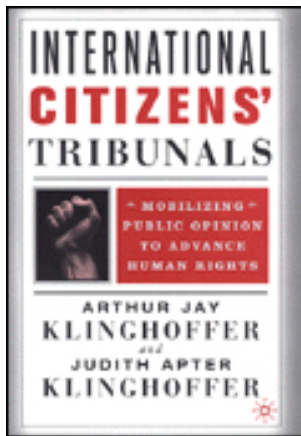


Human Rights Investigation and Dialogue

By Bronwyn Leebaw



Shattered Voices: Language, Violence, and the Work of Truth Commissions by Teresa Godwin Phelps. Philadelphia, PA: University of Pennsylvania Press, 2004. 180pp.

International Citizens' Tribunals: Mobilizing Public Opinion to Advance Human Rights by Arthur Jay Klinghoffer and Judith Apter Klinghoffer. New York, NY: Palgrave, 2002. 272pp.

When students of international politics want to illustrate the folly of idealism, they commonly invoke a passage of Thucydides' History of the Peloponnesian War known as "The Melian Dialogue." In the passage, a delegation from Athens tries to persuade the leaders of Melos to become a subject colony of the Empire. As the two parties debate the question of whether or not Melos should submit to Athens, it becomes clear that the more urgent question is whether the words of the Melians, as weak islanders confronting a powerful empire, have any significance at all. The exchange involves persuasion and deliberation, yet simultaneously undermines the very idea that dialogue is possible in a world of violent conflict and inequality. The Melians offer a range of arguments for their independence, citing the importance of honor and pride, and warning the Athenians that it is in their long term interest to support common norms of justice. The Athenians make it clear that if they do not submit willingly, Melos will be forced into submission. "[T]he strong do what they have the power to do," they argue, "and the weak accept what they have to accept." (Thucydides: 402). At the conclusion of the scene, the adult males of Melos are put to death, and the women and children are enslaved.

The slaughter of the Melians will not appear as the unimaginable barbarism of an ancient era to anyone who is familiar with twentieth century atrocities. This is one reason the passage remains so compelling to contemporary readers. A central aspiration of the human rights movement, to prevent such slaughters and to punish leaders who order them, still appears as a distant dream. Nevertheless,

human rights advocates claim to have developed alternative routes to influence and in recent decades, institutions and organizations dedicated to investigating human rights abuses have proliferated rapidly. Were the altercation between the Athenians and the Melians to occur today, it is likely that a commission of inquiry would be assembled to investigate the potential for violence. A truth commission might be established to investigate the incident, take testimony from survivors, and perhaps encourage reconciliation amongst them.

When it is not politically or practically feasible to enforce international law, human rights advocates have continued to develop tools and institutions designed to investigate political violence. Human rights organizations have refined their expertise in information gathering and analysis, incorporating tools of forensic anthropology, DNA matching, oral history, and statistics. The proliferation of informal tribunals and truth commissions has changed the ways that scholars and activists alike view the role of human rights investigations. It is now widely argued that investigating atrocities may have a powerful impact on the character of a state whether or not an effective legal response is available. Those who champion informal human rights investigations tend to share the view that the *process* of investigation is as important as the findings or results. Even where investigations do not contribute to the prosecution of responsible parties, it is hoped that the process of examining abuse, repression, or atrocity may allow victims the chance to speak about their experiences, generate consensus in favor of human rights, and embarrass leaders into changing their ways.

As scholars and activists devote more attention to the process of investigating political violence, new debates have taken shape over the question of how such investigations ought to be designed. Some adopt what might be termed a procedural perspective, which holds that investigations are most effective when they are dispassionate and scientific, conducted in accordance with neutral procedures. This is the view adopted by Arthur and Judith Klinghofer in their fascinating book, International Citizens' Tribunals: Mobilizing Public Opinion to Advance Human Rights. Others contend that investigations should be designed in ways that respond to the emotions surrounding political violence by facilitating a therapeutic processing of painful memories, or by developing a narrative response to traumatic conflict. Teresa Godwin Phelps makes a novel argument in support of such an approach in her book, Shattered Voices: Language, Violence, and the Work of Truth Commissions. These books provide an opportunity to examine some of the complex problems associated with human rights investigations and to assess diverging views on how they ought to be conducted. Together, the two books raise a difficult set of questions about how investigations of political violence are used to promote dialogue in times of repression or in the aftermath of violent conflict, and how the goal of dialogue relates to the goal of judgment in human rights advocacy.

Citizens' Tribunals

In April of 1937, the pragmatist philosopher, John Dewey boarded a train to Mexico City. There, in Frida Kahlo's famous Blue House, the seventy-eight year old philosopher would spend the next several days interviewing the exiled Russian revolutionary, Leon Trotsky, in a series of hearings designed to investigate Trotsky's response to the Moscow show trials. Trotsky had been accused of conspiring with Germany and Japan to foment a terrorist campaign within the Soviet Union. In a trial that would inaugurate what is known as the Great Purge, fifteen defendants publicly confessed

to their involvement in the alleged plot and were immediately executed. Trotsky was not actually charged in absentia, but presented as the mastermind of their activities and he hoped that an international commission of inquiry could investigate the Moscow Trial and clear his name. In International Citizens' Tribunals, the Klinghofers quote Trotsky's plea for a parallel investigation, "With what conviction can the democratic countries develop a common front with Soviet Russia against reaction," he asked, "if she descends to the methods of barbarism of the Fascist world?" (56).

The Joint Commission of Inquiry, better known as the Dewey Commission, that formed in response to Trotsky's request, was inspired by an earlier "countertrial" that had investigated the 1933 Reichstag fire. The Nazis had proclaimed that the February Reichstag fire was part of a Communist plot and used it as a pretext for suspending civil liberties, rounding up Communists, and, after winning the March elections, giving Hitler's government the absolute power to make laws. Although a young Dutchman named Martinus van der Lubbe took credit for the fire and insisted that he had acted alone, four Communists, a German and three Bulgarians, were accused of participating in the newly defined crime of "revolutionary arson." A countertrial was organized by the Comintern, which hoped to establish that the Nazis had set the fire themselves as a pretext to seize power. The countertrial took place in London a week prior to the actual trial in Leipzig.

Although both trials were initiated with the goal of legitimating ideological positions, the Klinghofers maintain that the real impact of the countertrial had to do with a commitment to procedure and impartiality on the part of its major backers. Despite the origins of the informal Commission of Inquiry, none of its members were Communist and all were lawyers (Klinghofer and Klinghofer: 23). The chair of the Commission, Denis Nowell Pritt, responded harshly to evidence of prior bias on the part of the other commissioners, and emphasized that "evidence should precede a decision" (Klinghofer and Klinghofer: 24). In reaching their conclusions, the commissioners did not invoke the major political pamphlets circulating at the time, the "Brown Book" and the "Oberfohren memorandum," which aimed to establish the fire as a Nazi plot. The conclusions, based entirely on evidence presented before the commission, were "more temperate than polemical" in suggesting that the Nazis had started the fire. The focus on establishing facts through the presentation of evidence contributed to a positive response to the countertrial on the part of the foreign media. As a result, they argue, the Nazis were "placed on the defensive in their own court...so the emphasis was more on exonerating themselves than convicting the Communists" (Klinghofer and Klinghofer: 31). The Nazi court opted against in camera hearings and opened the courtroom to the foreign press. They did not interfere with the defense's right to present its own witnesses and they analyzed evidence that had been addressed in the countertrial.

It was their sensitivity to world opinion that compelled the judges overseeing the Reichstag fire trial to acquit the four defendants at a time when the Nazi regime was consolidating power and abandoning any semblance of rule of law (Klinghofer and Klinghofer: 35). It was the dispassionate analysis of the legal team running the informal Commission, they argue further, which persuaded the foreign press to take their conclusions seriously at a time when many leaders around the world remained skeptical about the validity of an unofficial *ex parte* proceeding. Arthur Garfield Hays, an American Jew who served as a kind of mediator between the countertrial and the Leipzig trial, exemplifies for the Klinghofers, the power of a commitment to impartial procedure as against the manipulation of law for political ends. Hays distanced himself from the other foreign lawyers

attending the Leipzig trial, “preferring tact to confrontation.” At a time when many Jewish intellectuals were fleeing Germany, Hays wrote to the Leipzig court just before they issued their verdict: “If these men are acquitted, the world will realize that at least one court in Germany is objective and independent and that even in the midst of terror instituted by the Nazis, you judges have shown the courage of your convictions” (Klinghofer and Klinghofer: 41).

The Klinghofers refer to these informal commissions of inquiry as “international citizen’s tribunals.” This label, they explain, is designed to capture the grassroots quality of the forum, while avoiding the historical baggage associated with “people’s courts” (3). After the Dewey Commission, the next major citizen’s tribunal to command widespread international attention was the International War Crimes Tribunal. Chaired by another elderly philosopher, the eighty-eight year old Bertrand Russell, the “Russell Tribunal” hearings of 1967 investigated charges of U.S. war crimes in Vietnam. The Klinghofers indicate that the central lessons regarding the potential success, as well as the failure of citizens’ tribunals, are encapsulated in the story of the Russell Tribunal.

Dispassionate Analysis

Russell’s idea was to make use of the precedent set in international law by the Nuremberg trials of Nazi war criminals to hold the U.S. accountable for its actions in Vietnam. The Klinghofers expand upon this idea to develop an intriguing argument about the potential role of citizen’s tribunals. The mainstream human rights movement has focused on empowering the United Nations to advance international criminal law, despite the recognition that permanent Security Council members will generally succeed in avoiding scrutiny for their actions or obstructing investigations that may undermine their interests. The hope has been that better international institutions can be developed to support and enforce international law in ways that are increasingly effective and fair. The Klinghofers suggest that this emphasis on the UN may be misplaced. Informal citizens’ tribunals cannot detain and punish individuals, yet they have advantages over formal international institutions. Because they are not subject to a Security Council veto, citizens’ tribunals can investigate a wider range of allegations. In contrast to international organizations, which remain under the control of member state powers, the panelists who run citizens’ tribunals are not appointed as official state representatives. Tribunals might enhance their claims to impartiality by including panelists from states that would reject official participation in a formal trial. As Russell put it, “Our tribunal, it must be noted, commands no State power.... It claims no other than moral authority” (Klinghofer and Klinghofer: 4).

Thus, the apparent weaknesses of citizens’ tribunals might alternatively be understood as strengths. When effective legal structures are absent international citizens’ tribunals can serve as a “corrective mechanism through which public intellectuals mobilize world public opinion against powerful countries shielded from sanctions under international law” (Klinghofer and Klinghofer: 5). It is the very informality of these investigations, they contend, that protects them from political influence. Although much of growing literature on human rights organizations similarly identifies the influence of such groups in their ability to galvanize public opinion, international organizations remain the focal point of the mainstream human rights movement. The Klinghofers suggest that instead of engaging in a quest to utilize state power and enforce international norms fairly as against

abuses of state power, it may make more sense to focus on utilizing the weapon of “world public opinion” against abuses.

Such a project will fail if citizens’ tribunals are not seen as fair and impartial, which is precisely what went wrong with the Russell Tribunal (161). This message is elaborated in a comparison of the two philosophers. Whereas Dewey sought to give Trotsky a fair hearing despite his personal distaste for Trotsky’s ideology, Russell’s goal from the beginning was to utilize the tribunal as a means with which to establish American guilt. Russell’s frequent contact with North Vietnam and his suggestion that Ho Chi Minh schedule a trial of captured American pilots to coincide with the Russell Tribunal hearings, demonstrate that he was “prepared to discard any pretense of political objectivity” (Klinghofer and Klinghofer: 107). The Klinghofers criticize the Tribunal for lacking clear rules of evidence, refusing to apply the same standards to both sides in the conflict, and failing to make a serious effort to include an American defense. Julius Nyerere eventually withdrew from the Bertrand Russell Peace Foundation over his differences with a tribunal that would only “make anti-American propaganda” (117). The international panel that ran the Russell Tribunal was composed of intellectuals who shared Russell’s political goals. Interestingly, it was the French contingent, led by Jean-Paul Sartre and Simone de Beauvoir, which struggled to keep the Russell Tribunal focused in accordance with fair procedures and international law. This led to an acrimonious and destructive divide with their London-based counterparts, who had a more straightforward activist agenda. The Klinghofers attribute much of this conflict to an American named Ralph Schoenman, Russell’s “proxy on matters relating to Vietnam.” They suggest that Schoenman often proceeded in ways that Russell might have objected to had he been able to devote more energy to the tribunal. The divisions and bias in the Russell Tribunal made it ineffective as a tool for galvanizing world public opinion (161).

In a chapter entitled, “Proliferation,” the Klinghofers offer a survey of contemporary citizens’ tribunals, dealing with issues such as use of “comfort women” in the Second World War, repression in Latin America, global capitalism, the Armenian genocide, and the trial of Mumia Abu Jamal. The diversity of these issues and the increasing focus on re-examining past crimes, reflect the mood, as well as the fragmentation of the contemporary left. They argue that the contemporary tribunals are animated by the same kind of activist agenda that fatally damaged the Russell Tribunal. The Klinghofers conclude the book with a list of practical recommendations for the revitalization of international citizens’ tribunals. Success in the future, they suggest, will require the cool analysis of leaders like Dewey and Hays, with their emphasis on procedural integrity. It was the “liberal emphasis on the primacy of procedure demonstrated at the Reichstag fire trial and Moscow show trial” that enabled these tribunals to achieve what should be, in their view, the main goal of such commissions: to “transform a currently debilitated and partisan process into one that is vigorous and impartial” (Klinghofer and Klinghofer: 194).

This discussion of what made the best tribunals effective is persuasive as a model for success in individual cases, but less compelling as a model for human rights advocacy more generally. Certainly it is remarkable that a Nazi court acquitted the four defendants in the Reichstag fire case, yet given what followed, it seems strange to celebrate this event as a triumph for the liberal response to illiberal power. The Nazis were still able to utilize the fire as a means with which to seize power and a pretext for rounding up communists and intensifying Anti-Semitic propaganda. The effectiveness of the case rested on its status as an exception, divorced from the broader context of the Nazi

seizure of power. When the Klinghofers claim that these cases demonstrate the potential effectiveness of such tribunals, they do not claim any concrete successes in combating repressive political systems. The hope appears to be that over time, these largely symbolic legal successes will broaden the political commitment to human rights.

The Klinghofers suggest that certain organizational changes in the structure of citizen's tribunals could make them more effective. Their ideal citizens' tribunal is not only led by lawyers, but also informed by experts in history and other relevant fields. Its membership hails from numerous countries. It aspires to impartiality with respect to ideology, but remains dedicated to the promotion of liberal rights and rule of law. It requires cross-examination of all witnesses and counsel for all defendants. It prepares reports that center on specific, legally based charges and adheres to transparent, formal standards of evidence in making claims. It serves as a clearinghouse for the distribution of reports and seeks to influence the future course of justice as well as responses to past injustices (Klinghofer and Klinghofer: 192-193).

Although the authors do not make this connection, their ideal tribunal turns out to look a bit like the investigations conducted by Human Rights Watch, which might be viewed as mock trials designed to galvanize world opinion. Mobilizing public opinion is central to the "shaming method" utilized by many human rights organizations. According to Human Rights Watch director, Kenneth Roth: "We are at our most effective when we can hold governmental (or in some cases, nongovernmental) conduct up to a disapproving public" (Bell and Carens 2004: 312). Yet human rights advocates and scholars are also aware of the fact that the judgments of outsiders can trigger a backlash or a "rally around the flag" effect and an increase in repression (Risse and Sikkink 1999). Advocates became particularly concerned with the limitations of efforts to mobilize public opinion in the mid-1990s, observing that the presence of international observers in Rwanda, Bosnia, and elsewhere, did nothing to discourage leaders from committing atrocities (De Waal 1997; Neier 1999). These episodes help explain why a number of activist organizations, though well aware of the compromises that the Klinghofers associate with relying on states to investigate and enforce human rights, moved to embrace the use of state force as a means of putting "teeth" into human rights provisions through international institutions that might prosecute and punish violators, and by endorsing unilateral "humanitarian intervention" to stop atrocities.

The Klinghofers do not address the liberal interventionism of the last decade. Their main concern is to argue that recent citizens' tribunals have been undermined by the activist agenda of the radical left, though they recognize that all of the tribunals discussed in the book were in fact designed by the radical left in its various incarnations. The history of these tribunals is also a history of leftist movements and their ambivalent relationship with legalism. This ambivalence might be better understood in relation to a distinction between liberal and left politics as summarized by Wendy Brown and Janet Halley: "Law and the state are ordinarily figured as technically neutral within liberalism," they write, "even if 'liberals' recognize that these institutions have been historically beholden to socially dominant powers" (2002: 6-7). Although drawn to the elaboration of legal rights as the basis for political struggle, this move is in tension with a core concern of the left, which is to demonstrate that the liberal state "masks unfree and unequal conditions with an ideology of freedom and liberty that entrenches or extends the powers of the already advantaged" (Brown 2002: 6-7).

If the Klinghofers take issue with the way that the activist left has abandoned the liberal principle of impartiality, the activist might respond that procedural impartiality can function to obfuscate and legitimate power relations in ways that undermine the goal of political change. The Klinghofers recommend that the panelists on the ideal citizens' tribunal should be selected without an "ideological litmus test." Yet the inclusion of a Fascist or Stalinist panel member would arguably function not as a neutral response to, but a legitimization of, repressive state systems. Human rights advocates acknowledge the limits of ideological impartiality when they lambaste the United Nations for including a representative of the genocidal Rwandan government, which happened to occupy a rotating Security Council seat at the time, in debates over the appropriate response to the genocide. "Neither the United States, nor any other UN member state ever suggested that the representatives of the genocidal government be expelled from the council," laments Samantha Powers in her award winning book, *A Problem from Hell* (2002: 369). This detail incensed advocates because they recognized that sitting down at UN headquarters to have a civilized conversation with the representative of a genocidal regime was an act that granted international legitimacy to a leadership that was engaged in massacring its own people. As human rights organizations improve upon the use of informal investigations as a means with which to protest repressive regimes, it will be important to consider the question of how to define the limits of neutrality in framing the mandates of such investigations.

The Klinghofers place a good deal of emphasis on the role of the press in generating attention to the work of the citizens' tribunals in a way that will have an impact on public opinion around the world. In making this claim, they draw on Walter Lippmann's argument that public opinion is shaped by elites. They support their claims regarding the effectiveness of the Reichstag inquiry and the Dewey Commission with evidence that these cases were covered more favorably in the foreign press than the more radical tribunals that followed. Historically, however, sustained improvement in human rights conditions has required the mobilization of domestic pressure to complement or supplant the role of international criticism (Risse and Sikink 1999). Moreover, it is not clear that these investigations would have received any attention from the press at all had it not been for the charisma of, and drama surrounding, their famous participants. The Klinghofers contend that future citizens' tribunals should deliberately cultivate the press by locating hearings in media centers and utilizing celebrities to dramatize their cases. Some might argue that the cultivation of drama in this manner is in tension with their dispassionate procedural approach to investigation, yet human rights investigations are unlikely to have an impact on public opinion if nobody cares in the first place.

Language and Violence

In his discussion of the Corcyran revolt, which illustrates the larger theme of civil conflict and the breakdown of social cohesion, Thucydides writes that "to fit in with the change of events, words, too, had to change their meanings" (Thucydides: 242). In the context of violence and fear, "any idea of moderation was just an attempt to disguise one's unmanly character; ability to understand a question from all sides meant that one was totally unfitted for action..." (Thucydides: 242). In times of war, words "change their meaning" in the sense that democracy, justice, and freedom are invoked to rationalize actions that actually signal the abandonment of these values as they were previously understood or defined. Perceived "enemies of the state" are dehumanized with

language that likens them to lice, parasites, or animals. Marguerite Feitlowitz refers to this as part of the “lexicon of terror” (1998). In more stable times, language can normalize institutionalized forms of violence. Human rights advocates thus challenged the technically neutral terminology of “female circumcision” by renaming the practice “female genital mutilation” (Keck and Sikkink 1998: 20). Thucydides’ rendering of the Corcyran revolt also suggests that words “change their meaning” in the sense that they cease to be a means of communication. When reflection is abandoned, words are nothing but weapons.

The Klinghofers’ focus on fair versus activist proceedings is animated by a deeper concern with restoring communication as a basis for human rights advocacy. This theme is developed in the contrast between Russell, on the one hand, and Dewey and Hays on the other. Dewey and Hays exemplify the possibility of speaking and listening to our ideological and political opponents, even in the worst of times. What really seems to irk the Klinghofers about the Russell Commission is not simply that it had a predetermined political goal, but that this also meant the Commission would abandon the possibility of persuasion. Instead of utilizing the investigation in a way that might change minds or mobilize the apathetic, the Russell Commission proceeded in a way that could only involve preaching to the converted.

Teresa Godwin Phelps is also concerned with the relationship between language and violence. Where the Klinghofers focus on elite opinion, Phelps is primarily interested in how language affects victims of violence. She refers to this as the problem of “Paulina’s good,” after the central character in Ariel Dorfman’s powerful play, *Death and the Maiden*. In the play, which may be more familiar to some readers as the basis for a Roman Polanski film of the same title, Paulina confronts the man she believes to have been her torturer and rapist during a time of imprisonment. Paulina interrogates the man, known as Miranda, at gunpoint, while her husband Gerardo, a lawyer who was recently honored with a seat on the country’s new truth commission, looks on in horror. Gerardo feels that Paulina is sinking to the level of the repressive prior regime, relying upon violence and intimidation to extract a confession. He knows little about her experience of torture, but he does know that she had been blindfolded and is not convinced that she has the right culprit. She is unreasonable, crazy, damaged. Paulina feels betrayed by the truth commission, which was designed to investigate murders committed under the prior regime, but has a limited mandate that excludes torture and rape. She is convinced that she has the right man because his voice, his smell, and his taste in music have triggered in her a terrifying and violent memory of her experience. She is disgusted by Gerardo’s insistence that her instincts are not sufficient evidence to establish guilt. She rejects his view that they both ought to defer to the wisdom of the new state leaders, who have made major compromises in the name of liberal change.

Phelps argues that Dorfman’s story contains an important set of lessons regarding what happens when the psychological needs of victims are ignored. When state law is perverted or ineffective, she argues, victims will become killers and this will perpetuate cycles of violence. This argument is common in human rights advocacy on behalf of prosecution. Yet for Phelps, legalistic arguments are also problematic because they have evolved in a way that refuses to acknowledge revenge as a human need and as a foundational component of justice (30). In a brief, yet evocative, genealogy of modern criminal justice doctrine, Phelps contends that “the original sense of the meaning of retribution as giving something back to the victim has disappeared” (31) and in the process, the victim’s response to crime has been demonized in ways that are destructive to victims and to the

pursuit of justice. “For all we think we know about revenge and retribution,” she argues, “we have not developed a way of thinking about alternatives to traditional violence for violence” (7).

The other lesson of Paulina’s story has to do with the power of language as a response to violence. The play not only conveys the frustration, anger, and betrayal that might stimulate revenge, but also the limitations of revenge as a response to these emotions. Although she is convinced that Miranda is her torturer and takes up a weapon to overpower him, Paulina hesitates to implement the “eye for an eye” justice that she seems to crave. She clearly wants something more. What she wants is a confession and she wants the confession to be authentic. She is dissatisfied when he confesses in a manner that is obviously designed to please her and possibly spare his own life. “I want him to confess,” she tells Gerardo, “to sit in front of that cassette-recorder and tell me what he did—not just to me, everything, to everybody” (Dorfman 1991: 41). *Death and the Maiden* is discussed in the report of the South African Truth and Reconciliation Commission, which states that Miranda’s admission restores Paulina’s sense of dignity and her identity: “Her experience is confirmed as real and not illusory and her sense of self is affirmed” (1998: 7). For Phelps, the play illustrates the way that victims of violence “lose language” and the ability to articulate pain. This is presented as a general problem associated with violence and victimization, but one that is particularly urgent in the context of political violence, which involves propagandistic stigmatization of victims as a way to rationalize their abuse. If pain and abuse involve the perversion and loss of language, then this suggests for Phelps that language may also provide an alternative to violent punishment as a response to crime. The central argument of her book is that truth commissions exemplify this possibility. If so, truth commissions may constitute not simply a lesser alternative to criminal prosecution, but also a “radically new kind of justice” (Phelps: 9).

Truth Commissions

In the past couple of decades, truth commissions have been established in numerous countries around the world. Like citizens’ tribunals, truth commissions are temporary, extra-legal institutions designed to investigate political violence when state law is inadequate or ineffective. Like citizens’ tribunals, they investigate abuse, yet lack the power to prosecute and punish individual offenders. Several truth commissions have been established in the process of negotiations to end conflict, and truth commissions are now promoted as peacebuilding tools. In contrast with citizen’s tribunals, truth commissions are designed to investigate widespread abuse, rather than specific events, and generally seek to analyze the causes and the consequences of historical patterns of violence (Hayner 2001). Thus, whereas citizens’ tribunals mimic the procedures of a formal courtroom in an informal setting, truth commissions have developed alternative forms of investigation and evidentiary standards (Chapman and Ball 2001). Where citizens’ tribunals are distinguished by their independence from state authority, official truth commissions are either sanctioned or authorized by states. The United Nations has also designed or been involved in truth commissions in a number of countries including El Salvador, Guatemala, Sierra Leone, and East Timor. Truth commissions are generally developed as part of a political transition and have been associated with a range of goals: human rights accountability, individual healing, political reconciliation, and state legitimation.

The first truth commissions to receive widespread attention were designed to investigate political violence under the military dictatorships of Argentina and Chile. *Death and the Maiden* takes place in a

country that is not named, but seems a lot like the author's native Chile. Argentine president Raul Alfonsín set up a truth commission and also pursued a dramatic effort to prosecute the military junta. However, his efforts were undermined by protests from the military and he lost office to Carlos Menem, who issued hundreds of pardons. The collapse of the Argentine prosecutions led to a debate regarding the feasibility of transitional human rights prosecutions and whether or not truth commissions, which do not punish individuals, might provide an appropriate alternative. Some, including Chilean human rights advocate, José Zalaquett, claimed that truth commissions provide benefits that cannot be achieved in a formal courtroom setting (1992). In a truth commission setting, he argued, victims may tell their stories in their own words, without having to confront a hostile cross-examination. He noted that the victims who appeared before the Chilean commission seemed to find some degree of comfort in having state officials listen to, and acknowledge, what had happened to them after so many years of lies, secrecy, and stigmatization.

Zalaquett's arguments would have an important influence on the more famous Truth and Reconciliation Commission (TRC) in South Africa (Krog 1998; Boraine 1999). *The Truth and Reconciliation Commission of South Africa Report* enumerates a number of different roles for the "truth" of the truth commission, which aimed not only to investigate the causes and effects of past violence, but also to promote the healing of victims, dialogue among conflicting groups, and state legitimation (1998: 110-117). The report argues that the truth commission, though framed by political compromises with the outgoing apartheid regime, should not be viewed as having abandoned justice, but rather as a contribution to "restorative justice" (1998: 125-6). Restorative justice theory developed out of a range of alternative dispute resolution practices, including indigenous courts and juvenile justice programs around the world. It centers on the idea that justice must involve an effort to "restore" a lost balance and that prosecution is not the only, or the best, means to attain this balance. Rather, victims, perpetrators, and the broader community should engage in a dialogue that aims to identify and address the underlying social and political causes of crime (Zehr 1990; Galaway and Hudson 1996; Braithwaite 2002). Theoretical approaches to restorative justice theory often incorporate Christian and therapeutic conceptions of redemption and healing, and generally involve a communitarian emphasis on the local values and traditions. Proponents of restorative justice argue that scarce resources are better devoted to tangible measures to promote victim recovery than the affirmation of abstract moral principles through prosecution and punishment.

It is important to recognize the variation in truth commission goals and design. Reconciliation was not a declared goal of truth commissions in Guatemala and Haiti, for example. Debates among truth commissioners in these countries are said to have focused on the relative merits of social scientific or legalistic fact finding methods, rather than narrative and healing (Chapman and Ball 2001). However, ideas associated with restorative justice have been appealing to many leaders in places where large numbers of people who have suffered from political violence must somehow live alongside large numbers of people who committed those acts. Truth commissions that have been developed more recently in countries such as East Timor and Sierra Leone seem to have incorporated many of the premises that animated the South African TRC and their mandates similarly connect the process of investigation to ideas of healing and reconciliation.

Phelps appears to be profoundly influenced by the South African TRC, yet she does not comment on restorative justice and advances a unique theoretical argument. Like many associated with the TRC, Phelps argues that the public process of telling stories about past crimes functions in

a variety of ways to “rebalance” societies dealing with the aftermath of massive political violence. She shares, with proponents of restorative justice, the view that it can be therapeutic for victims to have the opportunity to recount their stories in public and argues that this provides a vehicle for “the restoration of the ability to use language for oneself in one’s own way” (8). However, where restorative justice theory has developed in direct opposition to retributive justice, Phelps aims to affirm the retributive notion that justice is intrinsically related to the desire for revenge. She embraces the role of language and stories because she believes they may provide a more constructive response to the natural need for revenge.

Do victims invariably desire revenge? Even if this were obviously so, interviews in a number of countries suggest that victims of political violence do not necessarily define justice as retribution in their own case, but may rather identify justice with a range of responses: trials for all war criminals, the return of stolen property, reparations, jobs, education for children, or medical treatment (Stover and Weinstein 2005: 325; Pigou 2002). The list of responses reflects not only variation among individuals, but also the varied legacies of political violence. One problem with debates on truth commissions is that they have tended to assume that the victim response to violence lies somewhere on a continuum between the desire for violent revenge and the readiness to forgive, which means that not enough attention is given to the role that truth commissions might play in analyzing or addressing the range of injustices that result from political violence and repression, including structural inequality and institutionalized discrimination.

Where victims of violence do desire revenge, it is even less clear that the process of giving testimony before a truth commission will alleviate that desire or nurture an individual healing process. Phelps acknowledges in a footnote that it would be simplistic to conclude that all victims feel that testimony has aided them in healing, noting some evidence to the contrary (fn # 29:147). Yet in a book that aspires to champion the voice of victims, it is odd that Godwin Phelps does so little to follow this up and investigate what victims of violence have said thus far about the process of giving testimony in the context of truth commissions or other venues. Cape Town’s Trauma Centre for Victims of Violence and Torture once estimated that among those victims that they worked with, 50-60 percent expressed regret for having given testimony to the TRC (Hayner 2001: 144). Psychologists and others who work closely with victims of abuse have warned that individual recovery from violent trauma is a long term process. Brandon Hamber of South Africa’s Centre for the Study of Violence and Reconciliation observes that “many victims have described feelings of initial relief following the hearings and then, weeks or months later, feelings of despondency and re-emergence of trauma” (1998: 19). Similarly, in a study of witnesses who testified before the International Criminal Tribunal for the Former Yugoslavia, Eric Stover found that among the few who experienced cathartic feelings immediately or soon after testifying, “the glow quickly faded once they returned home to their shattered villages and towns” (2005: 126). Richard Wilson, who conducted ethnographic research on the impact of the TRC in South Africa’s townships, argues that in the absence of legitimate community-wide procedures to deal with conflict, the desire for vengeance continues to prevail (2004:187). Others have observed that one of the central features of systematic atrocity is enforced complicity in the violence, which results in large numbers of survivors who are haunted by their role as victims and perpetrators in what Primo Levi referred to as “the gray zone” (Sanford 2003; Hamber 1998, De Ridder 1997; Stover 2005). The opportunity to testify at a truth commission as a “victim” may do little to aid people who are struggling with such experiences.

Storytelling and Community

Phelps does not limit her argument to claims regarding the benefits of storytelling for individual victims, however. She is also concerned with how stories might be received by an audience than the impact stories have on the teller. Where the Klinghofers call for a scientific approach to human rights investigations, Phelps maintains that stories can *reveal* more about the meaning of violence than a criminal investigation and so can also foster understanding and communication among conflicting groups. First person accounts of atrocity, she argues, “are not merely stories...they are stories about *people*, with lives, jobs, friends, exams to take, ordinary people whose lives were interrupted or ended” (89). The inclusion of detailed personal narratives in truth commission reports “disallows dispassionate distancing from the blood and gore of the past” (Phelps: 76). She suggests that victim healing through storytelling might also be associated with a “healing ritual” for the larger community. Finally, she argues that truth commission reports serve to provide a constitutive history for a transitional state, by providing a narrative plot to these accumulated stories (8).

Richard Rorty has argued that progress in achieving support for human rights will not be based on a widening sense of moral obligation rooted in human reason, but rather an empathetic response to the “sad and sentimental stories” that are conveyed through human rights reporting (1993: 118). In his view, a continued preoccupation with reasoned argumentation, whether in the form of foundationalism or legalism, will undermine the primary goals of the human rights movement. It is our capacity for friendship, he maintains, rather than our capacity to know, which has fueled the human rights movement, and this capacity for friendship awakens in response to the kinds of stories that illuminate what it is like to be far from home, among strangers, or to grieve for the loss of a child. Such stories, argues Rorty, remind us of what he refers to as our “superficial similarities,” such as the fact that we all cherish our parents and children (1993: 129), and to see those similarities as outweighing our differences. Arguments of this kind are often invoked by advocates of truth commissions and trials alike to convey the role that victim testimony might play in fostering reconciliation and community building after massive political violence.

To some extent, Phelps shares this view. However, in contrast with Rorty, who focuses on the ways that stories might illuminate commonalities and generate moral clarity, Phelps favors individual stories as a basis for revealing the complexity and particularity of suffering, loss, and moral choice. In this view, the dispassionate, procedural approach to human rights reporting favored by the Klinghofers not only fails to arouse concern for the fate of others, but also fails to respond to the dehumanization of atrocities and repression. “In conventional war discourse the individual human body disappears and is replaced by generalities,” whereas the inclusion of verbatim stories in truth commission reports “emphasizes the pain and deaths of individuals, of actual people” (Phelps: 76). This argument resonates with a distinction that Jodi Halpern and Harvey Weinstein draw between empathetic and sympathetic responses to suffering: a sympathetic response is based on identification with others and shared emotion, whereas an empathetic response “involves an effort to seek out the unique individual perspective of another, rather than generalizing or stereotyping what that perspective might be” (2005: 307). This requires genuine curiosity about the other person and the ability to tolerate the ambivalence that might be aroused through a greater awareness of experiences that differ from one’s own. By allowing particular stories to be told in all of their detail, Phelps

suggests that truth commission reports might commemorate the dead, while generating empathy for survivors. The process of telling stories about past suffering, in her view, might also aid a political community in facing the challenges of responding to the legacies of the past, while simultaneously rejecting inherited political identities.

Phelps raises an important set of questions regarding what she terms the “dark side” of truth commissions. For example, audiences that are barraged with images and stories of suffering may experience “psychic numbing” (Phelps: 125). In a study of responses to human rights campaigns, Stanley Cohen and Bruna Seu found that while blatant denial was rare, people responded to the complicated emotions aroused by images of suffering with avoidance, claims of helplessness, rationalization, resentment, and fatalism (2002). Instead of opening dialogue about past abuse and a process of ongoing efforts to pursue justice, truth commissions may serve the opposite goals if they claim to be the final word on the past. Phelps is also aware of the danger that truth commissions might end up appropriating stories of suffering for political use in a manner that is actually destructive to victims.

These “pitfalls,” as she refers to them, “lurk wherever personal stories of suffering are used in a public way” (128). However, she argues that they can be minimized when we remain aware of the potential harms of truth commissions and their reports. In this regard, her main concern is to argue that reports should minimize the tendency to utilize victim testimony in the service of larger political or even legal goals and allow victims to convey their experiences on their own terms (127). Phelps acknowledges that the aspiration to develop a narrative that will frame a new political identity is in tension with the goal of allowing diverse testimonials to dominate the report. Instead of trying to unify the message of truth commission reports, she argues that a better strategy is to put this tension on display in a way that allows reports to remain incomplete and multivalent (128).

It is difficult to see how this addresses the pitfalls that Phelps identifies, yet it may be useful as a strategy for addressing more general tensions between the political and moral goals of truth commissions. Truth commissions commonly aim to reject a prior order and legitimate a new political identity, which requires them to adopt some kind of unified stance. At the same time, they frame and pursue their investigations in politically volatile contexts. They may anticipate political changes that have yet to be consolidated. As Charles Maier puts it, truth commission histories can be both authoritative and provisional, “subject to amendment as new political values become established and thereby open up new agendas” (2000: 275). To accept their findings or recommendations as a conclusive or complete assessment of past abuse would be to accept as final the compromises and limitations that invariably affect truth commission mandates. If truth commissions succeed in generating a dialogue about past abuses, then this may inform future efforts to pursue further reform in a more stable political context. A report that displays multiple perspectives and challenges to the “official” interpretation of the past invites further dialogue and acknowledges its own limitations. However, a report that uncritically *reflects* back the conflicts, fears, and hostilities associated with political transition may function to legitimate the prejudices and stereotypes that were invoked to rationalize past atrocities or repression (Leebaw 2003). As Phelps observes, several truth commission reports seem to have addressed this problem by displaying the tension between the voices of those who gave testimony and the official interpretation advanced by the commission in the text of the report.

Given that Phelps is primarily concerned with the role of truth commissions in opening new spaces to speak about the past, she might have devoted more attention to their efforts to foster dialogue within local communities. Truth commissions have involved villages in the exhumation of mass graves and aided them in conducting reburial ceremonies. Truth commissions have sponsored public dialogues and ceremonies that aim to reintegrate communities. They have hosted community workshops to assess the local impact of violence. The focus on the “truth” of truth commissions has meant that the impact of these accompanying activities is often neglected as commentators analyze the content of official truth commission reports. Yet depending on the literacy rates within a country and the way in which official reports are disseminated, these varied interactions with truth commissions may produce their most significant impact.

Instead of examining such efforts, Phelps offers a novel way to look at truth commission reports. However, in analyzing the tensions between victim voices and political aspirations of truth commissions, she neglects the extent to which the process of defining the category of victim and terms of healing involve highly political decisions. Like Dorfman’s Paulina, Chilean torture survivors were not designated as victims by the truth commission. In South Africa, the decision to limit the TRC mandate to “gross violations of human rights” was designed to develop a category of “victim” that would encompass all racial groups. This would mean that the resulting narrative centered on a condemnation of apartheid era torture and killings, rather than the system of apartheid per se. The goal of healing has been used as a generic way to refer to a range of truth commission objectives that require distinct and even conflicting tasks, such as support for individual recovery, local community rebuilding, and state legitimation. Michael Ignatieff once observed that “it is perilous to extrapolate from traumatized individuals to whole societies” (1996: 110). As a metaphor, peacebuilding—“healing”—implies that nations have a common psyche, which masks ongoing conflict among competing views of the past. The close identification of justice with healing is also at odds with a serious effort to assign responsibility for past abuses, or to address the ways in which some groups may have benefited from the exploitation of others (Roth 2002).

A more troubling problem in Phelps’s analysis is her suggestion that all master narratives are equally pernicious, that there is little point in discriminating among the narratives that truth commissions seek to displace and the narratives they seek to formulate. In evaluating the prologue to the Argentine truth commission report, she writes that by setting up a “good guys” versus “bad guys” narrative that placed the bulk of the blame of the military, the report “depicts a black and white world...an authoritarian view that the world is split into allies and enemies...quite like that of the oppressors, who kidnapped and tortured all those suspected of being against them” (86). Further on, she writes that “the report proposes a new order, authoritarian as all orders are,” and implies that it is only the cacophony of victim voices that undercuts this authoritarian strain. While it is important to recognize that all official histories are deeply political, it is another thing entirely to imply, as these passages seem to, that all political orders are equally contemptible. Phelps contends that the role of truth commissions is “not to judge but to gather information and make it known” (78). Given that truth commissions classify actions that may have been legal or normalized under prior regimes as human rights violations, it is difficult to imagine how their work could be perceived as falling short of judgment. Yet as leaders have increasingly identified truth commissions with the goal of healing, the question of how or why these institutions judge the past has often been neglected.

Judgment and Dialogue

As scholars devote more attention to evaluating the political and moral role of human rights investigations, it will be important to consider the significance of choices made in designing the process of investigation and the dissemination of findings. Both books under review here arguably evaluate these choices in relation to the broad goal of generating dialogue across political and social boundaries. The promotion of dialogue relates to core substantive goals of human rights, which specify that the ideal polity should reject repression and violence as dominant tools of dispute resolution. The focus on dialogue also supports the related view that the process by which human rights take hold must involve persuasion and the internalization of norms. In advancing these claims, scholars have drawn on the constructivist idea that interactions shape identities and frame meanings that are assigned to power and conflict. Richard Ned Lebow has argued that in the broader context of Thucydides' history, which connects the fall of Athens to the breakdown of language and the abandonment of Periclean ideals, the Melian dialogue is not about the supremacy of brute force after all, but rather the impossibility of divorcing interest from conventional norms and standards of justice (2003).

In examining the relationship between human rights investigation and dialogue, these books follow the lead of Amy Gutman and Dennis Thompson, who argue that the promotion of democratic dialogue should be the moral standard by which truth commissions are evaluated (2000), and Mark Osiel who contends that the main purpose of prosecutions for political violence should be to promote "discursive solidarity" (1999). International Citizens' Tribunals and Shattered Voices both contribute important insights to this debate by exploring how specific choices in the design of investigations may affect their ability to sustain ongoing debate, yet also establish the common ground that distinguishes dialogue from battle. Together, the two books illustrate important tensions between distinct approaches to investigating political violence that are often viewed as complementary. The Klinghofers point out that a heavy reliance on victim testimony may undermine the accuracy of human rights investigations and undercut any effort to persuade a wide audience that investigation findings and recommendations are valid. They contend that tribunals will have less impact on elite public opinion when personal testimony takes priority over expert analysis (166). Phelps observes that efforts to force victim testimony into legal categories may undermine the goal of fostering a broader understanding of past violence (63).

These books also illustrate how the goal of judging political violence may be undermined by the use of human rights investigations to facilitate dialogue. Despite their substantial theoretical differences, both books convey the message that the cultivation of human rights dialogue is at odds with any claim to judge political systems. Both describe the ways in which language is distorted for political purposes until words become little more than weapons. In doing so, the authors seem to adopt the logic of the slippery slope: When politics influence the process, then words will lose their meaning altogether. This leads to the conclusion that human rights investigations might restore the communicative role of words only excluding political judgment. For the Klinghofers, this is to be accomplished by restoring the procedural integrity of informal investigations and using this as a means with which to improve the procedural integrity of state-empowered courts. Phelps suggests that the stories of victims and their process of healing should be distinguished from and opposed to

the political goals of truth commissions. The two positions reflect trends in human rights advocacy whereby procedural integrity and healing are championed as proxies for fighting political repression, while the idea of waging an explicit political struggle is often treated as suspect. Yet efforts to divorce human rights investigation and dialogue from a political agenda have always been awkward. Such efforts have often resulted in unconvincing disavowals of the role of political compromise in framing the terms of inquiry or inflated claims regarding what investigations can accomplish outside of a broader effort to combat repressive political systems and their legacy. A genuine dialogue about the meaning and role of human rights requires a commitment to the project of articulating and debating political judgments and goals.

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