

## Testimony in Truth Commissions: *Aporetic* Critique

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*In this article, I critically examine the role of testimony in the work of truth commissions and its implications for understanding human rights violations and testimony drawing on Jacques Derrida's deconstruction of testimony. Two key implications emerge from this analysis. First, by applying a tort model, human rights violations are depoliticized through their individualization. This approach turns testimonies into evidence, limiting their critical potential. Depoliticization involves overlooking the political context of violence, which results in a failure to consider power dynamics, potentially reinforcing the same power structures that contributed to the atrocities in the first place. Second, the rationale behind truth commissions, often framed as "giving a voice to the voiceless," tends to prioritize the act of speaking over the moral obligation to listen to testimonies and reflect on one's moral and political responsibilities. Finally, I argue that addressing past human rights violations and their root causes should be guided by an idea of responsibility, particularly the responsibility for justice. The way truth commissions utilize testimony may hinder the fulfillment of this responsibility.*

### Introduction

Initially, it is important to acknowledge the plurality of truth commissions and the diversity of their experiences across different times and contexts. The focus of this analysis is on the concept of truth commission as a political institution founded on specific normative assumptions. One such assumption is intimately connected to the practice of testimony and the presumed effects and functions that this practice is believed to fulfill.

The concept of testimony has been a subject of philosophical analyses tracing its roots legal, historical, and theological contexts.<sup>1</sup> The role of truth commissions as tools for addressing past human rights atrocities through testimonies and public hearings has also gained much attention both in the academic discourse and the realm of politics. Since the experiences of the South African Truth and Reconciliation Commission it has been widely recognized that testimony and public hearings are central for the work of truth commissions and their potential contribution to justice and reconciliation.<sup>2</sup> Martha Minow has argued that the notion of the restorative power of narrative through testimony has

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<sup>1</sup> For example, Emmanuel Lévinas, Paul Ricœur, Hannah Arendt, Jacques Derrida.

<sup>2</sup> Gready, Paul: "Culture, Testimony, and the Toolbox of Transitional Justice", in *A Journal of Social Justice*, Vol. 20, No. 1, 2008; Minow, Martha: *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Beacon Press, Boston 1998.

been a key factor in the establishment of truth commissions, viewing them as public platforms for victims to share their experiences of suffering.<sup>3</sup>

It has been previously suggested that the idea about the positive impacts of testimony and public witnessing of human rights violations constitutes one of the foundational assumptions underlying the concept of truth commissions. In these processes, truth and truth-telling are regarded as crucial elements in addressing past atrocities, with truth seen as a prerequisite for achieving justice.<sup>4</sup> On an international policy level, the United Nations High Commissioner for Human Rights has emphasized the pedagogical role of public hearings in informing society about past abuses and stimulating discussion about the past.<sup>5</sup> Beyond the societal impact, testimony is also believed to have a positive psychological effect on survivors, as it acknowledges their suffering and offers a healing process that can contribute to reconciliation.<sup>6</sup>

The discourse on truth commissions often includes the concept of healing, highlighting a significant difference between trials and truth commissions. While trials focus on establishing the accountability of individual perpetrators, truth commissions are intended to address the needs of the entire society, which is seen as requiring healing. Franka Winter points out that societies are often presumed to need to work through past trauma and undergo a healing process.<sup>7</sup> However, in his essay "The Meaning of Working Through the Past," Theodor Adorno warns of the dangers of using psychological language to shift the issue of moral responsibility into the psychological realm, thereby avoiding confrontation with the brutality of one's actions and the conditions that made them possible.<sup>8</sup> The use of psychological terminology tends to frame human rights violations as trauma or suffering rather than as moral wrongdoings – an interpretation that must be critically examined and challenged.

In this article, my aim is two-fold: first, to critically analyze the role of testimony as one of normative foundations underpinning the concept of truth commissions and its implications for understanding human rights violations; and second, to examine the critical potential of Derrida's deconstruction and *aporetic* analysis in this context. I begin by examining the implications of the centrality given to testimony and witnessing within the framework of truth commission, which is a key normative assumption underlying the concept of truth commissions. The critique of testimony presented here operates on a

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<sup>3</sup> Minow, Martha: *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Beacon Press, Boston 1998, 66.

<sup>4</sup> In my doctoral thesis, I have identified and critically discussed three normative assumptions behind the idea of truth commission: firstly, the justification for truth commissions derives from the idea that in the aftermath of large-scale human rights violations, restorative justice should be given priority over retributive justice; secondly, truth is a prerequisite for justice and for dealing with past human rights violations; and thirdly, public testimony as a form of truth-telling is connected to the purpose of justice and presupposes it to have a positive impact for victims and society in general. Lebedeva, Alexandra: *Justice and Politics. On the Depoliticization of Justice Claims in the Work of Truth Commissions*. Acta Universitatis Upsaliensis, Uppsala 2022.

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights: *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*, HR/PUB/08/1, 2008, 18-19.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights: *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*, 23.

<sup>7</sup> Winter, Franka: Giving Voice to the Voiceless? Second Thoughts on Testimony in Transitional Justice, in *A Journal on Social History and Literature in Latin America*, Vol. 6, No. 3, Spring 2009, 93.

<sup>8</sup> Adorno, Theodor W.: "What Does Coming to Terms with the Past Mean?", in Hartman, Geoffrey (ed.): *Bitburg in Moral and Political Perspective*. Indiana University Press, Bloomington 1986.

normative level but is also empirically informed by examples from various truth commissions and their experiences with testimony and public hearings. I offer a critical analysis of the implications of placing testimony at the core of efforts to address past human rights atrocities, and I discuss the questions that *ought* to be prioritized in these processes.

In my endeavor to discuss the problem introduced above, I engage critically with the work of Jacques Derrida. In 1998, Derrida visited South Africa and delivered lectures on reconciliation and forgiveness in the context of the Truth and Reconciliation Commission's work. He argued that the concepts of reconciliation and forgiveness should be distinctly separated. According to Derrida, reconciliation, represents a form of conditional forgiveness which he refers to as "political therapy", whereas forgiveness should remain pure and unforgivable.<sup>9</sup>

When analyzing testimony, Derrida critiques its reductionist use within the legal realm, where testimony is often reduced to the demonstrable truth, and thereby stripping it of its essential meaning as an act of faith. In the deconstruction of testimony, Derrida places Paul Celan's poetry at the center of his analysis, concluding that the poet is "the only one who can bear witness to them".<sup>10</sup> The analysis of the use of testimony within truth commissions is informed by Derrida's *aporetic* perspective, the limitations of his thought is also acknowledged in the final part of the article.

It is important to recognize that Derrida's *aporetic* understanding of testimony, as discussed in the article, is deeply influenced by the concrete historical events of the twentieth century, particularly the efforts to comprehend and articulate the experiences of the Holocaust. These experiences remain both unbearable and incomprehensible, yet have also become an object of revisionism. The efforts to convey the experiences of the Holocaust by thinkers like Jacques Derrida or Theodor Adorno have raised profound moral questions that remain unresolved and require ongoing critical reflection in relation to the contemporary contexts. How can a society best deal with its traumatic history, particularly during political transitions? We must also ask whether addressing the past through transitional justice mechanisms, such as truth commissions, is a viable alternative.

The challenge of conveying the Holocaust experiences has also been central to Hannah Arendt's analysis of the Eichmann trial, which marked the beginning of the "era of testimony".<sup>11</sup> Arendt refers to Nazi crimes as "speechless horrors" that defy both punishment and forgiveness. She offered a stark critique, arguing that although these horrors were beyond words, people nevertheless attempted to express them or to translate their speechlessness into emotional expressions. In Arendt's view, all such attempts were ultimately inadequate.<sup>12</sup>

The increasing prominence of testimony and truth commissions<sup>13</sup> raises significant moral and political questions regarding how human rights atrocities ought to be

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<sup>9</sup> Derrida, Jacques: *On Cosmopolitanism and Forgiveness (Thinking in Action)*. Routledge, New York 2001, 27, 31-32.

<sup>10</sup> Derrida, Jacques: "Poetics and Politics of Witnessing" in *Sovereignities in Question: The Poetics of Paul Celan*. Fordham University Press, New York 2005, 67.

<sup>11</sup> For example, Annette Wieviorka, Elizabeth Jelin, Kay Schaffer, Sidonie Smith and Leora Bilsky.

<sup>12</sup> Arendt, Hannah: "Some Questions of Moral Philosophy", in *Responsibility and Judgement*. Schocken Books, New York 2003, 56.

<sup>13</sup> Depending on how truth commissions are defined (whether as truth and reconciliation commissions or commissions of inquiry), there have been more than 40 such truth commissions since 1974.

addressed, including the question of the moral foundations of truth commissions. Different answers have been proposed. Martha Minow argues that the moral foundation of truth commissions lies in their public acknowledgement of human rights violations and their efforts to restore the dignity of victims.<sup>14</sup> Amy Gutman and Dennis Thompson contend that the moral basis of truth commissions is rooted in restoring public recognition of the humanity of victims.<sup>15</sup> Meanwhile, Maria Ericson suggests that truth commissions create a shared moral landscape, offering a shared understanding of different groups' experiences and interpretations of reconciliation and peace, particularly, in the context of armed conflicts and wars.<sup>16</sup>

In light of these perspectives, my concern is that justice in the aftermath of human rights violations risks being confined to pivotal yet insufficient questions, such as those related to healing and reconciliation. I propose that the most crucial issue that ought to be addressed in dealing with past atrocities are questions of justice and responsibility. Drawing on Derrida's deconstruction of testimony, I critique the reductionist approach to testimony, which is often shaped by its institutionalization and instrumental uses. I argue that truth commissions frequently downplay or overlook the political and socio-economic contexts of human rights violations, focusing primarily on individual instance of wrongdoing.

The article is structured as follows. It begins with an analysis of Derrida's perspective on testimony, highlighting critical insights that are subsequently applied to the context of truth commissions. Following this, I present and discuss various uses of testimony based on Shoshana Felman's distinction between legal and historical uses of testimony. This distinction of testimony's different uses in truth commissions is supported by the references to prior research rather than empirical analysis. In the conclusion, I summarize the implications of placing testimony at the center and address the key questions that *ought* to be considered when dealing with large-scale human rights violations.

### Testimony's *Aporetic* Conditions

The point of departure for my analysis is Derrida's deconstruction of testimony and the challenge of *aporetic unrepresentability*. As Shoshana Felman has noted, the *aporetic* condition of testimony introduces a new perspective on testimony, raising questions about the responsibility of survivors who assume the role of witnesses. Felman writes: "To testify is thus not merely to narrate but to commit oneself, and to commit the narrative, to others: to take responsibility – in speech – for history or for the truth of an occurrence, for something which, by definition, goes beyond the personal, in having general (nonpersonal) validity and consequences."<sup>17</sup> I propose that Derrida's *aporetic* thinking should be developed towards an ethics of responsibility, particularly – responsibility for justice.

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<sup>14</sup> Minow, Martha: "The Hope for Healing: What Can Truth Commissions Do?" in Robert I. Rotberg and Dennis Thompson (eds.): *Truth v. Justice: The Morality of Truth Commissions*, 236-237.

<sup>15</sup> Gutman Amy and Thompson Dennis: "The Moral Foundations of Truth Commissions?" in Robert I. Rotberg and Dennis Thompson (eds.): *Truth v. Justice: The Morality of Truth Commissions*, 32.

<sup>16</sup> Ericson, Maria: Reconciliation and the search for a shared moral landscape: Insights and challenges from Northern Ireland and South Africa, in *Journal of theology for Southern Africa*, 2003, Vol. 115.

<sup>17</sup> Felman, Shoshana and Laub, Dori: *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*, Routledge, New York 1992, 204.

In the essay “Poetics and Politics of Witnessing” in *Sovereignities in Question: The Poetics of Paul Celan*, Derrida states that “the only condition for bearing the witness, its only condition of possibility as condition of its impossibility – paradoxical and *aporetic*”.<sup>18</sup> According to Derrida, the essence of testimony does not and cannot lie in its evidential function, but in its built-in uncertainty. He argues that witnessing should not be equated with proving or confirming knowledge. Instead, testimony is fundamentally an act of faith.

This performative nature of testimony involves the witness making a promise to convey what they have seen, heard, or experienced.<sup>19</sup> However, this performativity as a constitutive element of testimony should be reciprocal. When a witness makes a promise and requests the recipient to believe them, it imposes a reciprocal demand on the recipient to believe and engage in an act of faith. Derrida asserts that the only possible response to the “performativity” of testimony is another “performative” act – saying “I believe you”. As an act of faith, testimony is always characterized by built-in uncertainty and cannot be guaranteed without risking the loss of its value.

The Latin etymology of the word “testimony” highlights a fundamental discrepancy between two categories: *testis* and *superstes*. *Testis* refers to someone who testifies as the third party, while *superstes* denotes someone who testifies as a survivor.<sup>20</sup> Primo Levi famously used the discrepancy to illustrate the “essential lacuna” of testimonies. Levi observes: “There is another lacuna in every testimony: witnesses are by definition survivors and so all, to some degree, enjoyed a privilege...”<sup>21</sup>

In addition to *testis* and *superstes*, Levi introduces a third category: “the true witness,” those who witness through their death. This third category underscores the *aporia* of testimony: the dead cannot witness due to their death, and survivors cannot witness due to their survival. This *aporetic* condition, or essential lacuna, raises critical questions about moral and political responsibility toward those who cannot testify – whether due to death or their exclusion and inability to speak for themselves. Following Felman’s idea, the responsibility toward these “true witnesses” involves remembering and protecting the dead from being misappropriated or exploited.<sup>22</sup>

Derrida formulates the hypothesis that “all responsible witnessing engages a poetic experience of language.”<sup>23</sup> To understand this hypothesis, we need to address two questions: what makes witnessing responsible, and what does a poetic experience of language entail.

Responsible witnessing can be interpreted as ability to answer or to respond for oneself. Derrida argues: “It is on this condition that the witness can respond, can answer for himself, be responsible for his testimony as well as for the oath by which he commits himself to it and guarantees it.”<sup>24</sup> From the perspective of an ethics of responsibility, this means that true moral responsibility involves bearing witness on one’s own behalf, not on

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<sup>18</sup> Derrida, Jacques: “Poetics and Politics of Witnessing” in *Sovereignities in Question: The Poetics of Paul Celan*. Fordham University Press, New York 2005, 68.

<sup>19</sup> Ibid., 80.

<sup>20</sup> Derrida, Jacques: “Poetics and Politics of Witnessing” in *Sovereignities in Question: The Poetics of Paul Celan*, 72-73.

<sup>21</sup> Levi, Primo: *The Drowned and the Saved*, quoted in Agamben, Giorgio: *Remnants of Auschwitz: The Witness and the Archive*. Zone Books, New York 2002, 33.

<sup>22</sup> Felman, Shoshana: *The Juridical Unconscious*, Harvard University Press, Harvard 2002, 15.

<sup>23</sup> Derrida, Jacques: “Poetics and Politics of Witnessing” in *Sovereignities in Question: The Poetics of Paul Celan*, 66.

<sup>24</sup> Ibid., 80.

behalf of others. The only way to take one's moral responsibility is to bear witness for oneself and nobody else. The concept of collective subject and representation through individual stories inevitably risks misappropriating and inadequately representing others' unique and individual experiences. Therefore, the moral responsibility of those who speak and testify includes acknowledging and addressing the risk of misappropriation and the potential failure of representation.

The second part of Derrida's hypothesis about the poetic experience of language addresses the singularity and irreplaceability of individual experience, and by extension, the uniqueness of each testimony. This concept takes us to the last phrase in Paul Celan's poem *Ashglory*: "No-one bears witness for the witness."<sup>25</sup> Derrida's prescriptive interpretation of this phrase suggests that no one *should* bear witness on behalf of another.

According to Derrida: "...all bearing witness must always appear as 'poetic' (a singular act, concerning a singular event and engaging a unique, and thus inventive, relationship to language)."<sup>26</sup> No one should bear witness for the witness since testimony is characterized by the radical uniqueness of both the experience and the means of describing it. Testimony arises from firsthand experience, which is transformed into testimony through the act of bearing witness, by the *superstes*. The irreplaceability of the witnessing subject is the condition of testimony.

Derrida's deconstruction of testimony reveals two *aporetic* conditions inherent to testimony. The first condition pertains to the essence of testimony and its built-in uncertainty. This built-in uncertainty challenges the reductionist view of testimony as mere evidence and cautions against its instrumental use. Testimony, as an act of faith, is performative, and requires both a witness and an audience. Thus, testimony demands both responsible witnessing and responsible listening.

The second condition addresses the *aporetic unrepresentability* of testimony and the irreplaceability of the witnessing subject. This perspective critiques the assumption of testimony's representative potential, particularly in the context of political representation. Claims of collective representation often obscure the risk of misrepresentation, as they may fail to account for the unique and singular nature of individual experiences.

### **The use of testimony in truth commissions**

In the field of testimonial studies, two poles have been identified: one that highlights the political dimension of testimony, and another that underscores the *aporetic unrepresentability* of suffering.<sup>27</sup> Anne Cubilié and Carl Good, who explore and discuss these two poles, critique the tendency of some institutions to constraint testimony by using it for narrow purposes. They argue that when testimony is overly institutionalized it risks becoming complacent and limited in scope. The narrow conception of testimony is shaped by the application of rigid rules governing its production, the imposition of predetermined political functions, and the treatment of testimony as an unmediated representation of historical experience.<sup>28</sup>

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<sup>25</sup> Derrida, Jacques: "Poetics and Politics of Witnessing" in *Sovereignities in Question: The Poetics of Paul Celan*, 67, 75.

<sup>26</sup> Ibid., 88.

<sup>27</sup> Cubilié, Anne and Good, Carl: "Introduction: The Future of Testimony", in *Discourse*, Vol. 25, No. 1 and 2, 2003, 5.

<sup>28</sup> Cubilié, Anne and Good, Carl: "Introduction: The Future of Testimony", 5.

In the context of truth commissions, the tendency to restrict the use of testimony for specific needs is particularly evident. Truth commissions exemplify a narrow perspective on testimony and demonstrate the problematic institutionalization of testimony, as they often reduce testimony to a tool for achieving specific political objectives, rather than recognizing its broader, more complex significance.

Furthermore, as will be demonstrated, specific functions are ascribed to testimony, encompassing both political and pragmatic dimensions. To identify these “functions” or different uses of testimony, I draw on Shoshana Felman’s works on testimony. Felman distinguishes between the legal use of testimony in courts and its historical use. She argues that the most traditional use of testimony within the legal context involves calling upon testimony when the facts of the situation upon which justice must deliver a verdict, are unclear. In this context, testimony serves as a supporting element of evidence.<sup>29</sup>

According to Felman, testimony’s historical use represents a broader application, both in terms of form and context. Unlike its role in the legal context, where testimony functions as supporting evidence, historical use of testimony is a mode of representation of past events from the first-person perspective. This type of testimony is often presented in academic research, literature, and various forms of art. Examples of this broader use include *testimonio* and prison literature, where personal accounts are used to convey historical experiences, often shedding light on the social and political conditions surrounding those events.

The case of truth commissions blurs the boundaries between the legal and historical uses of testimony, as elements of both are interwoven. On one hand, testimonies are provided within rule-governed circumstances, where the form and content are regulated by the commissioners, mandates, and other institutional frameworks. This approach often seeks to fill gaps in evidence and complete the historical record, functioning similarly to the legal use of testimony. On the other hand, testimony within truth commissions also serves the purpose of revealing the past in a broader context, aiming to inform the society about the past human rights atrocities and contribute to a collective understanding of historical events.

#### *Legal use and the problem of individualization*

In the context of truth commissions as quasi-judicial institutions, the legal use of testimony is exemplified by the connection between witnessing and the right to reparations. The legal use should be interpreted broadly, taking into account the various contexts and expressions it may assume. For the purpose of my analysis I focus on the right to reparation and the role of testimony as one possible interpretation of testimony’s legal use.

Examining the experiences of Morocco’s Equity and Reconciliation Commission, which was widely perceived as successful largely due to the extensive reparations granted and paid, it becomes evident that testimonies were intricately linked with the process of applying for reparations. In the Moroccan context, Susan Slyomovics highlights the term *ifada* used to denote a statement made for indemnification.<sup>30</sup> In Morocco, *ifada* contrasts with the term *shahada*, meaning witnessing or testimony, which is associated with the

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<sup>29</sup> Felman, Shoshana and Dori, Laub: *Testimony: The Crisis of Witnessing in Literature, Psychoanalysis and History*, 6.

<sup>30</sup> Slyomovics, Susan: “Financial Reparations, Blood Money, and Human Rights Witness Testimony: Morocco and Algeria”, in Richard Ashby Wilson and Richard D. Brown (eds.) *Humanitarianism and Suffering: The Mobilization of Empathy*, Cambridge University Press, Cambridge, 2009.

prison literature written in Morocco during the so-called years of lead.<sup>31</sup> Thus, testimonies were often integrated into application forms (*ifada*) that detailed the harms incurred and required repair.<sup>32</sup>

In this context, testimony – whether in written or oral form – often becomes a prerequisite for economic reparation. A story must be told, or a form must be completed, to receive compensation. This process reduces testimony to a form of proof or evidence, aligning it with a reductionist legal perspective that contrasts sharply with the understanding of testimony as an act of faith. Consequently, the performative and relational aspects of testimony are overlooked. Instead of establishing a relationship characterized by responsible witnessing and responsible listening, the association of economic compensation with testimony can signal a sense of finality in the pursuit of justice, potentially undermining the deeper moral and ethical dimensions of testimony.

While reparations and economic compensations are crucial components in the pursuit of justice in the aftermath of large-scale human rights violations, a narrow link between testimony and reparation can have significant implications for understanding these violations, especially when a legal paradigm of compensation or model of tort is applied. Compensatory justice and the model of tort are traditionally used to resolve disputes between private parties, which raises questions about their suitability for addressing large-scale human rights violations.

Pablo de Greiff, a professor of international law and former Special Rapporteur on the promotion of truth, justice, and reparation, highlights several issues that emerge when a legalistic approach to reparations is applied. He argues that the compensatory model, which bases compensation on the proportionality of harm, may be appropriate for individual cases but becomes problematic when applied to collective violations. de Greiff points out that this model often overlooks the specific circumstances of violence, including its systematic nature and normalization. When massive reparation programs are implemented, they may fail to address the complexities and broader implications of collective violations, reducing them to mere calculable harms rather than acknowledging their broader social and political dimensions.<sup>33</sup>

#### *Historical use and the problem of representation*

Given the limitations of testimony in legal contexts, its historical use sought to highlight the political dimension of human rights atrocities. Scholars in subaltern studies, for example, John Beverly, have advocated for a “subaltern” perspective on testimony.<sup>34</sup> This perspective emphasizes the political representation of collective experiences of human rights violations through personal stories. These stories capture both the uniqueness of individual experiences and their connection to the broader community where the violations occurred. Testimonial narratives offer alternatives to official accounts, serving

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<sup>31</sup> For example, El Bouih, Fatna: *Talk of Darkness*. Center for Middle Eastern Studies at the University of Texas, Austin 2008, and BineBine, Aziz: *Tazmamart*. Haus Publishing Ltd., London 2019.

<sup>32</sup> Slyomovics, Susan: “Financial Reparations, Blood Money, and Human Rights Witness Testimony: Morocco and Algeria”.

<sup>33</sup> de Greiff, Pablo: “Justice and Reparations”, in de Greiff, Pablo (ed.): *The Handbook of Reparations*. Oxford University Press, New York 2006, 454-55.

<sup>34</sup> Beverly, John: *Testimonio: On the Politics of Truth*. University of Minnesota Press, Minneapolis 2004, 27.



to amplify the voices of those whose experiences have been marginalized, thereby challenging their subaltern position.

Beverley advocates for the collective representability of individual testimonies, emphasizing the link between testimony and democracy. He suggests that individual voices form a common ground that can be leveraged for political action.<sup>35</sup> According to Beverley, the purpose of testimony is not merely to reveal the subalternity but to actively engage with the audience. In his analysis, Beverly asserts that testimonial literature (*testimonio*) serves to dismantle hegemonic power structures and overcome subalternity. However, I argue that his view is flawed. Rather than eliminating subalternity, this assumed representability of testimony can actually reinforce and exacerbate it.

The concept of giving voice to the voiceless and representing collective experiences through personal stories within institutional setting, such as truth commissions hearings, demands confronting the problem of representation and the inherent risk of misappropriation. Derrida argues that testimony requires recognizing that the witnessing subject is unique and cannot stand in for others who may have similar experiences. The *aporetic unrepresentability* of testimony compels us to confront the complexities of representation: how collective experiences are conveyed, how injustices are defined and by whom, whose voices are amplified, and whose remain excluded from the public discourse.

The asymmetrical and hierarchical relationship between those who are privileged enough to access the public sphere, such as the truth commission hearing, and those who remain excluded must be acknowledged. The institutionalization of testimony within truth commissions often serves as predetermined framework for recounting human rights violations, operating within established modes of representation. Winter illustrates how the perceived openness of public hearings at the Peruvian Truth and Reconciliation Commissions was undermined by the preparation given to witnesses before their testimony, which shaped both the content and structure of their accounts. Winter contends that these public hearings were “highly ritualized events”.<sup>36</sup>

The experiences from the Solomon Islands Truth and Reconciliation Commission reveal similar issues – testimonies were often repetitive, pre-written, and read aloud.<sup>37</sup> A similar pattern emerged in Morocco’s Equity and Reconciliation Commissions, where testimonies from the Amazigh minority also adhered to prewritten scripts.<sup>38</sup> These examples illustrate how testimonies can lose their uniqueness and critical potential when constrained by predetermined narratives. The issue extends beyond the matter of shared language proficiency or the inclusion of minority languages in the hearings. The core problem lies in the truth commissions’ failure to create alternative institutional frameworks that genuinely include all individuals affected by human rights violations in the processes of addressing past injustices. This failure results in a secondary injustice – the injustice of exclusion.

In other words, representation is imbued with the history of the power dynamics that shaped it. Often leaving power structures unchallenged and hegemony intact. The

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<sup>35</sup> Ibid.

<sup>36</sup> Winter, Franka: *Giving Voice to the Voiceless? Second Thoughts on Testimony in Transitional Justice*, 99.

<sup>37</sup> Bronéus, Karen: *Truth and Reconciliation Commission Processes: Learning from the Solomon Islands*. Rowman & Littlefield Publishers, London 2019.

<sup>38</sup> From a talk with a former commissioner Abdelhay Moudenin in Rabat, Morocco, April 2018.

radical uniqueness of individual experience, along with the language used to describe it, poses a challenge to the notion of testimony as a form of representation and the concept of a collective testimonial subject. This is particularly evident in truth commissions, where witnesses are often expected to represent entire groups and follow a pre-written narrative. Such practices risk undermining the authenticity and individuality of the testimonies, reinforcing rather than dismantling existing power relations.

The issue of the representative potential of testimony becomes even more complex within the work of truth commissions due to the gap between how testimonies are initially presented and how they are later represented in the final reports. Mark Sanders highlights this discrepancy in his analysis of the South African Truth and Reconciliation Commission, describing it as “a bifurcated event”. According to Sanders, the commission operated between two stages - listening to the testimonies during hearings and the producing the final report, which involves reading and interpreting the testimonies”.<sup>39</sup> This bifurcation means that the testimonies given during the hearings are not fully or continuously represented in the final reports as they were originally expressed. Instead, they are processed, selected, revised, and mediated by the commission members and various working groups. This process results in a new mode of representing human rights violations that emphasizes the patterns and statistical data but often omits the raw, original experiences and the testimonies that conveyed them.

The inclusion of original testimonies in truth commission reports has varied significantly across different commissions. For instance, Morocco’s Equity and Reconciliation Commission, did not include any citations in its final report, with the exception of brief descriptions of violence experienced by women survivors.<sup>40</sup> In contrast, the South African Truth and Reconciliation Commission made original testimonies accessible on its website, though they were not incorporated in the final reports.<sup>41</sup> On the other hand, Argentine’s National Commission on the Disappearance of Persons documented its work in the report *Nunca Más*, which featured detailed descriptions of individual cases of disappearance and torture, alongside an analysis of the context of the violations.<sup>42</sup>

Despite these differences, it is clear that the establishment of truth commissions often leads to a bifurcation in the representation of large-scale human rights violations. This split creates a gap between the public hearings, where testimonies are shared, and the final reports, which often present a more processed and mediated version of these accounts.

The bifurcation between public testimonies and their representation in truth commission reports, resulting in two distinct modes of representation, has been critically examined from various perspectives. Psychologically, the act of bearing witness to human rights violations carries the risk of secondary traumatization for those recounting their

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<sup>39</sup> Sanders, Mark: *Ambiguities of Witnessing. Law and Literature in the Time of a Truth Commission*. Stanford University Press, Stanford 2007, 148.

<sup>40</sup> Equity and Reconciliation Commission: Final Report, Volume 1 “Truth, Equity and Reconciliation”, 82-83.

<sup>41</sup> Truth and Reconciliation Commission, Human Rights Violations: Hearings and Submissions. Available at: <https://www.justice.gov.za/trc/hrvtrans/index.htm>.

<sup>42</sup> National Commission of the Disappearance of Persons: Report “Nunca Más”, 1984, Available at: [http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain\\_000.htm](http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_000.htm).

experiences.<sup>43</sup> This risk has been observed in both legal trials and truth commissions settings.<sup>44</sup> Ethically, the failure to accurately represent testimonies in final reports poses a serious threat to the dignity of the witnesses. It undermines the creditability of the experiences and the ways they express them, effectively rendering their suffering invisible. This lapse not only diminishes the validity of the testimonies but also perpetuates the injustice by failing to honor the truth of their experiences.

Drawing on Jean-François Lyotard's concept of the *differend*,<sup>45</sup> Iris Marion Young examines a form of injustice that occurs when the prevailing discourse fails to accommodate the expression of a wrong.<sup>46</sup> The presence of multiple systems of representation, organized hierarchically, creates a risk of silencing and marginalizing experiences if injustice that do not conform to the dominant system of representation. In a situation of *differend*, some human rights violations are acknowledged and prioritized, while others remain invisible and excluded from public discourse. The failure to recognize certain injustices not only exacerbates the original injustice but also introduces the risk of secondary injustice, where the lack of recognition further compounds the harm.<sup>47</sup>

### The Implications of Testimony's Central Role

Placing testimony and public hearings at the core of truth commissions' moral foundations carries significant implications. As demonstrated, the act of speaking out about atrocities and testifying to human rights violations is justified by the goals of recognizing suffering and restoration the dignity of survivors. On a societal level, testimony is also seen as having an educational role, informing the society about the violations and acknowledging the moral wrongs involved. What are the implications of placing testimony at the core of efforts to address past human rights violations?

Building on Derrida's *aporetic* view of testimony, I argue that truth commissions face a significant risk of overlooking the inherent openness and complexity of testimonies.

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<sup>43</sup> Brounéus, Karen: "The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health", in *Journal of Conflict Resolution*, Vol. 54, No.3, 2010.

<sup>44</sup> For example, Dembour, Marie-Benedicte, & Haslam, Emily: Silencing hearings? victim-witnesses at war crimes trials, in *European Journal of International Law*, Vol. 15, No. 1, 2004; and Robins, Simon: Challenging the Therapeutic Ethic: A Victim-Centred Evaluation of Transitional Justice Process in Timor-Leste, in *The International Journal of Transitional Justice*, Vol. 6, 2012.

<sup>45</sup> Lyotard defines *differend* in the following way: "A case of different between two parties takes place where the 'regulation' of the conflict that opposes them is done in the idiom of one of the parties while the wrong suffered by the other is not signified in that idiom." The concept was developed against the background of the arguments presented by Robert Faurisson, an Auschwitz revisionist, who questioned the existence of gas chambers. Lyotard, Jean-François: *The Differend: Phrases in Dispute*. University of Minnesota Press, Minneapolis 1988.

<sup>46</sup> Young, Iris Marion: *Inclusion and Democracy*. Oxford University Press, Oxford 2000, 72.

<sup>47</sup> In her book on epistemic injustice, Miranda Fricker presents a theory of epistemic injustice that connects epistemic injustice with other forms of systematic injustice. She distinguishes between testimonial injustice, where an individual is unjustly questioned as a credible witness, and hermeneutical injustice, where unequal participation in the creation of meaning occurs. Hermeneutical injustice arises when a witness lacks the linguistic resources needed to articulate their experiences. Fricker, Miranda: *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford University Press, Oxford 2007. It goes beyond the scope of this article to discuss her theory in detail, but it has been approached in the analysis of Belgium's Truth Commission, for example. See: Destrooper, Tine: Belgium's "Truth Commission" on its overseas colonial legacy: An expressivist analysis of transitional justice in consolidated democracies, in *Journal of Human Rights*, 2023-03, Vol.22, No. 2, 168.

Truth commissions are designed to investigate human rights violations and present their findings to the public. In the name of justice and reconciliation, testimonies are often treated as demonstrable and incontrovertible truths. This approach distorts the essence of testimony. As Giorgio Agamben observes, there has been some conceptual confusion and contamination of categories that have spread far beyond the legal domain.<sup>48</sup>

The narrow focus on linking testimony to reparation – essentially using testimony within a legal framework – highlights its instrumentalization as mere evidence or demonstrable truth. This perspective reduces the act of bearing witness to a matter of aligning testimony with other sources. While testimony should be coupled with compensation for the harm suffered, the violation itself is viewed solely through a legal lens. The legalistic approach imposes a model of tort that individualizes violations, detaching them from their broader political and power dynamics, and obscuring the underlying political and social conflicts that contributed to the atrocities.

Given the specific circumstances of injustice, such as systematic violence and widespread complicity, treating violations in an individualized manner is inadequate. This approach fails to address the broader moral and political responsibilities, leaving critical questions about accountability and the larger context of the violations unresolved.

The instrumental use of testimony in truth commissions often leads to the depoliticization of human rights atrocities. This depoliticization can be understood through Wendy Brown's concept, where it is seen as a strategy that naturalizes political compromises and enforces a façade of impartiality regarding political conflicts.<sup>49</sup> In the context of truth commissions, depoliticization functions as a tactic to evade legal accountability and political responsibility. By framing human rights violations within a narrow legal or procedural scope, truth commissions can diminish the political dimensions of these atrocities, thus avoiding deeper engagement with the underlying issues of power and responsibility.

Depoliticization does not mean that political power vanishes; rather, it functions as though it were objective and therefore not in need of justification. According to Brown, to depoliticize means to analyze or address issues by removing them from their political and historical contexts.<sup>50</sup> Truth commissions, grounded in the ideal of impartiality, are expected to act as neutral arbiters without delving into the political contexts of the violations they examine or passing political judgment. They are based on the belief that justice and reconciliation are non-political.

In addition to the individualization of violations, depoliticization also occurs when societal problems and conflicts are portrayed as objective and natural, rather than being understood as part of a complex web of power dynamics. The politics of reconciliation in response to human rights atrocities can be counterproductive because it often overlooks the power dynamics at play, thereby limiting the discussion of the true roots of political violence.

This lack of focus on power dynamics is further complicated by the assumed representativeness of testimony. The risk here is that it can unintentionally reinforce power imbalance between those who are heard and those who remain ultimately voiceless.

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<sup>48</sup> Agamben, Giorgio: *Remnants of Auschwitz: The Witness and the Archive*, Zone Books, New York 2002, 18.

<sup>49</sup> Brown, Wendy: *Regulating Aversion: Tolerance in the Age of Identity and Empire*, Princeton University Press, Princeton 2006, 15-16.

<sup>50</sup> Ibid.

Representational issues arise from the separation between public hearings and official reports, as well as from the way testimonies and hearings are pre-structured.

The performative and relational aspects of testimony are often overlooked when the primary focus of truth commissions becomes simply providing a platform for speaking. This emphasis on the act of giving a voice diminishes the importance of actively listening to these testimonies, undermining the intending pedagogical role. While testimonies are presented in public hearings and documented in final reports, there is no obligation for passive bystanders or other members of society to engage with these accounts.

Jacques Derrida's analysis of testimony highlights that a commitment to telling the truth must be matched by a commitment to listening, which I view as foundational to our moral responsibility. This insight reveals that testimony holds significant moral and political potential, which is unfortunately neglected in the framework of truth commissions.

## Conclusion

A critique of the representative potential of testimony, derived from Derrida's thought, is a radical critique. This radicalism stems from the complete denial of the possibility for someone to testify in the role of *testis*, or third party. Alongside Celan, Derrida contends that no one should bear witness for the witness. The act of witnessing is thus imbued with the responsibility of bearing witness solely for oneself, rendering it a burden and responsibility of solitude.<sup>51</sup> For Derrida, Celan's poetry represents a profound instance of bearing witness to the Holocaust. Celan's innovative and unconventional use of language exemplifies how the poet becomes "the only one who can bear witness".<sup>52</sup> However, this raises a question: Is the poet truly the only conceivable witness, and is such a perspective tenable?

The analysis presented in this article reveals that Derrida's *aporetic* perspective on testimony lacks a focus on power perspective. By positioning the poet as the sole true witness and poetry as the exclusive means of bearing witness, Derrida's approach diminishes the capability to address how large-scale human rights violations *ought* to be dealt with. While Derrida's work offers valuable tools for scrutinizing the use and misuse of testimonies, it does not extend to challenging truth commissions as institutions of justice and reconciliation. Derrida's critical insights into mass atrocities overlook the need to analyze power structures, as well as the socio-economic and political factors that contribute to violence, which are crucial for addressing in the aftermath of large-scale human rights violations. Consequently, Derrida's contribution through deconstruction must be critically assessed, acknowledging the limitations within his thought and the lack of self-awareness regarding his own position of power.

By exploring the various uses of testimony and its implications in addressing past human rights violations, I have challenged the reductionist view of testimony and the claimed aims of truth commissions to contribute to justice and reconciliation. The primary critique presented in this article targets the pragmatism of political practices and institutions that seek to address human rights atrocities in the name of justice. The institutionalization of testimony through truth commissions can potentially lead to the

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<sup>51</sup> Felman refers to Paul Celan in the book Felman, Shoshana and Laub, Dori: *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History*, 3.

<sup>52</sup> Derrida, Jacques: "Poetics and Politics of Witnessing", 67.

negotiation and depoliticization of human rights violations. While efforts to address past injustices can never be fully completed, our moral and political responsibility lies in acknowledging the failures inherent in every attempt at representation. This involves recognizing privilege and the unavoidable asymmetry of power in these processes.

Considering the observed implications, I argue that truth commissions and other institutions of transitional justice often shift the focus from addressing justice to prioritizing healing and reconciliation. From an ethical perspective, this shift is problematic because it fails to address the underlying circumstances that enabled the atrocities, such as the systematic nature of the violence, mass compliance, and the normalization of violence. These critical questions should be at the forefront of efforts to address past human rights violations alongside an analysis of political changes required to prevent future occurrences.

In the context of transitional justice, the desire to link political reforms with the investigation of atrocities is accompanied by the rhetoric of reconciliation. This rhetoric calls for compromises and coming to terms with violent past for the sake of the future. As Adorno insightfully noted, efforts to address the past are frequently motivated by “the intention to close the books of the past”<sup>53</sup> and move forward. While this intention is understandable, it is problematic because it tends to bypass a self-critical perspective and neglects serious engagement with structural violence and the root causes of human rights violations. Addressing these issues requires a focus on justice, rather than solely on healing and reconciliation.

In the aftermath of large-scale human rights violations, justice should not be confined to legal accountability or economic compensations. Coming to terms with the past is an ongoing process, and any attempt to close the archives in name of reconciliation must be critically evaluated and challenged from the perspective of justice. Justice, I suggest, requires political inclusion, recognition and a just distribution of power. It should serve as a moral guideline for political processes, especially in societies that have historically dealt with political and ideological conflicts through violence. Political conflicts and disagreements are inherent part of all societies and should be resolved through democratic means.

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<sup>53</sup> Adorno, Theodor W.: “What Does Coming to Terms with the Past Mean?”.

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