January 2016

Justice, Reconciliation, and the Masculinist Way: What Role for Women in Truth and Reconciliation Commissions?

PENELOPE ANDREWS
*Dean of the University of Cape Town Faculty of Law*

Follow this and additional works at: [https://digitalcommons.nyls.edu/nyls_law_review](https://digitalcommons.nyls.edu/nyls_law_review)

Part of the [Constitutional Law Commons](https://digitalcommons.nyls.edu/nyls_law_review)

Recommended Citation


This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.
PENELOPE ANDREWS

Justice, Reconciliation, and the Masculinist Way: What Role for Women in Truth and Reconciliation Commissions?

60 N.Y.L. Sch. L. Rev. 199 (2015–2016)

ABOUT THE AUTHOR: Penelope Andrews was Scholar in Residence and Consultant to Faculty at New York Law School in 2015 and is now Dean of the University of Cape Town Faculty of Law. The author thanks Courtney Gressett (Albany Law School Class of 2015) and Hannah Akkerman (Albany Law School Class of 2015) for research assistance.
I. INTRODUCTION

There is no future without a past, and the future is largely a result of the past. Unless we construct a future based on the lessons of the past, we are bound to repeat our own mistakes and retard the development of our society.¹

In the early 1990s, three feminist scholars lit up the theoretical field of international law and injected a wave of energy into feminist legal scholarship with their groundbreaking and now highly-cited article, Feminist Approaches to International Law.² I, along with many fellow feminist academic travelers who had been mere believers before, immediately became a convert.³ Feminist Approaches to International Law criticized the gaps in international law regarding gender equality and with compelling evidence highlighted the masculinist edifice of international law.⁴ The article has been of great assistance to feminist legal scholars in exploring, understanding, and clarifying the contradictory and complex questions of law and legal processes, which are, after all, the bread and butter of feminist legal theory.⁵

Two decades after Feminist Approaches to International Law, the article's arguments remain relevant in an evolving area of human rights law and policy, namely, transitional justice and gender equality. The arguments are particularly pertinent to the status and role of women in transitional justice mechanisms.⁶ In this article, I raise an increasingly familiar question: what is the role of women in truth and reconciliation commissions? This question is particularly pressing in light of the recent lessons from societies in transition, of which South Africa is one. Justice, reconciliation, and gender equality are concepts linked to conflict's end and lasting peace. How to pursue justice and reconciliation to attain peace, while highlighting the significance of gender equality as a central component of peace, poses a notable challenge for societies in transition.

³. There were also detractors who questioned both the substance and methodology of the article. See, e.g., Fernando R. Tesón, Feminism and International Law: A Reply, 33 Va. J. Int’l L. 647 (1993).
⁴. See Charlesworth et al., supra note 2.
⁶. The major arguments in Feminist Approaches to International Law were the failure of the United Nations (UN) and other international organizations to fully consider the role and status of women within international law and to appreciate the impact of such failure on the continued subordination and subjugation of women globally. The authors argue that working towards the inclusion of feminist perspectives in international law will go some way to addressing the subordination and subjugation of women. See generally Charlesworth et al., supra note 2.
During periods of armed conflict, women and girls are frequently subjected to violence because of their gender. National governments have attempted to address this issue through transitional justice mechanisms like truth and reconciliation commissions. Truth commissions are victim-centered, non-judicial enquiries, established by governments in the aftermath of conflict and war, to ascertain the facts and evidence of human rights violations. They are designed as an alternative to criminal trials to allow for victim reparations and amnesty for perpetrators.

The record of women's input and participation in these processes, however, is rather poor. In this article, I highlight the role of South Africa's Truth and Reconciliation Commission (SATRC) and the opportunity the SATRC missed in failing to comprehensively confront and examine the systemic nature of violence against women under apartheid.

Many transitional justice mechanisms, the SATRC being one of the more vivid examples, have adopted a restorative justice approach. Transitional justice mechanisms are non-judicial bodies set up by governments after armed conflict or internal political violence. These mechanisms usually reflect the compromise reached between warring parties during negotiations to end the conflict or violence, seek justice for the victims, and establish peace in the affected communities. Their purposes are largely to investigate the human rights abuses that occurred during the armed conflict or political violence, provide the victims a forum within which to tell their stories and create an official record, and enable perpetrators to publicly account for the harm they inflicted.

9. See Bisset, supra note 8; Freeman, supra note 8; Hayner, supra note 8.
12. See Freeman, supra note 8, at 4–10.
13. Id. The most notable of these transitional justice mechanisms are truth and reconciliation commissions, which are discussed in greater detail later in this article. Other transitional justice mechanisms include the gacaca courts in Rwanda. See Paul Christoph Bornkamm, Rwanda’s Gacaca Courts: Between Retribution and Reparation (2012).
14. See Freeman, supra note 8, at 7–10. These goals are incorporated in different ways in the various truth and reconciliation commissions. For example, the SATRC allowed perpetrators to apply for amnesty after revealing truthfully the nature of their activities. See Ronald C. Slye, Amnesty, Truth, and Reconciliation: Reflections on the South African Amnesty Process, in TRUTH v. JUSTICE: THE MORALITY OF
Transitional justice mechanisms are widely believed to reinforce accountability and promote democracy in post-conflict societies. In the past two decades, however, international human rights law has arguably taken a somewhat punitive turn. Starting with the establishment of the International Criminal Tribunal for former Yugoslavia, followed by the Rwanda Tribunal, and culminating in the establishment of the International Criminal Court (ICC), an extraordinary amount of resources has been spent on punishing individuals who have committed gross human rights violations and war crimes.

Although punishing war criminals is an essential component of international human rights law—indeed, this necessity was confirmed during the Nuremberg trials—some misgivings about the efficacy of war crimes tribunals generally, and the ICC specifically, persist. These misgivings relate to the ability of international criminal tribunals to provide justice and reconciliation for victims of such atrocities. The opportunity for victims to confront perpetrators within their own communities in a local hearing—which a truth and reconciliation commission or even a local

---


17. See Aaron K. Baltes, Case Note, Prosecutor v. Tadic: Legitimizing the Establishment of the International Criminal Tribunal for the Former Yugoslavia, 49 Me. L. Rev. 577, 579–86 (1997) (articulating the history and events that led to the creation of the International Criminal Tribunal for the former Yugoslavia by the UN Security Council).


criminal trial allows—is not available when the criminal trial occurs away from the country where the atrocities occurred and when members of the local communities have no active part in the proceedings. 23

In light of the perceived limited effectiveness of international criminal law mechanisms regarding justice and reconciliation for victims, particularly women and children, I argue that national transitional justice mechanisms like truth and reconciliation commissions may provide more effective ways for victims to feel invested in the process and may lead to a longer-lasting peace in society. In addition, these local processes may enable advocates to squarely confront the issue of gender inequality. I further argue that the several purposes that truth and reconciliation commissions serve—including the possibilities for victims to confront perpetrators; to explain and name the harms to which they were subjected; to create a permanent record to prevent denial in the future; and to highlight the responsibility of all members of society, including the bystander beneficiaries—cannot be accomplished in international criminal tribunals. 24 My argument is most appropriate as it relates to the peculiar harms that women suffer during armed conflicts.

Part II of this article introduces two international doctrines that illustrate the international community’s acknowledgment of the need for women in peace processes—the United Nations (UN) Responsibility to Protect and Resolution 1325. Part III highlights the connections between women and peace processes and between women, peace, and citizenship. Part IV explores the historical role of women in various truth and reconciliation commissions and demonstrates how these commissions have failed, both to incorporate women’s concerns in their processes and to provide an opportunity for women’s participation in the commissions themselves. Part V provides a particular focus on the SATRC’s achievements and failures and concludes that its omissions foreclosed the possibility of a genuine and lasting peace as well as a comprehensive approach to gender inequality. Part VI reviews the Secretary-General’s 2009 report on Resolution 1325 to highlight the need for the inclusion of women in

23. See id.

24. I do not mean to suggest that international criminal tribunals cannot achieve some of the purposes of truth and reconciliation commissions. They certainly can. See Verónica Michel & Kathryn Sikkink, Human Rights Prosecutions and the Participation Rights of Victims in Latin America, 47 LAW & Soc’y Rev. 873 (2013). Transitional justice mechanisms like truth commissions categorically reject the idea of impunity for those who commit war crimes and gross violations of human rights. As Makau Mutua has argued, “To shield egregious perpetrators would only encourage a culture of unaccountability for past abuses. Hence a balance must be struck between justice for the victims and retribution against offenders.” Mutua, supra note 1. My argument, however, is that for victims, justice is distant, since the tribunal is almost never in the country in which the atrocity occurred, and in any event, the ICC sits in the Hague. The evidentiary rules of criminal trials do not always allow for absolute candor—so often the truth is limited or distorted. Most importantly, members of the wider society do not participate in the proceedings in a substantial way, creating a distance that might not be conducive to societal responsibility and therefore healing. For a compelling description of society as witness in truth and reconciliation commission proceedings, see Antjie Krog, Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa (2000). For an interesting account of the different restorative and punitive approaches to justice, see generally Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms? (Andreas von Hirsch et al. eds., 2003).
truth and reconciliation commissions. Part VII concludes this article and suggests an approach to the establishment and operation of truth and reconciliation commissions through a gendered lens, one which centers on women’s experiences both as victims of gender-based violence and as agents of change.

II. THE INTERNATIONAL COMMUNITY, PEACE, AND GENDER

The ability of the international community to protect against gender-based violations of human rights before they occur, as well as redress them in the aftermath of such violence, continues to generate concern. The UN Responsibility to Protect (R2P) norm and UN Resolution 1325 illustrate this concern.

R2P provides that governments’ primary responsibility is to protect vulnerable populations within their borders from genocide, war crimes, crimes against humanity, and ethnic cleansing. It further stipulates that the international community has a responsibility to encourage and assist governments in fulfilling their responsibilities in this regard. Where governments fail, the international community is to use appropriate and available means to protect vulnerable populations through collective action.

The 2009 Outcome Document of the 2005 UN World Summit pays particular attention to gender-based crimes and human rights violations against children, noting:

We express dismay at the increasing number of children involved in and affected by armed conflict, as well as all other forms of violence, including domestic violence, sexual abuse and exploitation and trafficking. We support cooperation policies aimed at strengthening national capacities to improve the situation of those children and to assist in their rehabilitation and reintegration into society.

Although R2P is a mechanism to prevent genocide and gross violations of human rights, rather than a transitional justice mechanism, skepticism has been raised about

25. See Annie Herro, UN Emergency Peace Service and the Responsibility to Protect (2014) (examining the political and military perception of the UN Emergency Peace Service and the R2P norm in regards to addressing atrocity crimes and human rights violations); Monica Serrano, The Responsibility to Protect: Libya and Côte d’Ivoire, AMSTERDAM L.F., Summer 2011, at 92 (discussing the need to further develop R2P in the context of two UN Resolutions adopted following the occurrence of mass atrocities in Libya and Côte d’Ivoire in 2011).


29. Id. ¶ 139.

30. Id.

31. Id. ¶ 141.
the principle of the doctrine in operation—as has been laid bare in the Syrian humanitarian crisis, for example.\textsuperscript{32}

Due, in part, to the concerted lobbying efforts of dozens of women’s organizations, including the NGO Working Group on Women, Peace and Security, UN Security Council Resolution 1325—one of the most important UN resolutions within the field of peace and security policy—was unanimously adopted in 2000.\textsuperscript{33} Resolution 1325 calls for increased participation of women at all levels of decisionmaking in regional, national, and international bodies with the express purpose of allowing women to manage, prevent, and resolve armed conflicts.\textsuperscript{34}

Resolution 1325 is particularly significant because it recognizes not just the distinct and dire impact of armed conflict on women and girls but also the important role of women in preventing violence and resolving violent conflicts once they occur.\textsuperscript{35} The Resolution mandates governments and institutions, both regional and international, to recognize the gender implications of violence against women and girls in armed conflicts and to comprehensively engage women in the processes of peace, whether in transitional justice mechanisms like truth and reconciliation commissions, regional judicial and non-judicial institutions, or international bodies like the UN.\textsuperscript{36} Most importantly, Resolution 1325 provides for educational materials and training guidelines for governments “on the protection, rights and the particular


34. See S.C. Res. 1325, supra note 27, ¶ 1. The Resolution highlights the dire consequences of armed conflict on women and girls as well as the important role of women in peace-building and post-conflict processes, including in UN peacekeeping operations, post-conflict negotiation bodies, and transitional justice mechanisms. See id. Several new resolutions to complement Resolution 1325 have been passed by the Security Council in the past few years. See S.C. Res. 1960 (Dec. 16, 2010); S.C. Res. 1889 (Oct. 5, 2009); S.C. Res. 1888 (Sept. 30, 2009); S.C. Res. 1820 (June 19, 2008).

35. See S.C. Res. 1325, supra note 27.

36. See id. The Resolution:

1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. Encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. Urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard calls on Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;
needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures.”

The Resolution also calls on governments “to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts.”

The next section provides a backdrop for the importance of women’s involvement in peace processes by linking women, peace, and citizenship to peace processes.

III. WOMEN AND PEACE

In response to the recurring concern regarding women’s role in the process of peace after war and armed conflict, some feminist scholars have persuasively argued that in order to fully incorporate the goals of gender equality, peace must be considered comprehensively, and not just as an absence of violence. Such an approach may lead to a lasting peace and may more effectively transform cultures from those steeped in masculinity to cultures in which non-sexism and equality have been fully embraced.

In order for women to benefit from the fruits of peace, the concept of full and equal citizenship must be pursued zealously. This concept must embrace at least three components: freedom from violence in both the public and private spheres, access to economic and social resources, and freedom from subordinating cultural practices and attitudes. The next section briefly explores these three components and attempts to link them to women and peace.

4. Further urges the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. Expresses its willingness to incorporate a gender perspective into peacekeeping operations, and urges the Secretary-General to ensure that, where appropriate, field operations include a gender component[.]

Id. ¶¶ 1–5.

37. Id. ¶ 6. The Resolution further invites governments “to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and further requests the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training.” Id. (emphasis added).

38. Id. ¶ 7.

39. See generally Joyce P. Kaufman & Kristen P. Williams, Women at War, Women Building Peace: Challenging Gender Norms (2013); Betty A. Reardon, Women and Peace: Feminist Visions of Global Security (1993); J. Ann Tickner, Gendering World Politics: Issues and Approaches in the Post Cold-War Era (2001). The dictionary definition of “peace” generally includes notions like freedom from war or violence, and freedom from mental angst. See Peace, Dictionary.com, http://dictionary.reference.com/browse/peace (last visited Feb. 15, 2016). Peace is commonly understood as the absence of hostility and retribution. See id. Peace also suggests sincere attempts at reconciliation, the existence of healthy or newly healed interpersonal or international relationships, prosperity in matters of social or economic welfare, the establishment of equality, and a working political order that serves the true interests of all. See id.

A. Absence of Violence

Violence against women remains one of the most vexing and insurmountable problems facing women on a global scale—from liberal, affluent countries to struggling regions of the world where poverty is rife. Academic research and empirical data reinforce this incontrovertible fact. In addition, the media regularly reminds us of incidents of violence against women. These incidents include the shocking gang-rape and murder of a young student in India in 2012, the subsequent high-profile rapes of tourists in India, the widespread incidences of sexual assault in the U.S. military, the ghoulish persistence of rape in the Congo, and the targeting of lesbians in South Africa for rape by vigilantes who are determined to “correct” their victims’ sexuality.

We are shocked and outraged by what we see as egregious and isolated episodes of extreme violence. These incidents disrupt our sense of morality and dignity, but they arguably lie at the far end of a continuum of violence that has been internalized by many within society, particularly by men. By treating these incidents as aberrant


to the wider society and culture, the media generates a sense of sensationalism and anomalism that serves to mask the normalcy of violence against women. Such behavior, however, as much as it offends our sense of morality and dignity, is not aberrant. These systemic incidents of violence against women are the manifestations of a masculinist culture, and the outcome of a masculinist culture is violence—whether in private or in public.\textsuperscript{49}

I have used this argument in my research and scholarship on violence against women in South Africa, demonstrating that the widespread violence against women is linked to the masculinist underpinnings of South Africa’s very macho and militaristic society, with strong indigenous cultural underpinnings that reinforce negative stereotypes about women.\textsuperscript{50} In addition, the evidence and statistics make it clear that during armed conflicts and internal wars, “gender violence is arguably the most predominant abomination.”\textsuperscript{51}

To counter and eradicate such violence, post-conflict peace processes must include concerted efforts to incorporate comprehensive goals across all sectors of society to redress not just violence against women, but also the masculinist underpinnings that reinforce stereotypes about women and perpetuate the condoning of violence in the public and private spheres.\textsuperscript{52} In short, post-conflict transitional justice mechanisms should prioritize the pursuit of gender equality.

\subsection*{B. Access to Economic and Social Resources}

Access to economic and social resources is key to the fulfillment of a dignified life.\textsuperscript{53} Gender-based violence is strongly linked to economic powerlessness.\textsuperscript{54} Feminist scholars and women’s rights advocates have long argued that the economic empowerment of women is impeded by violence against them and cultural norms and customs that obstruct their path to equality.\textsuperscript{55}

\begin{itemize}
\item \textsuperscript{49} The term “masculinist culture” is used to denote cultures that are male-oriented and male-dominated and which relegate women to a second-class status. For a further exploration of this subject, see Nancy E. Dowd, \textit{Masculinities and Feminist Legal Theory}, 23 Wis. J.L. Gender & Soc’y 201 (2008); Andrews, \textit{supra} note 47; and Saloom, \textit{supra} note 48.
\item \textsuperscript{51} Mutua, \textit{supra} note 1.
\item \textsuperscript{54} See Christine Chinkin, \textit{The Protection of Economic, Social and Cultural Rights Post-Conflict}, http://www.peacewomen.org/assets/file/Themes/paper_protection_escr.pdf (last visited Feb. 15, 2016). Whether poverty causes domestic violence is still in dispute. However, economic powerlessness is a byproduct of domestic violence. \textit{Id.}
\item \textsuperscript{55} See, e.g., \textit{id.}
\end{itemize}
Although poverty affects and traverses several demographic groups, social and economic indicators suggest that women are unduly burdened by economic powerlessness and inequality. Women continue to be disproportionately associated with negative indicators, including high rates of unemployment; lack of education; and sexually transmitted diseases, including high incidences of HIV/AIDS. Several reasons account for this reality, but a significant reason is the unequal access to economic resources for women due to political, legal, social, and cultural factors.

Formal societal mechanisms and structures embedded in law and political institutions, as well as policies of non-discrimination in the social and cultural context, are preconditions for women's economic empowerment. The quest for gender equality, therefore, has to address social and economic prejudices, which impede women's path to full citizenship. By strengthening these structures for the benefit of all, including women, national and local governments, and all the major institutions of society, signal that the lack of economic power for women is a barrier to women's full citizenship and a matter of national concern.

C. Freedom from Subordinating Cultural Practices and Ideas

The effect of cultural practices and policies on women's rights remains one of the most highly-charged subjects within feminist legal scholarship and advocacy, and much has been written on the subject. For the purposes of this article, I will not dwell on many of the theoretical intricacies of the various debates within feminist


58. See Achieving Gender Equality, supra note 56. See generally Becker, supra note 56.


60. See Achieving Gender Equality, supra note 56; Economic Empowerment, supra note 57.

Justice, Reconciliation, and the Masculinist Way

legal theory or within the human rights academic and advocacy communities. There is no doubt, however, that subordinating cultural practices such as the restriction on women’s inheritance, the issue of dowry, the obsession with female youth and beauty, and the existence of child brides all serve to deny women fundamental human rights. In addition, female genital surgery and the widespread preference for male children deny women the right to health and the right to life. Moreover, these practices clearly impede the right of women to full and equal citizenship.

Engaging with cultural norms and the multiplicity of cultural contexts poses a range of challenges and contradictions for women’s rights advocates. As I have argued elsewhere, women’s experiences are so varied and “women have so many


63. See generally Nazila Fathi, Starting at Home, Iran’s Women Fight for Rights, N.Y. Times (Feb. 12, 2009), http://www.nytimes.com/2009/02/13/world/middleeast/13iran.html (“By law, women may inherit from their parents only half the shares of their brothers.”).


65. As Naomi Wolf states: The more legal and material hindrances women have broken through, the more strictly and heavily and cruelly images of female beauty have come to weigh upon us . . . . During the past decade, women breached the power structure; meanwhile, eating disorders rose exponentially and cosmetic surgery became the fastest-growing medical specialty. During the past five years . . . pornography became the main media category, ahead of legitimate films and records combined, and thirty-three thousand American women told researchers that they would rather lose ten to fifteen pounds than achieve any other goal. More women have more money and power and scope and legal recognition than we have ever had before; but in terms of how we feel about ourselves physically, we may actually be worse off than our unliberated grandmothers.


cultural templates to work from,” that often the contradictions are obscured or ignored, or “simply accept[ed] . . . as natural or immutable.”

As feminist and human rights advocates, we are particularly sensitive to the question of cultural rights, especially when we are faced with a specific cultural practice that we may find offensive. The impetus then is to organize and strategize to eliminate the particular offensive practice while also liberating the affected woman or her community. Often, “two important questions fail to be addressed: First, which other forces are we liberating; and second, which other constraints are being discarded? Failing to raise these important questions results in a focus on the immediate cultural practice and ignorance of the larger cultural practice.” This is particularly pertinent when we encounter practices emanating from religious or indigenous belief systems and traditions. We know that many principles of international human rights law coincide very clearly with religious concepts and principles. It has been noted that:

All major religions lay claim to having fostered the idea of human rights long before their inclusion in positive law—whether through domestic bills of rights or international treaties. In fact, natural law philosophy permeates the first constitutions of France and the USA, and is also present in the 1948 Universal Declaration of Human Rights.

Scholars on the behalf of indigenous communities have also argued that traditional institutions embody the principles found in international human rights law. The human rights community, however, continues to grapple with the difficulties of blending secular human rights norms with religious or non-Western cultural values. At the core of this conceptual struggle lie the questions of the options available to women and how such options are either enhanced by, or impeded by, religious and cultural values.

71. Andrews, supra note 70, at 613 (emphasis added).
73. See Andrews, supra note 70, at 613.
77. See RELIGION & HUMAN RIGHTS: AN INTRODUCTION (John Witte, Jr. & M. Christian Green eds., 2012).
78. See generally Jimmy Carter, A CALL TO ACTION: WOMEN, RELIGION, VIOLENCE, AND POWER (2014).
The commitment to equal citizenship for women in the context of diverse cultural and religious values must account for women’s status and role in their religious and cultural communities, as well as in broader society. Advocates should also consider women’s access to options that may lead to equal citizenship.

The three broad issues discussed above, namely, freedom from violence, access to economic resources, and freedom from subordinating cultural practices, are interconnected. Each is predicated on the existence of the other, and only the reinforcement of all will lead to equal and full citizenship for women—and arguably to lasting peace. How then have transitional justice mechanisms dealt with gender inequality and the transition to peace in the wake of armed conflict and gender-based violence? The next section reviews the performances of truth and reconciliation commissions established in the past three decades.

IV. A SURVEY OF TRUTH AND RECONCILIATION COMMISSIONS AND GENDER

Since the early 1980s, starting with the Bolivia National Commission for Investigation for Forced Disappearances in 1982 and the Argentine National Commission on the Disappeared in 1983, twenty-eight countries have established truth and reconciliation commissions. Many of these commissions were established by parliament, while others were executed by executive decree.

With respect to gender issues addressed by truth and reconciliation commissions, the record is somewhat dismal. Most truth and reconciliation commissions largely ignored violations of women’s human rights. The few commissions that did address

79. See generally id.
84. See generally Priscilla B. Hayner, Unspeakable Truths: Transitional Justice and the Challenges of Truth Commissions (2nd ed. 2011) (reviewing more than thirty truth commissions).
such violations made only limited attempts to recognize the special harms that women suffered during armed conflicts. 86

El Salvador's Commission on the Truth, at its creation, seemed to have a “focus . . . on acts that had a special or broader impact on society in general” 87 but entirely disregarded sexual and gender-based violence. 88 The El Salvadoran Commission’s final report referenced violations within the home, primarily to women, but those violations were not investigated, and efforts were not expended to remediate them. 89

The Sierra Leone Truth and Reconciliation Commission, on the other hand, took a more purposive approach regarding women. 90 The civil war in Sierra Leone was one of the most devastating in Africa, resulting in the displacement of more than a million civilians. 91 During the war, between 215,000 and 257,000 women and girls were subjected to sexual violence. 92 The war is known for the mass amputations of women, children, and infants’ limbs and the forceful recruitment of civilians, including women and children, as a fighting force. 93

86. See id. at 249–53.


88. See Buergenthal, supra note 87, at 500–02 (including no mention of sexual or gender-based violence in reviewing the Commission’s mandate).

89. From Madness to Hope, supra note 15; see also Buergenthal, supra note 87, at 519–20. Another example of a commission’s limited attempt to address a violation of women’s human rights is illustrated by the Guatemalan Truth Commission, which included a chapter on sexual violence against women, but for the most part ignored the violations to which huge numbers of women were subjected. See Julissa Mantilla Falcón, The Peruvian Truth and Reconciliation Commission’s Treatment of Sexual Violence Against Women, Hum. Rts. Brief, Winter 2005, at 1, 1–3 (acknowledging the Guatemalan Truth Commission’s under-reporting of sexual violence crimes). See generally Jan Perlin, The Guatemalan Historical Clarification Commission Finds Genocide, 6 ILSA J. Int’l & Comp. L. 389 (2000).

90. See generally Elizabeth M. Evenson, Note, Truth and Justice in Sierra Leone: Coordination Between Commission and Court, 104 Colum. L. Rev. 730 (2004) (discussing the situation in Sierra Leone and the implementation of the Truth Commission there).

91. Id. at 733.


Though the Truth and Reconciliation Act, which established the Sierra Leone Truth Commission, did not specifically mention women, women were instrumental in getting the warring parties to the negotiating table. The enabling act required that gender be a consideration in the selection of Commissioners and in the appointment of committees.

The goals of the Sierra Leone Truth and Reconciliation Commission were “to protect the victims; to engender an atmosphere of trust in the Commission; to observe issues of confidentiality; to create a safe environment for women; and to ensure that women and girls would not be ‘retaumatised’ or ‘revictimised’ in the process.” To ensure that these goals were met, the Commission held public meetings to reach out to women, women’s groups, and agencies working with women in order to inform them of the Commission’s work. The Commission intended to reach as many women and girls as possible in order to ensure their comfort with the proceedings and to engage them in the ultimate findings—a goal the Commission mostly met.

The Sierra Leone Commission’s enabling act also required the Commission to give attention to the sexual abuses and experiences of children within the armed conflict and to consider implementing special provisions for those who had suffered sexual abuses. Additionally, the Commission did not overlook the women who had suffered abuse in the private sphere and mandated that the wider community be educated on the specific issues that women confronted.

94. See Truth and Reconciliation Commission Act 2000 (Sierra Leone).
95. See 3B Final Report Sierra Leone Truth and Reconciliation Commission, supra note 93, at 193–95.
96. Truth and Reconciliation Commission Act 2000, pt. IV, para. 10(2) (Sierra Leone) (“A committee under this section shall include persons who are not members of the Commission but who are appointed, taking into account gender representation and regional participation in the work of the Commission.”).
97. 3B Final Report Sierra Leone Truth and Reconciliation Commission, supra note 93, at 88 (“The TRC in Sierra Leone boldly confronted the task of dealing with its special mandate in respect of sexual violence by formulating policy and determining a methodology to reach as many women and girls as possible in order that their experiences could be documented.”).
98. Id.

The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may wish to recount their stories in public and the Commission may also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses as well as in working with child perpetrators of abuses or violations.

Id.
In Peru, the Truth and Reconciliation Commission was created in response to human rights violations that had occurred between 1980 and 2000.\textsuperscript{102} The Commission’s definition of “victim” encompassed not only physical harm to women, such as torture and sexual abuse, but also the consequences of relocating their families to unknown distant areas,\textsuperscript{103} as well as the emotional effect of the death or disappearance of a loved one.\textsuperscript{104} The Commission conducted an investigation of the experiences of women and dedicated a substantial portion of its final report—two-and-a-half chapters—to women’s issues.\textsuperscript{105}

The Peruvian Commission’s report established a record of the sexual violence that took place “during the armed conflict and countered the idea that [sexual violence] was simply a collateral damage of war.”\textsuperscript{106} One significant omission was the Commission’s failure to include the “State’s forced sterilization of over 200,000 women - all of whom were poor and most of whom were indigenous, illiterate, and non-Spanish speaking [in] its investigation.”\textsuperscript{107} Despite this omission, the Peruvian Commission provided a thorough investigation of violence against women.\textsuperscript{108}

These truth and reconciliation commissions were established under national laws and through respective enabling statutes, but the use of international legal principles, particularly international human rights law, motivated and sustained their operations.\textsuperscript{109} The disappointing reality, however, is that a more vigorous incorporation of international women’s human rights law could have been provided. Even the most widely-lauded transitional justice mechanism, the South African model, largely failed in this regard.\textsuperscript{110}

\textbf{V. THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA}

South Africa created a legislative vehicle, the Promotion of National Unity and Reconciliation Act, to establish the South African Truth and Reconciliation Commission.\textsuperscript{144} The new South African Truth and Reconciliation Commission (TRC) has been noted for its innovative approach to addressing the past and promoting reconciliation.\textsuperscript{145} The TRC has been praised for its comprehensive coverage of human rights violations, including sexual violence, and for its focus on reparations and non-criminal processes.\textsuperscript{146} However, the TRC has also been criticized for its limited powers and the challenges of implementing its recommendations.\textsuperscript{147}


\textsuperscript{103} See Rose, supra note 102, at 327–28.


\textsuperscript{106} See Falcón, supra note 89, at 1.

\textsuperscript{107} Maisel, supra note 105, at 171.

\textsuperscript{108} See id.


\textsuperscript{110} See generally Amnesty Int’l, supra note 83.
Commission (SATRC). The SATRC was, in effect, a compromise mechanism since a Nuremberg-style prosecution was neither feasible nor workable under the conditions that prevailed in the country after the release of Nelson Mandela. Unlike the conditions that led to the establishment of the Nuremberg Tribunal, there was no military victory by the South African government or the liberation movements.

The SATRC has been coined the gold standard for national reconciliation and has been heralded internationally by human rights advocates. The SATRC is viewed as the most credible of the truth and reconciliation commissions set up in the past few decades. The SATRC’s credibility is largely a result of its public airing of reconciliation and forgiveness, as well as the choice of Archbishop Desmond Tutu and the Reverend Alex Boraine, two prominent clerics, to serve as its Chair and Vice-Chair, respectively.

As South Africa develops politically, economically, and socially, the possibilities and limitations of the SATRC will become more apparent. Currently, the general consensus is that the establishment of a viable democracy in South Africa would not have been possible without a transitional justice mechanism like the SATRC. As mentioned earlier, the SATRC, although the result of political compromise, has had a profound impact on the broader project of political and legal transformation in


113. Since there was no clearly prevailing military party (as was the case with the Allies after World War II), the parties had to negotiate a political settlement, with compromises elicited from both sides. See generally Heinz Klug, The Constitution of South Africa: A Contextual Analysis (2010); Allister Sparks, Tomorrow is Another Country: The Inside Story of South Africa’s Road to Change (1996).

114. See From Cape Town to Kabul, supra note 112, at 27. See generally Lyn S. Graybill, Truth & Reconciliation in South Africa: Miracle or Model? (2002); Hayner, supra note 84.


117. For an interesting recent scholarly examination, see Melodie Slabbert, Debunking a Meta-Narrative: A Few Reflections on South Africa’s Truth and Reconciliation Commission One Decade After its Final Report, 73 THRHR 24 (2010).

118. See From Cape Town to Kabul, supra note 112, at 27–28; see also Moon, supra note 116; Tutu, supra note 116.
South Africa. The impact of the SATRC on gender equality, however, has been largely inadequate. In all of its processes, the SATRC has failed to fully address the particularized harms that women suffered under apartheid and further failed to appreciate that women were also the victims of apartheid, especially in light of the widespread incidents of rape, other forms of sexual assault, and domestic violence. Ideally, the SATRC, in its definition of victim, could have addressed sexualized violence in the same way that it addressed racial violence, especially in its definition of torture.

The SATRC failed at several stages, beginning with the drafting of the enabling statute, the Promotion of National Unity and Reconciliation Act, and especially the statute’s definition of “victim.” The statute incorporated a definition that included individuals who were subjected to gross violations of human rights, namely torture, kidnapping, murder, and grievous bodily injuries. This limited definition of victim created problems from the outset due to its exclusion of a large number of other victims who might not have suffered “gross violations of human rights,” but who were nonetheless subjected to the daily vagaries and humiliations of apartheid.

This decision by the drafters of the SATRC statute was not a mere linguistic distinction but a conceptual shift from the manner in which the system of apartheid was characterized under international law. In other words, the enabling statute

---


121. A good example of such an approach is found in the judgment of the International Criminal Tribunal for Rwanda, where the Chamber interpreted sexual violence as a form of torture. See Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶¶ 596–98, 731, 734 (Sept. 2, 1998).

122. The enabling statute defines “victims” as:

(a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights—

(i) as a result of a gross violation of human rights; or

(ii) as a result of an act associated with a political objective for which amnesty has been granted;

(b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and

(c) such relatives or dependants of victims as may be prescribed.

Promotion of National Unity and Reconciliation Act 34 of 1995 § 1.

123. Id.

124. See Andrews, supra note 112, at 1166.

isolated gross violations of human rights under apartheid, while the UN deemed apartheid itself a crime against humanity in 1976. This approach was adopted because a more inclusive definition of victim was of great concern, especially due to the potentially large and unwieldy number of victims.

The limited definition of “victim” under the statute:

excluded . . . millions of women who . . . were [regularly and systematically] subjected to the degradations of apartheid, including the destruction of family life [wrought by] the operation of the pass law or the migrant labor system. In addition, the lethal cocktail of apartheid masculinities exposed women to systemic violence, both in the public and private sphere.

Ultimately, 22,000 victims were certified by the SATRC, a rather small number considering the operation of “three hundred years of colonialism, and forty plus years of apartheid.” Significantly, the SATRC, for the most part, focused on the suffering and concerns of men and the violations to which they were subjected.

The SATRC’s failure to fully conduct an investigation into gender-based crimes was unacceptable, causing women to lobby. The SATRC responded by organizing three days of public hearings for women in three regions of the country. These hearings would constitute part of the Human Rights Violations Committee’s mandate under the SATRC’s enabling statute. Up until that point, although

127. See SATRC Report, supra note 126, at 86; see also Maisel, supra note 105, at 155.
128. Andrews, supra note 47, at 50–51; see also Maisel, supra note 105, at 155. As a result of the passage of land and labor laws by successive colonial and apartheid governments, for most of the twentieth century only black African men were allowed to travel to the urban centers of South Africa (considered “white” territory) in search of work. Known as the “pass law” or “migrant labor” system, it resulted in millions of women forced into cycles of economic dependency and poverty and relegated to life in the rural areas of South Africa, which were largely the most impoverished areas. Those women who were permitted to leave the rural areas only did so under extraordinarily stringent conditions, and the overwhelming majority of them worked as domestic workers for white families. See generally Hilda Bernstein, For Their Triumphs & For Their Tears: Women in Apartheid South Africa (rev. and enlarged ed. 1985); Rebekah Lee, African Women and Apartheid: Migration and Settlement in Urban South Africa (2009).
131. See Graybill, supra note 119, at 4; see also Andrews, supra note 47, at 51.
132. See Andrews, supra note 47, at 51; Graybill, supra note 119, at 4–5.
133. See Maisel, supra note 105, at 159–60.
134. The Human Rights Violations Committee was one of the committees set up under the SATRC enabling statute. Promotion of National Unity and Reconciliation Act 34 of 1995 § 12. The SATRC consisted of three Committees: the Human Rights Violations Committee, which investigated gross violations of human rights and designated victim status to applications; the Amnesty Committee, which granted amnesty to applicants; and the Reparation and Rehabilitation Committee, which explored methods and mechanisms of reparations. Id. §§ 12–27.
women had a role in SATRC proceedings, they “were largely seen as ‘secondary victims.’”\textsuperscript{135} They did not testify in their own right as primary victims but provided testimony to the Committee as “mothers, wives, and sisters,” focusing largely on “the suffering of their male relatives.”\textsuperscript{136}

During the three days of hearings, the women who were able to testify before the SATRC were encouraged “to speak as actors, as active participants and direct survivors of the violation of human rights.”\textsuperscript{137} One participant argued that “women in [South Africa] . . . deserve to be counted amongst those who have played a role. Not as wives, not as mothers, but as women, but as citizens of this country and as leaders.”\textsuperscript{138}

Women also noted the media’s refusal to treat “their testimony as noteworthy [in comparison] to the testimony of men.”\textsuperscript{139} One account labeled some female witnesses as the “crying team” of the Commission.\textsuperscript{140} In the final analysis regarding the SATRC report, there was a general consensus among the women advocates that the SATRC’s three days of hearings for interrogation of the gender-based crimes of apartheid were ultimately insufficient to comprehensively confront the historic legacy and current reality of violence against women.\textsuperscript{141}

As I have noted elsewhere, the SATRC, “[i]n its final report . . . emphasize[d] the need for national reconciliation and the creation of a human rights culture.”\textsuperscript{142} The final report is an impressive document, but absent from the report is a full examination and consideration of the historical, and continuing, institutionalization of gender inequalities, including systemic patterns of violence against women.\textsuperscript{143}

Some South African women’s rights advocates have noted the sanitized nature of the SATRC process, arguably a reflection of the political compromise.\textsuperscript{144} This


\textsuperscript{136.} Andrews, \textit{supra} note 47, at 51; see also Gobodo-Madikizela, \textit{supra} note 135, at 14–15.


\textsuperscript{139.} Andrews, \textit{supra} note 47, at 51.

\textsuperscript{140.} Gobodo-Madikizela, \textit{supra} note 135, at vii, 15.

\textsuperscript{141.} See Maisel, \textit{supra} note 105, at 160–61.

\textsuperscript{142.} Andrews, \textit{supra} note 47, at 52. See generally Andrews, \textit{supra} note 112.

\textsuperscript{143.} See Oboe, \textit{supra} note 137, at 65; see also Maisel, \textit{supra} note 105, at 152, 160–61.

\textsuperscript{144.} See, \textit{e.g.}, Sheila Meintjes, ‘Gendered Truth?’ \textit{Legacies of the South African Truth and Reconciliation Commission}, 9 Afr. J. on Conflict Resol. 101, 105–07 (2009); see also Oboe, \textit{supra} note 137, at 61 & 72 n.1 (explaining that the creation of the SATRC was the result of a political compromise).
political compromise failed to deal appropriately with the particularized nature of the violation of women’s human rights, whether in its continued severity or its continued ubiquity. This oversight has deprived women’s rights advocates of a valuable opportunity to confront apartheid’s sexualized violence in a comprehensive manner and to strategically engage to curb its continuation.

Women’s rights advocates have pondered this omission. Some have argued that it was the result of mainstream institutions in South Africa ignoring the role of women in the struggle against apartheid. They have also argued that South African society is reluctant to accept women as autonomous political agents in their own right. South African attitudes mirror the societal vision of women as secondary partners, whether in the home or in public places, and particularly in the broader anti-apartheid movement.

In the next section, I explore ways in which transitional justice mechanisms could ensure that violence against women during armed conflict is fully confronted and examined and therefore lead to greater formal commitments to gender equality.

VI. WHAT ROLE FOR TRUTH AND RECONCILIATION COMMISSIONS IN GENDER JUSTICE?

The challenge... is to develop both conceptual tools and strategies—at the political and intellectual levels—to smash the walls of invisibility and exclusion so that sexual and gender-based violence can be exposed to the sunlight of the public domain. Without this first critical step transitional justice mechanisms will continue to exclude sexual and gender-based violence.

What role can, and should, women have in truth and reconciliation commissions, and will such a role lead to justice, reconciliation, and a commitment to gender equality? In other words, “[h]ow do we demarginalize women’s rights questions in the construction of transitional justice...?” A caveat might be in order here: In exploring this question, my approach may appear essentialist. Focusing on women as an undifferentiated group when some women are implicated in gross violations of human rights in a number of ways—either by directly supporting warlords, engaging in the trafficking of women and children, or enabling such activities—is

145. See Meintjes, supra note 144, at 108–11 (explaining the SATRC’s failure to address the systemic and gendered nature of apartheid).

146. See id. at 109–11.

147. See generally id.

148. Id.


150. Mutua, supra note 1.

151. Id.
problematic. Despite this reality, evidence shows that women, as a group, are largely the victims of atrocities and not the perpetrators.

The 2009 Secretary-General’s report on the implementation of Resolution 1325 notes that “[a] persistent cause of concern is that women continue to be virtually absent from the peace table and to be severely underrepresented as third-party mediators or even as representatives of the [UN] in most conflict-affected countries.” The report also highlighted the UN Development Fund for Women’s finding that out of twenty-one major peace processes reviewed “since 1992, only 2.4 per cent of signatories to peace agreements were women.”

Anecdotal evidence suggests that this pattern of exclusion persists.

“[W]omen and girls are [also] particularly vulnerable to threats of violence” and as “bearers of cultural identity . . . [often] become prime targets . . . [for] [r]ape, forced impregnation, forced abortion, trafficking, sexual slavery and the intentional spread of sexually transmitted infections (STIs), including . . . (HIV/AIDS).” The Secretary-General’s 2009 report noted that “sexual and gender-based violence remained one of the most pernicious consequences of armed conflict . . . as a weapon of war.”

The report particularly highlighted the Democratic Republic of Congo’s 2009 figure of 1,100 rapes reported each month, of which more than ten per cent were child victims aged ten years old or younger.

As mentioned earlier, women are both victims of, and participants in, armed conflict. In addition, they are often agents of change. Moreover, “[w]hen women [are] involved in national peace negotiations they . . . [bring their own] perspectives . . . to the peace table . . . by ensuring that peace accords address demands for gender

155. Id.
156. A senior female UN official confirmed this state of affairs in a private conversation with me in January 2015.
159. 2009 Secretary-General Report, supra note 154, ¶ 9.
160. Id. ¶ 10.
equality in new constitutional, judicial and electoral structures." The challenge therefore is for transitional governments to commit themselves to the imperatives provided in Resolution 1325 by ensuring that women’s participation is integral to the operation of their transitional justice mechanisms.

VII. MOVING FORWARD: A GENDERED LENS

A gendered lens on the operation of truth and reconciliation commissions can assist in demonstrating the limitations of transitional justice processes in bringing about a lasting and transformative peace. This failure is likely related to the absence of women in planning and engaging as full participants in these processes. This absence has defined the ambit of truth and reconciliation commissions, their definition of “victim,” their operation, and their recommendations.

Bringing women into the process in a comprehensive and constructive way allows for a greater emphasis on victim and witness testimonies. Such an approach might generate an ethos of shared societal responsibility rather than a focus on the criminal responsibility of individual perpetrators. In addition, a focus on victims might serve as an antidote to the recent focus on punitive processes in human rights law and lead to justice and reconciliation across all sectors of society through publicly-shared knowledge of human rights violations. Instead of punishment, the focus should be on healing, empathy, and a commitment to preventing the conduct that led to the creation of transitional justice mechanisms like the SATRC in the first place.

Ultimately, the key question is the overall purpose of a truth commission and what goals are to be served. For women especially, several are quite apparent. First, truth and reconciliation commissions provide a structured and supportive venue that enables victims to tell their stories. Second, they furnish a lens through which to see the harms that the victim suffered. Third, even the experiences of those women who do not appear before a truth and reconciliation commission to tell their stories

163. For a compelling collection that demonstrates the need for feminist perspectives in transitional justice mechanisms, see Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice (Martha Albertson Fineman & Estelle Zinsstag eds., 2013) [hereinafter Feminist Perspectives on Transitional Justice].
164. See generally Maisel, supra note 105.
167. See generally Fionnuala Ní Aoláin, Advancing a Feminist Analysis of Transitional Justice, in Feminist Perspectives on Transitional Justice, supra note 163, at 43; Gobodo-Madikizela, supra note 135.
168. See generally Graybill, supra note 119.
169. See generally Ní Aoláin, supra note 167; Gobodo-Madikizela, supra note 135.
are validated by the testimony of those who do so appear.\textsuperscript{170} In other words, the testimony of individual victims of gender-based violence serves to highlight the systemic nature of such violence and its impact on women in general.\textsuperscript{171} In effect, truth and reconciliation commissions can serve a preventative function, acting as a bulwark to prevent future violations of human rights.\textsuperscript{172}

Truth and reconciliation commissions ensure that perpetrators are confronted with their crimes and the harm that they unleashed as a result of such crimes.\textsuperscript{173} Bystanders or beneficiaries of the system that inflicted harm on large numbers of victims are confronted with the consequences of their inaction or acquiescence in the face of such widespread atrocities.\textsuperscript{174} In the final analysis, truth and reconciliation commissions document the official record of atrocities and abuses and proscribe its denial.\textsuperscript{175} Most importantly, truth and reconciliation commissions, if conducted thoughtfully and with commitment and widespread societal buy-in, may enable a society to transition and move toward a culture of human rights, equality, and dignity.\textsuperscript{176}

Truth and reconciliation commissions may be cathartic, but to be effective, they have to be transformative.\textsuperscript{177} The SATRC provided great moments of pathos, pain, revelation, and even theater, and it gave rise to countless literature and movies—including the Academy Award-nominated \textit{Long Night’s Journey Into Day}.\textsuperscript{178} The lasting legacy of the SATRC, however, is diminished by its failure to address violence against women. In fact, violence against women persists in South Africa, resulting in a “double penalisation” of women.\textsuperscript{179}


\textsuperscript{171} See generally Ross, \textit{supra} note 170.


\textsuperscript{173} See Amnesty Int’l, \textit{supra} note 83.

\textsuperscript{174} See id.; cf. Elizabeth F. Drexler, \textit{Fatal Knowledges: The Social and Political Legacies of Collaboration and Betrayal in Timor-Leste}, 7 \textit{Int’l J. Transitional Just.} 74 (2013) (analyzing the counterproductive impact that a truth commission can have if a pre-existing climate of collusion and distrust discourages open testimony).

\textsuperscript{175} See Kader Asmal, \textit{Truth, Reconciliation and Justice: The South African Experience in Perspective}, 63 Mod. L. Rev., Jan. 2000, at 1, 1 (“The [SATRC] was mandated to pronounce on what had been done by whom to whom, why, and what was to be done about these past abuses in our calmer present times.”).


\textsuperscript{178} \textit{Long Night’s Journey Into Day} (SnagFilms 2001).

As armed conflicts unfold in many parts of the world, sexualized violence continues. As feminist scholars and women’s rights advocates strive to redress this reality, the most significant change will come through women’s active involvement in peace and transitional processes. Transitional justice mechanisms that are currently under consideration and that may be established in the future have the opportunity to commit to an enduring peace and to gender equality by ensuring women’s comprehensive participation.\footnote{In my book, \textit{From Cape Town to Kabul: Rethinking Strategies for Pursuing Women’s Human Rights}, I advance a methodology that centers the experience of women in legal, constitutional, and political transformation processes. See generally \textit{From Cape Town to Kabul}, supra note 112. For the purposes of my exploration, I coined the term “conditional interdependence,” an approach that draws from diverse, multicultural, and global feminist methodologies. \textit{Id.} at 4–6.}[180]

\footnote{\textit{Id.} at 20.}