

**DRAFT: DO NOT CITE WITHOUT AUTHOR'S PERMISSION**

## **Theorizing Justice for War Babies**

Debra DeLaet

Only recently have scholars begun to draw attention to the issue of “war babies” in war-torn societies. The label “war babies” has been used to describe babies born due to rape and sexual exploitation during wartime (Carpenter, this volume). Systematic data on war babies is non-existent. Nevertheless, anecdotal evidence suggests that the category of “war babies” encompasses a wide variety of children who experience differing degrees of victimization. Although some women impregnated by wartime rape have abortions, many women who become pregnant as a result of wartime rape and sexual exploitation carry their pregnancies to term, either by choice, as a result of coercion, or due to their lack of access to abortion services. Some women who experience “forced pregnancies” kill their babies at birth or later in infancy. Surviving war babies are vulnerable to being orphaned, stigmatized by the communities of both parents, and to discrimination in general (Grieg 2001; Niarchos 1995; Nowrojee 1996; Stiglmayer 1994; Salzman 1998). Because of their vulnerability, war babies are at particular risk of becoming child soldiers and child laborers or being sexually enslaved and exploited (McEvoy-Levy 2005). Other war babies are accepted by their communities while they continue to be a reminder of the wartime violence that produced them.

The primary purpose of this chapter is to “theorize justice” for war babies in societies emerging from violent conflict. To this end, the chapter begins with a brief discussion of the unique obstacles to pursuing justice for war babies. Then, the chapter provides an overview of punitive and restorative models of justice and examines existing mechanisms for pursuing justice in war-torn societies. Next, the chapter considers the potential strengths and weaknesses of both punitive and restorative models of justice as they apply to the issue of war babies. Finally, the chapter includes an exploration of alternative approaches to justice for war babies. A basic theme emerges in this preliminary attempt to theorize justice for war babies: existing mechanisms for pursuing justice in war-torn societies are not currently designed in a manner that promotes justice for war babies. Indeed, in some cases, existing models of justice are altogether inappropriate for war babies. In their place, alternative approaches will be necessary for bringing justice to war babies.

### **OBSTACLES TO JUSTICE FOR WAR BABIES**

The issue of “war babies” represents a potentially thorny and multi-layered obstacle to the pursuit of justice in war-torn societies. As discussed above, the label “war babies” can be applied to a wide variety of victims of wartime sexual violence, and the status of these babies as victims can be contested. Does it make sense to characterize war babies as victims since the

birth of these children is the very source of their existence (Carpenter 2000)? Does the category of war babies include unborn fetuses that were conceived due to wartime rape? Many feminist scholars sympathetic to a gendered analysis that draws attention to the problem of war babies would nonetheless resist classifying fetuses as victims due to the implication that such classification would have for reproductive rights. This dilemma illustrates one of the underlying factors that complicates any consideration of justice for war babies. This problem inevitably involves not only children but their mothers.

Thus, the problem of war babies involves at least two general categories of possible victims that have been harmed in different ways: war babies and their mothers. As discussed above, war babies are harmed in a variety of ways. If one includes unborn children conceived of wartime rape in the definition of war babies, then aborted fetuses become a category of victims. Some war babies are victims of infanticide. Surviving war babies are subject to a variety of harms, including abandonment, abuse, stigmatization, and discrimination. These categories are complicated by the fact that the division between these two groups of victims is not simply a matter of age. Rather, the mothers of war babies might themselves be children (Sekaggya, this volume). At the same time, the label “war babies” can be applied to adults who were born of wartime rape.

The mothers of war babies are victims in many ways. Initially, they are victims of wartime sexual violence or coercion. In cases where these mothers have not voluntarily chosen to give birth, they can be considered victims of forced pregnancy. When mothers are forced to marry their rapists, they also become victims of forced marriage. They can be victims of social stigma and discrimination in societies where women are blamed for rapes perpetrated against them. Indeed, choosing to actively parent a war baby is an inherently dangerous choice for women in some societies because men in these societies have often killed women who return with children born of rape, clear evidence that their sexual purity has been violated (Meintjes, Pillay, and Turshen 2001: 12). When it does not lead to outright violence against them, the stigmatization of women who have been raped hinders the ability of these women to provide for their basic economic needs (Goldblatt and Meintjes 1998: 32, 53). Moreover, it should be noted that women who abandon children born of rape are sometimes forced to do so. In such cases, the mothers as well as the abandoned children are victims of the social stigma attached to babies born of wartime rape.

Despite the importance of this issue, war babies remain virtually invisible in international political and legal discourse. The international community and non-governmental bodies involved in humanitarian relief, peacebuilding, and post-conflict justice efforts have neglected this issue to date. A striking example of the invisibility of war babies is provided by a United Nations Children’s Fund (UNICEF) report outlining a series of recommendations for addressing the involvement of children in the Truth and Reconciliation Commission for Sierra Leone (United Nations Children’s Fund 2001). According to the report, one of the key purposes of the Truth and Reconciliation Commission for Sierra Leone is to create an authoritative historical record documenting what happened to children during the armed conflict in Sierra Leone. The Truth and Reconciliation Commission’s mandate also involves promoting the reintegration and reconciliation of children, a goal that is directed primarily at child soldiers. UNICEF’s report was designed to provide recommendations and guidelines for achieving these goals. However, despite the report’s emphasis on children, nowhere does it mention the issue of war babies. Given the social isolation and ostracism apparently faced by many war babies, this is a

conspicuous omission in a report intended to aid a truth commission in fostering reconciliation and reintegration of children in a war-torn society.

In the same way that the international community has neglected war babies to date, scholarship on peacebuilding, post-conflict justice, and reconciliation has not yet explored this issue in detail. Just as this volume seeks to render war babies visible, this chapter represents a preliminary effort to bring war babies to the center of analyses of efforts to pursue justice in war-torn societies. This effort involves exploring several important questions. What would justice for war babies look like? Are existing models for pursuing justice in war-torn societies appropriate for war babies? What are the limitations of existing models in terms of addressing the problems of war babies? Do war babies require altogether new mechanisms for pursuing justice in war-torn societies?

These questions are especially important because many war babies are not yet at the age of majority, particularly in the case of more recent wars. Thus, war babies often are not in a position to demand justice for themselves or to articulate a vision of justice, especially in the immediate aftermath of war when they may still be very young. (Upon reaching adulthood, war babies may, in fact, become outspoken proponents of justice for themselves, other war babies, or even their mothers and other women victimized by wartime sexual violence.)<sup>1</sup> Complicating matters, when war babies are socially ostracized and isolated within their communities, they do not have vigorous advocates to demand justice on their behalf. This reality suggests that human rights advocates and the international community will need to play an especially prominent role in bringing attention to the needs of war babies in war-torn societies.

## **PURSUING JUSTICE IN WAR-TORN SOCIETIES**

Scholars, policymakers, and activists have shown increasing interest in the issue of how to pursue justice for victims of human rights abuses and war crimes in war-torn societies.<sup>2</sup> To this end, there have been an incredible number of legal and institutional developments both at the national and international level since the end of World War II. A wide variety of legal and political mechanisms, including trials, truth commissions, reparations, and apologies, have been created in an effort to pursue justice in war-torn societies (DeLaet 2005b). Efforts to bring war criminals to justice are not altogether new. Numerous states made efforts to bring war criminals to trial prior to the Nuremberg Tribunal (Bass 2000), and states historically also have relied on reparations as a method for pursuing justice in the aftermath of violent conflict and warfare (Barkan 2000). Nevertheless, the scope and intensity of international efforts to institutionalize methods for pursuing justice in war-torn societies since World War II is unprecedented.

Before exploring the limitations of existing justice mechanisms in regards to war babies, it is necessary to provide a basic overview of the strengths and weaknesses of these mechanisms in general. The international community has relied primarily on two basic models for pursuing justice in war-torn societies: punitive and restorative. The punitive model, sometimes called

---

<sup>1</sup> See the story of Ryan in the film *War Babies*, directed by Raymond Provencher (Montreal, Quebec: Macumba Productions, 2001).

<sup>2</sup> The terminology used by practitioners and scholars varies. Often, scholars refer to “transitional justice”, which technically deals with cases involving a transition from an authoritarian to a democratic government. The term “post-conflict justice” also is widely used and refers to cases where violent conflicts ostensibly have ended. Because violent conflicts are typically more fluid and do not abruptly come to an end, the term post-conflict justice is problematic. Additionally, the term “transitional justice” may be too narrow because it seems to apply only to societies actively in the transition from authoritarianism to democracy. Therefore, I have chosen simply to refer to justice in war-torn societies in this chapter.

retributive justice, emphasizes the punishment of perpetrators of war crimes and human rights abuses as a path towards justice in war-torn societies (DeLaet 2005b: 159-162). The primary mechanism for pursuing justice within the punitive model is trials, although other punitive mechanisms include retributive killings, purges, and reparations imposed on guilty parties. In contrast, restorative justice, sometimes referred to as a conciliatory model of justice, emphasizes the restoration of social relationships as the most important goal for societies emerging from violent conflict (Llewellyn 2005). Truth commissions are perhaps the most prominent example of a restorative approach to justice in war-torn societies. Apologies represent another example of a restorative approach to justice in war-torn societies, as do public memorials and social rituals intended to promote individual and collective healing. While reparations can be characterized as punitive in the sense that they impose a penalty on guilty parties, they might also be seen as restorative to the extent that they are intended to provide restitution to parties that have been harmed and, in doing so, to encourage social repair among groups in conflict.

Punitive justice is fundamentally concerned with questions of guilt and accountability. A punitive model prioritizes the punishment of perpetrators of war crimes and human rights abuses as the central component of justice in war-torn societies. As a general rule, punitive justice calls for the punishment of *specific* individuals guilty of perpetrating war crimes and human rights abuses and seeks to avoid ascribing collective guilt to groups that have been involved in violent conflict. Although in some cases punitive justice may involve a punishment imposed on a society at large (for example, taxpayers whose government funds reparations to a victimized group), the primary focus of a punitive model of justice is on individual perpetrators of war crimes and human rights abuses. Accordingly, the identification of “the guilty” is one of the essential elements of a punitive approach to pursuing justice in the aftermath of human rights abuses and war crimes.

Because of its emphasis on individual rather than collective guilt, proponents of punitive justice typically view trials as the most appropriate method for identifying and punishing those individuals guilty of perpetrating war crimes and human rights abuses (Mendez 2005). Judicial efforts to punish war crimes and human rights abuses are founded on the rule of law and the belief that “neutral” legal institutions are in the best position to apply the rule of law fairly and to evaluate guilt and innocence without discrimination. Perhaps the strongest argument in favor of trials as a path to justice in war-torn societies is that they represent a legalist response that is not necessarily the instinctive reaction of actors that have been deeply involved in violent conflict. Instead of trials, parties to a conflict might choose retributive killing without trial or widespread purges of enemy parties and their collaborators. In this regard, trials represent an attempt, albeit an imperfect one, to inject fairness and due process into a situation where hostility typically runs deep and where the impulse for vengeance is often strong (DeLaet 2005b: 181-184).

Despite the appeal of relying on the rule of law as a fair method for meting out punishment to the guilty, trials are imperfect mechanisms for pursuing justice in war-torn societies. Societies emerging from violent conflict often have no tradition of the democratic rule of law and rarely have the financial or social resources to create effective judicial mechanisms. Therefore, efforts to pursue trials at the national level face great obstacles. For example, in Rwanda, the national courts are overwhelmed by the approximately 120,000 suspects in custody. If prosecutions continue at the current pace in Rwanda, it would take over 150 years to prosecute all of these suspects (Neuffer 2000). Obviously, in such a context, trials do not provide a realistic option for pursuing genuine justice.

Because national courts are not always ideally situated to prosecute trials, the international community has created *ad hoc* tribunals as a way of pursuing punitive justice in the aftermath of violent conflicts. Critics charge that *ad hoc* tribunals represent at best a limited method for pursuing justice. For example, critics have challenged the legitimacy of the Nuremberg and Tokyo Tribunals on the grounds that they did not fulfill liberal requirements of due process by relying on an *ex post facto* application of the law and by blurring the lines between individual and collective guilt. Critics also contend that the post-World War II trials represent an illegitimate form of “victor’s justice” in which similar crimes by the Allies were ignored.

The *ad hoc* tribunals created by the United Nations in the former Yugoslavia and Rwanda generally have avoided problems with the *ex post facto* application of the law and with victor’s justice. Nevertheless, they also have been the subject of serious criticism, including the charge that these tribunals have only prosecuted a relatively small number of individuals in each case. In any case, *ad hoc* tribunals do not provide a consistent and comprehensive model for pursuing justice in war-torn societies at a global level. The recently created International Criminal Court (ICC) may rectify the weaknesses of *ad hoc* tribunals, though the extent to which it becomes an effective mechanism for trying war criminals remains to be seen. In short, an absence of effective judicial institutions at either the domestic or international level has limited, to date, trials as punitive mechanisms for bringing justice to the perpetrators of war crimes and human rights abuses and their victims.

Unlike the punitive model of justice, a restorative model of justice suggests that genuine justice is more likely to be produced by processes that seek to repair social relationships among groups that have been in conflict than by processes emphasizing the punishment of the guilty (Llewellyn 2005). According to its proponents, restorative justice also may do a better job than punitive justice of assessing the guilt of perpetrators and responding appropriately. Whereas judicial trials stress individual guilt, institutional mechanisms emphasizing restorative justice may do a better job of forcing communities at large to wrestle with their collective guilt. While proponents of trials contend that in the absence of individual accountability an entire group may be deemed collectively guilty, the reverse may also be true. By focusing on individual accountability, trials also may inappropriately remove the burden of guilt from collective groups (Fletcher and Weinstein 2002: 601).

Proponents of restorative justice often embrace truth commissions as the most appropriate method for pursuing justice in war-torn societies precisely because they believe that truth commissions may be better suited than punitive mechanisms to fostering an examination of collective guilt and responsibility and the structural and institutional context in which mass violence occurs. Moreover, proponents of truth commissions contend that they play an essential role in creating an authoritative record of past atrocities that will help to prevent the recurrence of violence (Rotberg 2000: 3). Admittedly, truth commissions are not concerned with establishing the guilty and accountability of individual perpetrators of war crimes and human rights abuses. Indeed, some, though not all, truth commissions offer amnesty to perpetrators in exchange for their testimony. Rather than focusing on individual guilt and accountability, truth commissions emphasize a collective sense of guilty and accountability. A particular advantage of the collective conception of justice in truth commission is that it acknowledges the reality that in most war-torn societies, there is not a clear, bright line dividing victims and perpetrators (Fletcher and Weinstein 2002). Indeed, many individuals living in war-torn societies have been both victims and perpetrators. In recognition of the complexity of guilt and victimization during

war, truth commissions stress social repair and peace as higher priorities than punishment in the pursuit of justice.

Although truth commissions have many strengths, they, like trials, are imperfect mechanisms for pursuing justice in war-torn societies. As Anne Hayner notes, commissions of inquiry typically have limited mandates that prevent a detailed exploration of the truth as it relates to repression by governments and violent conflicts. Moreover, truth commissions often operate with limited resources and under time constraints which limit the extent to which the full truth can be explored and disclosed (Hayner 2001). According to critics, truth commissions are not necessarily better than trials at contributing to reconciliation or social repair, despite claims to the contrary. As Juan E. Mendez has pointed out, truth without punishment for perpetrators may lead to lasting bitterness in the heart of victims of atrocities which, in turn, may serve to perpetuate cycles of violence rather than foster social repair (Mendez 1997: 255-282). Problems faced by the South African Truth and Reconciliation Commission (TRC) are illustrative in this regard. Many African victims of apartheid have expressed resentment at the amnesty process that was part of the TRC. For example, the family of Steven Biko, the prominent anti-apartheid activist, unsuccessfully tried to fight the establishment of the TRC. Although Biko's killers ultimately were denied amnesty, the family remained firmly opposed to a process which might have granted his killers amnesty. Other victims expressed concern that the TRC would generate only "empty apologies and hollow reconciliation" (Yamamoto and Serrano 1999: 494).

Mendez also has argued that truth commissions are not necessarily better than trials, where testimony is subject to cross-examination and the testing of evidence, at producing an authoritative record of the violence that has occurred in war-torn societies. According to Mendez, one of the most important moral justifications for trials is that they "are the most effective means of separating collective guilt from individual guilt, and thus to remove the stigma of historic misdeeds from innocent members of communities that are collectively blamed for the atrocities committed on other communities" (Mendez 1997: 277). In short, Mendez and other critics of truth commissions reject the assumption implicit in the restorative model of justice that an emphasis on collective guilt and accountability is preferable to the prioritization of individual guilt. Even in restorative models that do not call for the punishment of the guilty, a collective conception of guilt that risks of condemning the innocent along with the guilty will not serve the goals of social repair, according to critics.

As this brief overview has shown, punitive and restorative models of justice prioritize different goals and conceptualize justice in different ways. A punitive model conceptualizes justice as punishment for perpetrators and prioritizes individual over collective guilt. Conversely, a restorative model conceptualizes justice in terms of the restoration of social relationships and places a premium on collective accountability rather than individualized guilt. With these differences in mind, the next section considers the extent to which either of these models is appropriate for pursuing justice for war babies.

## **JUSTICE FOR WAR BABIES: PUNISHMENT OR RESTORATION?**

While the previous section explored the differences between punitive and restorative models of justice, it is worth noting that they share one thing in common— to date, both punitive and restorative mechanisms for pursuing justice in war-torn societies have neglected the issue of war babies. In large part, this neglect simply mirrors the invisibility of war babies in international legal and political discourse (Carpenter 2000). Proponents and practitioners of "transitional" or "post-conflict" justice have not intentionally dismissed or disregarded war

babies as a category of victims. Rather, they simply have not *seen* the war babies living at the margins of societies in conflict.

Even if existing approaches to justice in war-torn societies focused attention on war babies as a category of victims, it is not clear that they are particularly well-suited to actually promoting justice for war babies. A punitive model poses particular difficulties for the pursuit of justice for war babies. As discussed above, trials, the most prominent mechanism for pursuing punitive justice, prioritize the punishment of perpetrators and stress an individualized conception of guilt. Applying this model to war babies begs the question: who are the perpetrators? On one level, the answer to this question is easy. The perpetrators are the men who raped and forcibly impregnated the mothers of war babies. Working at this level, pursuing justice for war babies would not require a dramatic overhaul of international human rights law. Rape is now recognized as a grave breach of international law. Thus, one could argue that justice for war babies merely requires broadening international human rights law to recognize war babies as another category of victims of wartime rape.

However, this response is not as straightforward as it might first appear. Indeed, a variety of problems are inherent in a punitive, judicial approach to justice for war babies. One can identify the rapists as the primary perpetrators responsible for war babies as victims of human rights abuses. Nevertheless, the categorization of perpetrators remains problematic. In some cases, wartime rape has been perpetrated by men who are forced to rape their victims. In such cases when pregnancies result, albeit presumably small in number, these men can be considered victims rather than perpetrators. Moreover, wartime rapists are not the only “perpetrators.” Some opponents of abortion would argue that women who get abortions, even those who are victims of sexual violence, perpetrate violence against unborn fetuses. The mothers of war babies, themselves victims of rape or sexual coercion, are “perpetrators” when they kill war babies in infancy. Mothers of war babies are often also responsible for the political, social, and economic vulnerability of war babies when they reject and abandon them. Similarly, members of the community who ostracize, isolate, and discriminate against war babies can be seen as “perpetrators” who deprive war babies of fundamental human rights. Even those members of the community who simply embrace the cultural norms that create the pressures that result in the marginalization of war babies have some culpability for the vulnerable status of these children.

Despite the fact that they may have some culpability, it is simply not realistic to imagine that entire communities will be put on trial for contributing to an atmosphere in which war babies are marginalized. Moreover, it is unlikely that the international community would embrace, or that national societies would accept, an approach to justice that punished women whose basic human rights have been violated in such a stark and devastating way. Indeed, such an approach likely would exacerbate the hostility directed towards war babies and risk increasing their social isolation. Finally, treating war babies as victims in jurisprudence raises another thorny issue. As discussed in the introduction to this chapter, the category of war babies can be problematic in that it suggests at some level that their very birth makes them victims. Since the birth of these children is the source of their existence, does it really make sense to identify their birth as a harm requiring legal redress?

A punitive approach towards the mothers of war babies would be especially problematic in that it creates a potential tension between women and war babies as victims. Controversy is especially likely to arise in the case of abortion, given that many women who have been forcibly impregnated get abortions. If scholars and practitioners treat the issue of abortion in response to forced pregnancy as part of the larger problem of war babies, then does a punitive model of

justice suggest that women who have been raped and forcibly impregnated should be subject to punishment if they choose to undergo an abortion?

Even if a punitive approach towards the mothers of war babies were desirable or realistic, it would risk exacerbating the problem of silence about wartime sexual violence and forced pregnancy. Any effort to render war babies visible as a category of victims of wartime violence faces a formidable obstacle in the cross-cultural pattern of silence about sexual violence during wartime (Copelon 1998; Meintjes, Pillay, and Turshen 2001). Already constrained by conservative social and gender norms, women who have been raped and forcibly impregnated will be even more reluctant to acknowledge the sexual violence that has been committed against them if they are characterized as perpetrators rather than victims. If women who have been victimized by wartime sexual violence do not acknowledge the sexual violence that has been perpetrated against them, then neither they nor the communities in which they live can openly address the issue of the war babies living in their midst. Such an approach might also reinforce the tendency of some women to reject war babies as representative of “the enemy” rather than perceiving their needs as interconnected. In other words, a punitive approach that treats women who have been victims of sexual violence as perpetrators risks marginalizing war babies further.

A related problem with a punitive, judicial approach to justice for war babies is that the victims of wartime violence in this case are not in a position to bring charges. In other words, questions about who the complainants in any judicial process will be mirror the questions about who should be punished as perpetrators. Many war babies literally are not in a position to comprehend that they have been deprived of basic human rights or to recognize let alone bring charges against perpetrators, at least until they reach adulthood when trials may not be a likely option for responding to historical violence. To the extent that war babies have been rejected by their mothers and their communities, who can be expected to press charges on their behalf and to seek redress within the judicial system? Of course, human rights advocacy groups could bring charges on behalf of war babies. However, in light of the complications outlined above, trials as a response to the problem of war babies ultimately seem to be counter-productive.

The limitations of a punitive model of justice apply not only to the case of war babies but also to justice in war-torn societies in general. An emphasis on punishment and individualized justice does not always sufficiently take into account the social nature of violence and the structural context in which human rights abuses occur. Recognition of this point does not discount the justice contributions of trials when they are feasible and appropriate. For instance, in the case of war babies, trials for rapists that treat war babies as secondary victims of rape may be appropriate. In general, as discussed in the previous section, trials offer many advantages in terms of pursuing justice for individual perpetrators of war crimes and human rights abuses. However, the bottom line is that punitive models of justice simply may not be appropriate when the lines between victims and perpetrators are so blurred, as in the case of war babies where the violence and discrimination practiced by many mothers of war babies and their communities is understandable, if not justifiable.

A restorative model of justice seems more promising in many respects, but significant obstacles remain. Because they represent the most prominent approach to restorative justice in war-torn societies, an exploration of the ways in which truth commissions might contribute to justice for war babies is illustrative. As discussed in the previous section, one of the basic objectives of truth commissions is to contribute to an authoritative record of past atrocities in war-torn societies. In doing so, truth commissions are intended to prevent a denial of historic violence. The logic of truth commissions, in part, is that an acknowledgement of the violence



and abuses that victims have experienced is one form of justice for these victims. In turn, creating a record of the “truth” ideally will help to prevent the recurrence of violence. Applying this model to the problem of war babies simply requires rendering war babies visible and adding war babies to the mandates of truth commissions. In this regard, the “truth” produced by a truth commission is incomplete if it does not document the extent to which war babies exist as a category of victims of wartime violence as well as the subsequent violence and discrimination that they experience at the cessation of violent hostilities. By adding war babies to their mandates, truth commissions ideally would contribute to justice for war babies by raising awareness about the violence and discrimination that they experience. In turn, the logic of truth commissions suggests that acknowledging the existence of war babies and the human rights abuses they suffer is the first step towards preventing similar abuses in the future.

A more ambitious application of a restorative model of justice suggests that a focus on the issue of war babies in truth commissions could present new possibilities for social repair. As Siobhan McEvoy-Levy has written, war babies “... might even offer a road-map for transformation involving radical social change...” (McEvoy-Levy, this volume.) War babies’ very existence symbolizes the violence and conflict between warring parties in war-torn societies. In fact, war babies are a physical embodiment of the wartime violence that produced them. This reality is what makes the problem of war babies so vexing. On the one hand, it explains precisely why war babies are so often killed, ostracized, or rejected—to victims of wartime violence, they represent “the enemy” and the violence that has been perpetrated against them. On the other hand, there is the *possibility* that communities recovering from wartime violence could choose to emphasize war babies connections to their birth mothers and their communities. Doing so might contribute to the blurring of rigid distinctions between “enemy perpetrators” and victims. In short, if communities can recognize the humanity of war babies despite the violent circumstances leading to their births and the apparent inhumanity of the rapists or sexually exploitive men who fathered them, then perhaps such recognition could be a tentative first step towards social repair among groups in conflict in war-torn societies.

In spite of their potential, truth commissions still face many obstacles in terms of providing justice for war babies. A recognition of war babies as a category of victims does not guarantee that truth commissions will produce justice for them. The way in which truth commissions have dealt with sexual violence towards women is instructive. To date, truth commissions have not seriously incorporated attention to gender and sexual violence (DeLaet 2005a). This lack of attention to sexual violence results, in part, from mandates that prioritize “politically motivated crimes” and an interpretation of these mandates that treats rape and other forms of sexual torture as non-political crimes (Hayner 2001: 79-80). In this regard, it should not be surprising that truth commissions have not treated war babies as a category of victims of wartime violence.

Even if truth commissions prioritize sexual violence against women and human rights abuses against war babies, there is no guarantee that truth commissions will elicit the truth about the prevalence of war babies and the human rights abuses they face. Despite the fact that truth commissions, unlike trials, are based on a non-adversarial approach to justice, victims of sexual violence may remain reluctant to testify about sexual violence due to deeply entrenched norms that encourage silence on the part of victims of sexual violence (DeLaet 2005a). So long as victims remain reluctant to testify before truth commissions about sexual violence, war babies will remain at the margins of justice processes in war-torn societies. If victims of wartime rape will not discuss their own victimization before truth commissions, then it is unlikely that they

would testify about the victimization of war babies to whom they have given birth, particularly in cases where mothers have abandoned or rejected war babies.

In the case of infants or very young children, war babies themselves cannot, of course, be expected to testify on their own behalf. Older children<sup>3</sup> or adults who grew up as war babies could testify before truth commissions, and testifying before truth commissions might be empowering for these victims. Nevertheless, important obstacles remain. In many cases, truth commissions are instituted closer to the time of violent hostilities rather than after an extensive time period has lapsed (Hayner 2001: 291-297.) In these cases, many war babies are still very young children, rarely older than teenagers, lessening the likelihood that truth commissions will be an option.<sup>4</sup> Even if children are old enough to testify before truth commissions, they might face emotional trauma that renders the process more harmful than beneficial. Even many adults testifying before truth commissions argue that they have found the experience psychologically traumatizing, and critics have charged that truth commissions generally have not done enough to provide psychological support for victims (DeLaet 2005a).

Once again, we are left with a problem of agency—war babies as victims often are not in a position to act as agents on their own behalf. Even if they are old enough, testifying before a truth commission could be a traumatic and, ultimately, counter-productive experience in terms of promoting justice for *individual* victims. Certainly, the goal of restorative justice should not sacrifice the psychological well-being of individual war babies in an effort to promote social repair among groups in war-torn societies. As a result, even if justice mechanisms acknowledge war babies as a category of victims, there is no guarantee that the problems of war babies will truly be addressed by these mechanisms.

In the end, this exploration of punitive and restorative justice as responses to the problems of war babies suggests that existing mechanisms for pursuing justice in war-torn societies are limited in their applicability to war babies. Putting individuals who have perpetrated wartime rape and forcibly impregnated women on trial may lead to a certain degree of justice for war babies as victims. However, this approach does not in any way address the structural context that contributes to violence and discrimination against war babies in the societies in which they live and the often blurred lines between victims and perpetrators.

Encouraging truth commissions to prioritize the issue of war babies theoretically leads to a more comprehensive account of the truth about violence in war-torn societies and may even render war babies symbolically important as an embodiment of the humanity that connects groups that have been involved in violent conflict. Nevertheless, drawing attention to the plight of war babies as an abstract issue does not ensure that truth commissions will document the victimization of real children who fall into this category due to apparently global norms that encourage silence on the part of victims of sexual violence. Moreover, to the extent that truth commissions prioritize a vision of *collective* justice that stresses social repair among groups rather than justice for individual perpetrators and victims, they may not meet the needs of war babies and, indeed, may be counter-productive. Ultimately, then, this analysis suggests the need

---

<sup>3</sup> There is no consensus regarding the minimum age at which children should be able to speak on their own behalf.

<sup>4</sup> An examination of Priscilla Hayner's list of twenty-one truth commissions instituted since 1974 shows that six of these truth commissions (Bolivia, Chile, Ecuador, El Salvador, Sri Lanka, and Chile) covered a time period in which at least some teenage war babies would have been able to testify if this category of victims had been covered. Six additional truth commissions (Germany, Guatemala, Nepal, Nigeria, South Africa, and Uganda) covered a time period that would have enabled war babies who had reached adulthood to testify had war babies been included in their mandates. Hayner 2001: 290-297. Whether or not teenage or adult war babies are able to testify is a function not only of when a truth commission is created but also the duration of the violent conflict.

for new mechanisms and approaches in any effort to bring justice to war babies in war-torn societies.

### **ALTERNATIVE APPROACHES TO JUSTICE FOR WAR BABIES**

The previous examination of punitive and restorative justice as possible responses to war babies indicates that alternative approaches need to be considered. Trauma therapy represents one possible approach for seeking to promote healing for war babies. Admittedly, a focus on healing for individual victims falls outside of the bounds of what is traditionally considered justice. Nonetheless, therapy at least puts individual victims at the center of the process unlike trials, which emphasize the punishment of perpetrators, or truth commissions, which prioritize a collective conception of justice (DeLaet 2005a). In this way, trauma therapy that seeks to promote healing for individual war babies might be more likely to bring some sort of justice to these war babies than trials or truth commissions. However, trauma therapy also presents at best a limited approach to promoting justice for war babies. While it might give war babies psychological tools for dealing with the trauma they have faced, therapy does nothing to address the social context that sanctions ongoing violence and discrimination against war babies.

Another alternative approach towards justice for war babies would be to seek reparations for the victims of wartime sexual violence, including both children born of wartime rape and their mothers. Such an approach would treat both mothers and war babies as victims with shared needs and interests. Reparations as an approach towards justice would be based on a recognition of the structural context in which violence occurs. A pursuit to justice for war babies that also recognizes this structural context might serve to alleviate the economic inequalities that drive violence in general and that contribute to the deprivations faced by war babies and their mothers in particular. Because economic inequality significantly contributes to the vulnerability of women who have been victimized by wartime sexual violence and, in turn, to the vulnerable status of war babies, an approach that seeks to provide economic support to women and war babies merits serious consideration.

Scholars and practitioners of justice in war-torn societies also need to seriously consider international adoption as a response to war babies. Despite skepticism among human rights organizations and governments in war-torn societies (Carpenter 2000; Williamson 1993), international adoption as one possible solution to the plight of war babies in war-torn societies needs to be given serious consideration. Critics resist international adoption for a variety of reasons, including the argument that it represents a form of cultural imperialism (Weitsman 2003). Opponents of international adoption also raise concerns about the exploitation involved in child trafficking. Furthermore, opponents of adoption also argue that international adoption works against the need to repopulate countries whose populations have been decimated by violence (Stanley 1999). Moreover, as discussed in the previous section, the symbolic importance of war babies positions them to serve as an impetus to social repair in war-torn societies as representations of the humanity of enemy communities. Obviously, if war babies are removed from war-torn societies, they cannot play this symbolic role. However, the fundamental rights of *real* war babies should never be sacrificed to the *possible* contributions they might make to demographic rejuvenation or collective reconciliation in war-torn societies. Accordingly, international adoption should be treated as an appropriate response if it can be shown that war babies are more likely to gain access to fundamental human rights in the process.

Ultimately, the ideal solution for bringing justice to war babies will require a dramatic transformation of socially constructed norms governing gender and ethnic identities that

currently encourage communities to ostracize war babies as representations of “the enemy.” Gender norms that construct ethnic identity as stemming strictly from the father play a key role in the marginalization of war babies. Thus, efforts to deconstruct these norms might play an essential role in creating recognition of the humanity of war babies. Of course, the reality that both gender and ethnic norms are typically deeply entrenched suggests that any effort to deconstruct them will face significant obstacles. Nevertheless, the fact that some mothers of war babies and their families embrace babies born of rape suggests that this goal is possible (Carpenter, this volume). The task for future scholars and practitioners will be to delve more deeply into whether, when and how such dramatic reconstruction of gender and ethnic norms is appropriate and, when it is inappropriate, what alternatives remain.

Similarly, justice for war babies also likely requires challenging entrenched gender norms that encourage silence on the part of victims of sexual violence. Because silence as a response to sexual violence has resulted in the marginalization of women as victims of wartime violence, most feminist analyses of sexual violence during war suggest that breaking the silence about sexual violence during wartime is an essential step towards achieving justice for its victims. However, it is not absolutely clear that breaking the silence about sexual violence during wartime is the most appropriate method for bringing justice to war babies. In fact, one reason that humanitarian agencies have not drawn attention to the plight of war babies is that they have assumed that silence may be an important device for protecting war babies (Carpenter, this volume). If it is unlikely that war babies will be welcomed into a community devastated by wartime violence, then perhaps silence about their status is a more appropriate approach towards encouraging their acceptance and integration than drawing public attention to and scrutiny of the circumstances of their birth.

Although the logic underlying justifications for silence on the issue of war babies is persuasive in certain respects, there are compelling reasons for nonetheless ending this silence and rendering war babies visible as a category of victims of wartime rape and sexual violence (Carpenter 2000), along with the women who have been raped, sexually exploited, and who have either chosen or been forced to carry and bear children produced by sexual violence. As long as war babies remain invisible, they will be denied access to fundamental human rights to which they should be entitled under international law. Indeed, the failure to recognize war babies as victims of human rights violations demonstrates the limitations of international human rights law as a framework for advancing children’s rights as human rights (Carpenter 2000). If the idea of human rights as *universal* rights applying to all people is to have meaning, then the existing gaps in international human rights law that fail to address the basic rights of children, including war babies, must be closed.

At the same time, this analysis of the relationship between gender norms and silence in the face of sexual violence suggests that any effort by humanitarian actors and scholars to render war babies visible should be sensitive to the role that gender norms play in encouraging silence on the part of victims of sexual violence. Any effort to bring justice to war babies will be counter-productive if it does not reflect sensitivity to the constraints faced by women who have been victimized by wartime sexual violence. In short, efforts to pursue justice for war babies must be based on a careful consideration of how to balance the needs of different categories of victims, including both war babies and women.<sup>5</sup>

---

<sup>5</sup> It is important to note that men also are victims of sexual violence during war (DeLaet 2005a; Zarkov 2001). However, war babies are the product of sexual violence against women. It should be noted that men who have been

## CONCLUSIONS

The invisibility of war babies in existing international efforts to pursue justice in war-torn societies reflects the reality that international actors involved in efforts to pursue justice in war-torn societies have wrongly assumed that the effects of war are gender neutral and, accordingly, have not paid attention to the gendered nature of violence (DeLaet 2005a). As a result, they have not sought to scratch beneath the surface of conflict to identify categories of war crimes and victims that are not immediately apparent. The historic failure on the part of the international community to carefully examine and identify the gendered nature of violence has been especially evident in the case of sexual violence. The fact that international organizations, non-governmental organizations and scholars are increasingly paying attention to gender issues provides some hope that this pattern is changing, though the historic inattention to these issues has reinforced silence as a response to sexual violence and, in doing so, has perpetuated the invisibility of war babies.

Although the invisibility of war babies is a large part of the problem, the difficulties involved in the pursuit of justice for war babies are more complicated than that. To modify a common criticism of the contributions of liberal feminism to the study of international relations, it will not be enough to “add war babies and stir.” On the one hand, recognizing war babies as a category of victims of war-time violence and designing justice mechanisms accordingly represents an important first step. War-torn societies simply will not be able to pursue justice for war babies if they do not acknowledge and address their existence. On the other hand, rendering war babies visible in and of itself will not be enough to bring them justice. Existing justice mechanisms are limited in their applicability to the problems posed by war babies. Although in some cases existing mechanisms may be useful as a tool for bringing justice war babies, in other cases they are, at best, unhelpful and, at worst, counter-productive. In place of traditional punitive and restorative justice mechanisms, alternative approaches, including therapy, international adoption, and reparations for war babies and their mothers, need to be considered. In the long run, the international community will need to challenge entrenched gender norms that lead to violence and discrimination against both war babies and their mothers.

This exploration of possible paths towards justice for war babies is necessarily tentative and incomplete. Not only have scholars to date largely neglected the issue of war babies, but the invisibility of war babies also has been replicated in global efforts to pursue justice in war-torn societies. As a result, this is not a critique of existing institutional practices towards war babies because the problem simply has not been addressed by the international community. Rather, this chapter represents an effort to preemptively shape global efforts to bring justice to war babies. If this volume is successful in its goals, war babies will be rendered increasingly visible as victims of violent conflict. Hopefully, international organizations, states, and international humanitarian agencies working to bring justice to war-torn societies will put war babies on their agenda. When that time comes, it will be essential for policymakers and activists to have a thoughtful understanding of the potential obstacles to justice for war babies and the inevitably gendered framework in which war babies exist.

---

forced to rape women might be implicated in the problem of war babies when such forced rapes result in pregnancies. Consideration of this issue is beyond the scope of this chapter.

## WORKS CITED

- Barkan, Elazar. 2000. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: W.W. Norton & Company.
- Bass, Gary Jonathan. 2000. *Stay the Hand of Vengeance: the Politics of War Crimes Tribunals*. Princeton: Princeton University Press.
- Carpenter, R. Charli. 2000. Surfacing Children: Limitations of Genocidal Rape Discourse. *Human Rights Quarterly* 22: 428-277.
- Copelon, Rhonda. 1998. Surfacing Gender: Reconceptualizing Crimes against Women in Time of War. In *The Women and War Reader*, eds. Lois Ann Lorentzen and Jennifer Turpin. New York: New York University Press: 63-79.
- DeLaet, Debra L. 2005a. Gender Justice: A Gendered Assessment of Truth-telling Mechanisms. In *Telling the Truths: Truth Telling and Peace Building in Post Conflict Societies*, ed. Tristan A. Borer. Notre Dame, Indiana: University of Notre Dame Press: ??
- \_\_\_\_\_. 2005b. *The Global Struggle for Human Rights: Universal Principles in World Politics*. Wadsworth Publishers.
- Fletcher, Laurel E. and Harvey M. Weinstein. 2002. Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation. *Human Rights Quarterly* 24: 573-639.
- Goldblatt, Beth and Sheila Meintjes. 1998. South African Women Demand the Truth. In *What Women do in Wartime: Gender and Conflict in Africa*, eds. Meredith Turshen and Clotilde Twagiramariya. London: Zed Books, 1998: 27-61.
- Grieg, Kai. 2001. *The War Children of the World*, Report 1. Bergen, Norway: War and Children Identity Project. Available online at <http://www.warandchildren.org>.
- Hayner, Priscilla B. 2001. *Unspeakable Truths: Confronting State Terror and Atrocity*. Routledge.
- Llewellyn, Jennifer. 2005. Restorative Justice in Transitions and Beyond: The Justice Potential of Truth Commissions for Post-Peace-Accord Societies. In *Telling the Truths: Truth Telling and Peace Building in Post Conflict Societies*, ed. Tristan A. Borer. Notre Dame, Indiana: University of Notre Dame Press: ??
- McEvoy-Levy, Siobhan. 2005. Introduction: Youth and the Post-Accord Environment. In *Troublemakers or Peacemakers? Youth and Post-Accord Peace Building*, ed. Siobhan McEvoy-Levy. University of Notre Dame Press: ??.
- Meintjes, Sheila, Anu Pillay, and Meredith Turshen. 2001. There is no Aftermath for Women. In

*The Aftermath: Women in Post-Conflict Transformation*, eds. Sheila Meintjes, Anu Pillay, and Meredith Turshen. London: Zed Books: 3-18.

Mendez, Juan E. 1997. Accountability for Past Abuses. *Human Rights Quarterly* 19: 255-282.

\_\_\_\_\_. Truth-telling and Sustainable Peace: An Overview of Latin-American Experiences and Developments in International Human Rights Law. 2005. In *Telling the Truths: Truth Telling and Peace Building in Post Conflict Societies*, ed. Tristan A. Borer. Notre Dame, Indiana: University of Notre Dame Press: ??.

Neuffer, Elizabeth. 2000. It Takes a Village. *The New Republic*. April 10: 18-20.

Niarchos, Catherine. 1995. Women, War and Rape: Challenges Facing the International Tribunal For The Former Yugoslavia. *Human Rights Quarterly* 17:4: 649-690.

Nowrojee, Bianifer. 1996. *Shattered Lives: Sexual Violence During the Rwandan Genocide and Its Aftermath*. New York: Human Rights Watch.

Rotberg, Robert I. 2000. Truth Commissions and the Provision of Truth, Justice, and Reconciliation. In *Truth v. Justice: the Morality of Truth Commissions*, eds. Robert I. Rotberg & Dennis Thompson. Princeton: Princeton University Press: 3-21.

Salzman, Paul. 1998. Rape Camps as a Means of Ethnic Cleansing. *Human Rights Quarterly*. 20:2: 348-378.

Stanley, Penny. 1999. Reporting of Mass Rape in the Balkans: Plus Ça Change, Plus C'est Meme Chose? From Bosnia to Kosovo. *Civil Wars* 2 (2): 74-110.

Stiglmeyer, Alexandra, ed. 1994. *Mass Rape: The War Against Women in Bosnia-Herzegovina*. Lincoln: University of Nebraska Press.

United Nations Children's Fund (UNICEF). 2001. Children and the Truth and Reconciliation Commission for Sierra Leone: Recommendations for policies and procedures for addressing and involving children in the Truth and Reconciliation Commission. UNICEF National Forum for Human Rights, report based on a technical meeting on children and the TRC June 4-6 in Leister Peak, Freetown.

Weitsman, Patricia. 2003. The Discourse of Rape in Wartime: Sexual Violence, War Babies and Identity. Paper presented at the Annual Meeting of the International Studies Association, Portland, OR, February 26-March 1.

Williamson, Jan. 1993. *Bosnian Children of War: The Adoption Question*. New York: International Social Service.

Yamamoto, Eric K. and Susan K. Serrano. 1999. Healing Racial Wounds? The Final Report of

South Africa's Truth and Reconciliation Commission. In *When Sorry Isn't Enough*, ed. Roy L. Brooks. New York: New York University Press: 492-500.

Zarkov, Dubravka. 2001. The Body of the Other Man: Sexual Violence and the Construction of Masculinity, Sexuality, and Ethnicity in Croatian Media. In *Victims, Perpetrators, or Actors?: Gender, Armed Conflict and Political Violence*, eds. Caroline O.N. Moser and Fiona Clark. London: Zed Books: 69-82.