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Book Review, Jamie Rowen, Searching for Truth in the Transitional Justice Movement (2017) & Leonie Steinl, Child Soldiers as Agents of War and Peace: A Restorative Transitional Justice Approach to Accountability for Crimes under International Law (2017)

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BOOK REVIEWS

Jamie Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge University Press, 2017) 182 pp. (Hardback) \$99.99 ISBN 978-1-1071-08769

Leonie Steinl, *Child Soldiers as Agents of War and Peace: A Restorative Transitional Justice Approach to Accountability for Crimes under International Law* (Asser Press, 2017) 421 pp. (Hardback) €149.99 ISBN 978-9-4626-52002

Why do truth commissions emerge following some conflicts but not others? Jamie Rowen tackles this question in *Searching for Truth in the Transitional Justice Movement*. Rowen approaches this topic through a detailed study of three jurisdictions: the former Yugoslavia, Colombia, and the United States. Although truth commissions did progress in Colombia, they stalled in both the former Yugoslavia in the wake of the Balkan Wars as well as in the United States in regard to the conduct of US officials after the events on 11 September 2001. Rowen unpacks what happened and what failed to happen — and why — in each of these three jurisdictions.

Rowen delivers a lively, careful, and engaging account as to why truth commissions arise in some places but not in others. Along the way, Rowen shares with readers stories from those individuals who animate the human rights movements and those individuals — hungry for justice — who are touched by such movements. Rare among academics, and utterly refreshing, Rowen's book is less about best practices than it is about what is best for people. On this note, Rowen's book is courageous. She eschews the allure of universality and commonality to conclude that what may be 'best' differs across time and places.

Rowen's focus on individuals and the idiosyncratic, rather than machineries and the systemic, prompts a set of deeper ruminations on transitional justice, a process that she considers reified in crucial ways through truth commissions. Rowen identifies malleability as a key characteristic of truth commissions.

Rowen presents the truth commission as shape-shifter, as ambiguous, and as cypher. She nonetheless refrains from casting aspersions upon a malleable entity as one that lacks decisiveness or presents as characterless, irremediable, or wishy-washy. Instead, Rowen unfurls malleability as dyad: vice and virtue, asset and liability, foible and strength. For me, Rowen's insights evoke the Rolling Stones song:

But what's confusing you
Is just the nature of my game
Just as every cop is a criminal
And all the sinners saints
As heads is tails.¹

Rowen's book presents malleability in a way that renders the concept less confusing and more natural. While malleability, indeed, may frustrate at times, Rowen also remediates its value when it comes to promoting accountability, improving survivor well-being, and preventing future violence. There is a fine line between flaccidity, on the one hand, and agility, suppleness, and adaptability, on the other. It is because of the intrinsic malleability of truth commissions that, according to Rowen, 'actors in strikingly different political contexts see the utility of creating them.'² Truth commissions, in this sense, hold a generative plasticity. 'In many places', Rowen adds, 'calling for a truth commission became a default strategy — the "something" that many view as preferable to doing nothing.'³

Reflexively, readers may juxtapose the plasticity of the truth commission with the apparent rigidity of law. Tangibility, after all, is one of the putative qualities of criminal law: we believe that we know it when we see it in operation, and we have a set of standards by which to measure it. These standards are due process. Outputs, as well, can be quantified: acquittals, convictions, and sentences.

1 Rolling Stones, 'Sympathy for the Devil', *Beggars Banquet* (1968).

2 J. Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge University Press, 2017), at 4.

3 *Ibid.*, at 5.

In contrast, a standard operating definition for what counts as a truth commission remains lacking. That said, Rowen's finding that '[e]ven where actors promoted truth commissions, they did so in ways that did not challenge the prevalent belief that retribution is important, if not necessary' is of great interest to international criminal lawyers.⁴

Rowen rightly notes the absence of a national truth commission in the United States following 11 September 2001. The American experience with truth commissions, however, is somewhat more granular. Many international legal scholars may be surprised to learn that the United States has had actual experiences with truth and reconciliation commissions. These experiences are not national. They occurred at subnational and city levels. These experiences, nonetheless, unwind riveting and largely underappreciated stories of the search for justice and also the generative politics through which truth commissions are created. Experts invested in international justice have much to learn from local efforts, including those that make little to no reference to international law or norms.

One example is from North Carolina. The Greensboro Truth and Reconciliation Commission was established to examine the 'context, causes, sequence and consequences' and make recommendations for community healing around a tragedy in the city of Greensboro, which occurred on 3 November 1979.⁵ That day witnessed the deaths of five anti-Ku Klux Klan (KKK) demonstrators and the wounding of eight others along with one KKK member and a news photographer. This truth commission came into existence in light of community frustration: after two criminal trials, and a civil trial that found members of the Greensboro Police Department jointly liable with KKK and Nazi members for the wrongful death of one victim, many in the Greensboro community still did not feel that justice had been served. For this reason, the community launched a democratic process to nominate and select the seven members of this independent commission, which was

empaneled in 2004. This Commission brought perpetrators, survivors and victims' families into the public arena to recount the tragic events of that day, explore realities of systemic and structural racism, and thereafter reach a broad series of recommendations.⁶ Ultimately, however, the City Council of Greensboro rejected the process and report. The Council, instead, merely issued a statement of regret for the violence.

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission represents a second example.⁷ In 2012, the state of Maine and the Wabanaki tribal governments committed to a joint entity to investigate and document an era in Maine's history when indigenous children were being sent into 'foster' care at an alarmingly high rate. This entity was the first truth and reconciliation commission established in the United States endorsed by government. It was one of the first in the world to examine issues of indigenous child welfare — well before the widely recognized national initiative in Canada. The Maine-Wabanaki Commission focused on placing the state and its child welfare system under scrutiny and sought systemic reconciliation between the child welfare practices of tribes and the state.

Rowen structures her book around national jurisdictions. In other words, she turns to *places* as units of analysis. Discussion could also be grounded in *conceptual spaces*, to wit, *kinds* of human rights abuses and *types* of abusers. It is on this latter note that the compelling book, authored by Leonie Steinl, enters the mix as a complement to Rowen's innovative work. Steinl examines how law and justice suffuse and infuse child soldiers. Steinl normatively interrogates how questions around child soldiers should intersect with transitional justice initiatives. Steinl picks up the toughest questions: how to approach the child who, subject to a variety of conditions, murders, maims or mangles others? What does justice mean for these others, which could well include children; and what does it mean for the child who commits the hurt, who too is a victim?

4 *Ibid.*

5 See the website of the Greensboro Truth and Reconciliation Commission, available online at <http://www.greensborotrc.org> (visited 6 February 2018).

6 The recommendations are available online at <http://www.greensborotrc.org/overallrecs.pdf> (visited 6 February 2018).

7 See the report issued by the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, available online at <http://www.mainewabanakitrc.org/report/> (visited 8 February 2018).

Although Steinl's book is based on a doctoral dissertation she defended at the University of Hamburg in 2016, it reads like the work of an assured and reflective senior scholar. Steinl advances a convincing case that child soldiers ought to be treated with dignity, which means they should also, depending on the circumstances, be considered as actors. Unlike many authors who soothe themselves in the occlusion of the passive voice, Steinl is refreshingly clear in her deployment of the active voice. When it comes to children committing acts of atrocity, she is categorical: 'I hold the view that child soldiers can benefit from accountability under the condition that the accountability measures are crafted and executed in a child-adequate fashion.'⁸ Steinl contests totalizing narratives, however, well-intended, that simplify child soldiers as innocent victims, or in contrast, as baleful demons. She situates herself in an approach to militarized youth that draws from ethnographic theory. Steinl addresses complex questions on gender and violence, recognizing that, falling among the paradoxes of war, 'is that it can, in some ways, actually have positive effects on gender equality' and that failing to recognize the agency of youth can doubly disadvantage girls and young women within processes of societal reconstruction.⁹

Steinl's work is normative, in that she sets out why her approach is beneficial. Nonetheless, her project is also expository. Steinl offers one of the most deeply researched accounts of practices of child soldiers globally as well as a meticulous survey of law and policy. She deftly canvasses national legislative and judicial proceedings, including domestication of the Statute of the International Criminal Court, and concludes — correctly — that child soldiers, as a matter of *lex lata*, 'can be held domestically accountable for crimes under international law provided that they meet the relevant domestic standards for criminal responsibility such as the applicable minimum age,'¹⁰ taking into account the special rights of children, defenses, and mitigating

factors. Steinl, however, goes well beyond to consider traditional processes, amnesties, cleansing ceremonies, and reparation.

Steinl makes a powerful case that truth commissions specifically, and transitional justice generally, can advance the best interests of child soldiers. For this to happen, she argues, transitional justice frames must shed their predilection to construct child soldiers as passive victims. Steinl's sophisticated treatment of situational authority unspools the complexities of violence and the confounding ambiguity of many perpetrators. The criminal law divides binarily into guilty or innocent, right or wrong, victim or victimizer, persecutor or persecuted. In actuality, however, these categories may be far more fluid. Steinl challenges reductive parsimony when it comes to child soldiers. In this regard, she situates herself in a dynamic research stream that has come to visit and revisit how to *talk about* discomfiting questions while avoiding sensationalism or dismissiveness. Examples are the Kapo violence in the Nazi concentration camps,¹¹ men's experiences of forced marriage,¹² sexual violence during armed conflict,¹³ and the role of women as atrocity perpetrators.¹⁴

Steinl remains bashful when it comes to the prospect of criminally prosecuting children who perpetrate acts of atrocity.¹⁵ While she underscores the existence of a duty to prosecute, and that *lex lata* permits that duty to apply to children, at the same time, Steinl inclines towards 'leav[ing] behind' the duty to prosecute in such instances and instead

8 L. Steinl, *Child Soldiers as Agents of War and Peace: A Restorative Transitional Justice Approach to Accountability for Crimes Under International Law* (Asser Press, 2017), at 36–37.

9 *Ibid.*, at 30–33.

10 *Ibid.*, at 189.

11 M.A. Drumbl, 'Victims who Victimise', 4 *London Review of International Law* (2016) 217.

12 O. Aijazi and E. Baines, 'Relationality, Culpability and Consent in Wartime: Men's Experiences of Forced Marriage', 11 *International Journal of Transitional Justice* (2017) 463.

13 S. Sivakumaran, 'Sexual Violence Against Men in Armed Conflict', 18 *European Journal of International Law* (2007) 253.

14 L. Sjoberg, *Women as Wartime Rapists: Beyond Sensation and Stereotyping* (New York University Press, 2016).

15 Steinl states that: 'In the case of child soldiers, criminal prosecutions do not pose an ideal solution to the quest for accountability.... As such it is... of particular importance to examine alternative approaches towards achieving accountability'. See Steinl, *supra* note 8, at 277.

advancing a 'duty to hold accountable' or a 'duty to end impunity'.¹⁶ This move, coupled with a broader understanding of how impunity can be thwarted, vivifies a rich array of transitional justice mechanisms. For Steidl such mechanisms, including truth commissions, would do well to present the child soldier three-dimensionally as actor, victim, and witness. She notes that this has not happened as yet. Steidl laments how truth commissions have been inhibited in how they approach child soldiers because of fears that any conversation which they initiate portraying child soldiers as other than passive victims would be instrumentalized in abusive forms. It is wise to worry about this concern. We learn, nonetheless, from Steidl's detailed review of truth commissions in South Africa, Sierra Leone, and Liberia, that passive victim narratives approach children dismissively and even condescendingly by failing to fully explain the aetiology of violence and to build a vibrant culture of children's rights.

Steidl advocates for the restorative potential of truth commissions, and other justice modalities, which she sees as best actuated when these mechanisms speak in ways that transcend the constraints of preordained imagery and facile conceptions. Steidl posits a paradigm of 'restorative transitional justice'. The rub, of course, lies in the details. What does this mean on the ground? What does this look like in practice? Much of restorative justice literature is a bit tired: well-versed and often rehearsed. The bottom line, however, remains clear and Steidl is right to underscore it. Operational experiments with restorative transition justice will not be robust until the grip of criminal law on the imagination of post-conflict justice begins to relax.

Rowen flags truth commissions as a solution when there may be none other politically, while Steidl incubates these commissions where it may simply be the best fit ontologically. Both books differ in tone, style, and approach. Yet, when read together, these books make a vivid case for expanding justice beyond courtrooms and jailhouses. In this regard, both books are indispensable reads for

all those concerned with developing a meaningful transitional justice paradigm.

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Claus Kreß and Stefan Barriga (eds),
The Crime of Aggression: A Commentary,
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2016) 1583 pp. (Hardback) \$350 ISBN
978-11-0701-526-5

A definition of the crime of aggression was reached at the Review Conference of the Rome Statute of the International Criminal Court (ICC) in Uganda in 2010.¹ The ICC Statute has been the subject of many commentaries,² the crime of aggression, which was left undefined during discussions in Rome,³ certainly deserved its own commentary. This book is written to fill this gap. Its uniqueness is, therefore, unquestionable since considered alone, the crime of aggression has been the subject of countless international law

- 1 N. Blokker and C. Kreß, 'A Consensus Agreement on the Crime of Aggression: Impressions from Kampala', 23 *Leiden Journal of International Law* (2010) 889.
- 2 See amongst others, W.A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn., Oxford University Press, 2016); O. Triffterer and K. Ambos, *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (2nd edn., C.H. Beck/Hart/Nomos, 2008), at 1954; A. Cassese, P. Gaeta and J.R.W.D. Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press, 2002), at 2018.
- 3 Art.5(2) ICCSt., which entered into force on July 2002, states that: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations."

16 *Ibid.*, at 277.