

# **Healing the Wounds of a Nation: The Truth and Reconciliation Commission of South Africa**

Samara Auger

## **Introduction**

While studying abroad during my senior year of college, I visited South Africa. The country intrigued me because of the racial tensions that were still prevalent so long after apartheid had ended. The first thing I saw when I arrived in South Africa were huge mansions dotting the hillside, vineyards as far as I could see, and white faces welcoming me. At first, I thought this accurately represented the country. However, when I took more time to explore, I realized that on the outskirts of the cities were townships. These townships were where the majority of the blacks lived and they were poor and desolate. Ever since I left South Africa, I wanted to explore the system of apartheid and the Truth and Reconciliation Commission, which was implemented to heal the country.

The National Unity and Reconciliation Act in South Africa defined apartheid as the system under which “a small minority monopolized political power, which gave it access to all other kinds of power and privilege and maintained a vicious system of privilege by equally vicious and immoral methods” (Tutu, 91). The system of apartheid took over the country and gave the white minority complete control over the black majority starting with the takeover of the National Party in 1948.

Under this system, decades of killings, abductions, torture, and severe ill treatment plagued South Africa struggled and sparked civil unrest. In 1995, the nation finally took action to counteract and address these problems. The result was the establishment of the Truth and Reconciliation Commission (TRC) of South Africa, which was designed to investigate the gross violations of human rights that occurred under apartheid.

While there was consensus that action must be taken to heal the wounds caused by apartheid, the direction to take was more controversial. Various groups advocated different ways to find “the truth” and to promote justice for both the victims and the offenders. The debates ranged from issues of religion, to politics and economics, to social factors, and even individual wants and needs. This debate involved a wide variety of actors including academics, professionals, religious leaders, international leaders, local advocates, NGOs, and community activists.

From this debate, the Truth and Reconciliation Commission, which utilized a restorative rather than a retributive model of justice, emerged as the means by which South Africa would address apartheid. Although the TRC dealt with individual victims and offenders, its focus was directed toward the nation as a whole. Therefore, the TRC extended the framework of restorative justice beyond the individual actors and onto a national scale. When evaluating the effectiveness of a restorative model like the TRC, certain questions must be asked. Whose needs are met and whose may have to be sacrificed? How are a nation’s needs different than individual needs? Is a nation homogeneous? How are inequalities dealt with? Who are the victims and offenders? What is crime? What lens do we see justice through? How is personal and societal accountability separated? What happens when you try to heal a nation rather than

individuals? In attempting to heal the entire nation rather than individuals, the TRC would have to overcome major obstacles, failures, and resistance to achieve its goal.

### **Truth and Reconciliation Commission of South Africa**

The TRC was established in December 1995 under the slogan “Truth the Road to Reconciliation”. Fifteen commissioners with Desmond Tutu appointed as chair oversaw the TRC and its three committees, the first of which was the Human Rights Violations Committee. This commission dealt directly with victims; it collected over 21,298 victim statements (Wilson, 21), and compiled them to document the victims’ stories. The Reparation and Rehabilitation Committee was responsible for making recommendations to the President for allocating funds to victims. Lastly, the Amnesty Committee dealt with the perpetrators of apartheid crimes. Over 7000 offenders applied for amnesty. Of these 7000, 1167 were granted full amnesty and 145 partial amnesty.

It is necessary to consider the goals of the TRC when assessing its impact on South Africa. The first goal was to promote national unity and reconciliation in a setting of understanding, which transcends the conflicts and divisions—especially racial—of the past (Gibson, 10). The second goal was to facilitate the granting of amnesty to persons who made full disclosure of the facts related to crimes associated with a political motive. Since the history of apartheid was quite vast, the TRC had to define its scope. It decided to address only political crimes that occurred between the Sharpeville Massacre, March 21, 1960, and the establishment of the Constitution, May 10, 1994. The TRC released an interim report in 1998 and a final report on March 21, 2003 (Gibson, 10). The third goal was to make known the fate and whereabouts of victims and to restore the human and civil dignity of victims (Gibson, 11). The fourth goal was to compose a report addressing the successes and failures of the first three goals and making recommendations for the future (Gibson, 11).

When examining the success of the TRC it is important to consider the implications of choosing to heal the nation rather than individuals. In a broad sense, the TRC was a success because it healed the nation of South Africa while simultaneously healing individuals. It did this by providing a forum through which people could proactively address the past in order to move forward. This process helped meet the needs of the victims, offenders, and nation. Thus, the TRC provided a restorative model that enabled wounds to be healed and provided a bridge for the transformation of South African society.

However, success in the context of the TRC can be measured on many different levels. Each of the following sections will examine the TRC’s success. While the TRC was largely successful, the problems, obstacles, and struggles it encountered demonstrate how difficult it was for the TRC to achieve its goals. In the end, the smaller successes and failures are all part of the overarching notion that the TRC healed the nation of South Africa by opening the nation to the past and then allowing it to move forward.

### **Religious-Redemptive Framework**

In understanding the South African approach to healing a nation rather than individuals, it is important to start with an understanding of South African history and

culture. Judge JY Mokgoro, a presiding judge of the TRC said, “The original conception of law was not as a tool for personal defense, but as an opportunity given to all to survive under the protection of the order of the community entity” (Asmal, 14). Justice is thus looked at in a completely new way in South African culture. Instead of justice being a matter of competing individual rights, it is a matter of promoting cooperation between people and harmony within the community. In many of the cultures where truth commissions have been successful, cooperation and community was the basis for everyday life. In nations that see justice through this lens, the individual’s rights to prosecute are superceded by society’s right to live in peace (Graybill, 1119).

The term *ubuntu* is an important concept in defining the notion of the community over the individual. *Ubuntu* might be hard for those outside of South African culture to understand, because comparable concepts are not found globally. *Ubuntu* is the essence of being human – generous, hospitable, friendly, caring, and compassionate. It says that a person is a person through other persons and that social harmony is the greatest good (Tutu, 31).

According to Desmond Tutu:

Ubuntu says I am human only because you are human. If I undermine your humanity, I dehumanize myself. You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for vengeance. That is why African jurisprudence is restorative rather than retributive (Wilson, 9).

In the final report of the TRC, *ubuntu* is linked to restorative justice as justice is defined not as punishment, but as reparations to victims and rehabilitation to perpetrators (Wilson, 10).

The history and culture of South Africa that includes the interdependence of humanity was influential in ensuring the TRC’s successes in healing both people and communities. Although not everyone in South Africa agreed with the traditional routes and the concept of *ubuntu*, the nation is known for its strong religious sentiments and spiritual affiliations. The TRC thus made an ambitious leap by combining Christian morality, liberation narratives, and reconciliation on individual, social group, and national levels (Wilson, 121). However, different narratives did emerge that allowed those uncomfortable with one path to follow another path—legal-procedural narrative or mandarin-intellectual narrative. The religious-redemptive narrative emerged for those connected to the history of the nation, the concepts of *ubuntu*, and the religious underpinnings. The religious-redemptive narrative was based on the living law of confession, forgiveness, and redemption, with an exclusion of vengeance. It sought to heal the nation, by focusing on individuals within the nation.

The first step was to recognize collective suffering. This stated: “Your pain is our pain. We were tortured, we were harassed, we suffered, we were oppressed” (Wilson, 109). The second step involved the moral equalizing of suffering, which sought to put everyone on the same level regardless of class, race, religion, or politics. This was met with resistance from the public, because certain groups did not believe their suffering should be seen as equals with others. Black South Africans believed their pain was

greater than that endured by white South Africans (Wilson, 110-115). The third step was liberation and sacrifice. During this step, a spiritual ritual was performed where victims were freed from the horrors of the past after performing an act of sacrifice. The final step was redemption through forsaking revenge, urging victims to forgive and abandoning desires for retaliation in exchange for peaceful alternatives (Wilson, 118-121).

This method of reconciliation was effective for some victims and advanced the nation closer toward an overall healing. However, this process has been termed “thick reconciliation” because it involves many deep emotions and a high level of spiritual faith (Wilson, 122). While most South Africans have followed the long held beliefs of community and cooperation, which ultimately made the TRC successful, not as many people were willing to take the religious-redemptive route toward reconciliation.

### **Collective Psyche/Memory**

For collectivism and *ubuntu* to heal an entire nation, that nation, to some extent, must become a homogeneous body. One entity cannot be healed successfully if every difference is looked at, so conclusions and inferences must be made about the nation as a whole. This leads to the notion that the nation has a collective psyche or memory. A collective psyche or memory attributes a nation with a collective identity in which all the people of the nation are looked at as having similar need and wants. This implies that regardless of race, ethnicity, demographics, age, or sex, the experiences of the people are similar and thus their future needs must be similar. The second path toward reconciliation, the mandarin-intellectual narrative, looks at this in a positive light.

This path focuses on the nation as a collective body and sees truth as a catalyst to reconciliation. In this way, the goal is a peaceful coexistence between all people. People who follow this route toward reconciliation believe success necessitates healing of the nation over the individual. This means the individual might have change opinions, beliefs, and ideas for the good of society. This might be necessary because the needs of society may supercede the needs of individuals. In theory, once society is healed, individuals will be healed too, even if it may mean changing existing opinions, beliefs, and ideas. If society is not fixed, there is a fear that the vicious cycle may continue. Therefore, the nation of South Africa should have a collective identity that masks individual differences for the well being of the group to reconcile the nation as a whole (Wilson, 106-108).

On the other side of the debate are those who believe collectivism has been taken too far and argue that a collective psyche is harmful to a nation. Michael Ignatieff says:

We tend to invest our nations with conscience identities and memories as if they were individuals. It is problematic enough to rest an individual with a single identity: our inner lives are like battlegrounds over which uneasy truces reign; the identity of a nation is additionally fissured by region, ethnicity, class, and education (Wilson, 15).

Hamber and Wilson agree that nations do not have collective psyches. They contend that South Africa is made up of a heterogeneous group of survivors. The survivors are especially heterogeneous in how they see justice. Some survivors want revenge, while

others are ready to forgive, and some simply need more time – there are a diversity of responses to suffering (Hamber and Wilson, 15).

Another problem with the collective psyche model is that the power is taken away from individuals and given to the government or the TRC, which can facilitate re-victimization. The government may seek closure before individuals are ready, forcing people to confront a past they are not prepared to face. This happens when the national process of reconciliation does not coincide with the individual process (Hamber and Wilson, 14). One woman said, “No government can forgive. No commission can forgive. Only I can forgive. And I am not ready to forgive” (Phelps, 112).

One view looks at people as individuals, unique beings that cannot be put into a collective psyche of a nation, while the other looks at individuals from a nationwide perspective in which individual rights may have to be sacrificed for the good of the nation. In deciding if a collective psyche or memory is an appropriate approach to take for a nation, some questions might be useful. How can a nation grieve in the same way as individuals? How can national scars be the same as personal scars? Can an entity ever be hurt? What does it mean to heal a nation? Is not a nation nothing more than a summation of individuals? Can a nation ever know what it felt like for the individuals within it?

The debate over investing South Africa with a collective psyche gets to the heart of the TRC and what happens when you try to heal a nation rather than individuals. Many people agree that this was the appropriate route to take. Others think it was the only option in a country that had been plagued by so much for so long. Still others think that it was a mistake and ignored many differences, needs, and wants amongst the people that resided within the nation.

## **Institutions and Business**

The TRC dealt with major societal issues such as business, institutions, social, political, and economics. These are important themes that come up when looking at a nation, but they also trickle down into the lives of individuals. In some of these larger societal issues, the TRC succeeded in recognizing the duality of the individual and the state while in other instances the needs of one or the other were sacrificed.

During the TRC, institutions as a whole came under attack. Terry Bell explained how transnational companies and the international community sustained and perpetuated apartheid. While the UN filed many complaints against and directives to South Africa, businesses that did direct business with the nation were not ordered to withdraw or to cut off ties (Bell, 349). Thus, they were able to profit off the system and either directly or indirectly utilized racism and slavery to their benefit.

None of the international or transnational communities or companies were ever addressed at the TRC hearings (Bell, 350). This is interesting because these international organizations received significant benefits from the apartheid system. Some benefits include cheap labor, increased incomes, cheap supplies and raw materials, and recognition. They hold direct liability for many of the harms and damages done to the nation and to individual victims, but their liabilities were never questioned. This may be because of the difficulties in dealing with international law, the scope of the TRC, the belief that this would not promote healing, or political motives.

It might have been easier to turn a blind eye to this fact if the international community and some of the beneficiaries had played a more active role in the reconstruction and development of South Africa. South Africa has had to more or less deal with its horrific past on its own. While the TRC has made headlines worldwide for its ability to heal a nation and by doing this, indirectly heal the individuals of that nation, it has received little outside help. In areas like economic assistance, information gathering, and support, the international community has been of little assistance.

In the context of institutions and business, the TRC was successful in offering forgiveness and accountability to the people of the nation, both black and white. The institutional hearings were an important truth-telling mechanism that exposed hidden facts about the past and helped people move on with their lives. While the TRC has presented the world with an opportunity to develop international human rights law precedent, the world has not taken advantage of this opportunity. If the UN or another international organization were to adopt this model, human rights as a whole could advance worldwide.

The TRC also held a series of hearings that examined the role of internal institutions during apartheid. These institutions included the media, faith communities, the agriculture sector, security police, and health and legal professionals. During the hearings, a number of South African institutions acknowledged their adverse roles in the system and how they benefited directly from apartheid. Since these institutions did not directly victimize people, they were not subject to prosecution and did not need to apply for amnesty, a point that is contested by some (Tutu, 215).

According to Desmond Tutu, the institutional hearings discovered that a vast majority of citizens were systematically excluded from participation in civil society (Tutu, 219). The Afrikaner Broederbond, a secret society that controlled every aspect of society, played a preeminent role in controlling South African civil society. The Broederbond emphasized conformity and secrecy at all costs (Tutu, 222). This major organization went to great lengths to stay concealed throughout the apartheid regime. Exposing the Broederbond was an important step toward healing and it revealed many secrets and helped make links between unknown events.

The media, faith communities, the agriculture sector, security police, and health and legal professionals were among the institutions to come forward during the hearings. The newspapers admitted to calling black freedom fighters terrorists and television media admitted to portraying black freedom fighters as bad guys (Tutu, 220). One of the most shocking revelations came from many of the faith communities who had been among the biggest critics of the apartheid. They admitted to the TRC that while they had been critical of apartheid, many of them had practiced or at least supported the policy. This confession was difficult for many individuals to hear. Farmers benefited from cheap labor, security police took advantage of their power, and the health and legal professions admitted to the racialized system at every level (Tutu, 221-229). Many of these institutions were prompted by the TRC to come forward, while others came forward on their own will. The institutional hearings within South Africa served to heal the nation, exposed the deep wounds that many never knew existed. While some people criticize the TRC for releasing too much truth, it can be argued that the people have a right to know.

## Social

Race, class, gender, religion, age, and sexuality are all social factors that help to shape a society. In South Africa, racial differences were a major factor in experiencing apartheid. James Gibson contends that two goals of the TRC were interracial reconciliation and racial tolerance. In regards to interracial reconciliation, Gibson said, “We are all in the same boat – we simply need to understand each other better and be more respectful of each other’s culture” (Gibson, 117). Gibson emphasized that trust, rejection of stereotypes, and respect for those of different races.

One theory that seeks to explain interracial reconciliation is interracial contact theory, which states that the more people interact with each other, the more likely they are to accept each other. The theory says that close and sustained contact with members of different groups promotes positive, tolerant attitudes. The absence of such contact, however, fosters stereotyping, prejudice, and ill will (Gibson, 136).

A public opinion survey of 3700 South Africans conducted by Gibson and colleagues in 2000 and 2001 indicated that the idea of interracial reconciliation would be very difficult in the country. Sixty eight percent of all races found it hard to understand one another and 56 percent found the other race untrustworthy (Gibson, 120). In addition, less than one fifth of people wanted to be friends with members of another race and there is little support for ethnic homogeneity and uni-culturalism (Gibson, 122). Fewer than 10 percent of those surveyed had a large number (in this case, a large number is defined by those being surveyed, so it varies from person to person) of friends from different races, and experienced little contact at work, outside of work, or in any social situations. In essence, many South African’s daily experiences are devoid of contact with different races.

In order to merge these separate worlds and foster interracial reconciliation, many changes must take place. The approach of the TRC has been to look at the racial problem as a national social problem, from the top-down. This may be easier than changing individual values and beliefs. In fact, issues like language, illiteracy, social class, and education contribute to the separate racial worlds of these two groups, which will be discussed in the economic section of this paper. The TRC seeks to bring the two racial groups together on one equal playing ground. Thus, goals like equal status, intergroup cooperation, support from authorities and law, and common customs may be realized (Gibson, 138).

A second major goal of the TRC was to promote tolerance amongst the different racial groups in South Africa. Desmond Tutu said, “You do not get reconciled with someone you agree with. You get reconciled with someone with whom you disagree; otherwise there would be no point in having reconciliation. You do not reconcile with someone whom you have no discord with” (Gibson, 213). The history of difference that had been embedded in South African society for so long made reconciliation and tolerance amongst different racial groups problematic. South Africa’s history of racial difference has limited the spread of interracial tolerance, even following the TRC.

One significant part of tolerance is what Gibson terms the threat-tolerance connection. This connection relates to the threat that a group feels from outside groups or forces. The threat can include physical attack and territorial or political power; but what is important is that it relates to the group as a whole (Gibson, 238-240). Due to outside

threats, racial groups build social identities, which emphasize the value of group solidarity and benefits from group association. The social identity of a group is important in forming borders, differentiation, out-groups, and larger social systems (Gibson 241-246). Today in South Africa, people still feel threatened so they are not ready to be tolerant. The TRC has taken steps to promote interracial reconciliation and following this, people may be able to take a second step towards tolerance of different racial groups.

Racial tensions even played a role within the TRC, which many claim hindered its effectiveness. The TRC commissioners were picked to represent the diverse racial backgrounds of South Africans. However, in some instances, this caused friction and distrust. There were accusations of incompetence and spreading racial tensions as the TRC unfolded in later years (Bell, 316). Indeed, the staff would split on issues along racial lines in some instances. Some claim that little disputes were blown out of proportion by the media, while others claim that these disputes severely disrupted the functioning of the TRC. In turn, charges of bias and distortion were implemented against the TRC, with forces such as the police, military, and the NP threatening to shut down the TRC (Bell, 317).

Numerous polls were performed to gain an understanding of the attitudes different racial groups held towards the work of the TRC. A public opinion poll that asked the question: "Did the TRC promote reconciliation?" found 70 percent of blacks, 59 percent Asians, and only 26 percent of whites answering yes (Deegan, 141). Similarly, a 2002 survey performed by Jeremy Sarkin-Hughes found 70 percent of blacks, 61 percent of Asians, and only 37 percent of whites providing moderate to strong approval of the TRC's work (Sarkin-Hughes, 7). These strong differences of opinion between races make it difficult for the TRC to advance its goals of interracial reconciliation and tolerance because cooperation is needed by all races, not just some. The division that is still prominent in South Africa needs to be fixed in order for society as a whole to move forward in its efforts towards healing.

Moving away from the broader levels of the society to the victims and perpetrators, the TRC uncovered stark racial and gender differences among both groups. Antjie Krog commented on the differences between the "first narrative" of victim hearings and the "second narrative" of offender hearings. She claimed that the first narrative was filled with victims who were black female, while the second narrative was filled with offenders who were white males (Krog, 75). While there were victims who were white males and offenders who were black females, it is understandable why this pattern emerged. For blacks to come forward as offenders was difficult because it was a sign of betrayal to their own people and for males to come forth as victims took courage because it was letting a guard down and admitting defeat.

The racial implications played into many facets of life in South Africa. While two primary goals of the TRC, interracial reconciliation and tolerance, dealt directly with racial issues, the TRC itself and individuals throughout society were plagued by racial issues daily. The TRC made strides in the right direction in regards to race, but South Africa as a nation still has a long way to go in healing itself of racial wounds that cut deep into the fabric of society. Presently, the townships still exist on the outskirts of towns, a sign that racial divisions have not been completely healed in the year 2006.



## Political

A third narrative that is important to understanding the TRC, in addition to mandarin-intellectual and religious-redemptive, is the legal-procedural narrative. This narrative focuses on the legal and political processes that occur, which may lead to reconciliation, but not in connection with prosecution. People who followed this narrative in South Africa believed in the power of high-ranking officials such as lawyers, judges, and commissioners. They saw fairness created in the direct application of statutes to individual cases. The outcomes and reconciliation was based on broad and consistent decisions, which applied to society and individuals (Wilson 104- 105).

While the legal and political processes may have led to reconciliation, political parties within South Africa presented major obstacles to the TRC in achieving its goals. The most problematic political parties were the NP, ANC, Inkatha Freedom Party (IFP), Democratic Party, and the military.

The TRC was the first truth commission in which political parties actually made submissions. The degree and honesty of these submissions did however vary. The NP, according to Krog, gave no specific information regarding high-profile abuses. It admitted that it used unconventional strategies, but said that these did not include assassination, murder, torture, rape, or assault (Krog, 136). Although the NP did testify in front of the TRC, it was highly uncooperative. Obviously, from what came out during amnesty hearings, instances of assassination, murder, torture, and assault were evident at all levels. Because of this, the truthfulness of the NP has to be called into question.

The ANC confessed specifics and even submitted spy reports to the TRC, claiming that the war of retaliation it had waged on the NP was a “just war.” It provided numbers of those who had died, been displaced, and damages, as well as a list of names of those who had died in training camps (Krog, 136-137). This information was useful to the people of South Africa in finding out about their loved ones and in offering opportunities for closure.

The Democratic Party showed the building blocks of apartheid and how they had come together in Parliament. It provided a list of all the acts that had been in place during apartheid (Krog, 137). Although many people could put together this chronology by themselves, to hear it made by people in power was symbolic and a sign of submission. Hearing the extensiveness of the system was a powerful way for many victims to let go and push it out of their past in a way that was not previously available.

The TRC failed to gain any support from the IFP because it did not agree that certain people were victims (Tutu, 230). In addition, it believed that senior members of the NP should be charged in criminal cases. The IFP also was afraid that its role in apartheid violence would be revealed. At one point, the IFP called the TRC a “witch hunt” and a “circus” (Sarkin-Hughes, 8-11).

The military, the South African Defense Force or SADF, was another group that did not cooperate with the TRC (Tutu, 235). This group neither testified nor informally communicated with the TRC. According to Terry Bell, this institution was never investigated by the TRC and the officials were never called to account (Bell, 3). The strong societal underpinnings of this organization that reach far beyond the political sphere may inhibit the ability of South Africa to completely heal. However, little by little, information is coming out about the Broederbond (SADF) after two security

breaches in the last seventy years and physical traces of its activities are tying it to other institutions and individuals. As the TRC found more information about the SADF through other institutions and individuals, it has helped to heal the nation by exposing secrets that have puzzled victims.

An overarching goal of the TRC, according to James Gibson, was to gain political legitimacy. The distrust and havoc within the different political parties has caused a need to regain political legitimacy within the nation. ANC member Johnny de Lange said, "There is a deep crisis of legitimacy of our political institutions. The moral fabric of society had been torn. Expediency and principle has been blurred. Society is now held together by obstinacy, goodwill, and good luck of an inclusive moral base" (Wilson, 17). More than anything, the concept of legitimacy is important in South Africa because of the illegitimacy that was present in the apartheid state.

In South Africa, even more important than the legitimacy of the political parties are the Constitutional Court and the National Parliament, which are the two main bodies of the new democratic nation. According to Gibson, the surveys he conducted in 2000 and 2001 found that blacks tend to support both bodies over whites (Gibson, 308). However, reconciliation requires that all people, regardless of race, accept the political institutions as legitimate, with the moral and legal rights to make decisions on their behalf (Gibson, 315).

Although the TRC was not politically affiliated, it gained political legitimacy by backing the new political order. In doing this, it advanced the nation in a direction, in hopes that it would continue that way and not return to the deeds of the old order. So far, the TRC was successful in this. The nation of South Africa has continued to have strong political parties with beliefs that protect the people of the nation.

## **Economic**

One of the most overlooked impacts of apartheid is the economic inequalities that the system created. Blacks and whites were not always separated economically, but years of systematic oppression led to a way of life in which the majority was deprived of the necessities of life. Apartheid not only left blacks feeling deprived and exploited, but it provided benefits and privileges to whites. The biggest obstacle, after apartheid and the TRC, lie in fixing the economic disparities that remain in South Africa. The people of South Africa on the bottom need access to proper education, housing, and health care (Tutu, 273).

When scholars rank human rights violations and other crimes, they often look at the number of people the system killed or injured. However, the system of apartheid inadvertently killed more through malnutrition, starvation, unsanitary water, and other indirect causes of apartheid than by direct killing (the infant mortality rate at the peak was 400/1000) (Asmal, 16). Because of this, the TRC investigated not only civil and political rights, but also socioeconomic rights.

However, the civil and political rights are where the media and attention was focused. Many factors contributed to this, including the inability to define socioeconomic rights, and the privateness of the problem.

By the end of its term, the TRC did realize these problems and instituted a series of poverty hearings, which were run separately but concurrently to the TRC. These

hearings looked at socio-economic assaults on human rights during apartheid (Deegan, 163). The poverty hearings could have been valuable, but ended up being overshadowed by the other aspects of the TRC. However, the TRC did include in its final report a section of recommendations for change regarding economic conditions in the country, so it is now up to the current government to address the economic needs of the people.

According to Kader Asmal, there is an urgent need to reduce inequalities or people will grow restless and alienated and this will threaten the very stability of society that the TRC created (Asmal, 11). Goals as complex as interracial reconciliation, tolerance, and support for human rights will be hard to reach if the people do not have their basic needs met.

## **Victims**

In restorative justice, three main actors are named – victims, offenders, and the community. The TRC sought to include the same actors in its initiative. Although the TRC sought to heal the wounds of the nation as a whole, it accomplished this in numerous ways. One of the ways it did this was through the Human Rights Violations Committee, which took statements from victims. While we can talk of a collective psyche or memory of a nation, we cannot do so for individuals. Each individual victim and offender had a different response to the TRC and its results. However, in order to try to make sense of individual stories, I will argue that the victim responses can be broken down into a group of positive and negative responses, with the positives outweighing the negatives.

On the positive side exist victims who embraced the idea of reconciliation and truth seeking. One such voice is Cynthia Ngewa, the mother of Christopher Piet, who was killed brutally in the Guguletu Seven massacre. She said, “This thing called reconciliation... if I am understanding it correctly... if it means this perpetrator, this man who had killed Christopher Piet, if it means he becomes human again, this man, so that I, so that all of us, get our humanity back... then I agree, then I support it all” (Krog, 142). In her voice is the idea of *ubuntu* that resonates so strongly throughout South African society. It is important to note that forgiving does not mean forgetting. The entire purpose of this process was to reveal the truth in its entirety so that it will never be forgotten or repeated.

On the negative side are victims who walked away from the process feeling less than satisfied with the response they received. In one way or another, they feel that the TRC did not do its job. Mahmood Mamdi said:

Whereby injustice is no longer the injustice of apartheid: forced removals, pass laws, broken families. Instead, the definition of injustice has come to be limited to abuses within the legal framework of apartheid: detention, torture, murder. Victims of apartheid are narrowly defined as those militants victimized as they struggled against apartheid, not those whose lives were mutilated in the day-to-day web of regulations that was apartheid. We arrive at a world in which reparations are for militants, those who suffered jail or exile, but not for those who suffered only forced labor and broken homes (Wilson, 35).

Just as there was a narrow definition for who could apply for amnesty, the definition for victims was also limited. This ties into the economic issues that caused people to die daily, but could not place a name on the harm done.

Another major issue individual victims had was with the Reparation and Rehabilitation Committee. The initial recommendation was that 22,000 victims should receive a grant of between US \$2800-3500 per year for six years. In 1998, urgent interim relief payments of \$330 were made to 20,000 victims. While this was hardly anything, it did show some initiative by the government and was symbolic to the victims. In 2000, the government released a statement saying it would give more money to the victims, but this has yet to happen as of December 2006 (Wilson, 21).

One of the TRC's strengths was in making the victims feel comfortable and safe. The prayers and testimonies were in the victims' language and religion. The TRC stressed regionalism rather than a big, central office. In addition, for procedural and moral support, a briefer was available to each victim who accompanied him or her as the victim testified (Phelps, 110). All of these measures enabled and encouraged more victims to come forward so an accurate picture of the past could be painted.

In its attempts to heal the nation, the TRC of South Africa looked at the needs of individual victims. While some victims walked away from the process satisfied, others were not content with the outcome of their cases. It was important to recognize that while trying to fix the nation as a whole, the TRC also took the time to look at individuals. Without including the pieces and healing the parts, the nation as a whole would continue to be plagued with minor cuts and bruises.

## **Offenders**

Although a condition for amnesty was neither apology nor remorse, the majority of applicants did show guilt or regret for what they had done (Sarkin-Hughes, 51). In this way, offenders' responses to the TRC were not as varied as victims. Desmond Tutu states that a commonality between all cultures and languages is that the three most difficult words to say are "I am sorry" (Tutu, 269). This may be hard for people to believe because the public tends to give offenders the face of the other, that person who we could never be. However, they are people too, who have emotions and can be changed. One such offender writes:

It is not easy to sit in this chair. You expose your soul to the nation of South Africa, white and black. And they look at me and they think I am a monster... I can actually say that I see the fear in their eyes as well as the hatred (Krog, 117).

This quotation shows deeply held emotions by offenders. This quotation also demonstrates how victims gain power through the process of switching of roles. Suddenly, the offenders are at the mercy of the victims. They are looking to regain a sense of self-worth that was lost in the horrific acts they performed. They are looking for forgiveness from those they harmed.

An important distinction that has been brought up in the TRC has been the difference between a perpetrator and a beneficiary. While perpetrators can apply for

amnesty or else are subject to criminal prosecution, beneficiaries are not liable to either process. According to Terry Bell, reconciliation needs to be made not only between perpetrator and victim, but also between beneficiaries and victims (Bell, 349). This is important because in many cases, victims came from a group that was despised while beneficiaries were in privileged groups. While they did not directly harm anyone, they did benefit indirectly, and therefore owe something back to society as part of their civil duty. This is something that would be hard for the TRC to enforce, but could be done as a measure of good faith, understanding, and humanitarianism.

One way that the TRC did try to address this problem was through the reconciliation register. This mechanism was a success story, but received little publicity. The reconciliation register was a place for those who benefited from apartheid to express remorse to victims in their own words. It was available to the public and open at every amnesty hearing (Sarkin-Hughes, 219).

A final argument in regards to offenders is that the TRC would not be able to create a new moral order without distinguishing between those who fought against apartheid and those who defended it (Krog, 76). However, the purpose of putting everyone together on equal levels was to achieve the goals of interracial reconciliation and tolerance. Separating people would start to look like apartheid all over again. One of the TRC's successes was in its ability to reintegrate the perpetrator into the community. After an amnesty hearing, the perpetrator was let free to go home and live life again. Criminal trials cannot accomplish this same result (Graybill, 1128).

While the responses of offenders to the TRC were similar, the public had varied responses to the treatment of offenders. The offenders were the cause of the entire system of apartheid that led to a need for the TRC. However, there were greater societal underpinnings that caused these offenders to act. Apartheid was not simply a web of individuals acting of their own free will. An important step for the TRC in healing the nation was dealing with offenders through the Amnesty Committee. The offenders that came forward provided information that helped them heal, victims heal, and the nation as a whole heal in order to reconstruct society in a progressive way.

## **Community**

The community in restorative justice is thought of as those who have a stake in the crime, but are not directly involved as a victim or offender. In the case of South Africa, arguably everyone had a stake in the system of apartheid in some way or another. However, there were many people who did not come forward in either the victim or offender hearings, and in this sense, these individuals can be thought of as the community.

In seeking to heal the nation rather than individuals, the TRC appealed to the community for support. Some, if not all, of the major successes of the TRC had to do with community life. One major example is the adoption of a National Day of Reconciliation on December 16<sup>th</sup> (Wilson, 14). Whites and blacks alike celebrate this day, which venerates those who died at the hands of fellow South Africans. This day would never have been established if it had not been for the truth-telling mechanisms embedded in the TRC.

In fact, the community held a sort of collective responsibility towards the perpetuation of apartheid according to Deegan. The communal failure to oppose the injustice of the system led to an overall ethos of public acceptance of racial injustice. A climate of injustice, if not actual complicity, became the norm (Deegan, 152). Because of the nature of the community involvement in apartheid, the TRC should have aimed to collectively resolve the problem. This would include measures such as the creation and rebuilding of communities, and the establishment and respect for the rule of law (Llewellyn and Howse, 27).

However, appeals to and involvement by community members without a direct stake in crimes was low. In fact, according to Quinn and Freeman, there was an overall low level of civic participation and engagement in the TRC (Quinn and Freeman, 1127). One reason for this is that there was no separate committee or forum to hear the concerns of community members. A second reason was that statement takers only approached victims and not other key players in the communities (Quinn and Freeman, 1135). Finally, budgetary and time constraints made it hard for the TRC to focus on anything but the direct victims and offenders.

A major critique of the TRC is that it failed to attract the bulk of the white community. The TRC did have much stronger support from the black community than the white community. One theory is that the white community resented the loss of political power (Tutu, 232). Other theories suggest that whites saw no benefits stemming from the TRC or that they did not want to admit their wrongdoing. While there were white offenders who came forward, many more, especially those affiliated with political parties, stayed back in the shadows.

While the community's role in apartheid was profound, its role in the TRC was much more limited. Where the TRC played a major factor was in its findings and exposing the truth regarding the community of South Africa. Everything about community life was exposed through the TRC, for better or for worse. Political, social, economic, institutional, and even individual relationships were exposed for the nation to see exactly how the community had existed during the apartheid era.

## **Culture**

The final goal of the TRC according to James Gibson was the creation of a human rights culture in South Africa. He writes that, "a human rights culture is one in which people value human rights highly, are unwilling to sacrifice them under most circumstances, and jealously guard against intrusions into those rights" (Gibson, 177). In a human rights culture, values such as tolerance, deference to the rule of law, rights consciousness, support for due process, respect for life, commitment to individual freedoms, and commitment to democratic institutions are highly valued.

One of the major findings of the TRC was that general support for the rule of law was not widespread in South Africa. This stemmed back to the very reason for the longevity of apartheid, which had to do with the adherence to the rule of law by the NP whose very legitimacy bestowed injustice on the majority of the people. However, the rule of law was often suspended, leaving the people powerless and the government with complete control (Gibson, 184).

This attitude towards the rule of law was in place for so long that it became the norm for the people of South Africa. This is how they thought life was supposed to be. The attitudes and beliefs of certain groups, those of whites, had precedence over those of other groups, blacks (Gibson, 188).

The TRC stressed the concept of universalism, which is the idea that the law ought to be universally heeded, obeyed, and complied with. This posed significant problems for people who saw a conflict between individual human rights and collective human rights (Gibson, 199). For example, some blacks who had been oppressed for many years had a problem when suddenly they were asked to put themselves in a group with their oppressors and say that they all had the same human rights. Why were their human rights so different years ago?

In creating a human rights culture, the TRC was also looking to enforce the notion of democracy. According to Teresa Phelps, South Africa was “creating a state which had never existed before” (Phelps, 105). This is true because never before had South Africa been a coherent whole. The nation had never known what peace looked like. As far back as the history of the nation goes, it has been plagued by civil unrest. In creating a human rights culture, the TRC was in essence saying that all South Africans would be treated as equals regardless of their status and prosecuted under the same laws.

## **Conclusion**

The decision to choose a restorative route to deal with the gross human rights violations in South Africa rather than a retributive route was based on a number of factors including history, politics, social structure, and power. In the words of Judge Mohamed, the hope of the TRC was that:

In the process, families of victims and the survivors would be better enabled to discover the truth; perpetrators would also have the opportunity of relieving themselves of a burden of guilt or anxiety with which they might have been living with for many years. In the process, the country would begin the process of healing the wounds of the past, transforming anger and grief into an understanding and thereby creating the climate essential for reconciliation and reconstruction (Sarkin-Hughes, 371).

The TRC operated longer than any previous truth commission and arguably produced greater results. Although its aim was to heal the nation of South Africa, it healed individuals through the process as well.

An important question to consider is how justice is defined. In the context of the TRC, individual justice had to be sacrificed in some instances for the sake of peace, stability, and the avoidance of war or further conflict (Llewellyn and Howse, 16). It is important to look at justice on more than one level. Kader Asmal breaks justice down into five categories, which are useful in thinking of the TRC and individual versus collective healing. The first type of justice is deterrent justice, which occurs when future perpetrators are dissuaded. The second type is compensatory, in which beneficiaries share in restitution to victims. The third type of justice is rehabilitative that serves as a remedy to both victims and perpetrators. The fourth type is an affirmation of human

dignity, emphasizing the equality of all. The final type of justice is exoneration, rectifying the record for those falsely accused (Asmal, 12). It is useful to break down the overarching theme of justice and look at it in parts, to examine different ways in which one concept can be applied to different parties.

The fact that justice is applied to both victims and perpetrators suggests the interconnectedness of humanity. Desmond Tutu said, “although there is much evil about, we human beings have a wonderful capacity for good” (Tutu, 253). This idea of *ubuntu*, or interrelatedness, is a primary reason for the effectiveness of the TRC in South Africa. Although the TRC faced obstacles, failures, and resistance, in the end, the results coincided the most with the beliefs and needs of the people of the nation.

Antjie Krog says, “we [the people of South Africa] tell stories not to die of life” (Krog, 64). In this, she is referring both to the rich tradition of story telling in the country, but also the success of the TRC. The TRC in fact tapped into the culture surrounding story telling by exposing truths. The truths were in a sense a type of story that released the people from the liminal state in which they were living in for so long. Like justice, truth can be divided further into four categories according to Richard Wilson. He states there are four truths. The first truth, factual/forensic, refers to the legal or scientific truths, those of individual incidents, usually compiled by experts. The second truth, personal/narrative, is truth told by victims and offenders at hearings. The third truth, social, is a community truth that evolves through discussion, interaction, and participation. The final truth, healing/restorative, is the overarching truth that the TRC sought to accomplish and that is the healing truth that repairs damage and prevents further recurrences (Wilson, 36-37).

In this way, a story is built and the community of South Africa is exposed, bit by bit, to the reality of the past. While it may not be easy at times, it is important because a new nation cannot be built on denial of the past. According to James Baldwin, “not everything that is faced can be changed, but nothing can be changed until it is faced” (Bell, 350). South Africa is just one country that had a painful past, but it chose to deal with it in a proactive way, which has paved the way for a future without any more pain.

Reconciliation is a complex, long-term process with many dimensions and the TRC was just a small part of that process (Deegan, 159). However, it did play an important role in propelling the nation of South Africa past the injustices and inequalities of the past. While it was hard – exposing abuse, degradation, and pain – it brought about the reality of the situation, which is the only way that real healing could occur. In addition, it allowed for secondary goals, such as learning about other cultures, making amends, reducing stereotypes, creating a culture of respect, and enhancing tolerance, to occur.

It is too early to assess the long-term effects of the TRC, but it is certain that it did have many successes despite the many challenges it met. In the realm of restorative justice, some major successes include a public, victim-centered, forward-looking forum, which aimed to restore communities and rebuild relationships. On the other hand, some problems with the TRC from a restorative justice paradigm were the lack of direct connection between perpetrator and victim, the inability to make things right, and the lack of involvement by the community.

In overcoming many obstacles, failures, and resistance in trying to heal the nation of South Africa rather than individuals, the Truth and Reconciliation Commission offered



a glimmer of hope into the future of South Africa trying to overcome a painful past. Now that the past has been dealt with, the nation has the enormity of moving on and dealing with the present and the future. The most pressing issue in the nation presently is how to deal with the economic injustices that prevail within society. Until the issues such as malnutrition, education, illiteracy, healthcare, poverty, and violence are dealt with, the nation is going to continue to struggle in the future.

The nation still has a long way to go before it is reconciled and it can function as a whole, but the Truth and Reconciliation Commission was a step in the right direction. The TRC addressed many of the painful issues of the past including racial tensions, social issues, institutional problems, and political issues. It provided a forum for victims, offenders, and the community to come together in order to reflect on the past and look towards a future in the presence of community and building a national culture. According to Desmond Tutu, "The Truth and Reconciliation Commission was a flawed attempt, but a beacon of hope, a possible paradigm for dealing with endemic conflict within nations" (Tutu, 282).

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