynicism.

The Importance of Truth

Because truth telling has historically been the victim of these unrealistic expectations, and because the idea of Truth seems so elusive, some might lament the choice of the word “truth” to generically describe the work of commissions which seek to encourage disclosure as an antidote to the denial of state-sponsored terrorism or atrocity. But I think that the choice to use the notion of “truth” to describe this kind of project was both fortuitous and appropriate. In an age of skepticism, it is refreshing to reassert the importance of Truth, even while acknowledging the problem of positionality. And by explicitly connecting this process of public disclosure with the loftier idea of Truth, the responsibility of truth commissions to commit themselves fully and to the best of their abilities to accuracy and fairness is reinforced. This both legitimizes the process and makes it more meaningful.

Nevertheless, establishing a more universal understanding of the meaning of truth in these social and political projects is important. Would it be possible to establish standards of evidence that would still allow sufficient space for victims and others to tell their stories safely and fully? What are the risks associated with lending credence or skepticism to differing accounts? Although considering the nature of truth has always occupied philosophers . . . *understanding truth* is a genuinely eternal pursuit. Today, these ancient epistemological questions are rife with immediate, high-stakes, real-world policy implications.

¹ Primo Levi, *The Drowned and the Saved* (New York: Summit Books, 1986) 38.

² Jaime Malamud, *Game Without End: State Terror and the Politics of Justice* (Norman, OK: University of Oklahoma Press, 1996) 122-145.

³ Levi, 31.