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UNIVERSITY OF CAPE TOWN



**Dissertation Title: Truth, Trauma and Memory: A Critical Analysis  
of Truth Commissions with Specific Reference to Liberia**

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Masters of Philosophy Human Rights Law Degree in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of a Masters of Philosophy Human Rights Law dissertation, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

# Truth, Trauma and Memory: A Critical Analysis of Truth Commissions with Specific Reference to Liberia



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**Rachel Ward**

**September 2011**

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<sup>1</sup> Picture depicting a sign in Liberia's capital, Monrovia, advertising the country's forthcoming Truth and Reconciliation Commission. Image courtesy of Radio Netherlands Worldwide, available at <http://www.rnw.nl/international-justice/article/liberia-truth-commission-recommend-war-crimes-tribunal>, last accessed 14<sup>th</sup> September 2011.

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*Dedicated to the future peace of Liberia, and to all Liberians across the world.*

University of Cape Town

## ACKNOWLEDGEMENT

In 2006, Ellen Johnson Sirleaf was elected as president of Liberia: she also became the first female president in Africa. At this time I was in Accra, Ghana, working at a local newspaper, *The Statesman*. Since this time I have developed a growing interest in the state of Liberia, an interest which culminated in this dissertation paper.

However, aside from the inspiration of Africa's first female president at a time when I myself was confronting my own womanhood in a distant land, I would like to thank my parents, Graham and Mary Ward, who are, and continue to be, an immense source of both inspiration and support. Their love and kindness keep me strong through times of questioning and insecurity.

To my husband, Yazeed: thank you for all you do to help me be who I am and who I want to be. And to our dear daughter Iriyana: thank you for your love and light, may you grow to be a woman of integrity and joy.

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*'I have a long very long story to explain to you.'*  
*Anonymous Witness, Liberian Truth and Reconciliation Commission Hearings*<sup>2</sup>

## **ABSTRACT**

On the 18<sup>th</sup> August 2003 in the City of Accra, Ghana, representatives of the new Liberian government signed what became known as the Comprehensive Peace Agreement (CPA).<sup>3</sup> The Agreement marked the formal end of over twenty years of civil war and strife for Liberia and the Liberian people. Article XIII of the CPA outlines the establishment of a Truth and Reconciliation Commission (TRC). Accordingly, the Commission was mandated to 'provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past to facilitate genuine healing and reconciliation.'<sup>4</sup> In essence, the proposal was for individuals to share their experiences, through speech and language, of the violence and inhumane treatment suffered through the years of war, in order to provide the greater community of Liberia with a clearer understanding of their collective history and, as a result, lead the country to realise 'genuine healing and reconciliation' through this process.<sup>5</sup>

Through a philosophical and psychological framework this paper seeks to explore the promises and limitations of truth commissions - with specific reference

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<sup>2</sup> Anonymous Witness, Fish Town City River County, Feb 25 2008, available at <http://trcofliberia.org/transcripts/29>, last accessed 7<sup>th</sup> September 2011.

<sup>3</sup> Comprehensive Peace Agreement of Liberia, signed 18<sup>th</sup> August 2003, Accra, Ghana. Available at <http://trcofliberia.org/resources/documents/peace-agreement.pdf>, last accessed 21<sup>st</sup> August 2011.

<sup>4</sup> Truth and Reconciliation Commission of Liberia Mandate, enacted on May 12<sup>th</sup> 2005, by the National Transitional Legislative Assembly, available at <http://trcofliberia.org/about/trc-mandate>, last accessed 2<sup>nd</sup> September 2011, p. 2.

<sup>5</sup> *Ibid.*

<sup>6</sup> Friedrich Nietzsche, 'Truth and Lies in a Nonmoral Sense', in Keith Ansell-Pearson and Duncan Large (eds), *The Nietzsche Reader*, (Blackwell Publishing: Maldon, 2006).

<sup>7</sup> George Orwell, *Nineteen-Eighty-Four*, (Heinemann Educational Books Ltd: Oxford, 1990), p. 26.

to the truth commission established in Liberia - through a deconstruction and discussion of their central elements: truth, testimony, history and reconciliation.

The paper will contest the notion posited in the mandates of truth commissions that truth is something objective and verifiable that can be found; rather, I insist that if we align our understanding of truth with Nietzschean thinking on the subject, truth commissions can foster the creation of truth through the individual's creative engagement with speech and language as they testify at truth commission hearings.<sup>6</sup>

The paper then goes on to discuss some of the problems inherent in the idea that, through the act of narrative, individuals can heal through a spoken testament of their traumas. Following post-modernist thinking, this paper is sceptical of claims of official truth and history which privileges certain memories and narratives and in fact subscribes to a version of history which suits the agenda of the new order and government, or those who have been tasked with writing this official truth and history. Indeed, by the very notion that truth commissions "rewrite" the past they admit that truth and history are permeable, biased and privileged to whomever is writing it. This paper argues that despite truth commission's claims that they are therapeutic bodies aimed at the overall healing and betterment of those afflicted by the pains of war, truth commissions are in fact political bodies designed to forward the agenda of the new reigning order. In addition, this paper makes suggestions as to what elements of a truth commission can have a positive and healing effect, and could therefore lead to what I argue to be true and lasting reconciliation.

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<sup>6</sup> Friedrich Nietzsche, 'Truth and Lies in a Nonmoral Sense', in Keith Ansell-Pearson and Duncan Large (eds), *The Nietzsche Reader*, (Blackwell Publishing: Maldon, 2006).

*'If the Party could thrust its hand into the past and say this or that event, it never happened - that, surely, was more terrifying than mere torture and death. [...] And if all others accepted the lie which the Party imposed – if all records told the same tale – then the lie passed into history and became truth. "Who controls the past" ran the Party slogan, "controls the future: who controls the present controls the past".'*

*George Orwell, Nineteen-Eighty-Four*<sup>7</sup>

## **INTRODUCTION**

This work will span the literature and discourses of philosophical, political, psychological and legal studies as it delves into the meanings and promises of the 'truth commission'. In modern society, as nation states fight against others and internally, mechanisms have been developed in the field of transitional justice which are aimed at bringing a country out of the darkness of war and oppression and into the light of democracy and human rights. Such goals reveal not just the contemporary trends in governance, but the ideals of a new world order. As a parastatal body, a truth commission stands as a prime space where the goals of this new world order can be performed and enacted, especially as the international community becomes involved in its processes. This paper will explore the conceptual grassroots of truth commissions and, through this, lay out the argument that they become a political tool used to forward the agenda of the new government.

### **1. Truth Commissions**

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<sup>7</sup> George Orwell, *Nineteen-Eighty-Four*, (Heinemann Educational Books Ltd: Oxford, 1990), p. 26.

Truth commissions are temporary parastatal bodies designed to deal with the atrocities of a country's past through the hearing of individual testimonies, from both victims and perpetrators, and through their own investigations. In this way they aim to bring to light the truth of the past in order to create a nationally accepted history of what really happened. Truth commissions foster justice through the naming of past violence and violation, and foster reconciliation through the dialogic confrontation of victims and perpetrators and through the national process of learning truth and creating history. Indeed, the public testimony of individual memories of war come together to form a national consciousness which warns people not to let it happen again and brings them together over a shared history and heritage.<sup>8</sup>

Truth commissions occupy an unchartered territory between the legal trial and court room and those unofficial spaces whereby crimes or hurtful behaviour are confronted and handled.<sup>9</sup> Truth commissions do not hold the power to prosecute but employ a legalistic method of investigation and testimony-hearing.<sup>10</sup> It is, as many have remarked, a 'quasi-judicial body' indicative of the victim-centred paradigm shift in criminal justice, as they privilege the voices of the country's victims.<sup>11</sup> Yet, truth commissions do not favour the individual witness as their justice (in the form of prosecuting their victimiser) is sacrificed for truth and justice for all. However, when a country is facing a multitude of human rights violations and violations of humanitarian law, it would be near impossible for any country's judicial system to process so many cases; and further, these countries tend to have weak judicial and administrative structures as a result of the conflict.<sup>12</sup> For these reasons most agree that a truth commission is indeed the most suitable method for dealing with a

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<sup>8</sup> For a more detailed definition of a truth commission see Priscilla Hayner, *Unspeakable Truths*, (Routledge: New York, 2001), pp. 1 – 49.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission*, (Stanford University Press: Stanford, California, 2007), p. 2. And furthermore, in their report the Truth and Reconciliation Commission of Liberia also used the term 'quasi-judicial body', see, Republic of Liberia Truth and Reconciliation Commission, *Volume One Preliminary Findings and Determinations*, 2009, available at [www.trcofliberia.org/resources/reports/final/volume-one\\_layout-1.pdf](http://www.trcofliberia.org/resources/reports/final/volume-one_layout-1.pdf), last accessed 3<sup>rd</sup> September 2011, p. 34.

<sup>12</sup> *Supra* note 8 at 1 – 19.

country's heinous past;<sup>13</sup> this paper seeks to analyse how far the current model of a truth commission can go to achieving 'true healing and reconciliation' for a whole society.<sup>14</sup>

Ideologically truth commissions aim high. It is often remarked how truth commissions create more expectations than they are ever possibly able to fulfil. This paper seeks to explore the promises and limitations of truth commissions through a philosophical discussion of their central elements: truth, testimony, history and reconciliation.

## **2. Liberia**

### **2. 1 Liberia: A Brief History**

Liberia is unique amongst African countries. Unlike the rest of Africa, Liberia was never colonised as such. Instead, in the mid-19<sup>th</sup> Century it became known as the homeland for ex-slaves returning to Africa from the Americas. However, the natives of Liberia were antagonised by the repatriated Americo-Liberians, as these new nationals imposed systems of governance and administration which disregarded the needs of the natives, rendering them their servants and workers. Americo-Liberian's became the country's elite, exploiting the natives, whom they regarded as second class citizens. Effectively, Liberia became colonised by the Americo-Liberians who saw the country as their homeland.<sup>15</sup>

This history of Liberia provides the backdrop for the identity crises which caused much of the country's historical strife. Indeed, a succession of bloody coups d'état became the motif for the movement of Liberia's governments as the oppressive governance of the white American Colonization Society was overthrown

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<sup>13</sup> See, for example, Hayner, *supra* note 8 at 24 – 31.

<sup>14</sup> *Supra* note 4 at 2.

<sup>15</sup> In 1822 the American Colonization Society began repatriating African-Americans to Liberia. By 1847 Liberia was established as a sovereign nation under white Americo-Liberian rule. For a detailed history of Liberia see Liberian TRC Report *Volume One*, *supra* note 11 at 47 – 57.

by elitist black leadership, which, in turn, was overthrown by the likes of Samuel Doe, and later, Charles Taylor.<sup>16</sup> Although similar to many other African countries, Liberia became one of the worst afflicted by internal separations and antagonisms between communities and tribes, differences which later came to fuel one of the most severe, protracted and bloody civil war of the last 50 years. The country suffered a continuous line of autocratic, insecure and violent presidents, including the notorious Samuel Doe and Charles Taylor who today is facing serious allegations at the International Criminal Court for war crimes and crimes against humanity for his actions in Liberia and West Africa.<sup>17</sup> During the years of civil war in Liberia, from 1979 to 2003, it is estimated that over 250, 000 people died as a result of the conflict and over 1.5 million were displaced, amounting to over a third of the population.<sup>18</sup>

## 2.2 The Truth and Reconciliation Commission of Liberia

Therefore, it was decided at the 2003 Comprehensive Peace Agreement in Accra, Ghana, that a truth commission would be created in order to secure peace efforts in Liberia.<sup>19</sup> By 2006 a Truth and Reconciliation Commission of Liberia had been established which was mandated to ‘provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past to facilitate genuine healing and reconciliation’.<sup>20</sup> Indeed, the Liberian TRC was to ‘creat[e] an independent, accurate and objective record of the past and mak[e] recommendations reflexive of the truth to re-unify and reconcile contending groups and/or the peoples of Liberia’.<sup>21</sup>

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> See Liberian TRC Report *Volume One*, *supra* note 11 at 50.

<sup>19</sup> *Supra* note 3 at 11.

<sup>20</sup> *Supra* note 4 at 2.

<sup>21</sup> *Supra* note 11 at 33.

For a number of reasons I have decided to use Liberia and the Liberian TRC in order to assess the conceptual possibilities and limitations of truth commissions. Firstly, the Liberian TRC is, to date, the most recent truth commission to be established and its findings published. For this reason, there is yet little literature which has commented on its operations and findings. I wish, therefore, to begin scholarly dialogue on this institution so as to assess how far it has helped in bringing Liberia out of the misery of its past. Further, because it is the most recent truth commission it has utilised many of the attributes and functions of previous truth commissions which are seen to be the most affective for the realisation of peace and justice. Therefore, to analyse the Liberian truth commission is, to some extent, to analyse truth commissions in general. Lastly, in their bid to establish an effective truth commission, the Liberian TRC drew heavily from the ideologies and technologies of the South African Truth and Reconciliation (SATRC).<sup>22</sup> The SATRC has been one of the most popular and widely witnessed of truth commissions, and so has received much scholarly attention. Indeed, I have taken widely from the literature on the SATRC in order to bolster the arguments laid out here in this paper.

### **3. Chapter Overview**

#### **3.1 Chapter 1: Truth**

The central theme of truth commissions is, necessarily, the search for truth. This truth is sought in the testimonies and accounts of war and violence given by all who were affected, and in the investigative mandate of the commission. It is supposed that through the search for truth in the memories of the victims, survivors and perpetrators of war, that a shared national history is arrived at and reconciliation is achieved. However, this is idealistic and based on numerous assumptions which will be discussed and deconstructed in this chapter. Indeed, I outline that truth

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<sup>22</sup> Indeed the commissioners and staff were even trained in South Africa by the commissioners and workers of the SATRC. See Liberian TRC Report *Volume One*, *supra* note 11 at 36.

commissions tend to hold an understanding of truth as that which is factual, verifiable and corroborative: an objective reality to be uncovered, sought, and found. However, by bringing in Nietzschean criticisms of objective truth being created through language,<sup>23</sup> this chapter posits that truth commissions are a discursive act which subjectivises individuals to the ideals of the new political regime through the creation, and appropriation of, truth-claiming discourses. However, on the other hand this chapter argues that through this notion of creating truth, truth commissions hold the promise of fostering the creation of subjective truths which are created through the engagement with speech and language as individuals narrate and testify about their experiences of war. And further, the subjective truths embedded in these narratives call upon their audience and readers to actively engage in an ethical reading of them and, in this way, encourage ‘true healing and reconciliation’<sup>24</sup> as the self and the other begin a process of communal empathy.

### 3.2 Chapter 2: Testimony

The second chapter will explore the notion of testimony. The stories of the individuals who come to testify are an integral part of a truth commission as these testimonies are to aid the commission in their investigation of the past, bring justice to the victims of war through the naming of their violations and violators, and restore dignity and healing to the individual through the act of narration, speech and revelation. The testimonies of many at truth commissions are the telling of a traumatic experience. Therefore, this chapter is situated within psychological debates on trauma and memory, and phenomenological theories on the dilemma of sharing experience, and argues that traumatic memories – which truth commissions hope to extrapolate from the testimonies of witnesses and victims – in their very nature resist telling, as the traumatic experience is essentially unknowable to its victim; resist hearing, as those witnessing often do not register the trauma as it falls outside of their cultural references and understanding; and resist history, as a traumatic event is outside of time, living repressed in a continual present.

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<sup>23</sup> *Supra* note 6.

<sup>24</sup> *Supra* note 4 at 2.

The phenomenon of the truth commission continues to impress academics, activists and other actors in the sphere of transitional justice. Unlike the purely legal criminal trial, a truth commission has come to be known as a way of dealing with the crimes of war in a way that brings about not just justice for its victims, but healing and reconciliation on a national level. It is phenomenal that a mechanism of transitional justice has possibly been found which can bring about lasting and effective peace, and thus it requires deep and critical analysis. This paper will explore the theoretical components of a truth commission, delving into the limitations, and indeed possibilities, of what is now thought of as a true road to peace and stability for countries and nations coming out of severe war, conflict and difficulties. Although one of the world's most recent truth commissions will be discussed here (the Truth and Reconciliation Commission of Liberia), the focus of this paper will primarily be a philosophical analysis of the conceptual elements which make up a truth commission.

*'I have made up thousands of stories; I have filled innumerable notebooks with phrases to be used when I have found the true story, the one story to which all these phrases refer. But I have never yet found that story. And so I begin to ask, are there stories?'*

Virginia Woolf, *The Waves*<sup>25</sup>

## **CHAPTER 1: TRUTH**

### **1. Introduction**

The Ministry of Truth in George Orwell's *Nineteen Eighty-Four* was the state department responsible for manufacturing truths and historical facts which became dogmatic narratives for its citizens to follow.<sup>26</sup> This literary trope was used by Orwell to satirically critique political narratives of freedom and democracy that masqueraded as truth and knowledge. With their Orwellian title, today's truth commissions are arguably not so far removed from their literary counter-part. Truth commissions are state sponsored operations, designed to discover truth and knowledge that will come to stand as a country's official story. And further, truth commissions subscribe to a political agenda in their intent to solidify confidence and trust from the people in the new government.<sup>27</sup> However, as their designation lays bare, truth commissions are focused primarily towards "truth", and this chapter intends to explore the meanings, consequences, and possibilities of such an objective. This chapter aims to analyse such questions as how does one tell the truth,

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<sup>25</sup> Virginia Woolf, *The Waves*, (Hertfordshire, Wordsworth Classics: 2000), p. 106.

<sup>26</sup> *Supra* note 7.

<sup>27</sup> For a critique of the political nature of truth commissions see, for example, Alex Boraine, *A Country Unmasked*, (Oxford University Press: USA, 2001); and Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission*, (Lexington Books: London and New York, 2008).

if indeed it can be told at all, and further, who decides what the truth is and when it has been arrived at.

This chapter begins by considering what truth commissions in general and the Liberian TRC in particular understand truth to be, and further, where their understanding arose from and its limitations. This paper puts forward that although truth commissions tend to realise that there are alternate ways of understanding truth, certain kinds of truths are privileged, *viz.* legalistic and scientific truths which can be corroborated and verified. This chapter will move on to discuss the notion of truth from a Nietzschean and post-modernist perspective, reflecting first on the political ramifications of this understanding of truth for a truth commission, and secondly, the possibilities for redress and healing that this conception of truth holds. From a post-modernist perspective, therefore, I argue here that a truth commission's claim to seek and to find an objective truth is misdirected; instead, such commissions have the potential to open an official and public arena whereby truth can be created rather than found.

Following a Nietzschean and postmodernist distrust of objective truth, this paper puts forward that there are two types of truths that could conceivably be produced or created by a truth commission. The first is based on an Orwellian and Foucauldian understanding of truth as being manufactured by the state and those in power to contain and regulate the subjects, directing them, through hegemonic ideologies of truth and knowledge, towards certain political and economic objectives.<sup>28</sup> In this regard, therefore, a truth commission can simply become another institutional body which regurgitates the political order of the state through truth- and knowledge-claiming discourses masked in the altruistic and regenerative discourse of human rights and reconciliation. However, the second truth that truth commissions provide a space for is a subjective and multifaceted truth created by the stories of the individuals who testify. It is this truth which I argue holds more power and promise for the future reconciliation and healing of a post-oppression country, as its speakers actively engage in an interpretation of their experiences through a creative use of language and narrative, and as the witnesses are required to engage in an ethical reading or listening of such testimonies. This chapter therefore examines

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<sup>28</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, translated by Alan Sheridan, (Vintage: New York, 1977).

the question of what kind of understanding of truth leads to what kind of reconciliation, and for whom.

## 2. A Truth Commission's Conceptualisation of Truth

Their name proclaims that truth is the primary objective of the work of a truth commission. As Charles Villa-Vincencio and Wilhelm Verwoerd describe it, the role of a truth commission is 'to uncover and acknowledge the truth, so our society could at least be free and more forward.'<sup>29</sup> But what is a truth commission's understanding of truth? And what do they mean when their mandate speaks of their mission as truth-seeking?

Considering that truth commissions - as a mechanism of transitional justice - fall under the umbrella of human rights, it is necessary to first look at how this discourse has previously constructed the notion of truth. Although not explicitly stated in the Bill of Rights, there exists a right to the truth, and this right is one of the oldest rights historically struggled for; its inception dates back to John Milton in the 17<sup>th</sup> Century who petitioned against censorship as he believed the public held the right to know the truth about how their state was managed and conducted.<sup>30</sup> In 2005 the United Nations passed a Resolution which instructed the United Nations Commission on Human Rights to complete a study and report on the right to the truth and to update the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.<sup>31</sup> The understanding here of truth as a right is essentially as "knowledge" and, therefore, the right to the truth denotes the right to know.

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<sup>29</sup> Charles Villa-Vincencio and Wilhelm Verwoerd, *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, (University of Cape Town Press: Cape Town, 2000), p. 134.

<sup>30</sup> See A. C. Grayling, *Towards the Light: The Story of the Struggles for Liberty and Rights that Made the Modern West*, (Bloomsbury: London, 2007), pp. 67 – 69.

<sup>31</sup> United Nations Commission on Human Rights, Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II), available at [ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_9\\_11.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf), last accessed 29<sup>th</sup> August 2011.

Within the human rights discourse the right to the truth is largely associated with freedom of speech and the right to seek public information and knowledge; and secondly, with the aspect of humanitarian law which concedes that family members have a right to know what happened to relatives who have suffered torture, forced disappearances, and extra-judicial killings, for example.<sup>32</sup> Indeed, in the Report of the Office of the High Commissioner for Human Rights on the Right to the Truth it states, ‘a person has a right to know the truth about what happened to him/her and that society as a whole has both a right to know and a responsibility to remember.’<sup>33</sup> Not only does this quotation explicitly demonstrate the exchangeability of the denotations of “truth” and “knowledge”, but also implicitly demonstrates the understanding of truth to be an objective reality in the fact that it can - and should - be shared by all society, who hold the ‘right to know’ the truth.<sup>34</sup>

‘The right to know the truth’,<sup>35</sup> which the Final Report of the Liberian TRC expressly claims that all Liberian’s are entitled to,<sup>36</sup> implies a certain both traditional and positivist notion of truth which has been extended into the mandates and rhetoric of numerous truth commissions and, as we shall see, the Liberian TRC. Truth commissions tend to hold a *truth-seeking* mandate which aims to bring into public conscious the truth about the atrocities and violence of war, and unite people in a shared understanding of the past. This commitment holds two assumptions about the nature of truth: the first is that truth is objective and already “out there” or *a priori*, needing simply to be sought and revealed by human methods. Indeed, the fact that the writers of the final report have compounded the words ‘truth’ and ‘seeking’

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<sup>32</sup> Mark Freeman, *Truth Commissions and Procedural Fairness*, (Cambridge University Press: Cambridge, 2006), p. 7.

<sup>33</sup> United Nations Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, Right to the Truth, Report of the Office of the High Commissioner for Human Rights*, A/HRC/12/19, 21 August 2009, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-19.pdf>, last accessed 15 July 2011, p. 3 paragraph 5.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Republic of Liberia Truth and Reconciliation Commission, *Volume Two Consolidated Final Report*, 2009, available at [www.einaudi.cornell.edu/files/content/.../Volume%20Two%20reduced.pdf](http://www.einaudi.cornell.edu/files/content/.../Volume%20Two%20reduced.pdf), last accessed 29<sup>th</sup> August 2011, p. 23.

clearly demonstrates this construction of truth as an objective reality to be found.<sup>37</sup> Secondly, and stemming from this understanding of objective truth, is the assumption that the truth, once revealed, will be common to all, as demonstrated in the ‘right to truth’.<sup>38</sup> These constructions of truth arose from the philosophies of René Descartes in the Renaissance epoch and Immanuel Kant in the 18<sup>th</sup> Century.

Descartes first documented the notion that the individual was a thinking subject (*Cogito, ergo sum* – “I think, therefore I am”) who viewed the world objectively.<sup>39</sup> What Descartes laid out was the philosophical conception of objective truth, an idea that was cross-referenced in the advancing discourses of science, creating an epistemic paradigm which saw truth being discovered through reason and knowledge.<sup>40</sup> It is this conceptualisation of truth which is evident in the mandate of the Liberian TRC as it seeks to find an ‘independent, accurate and objective record of the past’,<sup>41</sup> which is to be ‘sought’ through ‘investigating’, ‘determining’ and ‘establishing’;<sup>42</sup> such language demonstrating the same Cartesian philosophy that truth is objective, waiting to be discovered and found through reason and knowledge.

Following on from this is the idea expressed in the mandate of the Liberian TRC that the truth found will be common to all and come to unite Liberians in a shared understanding of the truth of their past.<sup>43</sup> Although Descartes laid the foundation for the idea of objective truth, it was Immanuel Kant in the 18<sup>th</sup> Century who took the idea further, positing that objective truth is universal and shared by all as humanity has the same mechanisms with which to experience and understand the objective world.<sup>44</sup> This evolved into his theory on ‘categorical imperatives’ which describes these universal truths on which we act and think.<sup>45</sup> This idea of a shared

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Supra* note 33.

<sup>39</sup> Immanuel Kant, ‘Critique of Pure Reason’, in Louis White Becker (ed), *Kant: Selections*, (Macmillan Press: New York, 1988).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Supra* note 11 at 33.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Supra* note 4 at 2.

<sup>44</sup> *Supra* note 39.

<sup>45</sup> Immanuel Kant, *Groundwork for the Metaphysics of Morals; with, A Supposed Right to Lie because of Philanthropic Concerns*, translated by James Ellington, (Hackett: Indianapolis, 1993).

and universal truth is implied in the United Nations' description of the right to the truth which talks of 'society as a whole ha[ving] both a right to know and a responsibility to remember.'<sup>46</sup> Indeed, according to the United Nations independent expert Diane Orentlicher, who wrote the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, the right to truth (which, for Orentlicheher, is synonymous with the right to know) is principally a right owed to '[e]very people', rather than to individuals.<sup>47</sup> What she expresses here is the importance of a people to a shared truth, which she explains becomes their national 'heritage' and 'history'.<sup>48</sup> This concept, which originates from the Kantian understanding of truth and categorical imperatives, holds a great deal of weight in the ideology behind truth commissions as, for a truth commission, a historical truth shared by a nation will be reconciliatory by bringing together all peoples, and justiciable in its public acknowledgment of "what really happened".

## 2.1 Different Kinds of Truth

Truth commissions in general, and the Liberian TRC specifically, acknowledge that the one objective truth, which will explain all the past atrocities and come to stand as the country's official history, is made up of numerous kinds of truth. They must be given credit, then, for their recognition that there is not simply one truth; however, and as will be examined here in this chapter, truth commissions favour and prioritise a certain kind of truth, privileging the kind that is factual, scientific and legalistic, rather than the personal and subjective truths created in the individual testimonies.

The mandate of the Liberian TRC sets out the framework for the establishment of different kinds of truth and, in doing so, determines how these different types of truth are prioritised. It is arguable that the Liberian TRC followed on from the conceptualisation of the different kinds of truth developed in the

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<sup>46</sup> *Supra* note 33 at 3, paragraph 5.

<sup>47</sup> Diane Orentlicher, United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, available at <http://www.derechos.org/nizkor/impu/principles.html>, last accessed 29<sup>th</sup> August 2011, p. 7.

<sup>48</sup> *Ibid.*

workings and report of the South African TRC. The report of the South African TRC announces four types of truth: firstly, ‘forensic truth’: effectively defined as factual truths concerning information about where, when, how, and so forth - this is also a legalistic understanding of truth.<sup>49</sup> Secondly, there was ‘personal or narrative truth’ which described the subjective truths of the individual testimonies.<sup>50</sup> Thirdly, ‘social truth’, which consists of the truths created through dialogue and the social engagement of speaking and listening to testimony.<sup>51</sup> And finally there is ‘reconciliatory’ or ‘healing truth’ which describes the truths brought to light by the SATRC process which reminds people of what must never be allowed to happen again.<sup>52</sup>

Although a truth commission is supposed to be a body which bridges the gap between legal court rooms and informal dispute mechanisms and victim services, it becomes apparent that in many previous truth commissions, notably the South African TRC and the Liberian TRC, a legalistic or scientific type of truth is prioritised. In short, the ‘forensic truth’, or, in the words of Alex Boraine, ‘objective or factual or forensic truth’,<sup>53</sup> is the privileged source of truth when it comes to the compiling of a truth commission’s final report, as these truths are hailed as objective and, therefore, undisputable. In reference to the South African TRC, Mark Sanders comments that ‘although it declares itself hospitable to storytelling, it proves more at ease with statements that can be forensically verified or falsified.’<sup>54</sup> Moreover, Catherine M Cole describes how the translating and statement-taking techniques of the South African TRC were designed in order to facilitate the bringing about of factual truths: ‘we were told to keep it as brief as possible and only focus on the major points ... we

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<sup>49</sup> Truth and Reconciliation Commission of South Africa, *Volume One Truth and Reconciliation Commission Final Report*, available at <http://www.justice.gov.za/trc/report/finalreport/Volume%201.pdf>, last accessed 2<sup>nd</sup> September 2011, p. 114.

<sup>50</sup> *Ibid.*, p. 115.

<sup>51</sup> *Ibid.*, p. 116.

<sup>52</sup> *Ibid.*, p. 117.

<sup>53</sup> Alex Boraine was Vice Chairperson of the South African TRC. *Supra* note 27 at 288.

<sup>54</sup> Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission*, (Stanford University Press: Stanford, California, 2007), p. 153.

had to get the facts, but people wanted to tell their story in broad terms.’<sup>55</sup> Indeed, Sanders points out that this has been one of the major criticisms of truth commissions to date: ‘the dominant tendency among scholars interpreting Truth Commission testimony has been to point to the inadequacy of the Commission’s procedures in allowing stories to be told or to its facilitating only certain kinds of stories.’<sup>56</sup>

For the writers of *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, this is a necessary prioritisation of truth as ‘the conflation of the subjective with objective truth finding weakens the political and moral importance of truth by making truth a matter of personal opinion, and not the product of verifiable scientific best practices.’<sup>57</sup> However, and as will be discussed in more detail later in the chapter, this way of seeing and understanding the work of truth within the operations of a truth commission excludes other significant ways of seeing truth which, arguably, could be more effective at bringing about ‘true healing and reconciliation’.

The Liberian TRC readily states how it was influenced by the workings of the South African TRC.<sup>58</sup> Further, it is evident in the following extract from the report of the Liberian TRC that their processes were deliberately designed so as to ensure that a certain kind of truth prevailed, viz. the factual and legalistic kind:

The statements forms were specifically designed to be gender sensitive, victim friendly, while special forms were designed for children statement-givers. This method employed a confidential interview using probing questioning techniques to assist the statement-giver in recounting traumatic events or experiences and to provide factual accounts or evidence of events that took place.<sup>59</sup>

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<sup>55</sup> Thabiso Mohasoa, a statement taker at the South African TRC statement taker, cited in Catherine M Cole, *Performing South Africa’s Truth Commission*, (Indiana University Press: Bloomington and Indianapolis, 2010), p. 63.

<sup>56</sup> *Supra* note 54 at 7.

<sup>57</sup> Audrey R. Chapman and Hugo van der Merwe (eds), *Truth and Reconciliation in South Africa: Did the TRC Deliver*, (University of Pennsylvania Press: Pennsylvania, 2008), p. 147.

<sup>58</sup> *Supra* note 11 at 36.

<sup>59</sup> *Ibid* at 37 – 38.

Statement-takers were deliberately trained to work past the traumatised memories of the individuals who were testifying in order to gain ‘factual accounts or evidence’.<sup>60</sup> Indeed, it is written in their report that the inquiry unit of the commission was tasked to ‘investigate and corroborate allegations’ made in such testimonies.<sup>61</sup> And further, the first objective listed in the mandate of the Liberian TRC is the ‘investigat[ion of] gross human rights violations and violations of international humanitarian law’.<sup>62</sup> What this therefore demonstrates is the prioritising of those kinds of factual and scientific truths, and therefore, the relegation of the importance of the subjective truths in the narratives and accounts of those who testify.

### 3. Criticisms of Objective Truth

The general Cartesian understanding of truth as an objective factual reality, which is common to all and can be corroborated and verified, holds the assumption that such a reality is separate from human existence. There is, then, *a priori* of truth to be reached, revealed or discovered by human methods, which in itself is intrinsically non-human or beyond human capabilities. However, there are certain problems with this understanding of truth, which were critiqued by Friedrich Nietzsche, and later by the post-structuralists and post-modernists of the 20<sup>th</sup> Century. Moreover, many have criticized - to the avail of Christians and other such monotheistic religions - the idea that there is a truth which is beyond human experiences. The argument follows that if this were so, it would be impossible to speak the truth as to do so would only ever be an approximation of truth as the human tools or language we have to talk of it could never, by their very nature, go beyond what is human.<sup>63</sup>

Nietzsche, on the other hand, decenters the Cartesian and Kantian objectively observing self and posited against the idea of objective truth by arguing that reality is constituted by subjective interpretations of the world as we directly experience it, namely, through our sensory capacity; and therefore, there can never be anything

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Supra* note 11 at 43.

<sup>62</sup> *Supra* note 4 at 2.

<sup>63</sup> Vladimir Lenin, 4: “Does Objective Truth Exist?”, available at <http://www.marxists.org/archive/lenin/works/1908/mec/two4.htm>, last accessed 29<sup>th</sup> July 2011.

beyond our own human experiences, and hence no objective or universal truth which is common to all.<sup>64</sup> Phenomenological thinking drew along similar lines: skeptical of whether there was any truth or reality outside of our sensory experiences, they explored the bounds of consciousness as the mechanism for interpreting these experiences.<sup>65</sup> By the latter half of the 20<sup>th</sup> Century the post-structuralists - and later, the post-modernists - were in their advent, theorizing that truth was a function both of self-interest and power, and was therefore real only in the sense of its strength as a political doctrine. These thinkers followed on from Nietzschean thinking in their insistence that truth is subjective and relative, but continued on to describe how truth-claims subjectivize the individual, making them modifiable bodies for the realization of political and economic goals.<sup>66</sup> It is criticisms such as these of objective truth that become both relevant and useful for an examination of the construction of truth in truth commissions.

For the modernists, whose ideas originated in the philosophies of the early modern Renaissance Descartes, their sole purpose was a search for “The Truth”. These thinkers believed that there could be found a single truth which would act as a panacea for all problems facing the modern world. This understanding of truth paralleled ideas on freedom and democracy which were increasingly becoming relevant to the then political climate, as it was thought that the truth, once found, could be applied to politics, economics and the betterment of society writ large.<sup>67</sup> Indeed, this parallel of truth with political ideas of democracy dates back to the musings of the poet and political activist John Milton (whose work was circulating in England at around the same time as Descartes’ thinking in France) as, for him, ‘the people can be trusted to arrive at truth and flush out error better than a few appointed officials whose timidity or arrogance might make them silence truth to the detriment

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<sup>64</sup> *Supra* note 6.

<sup>65</sup> Chapter on ‘Post-modernism’ in Vincent B. Leitch, (General Editor), *The Norton Anthology of Theory and Criticism*, (W W Norton & Company: New York and London, 2001), pp. 1619-1623.

<sup>66</sup> Namely, Louis Althusser and Michel Foucault, see Vincent B. Leitch, *Norton Anthology of Theory and Criticism*, *ibid.*

<sup>67</sup> For a detailed description and definition of modernism see Lawrence S. Rainey (ed), *Modernism: An Anthology*, (Blackwell: Oxford, 2005). For a critique of the theories of modernism see Terry Eagleton, *After Theory*, (Penguin: London, 2004).

of all'.<sup>68</sup> Indeed, it is this sort of understanding of an objective truth, that it is both democratic in its inclusion of all people and which would ideally contribute to the liberty of all from the shackles of a horrendous past, which is found in truth commissions in general, and the Liberian TRC specifically. Truth commissions seek to rewrite the falsehoods disseminated by the previous autocratic or volatile government with a story of the past which is true for all people and, in doing so, create a culture for democracy and human rights awareness. Therefore, just like the modernist search for truth, truth commissions are similarly seeking a truth which will be a panacea for past ills, speak for all and, therefore, add to the betterment and liberty of society.

However, the post-modernists, following on from post-structuralism, rejected whole cloth modernism's search for truth in grand metanarratives capable of total rationalization. Instead, they proposed that if there was such a thing as truth, it was culturally constructed, subjective and relative.<sup>69</sup> These thinkers followed on from Nietzsche's theories; he rejected the notion of objective or *a priori* truth, arguing that there was nothing outside human experience, and so the objective truths we seek are in fact metaphors or allegories we have put there ourselves and have forgotten their true nature.<sup>70</sup> The post-structuralists developed this line of thought and began thinking about the powers and agendas behind truth claims. The post-structuralists proffered that there were always alternative ways of viewing and experiencing the world and that truth claims, depending on their source, precluded and dominated over these other versions.<sup>71</sup> For the post-structuralists Louis Althusser and Michel Foucault, truth is a function of power.<sup>72</sup> Louis Althusser argued that state institutions produce ideologies which masquerade as truth and which, through these truth claiming ideologies, control and subjectivize the individual.<sup>73</sup> These 'ideological

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<sup>68</sup> *Supra* note 30 at 67.

<sup>69</sup> See Terry Eagleton, *After Theory*, *supra* note 67.

<sup>70</sup> *Supra* note 6.

<sup>71</sup> See Chris Weedon, 'Principles of Post-Structuralism', in *Feminist Practice and Post-Structuralist Theory*, (Oxford, Basil Blackwell: Oxford, 1987), pp. 12 – 42.

<sup>72</sup> See Louis Althusser, 'Ideology and Ideological State Apparatuses', in *Lenin and Philosophy and other Essays*, translated by Ben Brewster, (New Left Books: London, 1971); and Michel Foucault, 'Technologies of the Self', in L H Martin, H Gutman and P H Hutton (eds) *Technologies of the Self*, (University of Massachusetts Press: Amherst, 1988).

<sup>73</sup> Louis Althusser, 'Ideology and Ideological State Apparatuses', *ibid.*

state apparatuses', as he named them, called on – or hailed<sup>74</sup> – individuals in order to affect their performance of certain tasks or attitudes necessary for the furtherance of the dominant political order. For Althusser all human behavior and thinking was controlled by these ideologies.<sup>75</sup>

Developing on from these ideas, Michel Foucault (originally a pupil of Althusser's) renamed these ideologies as 'discourses', which he describes as being the structuring agents disseminated by numerous other structures, bodies, institutions, or groups, for example, the law, the family, or even - in a modern society - advertising and marketing.<sup>76</sup> Foucault defined these discourses as truth-claiming narratives which organize, regulate and structure the ways in which we see and experience the world in order to give it meaning – they were essentially the grand-narratives (or metanarratives) the modernists were searching for.<sup>77</sup> The self became the space which these discourses fought to obtain and subjugate. However, there were always certain discourses more powerful than others, discourses which were usually phallogocentric and which were backed by those in power<sup>78</sup> – in Marxist terms this would be the ruling elite of the prevailing political order of capitalism. In short, Foucault argues that truth is a function of the self-interest of those in power, following on quite directly from Nietzsche's understanding of truth being a function of will-to-power.<sup>79</sup>

### 3.1 Implications of the Criticisms of Objective Truth

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<sup>74</sup> Or, in Althusser's terms, "interpellates", *ibid.*

<sup>75</sup> However, this is a rather problematic position to take as, if there was no thinking outside of these state controlled ideologies, it would be impossible to think independently and arrive at this assumption.

<sup>76</sup> *Supra* note 28.

<sup>77</sup> *Ibid.*

<sup>78</sup> See Carol Smart, 'Rape: Law and the Disqualification of Women's Sexuality', in *Feminism and the Power of Law*. (Routledge: London and New York, 1989), pp. 36-49.

<sup>79</sup> For an explanation of Nietzsche's concept of the "will to power" see Keith Ansell-Pearson and Duncan Large, *The Nietzsche Reader*, *supra* note 6.

What, then, are the ramifications of the post-structuralist understanding of truth on the work of a truth commission? There are a number of points to be raised regarding most significantly, discourse, subjectivity and power.

Firstly - and as briefly mentioned above - truth commissions seem to follow a modernist conceptualization of truth in their search for some sort of grand narrative or truth which can explain all the wrongs of the past. And furthermore, like the modernist understanding of truth, this truth is supposed to aid the country in their transition to democracy as, once found, it will be a truth common to all. However, I argue here that truth commissions do not find truth, rather, they produce it. A truth commission produces a grand truth of the past by amalgamating in its final report the evidence it brought to light and the testimonies it witnessed.

Yet, certain kinds of truths are favoured and prioritized in the compiling of this report, viz. legalistic or scientific truths, as explained above. From a Foucauldian perspective, this new truth – or discourse - of the past generated by a truth commission is no different from the falsehoods circulated by the old regime as, for Foucault, political theories of freedom and democracy are discourses which serve to regulate and control the population by masquerading as truth and knowledge.<sup>80</sup> Indeed, according to the account of Foucauldian thought by Pierre de Vos, the new democratic and modern state is more controlling and penitentiary-like than the violent systems of the past as the apparatus for discipline are more subtle and pervasive, for example, surveillance, administration, mass media and so forth:

In the context of modern representative democracy, we can thus conclude that the constitution of society and the state through law and the details of power, discipline and punishment are all related. They fully interpenetrate one another. Juridical equality, explicit legal codes and representative democracy developed along with the disciplinary practices that shape mundane activity.<sup>81</sup>

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<sup>80</sup> *Supra* note 28.

<sup>81</sup> Pierre De Vos, 'Refusing Human Rights: A Foucauldian Account', in Karen van Marle (ed.) *Refusal, Transition and Post-Apartheid Law*, (Sun Media: Stellenbosch, 2009), p. 125.

Indeed, this Foucauldian criticism of the modern democratic state led De Vos to question the utility of the human rights discourse, a discourse which is characteristic of the hegemony of democracy, purposed towards the real alleviation of poverty and abjection: ‘will engagement with human rights not inevitably serve to mask and legitimise forms of oppression and exclusion?’<sup>82</sup> When viewed from this perspective, it becomes clear how a truth commission could be seen to be an Orwellian Ministry of Truth, manufacturing truths which become hegemonic political tools that contain the behavior and attitudes of its subjects.

### 3.1.1. Subjectivity

The construction of the subject is central to the thoughts and theories of post-structuralism. The notion that individual identity was structured intrinsically and by internal conscious experience was radically deconstructed; instead it was posited that individual identity was shaped externally by regulating forces in society which mold the minds and bodies of its citizens to perform in the most useful fashion for the continuance of the dominant order.<sup>83</sup> The idea of subjectivity and of discourses subjectivising the individual is an important one for the evaluation of truth commissions, as truth commissions arguably produce a discourse which subjugates the nation to the demands of the new political order.

The notion of subjectivity stems from Louis Althusser’s theory of “interpellation” which, arising from symbolic interactionism theories, describes how state bodies and institutions call on individuals to play a certain role and act and think a certain way.<sup>84</sup> In short, individuals are hailed to continuously reconstruct their identity to suit the economic, political, or other such goals of the state. It is through ideological state apparatuses, and their claim to truth and knowledge, that the individual is interpellated, or hailed. Foucault developed the rhetoric of this theory, renaming ideologies as discourses and explaining how these discourses create docile bodies which are used to perform the economic, military, political and

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<sup>82</sup> *Ibid.*, at p. 121.

<sup>83</sup> *Supra* note 71.

<sup>84</sup> Louis Althusser, ‘Ideology and Ideological State Apparatuses’, *supra* note 72.

other such functions of the state, and so continue the reign of the current political order.<sup>85</sup> In his work *Technologies of the Self*, Foucault contends that the modern democratic state is far more equipped to producing docile bodies as the apparatus for discipline and control are more subtle and nuanced:<sup>86</sup> ‘modern power requires increasingly narrow categories through which it analyzes, differentiates, identifies, and administers individuals’<sup>87</sup> and, in doing so, makes their bodies sites of docility. Therefore, if a truth commission is a discursive act, then through its claims to truth, it hails individuals, creating docile bodies of those who participate and listen who will - quite literally - be useful for the success of the new political order it seeks to promote.

### 3.1.2 The Discursive Nature of Truth Commissions

Indeed, for Foucault, and perhaps Althusser, the truths put forth by the work of truth commissions would amount to a discourse, or ideological state apparatus, which structures and subjectivises the bodies, lives and identities of those who believe in its truth claim. By its very title truth commissions claim to hold a legitimate authority over truth. Additionally, other already dominant and powerful discourses are used within its designs and functions, which allow a truth commission to hold an authoritative and influential claim to truth.

It has been outlined above that Foucault posited that certain discourses - namely those which fall under the umbrella of science - are dominant and hold a stronger claim to truth, marking out other discourses as invalid or, at the very least, unreliable.<sup>88</sup> It follows, therefore, that the appropriation of ‘forensic truth’ by truth commissions, and the prioritizing of this sort of truth, is a discursive act which deliberately appeals to the commonly held value that the scientific discourse has a superior access to the truth. The appropriation of this dominant discourse by a truth

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<sup>85</sup> *Supra* note 28.

<sup>86</sup> Michel Foucault, ‘Technologies of the Self’, *supra* note 72.

<sup>87</sup> *Supra* note 65 at 1620.

<sup>88</sup> *Supra* note 28.

commission therefore heightens both the truth commissions claim to know the truth and secondly, their position of authority and influence.

Furthermore, although Foucault never directly expressed it as such, proponents of Foucauldian thought have argued that the law is another such dominant discourse which disqualifies<sup>89</sup> and dominates over other ways of thinking or seeing the world. Arguing that law is a dominating discourse in her article 'The Power of Law', Carol Smart explains thus: 'law sets itself outside the social order, as if through the application of legal method and rigour it becomes a thing apart which can in turn reflect upon the world from which it is divorced.'<sup>90</sup> Indeed, truth commissions, although they claim to bridge the gap between the legal court room and informal dispute mechanisms, in fact adopt much of the legal discourse and method within their structures and functioning. This is ironic considering human rights - the prevalent discourse of truth commissions - is supposed to hold in check sovereignty or excess power, yet the realization of these rights is through one of the oldest mechanisms produced by the dominant, state or sovereign power, viz. the law.<sup>91</sup>

Consider Diane Orentlicher's definition of a truth commission: 'the phrase "truth commissions" refers to official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years.'<sup>92</sup> Although she claims these truth commissions are 'non-judicial', she uses a legal semantic field to describe their operations: 'official', 'fact-finding', 'investigate', 'human rights or humanitarian law', and 'committed'. The testimonies of individuals are required to be 'investigate[d]' just like the testimonies of witnesses in the court room. Furthermore, truth commissions subscribe to a legalistic construction of truth as objective 'fact[s]', as they favor the

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<sup>89</sup> The use of the word 'disqualifies' echoes Carol Smart's position as laid out in her chapter, 'Rape: Law and the Disqualification of Women's Sexuality', in *Feminism and the Power of Law*, *supra* note 78 at 36-49.

<sup>90</sup> Carol Smart, 'The Power of Law', in John Munice et al. (Eds.) *Criminological Perspectives: A Reader*. (Sage Publications: London, Thousand Oaks, New Delhi in Association with the Open University, 1996), p. 425.

<sup>91</sup> See Pierre De Vos, *supra* note 81.

<sup>92</sup> *Supra* note 47 at 6.

appropriation of factual evidence rather than, for example, emotional catharsis and personal epiphanies.

Moreover, the appropriation of the dominant legal discourse by a truth commission in fact manipulates the whole testimony process as the contents of any testimony, statement or account must strictly fall within the legally defined bounds of ‘Egregious Domestic Crimes’, ‘Gross Human Rights Violations’ and ‘Serious Humanitarian Law Violations’.<sup>93</sup> This therefore renders invalid the statement made in the mandate of the Liberian TRC that the commission provides an opportunity for people to ‘share their experiences’<sup>94</sup> as only those experiences which can be legally categorized are accepted. This conflation of the narratives of the individuals into certain categories of legally defined offenses meant that the commission lacked the capacity to examine some of the structural causes of the Liberian civil war and meant that there were many truths which were left out of being officially acknowledged and which may also have needed to be spoken and heard in order to achieve ‘true reconciliation and healing’.<sup>95</sup>

Furthermore, privileging a legalistic truth found in facts and evidence over subjective interpretations, narratives and memories, could - ironically - be severely detrimental to the investigative mandate the commission is trying to fulfil. Charles Villa-Vincencio and Wilhelm Verwoerd speak of this problem in terms of the legal system of apartheid South Africa: ‘the apartheid era courts were faced with the dilemma of weighting testimony from a detainee about how he was assaulted, against the derails of the police and the security forces, who were backed by a district surgeon’.<sup>96</sup> Indeed, this also demonstrates how the legal discourse employs a scientific discourse (the ‘district surgeon’) to - in the words of Carol Smart - ‘extend its legitimacy’.<sup>97</sup> But, moreover, the privileging of the legal discourse and legal truths could result in those without the means to adhere to the complexities of the legal system being left in an inequitable position, unable to speak their truth.

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<sup>93</sup> *Supra* note 11 at 22 – 25.

<sup>94</sup> *Supra* note 4 at 4.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Supra* note 29 at 111.

<sup>97</sup> *Supra* note 90 at 428.

Effectively, then, truth commissions employ certain discourses which historically have been accepted by society as dominant and, therefore, truthful. The employment of these dominant discourses is for the large part what makes a truth commission an ‘official’ body, and this official-ness is largely what gives a truth commission its authority and encourages people to listen when it speaks.

### **3.2 The Political Motivations of the Discourse of Truth Commissions**

It is furthermore evident that truth commissions announce a disciplinary discourse which moulds and subjugates individuals to a certain way of thinking and acting, as the need for truth by truth commissions is politically motivated. Namely, the political drive behind truth commissions is to move a nation away from one autocratic governmental regime to a democratic state which is conscious of its human rights obligations. For the Liberian TRC the truth needed was one that would ‘facilitate genuine healing and reconciliation’.<sup>98</sup> There was, therefore, a clearly mandated purpose and necessity for the truth: the truth needed was politically motivated in that it needed to be a truth that would aid in the reconciliation of a country which had been severely ravaged by horrendous civil war, and it was needed to reunite a fractured nation and bring about trust and confidence in the new government. However, as argued above, following Foucauldian thought these political theories of freedom and democracy that characterize the new state order simply act in the same way as the previous more violent regimes, as they discipline and subjugate individuals through their claims to truth and the organising and structuring mechanisms of society that see this power effected.

Foucault’s ideas on power, truth-claiming narratives and subjectivity hold their origins in the theories of Friedrich Nietzsche. Ken Gemes explains that Nietzsche’s ‘notion of truth is used to escape responsibility for one’s actions and beliefs and is employed as a means of coercing uniformity of belief.’<sup>99</sup> According to Gemes, then, truth-claiming discourses allow for a kind of self-subjugation to the

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<sup>98</sup> *Supra* note 4 at 2.

<sup>99</sup> Gemes, Ken, ‘Nietzsche’s Critique of Truth’, *Philosophy and Phenomenological Research*, Volume LII, Number 1, March 2002, p. 5.

powers behind them, in that they discourage thinking for oneself, rather fostering the relinquishment of the individual's agency over their 'actions and beliefs'.<sup>100</sup> Further, in this relinquishment of individual agency comes the relinquishment of individuality as people are homogenized into a uniformed way of thinking and acting. For this reason, we cannot ignore the call for unification by the Liberian government: the new president of Liberia Ellen Johnson Sirleaf speaks of how the Liberian TRC needs to find a 'unifying narrative' for the country,<sup>101</sup> and further, the mandate of the Liberian TRC speaks of

Strengthening the national *integration* and *unity* of the people of Liberia, regardless of ethnic, regional or other differences, into *one body politic*; and the Legislature shall enact laws promoting national *unification* and the encouragement of all citizens to participate in government.' (my italics)<sup>102</sup>

Indeed, the TRC Mandate has directly quoted here from the 1986 Constitution of Liberia, demonstrating then, how legal discourse effectively *constitutes* the identities of those who fall under its rule. Normalization - or the unification of people into 'one body politic' - is a very effective tool for the realization of political, economic, military and other such goals: it is the very objective of what Foucault calls disciplinary discourses.<sup>103</sup>

This idea that truth is a homogenizing agent - an idea which we have seen is picked up by the post-structuralists in their theories on discourse and ideologies - is an important one when considering the notion of reconciliation as, according to its definition, reconciliation, too, encourages 'uniformity of belief' in its attempts to unite opposing ideas and people.<sup>104</sup> 'To reconcile means not only reestablishing friendly relations, but reconciling contradictory facts or stories, "to make (discordant

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<sup>100</sup> *Ibid.*

<sup>101</sup> Christian M. De Vos and Erin Louise Parker (Co-Editoris-in-Chief), 'Liberian Government Swears in Truth Commission', *Human Rights Brief*, Volume 13, Number 3, Spring 2006, p. 56.

<sup>102</sup> *Supra* note 4 at 1.

<sup>103</sup> *Supra* note 28.

<sup>104</sup> *Supra* note 99 at 5.

facts, statements, etc.) consistent, accordant or compatible with each other”.<sup>105</sup> Arguably, then, reconciliation could be conceived of as a political tool which works towards conforming society towards the same understanding of the past, so goals of the future can together be realized. In this way, reconciliation itself becomes a truth-claiming discourse, subjugating a society into politically useful minds and bodies that will ensure the success of the new political order.<sup>106</sup> Indeed, it is worth considering here Stewart Motha’s thesis that reconciliation is another form of colonial domination as it seeks to unify people towards a modern, and let us add Western, way of governance:

The ‘time’ of reconciliation is marked and delineated by the possibility of producing a renewed polity or ‘political community’. This process of re-inscribing the ‘political’ under ‘one-law’ subordinates indigenous laws and customs, once again, in the name of ‘civilisation’, and its new effigies, democracy and human rights. Reconciliation [...] returns a form of domination through the subordination of ‘backward’ indigenous cultures that are to be overwhelmed by the ‘modernity’.<sup>107</sup>

Surely then, as truth commissions are typically sponsored by international - and usually western-based - NGO’s, or by the United Nations, they adopt ways of reconciliation, justice and peace-making which are in line with international standards, less cognisant of local dispute settlement mechanisms, and therefore, arguably, encouraging the hegemony of Western democracy.<sup>108</sup>

#### **4. An Alternative Truth**

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<sup>105</sup> *Supra* note 8 at 162.

<sup>106</sup> See, also, Claire Moon who speaks about the discourse of reconciliation in her book *Narrating Political Reconciliation: South Africa’s Truth and Reconciliation Commission*, *supra* note 27.

<sup>107</sup> Stewart Motha, ‘Reconciliation as Domination’, in Scott Veitch (ed.), *Law and the Politics of Reconciliation*, (Ashgate Publishing Limited: Hampshire, 2007), p. 69.

<sup>108</sup> Liberian TRC sponsored by The Advocates for Human Rights, a US human rights organisation, and UN.

I began above to illicit an argument that instead of finding truth, truth commissions create it. One way in which they do this is by creating, in Foucauldian terms, a new disciplinary discourse which subjugates the people of the nation to the new political order. However, there is another truth which truth commissions provide an official space for the creation of, a truth which is created by the stories and narratives of those who come to testify. Developing on from Nietzschean theories on the notion of truth, I argue here that this truth, unlike the truth-claims of the disciplinary discourse generated by a truth commission, is a truth which could lead to genuine healing and reconciliation as the story-tellers engage in the creative act of narration and those who listen to these stories of their past are required to partake in an ethical hearing or reading.

Rejecting the positivist philosophies of Descartes and Kant, Nietzsche argued against the idea that there are universal and objective truths, or categorical imperatives, that are shared by all. According to Nietzsche, truth - as is commonly understood - does not exist. Instead there are a collection of 'metaphors' or linguistic symbols which over time we have come to treat as universal and even transcendental truths:

What then is truth? A movable host of metaphors, metonymies, and anthropomorphisms: in short, a sum of human relations which have been poetically and rhetorically intensified, transferred, and embellished, and which, after long usage, seem to a people to be fixed, canonical, and binding. Truths are illusions which we have forgotten are illusions.<sup>109</sup>

Therefore, objective *a priori* truth has no "real" existence as truths are constructed through language and, hence, are only valid in a textual and subjective world. Take, for example, the maxim commonly used in court rooms and was asked of people to state before speaking their testimony before the Liberia TRC: "the truth, the whole truth and nothing but the truth": 'the Primary Witness was then sworn to tell the truth

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<sup>109</sup> Friedrich Nietzsche, 'Truth and Lying in a Nonmoral Sense', cited in Keith Ansall-Pearson and Duncan Large, *The Nietzsche Reader*, *supra* note 6.

and nothing but the truth by the TRC Hearings Officer'.<sup>110</sup> This phrase is rhetorically constructed in a tripartite epistrophe;<sup>111</sup> however, this linguistic construction is forgotten in favour of the notion that those who partake in this speech act will follow its order with a submission of truth. This example, then, highlights how truth is a linguistic construct as a truth claim is only true within the textual or linguistic world to which it is created and refers. For Nietzsche, these truths become a necessary and comforting illusion, providing humanity with a sense of purpose and confidence: 'only by forgetting that he himself is an artistically creating subject, does man live with any repose, security and consistency'.<sup>112</sup> Instead, he proposed that truth lies in the sensual world which we individually interpret.<sup>113</sup> For him, therefore, 'there are no facts, only interpretations',<sup>114</sup> those interpretations we make as we read the sensory signs and symbols of our daily lives.

Nietzsche's argument that humankind are 'artistically creating subject[s]'<sup>115</sup> can be extended with effect to the notion that truth commissions provide a space whereby subjective truths can be created, officially acknowledged, and publically heard and recorded. The mandate of the Liberian TRC lists the second objective of the truth commission as 'providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past so as to facilitate genuine healing and reconciliation'.<sup>116</sup> Although this paper is critical of the stricture that testimonies of past suffering must fall into the legal definitions of human rights law and humanitarian law, this paper commends the notion that through the sharing of experiences 'genuine healing and reconciliation' can be achieved. Indeed, I argue

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<sup>110</sup> This maxim ushered in every person called to witness at the Liberian TRC, testimonies available at <http://trcofliberia.org/transcripts/4>, last accessed 4<sup>th</sup> September 2011.

<sup>111</sup> 'Epistrophe' is a rhetorical term describing the instance when consecutive sentences or clauses end in the same word or group of words.

<sup>112</sup> *Supra* note 6.

<sup>113</sup> Indeed, the phenomenologists took extensively from the work and ideas of Nietzsche when they considered the role of the conscious and whether or not individual experience could ever be shared. This will be discussed further in the subsequent chapter, Chapter 2: Testimony.

<sup>114</sup> Friedrich Nietzsche, *Notebooks (Summer 1886 – Fall 1887)*, extracts in Keith Ansell-Pearson and Duncan Large (eds), *The Nietzsche Reader*, *supra* note 6.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Supra* note 4 at 2.

here that subjective truths are created through the creative stories and narratives of those who testify as they interpret their memories of the past and creatively reconstruct the symbols of oppression, persecution and violence into a narrative which tells of their suffering.

In her renowned book, which delved into and deconstructed the identity and nature of the South African TRC, Antjie Krog conveyed a similar message in her insistence on the importance of telling. For Krog, all stories of apartheid told of a unique and necessary truth and, in the very act of telling and story-telling, truths were created:

“Hey Antjie, but this is not quite what happened at the workshop,” says Patrick.

“Yes I know, it’s a new story that I constructed [...] I’m not reporting or keeping minutes. I’m telling. [...] I cut and paste the upper layer, in order to get to the second layer told, which is actually the story I want to tell. [...]”

“But then you are not busy with the truth!”

“I am busy with the truth ... *my* truth. Of course, it’s quilted together from hundreds of stories that we’ve experienced or heard about in the past two years. Seen from my perspective, shaped by my state of mind at the time and now also by the audience I’m telling the story to. In every story there is hearsay, there is a grouping together of things that didn’t necessarily happen together, there are assumptions, there are exaggerations to bring home the enormities of situations, there is downplaying to confirm innocence. And all of this together makes up the whole country’s truth. So also the lies. And the stories that date from earlier times.”<sup>117</sup>

In this passage the real and fictional Krog converses with the real and fictional Patrick, demonstrating the exchangeability of truth and fiction as we commonly understand it, and the significance of literature or narrative as a site for the creation of a different kind of truth.

Yet, as explained above, truth commissions tend to prioritize factual and objective truths and therefore do not extend enough importance to the truths created

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<sup>117</sup> Antjie Krog, *Country of My Skull*, (Random House: Johannesburg, 1998), pp. 170 - 171.

in individual testimonies. However, to date, one truth commission has actively acknowledged the value of the creative accounts of individuals describing past violence and atrocity. Priscialla Hayner describes thus:

The main idea was to get people to talk. Relying on members of the community to take testimony after receiving training by the national office, the REMHI [Guatemala the Recovery of Historical Memory Project] project was much more focused on the process and impact of collecting testimony than on the final production of a report.<sup>118</sup>

This paper posits that future truth commissions must take example from the REMHI truth commission and focus on the simple necessity of encouraging people to talk and others to listen, as this conversation is, in itself, an act of peace-making and reconciliation.

However, if the argument is followed that truth is created rather than found, it is worth noting that there are other creative mediums, besides speech and language, through which truth can be created and shared. Indeed, despite criticism, many truth commissions have been cognisant of the capacity of creative acts to tell and share moments of truth.<sup>119</sup> The Liberian TRC, for example, sponsored the creation of an art gallery to display the work of Liberian children telling of their experiences of the country's civil war:

On September 27, 2008, The TRC's Children's Art Gallery was officially opened by the Vice President of Liberia, H. E. Joseph N. Boakai. It featured poems, stories, and drawings by children about their experiences during the Liberian Civil War and how they envision the future of Liberia. The art was obtained from all across Liberia. Approximately 350 children attended the program.<sup>120</sup>

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<sup>118</sup> *Supra* note 8 at 84.

<sup>119</sup> See Ksenia Bilbua, Jo Ellen Fair, Cynthia E Milton, and Leigh A Payne (eds), *The Art of Truth-Telling about Authoritarian Rule*, (University of Wisconsin Press: Wisconsin, 2005).

<sup>120</sup> *Supra* note 11 at 37.

Therefore, despite not giving enough official emphasis to the testimonies of individuals in the final reports, some truth commissions do, to some extent, acknowledge the importance of the creative act for a society's engagement with truth. However, in erecting an institutional site whereby further truths could be created in the artworks of the children of Liberia, the Liberian TRC undermined its own claim to be the final and authoritative truth about the country's past and, in so doing, deconstructed their own truth-claim.

#### **4.1 The Ethics of Witnessing Testimony**

In comparison to official truths generated by states or other such official bodies, the subjective truths of the narratives and stories of individuals demand an ethical, and therefore active, reading or listening. Unlike officially sanctioned truths and histories which are simply accepted at face value (which is, for Foucault, why they retain so much power behind their truth-claims), the subjective truths of narratives and stories are listened to or read with a critical ear, which in fact allows them to be read ethically. Indeed, when one listens to the stories of those narrating their past sufferings and persecutions there is an ethical obligation or responsibility to engage in that story and, in it, share in the truth of the other. It is this sort of understanding and acceptance of another's truth and beliefs which will, I argue, lead to 'true healing and reconciliation'.<sup>121</sup>

Although I employ the word 'story' to speak of the testimonies given at truth commissions, I do not use the word to connote that the context of these testimonies are necessarily fictional, but to point out the link between the narrative structure of story-telling and the narrative structure which is fundamentally present in the expression of experience in language. The relation, then, between narrative and ethics is one that has been pointed out and debated on for centuries. Indeed, Aristotle, one of the foremost thinkers who pursued the philosophy of poetry, contended that in poetry, or narrative, we naturally identify with the characters and accounts given and, in doing so, both heuristically and pedagogically learn ethical lessons through the confrontation and the working through of the ethical issues and

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<sup>121</sup> *Supra* note 4 at 2.

circumstances presented to us.<sup>122</sup> In *Country of My Skull* Krog speaks of this ethical identification that occurred during the process of witnessing testimony at the South African TRC: ‘the more you empathize with the victim, the more you become the victim’.<sup>123</sup> Indeed, Graham Ward insists that through reading literature – or, for that matter, witnessing testimony - ‘we constitute another world, internally, that expands our being in the world, externally’;<sup>124</sup> and further, ‘reading is a following after, a submission to, a living and experiencing beyond oneself, the entering into new sets of relation; and the disposition is fundamentally ethical’.<sup>125</sup> Therefore, both through the creative act of narrative and through the witnessing of such acts, truths are shared through the ethical obligation to listen, to identify and to understand what is being said.

## 4.2 Truth and Reconciliation

The idea of creating new truths becomes significant when another meaning of reconciliation is considered. I proffered the argument earlier that reconciliation – in the field of transitional justice - could be seen as a political tool which homogenizes beliefs, understandings and attitudes to be in line with the new modern and democratic (and, arguably, Western) political order. However, reconciliation could be reconceived in a more positive fashion as, rather than trying to reconcile two opposing sources of meaning, a site for the creation of new meaning. This reconceptualisation of reconciliation as a place for the creation of new meaning lies parallel to the argument proffered here that truth commissions can foster the creation of new truths. Indeed, speech and language have long been considered place for the creation of new meanings: Komesaroff talks of how ‘speech and language are at once the primordial foundation of ethics and society and a great and unlimited

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<sup>122</sup> Aristotle, *Poetics*, (Cosimo: New York, 2008).

<sup>123</sup> *Supra* note 117 at 170.

<sup>124</sup> Graham Ward, ‘Narrative and Ethics: The Structures of Believing and the Practices of Hope’, *Literature and Theology*, Volume 20, Number 4, December 2006, p. 440.

<sup>125</sup> *Ibid.*, pp. 453 - 454

creative source of meaning'.<sup>126</sup> In this way, reconciliation could be reconceived as the process by which meaning is created both through the testimonies of individuals as they engage in the creative act of speech, through the ethical witnessing of such testimonies and through the dialogues that should, necessarily, ensue.

Sadly, the Liberian TRC lost a valuable opportunity for the fostering of this sort of dialogical and creative reconciliation is their inability to operate the actual meeting of victim and perpetrator; according to the report, 'the TRC decided against providing a venue for the accuser, particularly the most violent ones, to confront the accused, for security reasons, among others'.<sup>127</sup> However, one initiative was followed which, hopefully, has encouraged dialogue between Liberians: namely, the Palava Huts. Accordingly, 'the Palava Hut is another form of justice and accountability mechanism with traditional orientation to foster national healing and reconciliation at the community and grass-roots level creating opportunity for dialogue and peace-building'.<sup>128</sup> The Palava Huts were designed to encourage what the report spoke of as 'community-based atonement'.<sup>129</sup> Indeed, it is hoped that, although officially sanctioned by the state, such forums will encourage a localised reconciliation between neighbours in a manner both necessary and realistic for the realisation of peace and healing for the individuals and communities of Liberia.

## 5. Conclusion

It is always difficult to talk about truth. Without a concrete conceptualisation of truth as that which is real, present and apparent, all experience and existence is thrown in the air, no longer grounded by the notion of truth. It is comforting, therefore, to believe in truth, as with truth comes a sense of understanding of where we are and

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<sup>126</sup> Paul A. Komesaroff, 'Pathways to Reconciliation: Bringing Diverse Voices into Conversation', in Philip Rothfield, Cleo Fleming and Paul A. Komesaroff (eds.) *Pathways to Reconciliation*, (Ashgate Publishing: Hampshire, 2008), p. 4.

<sup>127</sup> *Supra* note 11 at 29.

<sup>128</sup> *Supra* note 36 at 364.

<sup>129</sup> *Supra* note 11 at 58.

what we are doing. But, I believe it is also both necessary and important to question truth, to question the source of truth and to question the reason for truth. This chapter has attempted to do just that, and specifically to question the notion of truth when it is present in the re-structuring of transitional societies, as that which is presented as truth comes to shape the lives and identities of those which it speaks of and about.

I have argued against the idea of objective truth that is promulgated by truth commissions in their desire for, and prioritising of, factual and legalistic truths. This chapter has argued that truth commissions, both of themselves and through their employment of legal and scientific structures, are, in the words of Louis Althusser, an 'ideological state apparatus'.<sup>130</sup> Indeed, truth commissions are designed to usher in the new political order, and, arguably, this is done through denouncing the old regime as autocratic and violent, and through promoting a new discourse of democracy and truth which serves to subjugate the nation once more to another political order.

On the other hand, however, I contend that truth commissions provide a space for an ethical engagement with the other and the truths of the other through the creative act of testimony. This paper sees the act of publically testifying as highly significant for the future reconciliation of a country as people are asked to come together to share in each other's meanings and to create new ones. Indeed, a commissioner at a hearing of the Liberian TRC commented to the testimony-maker that, 'the most important value from what you said today is that others can learn from what you went through. People can draw from your strength to survive also'.<sup>131</sup>

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<sup>130</sup> *Supra* note 72.

<sup>131</sup> Oretha Cholo, Fish Town City River County, Feb 25 2008, available at <http://trcofliberia.org/transcripts/29>, last accessed 7<sup>th</sup> September 2011.

*'Dirt[ies] you so bad you couldn't like yourself anymore. Dirty you so bad you forgot who you were and couldn't think it up'.*

*'All of it is now it is always now there will never be a time when I am not crouching and watching others who are crouching too I am always crouching the man on my face is dead his face is not mine'.*

*Toni Morrison, Beloved*<sup>132</sup>

## **CHAPTER 2: TESTIMONY**

### **1. Introduction**

The act of testifying and the notion of testimony are central to the concept and functioning of a truth commission. According to the mandate of the Liberian TRC the testimonies of individuals who during the course of the Liberian civil war have suffered serious and gross human rights violations and violations of humanitarian law are to come together to form a true and widely accepted picture of the past that will come to stand as the nation's official history. Furthermore, through the act of testifying, those who suffered are given a chance to share their experiences with their fellow citizens and, in this way, build a national consensus as to what can never again be allowed to happen, and allow the individual testifying and the country as a

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<sup>132</sup> Toni Morrison, *Beloved*, (London: Vintage, 1997), pp. 251 and 210.

whole to heal. Lastly, through testimony the victims and survivors of serious and gross violations of human rights and humanitarian law will restore the dignity stole from them by their perpetrators and attain justice through the naming of their violators.

However, it is not so simple to “tell the truth” and “explain what happened”. Theorizing on the process of making testimony, John Henry Wigmore explains thus:

When a witness’ statement is offered as the basis of an evidential inference to the truth of his statement – for example, the statement of A that B struck X – it is plain that at least three distinct elements are present; or, put in another way, that there are three processes, in the absence of any one of which we cannot conceive of testimony:

*First*, the witness must know something, i.e., must have *observed* the affray and received some impressions on the question whether B struck X; to this element may be given the generic term observation.

*Second*, the witness must have a *recollection* of these impressions, the result of his observation; this may be termed recollection;

*Third*, he must *communicate* this recollection to the tribunal; that is there must be communication, or narration, or relation.<sup>133</sup>

There are then three steps, according to Wigmore, in the process of testimony-making or statement giving, viz. the knowledge of what was observed or experienced, a recollection of this, and an ability to communicate this knowledge and recollection. However, there are certain problems, both theoretical and practical, with this tripartite construction of the process of testimony. Taking Wigmore’s definition of testimony, this chapter endeavours to deconstruct some of the concerns of testimony-making at truth commissions. Considering that the majority of testimonies given at truth commissions consist of traumatic memories, this chapter argues that such memories, by their very nature, resist telling, resist hearing, and resist being historicised, against the objective of truth commissions.

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<sup>133</sup> John Henry Wigmore, cited in Mark Sanders, *Ambiguities of Witnessing*, *supra* note 54 at 5.

Indeed, those who suffer traumatic experiences often fail to grasp the reality of what happened, and hence, in short, hold little knowledge about the actual experience. Furthermore, traumatic memories resist normal recollection as they do not subscribe to the usual form of memory; rather, the experience of trauma is inscribed into the body and psyche of the self, and, in Freudian terms, becomes a kind of repressed memory, unable to be chronologically ordered in the mind.<sup>134</sup> It is for this reason - that memory is inherently a-temporal - that this chapter argues that traumatic memories cannot be used to establish a historical past. Lastly, traumatic memories resist being communicated as there is not language sufficient to describe and relate the traumatic experience, and, the substance of trauma is outside of most people's frame of reference to understand and internalize, thereby making trauma testimony inherently difficult to hear. Furthermore, this chapter considers phenomenological and linguistic theories in evaluating whether experience can ever be communicated, whether traumatic in nature or not.<sup>135</sup>

## 1.1 Trauma

It is difficult to define trauma objectively as what constitutes a traumatic experience will vary from person to person as trauma is essentially an experience which, unable to be understood and processed, effects a person so much it fundamentally changes their self and identity.<sup>136</sup> The word "trauma" has its etymological roots in the Greek for "wound" which aligns the meaning of trauma to a deep piercing of the skin - the internal puncture of an external object.<sup>137</sup> Indeed, bound in the concept and physicality of wounding and trauma is a power relation, of something external overpowering and entering into a deep internal self, leaving the wounder with greater

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<sup>134</sup> Sigmund Freud and Joseph Breuer, *Studies in Hysteria*, translated by Nicola Luckhurst, (Penguin Classics: New York, 2004).

<sup>135</sup> For a comprehensive discussion on trauma and its nature see Cathy Caruth, *Unclaimed Experience: Trauma, Narrative, and History*, (John Hopkins University Press: Baltimore, 1996).

<sup>136</sup> Roberta Culbertson, 'Embodied Memory, Transcendence, and Telling: Recounting Trauma, Re-Establishing the Self', *New Literary History*, Volume 26, Number 1, pp. 169 – 195.

<sup>137</sup> Definition from website, <http://www.merriam-webster.com/dictionary/trauma>, last accessed 11<sup>th</sup> September 2011.

knowledge of – and power over - that self than the wounded her-/himself. In this way, trauma is inherently political in its concern with overpowering, and holding knowledge of, the self. In this way the traumatic event is like a discourse, subjugating the self, rendering it incapable of undoing the effects of that trauma, and forcing it to a life of subordination to both the power of the wounder and the traumatic memory.<sup>138</sup> Culbertson talks of how ‘in such violence and violation one’s life is no longer one’s own in a most fundamental way’,<sup>139</sup> and demonstrating how the self is overcome by the power of the trauma and the traumatiser.

The Liberians who came to testify about their experiences of the civil war at the TRC had to fulfil a certain criteria: the experiences of which they testified about had to amount to a human rights violation or a violation of humanitarian law.<sup>140</sup> It is arguable that the Universal Declaration of Human Rights,<sup>141</sup> and other such human rights or humanitarian law documents, list the conditions of humanity, meaning the rights declared in these documents are the attributes which make people human, distinguishing them from animals or other organisms. In this way, any violation of these rights constitutes an act of dehumanization. Furthermore, considering trauma is, by nature, a human response to an utterly inhuman experience, it can be argued that all human rights violations or violations of humanitarian law are traumatic. This chapter will consider the effects of trauma on the TRC’s objectives of testimony-making, arguing that truth commissions often fail to grasp the complex and intricate nature of trauma and the impossibility of traumatic experiences to be completely ‘healed’, in the words of the Liberian TRC mandate.<sup>142</sup>

## 2. Knowledge

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<sup>138</sup> I am deliberately using Foucauldian terms here of “discourse” and “subjugation”, an extension from the previous chapter.

<sup>139</sup> *Supra* note 136 at 4.

<sup>140</sup> *Supra* note 4 at 4.

<sup>141</sup> United Nations, Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/>, last accessed 11<sup>th</sup> September 2011.

<sup>142</sup> *Supra* note 4 at 2.

Both in accordance with Wigmore and generally speaking, in order to give testimony, some sort of knowledge must be known and conveyed; this knowledge is usually what necessitates the testimony-giving.<sup>143</sup> However, what if the individual testifying is attempting to talk of a traumatic experience they themselves have survived: is it so simple as to just convey recollected knowledge? This section examines some of the difficulties of testifying in order to convey knowledge when the subject of that testimony is an individual's trauma, and considers the notion that a traumatic experience is known and understood not by the conscious mind but rather by the body.

The Liberian TRC clearly outlines their position that despite testimony-making being an opportunity to regain lost dignity by the speaker, to heal through the psychotherapeutic nature of narrative, and to seek justice for past wrongs committed against the individual speaker, the testimonies at the TRC are to be used to gather information about the civil war. Indeed, the report of the Liberian TRC speaks of how they 'employed a confidential interview using probing questioning techniques to assist the statement-giver in recounting traumatic events or experiences and to provide factual accounts or evidence of events that took place'.<sup>144</sup> Implicit in this quotation from the TRC report is the notion that the traumatic nature of many of the testimonies was, for the realisation of the TRC's objectives, a kind of obstacle to be overcome in the path of gathering information and knowledge concerning the failings and atrocities of Liberia's past. Furthermore, the transcripts of the days of interviewing by commissioners of those who come to testify reveal how the testimonies of witnesses were probed for factual information: 'what year did this happen? [...] What part of Maryland did this happen? [...] When did this happen?'.<sup>145</sup>

This chapter is critical of the prioritised objective of the Liberian TRC to gather information and knowledge from the testimony-makers, rather than allowing these people the opportunity to simply tell their story and allow it to be heard. In this

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<sup>143</sup> Although, at truth commissions testimony giving was not just about conveying knowledge but also about healing through the very act of speech and narrative.

<sup>144</sup> *Supra* note 11 at 37 - 38.

<sup>145</sup> Questioning to Fred Bahway, Harper City Maryland County, Feb 13 2008, available at <http://trcofliberia.org/transcripts/19>, last accessed 7<sup>th</sup> September 2001.

way, it is arguable that, because of the need of truth commissions to gather facts and information from the testimonies of war's survivors, the traumatic experiences of the people who come to testify are used to secure the political success of the new order by condemning the failure and violence of the previous government.

Furthermore, it is arguable whether any such factual information or knowledge can indeed be retrieved from the testimonies of trauma suffers as trauma is, by definition, a response to something so alien to human experience that it cannot be processed or recognized by the human mind. Indeed, the psychiatrist Gordon Turnbull tells of how trauma 'is the impact of an event which, for some reason or other, the survivor has not been able to process, not because the mind can't do the processing – because it is flawed in some way – but because it hasn't had the opportunity.'<sup>146</sup> In this way, the trauma survivor has no real knowledge of what happened to them and will therefore face severe difficulties in trying to testify about the event.

According to Sigmund Freud, the psychoanalyst who was thought to pioneer the movement towards understanding trauma as a psychological response, 'trauma resulted from a rupture or breach in the protective shield of the consciousness'.<sup>147</sup> Looking closely at the use of language here it is evident that, for Freud, the traumatic experience should, ideally, not enter our consciousness, as the very fact that it does constitutes a 'rupture or breach'.

Essentially then, a traumatic experience should be repressed by the unconscious mind and, in this way, not enter into conscious knowledge. However, the traumatic memory does manifest itself in the conscious mind, but this manifestation is not as a kind of knowledge or understanding, but rather as what Cathy Caruth explains as 'repeated, intrusive hallucinations, dreams, thoughts or behaviours'.<sup>148</sup> Indeed, it is this very non-knowing about the event that constitutes it

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<sup>146</sup> Gordon Turnbull, 'The Truth about Trauma', *The Guardian*, 21<sup>st</sup> July 2011, UK.

<sup>147</sup> Anne Whitehead and Michael Rossington (eds), *Theories of Memory: A Reader*, (Edinburgh: Edinburgh University Press, 2007), p. 187.

<sup>148</sup> *Ibid.*, p. 200.

as traumatic, and what makes it, for Jean Francois Lyotard, ‘a revelation that never reveals itself but remains there’.<sup>149</sup>

For trauma theorist Culbertson, this non-knowable characteristic of trauma is necessary, for it is the survival instinct of the body and the unconscious protecting the self:

She knows much more is there, but to know it fully is to suffer again what her body worked so hard to protect her from before: the experience of her near dissolution and the pain associated with it. Then it would have killed her, or let her act in a way that would have gotten her killed. Now she fears it still might.<sup>150</sup>

For Culbertson, then, the traumatic memory or experience is what she calls ‘primary’,<sup>151</sup> it is physically and unconsciously known and remembered before it is consciously known, if it is ever consciously known at all. And furthermore, this is a necessary survival instinct, preventing the trauma from being re-lived in conscious thought and knowledge. Therefore, one can never have true knowledge of a traumatic event as that event was never properly registered by the mind at the time of its happening, and necessarily so, in order to preserve the body and mind from annihilation. In this way, it is therefore paradoxical for a truth commission to wish to seek information and knowledge from an individual’s accounts of their traumatic experiences, as that individual does not directly possess this knowledge in their conscious mind.

Instead, it is the body that knows and remembers the trauma. In her article ‘Embodied Memory, Transcendence, and Telling: Recounting Trauma, Re-Establishing the Self’ Culbertson describes how a traumatic event ‘is not known in words, but in the body’,<sup>152</sup> and later, that ‘they are remembered at the level of the body and the uncalculating mind, not at the level of everyday, functioning, speaking

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<sup>149</sup> Jean Francois Lyotard, *Heidegger and ‘the Jews’*, (University of Minnesota Press: Minneapolis, 1990), p. 23.

<sup>150</sup> *Supra* note 136 at 8.

<sup>151</sup> *Ibid.*, at 11.

<sup>152</sup> *Ibid.*, at 3.

self”.<sup>153</sup> Indeed, considering that typically a traumatic experience is one of severe violence as the individual suffers a violation of their bodily integrity and that the etymological root of “trauma” is the Greek for “wound”, trauma is, therefore, fundamentally a bodily experience as the body is, quite literally, wounded. The trauma is inscribed onto the body of its survivor rather than the mind as the mind lacks the referential capacity to hold any true knowledge as to what took place, and the body necessarily needs to hold the knowledge of what happened in order to protect it against a repeated occurrence.

Yet, for Michael Humphrey, the body is more than just the site for the knowledge of the trauma, as he explains in his article ‘From Terror to Trauma: Commissioning Truth for National Reconciliation’;<sup>154</sup> the body becomes a cultural, and arguably political, symbol and mark of violent power:

But when violence ends, after the cease-fire is announced or the military has returned to the barracks, the traces of violence survive in its victims. Soldiers carry the wounds of war, torture victims the scars of brutal repression and the survivors of genocide the horrors of the threat of social extinction. Their suffering continues because of the body’s capacity for memory. The body remembers violence as pain too well. And the pain refers to its origins in the torturer, the rapist, the assassin. Thus violence is both personal and cultural because it makes victims in relation to a particular context of reality and identity.<sup>155</sup>

Extending Humphrey’s position it is arguable that the traumatised body is, quite literally, made docile by the violence done against it and, in this way, is subjugated to the political order and demands of its violator. Furthermore, these traumatised and docile bodies become the ideal site whereby a new politic can prevail, a new politic like that of the ensuing government which truth commissions bolster.

Consider the testimony of Amelia Dimsea from the Liberian TRC:

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<sup>153</sup> *Ibid.*, at 9.

<sup>154</sup> Michael Humphrey, ‘From Terror to Trauma: Commissioning Truth for National Reconciliation’, *Social Identities*, Volume 6, Number 1, 2000.

<sup>155</sup> *Ibid.*, p. 1.

When we came they wrote on small-small papers and wasted them on the ground. They told us that they will not be killing Liberians again since Taylor came and suffer you people. They told us to choose from the papers, anything that is on the paper is what they will do to you. Me I was lucky the paper I choose it was written on for them to design me. They put a paper in my mouth, they said go and carry it to Charles Taylor. I was bleeding throughout when I got in one village, the people there now-now (presently) so the people help and tied cloths around me. The people help me and pas me through to Monrovia. When I got to Monrovia, they took me to JFK Hospital; there was no doctor there so they sent for one Chinese doctor from Cooper's Clinic. So he the one try small to give me stitches. So since that time that how I have been, even from here now I am going for treatment to Bomi. It was band knife they used on me. Each hospital I will go to they will they will say I should bring US dollars. I even went to Jewel Taylor but still no help, even my children, my seven children, the smallest one always ask me about the marks on me, I say the LURD rebels. So he too say he want to join the army, I say no. we were living to Defense when the TRC came there they saw me, they say you don't have anything to say to the TRC? I say I coming, this thing I na (have) explain it to plenty people, and they don't do anything for me and the children. I explained the story to them and they said they will come for me. One of the girls, I took up my cloths for her to see the marks. Even now I ready to show the marks.<sup>156</sup>

Significantly, the central trauma suffered by Amelia Dimsea is left unspoken. She cannot speak of the violence by which her body is left with these 'marks', as her testimony jumps from speaking about the piece of paper in her mouth, to her bleeding body as she enters the village. Indeed, Amelia Dimsea's body became a symbol for the violence of the LURD rebels, as they, quite literally, marked her. And later, she comes 'to show' these marks to the TRC as a physical sign of the brutalities of the warring factions. Amelia Dimsea's testimony demonstrates, therefore, this inability to know, remember and speak of, a deeply traumatic event. Instead, it is her body with its marks of LURD's torture, which speaks at the TRC, showing those watching the truth of their violence.<sup>157</sup>

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<sup>156</sup> Amelia Dimsea, Montserrado Monrovia, 9 January 2008, available at <http://trcofliberia.org/transcripts/4>, last accessed 7<sup>th</sup> September 2011.

<sup>157</sup> See also Antjie Krog, Nosisi Mpolweni and Kopano Ratele (eds), *There was this Goat: Investigating the Truth Commission Testimony of Notrose Nobomvu Konile*, (UKZN Press: Scottsville, 2009).

### 3. Memory (or Recollection)

Traumatic memories are not memories per se.<sup>158</sup> In order to testify at a truth commission one would need to first have some sort of memory of what had happened in order to retell the experience as testimony. However, quite simply, traumatic experiences refuse memory or, at the very least, refuse to be of a typical memory form. This section will look at the relationship between trauma and memory, examining the negotiable nature of memory; memory and testimony as a site for the self-construction of identity; and finally, the difficulties of trying to historicize traumatic experience.

Truth commission's seek, in the testimonies of individuals, memories of violence and violation in order to recreate a national memory of the past that is, arguably, a truthful account of the nation's history. The memories of the individuals who testify hold considerable weight: these memories become the source of truth and meaning for a whole nation, and further, are hailed as a symbol of justice and reconciliation for the sufferings of all. Yet, a truth commission's understanding of memory as a source of knowledge and truth that can serve as a vehicle to learn of the past of the nation, is deeply problematic. This section will explore the notion of memory, examining just how far memories of trauma and violence can serve the purpose of truth, history, justice and reconciliation.

Whether or not the memory content is traumatic, memories are far more complex than simple recollections of the past. A truth commission's understanding of memory to be a clean source of knowledge and information – be it subjective – is flawed, as memories are an unreliable source of this kind of truth. Indeed, Culbertson talks of how memories -and especially traumatic memories - 'appear in nonnarrative forms that seem to meet no standard test for truth or comprehensibility'.<sup>159</sup> When one remembers, certain things are forgotten and repressed, whilst others are highlighted, even more so when the memory is traumatic. Furthermore, memory is

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<sup>158</sup> See, for example, Sarah Nutall and Carli Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa*, (Oxford University Press: Oxford, 1998).

<sup>159</sup> *Supra* note 136 at 2.

performative as it responds to the needs of those listening and the situation to which it is being spoken. Indeed, Steven Robins speaks of how ‘memories are unstable, suffer the degradations of time, the pressures of the present and are often subject to self-serving revision and manipulation as well as the forgetting, silences, denials, and repression that traumas produce.’<sup>160</sup> Yet, more than this: memory is active and unfixed, it is more than just a source of knowledge and experience, but a creative technology of the self whereby knowledge, experience, meaning and identity are both created and constituted.<sup>161</sup> Memories of the past constitute the past in a new way.

On the one hand, therefore, truth commissions arguably provide a time and a space for those people most sorely affected by a nation’s terrible past to reinvent this past through the creative and constituting agency of their memory. On the other hand, however, the vulnerable nature of these traumatic memories leaves them open to revision by powerful government groups who need these memories to paint a certain picture of their past so a certain present can prevail. Indeed, we have seen how the Liberian TRC used deliberate techniques in their testimony-taking methodology to ensure a certain kind of truth is afforded.<sup>162</sup>

### 3.1 Memory and Identity

Memory, testimony and trauma are all intimately concerned with ideas of the self and identity. I have mentioned above that memory is both creative and constituting.

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<sup>160</sup> Steven Robins, ‘Silence in my Father’s House: Memory, Nationalism, and Narrative of the Body,’ in Sarah Nutall and Carli Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa*, *supra* note 158 at 125.

<sup>161</sup> I deliberately use the Foucauldian phrase here as my argument partly reflects his notion of ‘technologies of the self’ which, for him, describes the ways in which humans are constituted, namely through the discourses of the state which subjectivise through their power. See, Michel Foucault, ‘Technologies of the Self’, *supra* note 72.

<sup>162</sup> The report of the Liberian TRC speaks of how they ‘employed a confidential interview using probing questioning techniques to assist the statement-giver in recounting traumatic events or experiences and to provide factual accounts or evidence of events that took place’. *Supra* note 11 at 37 – 38.

Indeed, in this way memory creates and constitutes identity as certain aspects of the self are remembered and others forgotten. And furthermore, through testimony these memories become performative, projecting a certain image of the self. Consider Marie Konyan's construction of her self in her testimony to the Liberian TRC:

So my mother left my grand ma and and they sit her down by the road. Before we could look, he fired her and she fell down and died. My mother wanted to cry and I begged her not to cry and they told my ma to laugh or they will kill her too, so she had to laugh. I told her to forget and continue walking. We reach certain place my father was in front and they did not even call his attention, they just shot behind his neck. He dropped and my ma wanted to cry and I told her not to cry because for me I was not even to my self, I said lets go.<sup>163</sup>

Marie Konyan constructs herself as both courageous and stoical in her placation of her mother who she advises 'to forget and continue walking', 'not to cry', and later, 'lets go'. Indeed, Njabulo Ndebele speaks of how 'people reinvent themselves through narrative',<sup>164</sup> but more significantly, people constitute themselves through narrative as they teach their listeners who they are and what they are capable of, as is evident in the above extract from Marie Konyan's testimony.

This construction of identity through memory and narrative becomes more significant when considering that one of the major sources of conflict of the Liberian civil war was the identity struggles many native Liberian's faced through the degradation of them and their traditions by the Americo-Liberian settlers. The report of the Liberian TRC reads:

Another significant historical antecedent to settler and indigenous Liberian conflict was the innocuous attempt by settlers to degrade the identity and status of native Liberians through a subtle inferiorization process. Not only were native Liberians viewed as inferior by many settlers, but the settlers also attempted to erase the cultural identity of the natives by surreptitiously coercing them to adopt English

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<sup>163</sup> Marie Konyan, Montserrado Monrovia, January 9 2008, available at <http://trcofliberia.org/transcripts/4>, last accessed 7<sup>th</sup> September 2011.

<sup>164</sup> Njabulo Ndebele, 'Memory, Metaphor, and the Triumph of Narrative', in Sarah Nutall and Carli Coetzee (eds), *Negotiating the Past: The Making of Memory in South Africa*, *supra* note 158 at 27.

names, borne by Americo-Liberians, and by inculcating them into Western traditions, before considering them civilised.<sup>165</sup>

Therefore, in some ways, the opportunity to testify and narrate their own stories empowers the disempowered and giving a voice, quite literally, to those whose voices were previously silenced.

However, traumatic experiences fundamentally effect and change a person's identity and self. It has been empirically recognized how behaviour and attitude change after suffering a traumatic incident as the survivor grapples to deal with and accept what has happened to them, and as the memory of the trauma revisits them in the form of hallucinations, flashbacks, dreams and changed 'thoughts and behaviours stemming from the event'.<sup>166</sup> Indeed, writing about how soldiers are traumatised by war, the psychiatrist Gordon Turnbull explains how many ex-soldiers are among the homeless and constitute a significant portion of the prison population, as they are unable to readjust to a normal life after the army.<sup>167</sup> What this demonstrates is the extent to which a traumatic experience can change a person's identity and life, the result often being varying forms of anti-socialness.<sup>168</sup> Indeed, Turnbull quotes from an ex-soldier named only as George who, since suffering from Post-Traumatic Stress Disorder (PTSD), claims, "you are for sure never going to be the person you were before."<sup>169</sup>

The consequences are, therefore, considerable for a nation where the vast majority of its population will no doubt be suffering from some sort of PTSD as a result of the on-going civil war. Indeed, Dr Benjamin Harris in his report to the Liberian TRC, after undertaking research on PTSD in Liberia as a result of the civil war, concluded that 'sixty-five per cent (65%) experienced symptoms of psychological distress characterised by sleep difficulties, bad dreams, poor concentration, aggression and headaches. About seventy per cent (70%) said they

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<sup>165</sup> *Supra* note 11 at 56.

<sup>166</sup> *Supra* note 135 at 200.

<sup>167</sup> *Supra* note 146.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

had lost confidence in others.<sup>170</sup> And further, a 2010 report by IRIN News (a humanitarian news and analysis service of the United Nations Office for the Coordination of Humanitarian Affairs) notes how,

Research by Kirsten Johnson published in 2008 in the *Journal of the American Medical Association*, found that 44 per cent of the adult household population had symptoms associated with post traumatic stress disorder (PTSD). The difference between former combatants and non-combatants was 57 per cent and 37 per cent respectively.<sup>171</sup>

A country's economy and societal wellbeing will be severely affected by a population of ex-combatants - many of whom were indoctrinated as child soldiers – survivors of war, where many will have suffered personal losses to their families, or some sort of physical or mental violation themselves. It is vital, then, for the country's truth commission to look at ways, perhaps more fundamental than speaking testimony, to address a traumatised nation suffering severe identity crises.

Indeed, written in the chapter entitled 'Priority Recommendations' in the Final Report of the Liberian TRC is the concern that the needs of those traumatised as a result of the atrocities of the civil war need to be met; the report posits that this is to be achieved through actions such as reparations for the victims and addressing the impunity of the perpetrators through either legal trials or public naming and shaming.<sup>172</sup> However, these solutions result in a undesirable public and official labelling of the victim and the perpetrator which, directly because it is both public and official, dooms the pair to be eternally categorized as "victim" or "perpetrator" by their society, an identity which - according to labelling theory - they will come to

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<sup>170</sup> Republic of Liberia Truth and Reconciliation Commission, *Volume Three Appendices Title VIII: Accounting for the "Less Fortunate" and their Psychosocial Needs*, 2009, available at [http://trcofliberia.org/resources/reports/final/volume-three-8\\_layout-1.pdf](http://trcofliberia.org/resources/reports/final/volume-three-8_layout-1.pdf), last accessed 29<sup>th</sup> July 2011, p. 21.

<sup>171</sup> IRIN News, 'Liberia: Surviving the Past', available at <http://www.irinnews.org/Report.aspx?ReportID=91038>, last accessed 11<sup>th</sup> September 2011.

<sup>172</sup> *Supra* note 36 at 27 – 31.

assume and be.<sup>173</sup> Furthermore, I spoke earlier about the politics of the trauma, as the wounder overpowers the wounded, leaving an eternal mark of their domination; by marking out the wounder and the wounded in public society this power relationship is continued and augmented through its public acknowledgement. For these reasons, this paper is critical of the recommendations made by the Liberian TRC to help those traumatised by the country's civil war; indeed, their recommendations fail to take into account the highly complex, and even political, nature of trauma.

### 3.2 Memory and History

Asides from hoping that through testimony-making those who suffered the effects of the civil war will be given an opportunity to heal by making sense of their traumas through narrative, truth commissions require the stories of individuals to come together to create a collective history of the nation that is reflective of the truth of their past.<sup>174</sup> However, considering the majority of these testimonies are traumatic in content, the truth commission's objective to use them to create an official history is, both in theory and practice, flawed. This section will explore the ways in which trauma resists time and, therefore, being historicised.

Trauma is, by definition, outside of time, existing, as Charlotte Delbo calls it, in a 'perpetual present'.<sup>175</sup> Traumatic memories are not memories in any ordinary sense; these memories are persistent, invading the present and future with an incessant past. For Culbertson, 'perhaps it [the memory of the trauma] is not even remembered, but only felt as a presence or perhaps it shapes current events according to its template itself unrecognized'.<sup>176</sup> Note Culbertson's tentative language – 'perhaps', 'perhaps' – demonstrating the rather arcane nature of trauma, where the

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<sup>173</sup> Labelling theory posits that through social labelling those labelled come to assume the identity by which they are described: it is based on theories of language and linguistics, and the way in which individuals and society are constituted by the language used, both by ourselves and others, to describe individuals. See, Jan J M Van Dijk, 'The Mark of Abel: Reflections on the Social Labelling of Victims of Crime', Lecture at Tilburg University, 24 November 2006, available at <http://www.tilburguniversity.nl/intervict/news/06-11-24-rede.pdf>, last accessed 25 Aug 2011.

<sup>174</sup> *Supra* note 11 at 24.

<sup>175</sup> Charlotte Delbo, cited in Roberta Culbertson, *supra* note 136 at 3.

<sup>176</sup> *Supra* note 136 at 3.

only sound finding any have really been able to make is that it is unknowable and undefined. But more than this, trauma is a-temporal, existing not simply as a past memory but in this state of ‘perpetual present[ness]’ as it revisits people in ‘the form of repeated, intrusive hallucinations, dreams, thoughts or behaviours’.<sup>177</sup>

However, the testimonies of trauma can betray the traumatic memory by re-presenting it within language which is chronological and ordered through the structures of grammar. Indeed, Lawrence Langer notes how,

Testimony may appear chronological to the auditor or audience, but the narrator who is a mental witness rather than a temporal one is ‘out of time’ as she tells her story [...] Lyotard calls in the retrieval of a time that is lost ‘because it has not had place and time in the psychic apparatus’. He speaks of a moment ‘where the present is in the past and the past is always presence’.<sup>178</sup>

For believers in psychiatric therapy, the a-temporal nature of trauma is due to the fact that these memories have not yet been processed by what Lyotard (above) calls the ‘psychic apparatus’.<sup>179</sup> However, as outlined above, for others these traumas may never be able to be processed or understood by the conscious mind as they fall outside the range of references with which we come to make sense of and understand our experiences. But besides this, the unknowable and ever-enduring nature of trauma makes it impossible to historicize as to become history something needs to be completed and left neatly in the past. Indeed, Caruth explains this paradoxical link between trauma testimony and history: ‘the traumatized [...] carry an impossible history within them, or they become themselves the symptoms of a history that they cannot entirely possess’.<sup>180</sup> Speaking about postcolonial fiction Anne Whitehead discusses how the notion of memory itself is incompatible with the sort of objective and totalising history which official bodies, such as truth commissions, seek to write; she explains how postcolonial fiction ‘has often sought to replace the public and

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<sup>177</sup> *Supra* note 135 at 200.

<sup>178</sup> Lawrence Langer, *Holocaust Testimonies: The Ruins of Memory*, (Yale University Press: Yale, 1993), p. 194.

<sup>179</sup> *Ibid.*

<sup>180</sup> *Supra* note 135 at 201.

collective narrative of history with an interior and private act of memory. Memory counters or resists the ways in which history elides difference and forgets the heterogeneous.<sup>181</sup> It appears, then, that truth commissions are neglectful of the reality of trauma in the face of their objectives as it cannot, by its very nature, be laid to rest as a past experience as its effects continue to be felt in the present.

#### 4. Communication

As argued above, truth commissions make numerous assumptions about the nature of trauma in order to fulfil their objectives of truth, history, reconciliation and justice. Besides from assuming that the testimonies of individuals - although many of them are traumatic in nature – can be a source of objective knowledge and can be used to create an official and national history, truth commissions assume, most fundamentally, that experience – whether traumatic or not – can be shared. Indeed, the mandate of the Liberian TRC speaks of how it ‘provide[s] opportunities for them [those who have suffered as a result of the civil war] to relate their experiences’;<sup>182</sup> and this notion is furthermore reiterated in the daily functioning of the TRC as witnesses are called to ‘share [their] story’.<sup>183</sup> This section will therefore explore Wigmore’s third point in the process of testimony, viz. communication. From a phenomenological perspective this section will consider whether experience can be shared, notably when the medium of communication is speech and language – here in the form of testimony. This section will move on to consider the use of language and narrative as a mechanism for healing trauma. This paper argues that although it may not be possible to perfectly convey and share the essence of a subjective experience, there are important ethical implications in the very act of endeavouring to understand the other as a subject. Beyond this, I examine how useful testimony really is to the traumatised subject as they continue on with their individual lives, arguing that through trauma testimony the individual becomes docile as it is made

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<sup>181</sup> Anne Whitehead, *Trauma Fiction*, (Edinburgh: Edinburgh University Press, 2004), p. 82.

<sup>182</sup> *Supra* note 4 at 4.

<sup>183</sup> TRC of Liberia hearings at Fish Town City, February 25 2008, available at <http://trcofliberia.org/transcripts/29>, last accessed 7<sup>th</sup> September 2011.

vulnerable by reliving the trauma of the past and, in this way, becomes an easily mouldable body for the use of the new political order.

#### 4.1 Sharing Experience

Truth commissions advocate for the sharing of personal experiences in order to reconcile a country. This simple notion of sharing experience between two people has been examined and deconstructed by numerous schools of thought. Stemming from Nietzschean thinking, which rejected the Kantian idea that humankind had common categories with which to experience the world (and therefore reach a common and objective truth), phenomenologists examined the concept of experience, and how the subject experiences the phenomena of the world.<sup>184</sup> For these thinkers, humans are individually experiencing subjects whose conscious constitutes both itself and the world around it: what Heidegger named “being-in-the-world”.<sup>185</sup> Proponents of this school of thought have used the term “qualia” to describe subjective sensory experiences.<sup>186</sup> The question is, then, is my qualia the same as yours? Is my experience of an event we both witnessed the same as yours? Arguably, no, as although two subjects may both simultaneously witness or experience the same happening, their subjective interpretations will differ as their social, cultural and personal frames of reference with which their interpretations are constituted will never perfectly correlate. Indeed, we interpret an experience by comparing it to past experiences which our minds have already understood and processed. And furthermore, one’s culture and society provide interpretive material with which to understand experiences. It is for this reason that traumas fail to be processed by the conscious mind as they fall outside of our personal and cultural

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<sup>184</sup> Dermot Moran and Lester E. Embree, *Phenomenology: Critical Concepts in Philosophy, Volume 3*, (Routledge: New York and London, 2004).

<sup>185</sup> Martin Heidegger’s notion of Being-in-the-World describes how the individual only exists *within* the world, in its ability to both be created and to create. For a detailed analysis of Heidegger’s concept of Being-in-the-World see Timothy Clark, *Martin Heidegger*. (Routledge: London, 2002).

<sup>186</sup> Leopold Stubenberg, *Consciousness and Qualia*, (John Benjamin’s Publishing Company: Philadelphia, 1998), pp. 12 – 35.

range of referential experiences. Therefore, a testimony, especially one of trauma, will fail to be heard by any who have not experienced something very similar.<sup>187</sup>

Indeed, many have spoken on this problem of witnessing trauma testimony and sharing the experience of trauma. Culbertson speaks of how ‘this wordless language is unintelligible to one whose body is not similarly affected, and because without words the experience has a certain shadowy quality, a paradoxical unreality’.<sup>188</sup> Additionally, for Humphrey ‘listeners can simply fail to comprehend traumatic experiences that are beyond their knowledge. Witnessing violence or hearing accounts of it encounter a loss of powers of perception and description.’<sup>189</sup> Culbertson writes of a ‘wordless language’ and, further, Humphrey speaks here of a failure in ‘description’; indeed, besides from interpreting experiences differently, individuals will bring to the language choices a testimony-maker employs their own range of connotations and for this reason, even if the experience was felt in the same way by two differing subjects, the difficulty arises when one attempts to share this experience through language.

However, witnessing testimony and hearing accounts of trauma is, to a certain extent, culturally relative, as individuals from similar cultural backgrounds tend to share – not fully, but partially – a field of reference with which to interpret and understand experience. The phenomenologists speak of this as “intersubjectivity”, describing when two subjects experience the same phenomena.<sup>190</sup> Developing on, this notion of intersubjectivity stands as a foundation for the relation between listening or reading and ethics. Indeed, if we accept that two subjects can - to an extent - share an experience, or at the very least be conscious of the other subject who also experiences, then this becomes the basis for our ethical understanding of the other as we begin to empathize with what he/she is experiencing. In this case, the sharing of experiences at truth commissions becomes an act of ethical engagement as the self becomes conscious of the experiences of the other, potentially leading to some sort of reconciliation.

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<sup>187</sup> See, also, Michael Humphrey, *supra* note 154.

<sup>188</sup> *Supra* note 136 at 3.

<sup>189</sup> *Supra* note 135 at 11.

<sup>190</sup> *Supra* note 184.

However, this requires an understanding of language, the medium by which this sharing of experience is communicated, as a field of intersubjectivity. It has been often been debated just how far language is intersubjective as the general denotations and connotations of words in the same language are similar from person to person.<sup>191</sup> Yet, followers of linguistic determinist thought propose that language - besides from containing differing connotations for differing people - limits experience.<sup>192</sup> Language can only re-present an experience and in this re-presentation many aspects of the original experience are both lost and modified. Indeed, have the creators of language suffered traumas enough for there to be a language or vocabulary with which to speak of trauma? Or, do the survivors of trauma necessarily have to suffer in silence because the speaking of such experiences renders them trivial? Although truth commissions proffer that through the act of narration and testimony trauma can be healed as one makes sense of our lives through its expression in the structures of language, is it not the case that the trauma becomes further repressed as it is reworked into a medium which limits its reality even further, leading Culbertson to claim of trauma that 'ordinary narrative is simply inadequate'.<sup>193</sup>

And furthermore, post-structuralists contend that the cultural and social denotations of language are fostered by certain dominant people for certain ends.<sup>194</sup> Therefore, certain, usually dominant, discourses are promulgated by the very language choices made in testimony and by the cultural affectations of those listening. This viewpoint is incredibly limiting as it suggests that the meaning of all we speak, write and hear is predetermined. However, I would like to proffer the suggestion that other mediums of expression be used by truth commissions in order to encourage a conscientizing of the other so as to foster general healing and reconciliation. It is therefore commendable that the Liberian TRC created the TRC's

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<sup>191</sup> Notably, Jacques Lacan, *The Language of the Self: The Function of Language in Psychoanalysis*, (The John Hopkins University Press: Baltimore, 1986); and Jürgen Habermas, *The Theory of Communicative Action*, translated by T. McCarthy, (Beacon Press: Boston, 1984).

<sup>192</sup> See, for example, Ludwig Wittgenstein who wrote that 'the limits of my language means the limits of my world', in Ludwig Wittgenstein and Bertrand Russell *Tractatus Logico-Philosophicus* (Cosimo: New York, 2010), proposition 5. 6.

<sup>193</sup> *Supra* note 136 at 4.

<sup>194</sup> See, for example, Carol Smart, *supra* note 90.

Children's Art Gallery which showcases the art, poetry and stories of children expressing their experiences of the war and their dreams for the future.<sup>195</sup>

#### 4.2 The Politics of Healing Through Testimony

The effects of trauma are, arguably, permanent. On both sides of the debate, theorists, practitioners and sufferers themselves have avidly argued as to whether one can ever recover from trauma. Turnbull's ex-militant case-study, George, claims timidly, "I am not sure you ever can become 100% fixed".<sup>196</sup> Yet, the South African TRC – which inspired and greatly influenced the work of the Liberian TRC – assumes the belief that through speaking and narrative one can make sense of, and eventually over-come, one's trauma: this is echoed in their catch-phrase "revealing is healing".

However, there are a couple of issues that need to be raised here. The first is a practical issue concerning the fact that although psychiatrists and psychotherapists agree on the importance of drawing out repressed traumas through speech and narrative, they also proffer that it takes many sessions for the trauma to be released and for some sort of healing to take place. Conversely, at a truth commission, testimony-makers are given one opportunity to speak which, arguably, does more harm than good as trauma sufferers are made to relive their traumas for the sake of the country's political peace-making. Indeed, Sarah Nutall speaks of how 'many were re-traumatized by the process' of testimony-making at the South African TRC.<sup>197</sup> In this way, therefore, those who come to testify about their traumas of the war are once again made vulnerable to the power of their trauma by re-living it through testimony.

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<sup>195</sup> *Supra* note 11 at 37.

<sup>196</sup> *Supra* note 146.

<sup>197</sup> 'The TRC itself lacked the resources to provide adequate investigative research, counselling facilities or reparations to witnesses and their families, many of whom were re-traumatized by the process'. *Supra* note 158 at 78.

As explained above, the unconscious mind is deliberate in its repression of the traumatic memory for the protection of the self, as to be made conscious of the experience of trauma means to re-experience its devastating effects once more. Indeed, for Culbertson traumatic memory ‘is not memory to be told, not memory to be analyzed, but memory to be used for the purposes of survival’.<sup>198</sup> Moreover, not only is it perhaps impossible to heal – if healing is indeed possible at all – through the act of speaking in testimony, but traumas are fundamentally physical and bodily experiences, which cannot be healed through talking alone. Traumas are felt, known and remembered by the body; the body will experience hot sweats, feelings of fainting, dizziness and even nervous disorders as the body freezes believing another attack is imminent.<sup>199</sup> Babette Rothschild in her book *The Body Remembers: The Psychophysiology of Trauma and Trauma Treatment* considers the importance of somatic memory: the physical memories of the body which can be triggered by touch or other sensory phenomena. Rothschild insists on the importance of the body in the treatment of trauma as, for her, the body is a significant site where the trauma and the effects of trauma are played out: ‘[w]hen healing trauma, it is crucial to give attention to both body and mind; you can’t have one without the other.’<sup>200</sup> Indeed, one of the most important techniques for the trauma therapy is, for Rothschild, that the survivor feels completely safe in the environment in which the therapy is taking place. And further, she encourages the vigilant awareness by the survivor of their bodily reactions, fears and emotions as they tackle their PTSD:

So I teach them about self-awareness, body awareness and emotional awareness. I get them to be able to evaluate questions like ‘When we are working in this way do I feel more calm? Do I feel more present? Is my life working better? Am I more resilient?’ and so on. If the answer to those questions is primarily ‘yes’ then this is something that works well. However if they are answering ‘yes’ to: ‘Am I feeling

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<sup>198</sup> *Supra* note 136 at 8.

<sup>199</sup> See, Chapter 1 of Babette Rothschild, *The Body Remembers: The Psychophysiology of Trauma and Trauma Treatment*, (W. W. Norton and Company: New York, 2000).

<sup>200</sup> *Ibid.*, at xiv.

more unstable, more decompensated, more spacey, less productive, having more difficulty concentrating and so forth? then this isn't such a good direction.<sup>201</sup>

If, then, truth commissions wish to provide a forum where trauma victims can begin to heal with effect from their traumas caused by the war or conflict of their nation, then it is necessary for these commissions to incorporate some of the more recent debates and ideas concerning trauma and somatic memories into their ideologies and operations. Without addressing or, at the very least being conscious of, the trauma of the body truth commissions can arguably become a place where victims of trauma come to be re-traumatised by experiencing their traumas again in a place which simply wants the facts of their story.

## 5. Conclusion

This section has explored the possibilities and limitations of testimony from both a conceptual and philosophical perspective, and a practical one. At truth commission individuals are asked to come forward and share their experiences of a nation's past in the form of testimony. These testimonies are to come together to create shared picture of the past, to foster reconciliation, to bring about justice for the victims and victimisers of the war, and to help heal those most affected through the act of testifying. However, in these objectives truth commissions make numerous assumptions about the nature of testimony and trauma.

On the one hand, therefore, testifying offers an opportunity for people to engage and empathize with the other as the speaker finds language with which to connect with the listener, and as the listener becomes conscious of the subjective experiences of the speaker. In this way, truth commissions – even more so when a kind of dialogue is fostered – encourage reconciliation in the ethics of reading as meaning is shared and new meaning created. Indeed, testimony becomes an act of political negotiation as the self grapples with the needs of those witnessing and the situation, and their own personal need to tell and be heard. Furthermore, through

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<sup>201</sup> Interview with Babette Rothschild, available at <http://home.webuniverse.net/babette/InterviewBoRe.html>, last accessed 24<sup>th</sup> August 2011.

memory and testimony identities are constructed through the privileging of certain notions of the self and the suppression of others. Moreover, the individual memories in truth commission testimonies are not simply a source of truth and knowledge about the past, but a place whereby the past is constituted and given meaning.

However, on the other hand, traumatic experiences resist knowledge, recollection and communication, the tripartite steps of testimony, according to Wigmore. Indeed, trauma resists knowledge as traumas are, by definition, those happenings which the human mind cannot register as they fall outside of the usual frame of reference with which we interpret experience. Secondly, traumas do not conform to the typical memory form in that they refuse to be laid to rest in the past. Traumas are effectively a-temporal as they cannot be ordered in any distinctly chronological manner, and for this reason, they refuse, against the objectives of truth commissions, to be historicised. Furthermore, traumatic memories are not memories as such as they are, purposefully, repressed by the unconscious mind as a survival instinct so the body and mind does not have to continuously relive the pains of that trauma. In this way, the demand by truth commissions for individuals to retell, and therefore relive, their traumas for the good of national healing, in fact re-subjectivises these people to their traumas, making them docile bodies for the new political regime to manipulate.

And lastly, this paper has considered phenomenological thought in order to address the question of whether experience, especially traumatic experience, can ever be shared and communicated. Because of the essentially unknowable nature of trauma, traumatic experiences are difficult to understand both for the survivor and for those who attempt to listen to these testimonies. But beyond this, it is the body that needs to communicate the experience, not just the mind, as the body too experiences and suffers the trauma. Indeed, when Amelia Dimsea comes to the Liberian TRC hearings she cannot speak of her trauma, instead her bodies communicates the trauma as she 'shows the marks' of her suffering to the commissioners.<sup>202</sup>

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<sup>202</sup> *Supra* note 156.

*'In a kind of collective failure of imagination, we learned that we simply could not think our way out of our pasts.'*

*'It is possible to create past events simply by saying they occurred.'*

*Salman Rushdie, Midnight's Children*<sup>203</sup>

## **CONCLUSION**

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<sup>203</sup> Salman Rushdie, *Midnight's Children*, (Faber and Faber: London, 1995), pp. 148 and 564.

Undoubtedly the work of truth commissions around the world has not been in vain. Thousands have felt the effects of their efforts to restore a country to peace and order, yet many others are left untouched. However, there are issues within the conceptual framework of a truth commission that I have felt necessary to explore here in this paper.

Indeed, truth commissions stand as an institutional technology that ushers in the new government. This paper has been cognisant of the political purposes of truth commissions when deconstructing some of the conceptual elements of their make-up. The limitations of the construction of truth by a truth commission have been evaluated. This paper has deconstructed the understanding of truth by truth commissions as an objective reality to be found in factual and corroborative evidence, suggesting that this conceptualisation of truth, and the prioritising of this kind of truth, subscribes to the promulgation of certain dominant discourses, namely, the discourses of science and law. These dominant discourses - along with the new discourse of truth and reconciliation constructed by a truth commission - work to subjectivise individuals, making their mind and bodies docile sites for the realisation of the political and economic goals of the new government. Indeed, this paper has proffered that truth commissions are institutional tools of the hegemonic ideals of Western democracy which ensures the success of the new and democratic government through the discrediting of the old order and through its truth-claiming meta-narratives.

However, on the other hand, I have argued here as to the importance of the creative act of testimony for the creation of subjective truths. The personal and subjective truths of those who creatively participate in speech and language in order to share their experiences of the war become a site for the ethical engagement of the self and the other, as the speaker empathizes with its audience through its language choices and narrative constructions, and as those listening identify in their testimony. Indeed, these individual stories lie in comparison to the official "history" produced by truth commissions which claims to be truth which cannot be judged. In this way a truth commission becomes like the theatre houses of Greek tragedies which, for Martha Nussbaum, was where a 'communal process of inquiry [and] reflection' took

place.<sup>204</sup> Indeed, I argue that through the ethics of narrative, some sort of reconciliation can be achieved as new meanings are created.

Having laid out the value of testimony in chapter one, the second chapter moved on to deconstruct the notion of testimony, both conceptually and as it is performed at truth commissions. I have presented the difficulties of testifying when the content of the testimony is a traumatic experience, explaining how traumas are fundamentally known, felt and remembered by the body, rather than the conscious mind. Indeed, how can a truth commission, which understands truth as knowledge, expect to find this truth in the testimonies of the traumatised, as the testimonies of trauma do not convey knowledge of an event but rather a kind of re-living of experience? I have therefore highlighted in this paper the importance of understanding the difficult and volatile nature of trauma, as those testifying about traumatic events can - arguably - be re-traumatised by re-living their experience in testimony. Furthermore, I have posited the notion that in trauma there is a power relation, a desire by the victimiser to dominant over and hold knowledge of the victim; the resulting trauma, then, becomes like a Foucauldian discourse which continues to subjugate the self internally. For this reason I have proffered that truth commissions make vulnerable, once more, the citizens of the country of inquiry as they are subjugated again to the power of their trauma.

Sadly, Prince Yormie Johnson, one of the worst perpetrators of violence and brutality during the Liberian civil war, is now running as a presidential candidate in the upcoming October 2011 elections. The Liberian TRC painted Prince Johnson as the ultimate violator, the epitome of the harsh and gruesome nature of the civil war.<sup>205</sup> Now, as this man stands for public office, it is thought that he will be voted for not out of admiration for his values and respect for his campaign, but out of fear from knowing what he has, in the past, been capable of.<sup>206</sup> Indeed, this surely

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<sup>204</sup> Martha Nussbaum, *Love's Knowledge: Essays on Philosophy and Literature*, (Oxford, Oxford University Press, 1992), p. 15.

<sup>205</sup> Prince Yormie Johnson was the leader of the Independent National Patriotic Front of Liberia (INPFL), and was responsible for killing Samuel Doe, the country's ex-president. *Supra* note 24 at 225.

<sup>206</sup> For information on the upcoming elections in Liberia see Christopher Tansey, 'Election Commission Approves Former Warlord's Presidential Campaign: A Setback to Liberia's Rebuilding

demonstrates the enduring political power the traumatiser continues to wield over those he has wounded. And further, it is questionable to what extent the Liberian TRC itself, in making public the atrocities committed by Prince Johnson, has helped his rise to power.

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