

Queering Truth Commissions

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Abstract

Violence against sexual and gender minorities in periods of conflict and social unrest has received increased attention by the international media. While much has been written on anti-queer violence and oppression of sexual and gender minorities around the world, there has been very little written in regard to addressing historical and current acts of violence in transitional justice literature. In light of ongoing violence, what would the incorporation of sexual and gender minority experiences in transitional justice mechanisms, such as truth and reconciliation commissions, mean for sexual and gender minorities? Can truth commissions be a viable structure for addressing historical and continuing anti-queer violence and discrimination? In trying to construct a truthful account of anti-queer violence and the subjugation of sexual and gender minorities, how would a national truth commission address the diversity of locations, times, and fluid sexual and gender subject positions and narratives? I seek to address these questions by examining the challenges that truth commissions face in including the experiences of sexual and gender minorities. First I will review how previous truth and reconciliation commissions have addressed heterosexism, homophobia, and anti-queer violence. From there I will explore the underlying heteronormativity inherently found in truth and reconciliation commissions and ways in which truth commissions would benefit from incorporating queer theory and queer legal theory. Lastly, I will outline key steps that need to be taken for future truth commissions to better incorporate sexual and gender minorities in order to open up truth commissions to non-heteronormative and queer identities, histories, and experiences.

Keywords: anti-queer violence; homophobia; queer theory; queer legal theory; transitional justice; truth commissions

Violence against sexual and gender minorities in periods of conflict, economic and political instability, and social unrest has received increased attention by the international media. While much has been written on anti-queer violence and oppression of sexual and gender minorities around the world (Marzullo and Libman, 2009), there has been very little written addressing historical and current acts of violence in transitional justice literature. This gap in research is a matter of concern since the history of anti-queer violence and homophobia has consistently been linked with other acts of violence and conflict. The Nazi persecution of homosexuals in World War II, the harsh regulation of

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Two-spirit persons by settler societies in North America (Morgensen, 2010), Franco's dictatorship in Spain punishing homosexuality as political opposition, the use of corrective rape against lesbians and homosexuals in apartheid and post-apartheid South Africa (Di Silvio, 2011), the targeting of homosexuals by state governments in Egypt (Menyaw, 2006), Namibia (Currier, 2010), and Uganda (Xie, 2010; Tamale, 2007) all point to a large segment of the world's population that, throughout time, has been violently targeted and oppressed.

In light of ongoing violence, what would the incorporation of sexual and gender minority experiences in transitional justice mechanisms, such as truth commissions, mean for sexual and gender minorities? Can truth commissions be a viable structure for addressing historical and continuing anti-queer violence and discrimination in transitioning societies? In trying to construct a truthful account of anti-queer violence and the subjugation of sexual and gender minorities, how would a national truth commission address the diversity of locations, times, and sexual and gender fluid subject positions and narratives? What would a queer analysis bring to the normative liberal legal structure of truth commissions? In this article, I seek to address these questions by examining the challenges that truth commissions face in including the experiences of sexual and gender minorities. In order to do this, I will review how previous truth commissions have addressed heterosexism, homophobia, and anti-queer violence. I will then look further at the underlying heteronormativity inherently found in truth and reconciliation commissions and ways in which they could benefit by incorporating queer theory and queer legal theory through their emphasis on intersectionality, dismantling heteronormativity, and promoting flexibility in identities and subjectivities. Lastly, I will outline key steps that need to be taken for future truth commissions to better incorporate sexual and gender minorities in order to open truth commissions to non-heteronormative and queer identities, histories, and experiences.

Why should we consider sexual and gender minorities when talking about truth commissions?

Martha Minow writes that during times of transition, societies have struggled over how much violence and destruction to acknowledge, whether to punish offenders, and how to recover from a period of conflict (1998: 2). This is an incredibly complicated and difficult process. Often the lines between perpetrator and victim are blurred, as well as the circumstances and contexts for each nation, community, and person involved. Acknowledgement of the complexity of experiences, memories, and circumstances in structural, symbolic, and physical violence is necessary not only to understand the context in which violent acts occur in a given situation, but also to find a way to address harms in the past and foster community healing in the present.

In the past 50 years, transitional justice has become a broad term that encompasses a range of activities and approaches to addressing human rights

violations and social repair. Starting with the famous International Military Tribunal at Nuremberg in 1945, transitional justice was associated with state-level judicial and institutional reform that addressed human rights abuses during political transition, amounting mainly to legal and criminal prosecution of former war leaders and ex-combatants. The 1980s and early 1990s saw the focus of transitional justice shift away from jurisprudence towards democratization and the renewing of civil society, with Argentina holding the first state-led truth commission in 1983. Thereafter, truth commissions became a common mechanism for transitional governments, the most famous being the South African Truth and Reconciliation Commission (TRC) of 1995, which investigated gross human rights violations motivated by political reasons during apartheid in South Africa.

Today, truth commissions have had a broad range of goals attached to them. Most important is the protection and promotion of human rights, including the prevention of further violence and human rights abuses in the future (Olsen, Payne, et al., 2010: 459). Kimberly Theidon writes that one explicit goal of a truth commission is ‘the writing of new national narratives that are more inclusive of groups that are historically marginalized within the nation-state’ (2006: 457). Truth commissions are repeatedly used to incorporate multiple narratives that will foster community healing and growth. ‘The most distinctive element of truth commissions, in comparison with prosecution, is the focus on victims, including forgotten victims in forgotten places’ (Minow, 1998: 60). By democratizing history, truth commissions will provide a ‘better format’ for writing a more inclusive national narrative that will allow for a multitude of voices, experiences, and subjectivities (Theidon, 2006: 457). At the heart of these commissions is the desire to reveal the truth of history and thereby bring a more democratic truth to the forefront.

Violence permeates communities in complex ways. Having individuals testify to their own experiences of violence is one way to reveal various incidents and truths. Truth commissions are useful in facilitating an atmosphere where marginalized voices can speak to the public about their own experiences. If the role of a truth commission is to acknowledge the voices and experiences of the marginalized, then overlooking state and local violence directed against sexual and gender minorities will not only limit discussions on human rights and accountability, but may also cause further marginalization, trauma, and violence to occur (Garnets, Herek, and Levy, 1990: 370). The recognition and the protection of sexual and gender minorities is one step towards dismantling hegemonic norms of patriarchy, racial hierarchy, inequality, sexism, and heterosexism whether brought on by colonization, state insecurity, or civil conflict. If the goal of truth commissions is to recognize past crimes and wrongs so that a society can move forward, then the voices of sexual and gender minorities should be brought to the forefront. Allowing sexual and gender minorities the protection and freedom to speak to past violence and discrimination can also be the next step for breaking down the

structural and symbolic barriers that limit access by sexual and gender minorities to living a safe and secure life in the present.

In addition to providing a platform for individuals to speak to past crimes, truth commissions are necessary in identifying a pattern of directed violence against a marginalized group. By showing a pattern of violence by state and local actors against a particular social group, instances of human rights violations against these communities cannot be dismissed as random or based on personal desires. Instead, identifying these past and ongoing violations is a vital component of the overall agenda of addressing wrongs and providing necessary reparations or justice for social repair. In transitioning societies, homophobia and anti-queer violence is often ignored or placed outside of other state and local directed violences, such as in instances of ethnic or political violence. This not only ostracizes sexual and gender minorities from transitional justice processes, but allows for further violence and violations against sexual and gender minorities to be committed in post-conflict periods. It also stops further interrogation into how violence against sexual and gender minorities occurs alongside other human rights violations. Homophobia and transphobia are consistently tied to nationalist, racist/ethnic, political, and militarist agendas in which the population is managed through violent control of reproduction and sexuality. Sexual and gender minorities are often framed as being sexual deviants, carriers of disease, sexual predators, and threats to the security and well-being of the nation. Often, reproductive violence against men and women during times of conflict, such as state or military driven actions of mass rape or sterilization in places like Rwanda, Bosnia-Herzegovina, and South Africa, occurs alongside the targeting and persecution of sexual and gender minorities. To address one type of violence without the other limits the overall understanding of the causes and underlying mechanisms that allow particular patterns of abuse to occur, and stops society from investigating larger social, religious, economic, political, and national ideologies from which these types of violences stem.

Given the history and evidence of violence directed against sexual and gender minorities during periods of conflict and instability, there are important reasons for truth commissions to explore these acts of violence. For example, in places like Canada, where gay and lesbian history has focused predominantly on white settler communities, an open discussion of Canada's colonial past and its effects on indigenous sexualities and gender roles would be a further step to decolonization. In the current Indian Residential Schools Truth and Reconciliation Commission, a greater emphasis on the homophobic and racist anti-queer violence that was used by the Canadian Indian Residential Schools on indigenous persons could bring a richer understanding of the ongoing effects that colonialism and the Indian Residential Schools had on indigenous sexual and gender minorities (McLeod, Passante, and Ristock, 2010). As Irene Watson states: 'Can we have justice or the possibility of de-colonising the past injustices of colonialism when the state is committed to a one dimensional universal world

order, one which disallows for the diversity of peoples and cultures?' (2009: 1). By failing to investigate how indigenous sexual and gender minority identities have historically been violently targeted, we may allow for new sites of oppression to exist (Spurlin, 1999: 220). This is especially true for Two-spirit persons in Canada for whom the history of government eugenic policies and Indian Residential Schools led to their ostracization from their aboriginal communities and becoming targets of transphobia in Canadian settler society. Two-spirit persons practise mixed gender roles, are usually gender-nonconforming, and hold the spiritual essence of both male and female (McLeod, Passante, and Ristock, 2010). Prior to colonization, gender variance in aboriginal communities across North America was relatively common and Two-spirit persons held a special place within indigenous communities as spiritual healers and performers. The regulation and suppression of indigenous sexualities formed a key component in Canada's state-driven settlement practices in which Two-spirit persons were forced to conform to white settler gender roles, held in sexually and physically abusive Indian Residential Schools, and underwent forced sterilizations and medical experiments. These state practices and policies have contributed to the ongoing victimization and inequality of Two-spirit communities in which poverty, sexual and physical assault, and HIV/AIDS remains alarmingly high in comparison to other aboriginal and non-aboriginal sexual and gender minority groups in Canada. The ability for Two-spirit persons and other indigenous sexual and gender minorities to talk about their experiences of violence from Indian Residential Schools would bring much needed recognition to the voices that are left out of the mainstream media on violence against First Nations communities and even the mainstream lesbian and gay movements. It would also provide an opportunity for Canadians to critically investigate the connections between race and sexuality, and challenge racially charged heteronormative and homophobic ideologies that historically and currently underlie Canada's national and international policies.

In states that are considering, are in preparation for, or are undergoing truth commissions, but continue to criminalize homosexuality or homosexual acts, such as Kenya and Uganda, the ability for sexual and gender minorities to be given a platform in a truth commission to relate their experiences of being targeted in past violent episodes could have the potential to push these states to dismantle anti-homosexuality laws and adopt a rights-based policy for sexual and gender minorities. Since the majority of criminalization laws against sodomy or homosexuality were instituted during colonial occupation of Africa, the dismantling of these laws and adopting a rights-based approach to sexual and gender minorities could also be seen as another step in further decolonizing these states. As stated previously, violence against sexual and gender minorities is often linked to other acts of violence. Addressing one without the other leaves opportunity for further violence to occur against not only sexual and gender minorities, but other marginalized groups. Without addressing homophobia, transphobia, and anti-queer violence in addition to

gender, ethnic, and political violence, the dismantling of these ideologies and structures is incomplete. Truth commissions therefore have the opportunity to make connections between past experiences of abuse in order to address ongoing inequality in the present. While the safety and well-being of the participants would be an utmost concern in situations where homosexuality is criminalized, it should not be used as a reason to dismiss sexual and gender minorities from transitional justice processes. By having to deal with the safety and security of sexual and gender minorities in truth commissions, international, national, and local institutions must then confront what makes these persons marginalized in the first place.

Previous truth commissions' involvement with sexual and gender minorities

Although local and international human rights groups have made headway in recognizing certain forms of gender-based violence in truth commissions (such as officially recognizing rape as a war crime), a majority of these groups are silent on issues concerning sexual and gender minorities. As Kelli [Muddell \(2007\)](#) states, the failure in institutional transitional justice mechanisms to recognize the violence against and persecution of sexual and gender minorities has largely been the case in the majority of states that have held truth commissions, where they do not see the rights of sexual and gender minorities as being relevant to their work or, in some cases, are afraid of the larger repercussions. Muddell goes on to state that in Zimbabwe, the fear of being associated with lesbian, gay, bisexual, and transgender persons was based on the fact that the Zimbabwean government began targeting non-governmental organizations (NGOs) who included gay and lesbian activists in their advocacy. The consequence of the Zimbabwean government's persecution of lesbian and gay individuals was that groups working on lesbian, gay, bisexual and transsexual (LGBT) rights were left isolated and vulnerable. 'Such alienation could very well have implications for truth-seeking processes and the building of a coalition of support behind it' ([Muddell, 2007](#)).

During the South African Truth and Reconciliation Commission (TRC), several submissions detailing violence against sexual minorities were given to the Commission on Violence. Testimony was also delivered to the special hearing on compulsory military service on the discrimination and repression faced by gays and lesbians in the army. Lastly, during the institutional hearings on the health sector, submissions were given recounting the human rights abuses of aversion therapy given to gays and lesbians to change their sexual orientation without their consent. Yet, instead of using this wealth of testimony and evidence of the abuse of and discrimination against sexual minorities, the TRC's final report only made cursory references to the human rights abuses of aversion therapy ([Muddell, 2007](#)). The South African TRC's failure to fully incorporate the voices and experiences of sexual and gender minorities

in its final report speaks to the continued homophobia and heteronormativity in post-apartheid South Africa. As William Spurlin writes:

[P]ostcolonial feminist struggles have taught us that the insistence on silence about gender conflict, where it already exists, is to cover and thereby ratify women's disempowerment and maintain the nation-state as a repository of male hopes, male aspirations, and male privilege (McClintock, 1995: 385). Likewise, following the implications of McClintock's argument, to posit lesbian and gay struggles as somehow less urgent than the more sobering task of national reconciliation and renewal in South Africa, and not to recognize the transformative power of the politics of sexuality as a site of decolonization, irresponsibly defers and trivializes the political demands of queers, and enables heteronormativity, as a normalizing regime, to perpetuate its own ideological longevity. (Spurlin, 1999: 233)

Like the South African TRC, the Peruvian Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación) also failed to look at the general pattern of abuses against sexual and gender minorities committed by Movimiento Revolucionario Túpac Amaru (MRTA), Shining Path (Communist Party of Peru), and the government (Muddell, 2007). It was only by accident that the Peruvian Truth and Reconciliation Commission addressed violence against sexual minorities in their investigation of human rights abuses during the Peruvian conflict. The final Peruvian Truth and Reconciliation Commission report listed an incident where the rebel group MRTA detained and assassinated eight transvestites on charges of vandalism and collaborating with the armed forces and police. MRTA's argument for killing these persons was that their lack of control over their sexuality and their lifestyle choices reflected the failure of the government and the corruption of youth (International Center for Transitional Justice (ICTJ), 2009; Muddell, 2007). How the Peruvian Truth and Reconciliation Commission accidentally addressed this violent incident was due to a random discovery by a staff member who noticed a memorial led by a local lesbian, gay, bisexual, transgender, queer, and intersex group commemorating the victims who died during the conflict during a commemoration of the fall of Fujimori (Muddell, 2007). As Muddell writes:

This discovery was rather serendipitous, despite there being a sense among many in the TRC that this was a common pattern among the MRTA and Shining Path. It was known by the people within the Commission and the human rights community at large that these rebel groups marked the presence in an area by wiping out those deemed to be 'anti-socials' (drug dealers, prostitutes, petty thieves, and sexual minorities). The targeting of sexual minorities for torture and assassination was a normal mechanism employed to gain social legitimacy.

Discussions had been held by people within the Commission on these issues, but nothing came of them. (Muddell, 2007)

Out of the 12-volume report, only two pages focused attention on the violence against sexual minorities (Nesiah, 2006: 47). While the Peruvian Truth and Reconciliation Commission did label MRTA's use of homophobic violence as a strategy of terror and declared their actions as war crimes, the acute neglect of these issues in the South African and Peruvian truth and reconciliation commissions speaks to the normalization of violations against sexual minorities and the underlying heteronormativity that underlies conceptions of truth and justice (*ibid.*).

As one can see in the South African and Peruvian truth and reconciliation commissions, the silencing of sexual and gender minorities allows for the continued presence of heterosexism, racism, transphobia, and sexism. However, there has been some hope in recent years of having a more active push to recognize sexual and gender minorities. Actions on the ground by international human rights, as well as lesbian and gay rights, groups have pressured state-led truth and reconciliation commissions to bring more attention to violence, discrimination, and injustice against sexual and gender minorities. Organizations like the International Center for Transitional Justice (ICTJ) and the International Gay and Lesbian Human Rights Commission have pressured states undergoing truth and reconciliation processes to recognize and protect sexual minorities.

One promising example for greater recognition of sexual and gender minorities has been in Colombia where the ICTJ submitted a brief to the Colombian Constitutional Court on rights and reparations for victims of grave crimes. The brief focused on the particular victimization suffered by sexual minorities and the failure of the current system to recognize the same-sex partners of direct victims as beneficiaries of victim services and reparation programmes. The ICTJ urged the Colombian Constitutional Court to 'properly define the scope of the term 'victim' by guaranteeing that LGBT individuals are recognized fully as victims and beneficiaries of services and reparations for grave human rights violations' (ICTJ, 2009). In addition to the ICTJ brief, the UN Human Rights Committee and the Special Rapporteurs on extrajudicial, summary and arbitrary executions and on torture and other cruel, inhuman or degrading treatment 'have identified Colombia as one of several countries with persistent grave violations of the human rights of LGBT individuals' (*ibid.*). This has led the Colombian Constitutional Court to adopt a broad definition of victim that is more inclusive of same-sex couples and LGBT individuals (*ibid.*). At this moment, it is speculative what the results will be from this decision in ongoing transitional justice processes in Colombia. Despite this more progressive format in dealing with human rights, LGBT individuals and couples continue to be discriminated against in Colombian

courts and, as of right now, fail to be recognized in ongoing truth and reconciliation actions.

Further research is needed to understand why sexual and gender minorities are excluded from past truth and reconciliation commissions. For example, what was the reason behind the South African TRC's decision to not give adequate attention to anti-queer violence in their final report? Was there pressure from outside forces, such as political groups, international organizations, or cultural and religious communities, not to recognize sexual and gender minorities as victims of violence? Was it because the South African TRC was structured so that it did not allow for sexual and gender minorities to testify openly and safely? Was there a threat of further violence to those sexual and gender minority individuals who would testify that limited their interaction in these truth commissions? These and many more questions need to be asked when looking at these failed attempts by truth and reconciliation commissions to bring justice and reconciliation to victims of anti-queer violence. From just these few examples, a pattern emerges of underlying nationalistic, patriarchal, and heteronormative discourses and actions coming to the forefront as powerful forces that structure truth commissions and limit the access of sexual and gender minorities to participate in them. In the next section, I will further explore nationalism, patriarchy, and heteronormativity as underlying structures directing truth commissions. From there, I will argue that a queer theoretical analysis is needed in researching and designing truth commissions in order to challenge underlying patriarchy, nationalism, and heteronormativity and allow for greater flexibility in how witnesses can situate themselves and construct their testimony. Lastly, I will end with some practical recommendations that should be implemented in future truth commissions.

Confronting normativity and heteronormativity in truth commissions

When thinking about including sexual and gender minorities more actively in truth commissions, it is important to analyse the underlying norms that not only grant access for individuals to testify, but also frame their testimony, identity, and reception. Throughout transitional justice literature, the recording of truth is seen as a necessary step for the healing of individuals and communities (Orford, 2006: 856). In constructing new national narratives, truth commissions are then charged with the task of forming 'the country's fragmented "collective memory" into a shared national history' (ibid.). However, the reliance on an essential truth runs into barriers when expressed experiences and identities run counter to it. Due to overarching normative liberal legal structures that define violence in terms of culpability and assign all actors into narrowly defined roles, truth commissions may cause further silencing of individuals who do not fit the overarching script of victim/perpetrator, minority/majority, oppressed/privileged, or even male/female and homosexual/heterosexual. Witnesses' narratives may be chopped up, reordered, and

redefined in order to fit a more normative narrative (Mertus, 2004: 113). This essentializing of narrative and confining identity in a fixed construction not only limits critical analysis of the underlying social structures that allow violence to happen in both the past and the present, but also denies the diversity and plurality of experience.

The normative structures that limit an individual's identity also have significant ramifications for a person's testimony of violence. As we can see from the previous examples of South Africa and Peru, truth commissions never occur in a social vacuum but instead are often arranged and implemented as determined by international, state, and local forces. Truth commissions' commitment to the protection of human rights, democracy, and peace are contingent upon the domestic arrangements of a state and their interpretation of these rights. There is potential that some of these democratic, egalitarian, and human rights protection policies may be used in support of dominant political ideology that could cause further marginalization and instability to the population and region. Because truth commissions often appear after periods of war, crisis, political oppression, and state instability, Abraham Korir Sing Oei and Laura Young note that truth commissions may serve a transitioning state's goal for national consolidation. 'Truth commissions play a critical role in legitimating the government as an entity that is distinct from previous regimes (as evidenced by the commitment to examine past abuses) and that is ready to play a role as a "responsible" member of the international community' (2011: 61–2). Therefore, truth commissions can serve nationalist intentions that may marginalize minorities who run counter to it (ibid: 63).

Fionnuala Ní Aoláin also notes that in cases where the political climate of change is dominated by a particular social group, there is a high risk for truth commissions to serve the interests of the elites (2006: 840). 'This observation holds true across a number of truth-telling processes where the definition of harms sufficient to activate examination by the truth commission or body, have a direct relationship with the kinds of harms that were of most concern to those elites now in position to mandate review and oversight' (ibid.). For years, feminists have argued that patriarchy, a social system that is built upon the male being the primary authority figure, has served as the backbone of nationalism and nationalistic rhetoric in which women are deemed to be inferior and agentless to the nation's history and future. It is because of this that Ní Aoláin argues women have fared badly in this hierarchy of examination in which gender violence and gender inequality are seen as unimportant or potentially dangerous for national solidarity or nationalistic desires (ibid.). As we see in the truth commissions of South Africa and Peru, harms experienced by sexual and gender minorities fare just as much worse as their experiences are seen as either a threat to the state's nationalist agenda, a danger to patriarchy, or deemed not relevant enough.

Looking at this brief overview of the challenges that truth commissions face in terms of identity, testimony, and the political/social forces that inform their

structure, it seems apparent that an incorporation of sexual and gender minorities into truth commissions goes beyond physically placing these persons in truth commissions, and instead requires a complete reworking of underlying norms that dictate sexual and gender minorities' access to testify in truth commissions, the framing of their identities and testimonies, and how their testimonies are received and acted upon. Returning to the previous section, the denial of acts of violence against sexual and gender minorities as in the case of Peru and the dismissal of gay and lesbian testimonies in the final report of the South African TRC all point to underlying nationalistic and patriarchal norms that framed how witnesses were chosen, what truths were incorporated and taken under consideration, and what was seen as a danger to the state. For many feminist theorists, nationalism and patriarchy are part of the same coin, both feeding into one another. Due to heteronormativity, the strict division of gender and sexual relationships are so deeply embedded in both nationalism and patriarchy that any person or action that goes beyond the gender binary, or is different from the national construction of male and female relationships, will be seen as undermining the state and national culture as well as potentially jeopardizing the country's future.

Take, for example, the case of Uganda, in which the construct of lesbian, gay, and bisexual persons has been deemed a western import brought on by colonization that is not only a threat to families, but a force that could undermine the future of the state. We should be cautious and respectful of local and cultural constructions of gender and sexuality, and be wary of instantly placing labels of sexual and gender orientation that have a specific white Western European and North American context, such as gay, straight, lesbian, queer, bisexual, and transgender, on communities and individuals outside this particular framework. However, oppression and violent targeting of sexual and gender minorities for the sake of political power, terror, and national desires should be confronted immediately as it will not only have direct implications for the well-being and security of these groups being targeted, but will also have implications for other minority groups (religious and cultural) in which sexual and gender minorities are also members.

It is because of these underlying heteronormative structures that I argue truth commissions and transitional justice could benefit from a queer theoretical analysis. At its core, queer theory interrogates 'how ideas of sexual orientations are implicated in, and affected by, ideas of the world more generally' (Wilde, 2007). However, queer theory is more than just a theory for sexual and gender minorities. 'It is a way of analysing how gender, sexuality, and heterosexuality as organizing principles construct hierarchies of normal sexuality and intimacy. Setting itself a rather vague and ambitious task, queer theory aims to queer the normal – indeed, to challenge the very idea of normal' (Buss, 2007: 123). By challenging the normal, queer theory focuses on how heteronormativity structures social and political realities.

Aside from investigating how heteronormativity shapes and influences social and political structures, queer theory challenges essential and immutable identities of sexuality, gender, race, and class by saying that identities and subject positions are constantly developing and redefining through language, space, time and social interactions. Queer theory argues ‘that sexual identities, desires, and categories are fluid and dynamic, and that sexuality is inevitably intertwined with, even sometimes constitutive of, power relations’ (Gamson and Moon, 2004: 51). Sexual identity is therefore never experienced in ‘isolation, but is always already mediated by other axes of social positioning (including race, gender, class, and geopolitical spatialization)’ (Spurlin, 1999: 220). ‘The readings of queer identity, like other narratives of reading, are rhetorical practices that “extend and manipulate the social practices, political structures, and material circumstances in which they are embedded at particular historical moments”’ (Mailloux, 1996: 5, quoted in Spurlin, 1999: 220).

Queer theory aligns itself with the theory of intersectionality, in which identity and social/cultural categories like gender, ethnicity, class, ability, and age interact on multiple and simultaneous levels that then contribute to systemic social inequality. Whereas intersectionality directs us to research and critically analyse the standpoint of identities, queer theory helps us to think about the issues arising from intersectionality by focusing on the uncertainties of identity categories (Rahman, 2010: 951).

The interweaving of queer theory and intersectionality in critiquing and expanding upon universal notions of identity has definite implications when talking about violence and human rights. ‘Using laws and policies to reach for an equality based on one dominant, abstract and universal version of identity and experience is necessarily going to be a partial version of the actual lived experience of equality because it excludes differences, excludes understandings of how those differences result from, and are brought into effect by intersectionality’ (Rahman, 2009: 359). Likewise, queer theory exposes how notions of human rights and equality based on identity politics are negotiated and constructed by discourse as well as social and political circumstances.

In addition to critiquing universal versions of identity, queer theory has also been applied to international law. Queering international law has several implications, the first being extending normative frameworks of international law so that it is ‘inclusive to non-heterosexual experiences and identities’ and broadening human rights legislation so that it prohibits homophobic discrimination and offers protection to sexual expressions and various identities (Otto, 2007: 120). However, for Diane Otto, queering international law also suggests ‘a fundamental challenge to the usual way of going about things’ (ibid.).

One way queer theory and queer legal theory does this is by its emphasis on a multitude of experiences and expressions of voices to inform legal theory and legislation, while also trying to forge a new path in law by allowing for connectivity between gender, ethnicity, sexuality, class, age, and ability, but, at the same time, giving necessary space for diversities and overlapping

cross-communities (Valdes, 1993: 7). Queer theory and queer legal theory places emphasis on an individual's narration about their experiences as well as investigating the surrounding structural, political, and discursive forces that are not only shaping testimony, but also regulating who is given the opportunity to testify in truth commissions.

Another way queer theory and queer legal theory can challenge heteronormativity in truth commissions is to promote sexuality as a primary category of analysis as something that has direct implications for human rights, stability, and the rebuilding of civil society. Queer legal theory challenges normative assumptions in international law by critiquing underlying heteronormativity and patriarchy present in legal structures. A popular example can be seen in the United States in which queer legal theorists, activists, and lawyers challenge heteronormative assumptions on the legality of same-sex marriage, adoption, and equal rights for queer persons. Queer legal theory joins feminist legal theory and critical race theory in their quest for 'liberation from subordination under law' by investigating power relations that shape social and political identities, protecting individuals' claims for their gender/sexual/racial selves, and promoting equality (Valdes, 1993: 6). Queer theory could therefore be a much needed addition not only to truth commissions, but to research and advocacy related to transitional justice mechanisms.

Incorporating queer theory and queer legal theory into the design of truth commissions will have very direct and practical implications. First and primarily, sexuality and gender will be brought to the forefront as a means to talk about how sexual and gender-based violence, political and nationalistic discourses, and social norms are not only used to target sexual and gender minorities, but are intertwined in the ongoing social disruption and inequality present both during and after conflict. Before starting a truth commission, basic measures related to the right to equal treatment and non-discrimination of sexual and gender minorities must not only be in place, but held regardless of international, state, or local opposition. 'True participation' must be held as one of the primary goals in organizing a truth commission, in which minority groups are present and engaged from the beginning of the process and are active on all levels of decision making (Sing Oei and Young, 2011: 70). A mandate should be in place at the beginning implementing these principles in the truth commission that will in turn dictate what activities are funded and prioritized as well as direct strategies and outcomes (ibid: 71).

In forming truth commissions, organizers should consult and incorporate a large range of civil society groups, indigenous communities, and sexual and gender minority groups that will be better able to provide diverse perspectives on how to frame human rights abuses, sexual and gender identities, and structural and symbolic oppression of sexual and gender minorities. Having various queer-orientated and sexual and minority groups participate in the truth and reconciliation process from the beginning will not only be beneficial to having a greater inclusion of the experiences of sexual and gender minorities, but may

also provide the platform for those of other marginalized groups to be voiced. Because gender and sexual identity is incredibly diverse in its constructions and intersects with other identities and subjectivities, it is important to include not only representatives from self-identified lesbian, gay, bisexual, transgender, transsexual and queer communities, but also representatives from indigenous sexual and gender identity groups that are present in the state.

Sensitivity to the stigma and violence attached to open discussions of sexual orientation, gender identity, and sexual and gender-based violence must also be a key component in how truth and reconciliation programmes are framed and implemented. Security and services need to be provided to those who testify. In addition to addressing and recognizing violence against sexual and gender minority persons in truth commissions and trials, reconciliation will also need to be an ongoing process. Violence against sexual and gender minorities during a period of conflict, political oppression, or instability is intimately entwined with other ongoing social and political violence. In order to start dismantling one form of violence, we will also need to address all other forms of violence and abuse that are connected to it (Nesiah, 2006). Therefore, while truth commissions may be dealing with specific historical events, it is important to always be aware that whatever actions or decisions are made, they will have a direct impact on the lives and futures of sexual and gender minorities. The truth commission should be seen only as a starting point for recognition, reconciliation, and social justice for sexual and gender minorities and needs to continue in state and legislative policies, community services, and local community projects.

Conclusion

As I have shown in this article, the need to address violence against sexual and gender minorities is incredibly important and necessary for transitioning societies. Violence against sexual and gender minorities is a serious issue that has enormous implications for the ongoing process of maintaining peace, democracy, and stability. Yet it is important to remember that violence against sexual and gender minorities is not confined to states transitioning out of current conflict situations. The rise of gay bashing in metropolitan city centres in Europe and North America, the anti-gay crackdowns in China and neighbouring states, and the rash of tragic teen suicides in the United States from anti-queer bullying are just some of the examples that show homophobia and anti-queer violence are global crises that need to be addressed. Truth commissions can be a viable mechanism for sexual and gender minorities to gain a national presence that has been otherwise denied to them. In its desire for social recognition, rebuilding and justice after periods of unrest, transitional justice can no longer afford to ignore the experiences and plight of sexual and gender minorities. The inclusion of queer theory and queer legal theory in transitional justice will allow for greater flexibility and space to look at how violence

against sexual and gender minorities intersects with other historical and current forms of oppression. Hearing the lived experiences of sexual and gender minorities will be an opportunity to address past wrongs and stop present homophobic violence. Listening to the way individuals define their subjectivity and give testimony will also further challenge essentialist hetero-normative legal and social structures.

The safety and security of sexual and gender minorities who do testify is a crucial concern. In looking at how previous truth commissions have dealt with gender violence, Fionnuala Ní Aoláin (2006), Brenda Crossman (2002), Katherine Franke (2006), Nicola Henry (2010), and Susan Harris Rimmer (2010) have shown that women who testify about their experiences of violence in criminal courts and truth commissions can be further marginalized in the process. In speaking out about their experiences of sexual and physical violence in national truth commissions, the stigma attached to these actions has led to some of those women and men who have testified being ostracized from their communities.

While the recognition of gender violence and the experiences and actions of women during times of conflict and peace are incredibly important in the long term actions against gender violence and gender inequality, the potential for greater vulnerability, violence, and marginalization has led Katherine Franke to ask whether these transitional justice processes ultimately help women (2006: 816). This very same question can be applied to sexual and gender minorities, who at times, I would argue, are in a more fragile and precarious situation when testifying as they may not only face state criminalization, but also face violence from their community and family. However, ignoring and excluding sexual and gender minorities because of the very real concern for their safety will do nothing to critically challenge the underlying structural and symbolic forces that cause violence against these persons to happen.

In the end, the relationship between transitional justice, queer theory, and sexual and gender minority communities is one of vast potential. Through careful consideration, they can contribute positively to each other. This article has only focused on truth commissions, which are just one specific mechanism of transitional justice. More research is needed on how other mechanisms of transitional justice, such as national and international criminal courts and trials, have addressed violence towards sexual and gender minorities. Research is also needed on the local level of transitional justice in order to look at how alternative non-institutional methods have addressed sexual and gender minorities. It is my hope with this article to start a much-needed conversation about sexual and gender minorities in transitional justice. It is only by looking at how various levels of transitional justice have addressed issues pertaining to sexuality, sexual orientation, gender identity and subjectivity, and anti-queer violence that transitional justice can move forward with its mission to provide a space for the marginalized in society to have a voice and find justice.

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