

Success or Failure? Evaluating the Effectiveness of *The Missing Women Inquiry*

by

Leah Schmidt

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The School of Graduate and Postdoctoral Studies  
The University of Western Ontario  
London, Ontario, Canada

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## Abstract

The Purpose of this study is to evaluate the effectiveness of *The Missing Women Inquiry* in bringing about restorative justice for Aboriginal women within Canada. The study provides a brief overview of transitional justice, going through the history, the different definitions of the term, and the types of cases that can be studied under transitional justice. Further, the study analyzes the use of truth commissions and commissions of inquiry within restorative justice and lays out a criteria for success. The study then provides a brief overview of the systemic human rights abuses of Aboriginals within Canada and provides a discussion on *The Missing Women Inquiry* itself. The study concludes by evaluating the effectiveness of the Commissions and determines *The Missing Women Inquiry* was unsuccessful at bringing about restorative justice for Aboriginal women within Canada. This is significant because it demonstrates that transitional justice failed within a consolidated democracy.

## Keywords

Transitional Justice, Truth Commissions, Commissions of Inquiry, Human Rights, Women's Rights, Aboriginal Rights, Canada, *The Missing Women Inquiry*, Restorative Justice.

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## Introduction

The study of transitional justice has grown significantly within the past ten years. Governments have been applying transitional justice mechanisms in a variety of situations to address historical injustices to help ensure justice in the future. The purpose of this study is to evaluate the use of transitional justice within Canada through *The Missing Women Inquiry*. Ultimately, the study's goal is to evaluate how effective the Commission was at bringing about restorative justice for Aboriginal women within Canada.

The first chapter provides an in depth introduction to the topic of transitional justice. The chapter begins by providing a brief history of the development of transitional justice and then summarizes the scholarly debate regarding the definition of transitional justice. The chapter concludes by providing an overview of the different types of transitions. Due to limited space, the chapter looks specifically at classical cases (ones where a political transition occurred) and non-transitional cases (ones where no transition has taken place).

Chapter two examines the goals of restorative justice and the role truth commissions and commissions of inquiry play. The chapter summarizes the goals and duties of a truth commission and commission of inquiry. Further the theoretical goals of a truth commission are examined in depth to illustrate how these are directly related to the goals of restorative justice. Here, the arguments of numerous scholars are presented regarding the necessary components truth commissions must possess to be successful.

The third chapter addresses the historical systemic abuses experienced by Aboriginal women in Canada. It analyses the root causes of the discrimination and marginalization experienced. The chapter argues that there are two major root causes of the systemic abuse-taking place. The literature defines these causes as the colonization process and the construction of the Aboriginal identity. The chapter concludes by providing an overview of the actual Commission, summarizing its findings and goals.

The final chapter provides an in depth analysis and evaluation of *The Missing Women Inquiry*. Within this chapter, the success of the Commission is evaluated relative to the success

parameters detailed in chapter two. Ultimately, the evaluation concludes that *The Missing Women Inquiry* failed to bring about restorative justice for Aboriginal women in Canada due to its inability to fulfill the goals of restorative justice. Overall, this study hopes to contribute to the literature surrounding *The Missing Women Inquiry* and provide new insights into the effectiveness of the Commission within the context of transitional justice.

## Chapter 2

### Transitional Justice: History, Context, and Debates

The scope of transitional justice has grown since its inception. Initially, the term transitional justice was used to refer to a scenario that occurred when a country underwent a major political transition, often from an authoritarian to a democratic regime or from war to peace. Over time, however, the term transitional justice has broadened to encompass a number of different meanings and today embodies the use of many different mechanisms to bring about justice in a nation confronting horrors from the past. This chapter provides a brief overview of the history and development of transitional justice. The chapter also surveys some of the common definitions of the term and concludes by comparing different types of transitional justice.

### History

Transitional justice is rooted in the development of international criminal intervention with the recognition of human rights in 1945.<sup>1</sup> Following the atrocities of World War II, a language of human rights developed and standards of basic human decency were acknowledged.<sup>2</sup> It was now acceptable for the international realm to intervene in a country's affairs, if such country was

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<sup>1</sup> See Rachel Kerr and Eirin Mobekk, *Peace and Justice: Seeking Accountability After War* (Cambridge: Policy Press, 2007); and, Jose Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 3-32.

<sup>2</sup> 25+ Human Rights Documents: Universal Declaration of Human Rights, *Center for the Study of Human Rights* (New York: Center for the Study of Human Rights, 2005), 5-16.

infringing on its citizens' basic human rights. This new practice was sparked by the Nuremberg trials in 1945, which charged, prosecuted and punished key members of the Nazi party who were responsible for egregious crimes.<sup>3</sup> Nuremberg was key, since it was the first time an outside force held individuals accountable for abuses and crimes committed against their other citizens. Until then it was the domestic courts' responsibility to prosecute crimes against a country's own citizens.<sup>4</sup> Consequently, according to Rachel Kerr, the Nuremberg trials left a legacy of international accountability.<sup>5</sup> By this, she meant that Nuremberg pushed the development and codification of international humanitarian law and human rights laws by declaring that certain crimes trump the sovereign rights of individual nations and human beings. Ultimately, this provided the foundation for the establishment of international criminal law and the development of human rights laws and language in the international sphere.<sup>6</sup>

Following the Nuremberg trials, there was a lull in the use of transitional justice. It was not until the 1960s that transitional justice began to be implemented on a small scale in Europe.<sup>7</sup> Zalaquett explains that as human rights became more popular, the rumblings of political change began to take place in nations where citizen's rights were often suppressed.<sup>8</sup> Under the promise of more human rights, new forces came to power and began distancing themselves from past oppressors. The first instances of this were seen in Europe during the 1960s-70s when Greece, Portugal and Spain underwent a transition from authoritarian regimes to democratic regimes.

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<sup>3</sup> Kerr and Mobekk, *Peace and Justice*, 1-2.

<sup>4</sup> *Ibid.*, 18.

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

<sup>6</sup> *Ibid.*, 19-21.

<sup>7</sup> It is important to note that, some authors argue that transitional justice did not take place until the late 1980s. See, Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (2003): 69-94; Paige Arthur, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31, no.2 (2009): 321-367; and *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995).

<sup>8</sup> Zalaquett, "Confronting Human Rights Violations," 3.

Alexandra Barahona de Brito explains that these preliminary cases of transitional justice were unique, since they did not employ the use of restorative justice.<sup>9</sup> The next major wave of transitions came in the 1980s in Latin America, followed by the wave of de-communization throughout Eastern and Central Europe, as well as several undertakings in Africa. Here, transitional justice took many different forms, including lustration and the opening up of police and government files to reveal the crimes of the past regime.<sup>10</sup>

Through this brief survey of the history of transitional justice, it is evident that both the study and the use of transitional justice mechanisms have grown significantly. The importance and contributions of transitional justice was recognized in the 2004 Secretary General's Report, "The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies," which stated that "some form of transitional justice mechanism is crucial for societies emerging from violent conflict as the task of addressing past crimes is seen as essential to building stable peace."<sup>11</sup> Consequently, the practice of transitional justice has come a long way since its basic development in 1945.

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<sup>9</sup> Alexandra Barahona de Brito, Paloma Aguilar, and Carmen Gonzalez-Enriques, "Introduction," in *The Politics of Memory: Transitional Justice in Democratizing Societies*, rev. ed., ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriques, and Paloma Aguilar (Oxford: Oxford University Press, 2001), 11-25.

<sup>10</sup> For more information see authors: Alexandra Barahona de Brito, "Truth, Justice, Memory, and Democratization in the Southern Cone," in *The Politics of Memory: Transitional Justice in Democratizing Societies*, rev. ed., ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriques, and Paloma Aguilar (Oxford: Oxford University Press, 2001), 119-161; Rachel Sieder, "War, Peace, and Memory Politics in Central America," in *The Politics of Memory: Transitional Justice in Democratizing Societies*, rev. ed., ed. Alexandra Barahona de Brito, Carmen Gonzalez-Enriques, and Paloma Aguilar (Oxford: Oxford University Press, 2001), 161-190; Juan E. Mendez, "The Human Right to Truth: Lessons Learned from Latin American Experiences with Truth Tell," in *Telling the Truth: Truth Telling and Peace Building in Post-Conflict Societies* rev. ed., ed. Tristan Anne Borer (Notre Dame, Indiana: University of Notre Dame Press, 2006), 115-151; Ruti Teitel, "How are the New Democracies of the Southern Cone Dealing with the Legacy of Past Human Rights Abuses?" in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 146-155; and Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 262-290.

<sup>11</sup> *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, Report of the Secretary-General, 23 August 2004.

## Definitions of transitional justice

Transitional justice has been defined in a number of ways. Some scholars use a narrow definition, allowing for only specific types of cases to be considered, whereas others have taken a more broad definition of the term so as to include more cases under the study of transitional justice.<sup>12</sup> One of the main divisions between scholar's centers around the idea of a "transition," and whether or not a country has undergone a transition from an authoritarian to a democratic regime or from war to peace.

Kerr and Mobekk define transitional justice as "the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large scale abuses of human rights and/or violations of international humanitarian law. The mechanisms are designed to address the need for accountability, provide justice and to foster reconciliation in societies *in transition from authoritarian to democratic rule or from war to peace* [emphasis added]."<sup>13</sup> Therefore, for Kerr, transitional justice is needed in societies whose domestic system is so devastated from years of neglect and abuse that major measures need to be taken to restore stability to the country.<sup>14</sup> The change in regime and/or state of peace in a nation is key since it is through these major changes where accountability, reconciliation and justice will need to be delivered to the public at large.

Similarly, for Barahona de Brito, the "transition" element of transitional justice is the shift from a non-democratic regime to a democratic one and is not merely a change of government or a process of liberalization within an authoritarian regime.<sup>15</sup> This is key, since

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<sup>12</sup> See Kerr and Mobekk, *Justice and Peace*; Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 200); Joanna R. Quinn, "Whither the "Transition" of Transitional Justice?" (Paper prepared for presentation at the Annual Meeting of the Canadian Political Science Association, 16 May 2011, Waterloo, Canada).

<sup>13</sup> Kerr and Mobekk, *Justice and Peace*, 3.

<sup>14</sup> *Ibid.*, 4.

<sup>15</sup> Barahona de Brito, Aguilar, and Gonzalez-Enriques, "Introduction," 11.

under her definition, a number of cases, such as Kenya, and debatably Rwanda, would not be considered transitional justice since, although liberalization occurred, the government in power remained authoritarian. Therefore, similar to Kerr, for Barahona de Brito, the concept of having a transition in government is of utmost importance to the classification of cases in transitional justice.

Teitel also takes a narrow approach to the definition of transitional justice. She defines transitional justice as, “the conception of justice associated with period of political change, characterized by legal responses to confront the wrongdoings of repressive predecessors regimes.”<sup>16</sup> What is unique about Teitel’s definition is that, while she argues that a transition must occur, for her the importance of transitional justice lies in the legal processes that take place in new regimes, that will help bring about a strong consolidated democracy. As Teitel argues, one of the most basic principles of democracy is the ability to hold the government to account for its actions.<sup>17</sup> Transitional justice provides the perfect mechanisms to do this by holding the past government accountable for its actions and demonstrating that the new regime is willing to accept this reality as a way to move toward a liberal future. Therefore, transitional justice is part of a broader transitional process that allows new regimes to address questions of a disruptive nature that call into question the legitimacy of the government. Consequently, citizens can seek the truth about the past regime and the future government would need to be able to account for these past abuses and be held accountable for any future behaviour. This is important because transparency and “rule by the people” is a fundamental principle in democracy.

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<sup>16</sup> Teitel, “Transitional Justice Genealogy,” 69.

<sup>17</sup> Teitel, *Transitional Justice*, 187.

In contrast to Kerr, Barahona de Brito, and Teitel, other authors hold a broader definition of transitional justice. The International Center for Transitional Justice (ICTJ) does not limit the definition of the term to whether a major political transition has occurred. For the Center, transitional justice is defined as “a set of judicial and non-judicial measures that have been implemented by different countries to redress the legacies of massive human rights abuses. These measures include criminal prosecution, truth commissions, reparation programs and various kinds of institutional reform.”<sup>18</sup> Within this definition, there is no mention of the term “transition,” and nor does the definition imply that a political transition has taken place. Therefore, for the ICTJ the duty of transitional justice is to help address and provide justice for past abuses that are not restricted to countries undergoing a major regime change.

Furthermore, Roht-Arriaza defines transitional justice as “a set of practices, mechanism, concerns that arise following a period of conflict, civil strife or repression and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.”<sup>19</sup> While her definition provides more guidelines, it does not limit itself to a specific transition occurring. Therefore, Roht-Arriaza finds importance in the need to address the past to move forward within a society that has undergone some form of repression against its citizens.

Lastly, Arthur provides one of the broadest definitions for transitional justice. She defines the field of transitional justice as “an international web of individuals and institutions, whose internal coherence is held together by common concepts, practical aims, and distinctive claims

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<sup>18</sup> “What Is Transitional Justice?” *International Center for Transitional Justice*, June 9 2013, <http://ictj.org/about/transitional-justice>.

<sup>19</sup> Naomi Roht-Arriaza, “The New Landscape of Transitional Justice,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, rev. ed., ed. Naomi Roht-Arriaza and Javier Mariezcurrena (Cambridge: Cambridge University Press, 2006), 2.

for legitimacy.”<sup>20</sup> In this definition there is no mention of a political transition, past periods of violence or oppression. For Arthur, the key lies in the idea of establishing legitimacy. One thing that really sets her definition apart from others is her recognition of the role of the international in the process of transitional justice. For Arthur, transitional justice is a set of processes undertaken by individuals and the international system to achieve some overall goal of legitimacy.

Setting out the possible definitions of transitional justice is particularly important for the topic of this study, since it does not fall under the guidelines of the classic definition of transitional justice. *The Missing Women Inquiry* falls into the category of transitional justice that is defined in broader terms. Defining transitional justice under a broad classification allows the inclusion of numerous different types of cases. This allows academia to learn from cases that may not have traditionally been included, and also, allows many different nations access to the tools of transitional justice. Transitional justice is mainly about addressing historical injustices, whether it is from an authoritarian or democratic regime. In Canada, there has been no government change, nor even governmental liberalization that took place. Instead, it was a commission created to address a period of past violence and rights abuse against a particular group. Therefore, to be relevant in the study of transitional justice, it is essential that a broad definition be adopted for Canada to be considered a case of transitional justice.

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<sup>20</sup> Arthur, “How ‘Transitions’ Reshaped Human Rights,” 324.

## Types of transitions

There are different types of transitions that can take place, which categorize cases into distinct groupings.<sup>21</sup> These are important, since a scholar's stance on the definition of transitional justice will dictate which cases he/she sees as relevant to the study or not. There are two major categories of transition types: classical transitions and non-transitions. Classical transitions are cases where a major political transition took place and the state needs to reestablish rule of law to promote the development of democracy. Non-transition cases are ones where no major political transition has taken place, but the state is committed to addressing and acknowledging past human rights abuses to help reconcile the society and address the causes of the past abuses to prevent reoccurrence.

### Classical Transitions

There are key elements that are found specifically in classical cases of transitional justice that are simply not present in non-transition cases. Strictly speaking, classical cases focus on to what the nation is transitioning; the legal and penal element; the democratizing process; establishing rule of law; and, creating a culture of human rights. Most importantly, classical cases of transitional justice can be understood as a case having a distinct transition from a period of war to peace or transition from authoritarian to a democratic regime, addressing questions of a legal nature.

Traditional analysis and practice has applied a number of legal and quasi-legal processes in a democratic transition. Therefore, it is not simply about the fact that a nation has transitioned to democracy, but how the nation will legally maintain the democracy and cope with past repression. It has been argued that dealing with the past through transitional justice mechanisms

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<sup>21</sup> See Quinn, "Whither the "Transition" and Thomas Obel Hansen, "Transitional Justice: Toward a Differentiated Theory," *Oregon Review of International Law* 13, no.1 (2011): 1-46, for an overview of different categories of transitions.

will help consolidate liberal values.<sup>22</sup> Liberal values are defined as providing equal freedom to all individuals, transparency in government, freedom of speech, freedom of assembly, freedom to vote and an impartial judicial system.<sup>23</sup> These values provide the foundation to liberal democracies and are enforced and upheld by a stable judicial system separate from the government. Therefore, it is key in classical cases that the legal system is strong enough to enforce liberal values in order to provide a foundation for the creation of a democratic regime.<sup>24</sup>

As Crocker explains, there are certain elements found in classical transitions that are simply not found in non-transitional cases. For instance, Crocker argues that classical transitions possess “one type” of justice, which he refers to as exclusively penal justice.<sup>25</sup> Retributive justice is seen as a main component of classical cases, since a main way to demonstrate a break from a past oppressive regime is to punish those wrongdoers from the past through criminal trials. Under this view of transitional justice, prosecution and punishment is seen as the most complete form of justice. Therefore, for Crocker, mechanisms of restorative justice fail to bring about what he considers the highest form of justice, which are often the mechanism of choice of transitional justice being practiced in non-transitional cases and therefore, not including them in the definition of transitional justice since they do not practice retributive justice.<sup>26</sup> For proponents of classical cases, therefore, the use of retributive justice in establishing the rule of law is crucial to the future development of democracy.

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<sup>22</sup> Hansen, “Transitional Justice,” 2.

<sup>23</sup> Liberal, *Oxford Dictionaries*, June 6 2013, <http://oxforddictionaries.com/definition/english/liberal>.

<sup>24</sup> Hansen, “Transitional Justice,” 5.

<sup>25</sup> David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in *Truth V. Justice: The Morality of Truth Commissions*, rev. ed., ed. Robert I. Rotberg and Dennis Thompson (Princeton, N.J.: Princeton University Press, 2000), 99-122.

<sup>26</sup> *Ibid.*, 99.

However, while Crocker may be correct in some cases, there are other classical cases that do use restorative justice as a way to achieve their goals. South Africa, for instance, used restorative justice to achieve the goals of transitional justice, in implementing the South African Truth and Reconciliation Commission to address the historical injustices of the Apartheid regime. They did not implement what Crocker calls “one type” of justice: penal. Therefore, it is important to not limit the tools of transitional justice to one specific type of transition.

One major problem with reserving the concept and term “transitional justice” for use solely for societies in transition is that it implies a moral differentialism.<sup>27</sup> Poor countries in transition are seen as having endemic problems with gross violations of human rights, whereas non-transition cases, many of which are liberal democracies, are implied to be free of such problems and only need to come to terms with past problems.<sup>28</sup> Following this model, consolidated democracies are excused from any current human rights violations.

Therefore, in addition to the actual transitional element of the classical cases, the importance and possibility of retributive justice is a key difference between the different types of transitional justice cases. This is particularly important to note in the study of transitional justice, because depending on how one defines transitional justice, the determination of whether certain cases are considered forms of transitional justice will follow. Using the classical definition of transitional justice cases, Canada does not fit into the definition or study or practice of transitional justice. Canada is a consolidated democracy and has not undergone a significant regime change, which typically would eliminate it from study under the classical definition. However, despite the lack of a regime change, rule of law and the practice of human rights do

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<sup>27</sup> Hansen, “Transitional Justice: Toward a Differentiated Theory,” 40

<sup>28</sup> *Ibid.*

not apply equally to all Canadians and therefore, these elements do need to be established.

Consequently, while Canada may not fit into the strict definitional requirements of the classical transitional justice cases, it does need to establish elements of justice, which are done through transitional justice mechanisms.

## Non-transitional Cases

Following the definition presented above, non-transitional cases deal specifically with grave human rights abuses, instead of taking a purely legal and transformative approach. In non-transition cases, transitional justice occurs in the absence of a fundamental political transition. There are two types of non-transitional cases: transitional justice that takes place in consolidated democracies, and transitional justice that takes place in a nation that remains under the rule of an authoritarian regime.<sup>29</sup> For both of these cases, a major political transition is not occurring and thus the establishment of the rule of law is not of utmost importance, nor is implementing a policy of retributive justice since there is no need in either case to enforce liberal values. While a legal approach may be required, the success of a process of transitional justice is not contingent on this approach. Therefore, the legal approach favoured by some scholars may in fact be sufficient but is not always necessary for transitional justice to take place.

Hansen defines transition as “the interval between one political regime and another where regime change refers to something more profound than the periodic transition between new government.”<sup>30</sup> Thus, a non-transition case is one where no profound transition has taken place.

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<sup>29</sup> This paper will only go into detail about the non-transitions that occur in consolidated democracies. Cases of non-liberal transitions are defined as where non-transition occurred and the nation remains under the control of an authoritarian regime, but it is less repressive than the previous regime. Hansen uses the Rwanda case to demonstrate this by arguing that although Rwanda is still run by a semi-authoritarian government, it did use some transitional justice mechanisms such as tribunals, national trials and Gacaca Courts to address the atrocities of genocide, see Hansen, “Transitional Justice: Toward a Differentiated Theory,” 10.

<sup>30</sup> *Ibid.*, 22.

Simply because there is no profound transition occurring, however, does not mean something profound is not happening.<sup>31</sup> There may, for example, be a transition in society's mentality and attitude toward a group, or even a change in governmental behaviour that would support more democratic actions. This is important because in cases of consolidated democracies, there can be a deepening of democracy within society or even providing more democracy to a particular group in society who have historically been deprived of the same type of democracy as the rest of the population. In cases of non-transition in authoritarian regimes, the transition that may take place is a transition to stability. The nation may remain authoritarian, however, by pursuing transitional justice, stability may be created in the regime, which stops violence. This is significant because not every transition has to be one of regime change.

Some liberal democracies have favoured the use of transitional justice practices to address legacies of past violence that may still be felt among citizens in the present. For example, in 1995, the Australian Attorney General mandated the Australian Human Rights Commission to inquire into the state's practices concerning the forceful removal of Aboriginal children from their homes. In 1997, a report entitled, "Bringing Them Home: The Stolen Children Report," provided detailed accounts from victims and made a series of recommendations to the Australian government.<sup>32</sup> Similar to Australia, in 2008 New Zealand offered an official apology to the Maoris population for the State's treatment of the Aboriginal population and gave back close to a half a million acres of Crown forestry land in a settlement with the Aboriginal population.<sup>33</sup> Both countries used transitional justice mechanisms to address the treatment of their Aboriginal populations. While it is debatable how effective these processes were, both cases demonstrate a

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<sup>31</sup> Hansen, "Transitional Justice: Toward a Differentiated Theory," 22.

<sup>32</sup> *Ibid.*, 39.

<sup>33</sup> Kathy Marks, "A £160m Apology to the Maoris for Shameful History of Injustices," *The Independent*, June 26, 2008, July 17, 2013, <http://windowintopalestine.blogspot.ca/2008/06/160m-apology-to-maoris-for-shameful.html>.

consolidated democracy implementing the tools of transitional justice to address historical injustices.

Similarly, the Canadian government put in place a process of quasi-transitional justice in the form of the Truth and Reconciliation Commission to address the legacy of the Indian Residential Schools system and recently used *The Missing Women's Inquiry* to address concerns with the treatment of Aboriginal women in Canada by both society and government officials.<sup>34</sup> Neither of these inquiries was put in place to address a move from an authoritarian to democratic regime, but instead the same transitional justice mechanisms were applied to a case that would not fit the classical definition of transitional justice. The Canadian political and legal system is already a liberal democracy and, thus, does not meet the definition of instances where classical cases of transitional justice would be applied. However, due to a negotiated political settlement, the Canadian government was required to address the past period of oppression and human rights abuse against the Aboriginal population. The Canadian case is interesting because the government was reluctant to pursue a path of restorative justice, since it had no sincere intention to deepen democracy, acknowledge past abuses, reconcile the legacy of this effect and provide justice to a specific group in society. However, as a way to “save face” and appease the Aboriginal population, a truth commission was used to appear as though the government was devoted to bringing about the goals of transitional justice under the broad definition.

It is also the case that governments themselves may not want to take the responsibility to be held to account. However, the victims of past abuse often argue that the legacy lives on in the form of systemic inequalities and that the current government structure and laws are in fact

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<sup>34</sup> The Indian Residential School system was implemented in Canada from the 1800s until the early 1990s wherein the government with the help of churches would place Aboriginal children in residential schools as a way to take the “Indian out of the child.” In these schools, the children were sexually, physically and mentally abused. See “History,” *Indian Residential Schools Survivors' Society*, May 13, 2013, <http://www.irsss.ca/history>.

perpetuating old policies of discrimination and abuse. Therefore, many of the liberal democracies with a history of abuse see these violations as fixed in time and do not acknowledge their legacy. If a transition were to occur, addressing the legacy of repression would require a transformation of government behaviour, attitude and policy as well as a change in status for subjugated and oppressed groups.

This is important for the study of *The Missing Women Inquiry* because it calls into question the government and police practices within British Columbia in reference to the treatment of Aboriginal women. The Commission exposes the systemic abuse and neglect this group has undergone in not only British Columbia but within the overall Canadian population, demonstrating the perpetuating nature of the legacy of historical abuse. Therefore, transitional justice for Canada is about acknowledging this perpetual abuse, stopping it, and beginning a process of reconciliation wherein the Aboriginal population can restore harmony with the greater Canadian population and begin to experience the same form of democracy as the rest of the Canadian population.

## Conclusion

This chapter has provided a brief historical survey of the development of transitional justice. Moreover, the chapter has explored various definitions for the term and presented the arguments of several authors for a narrow definition of the term (transitional justice is the legal process of delivering justice to a state following a transition from authoritarian to democracy), as well as the definition provided by proponents of a broader definition (transitional justice is any legal or non-legal mechanism used to address periods of past violence, repression or human rights abuses). The next chapter will look at the use, theory and practice of truth commissions and commissions of inquiry.

## Chapter 3

### Truth Commissions and Commissions of Inquiry

Transitional justice uses many different mechanisms to deliver its goals. Truth commissions and commissions of inquiry are one of the mechanisms used. Both tools are bodies that investigate matters of political and societal concern.<sup>35</sup> Truth commissions are often used to investigate and reveal facts about the past, usually associated with a period of violence or severe human rights abuses.<sup>36</sup> Conversely, commissions of inquiry are not always restricted to investigating only violence or human rights abuses, but are often used by governments in the commonwealth countries to investigate any matter of significance.<sup>37</sup> For example, *The Royal Commission on Taxation* and *The Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River*,<sup>38</sup> are both commissions that investigated matters that did not deal with human rights abuses and mistreatment by the state or any other particular party. Canada has had its fair share of commissions of inquiry into subjects more commonly linked to truth commissions. For example, *The Missing Women Inquiry 2010* and *The Royal Commission on Aboriginal Peoples 1996*.

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<sup>35</sup> There are a number of authors who write on the function of truth commissions within the transitional justice context. See Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*; Arthur, "How 'Transitions' Reshaped Human Rights"; Quinn, *The Politics of Acknowledgement* (Vancouver: UBC Press, 2010); Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press, 2006); Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions, Second Edition* (New York: Routledge, 2011); Teitel, *Transitional Justice*.

<sup>36</sup> See Barahona de Brito, "Truth, Justice, Memory, and Democratization in the Southern Cone,"; Pablo De Greiff, "Theorizing Transitional Justice," in *Transitional Justice*, rev. ed., ed. Melissa S. Williams, Rosemary Nagy, and Jon Elster (New York: New York University Press, 2012); Freeman, *Truth Commissions and Procedural Fairness*; and, Hayner, *Unspeakable Truths*.

<sup>37</sup> See Kim Stanton, "Truth Commissions and Public Inquiries: Addressing Historical Injustices in Established Democracies," (Masters Thesis University of Toronto) and D.H. Borchardt, *Commissions of Inquiry in Australia: A Brief Survey* (Bundoora, Victoria: La Trobe University Press, 1991).

<sup>38</sup> Full list of national and provincial commissions of inquiry found, "Index to Federal Royal Commissions" *Library and Archives Canada*, June 3 2013, <http://www.collectionscanada.gc.ca/databases/indexcommissions/index-e.html>.

Although these two mechanisms, the truth commission and commission of inquiry, have different names, both address questions of public concern and are used to establish a narrative of truth for which policy recommendations could be proposed. For the purpose of this study, commissions of inquiry and truth commissions will be taken as essentially the same mechanism. This chapter will summarize and analyze various theories regarding the goals and uses of these mechanisms in transitional justice.

## Truth Commissions and Commissions of Inquiry: Restorative Justice

Truth commissions and commissions of inquiry are one of the mechanisms used in restorative justice. Restorative justice can be classified as one of the categories of transitional justice. Llewellyn explains that restorative justice is often seen as partial justice since it does not possess the typical elements of adjudication.<sup>39</sup> By this, she simply means that restorative justice does not possess the qualities of retributive justice where direct punishment is provided against the wrongdoer, and thus is sometimes perceived as not delivering full justice. Llewellyn argues that those commentators who see restorative justice as a *type* or *kind* of justice fall victim to constraining the use of restorative justice to only specific circumstances. Instead, Llewellyn argues against this position, and claims that restorative justice is a “comprehensive theory about the *meaning* of justice.”<sup>40</sup> Through this lens, justice is seen as “restoratively fundamentally concerned with restoring relationships harmed by wrongdoing to ones in which all parties enjoy

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<sup>39</sup> Jennifer J. Llewellyn, “Restorative Justice in Transitions and Beyond: The Justice Potential of Truth-Telling Mechanisms for Post-Peace Accord Societies,” in *Telling the Truth: Truth-Telling and Peace Building in Post-Conflict Societies*, rev. ed., ed. Tristan Anne Borer (Notre Dame, Indiana: University of Notre Dame Press, 2006), 83.

<sup>40</sup> *Ibid.*, s 91.

and accord one another equal dignity, respect and concern.”<sup>41</sup> Restorative justice defines wrongdoing in terms of the resulting harms; thus, restoring relationships requires acknowledging the harms experienced by all. For Llewellyn, the relationship being restored is not a personal one, but is the restoring of the network of relationships in which humans exist. Therefore, restorative justice concerns itself with restoring networks of social relationships.

Both truth commissions and commissions of inquiry are avenues to restoring networks of relationships, and incorporate the participation of the victim, the perpetrator and also the wider community. Within commissions of inquiry and truth commissions, the victims and perpetrators come together to tell their stories. This enables acknowledgement of past events by all parties involved in the events that occurred and enables reintegration to begin, instead of sending the wrongdoer to prison and isolating him/her from their community.

It is through restorative justice that *The Missing Women Inquiry* sought to accomplish its goals. *The Missing Women Inquiry* was a commission of inquiry set up to establish the truth and collect facts on the unusually large number of Aboriginal women and girls who have gone missing in Vancouver’s Downtown Eastside (DTES).<sup>42</sup> The commission defined the category of “missing women” as those who went missing between 1997 and 2005.<sup>43</sup> While women go missing every year, it is the staggering numbers and the lack of police attention associated with this group of women that makes this situation unique.

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<sup>41</sup> Llewellyn, “Restorative Justice” 91.

<sup>42</sup> See Wally T. Oppal, “Forsaken: The Report of The Missing Women Commission of Inquiry- Executive Summary,” *Library and Archives Canada Cataloguing in Publication* (2012) for the executive summary, which summarizes four volumes worth of findings and documents pertaining to *The Missing Women Inquiry* that took place from 2010-2012 in British Columbia to address the number of missing women from the Downtown Eastside of Vancouver.

<sup>43</sup> “About the Commission,” *Missing Women Commission of Inquiry*, May 26, 2013, <http://www.missingwomeninquiry.ca>.

## Truth Commissions/ Commissions of Inquiry: Theoretical functions

Freeman argues that truth commissions have helped to contribute to a sense of historical justice on the part of the victims.<sup>44</sup> By this, Freeman simply means that through truth commissions, victims are able to lay out a historical account of past events and be acknowledged for the crimes committed against them.

Hayner outlines four major elements:

- a) Truth commissions examine only past events
- b) They investigate patterns of abuse committed over a period of time, as opposed to a particular event
- c) They are temporary bodies that finish their work with the submission of a report containing conclusions and recommendations
- d) They are officially sanctioned, authorized and empowered by the state<sup>45</sup>

Hayner's analysis provides a clear operational definition of truth commissions, and she accounts for the ever-changing goals of the tool and avoids the large scholarly debates about what is the theoretical function of the mechanism.<sup>46</sup>

While Freeman accepts the elements defined by Hayner, he argues that she left out some important elements of truth commissions. He explains that truth commissions are also commissions of inquiry whose main function is investigative.<sup>47</sup> While this is true, Hayner *does* explain in her second point that truth commissions are investigative. The only difference is that Hayner does not include commissions of inquiry within her boundaries.

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<sup>44</sup> Freeman, *Truth Commissions and Procedural Fairness*, 3-86.

<sup>45</sup> Hayner, *Unspeakable Truths*, 14.

<sup>46</sup> See Teitel, *Transitional Justice: Politics of Memory*, Chapter 4, 6, 7; Antonius C.G.M. Robben, "Testimonies, Truths, and Transitions of Justice in Argentina and Chile," in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, rev. ed., ed. Alexander Laban Hinton (New Brunswick: Rutgers University Press, 2011); Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge: Cambridge University Press, 2006) chapters 1, 3, 7.

<sup>47</sup> For each of the Freeman's contentions with Hayner's Definition, see Freeman, *Truth Commissions*, 14-16.

Second, Freeman argues that truth commission's focus on severe acts of violence or repression. Once again, however, Hayner also explains that the mechanism investigates a period of abuse. While she may not be so specific as to say *severe acts of violence*, her classifying the thing that is being investigated as "abuse" gives a broader parameter of what can be included. In the case of *The Missing Women Inquiry*, the women in the DTES have faced years of systemic abuse from the policing and political system and endured abuse from members of the community.

Third, Freeman claims truth commissions focus primarily on acts that occurred during recent periods of abusive rule or armed conflict. This element of Freeman's argument is slightly problematic for those who follow a broad definition of the term transitional justice because it excludes cases that are not in transition. Clearly he sees transitional justice as being limited to cases where an obvious violent action has occurred in a nation's past and does not see transitional justice occurring in non-transitional cases.<sup>48</sup> This can include the systematic discrimination against one group in society that may not have faced outright political violence, but instead may have been marginalized in society.

Lastly, Freeman argues that truth commissions are responsible for providing an account of the broad causes and consequences of the violations that occurred. Hayner also states this guideline in her third point, where she explains that the commission is responsible for submitting a report of the findings, therefore, she did not omit this element from her definition, which Freeman claims she does.

Freeman attempts to provide further detailed boundaries of what a truth commission and commission of inquiry are responsible. However, one of the reasons why Hayner's definition has

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<sup>48</sup> See previous chapter for information on non-transitional cases.

been so popular through the years is the very fact that her parameters can be applied to any truth commission or commission of inquiry regardless of what the mandate states or what theoretical function is expected to be achieved. This is one of the most important elements of *The Missing Women Inquiry* because it reveals the systemic discrimination toward a specific group of women in society and what has resulted from this marginalization. If *The Missing Women Inquiry* were to be compared to a classical case of transitional justice using Freeman's definition of a commission of inquiry, it would most likely not fit. For instance, *The Missing Women Inquiry* is not investigating a period of recent repressive rule. It is investigating the mistakes among the British Columbian police force and its lack of attention to a specific group of people.<sup>49</sup> Consequently, Hayner provides a definition that is workable to the broad scope of cases examined through truth commissions and commissions of inquiry.

Freeman and Hayner's analysis provides a more organizational approach to what truth commissions and commissions of inquiry do, whereas other scholars provide a more theoretical approach.<sup>50</sup> Ntsebeza argues that one of the most important roles truth commissions possess is that they restore civil and human dignity back to victims through the process of sharing their experiences of victimhood.<sup>51</sup> Ntsebeza argues that this exact process of story telling gives the victim a sense of relief when their stories are heard and acknowledged. She gives an example using a case of a woman during the South African Truth and Reconciliation Commission, where

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<sup>49</sup> Wally T. Oppal, "Forsaken."

<sup>50</sup> See authors: Teitel, *Transitional Justice*; Quinn, *Politics of Acknowledgement*; and, *Politics of Memory*.

<sup>51</sup> Dumisa B. Ntsebeza, "The Uses of Truth Commissions: Lessons for the World," in *Truth V. Justice: The Morality of Truth Commissions*, rev. ed., ed. Robert I. Rotberg and Dennis Thompson (Princeton, N.J.: Princeton University Press, 2000), 158-170.

the woman and her husband had endured severe torture and violence, and when she was finally able to tell her story, she claimed a feeling of relief.<sup>52</sup>

While this may be the case for some victims, others fear story telling, due to the possibility of re-traumatization. Many victims, after telling their stories, are left feeling damaged and traumatized. Hayner explains that for these victims, story telling opens their wounds and leaves them with nowhere to go to mend the pain.<sup>53</sup> While it may be beneficial to tell the story at the time, it can often result in lasting physical and emotional trauma long after the story has been told. Consequently, a number of psychological problems such as post-traumatic stress disorder can develop, leaving the victim in crippling pain with little to no assistance.<sup>54</sup> This reality among many victims discourages them from coming forward and telling their story, which leaves them in a lose-lose position. They want to tell their story and can feel a feeling of justice, but are often afraid to do so, since it can lead to re-traumatization with no guarantee of assistance afterwards. Consequently, truth commissions have often been accused of taking the approach to healing too simplistically.<sup>55</sup>

Minow explains that a society coming out of conflict needs to achieve eight different things in restoring society. She explains that these eight specific goals are best achieved through the use of truth commissions and commissions of inquiry:

1. Overcome communal and official denial of the atrocity; gain public acknowledgement

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<sup>52</sup> Ntsebeza, "The Uses of Truth Commissions," 169.

<sup>53</sup> Hayner, *Unspeakable Truths*, 152. See also, Brandon Hamber and Richard A. Wilson, "Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies," *Journal of Human Rights* 1, no.1 (2002): 35-53.

<sup>54</sup> Hayner, *Unspeakable Truths*, 145.

<sup>55</sup> Hayner, *Unspeakable Truths*, 141-144. See also Brandon Hamber, "Dealing with the Past and the Psychology of Reconciliation: The Truth and Reconciliation Commission, a Psychological Perspective," paper presented at the International Symposium on the Contributions of Psychology to Peace, June 27, 1995.

2. Obtain the facts in an account as full as possible to meet victims' need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators
3. Forge the basis for a domestic democratic order that respects and enforces systems devastated by violence
4. Promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence
5. Promote psychological healing for individuals, groups, victims, by standers and offenders
6. Restore dignity to victims
7. Punish, exclude, shame, and diminish offenders for their offenses
8. Accomplish the goals in ways that render them compatible rather than antagonistic with the other goals<sup>56</sup>

Minow's eight goals provide a well-rounded set of goals for societies coming out of conflict. She covers the need to rebuild social networks of relationships and the importance of the victims, perpetrators and the community's involvement. Minow's analysis is interesting, since she takes a different approach to defending why truth commissions are a useful mechanism. Minow outlines the arguments made by proponents of retributive justice over the use of restorative justice and truth commissions.<sup>57</sup> After acknowledging these arguments, she outlines what societies need to do to accomplish lasting stability and peace. She argues retributive justice cannot satisfy all of these goals. This is where her argument for the use of truth commissions takes hold; she claims that through the truth commission, all eight goals outlined above can be met. Therefore, Minow's arguments are important because she is claiming that truth commissions provide the most holistic approach to healing and restoring a nation back to sustainable peace than the more classical form

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<sup>56</sup> Martha Minow, "The Hope for Healing: What Can Truth Commissions DO?" in *Truth V. Justice: The Morality of Truth Commissions*, rev. ed., ed. Robert I. Rotberg and Dennis Thompson (Princeton, N.J.: Princeton University Press, 2000), 253.

<sup>57</sup> See Mary Albon, "Truth and Justice: The Delicate Balance- Documentation of Prior Regimes and Individual Rights," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 290-292 and Douglas W. Cassell Jr., "International Truth Commissions and Justice," in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, rev. ed., ed. Neil J. Kritz (Washington, D.C.: United States Institute of Peace Press, 1995), 326-335; *Politics of Memory*, Chapters 4 and 5.

of retributive justice. For her, trials and criminal prosecution only satisfy some elements of justice but do not incorporate the importance of creating lasting stability. This is important because if a nation is coming out of conflict, and all that is done to fix it is criminals trials, it still leaves the victims, the community and the perpetrators isolated from each other and does not prepare them for future interaction.

While these may be goals for a number of transitional justice cases, a major flaw in Minow's argument is that she assumes all transitional justice cases are instances where the state is in a major political regime transition.<sup>58</sup> Some may argue this assumption is not a flaw and is accurate since a transition must occur in order for transitional justice to take place.<sup>59</sup> In many ways, transitional justice has its starts in transitional cases, and non-transitional cases have recently adopted the use of its mechanisms and alter the classical definition of the field of study to allow non-transition cases to use transitional justice. For those who feel transitional justice has been co-opted by non-transitions, countries will maintain that the requirement of a political transition is essential. However, with this assumption, not all these goals are applicable to other types of cases such as non-transitional cases. For instance, Canada's *Missing Women Inquiry* is operating in a context without any kind of real political transition. Canada is not undergoing a significant regime change or coming out of a major societal conflict. Despite this, Minow's eight goals can still be applied.

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<sup>58</sup> Many authors point out that cases of transitional justice can be found when a country is not in a political transition. See Joanna R. Quinn, "Whither the 'Transition' of Transitional Justice?"; Hansen, "Transitional Justice: Toward a Differentiated Theory."; and, Arthur, "How Transitions Reshaped Human Rights."

<sup>59</sup> See chapter one.

For other authors, the element of reconciliation is one of the most important components in truth commissions and commissions of inquiry.<sup>60</sup> Charles Villa-Vicencio argues a theory of political reconciliation. For him, reconciliation and forgiveness are two separate things. Villa-Vicencio explains that reconciliation and forgiveness can take place on two separate levels, a personal and political level. He argues that the state is responsible for implementing political reconciliation, which he defines as practicing a sense of belonging and living with one another in harmony. Whereas, forgiveness, he argues, is what takes place on a personal level, for which the state is not responsible. Consequently, reconciliation is a more practical version of forgiveness that can be attained and built by the state through transitional justice mechanisms, whereas, forgiveness must take place from within the individual and cannot be fostered by the state.

Unlike Villa-Vicencio, Joanna Quinn takes a more accepting approach of the role forgiveness plays in truth commissions and transitional justice overall in her book *Politics of Acknowledgement*. Here, she argues that there is a strong causal link between acknowledgement and forgiveness, social trust, social cohesion and reconciliation.<sup>61</sup> She argues that accounting for past events through restorative justice and specifically truth commissions, the process of acknowledgement can take place. Therefore, in contrast to Villa-Vicencio, Quinn claims that once acknowledgement has taken place, forgiveness, social trust and civic engagement will likely follow and will eventually result in the development of social harmony and reconciliation.<sup>62</sup> Quinn does not argue that forgiveness takes place on a different level than reconciliation and is attainable and promotable by the state. Therefore, forgiveness is a key part

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<sup>60</sup> See Quinn, *Politics of Acknowledgement*; Charles Villa-Vicencio, "The Politics of Reconciliation," in *Telling the Truth: Truth-Telling and Peace Building in Post-Conflict Societies*, rev. ed., ed. Tristan Anne Borer (Notre Dame, Indiana: University of Notre Dame Press, 2006); Hayner, *Unspeakable Truths*; Roht-Arriaza and Mariezcurrena, "Transitional Justice in the Twenty-First Century."

<sup>61</sup> Quinn, *The Politics of Acknowledgement*, 15.

<sup>62</sup> *Ibid.*, 16.

of her overall argument toward restorative justice and does believe that forgiveness is possible and part of the reconciliation process.

Quinn's inclusion of forgiveness in her overall theory of acknowledgement and the role it plays in truth commissions ties nicely into *The Missing Women Inquiry*. It is often stated in Aboriginal culture that for healing to take place, there needs to be a holistic approach, where people can come together and acknowledge past wrongs and begin a process of forgiveness to move forward in their relationships in society. Given this is an Aboriginal expectation, it would be fitting to incorporate forgiveness in the overall theory, since for Aboriginals, forgiveness is a key element to social cohesion and restoration. Since *The Missing Women Inquiry* focuses on mainly missing Aboriginal women, it is important to incorporate Aboriginal lifestyle and belief systems into the healing process.

Llewellyn provides a strong argument surrounding the importance of restorative justice and its use in transitional justice. Restorative justice, she says, is not a different kind of justice, but embodies a different meaning of justice. With this, restorative justice has completely different goals that are achieved through the mechanism of truth commissions and commissions of inquiry. The role of truth telling argued by Ntsebeza and the importance of reconciliation argued by Quinn are two crucial arguments that support the use of truth commissions. Furthermore, despite Minow's assumption that the mechanism is used for societies coming out of a regime change, her use of eight points to justify the use of truth commissions over retributive justice to achieve lasting peace and stability demonstrates how truth commissions and commissions of inquiry fit into transitional justice overall.

## Conclusion

Truth commissions and commissions of inquiry are complex mechanisms used in restorative justice. Both speak to a greater goal of reconciliation and are part of a process of building societal foundations for which social cohesion can take root and develop. Despite debates surrounding the commission's moral element, as well as the hotly debated element of truth, commissions of inquiry and truth commissions have a beneficial contribution to the practice of restorative justice.

## Chapter 4

### Systemic Violations of Aboriginal Women's Rights: History and The Missing Women Inquiry

The Aboriginal experience in Canada has been plagued by the legacy of colonization and the Canadian population falsely constructing the Aboriginal identity. Aboriginals have been marginalized by discriminatory policies and attitudes originating with the British colonizers, and perpetuated by the Canadian government. As a result, there are a number of social, economic and political problems facing the Aboriginal community. This chapter explores the historical roots of marginalization and discrimination of the Aboriginal community in Canada and further explores the means by which such practices have been maintained.

The chapter is divided into two main theoretical explanations of *why* the Aboriginal community in Canada has been marginalized. First, the results of colonization have led to destructive education and legal systems that put the group as a whole in a subordinate position.<sup>63</sup>

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<sup>63</sup> Wendee Kubik, Carrie Bourassa and Mary Hampton, "Stolen Sisters, Second Class Citizens, Poor Health: The legacy of Colonization in Canada," *Humanity and Society* 33 (2009): 18-34.

Second, the social construction of the Aboriginal identity as inferior,<sup>64</sup> specifically for women, has manifested itself in the lasting image of the “squaw.”<sup>65</sup> Colonization and identity construction have led to discriminatory policies and resulted in marginalization within Canada, which in the case of *The Missing Women Inquiry*, has manifested itself in the distrust and, discriminatory actions of the RCMP.<sup>66</sup>

## Legacy of Colonization

The legacy of colonization can be seen in the discriminatory education system and the legal policies surrounding Aboriginals. The results of colonization have led to numerous socioeconomic problems, including high unemployment and poverty rates. The Indian Residential Schools led to a lack of Aboriginal language and culture retention, thus stripping the group of its traditional cultural identity.<sup>67</sup> Furthermore, the legal and political system in Canada has used government policies to put Aboriginal people in an inferior position in society, resulting in marginalization and exposing the group to an increased risk of drug and alcohol dependency, ultimately perpetuating their inferiority in society.<sup>68</sup>

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<sup>64</sup> Rosalyn Ing, “Dealing with Shame and Unresolved Trauma: Residential School and Its Impact on the 2nd and 3rd Generation Adults,” (PH.D. Dissertation, University of British Columbia, 2001); James R. Miller, *Shingwauk’s Vision: A History of Aboriginal Residential Schools* (Toronto: University of Toronto Press, 1996).

<sup>65</sup> Kerstin Knopf, “‘Stolen Sisters’: Discrimination and Violence Against Aboriginal Women as Represented in Canadian Films,” in *Aboriginal Canada Revisited*, rev. ed., ed. Kerstin Knopf (Ottawa: University of Ottawa Press, 2008), 365.

<sup>66</sup> See Meghan Rhoad, “Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia,” *Human Rights Watch* (USA: Human Rights Way, 2013) and Oppal, “Forsaken.”

<sup>67</sup> See Rhoad, “Those Who Take Us Away”; John H. Hylton, “Aboriginal Sexual Offending in Canada,” *Aboriginal Healing Foundation* (Ottawa: Aboriginal Healing Foundation 2002); Ing, “Dealing with Shame and Unresolved Trauma.”; Miller, *Shingwauk’s Vision*; Charles R. Brasfield, “Residential School Syndrome,” *BC Medical Journal* 43, no. 2 (2001): 78-81; and Marlene R. Alteo, “De-Colonizing Canadian Aboriginal Health and Social Services from the Inside Out: A Case-Study- The Ahousaht Holistic Society,” in *Aboriginal Canada Revisited*, rev., ed., ed Kerstin Knopf (Ottawa: University of Ottawa Press, 2008).

<sup>68</sup> See Sharon Payne, “Aboriginal Women and the Law,” *Aboriginal Perspectives on Criminal Justice* (1992), [http://192.190.66.70/media\\_library/publications/proceedings/16/payne.pdf](http://192.190.66.70/media_library/publications/proceedings/16/payne.pdf); Anne Poonwassie, “Grief and Trauma in Aboriginal Communities in Canada,” *International Journal of Health Promotion and Education* 44, no. 1: 29-33; K. Amanda Maranzan, Alice Sabourin and Christine Simard, “First Nations Women in Northern Ontario: Health,

## Residential Schools

Once the British gained control over the Aboriginal population, they enforced a system of assimilation to maintain a position of subordination and prevent the group from getting in the way of British colonial goals. As noted and acknowledged in the Royal Commission on Aboriginal Peoples:

In the first few decades of the life of the new Canadian nation, when the government turned to address the constitutional responsibility for Indians and their land... it adopted a policy of assimilation... it was a policy designed to move communities and eventually all Aboriginal peoples, from their helpless 'savage' state to one of self-reliant 'civilization' and thus to make in Canada but one community- a non-Aboriginal, Christian one.<sup>69</sup>

Edward Said explains that race is constructed to subordinate and control the colonized as a group.<sup>70</sup> While his theory is not referring specifically to Aboriginal groups, it can be used to explain why groups who were colonized in the past often face a lifestyle of quasi-colonization following their liberalization, due to the attitudes and policies established during the colonization period.<sup>71</sup> The construction of the Aboriginal race as "savage" was done strategically to simultaneously control the group and rationalize its actions toward the population. Said argues that colonization was supported by ideological formations that ensure those who are being colonized become controlled through an ideology and begin to believe they are inferior to the

Social, and Community Priorities," *The International Indigenous Policy Journal* 2, no.1 (2011): 5-16; and Kubik, Bourassa and Hampton, "Stolen Sisters, Second Class Citizens, Poor Health," 18-34. It is important to note that the scholarly literature is missing any counter-arguments or counter theories as to why or even *if* the Aboriginal community in Canada has been marginalized. The general consensus among scholars is that marginalization and discrimination has occurred in Canada toward Aboriginal peoples. As such, the theories discussed in this chapter all come from sources that are either funded or associated with the Aboriginal communities in Canada and throughout the world. Therefore, it is important to note that the literature reviewed comes with a bias. In an attempt to counter this bias by searching for opposing views, the research has come up short, demonstrating that the topic of Aboriginal discrimination is not a "hot topic" among some of the more mainstream Political Science literature.

<sup>69</sup> Hylton, "Aboriginal Sexual Offending in Canada," 11.

<sup>70</sup> Kubik, et. al, "Stolen Sisters," 21, see also Meredith Cherland and Helen J. Harper, *Advocacy Research in Literacy Education: Seeking Higher Ground* (New Jersey: Lawrence Erlbaum, 2007).

<sup>71</sup> Kubik, et. al, "Stolen Sisters," 21,

colonizers. This is important because it provides the foundation for the British and Canadian governments' reasoning to purposefully discriminate against the group and can be seen as the starting point for the development of prejudices against Aboriginals in Canada.

Education became a main tool in undermining Aboriginal culture, belief systems, and learning techniques. The European learning system was at odds with the Aboriginal style of education. To assimilate the Aboriginals, the government believed that it needed to strip Aboriginal people of their identity and cultural traditions and give them new ones that mimicked that of the Europeans.<sup>72</sup> The Canadian government established Indian residential schools, which were designed to "take the Indian out of the child."<sup>73</sup> These schools operated from 1876 until 1996 and were a place of physical, sexual, psychological and emotional abuse. Aboriginal children were taken from their homes and forced into these residential schools, which were often run by Christian churches, with the primary goal to strip any cultural affiliation with Aboriginality, and inject European culture. Within the schools, the Aboriginal children faced severe abuse from teachers, headmasters, and other workers within the institution. The children were forced to abandon their identity and taught that their culture was wrong and inferior to that of the Europeans.<sup>74</sup> However, a major problem was that the children never fully assimilated into the European culture and were instead left without either identity. They were isolated from their own traditional culture and were rejected by the European Canadian culture since the group had always been viewed as subordinate and "savage" in comparison. This is significant because the

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<sup>72</sup> Hylton, "Aboriginal Sexual Offending in Canada," 10.

<sup>73</sup> Ward Churchill, *Kill the Indian, Save the Man* (San Francisco: City Lights Books, 2004).

<sup>74</sup> See "History," <http://www.irsss.ca/history/>; Rosemary L. Nagy, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission," *The International Journal of Transitional Justice* (2012); and Marc A. Flisfeder, "A Bridge to Reconciliation: A Critique of the Indian Residential School Truth Commission," *The International Indigenous Policy Journal* 1, no.1 (2010).

schools institutionalized the identity of inferiority and systematically promoted discrimination through lasting government policy.

Not only did the residential schools traumatize and destroy a part of the Aboriginal culture and identity, these schools also increased the discrimination among the rest of Canada toward the Aboriginal culture, since Aboriginal culture was seen as needing to be changed and was often characterized as bad. Consequently, while the schools were supposed to be assimilating the Aboriginal population into the greater Canadian population, instead these schools served to further isolate the Aboriginal population, due to the discriminatory position that the residential schools represented. These actions and attitudes placed the students of these schools into a subordinate place in society, while, simultaneously destroying the Aboriginal culture.

Many people argue that the legacy of residential schools inflicted serious psychological trauma among the Aboriginal population, which has resulted in an increased tendency to turn to destructive behaviour, such as abuse of drugs and alcohol.<sup>75</sup> Alteo argues that Aboriginal people began to “self medicate” with drugs and alcohol and partake of other destructive diversions as an attempt to quiet the internal trauma the group has felt for over a century.<sup>76</sup> The violence experienced within the residential schools was carried by victims long after leaving the school and was brought back to the Aboriginal communities where the cycle of violence and destructive behaviour continued among generations.<sup>77</sup>

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<sup>75</sup> See O'Connor and O'Neal, *Dark Legacy: Aboriginal Conditions: research as a Foundation for Public Policy*, rev. ed., ed. Jerry P. White, Paul S. Maxim and Dan Beavon (Vancouver: UBC Press 2003); *Aboriginal People and Other Canadians: Shaping New Relationships*, rev. ed., ed. Martin Thornton and Roy Todd (Ottawa: University of Ottawa Press, 2001); Rhoad, “Those Who Take Us Away,” and Maranzan et. al. “First Nations Women.”

<sup>76</sup> Alteo, “De-Colonizing Canadian Aboriginal Health,” 34.

<sup>77</sup> See Oppal, “Forsaken,” and Jo-Anne Fiske, “Boundary Crossings: Power and Marginalization in the Formation of Canadian Aboriginal Women’s Identities,” *Gender and Development* 14, no. 2 (2006): 247-258.

This is particularly important for *The Missing Women Inquiry* because it demonstrates one of the starting points to their addictions to drugs and alcohol. Many Aboriginal women, whether or not they were part of the residential schools, come from a community where drugs and alcohol run rampant as a result of the abuses their wider families suffered in the residential schools and often fall victim to these vices to deal with poverty, abuse and family problems caused by the residential school systems.<sup>78</sup> A number of these women flocked to the DTES to feed their addictive habits and often turned to prostitution as a way to survive and pay for their addiction. It is these women who fell victim to a number of murders and disappearances that the Commission sought to investigate.<sup>79</sup> Therefore, the legacy of the residential schools had a lasting effect in prompting these women to turn to a risky lifestyle, which ultimately led to their demise.

Overall, the Indian Residential Schools system institutionalized a belief system that made discrimination and marginalization against Aboriginal groups in Canada acceptable. It forced the loss of cultural identification and made associating with Aboriginal culture taboo and unacceptable, while simultaneously excluding the Aboriginal peoples from the wider Canadian population. Consequently, many Aboriginal people were isolated from Canadian culture, which enabled many Canadians to simply ignore them and their associated problems. This, in turn, made Aboriginal people, more susceptible to destructive behaviour, which perpetuated the wrongfully constructed identity of the group as “savage.”

## Social Construction of Identity

In addition to the legacies of colonization, the social construction of Aboriginal identity as inferior, subordinate, and taboo has played a crucial role in the group’s marginalization and

**Comment [JQ1]:** Leah, I’m not sure what happened here: I tried to delete the subtitle, and the section formatting changed too. The section number is fine, but delete the subtitle.

<sup>78</sup> See O’Connor and O’Neal, *Dark Legacy*, and Flisfeder, “A Bridge to Reconciliation.”

<sup>79</sup> Oppal, “Forsaken.”

discrimination. The Canadian government used the colonization process to create a negative image of Aboriginals to gain control over the group and keep them in a subordinate position within Canadian society. Even when colonization ended, the lasting effects of the colonization process were maintained through the identity that was constructed by the rest of Canada.

White and Maxim argue that communities are social constructions, built through the interaction of human actors with each other and with their environment.<sup>80</sup> As such, a community is both a physical entity and a relationship between organizations, institutions, structures of customs and patterns of everyday life. White and Maxim argue that these networks are products of the interrelationships held within the community and thus the interrelationships can produce cohesion and solidarity or discord and disunity.<sup>81</sup> Therefore, depending on the relationship between individuals and their environment, the stability of the community can vary. For example, the relationship between Aboriginal people, organizations and institutions has had a negative effect on the construction of their community and their place in the larger Canadian community. Within the Canadian institutional environment, Aboriginal people have been restricted to freedoms experienced by the rest of Canada and given an identity of inferior through discriminatory policies. Consequently, the community that has been constructed in Canada represents one of discord and disunity between Aboriginals and non-Aboriginals due to the segregating policies instituted and perpetuated by the Canadian government. This is important because it challenges the ability to overcome the false identities constructed and work toward a cohesive relationship.

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<sup>80</sup> Jerry P. White and Paul S. Maxim, "Social Capital, Social Cohesion, and Population Outcomes in Canada's First Nations Communities," in *Aboriginal Conditions: research as a Foundation for Public Policy*, rev. ed., ed. Jerry P. White, Paul S. Maxim and Dan Beavon (Vancouver: UBC Press 2003), 7.

<sup>81</sup> Ibid.

LaRocque similarly argues that many colonizers try to rationalize their actions, which has resulted in the production of an overwhelming body of dehumanizing images and perceptions of the Aboriginal identity, so as to legitimize the treatment of the group.<sup>82</sup> She explains that colonizers require a system of thought and representation to mask their oppressive behaviour; therefore, they require an ideology to legitimize and entrench unequal power relations set up by the overall colonization process.<sup>83</sup> For example, Memmi claims that a Colonizer characterizes himself as a “usurper who ‘need[s]...’ to absolve himself’ of the wrongs commit to achieve victory and therefore endeavours to falsify history... anything to succeed in transforming his usurpation into legitimacy.”<sup>84</sup> The colonizer creates a dichotomy in identity to show good/bad, civilized/savage, and superior/inferior. This is important because it demonstrates how the Aboriginal identity was created strategically and wrongfully as a means to legitimize the actions the government committed against the group. Moreover these theories identify where the discriminatory practices and prejudiced attitudes have originated in Canada.

Specifically for *The Missing Women Inquiry*, the false image of the “squaw” has played a key role in the disregarding Aboriginal women. In the Algonquin language, “squaw” is translated to “woman” but white culture has appropriated the term to mean, “squaw drudges, tawny temptress, loose,” thus associating them as sexual deviants.<sup>85</sup> The stereotyping of Aboriginal women as “squaws” promotes the stereotype of “Indian trash,” which, Knopf argues, is germinated and nourished in colonial discourse that fosters disrespect, chauvinism and sexism.<sup>86</sup> Consequently, Aboriginal women not only face economic instability and political discrimination

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<sup>82</sup> LaRocque, *When the Other is Me*, 37.

<sup>83</sup> Ibid.

<sup>84</sup> Albert Memmi, *The Colonizer and the Colonized* (Boston: Beacon Press, 1957), 52-53.

<sup>85</sup> Knopf, “‘Stolen Sisters,’” 365.

<sup>86</sup> Ibid.

caused by government policies, but they also must battle the misperception of being “trash.” Unfortunately, the discriminatory policies against them put Aboriginal women at an increased risk of partaking in dangerous behaviour to deal with the social and economic marginalization, and often, Aboriginal women turn to the sex trade to feed addiction habits, many of which are caused by psychological problems.<sup>87</sup> Since more Aboriginal women are at a higher risk of being subjugated due to their race, they tend to be overly represented among sex workers, which perpetuates the image of “Indian trash” and “squaw.” Furthermore, Aboriginal women are at a heightened position of violence due to the social stigmatization and condition of work in which they participate.<sup>88</sup> Aboriginal women are also at a greater risk of violence due to the ethnic stigma.<sup>89</sup>

This is crucial to understanding *The Missing Women Inquiry* because it exposes how the degrading images of Aboriginal women developed and helps to identify some of the causes why mainly aboriginal women went missing and continue to be murdered in the DTES. There are more Aboriginal women in the slum because poverty and discriminatory socioeconomic policies have brought them to the area, which accepts the reality of the practice of prostitution for the women to survive in the neighborhood. Since Aboriginal women are the dominant ethnic group among prostitutes in the DTES, Aboriginal women in general are more likely to be participating in work that is dangerous and incredibly violent. All this can be summarized in a simple multi-step cause and effect flow that demonstrates the complexity of the cycle of discrimination and ultimately violence:

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<sup>87</sup> Knopf, “‘Stolen Sisters,’” 366. See also, O’Connor and O’Neal, *Dark Legacy* and Oppal, “Forsaken.”

<sup>88</sup> Knopf, “‘Stolen Sisters,’” 366.

<sup>89</sup> *Ibid.*

(Colonization + discriminatory government policy + racism) = (loss of identity + instability + poor self image) = (destructive behaviour + perpetuating stereotypes) = (poverty + risky Behaviour) = **Higher chance of violence**

This diagram demonstrates how the past still has an effect on the future, and that while colonization may be over, the legacy of the discriminatory practices and prejudicial attitudes that occurred have left wrong ward-effects on the social, economic and political system within Canada. These consequences perpetuate the images of Aboriginals developed during colonization when such images were used to legitimize the treatment of the Aboriginal populations. Overall, the Aboriginal identity that was constructed by the greater Canadian population has promoted the discrimination and abusive treatment against the Aboriginal population as a whole. It is from within this identity and position in society that Aboriginal people, specifically women, must fight to change and overcome. This is what was supposed to be achieved through *The Missing Women Inquiry*.

### Results of Colonization and Identity Construction in Context of MWI: RCMP and Legal System Discrimination

**Comment [JQ2]:** Again, the numbering is fine—but because I screwed up above, it seems to want to change it.

A main issue *The Missing Women Inquiry* investigated was the abuse and neglect experienced by Aboriginal women by the RCMP and the legal system. This abuse was a result of the merging of the two major causes of their marginalization and discrimination: the legacy of colonization and identity construction.<sup>90</sup>

The violence that Aboriginal women have endured both directly and indirectly by the policing and legal systems in Canada is substantial. The RCMP has been accused directly of

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<sup>90</sup> See O'Connor and O'Neal, *Dark Legacy: Aboriginal Canada Revisited*, rev. ed., ed. Kerstin Knopf; LaRocque, *When the Other is Me*; and, Jim Harding, "Policing and Aboriginal Justice," *Canadian Journal of Criminal* 33 (1991): 362-383.

abusing many Aboriginal women and girls in rural British Columbia.<sup>91</sup> With the exposure of *The Missing Women Inquiry*, more complaints have surfaced among Aboriginal communities that date back forty years. These actions and attitudes held by the justice system and police forces in Canada are directly related to the legacy of colonization and the identity constructed by the rest of Canada. It may seem as though residential schools are a thing of the past. They are, in practice, however, still felt; many of the women that are currently being victimized are products of the surge in Indian residential school admittance during the 1960s.<sup>92</sup> Not only are they victims of the residential schools but so also are their parents and grandparents, thus instilling a cycle of violence and destructive behaviour in the family structure. O'Connor and O'Neal argue that the residential school experience traumatized the Aboriginal community so much that victims often turned to drugs and alcohol to cope with the memories.<sup>93</sup> This addictive vice often promoted violence in the household since it is a common side affect of addiction. Therefore, the Aboriginal women did not only face violence from the colonial structures of education, but were then exposed to severe violence once returned home. This consequently, destroyed their self-esteem and self-worth and opened them up for addiction and exposure to violent acts.

Moreover, as demonstrated above, many perceived the victims of violence as “Indian trash” and prostitutes, even in cases where they were not affiliated with that profession. These wrongfully constructed identities allowed the police force and the legal system to rationalize why this group of women has fallen through the cracks within Canada and justified the actions committed against them. It is within this context of colonial systemic discrimination and ill-conceived identities that Aboriginal women must fight for attention and respect. This is

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<sup>91</sup> Rhoad, “Those Who Take Us Away.”

<sup>92</sup> *Ibid.*, 34-43.

<sup>93</sup> *Ibid.*, 39-41.

important because it demonstrates what systemic issues of bias and neglect that *The Missing Women Inquiry* tries to address.

## The Missing Women Inquiry

Comment [JQ3]: Same as above.

*The Missing Women Commission of Inquiry* is an excellent example of a transitional justice mechanism being implemented in a consolidated democracy. Like other uses of transitional justice mechanisms under the classical definition, *The Missing Women Inquiry* sought to identify, address, examine, analyze and make recommendations regarding human rights violations, with the goal of improving the lives of citizens. However, it was invoked in a country that was and is not in transition.

### Logistics, Goals and Background on Inquiry

The Lieutenant Governor of British Columbia, who issued an Order in Council to establish an inquiry into the many missing and murdered women in British Columbia Canada, established *The Missing Women Commission of Inquiry* on September 27, 2010.<sup>94</sup> Wally Oppal, who served as Attorney General of British Columbia from 2003-2009, was named the Commissioner of the Inquiry. The Commission operated from September 27, 2010 until November 30, 2012.<sup>95</sup>

During this period, the Inquiry investigated and researched the lives of the missing women and the general attitude toward and treatment of these women by police when dealing with reports of missing women from underprivileged economic classes in British Columbia. While the Inquiry dealt primarily with police shortcomings, it discovered the systemic discrimination and

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<sup>94</sup> "About the Commission," *Missing Women Commission of Inquiry*, May 26, 2013, <http://www.missingwomeninquiry.ca>.

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

marginalization of Aboriginal women in the province, which contributed to the neglect of these women from the police and the courts in British Columbia.

The appointment of the Commission was triggered by the Robert Pickton murder investigation, as well as a growing awareness of events occurring on what is referred to as The Highway of Tears.<sup>96</sup> The Robert Pickton case was a murder investigation into Canada's most infamous serial killer. Pickton lived on a farm and often bought prostitutes back to his house to be murdered.<sup>97</sup> The actual number of victims is still unknown; however, Pickton has been convicted of the murder of at least six women and is suspected of killing an additional twenty other women.<sup>98</sup>

Pickton found his victims in a specific area of Vancouver known as the Downtown Eastside (DTES), where drugs, alcohol and prostitution are a common sight. The intersection of Main and Hastings marks the heart of suffering within the inner city<sup>99</sup> and the commonality of violence and deprivation within this area of Vancouver, which is unfortunately home to many Aboriginal women. These women come from rural British Columbia to escape the small rural towns where little opportunity to flourish exists, in the hope of finding more opportunities within the city of Vancouver. Many of these women resort to selling sex to feed their addictions or just to survive. The health conditions of the DTES are so desolate that the City of Vancouver Health Department declared a public health emergency in response to reports that HIV infection rates among residents exceeded that of anywhere else in the "developed" world.<sup>100</sup>

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<sup>96</sup> "About the Commission," <http://www.missingwomeninquiry.ca>.

<sup>97</sup> O'Connor and O'Neal, *Dark Legacy*, 72-96.

<sup>98</sup> "Pickton Investigation to be Reviewed by B.C.," *CBC News*, May 27, 2013, <http://www.cbc.ca/news/background/pickton/>.

<sup>99</sup> Dara Culhane, "Their Spirits Live Within Us: Aboriginal Women in Downtown Eastside Vancouver Emerging into Visibility," *The American Indian Quarterly* 27, no. 3&4 (2003): 594.

<sup>100</sup> *Ibid.*, 594.

In addition to the Pickton murder case, the “Highway of Tears” also played a role in the development of the Commission. The road itself is formally known as Highway 16, and spans approximately 724km across British Columbia. The highway was given this name because of the number of missing and murdered women and girls that have been targeted along its length.<sup>101</sup> The RCMP counts eighteen murders and disappearances along the highway, but indigenous communities’ estimates are significantly higher. This is because the RCMP follows a strict guideline that disappearances or murders must have been committed within one mile of the highway.<sup>102</sup> Of the eighteen women included in the RCMP statistics, ten are Aboriginal. This demonstrates that even in official statistics, Aboriginal women constitute the majority of victims.<sup>103</sup>

### Theories of Discrimination and Marginalization: Why Aboriginal Women?

While the Commission was not convoked to address an isolated event, it was tasked with accomplishing specific goals surrounding some key instances that are crucial to the missing and murdered women in British Columbia. This is important because it demonstrates that the matters being addressed are not a one-time issue, but commonly occur in Vancouver, thus providing reason for the development of the Commission to address a prolific problem in British Columbia. The missing and murdered women were not a result of one serial murderer, but were effectively the result of years of neglect by society and the police, which has put Aboriginal women at an increased risk of violence. The goal of the Commission was to explore this reality and produce findings as to why this is the reality.

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<sup>101</sup> Rhoad, “Those Who Take Us Away,” 35.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid., 36.

**Comment [JQ4]:** Sorry, Leah, I messed up your font!

## Background of the Women/Victims

It is important to note that the events considered by *The Missing Women Inquiry* were not isolated events and therefore, all of them must be situated and assessed relative to a larger picture. This picture is one of ignorance, marginalization, racism, discrimination and apathy toward a specific group within Canada. The mandate of the Commission acknowledges that many women go missing and murdered every year; however, the focus of “Forsaken” is Aboriginal women.<sup>104</sup> As detailed above, Aboriginal women experience higher levels of violence than any other group of women in Canada and are thus disproportionately represented in the number of missing and murdered women across Canada. Several authors provide their arguments as to why Aboriginal women are at such a heightened risk.<sup>105</sup>

Culhane uses the Valentine’s Day Women’s Memorial March to illustrate what she argues is a “regime of disappearance” to explain the swollen numbers of missing and murdered Aboriginal women. She argues that the annual march which is intended to bring awareness of the missing and murdered women from the DTES, gives practical expression to a complex process of which Aboriginal women from the area are trying to change the way people view them.<sup>106</sup> Often the women line the streets carrying large posters and pictures of missing women advocating that the victims are not simply prostitutes and drug addicts but are also mothers, daughters and sisters. In an attempt to humanize those in society who are often overlooked, the March provides an avenue of advocacy for Aboriginal women to alter society’s opinion of them.

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<sup>104</sup> Rhoad, “Those Who Take Us Away,” 7.

<sup>105</sup> See Ing, “Dealing with Shame and Unresolved Trauma,”; O’Connor and O’Neal, *Dark Legacy; Aboriginal Canada Revisited*, rev. ed., ed. Kerstin Knopf; LaRocque, *When the Other is Me*; and, Jim Harding, “Policing and Aboriginal Justice,”; Memmi, *The Colonizer and the Colonized*.

<sup>106</sup> See Appendix A for Flyer.

Culhane argues that the women's goal is to "critique and redefine a dominant representation of Aboriginal women that is deeply embedded in Canadian colonial history and culture."<sup>107</sup>

It is this struggle to escape the media representation of sex, drugs, crime and violence, Culhane argues, constitutes a "regime of disappearance." She takes this theory from Goode and Maskovsky, who coined the term to describe a neo-liberal mode of government that selectively marginalizes categories of people through strategies of representation that include, silences, blind spots, and displacement that have a material and symbolic effect.<sup>108</sup> By over representing Aboriginal women in Canada in such a negative light, Culhane argues that the government is able to systematically undermine the group and place the blame not on the government but on the group itself for getting in such a state of disarray.<sup>109</sup> Therefore, through this regime of disappearance, the government is able to put the blame on the victim and keep them in a position of marginalization and discrimination through media misrepresentation, thus taking the power away from the group to fight back. In reference to the colonial history of Aboriginal people in general within Canada, these people faced severe subjugation as a way to assimilate and isolate the group simultaneously through residential schools and the reserve system. Consequently, the group was stripped of its culture, abused and forced to live in shame, only to be finally rejected by the Canadian public at large. Therefore, the group was left in a place of limbo between two cultural identities and within a regime of disappearance. Consequently, the Aboriginal women in the DTES become criminalized and are no longer seen as victims. It is from this identity that the women of the DTES must struggle for visibility.<sup>110</sup>

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<sup>107</sup> Culhane, "Their Spirits Live Within Us," 592.

<sup>108</sup> *The New Poverty Studies: The Ethnography of Power, Politics, and Impoverished People in the United States*, rev. ed., ed. Judith Goode and Jeff Maskovsky (New York: New York University Press, 2001).

<sup>109</sup> Culhane, "Their Spirits Live Within Us," 595.

<sup>110</sup> *Ibid.*, 596.

One of the main arguments used to explain why Aboriginal women are at an increased risk of violence is that they are seen as “easy prey.”<sup>111</sup> Commonly, people blame the lifestyle of the victims, claiming that they put themselves at risk by participating in the sex trade. While this may be true, as mentioned above, these women often turn to the sex trade out of desperation to survive and not by choice. Taking a slightly different approach, the legal role of prostitution laws also put Aboriginal women in danger. Prostitution laws in Canada contribute to acts of violence against sex workers.<sup>112</sup> In Canada, prostitution is theoretically legal but practicing it is not. Under section 213 of 1986 Criminal Code the emphasis is on the arrest of a prostitute rather than the health and safety of the workers.<sup>113</sup> Therefore, there is a quasi-regulation of sex work, which has allowed workers space to operate, but has left them without any protection under the law.<sup>114</sup> This ultimately leads to a two-tiered system that criminalizes prostitution but simultaneously tolerates it. Communication with prostitutes itself can lead to arrest, both of the prostitute and of the potential client. This arrest and subsequent police record gives a negative stigma against prostitutes as engaging in deviant behaviour, which can lead both the public and police to feel justified in perpetuating violence towards prostitutes. RCMP Human Trafficking Awareness Coordinator, Marty Vandoren, states that Aboriginal women are the number one group represented in prostitution and sex-trafficking alike, acknowledges this problem.<sup>115</sup> Aboriginal women are often trafficked since these women are seen as easy prey, due to the lack of attention

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<sup>111</sup> Kate Shannon, “The Hypocrisy of Canada’s Prostitution Legislation,” *The Canadian Medical Association Journal* 182, no. 12(2010): 1388

<sup>112</sup> Shannon, “The Hypocrisy of Canada’s Prostitution Legislation,” 1388.

<sup>113</sup> Hoda Malakouti-Nejad, “Sexual Trafficking in the Canadian Context: Exploring the Political Landscape, Examining Discourse, and Identifying Health Issues Among Women with Lived Experience,” (Masters Thesis, Western University, 2012), 62.

<sup>114</sup> *Ibid.*

<sup>115</sup> Marty Vandoren, Human Trafficking Awareness Coordinator “O” Division, interview with author, 21 March 2013, London, Ontario.

provided when Aboriginal women are reported missing and the common argument that these women simply ran away.<sup>116</sup> This is important to *The Missing Women Inquiry*, since a number of the women who went missing were active participants in the sex trade and fell victim to the criminalization of their profession making them vulnerable to abuse.

Jodi Beniuk puts forward an interesting theory as to why Aboriginal women fall victim to violence and the lack of attention to the issue. Beniuk uses Simone de Beauvoir's theory of women as the "Other" and Albert Memmi's theory of the relationship between the colonizer and the colonized to analyze why there has been a lack of attention to the number of missing and murdered Aboriginal women.<sup>117</sup> Simone de Beauvoir argues, in her piece *The Second Sex*, which women are in a position of inferiority because they are seen as the "Other." They are a direct representation of what they are not, in this case- man. She explains that "man is represented both as the positive and the neutral, as is indicated by the common use of man to designate human beings in general, whereas women represent only the negative, defined by limiting criteria."<sup>118</sup> Consequently, women's identity is reduced to what they are not. This creates an inferior identity, wherein people can justify the poor treatment of women since they are seen often as objects.<sup>119</sup> Similarly, Albert Memmi explains that the "colonized" identity is characterized by how "they did not measure up to the standards of the colonizer."<sup>120</sup> Furthermore, the colonized is never characterized as an individual, thus causing a blanketing effect over the entire race. Beniuk describes the way Aboriginal women are "othered" both as Aboriginal people and as women in context with the twenty-six women murdered in the DTES. She claims that the negligent police

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<sup>116</sup> Vandoren, Human Trafficking Awareness Coordinator "O" Division.

<sup>117</sup> Jodi Beniuk, "Indigenous Women as the Other: An Analysis of the Missing Women's Commission of Inquiry," *The Arbutus Review* 3, no. 2 (2012): 80-97.

<sup>118</sup> *Ibid.*, 82.

<sup>119</sup> *Ibid.*, 83.

<sup>120</sup> Memmi, *The Colonizer and the Colonized*, 85.

investigations, as well as the misogynistic attitudes of the police, demonstrate how “othering” operates in these institutions. Furthermore, Beniuk argues that Aboriginal women face violence due in large part because of their double “othering.” Many simply blame these women’s lifestyles<sup>121</sup> (drugs, alcohol and prostitution) as a cause of their deaths, which may have put these women at a heightened risk; however, the important aspect to acknowledge is what brought these women into this lifestyle.<sup>122</sup>

These are just some of the theories as to why Aboriginal women have fallen victim to such horrible crimes within the DTES. However, all instances demonstrate the targeting of Aboriginal women for crimes of brutality. The report counts sixty-seven women under the specific definition outlined in the Terms of Reference section of what counts as a “missing women investigation”<sup>123</sup> even though there are many more women missing.

## Conclusion

Canadian history has been plagued with the legacy of discriminatory colonization policies that have left shadows on the Aboriginal culture. The effects of colonization experienced through marginalizing government policies and residential schools have placed Aboriginal people, specifically Aboriginal women in a position of vulnerability. The legacy of this prejudice has placed Aboriginal women at a lower level in society making them susceptible to poverty, poor education, destructive behaviour and violence. Moreover, the Aboriginal identity that was constructed by Canada put forward an image of Aboriginals as “Indian Trash” and of

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<sup>121</sup> See O’Connor and O’Neal, *Dark Legacy; Aboriginal Canada Revisited*, rev. ed., ed. Kerstin Knopf; LaRocque, *When the Other is Me*; and Rhoad, “Those Who Take Us Away.”

<sup>122</sup> Oppal, “Forsaken,”

<sup>123</sup> The Terms of Reference identifies “missing women investigation” as: the investigation conducted between January 23, 1997-February 5, 2002, by police forces in British Columbia Respecting women reported missing from the Downtown Eastside of the city of Vancouver, see Wally Oppal, “Forsaken,” 28.

Aboriginals as “inferior,” thus rationalizing and legitimizing the treatment Aboriginals experienced. Moreover, even after policies of colonization had ended, the perception of Aboriginals in Canada still largely resembles that during the period of colonization. This image has been perpetuated through the cycles of marginalization that have been systematically instituted in the Canadian governmental and socio-economic systems. This provides the backdrop for the explanation and reasoning behind why the Aboriginal women of the DTES fell victim to the crimes of serial killers, and neglect from the policing and legal systems within the province of British Columbia.

## Chapter 5

### Analysis: Was The Commission Successful?

Evaluating the effectiveness of *The Missing Women Inquiry* is a difficult task. There are a number of different ways and guidelines under which to conduct an analysis of the Commission; this chapter will evaluate the Inquiry based on the guidelines outlined in Chapter Two,<sup>124</sup> which lays out a common rubric for which to analyze the effectiveness of any particular truth commission or commission of inquiry.

It is important to note that in an attempt to make the analysis well rounded and provide counter arguments that suggest the Commission was as a success, the research fell short. After surveying databases of scholarly resources, the research was unable to come across any credible sources that would be able to provide different accounts as to the success of the Commission. There are three possible explanations for this finding. Either the lack of conflicted research

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<sup>124</sup> Chapter two goes through guidelines of a successful truth commission based on Freeman and Hayner’s analysis. Their parameters are operational and more instruction based. Also within chapter two, the more theoretical goals of truth commissions are addressed. These theoretical elements will also act as a guideline to determine the effectiveness of a truth commission based on how well it delivers the goals of restorative justice.

demonstrates that it is widely acknowledged the Commission was unsuccessful, or scholarly the Commission is not a popular topic of interest within the greater community. A third possibility is that it is simply too soon for this analysis to have come to publication. Therefore, the analysis provided within this chapter evaluates its effectiveness against well-founded theories of what a truth commission ought to do, instead of relying on someone else's scholarly analysis. The research does acknowledge that the sources that argue the Commission was a failure came from scholarly sources; however, it is important to keep in mind the potential bias inherent in these sources, since all of them argue that the Commission has been a failure.

### Freeman and Hayner: An Analysis

As detailed above, Freeman and Hayner provide a generalizable evaluative framework that can be used to evaluate the effectiveness of truth commissions and commissions of inquiry. Their guidelines are useful in that they are by no means too "commission specific" and can be applied to a variety of truth commissions and commissions of inquiry without excluding either. They outline four key parameters to determining the success of these transitional justice mechanisms.<sup>125</sup>

#### Did it look at a period of recent repression?

*The Missing Women Inquiry* focused on a period of repression of Aboriginal women outlined in the Terms of Reference between 1997 and 2005. This type of repression was not as widespread as other truth commissions seek to address, such as a mass genocide, but did address the repression experienced by a specific group in Canada whom have undergone repression for years. *The Missing Women Inquiry* looked at the culmination of the effects of being repressed,

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<sup>125</sup> For a detailed list of these evaluative tools, see pages 19-26 in Chapter two, above.

which as outlined in the Commission, resulted in a number of missing and murdered First Nations people.<sup>126</sup>

Freeman's definition of repression is directly related to the pre-transition period of authoritarian rule.<sup>127</sup> Using this lens, *The Missing Women Inquiry* does not fit; however, Hayner does not limit the experience of repression and abuse to a pre- transition period.<sup>128</sup> As explained in chapter two, above, Hayner's decision to omit this limiting factor from the guidelines was strategic to allow for the inclusion of transitional justice cases. Moreover, the Aboriginal community in Canada, as demonstrated in chapter three, above, has experienced severe repression and abuse by the state and thus qualified under the guidelines of truth commissions.

This is an excellent reason why following a broad definition of transitional justice is beneficial. It allows consolidated democracies to be included under the umbrella of transitional justice since as demonstrated by this current case, even they have to address periods of abuse from the past. *The Missing Women Inquiry* illustrates that even consolidated democracies that are supposed to represent the highest form of justice, and have an impartial legal system are still susceptible and willing participants of actions commonly associated with authoritarian regimes (racism, bias, corruption).<sup>129</sup> Therefore, transitional justice is still very much needed in societies perceived to be the end goal of transitional justice by those who hold a classical definition of the field. Consequently, even though Canada is not addressing a period of recent repression due to injustices created under the power of an *authoritarian* regime, the country still fulfills the

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<sup>126</sup> For more information see Chapter three and for the full Terms of Reference and lists of recommendations form the Commission see, Wally T. Oppal, "Forsaken: The Report of The Missing Women Commission of Inquiry- Executive Summary," 5 which can be accessed electronically, <http://www.missingwomeninquiry.ca/obtain-report/>.

<sup>127</sup> Freeman, *Truth Commissions*, 14-16

<sup>128</sup> Hayner, *Unspeakable Truths*, 14.

<sup>129</sup> *The Politics of Memory* and Teitel, *Transitional Justice*.

broader definition of transitional justice set out in chapter one as it is addressing a period of historical abuse.

### Did the Commission Address Severe Acts of Violence?

This Commission did look at the severe acts of violence committed by the serial killer Robert Pickton and the violence that has been occurring along the Highway of Tears over many years.<sup>130</sup> While these acts of violence were not committed by the state, the Commission reveals that these incidents could have been stopped and have been neglected by the state, which ultimately allowed the acts of violence to continue. As such, the actions of the state tie it, albeit indirectly, to the causes of violence experienced by Aboriginal women in British Columbia.

One important thing to note is that this Commission failed to look at broader cases of violence against Aboriginal women within Canada and British Columbia. Due to the Commission's incredibly narrow mandate and Terms of Reference,<sup>131</sup> it was unable to address the many other and significant acts of violence against Aboriginal women that were in fact committed directly by the state. Therefore, by having a narrow mandate the effectiveness of the Commission was ultimately hindered and the ability for the Commission to ultimately succeed was limited. Had wider Terms of Reference been developed, more Aboriginal women would have been represented in the Commission and it would have successfully targeted the violence toward the group committed by individuals, but also the violence committed by the state, which is a main component of transitional justice. By not fully addressing and acknowledging the abuse Aboriginal women have experienced in Canada, neither the country nor the group can fully move on and work to better their relationship if one side feels that the full truth has not been told. This

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<sup>130</sup>For the full Terms of Reference and goals of the commissions see, Oppal, "Forsaken," 5, which can be accessed electronically, <http://www.missingwomeninquiry.ca/obtain-report/>.

<sup>131</sup> Ibid.

issue is directly related to the next two qualifications for success outlined by Hayner and Freeman.

### **Did the Commission Investigate? Did the Commission account for the broad causes and consequences?**

The Commission provided a thorough investigation into what was specifically laid out in the Terms of Reference. In Volume One, the report produced by the Commission investigated the lives of the women and Volumes Two and Three provided a detailed investigation into the Robert Pickton murder case as well as what has been occurring on the Highway of Tears.<sup>132</sup> The Commission report went into great detail about poor report taking and follow up investigations into the missing women between 1997 and 2005 in the DTES. Moreover, it provided a detailed investigation into the lack of communication with the families of the victims and the insensitive treatment of the families by the police force. Overall, the report did do a good job investigating its narrow mandate

However, there is a greater problem at play in this case. The narrow mandate ascribed to this Commission was an incredible roadblock to actually achieving this guideline of success. The Commission's very limited mandate only investigated the women who went missing between 1997 and 2005, and did not provide any investigation into the hundreds of missing women prior to 1997 and following 2005. Therefore, the women who went missing outside this time frame were essentially forgotten by the investigation and have no way of experiencing justice for the mistreatment by police of their cases.

The Commission's investigation of the underlying causes of the missing and murdered women only looked at the institutional bias from the Vancouver Police Department (VPD) and

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<sup>132</sup> See chapter three pages 38-40 for more information.

neglected to address the societal and greater governmental causes of this group's abandonment. As explained in the First Nations' Summit Statement,<sup>133</sup> the extremely narrow mandate prevented the Commission from covering the other issues surrounding the missing and murdered women in the DTES, which they considered important.<sup>134</sup> The First Nations Council felt that had the mandate been broader, the Commission would have been able to investigate and discuss the deeper underlying causes of Aboriginal discrimination not only within British Columbia, but also within Canada as a whole.

Therefore, the Commission failed to investigate in detail or even to account for the broad causes and consequences of what brought about this neglect of Aboriginal women. All the information this study found and analyzed about the systemic violations of Aboriginal women's rights were external resources and literature not sponsored by either the Commission or the Canadian government.<sup>135</sup> The report of the Commission only provided a basic "glossed over" account of the discrimination and at that, the report does not address the deep causes of such realities. The fact that the Commission neglected to properly fulfill this one element of a truth commission's duty is important because to fulfill the other requirements of reconciliation and acknowledgement, the causes of each crisis situation ought to have been fully investigated to understand why the acts occurred and determine how to stop them from reoccurring.<sup>136</sup> Consequently, in order for the group within society to move forward, the country, as a whole,

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<sup>133</sup> The First Nations Summit is a forum where the majority of First Nations groups within British Columbia can meet to discuss issues of importance to the First Nations community. They put out official statements in response to government decisions that are directly related to First Nations interests. For more information see, "About the First Nations Summit," First Nations Summit, July 16, 2013, <http://www.fns.bc.ca/about/about.htm>.

<sup>134</sup> "First Nations Summit Statement," *Missing Women Commission of Inquiry*, October 12, 2011, [http://www.fns.bc.ca/pdf/MWCI\\_FNS\\_Statement\\_Oct\\_11\\_2011.pdf](http://www.fns.bc.ca/pdf/MWCI_FNS_Statement_Oct_11_2011.pdf), 7.

<sup>135</sup> See Rhoad, "Those Who Take Us Away," and O'Connor and O'Neal, *Dark Legacy*.

<sup>136</sup> Llewellyn, "Restorative Justice" 96; Slye, "Amnesty, Truth, and Reconciliation," 171; Villa-Vicencio and Verwoerd, "Constructing a Report: Writing up the Truth," 279.

must see what has been occurring and recognize and acknowledge the wrongful behaviour that has occurred.

In such circumstances, the Aboriginal community will likely be less willing to reconcile relationships with the rest of Canada since they feel the Commission was insufficient and did not do the job of addressing the overall problem. Therefore, for the Aboriginal community, the report produced by the Commission was not just about the missing women but what these women represent of the overall Canadian problem of the attitude toward Aboriginal women as a group.

The Commission's failure to address the broad causes of the abuse committed is a fatal flaw because without accounting for these issues, the restorative part of the truth commission cannot be fulfilled. It is under this element of a successful truth commission that the important act of acknowledgement is to occur. In the "Report of Substantive Change," produced by the Commission, it explains that what Kim Stanton argues is necessary for a public inquiry to be successful is the pedagogical tool to promote social accountability for historical injustice. As outlined in the report, *The Missing Women Inquiry's* limited terms of Reference and narrow mandate essentially ruined the ability for the Commission to successfully and thoroughly investigate what caused the murders and disappearance of the women during the limited time frame studied by the Commission. These have constrained the Commission from promoting social accountability for the injustices committed.<sup>137</sup> Therefore, the Commission's narrow mandate ruined the ability to successfully investigate what caused the missing women to occur

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<sup>137</sup> "From Report to Substantive Change- Healing, Reconciliation and Implementation- A Policy Discussion Report Prepared for the Missing Women Commission of Inquiry April 2012," *Missing Women Commission of Inquiry* (April 2012), 2.

during the narrow time frame the Commission studied and ultimately limited the success of the Commission.

## An Analysis of Martha Minow's Eight Points

Chapter Two outlines eight criteria presented by Martha Minow, which need to be achieved in order for a society to restore justice.<sup>138</sup> Minow explains that these eight points are best achieved through a truth commission or a commission of inquiry. This section evaluates *The Missing Women Inquiry* against these eight criteria and determines whether the Commission was able to bring about restorative justice.

The Commission failed to achieve the first and second milestones presented by Minow. The first criterion, to “overcome communal and official denial of the atrocity; gain public acknowledgment,”<sup>139</sup> was not met to the extent needed to bring about restorative justice. In order for restorative justice to be achieved, both the government and the greater national community need to acknowledge what occurred and accept the account as truth, otherwise, the nation can never move forward since not all parties are acknowledging the truth. The only thing the Commission did that was successful was overcome the official denial by the VPD that a serial killer had been working within the DTES and preying on Aboriginal women.<sup>140</sup> However, the Commission failed to overcome the overall national and official denial of the ongoing acts committed due to its limited mandate. This prevented the Commission from addressing the underlying causes and consequences of the atrocities that had been occurring throughout the

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<sup>138</sup> See chapter two pages 22-23.

<sup>139</sup> Minow, “The Hope for Healing: What Can Truth Commissions Do?” 253.

<sup>140</sup> For the full Terms of Reference, goals of the commissions, police failures, causes of failures and list of recommendations see, Oppal, “Forsaken,” which can be accessed electronically, <http://www.missingwomeninquiry.ca/obtain-report/>.

years. Addressing these causes and consequences is key to overcoming the communal and official denial since, to no longer be in denial, the group must become aware of the realities and evaluate the abusive acts that have occurred. Denial of violent acts does not come spontaneously, but often a community is more likely to deny an act occurred if it has preconceived ideas about the truthfulness and validity of the claims. As mentioned in chapter three, above, Canada as a whole has dismissed any claims of abuse against the Aboriginal community due to the historical mistreatment of the group and poor identity assigned to them by the greater population. The communal and official denial that was present during the specific years outlined in the mandate was not a random phenomenon, but was based on historical denial of the treatment of Aboriginals. To achieve restorative justice, these historical roots of denial needed to be addressed. In the case of *The Missing Women Inquiry*, they were not.

Furthermore, the Commission did not overcome the communal and official denial of the atrocities committed against Aboriginal women at large simply by running an exclusive inquiry designed to exclude the one group who could provide helpful information and would be a critical participant – Native Women’s Association of Canada (NWAC) and the First Nations Council.<sup>141</sup> As exposed in a number of sources, NWAC was only granted “limiting participant status” and was eventually forced to resign from the council due to the lack of funding from the Commission and British Columbian government.<sup>142</sup> This act allowed the inquiry to be run entirely by the British Columbian government, which itself had a history of discrimination and complicity in the abuse. Consequently, if the government were genuine in its goal of accountability and acknowledgement of the abuses experienced by Aboriginal women, it would have funded the

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<sup>141</sup> “First Nations Summit Statement,” 5.

<sup>142</sup> Ibid.

participation of the very group that could have provided crucial insight into the historical abuse. Ultimately, the Commission excluded the participation of the group who represents the victims at large.

The second criterion for success presented by Minow was also absent from the Commission. She argues that a truth commission ought to “obtain the facts in an account as full as possible to meet victims’ need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators.”<sup>143</sup> As explained in the First Nations Forum State,<sup>144</sup> the Commission’s decision to exclude the major participation of Aboriginal groups and organizations in the area demonstrates the Commission’s inability to obtain the facts in an account that represents how the victims felt and prevented the Commission from developing a full historical narrative.<sup>145</sup> The Commission appointed one individual as “independent council” to represent Aboriginal people; however, this was done without any discussion or consultation with the Aboriginal people.<sup>146</sup> This brings about the question: to whom is this individual accountable? Who does he/she represent, if the very group he/she is supposed to be representing did not have any opportunity to select him/her?

Furthermore, the First Nations groups within the area were not even told that a commission of inquiry was going to take place and the group was subsequently shocked to hear about its creation since they had not been asked to help with the Terms of Reference nor appointments to the Commission.<sup>147</sup> This reality limited the Commission’s ability to both overcome communal and official denial of the abuse and obtain a full historical account and

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<sup>143</sup> Minow, “The Hope for Healing,” 253.

<sup>144</sup> For information about the First Nations Forum see footnote 133.

<sup>145</sup> “First Nations Summit Statement,” 4-5.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*, 8.

record. Without the active participation and inclusion of Aboriginal communities, it left the goals of the Commission in the hands of the community and officials who have been denying the systemic abuse for years. This allowed the community and officials to design and run a commission under their terms and prevented any potentially disruptive truths from coming to the surface. Therefore, without the full participation of the community that ought to have represented the victims, the ability to develop an accurate historical account of the abuse was limited. Therefore, the ability to overcome communal and official denial was restricted since the group who has been denying there is a problem was the one in control, which is problematic since it will be reluctant to change or admit anything was done wrong.<sup>148</sup>

To gain public acknowledgement, a commission ought to be inclusive and committed to bringing about public awareness to the matter. Kim Stanton argues, in her analysis of the Indian Residential School Truth and Reconciliation Commission (IRSTRC), which can usefully be applied to *The Missing Women Inquiry*, that in order for acknowledgment to occur, the dominant Canadian society must also take part in the process.<sup>149</sup> For a society to overcome a history of denial, all parts of that society, must take part in the process of uncovering the truth and accepting the denial as wrong. This did not occur in *The Missing Women Inquiry* and as a result, many Canadians are still unaware of the problems that were presented in the Commission, or that a commission of inquiry even took place. Moreover, the Aboriginal community was not fully included in the inquiry, which limited its ability to take part in the process of acknowledgment and restorative justice. *Windspeaker*, an Aboriginal media outlet recognized by the Canadian Journalists Association, explained that many Aboriginal women felt the call for testimonies was

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<sup>148</sup> Jane Dickson-Gilmore and Carol La Prairie, *Will the Circle be Unbroken: Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2005), 3-57.

<sup>149</sup> Kim Stanton, "Canada's Truth and Reconciliation Commission: Settling the Past?" *The International Indigenous Policy Journal* 2, no.3 (2011): 7.

not well advertised and, thus, many women did not attend and ultimately felt left out of the entire process.<sup>150</sup> Furthermore, the province of British Columbia refused to appropriately fund women's participation in the Commission, despite research that demonstrated that the participation of Aboriginal organizations and human rights groups would provide valuable information and insight to ensure that the inquiry was thorough and fair.<sup>151</sup> This is important because without a variety of inputs and inclusion of the greater community, especially from the parties directly affected, the Commission was unable to provide an unbiased and inclusive report that brought together the experiences and truth from all sides of the story. These problems with the Commission demonstrate its inability to successfully meet the first and second requirement presented by Minow of a successful truth commission.

The third criterion presented by Minow, to “forge the basis for a domestic democratic order that respects and enforces systems devastated by violence,”<sup>152</sup> is hard to evaluate due to the lack of time that has passed since the Commission ended. It has only been a year since the Commission submitted its final report, which is not enough time to evaluate the changes made in the domestic democratic order.<sup>153</sup> However, given the lack of attention paid to educating the greater Canadian public about the issues in *The Missing Women Inquiry* and the greater causes of such violence, one can be led to believe that the domestic democratic order has not been altered enough to change the systems within society that allowed such violence to occur. For example, when the First Nations Forum asked the government why the Commission's mandate was

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<sup>150</sup> Shari Narine, “Frustration and Concern Greets Missing Women's Inquiry,” *Windspeaker, Edmonton Alberta*, (October 1, 2011); 9, July 12, 2013, <https://www.lib.uwo.ca/cgi-bin/ezpauthn.cgi/docview/899227871?accountid=15115>.

<sup>151</sup> “First Nations Summit Statement,” 16.

<sup>152</sup> Minow, “The Hope for Healing,” 253.

<sup>153</sup> A domestic democratic order can be defined as a society that respects and enforces human rights. See Minow, “The Hope for Healing,” 253.

restricted, the response was that the limited time and budget allocated to the Commission was seen not as a very “useful investment” of the limited government resources.<sup>154</sup> As was seen in the South African Truth and Reconciliation Commission, Hugo Van der Merwe and Audrey Chapman explain that by limiting the amount of investigations and funding toward them, the gross human rights violations that took place can become treated more as a product of individuals’ decisions and actions, and not address the dynamics of the discriminatory system.<sup>155</sup> This is important because it demonstrated the lack of government commitment and sincerity to fulfill the goals set out in the mandate. Without government motivation and commitment, the likelihood of a change in domestic order is minimal since the government is a major component in the ability to change society’s systems of discrimination.

The fourth point presented by Minow, to “promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence,”<sup>156</sup> is particularly important to achieving the overall goal of restorative justice. As explained in chapter two by Llewellyn, restorative justice is about reconciling the networks of relationships within society to bring about social cohesion and peace. Therefore, without reconciliation, the ability to mend these broken networks is restricted. *The Missing Women Inquiry* failed to promote reconciliation across social divisions and did not reconstruct the moral and social systems devastated by the violence not only felt in the DTES but of the violence experienced by the greater Aboriginal population

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<sup>154</sup> “First Nations Summit Statement,” 8.

<sup>155</sup> Hugo van der Merwe and Audrey R. Chapman, “Did the TRC Deliver,” in *Truth and Reconciliation in South Africa: Did the TRC Deliver*, rev. ed., ed. Audrey R. Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008), 250.

<sup>156</sup> Minow, “The Hope for Healing,” 253.

within Canada. As Quinn and Villa-Vicencio argue, and as outlined here in chapter two, reconciliation is a key element to bring about restorative justice.<sup>157</sup>

According to the arguments presented by Villa-Vicencio, reconciliation in a practical matter here in Canada was initiated by the state and did not occur within the Commission.<sup>158</sup> The Canadian state did not promote any sense of belonging among the Aboriginal population and greater Canada. As shown above, the Aboriginal population was unable to participate in a process of reconciliation through the state since the group was excluded in large part from the Commission process. Therefore, the group cannot be expected to feel a sense of belonging within the British Columbian community if it was unable to feel a sense of belonging within the investigation and Commission itself. This is important because it limited the ability for reconciliation to take place, since the Commission's process did nothing to fix the restrictive relationship between the government and Aboriginal groups.

Furthermore, based on the theory of reconciliation argued by Quinn, reconciliation would be unable to occur in *The Missing Women Inquiry* because the other processes necessary for reconciliation to occur were missing. For Quinn, in order for reconciliation to take place, acknowledgement must first take place.<sup>159</sup> As demonstrated above, in the analysis of Freeman/Hayner's points, and the first and second requirements argued by Minow, the act of acknowledgement was largely missing from the work of this Commission. In the report released by the Commission, "From Report to Substantive Change," different ways in which healing and reconciliation could occur within the context of *The Missing Women Inquiry* were discussed.<sup>160</sup> According to the report, to achieve reconciliation, the government must address what the report

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<sup>157</sup> See chapter two pages 24-26.

<sup>158</sup> Villa-Vicencio, "The Politics of Reconciliation."

<sup>159</sup> Quinn, *The Politics of Acknowledgement*.

<sup>160</sup> "From Report to Substantive Change."

calls “wicked problems,” which are defined as problems that are highly resistant to resolution.<sup>161</sup> The report claimed that the key to solving these problems and bringing about reconciliation were: taking a holistic rather than practical/linear thinking approach; successfully working across both internal/external organizations; and, engaging with citizens.<sup>162</sup> These elements are all aspects of Quinn’s argument; however, *The Missing Women Inquiry* met none of these.

The report argues that to overcome these “wicked problem,” the Commission must take a holist approach. This step is clearly missing from the Commission. The Commission was by no means holistic in its approach to reconciliation since the Commission only allowed partial involvement from the Aboriginal community. Furthermore, if the Commission were holistic, it would have expanded the mandate to include the broad causes and consequences of systemic Aboriginal abuse. This omission from The Terms of Reference seriously hindered the ability for reconciliation to occur since according to Quinn’s theory, the partial inclusion of the Aboriginal participation demonstrated the lack of acknowledgement taking place. Moreover, since acknowledgement was unable to fully occur, reconciliation was restricted since the Aboriginal population was not part of the acknowledgement process.

The second and third criterion (working across both internal/external organizations and engaging with citizens) argued by the “Report to Substantive Change” also fell short in achieving reconciliation and healing. As explained above, Aboriginal and human rights organizations were excluded from the Commission, which meant that no external organizations were sought out for assistance. Furthermore, the citizens within British Columbia and Canada were not engaged in the process given numerous people were unaware a commission of inquiry was taking place.

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<sup>161</sup> “From Report to Substantive Change.”10.

<sup>162</sup> Ibid.

Without civic engagement, any process of reconciliation can never fully take place since it is not sincere. Without acknowledgment and reconciliation the goals of bringing about restorative justice cannot be met, ultimately hindering the ability to bring about justice for Aboriginal women.

Minow's fifth criterion, to "promote psychological healing for individuals, groups, victims, bystanders and offenders,"<sup>163</sup> is hard to evaluate at this time. There are a lack of sources and evidence to suggest that the government of British Columbia has developed any significant psychological healing programs for the victims and their families. The lack of information may be a result of a lack of public reports explaining the development of these programs or not enough time has passed since the recommendations from the Commission were published to give the government the time to develop such programs. Therefore, it remains uncertain whether this criterion has been met.

It is debatable as to whether the sixth criterion, "to restore dignity to victims,"<sup>164</sup> has been achieved through the Commission. The first volume of the Commission's report details every woman that went missing and tells a story and mini biography of her life and who she was as a woman and member of her family.<sup>165</sup> In doing this, the Commission was able to bring to light a different side of these women, who are often prejudged based on their risky lifestyle. This section of the report did bring about some dignity to the victims; however, there are a number of other external resources that provide a more thorough account of the women and, hence, bring

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<sup>163</sup> Minow, "The Hope for Healing," 253.

<sup>164</sup> Ibid.

<sup>165</sup> For the full Terms of Reference and goals of the commissions see, Oppal, "Forsaken," which can be accessed electronically, <http://www.missingwomeninquiry.ca/obtain-report/>.

about dignity.<sup>166</sup> Unfortunately, the report only addressed the women who fall within the time frame of the Terms of Reference (1997-2005), which meant that all the women who went missing prior to 1997 and after 2005 were not given the opportunity to have their dignity restored. Technically speaking, the Commission was able to restore some of the dignity back to the women defined within the Terms of Reference; however, it failed to restore dignity to the many women who could have been addressed had the mandate been properly expanded.

Again, it is hard to determine whether the Commission fulfilled the seventh point presented by Minow, to “punish, exclude, shame, and diminish offenders for their offenses.”<sup>167</sup> The investigation did reveal specific names of those involved in the missing women’s cases that fell short of their duty to protect; however, it is unclear whether these people were punished. Overall, the report provided more of a blanket shaming of the VPD and the legal system within British Columbia, but by and large tended to stay away from naming specific names. In publishing the shortcomings of the overall police department, it prevented VPD from placing the blame on any specific person and forced the group to acknowledge that they failed as an agency. Moreover, it demonstrated the need for change within the entire department. The Commission, however, failed to hold individuals to account for their actions.

Finally, the eighth criterion, to “accomplish the goals in ways that render them compatible rather than antagonistic with the other goals,”<sup>168</sup> was not properly met. As explained above, to achieve the fourth criterion (reconciliation), the Commission would have needed to better meet the requirements of the first and second points presented by Minow. The two

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<sup>166</sup> “NWAC Report,” *Native Women’s Association of Canada*, <http://www.nwac.ca>; Christine Welsch, “Finding Dawn,” National Film Board (2006), [http://www.nfb.ca/film/finding\\_dawn/](http://www.nfb.ca/film/finding_dawn/); Rhoad, “Those Who Take Us Away,” and O’Connor and O’Neal, *Dark Legacy*.

<sup>167</sup> Minow, “The Hope for Healing,” 253.

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

contradict each other in their ability to be achieved since the Commission's capacity to meet the first two points listed by Minow was a complete failure, thus rendering them antagonistic with the remaining points. Therefore, overall the goals of a truth commission presented by Minow were not successfully met. Hence the Commission failed to bring about restorative justice for Aboriginal women in Canada.

### Was Restorative Justice Achieved?

The purpose of this chapter was to evaluate whether *The Missing Women Inquiry* brought about restorative justice for Aboriginal women and succeeded in fulfilling the requirements for a successful truth commission. This was done using the various criteria laid out by those within the scholarly community. Ultimately, the Commission failed at achieving restorative justice through the use of a truth commission, which then prevented justice from being delivered to Aboriginal women. As demonstrated above, the Commission made no genuine attempt to restore the social networks of relationships not only within British Columbia but also within Canada as a whole. Aboriginals and non-Aboriginals still remain largely at odds with one another and the Commission failed to restore this relationship to a cohesive partnership. The Commission failed to address the historical harms committed against Aboriginal women, which prevented the establishment of restorative justice to address the overall harm committed against that social unit.

A truth commission is thought to bring about the goals of restorative justice if successfully run. Ultimately the very mandate of *The Missing Women Inquiry* is one of the key components that have led to its failure to achieve the overall goals of transitional justice. While the Commission may have successfully fulfilled the Terms of Reference, and may even have been a successful truth commission in the sense that it followed the requirements laid out in its mandate, the Commission failed to achieve the overarching goals of restorative justice. The

Commission only provided superficial achievement since it appears to be successful by meeting the requirements of the mandate, but in reality, the whole purpose of establishing a truth commission (acknowledge, reconcile, create a full historical record of past abuses) was not achieved, thus rendering it ineffective. Therefore, *The Missing Women Inquiry* was a failure in transitional justice since it did not bring about restorative justice through the means of a truth commission.

## Conclusions

Transitional justice has grown and changed significantly as a field of study in recent years. Throughout the world, governments have been applying the tools and mechanisms of transitional justice to help address historical abuses and move toward a strong state of justice within its own nation. Scholars have debated and analyzed the many different mechanisms of transitional justice and the fields overall goals of addressing justice. The purpose of this study was to evaluate transitional justice within Canada through *The Missing Women Inquiry*. Overall, the study evaluated the effectiveness of the Commission at bringing about restorative justice to Aboriginal women within Canada.

The first chapter provided a brief historical survey of the development of transitional justice. Moreover, the chapter explored various definitions for the term and presented the arguments of several authors for a narrow definition of the term (transitional justice is the legal process of delivering justice to a state following a transition from authoritarian to democracy), as well as the definition provided by proponents of a broader definition (transitional justice is any legal or non-legal mechanism used to address periods of past violence, repression or human rights abuses). Ultimately, this study follows a broader definition of the term transitional justice and used it to evaluate the use of transitional justice within Canada.

Secondly, the study looks at the use of truth commissions and commissions of inquiry within transitional justice. Truth commissions and commissions of inquiry are complex mechanisms used in restorative justice. Both speak to a greater goal of reconciliation and are part of a process of building societal foundations for which social cohesion can take root and develop. Despite debates surrounding the commission's moral element, as well as the hotly debated element of truth, commissions of inquiry and truth commissions have a beneficial contribution to the practice of restorative justice. *The Missing Women Inquiry* demonstrated how a commission of inquiry was implemented in Canada to address the historical injustices of Aboriginal women. While it was ultimately demonstrated in the final chapter of this study, the use of a commission of inquiry was unsuccessful in bringing about the goals of restorative justice within Canada.

The third chapter provided an overview of some main theories of marginalization and provided background on *The Missing Women Inquiry*. Canadian history has been plagued with the legacy of discriminatory colonization policies that have left shadows on the Aboriginal culture. The effects of colonization experienced through prejudice government policies and residential schools have placed Aboriginal people, specifically Aboriginal women in a position of vulnerability. The legacy of this discrimination has placed Aboriginal women at a lower level in society making them susceptible to poverty, poor education, destructive behaviour and violence. Moreover, the Aboriginal identity that was constructed by Canada put forward an image of Aboriginals as "Indian Trash" and of Aboriginals as "inferior," thus rationalizing and legitimizing the treatment Aboriginals experienced. Moreover, even after policies of colonization had ended, the perception of Aboriginals in Canada still largely resembles that during the period of colonization. This image has been perpetuated through the cycles of ostracism that have been systematically instituted in the Canadian governmental and socio-economic systems. Overall,

this chapter provided the backdrop for the explanation and reasoning behind why the Aboriginal women of the DTES fell victim to the crimes of serial killers, and neglect from the policing and legal systems within the province of British Columbia.

The final chapter evaluated whether *The Missing Women Inquiry* brought about restorative justice for Aboriginal women and succeeded in fulfilling the requirements for a successful truth commission. This was done using the various criteria laid out by those within the scholarly community. Ultimately, the Commission failed at achieving restorative justice through the use of a truth commission, which then prevented justice from being delivered to Aboriginal women. The Commission made no genuine attempt to restore the social networks of relationships not only within British Columbia but also within Canada as a whole. Aboriginals and non-Aboriginals still remain largely at odds with one another and the Commission failed to restore this relationship to a cohesive partnership. The Commission failed to address the historical harms committed against Aboriginal women, which prevented the establishment of restorative justice to address the overall harm committed against that social unit.

As demonstrated in the final chapter, a truth commission is thought to bring about the goals of restorative justice if successfully run. Ultimately the very mandate of *The Missing Women Inquiry* is one of the key components that have led to its failure to achieve the overall goals of transitional justice. While the Commission may have successfully fulfilled the Terms of Reference, and that may have been a successful truth commission in the sense that it followed the requirements laid out in its mandate, the Commission failed to achieve the overarching goals of restorative justice. The Commission only provided superficial achievement since it appears to be successful by meeting the requirements of the mandate, but in reality, the whole purpose of establishing a truth commission (acknowledge, reconcile, create a full historical record of past

abuses) was not achieved, thus rendering it ineffective. Therefore, *The Missing Women Inquiry* was a failure in transitional justice since it did not bring about restorative justice through the means of a truth commission.

Therefore, this study demonstrated that *The Missing Women Inquiry* failed to achieve the goals of transitional justice within Canada. Its failure can teach a lot to the scholarly community as well as the Canadian government. The Commission failed to deepen democracy and provide justice equally to all Canadians regardless of race. This demonstrates that even consolidated democracies need improvements and belongs in the study of transitional justice. Striving for an ideal democracy and impartial judicial system is something that is a constant battle. Every country can improve its government systems and improve its societies relations. While *The Missing Women Inquiry* failed to achieve these goals, it demonstrated the need for continued growth even within a democratic system.

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## Appendices

### Appendix D: Flyer from Women's Memorial March

“ We are Aboriginal Women. Givers of Life. We are Mothers, Sisters, Daughters,  
Aunties and Grandmothers. Not just Prostituted and Drug Addicts. Not Welfare Cheats.  
We Stand on Our Mother East and We Demand Respect. We are Not There to be Beaten,  
Abused, Murdered, Ignored”

From a Flyer distributed at Downtown Eastside Women's Memorial March, February 14<sup>th</sup> 2001,  
Vancouver, British Columbia, Canada.<sup>169</sup>

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<sup>169</sup> Dara Culhane, “Their Spirits Live Within Us: Aboriginal Women in Downtown Eastside Vancouver Emerging into Visibility,” *The American Indian Quarterly* 27, no. 3&4 (2003): 593.