

Truth, Justice, and Reconciliation:
A Comparison of the South African Truth and Reconciliation Commission
and the Rwandan Gacaca Court System

by

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Bachelor of Arts, University of British Columbia, 2007

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Supervisory Committee

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Abstract

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This thesis examines the relationship between truth, justice, and reconciliation by comparing the South African Truth and Reconciliation Commission and the Rwandan Gacaca Court System.

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Dedication

I would like to dedicate this thesis to my family whose love, support, and encouragement have made me who I am today. First, to my parents who always told me I could do anything and then backed it up with endless support, provision of tools, and late nights of proofreading. To my husband, who loved me even when I was burned out, over worked, and stressed. Thank-you for always bringing me a hot cup of tea, and making dinner. Also thank-you for the advice of sticking with it even when I felt like quitting. Also a large thank-you to all of my extended family who believed in me and offered many words of encouragement. Finally, to my Grandmother who on a harbour walk in Boston listened to me sort through my thoughts on truth, justice, and reconciliation and always knew the right question to ask to help bring order to chaos.

Chapter One- Introduction, History, and Institutional Makeup

Introduction

The research question of this thesis is: how did the concept of truth affect the processes of justice and reconciliation in the South African Truth and Reconciliation Commission (TRC) and the Rwandan Gacaca Court System (Gacaca Court)? Three main concepts - truth, justice, and reconciliation- are commonly associated with post-conflict institutions. It is these three concepts that will form the foundation for this thesis. Three core claims are advanced in this thesis. First, there exists a reciprocal relationship among truth, justice, and reconciliation, with justice and reconciliation being strongly influenced by truth. Second, the form of truth used in each country assisted in shaping the structure, role and function of the institutions. Third, the structures and processes of reconciliation and justice were strongly influenced by the notion of truth employed. The structures and processes of justice and reconciliation also affected the outcomes of the post-conflict process. The relationship between these three concepts will be demonstrated through a comparison of two post-internal conflict African institutions: the South African Truth and Reconciliation Commission and the Rwandan Gacaca Court System. It is important to note that while the TRC process ended in 1998 the Rwandan system is still underway.

The TRC and the Gacaca Court system were selected because of their country's decision to use internally created transitional institutions instead of relying on international judicial tribunals as other countries (such as Yugoslavia) have done. The two institutions also possess enough similarities for a valid comparison. South Africa and

Rwanda both have had internal conflict based on racial/ethnic identity, both are located in Sub-Saharan Africa, and both countries chose not to employ pre-existing international structures. Importantly, both countries rejected pre-established western systems of trying human rights abuse perpetrators, and instead worked to develop their own systems based on their specific backgrounds, needs, cultural context, and approach to truth. Rwanda rejected the International Criminal Court-Rwanda that was established in Arusha, Tanzania to try *genocidaires* in favour of the traditional Gacaca method of justice.¹ South Africa also resisted international pressure to try human rights abuse perpetrators when establishing their Truth and Reconciliation Commission. Instead of focusing on retribution, the TRC chose to use truth to assist in forgiveness as well as employing the traditional concept of *ubuntu*.²

The TRC and the Rwandan Gacaca Court System were also selected because both institutions are intent on bringing resolution and healing to internal post-conflict situations. Their method of achieving this goal includes a combination of: gaining the truth about events during the conflict period; assuring some form of justice for the victims; and reconciling the groups involved in the conflict. One of the main differences between the two countries and the system adopted, other than the structure of their transitional systems, is their concept of truth and its effects on justice and reconciliation. The South African TRC and the Gacaca Court System both emphasised *truth* as one of their primary goals, but each used the concept differently. And, as will be argued in this thesis, how truth was understood became important to how reconciliation and justice

¹ Rosemary Nagy, "Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts," in *Reconciliation(s) Transitional Justice in Postconflict Societies*, ed. Joanna R. Quinn, (Montreal: McGill-Queen's University Press, 2009), 88.

² *Ubuntu* is the traditional African concept that means 'people are people through other people.'

were advanced. The hypothesis of this thesis is that because the formation of a communal truth was open to contributions by all parties in South Africa but was limited to one party in Rwanda, the outcomes of their respective justice and reconciliation processes differ greatly. Even with its limited financial reparations, South Africa had an even-handed application of justice during the TRC process and thus was able to effectively promote reconciliation; while Rwanda, with a more varied justice and reconciliation system lacked an even-handed approach and therefore may have a less successful reconciliation process.

The scope of this thesis will be maintained within the confines of the South African TRC and the Gacaca system with the goal of creating a meaningful structure that can be used to compare the two institutions. The hypothesis of this thesis is that the understanding of truth and its effect on each institution's goals and structure directly affected the processes of justice and reconciliation. This thesis will demonstrate that truth is a crucial foundation of both the processes of justice and reconciliation. The value of this thesis will be in its exploration of the understanding of the three concepts (truth, justice, and reconciliation), their interrelations, and how this interaction has shaped the institutional structure and processes of reconciliation. Such an approach provides a useful alternative way of evaluating post-conflict institutions and may contribute to debates and discussions regarding criteria for such systems in the future.

The thesis is structured in the following manner. The remainder of Chapter One will serve as context for later chapters in order to provide the necessary historical and contextual information to explore the use of truth in both institutions. It will begin with a brief overview of the history of systematic discrimination, ethnic or racial tension and

human rights abuses in both countries in order to provide a sense of the ingrained suffering, anger and fear in the society. Next, it will discuss how both institutions were established and what their goals were. Understanding what the priorities of each institution were will be critical to later chapters. Finally, this chapter will demonstrate why these cases make for a good comparison of the affects of truth on justice and reconciliation. Chapter Two will provide an overview of the relevant academic literature on the two countries and their post-conflict institutions in order to situate this thesis within broader academic discussions. Chapter Three will demonstrate how the notion of truth affected justice and reconciliation, which in turn affected the outcome of the processes. Chapter Four will contain concluding remarks and a brief look at the affects of the post-conflict institutions on their country.

History-Introduction

The following sections will explore the history of ethnic tension and resulting conflict in South Africa and Rwanda in order to provide context for the creation of the TRC and the Gacaca Courts. The history of conflict in each country is crucial to understanding their later need for reconciliation and the format that the TRC and Gacaca Courts adopted. This history is also important to how each country constructed its concept of truth. This chapter will begin with a brief history of each country's lead up to conflict, and the main events of the conflicts themselves. The second section will explore the creation of the TRC and the Gacaca Courts, their goals, and their basic structure.

A Brief History of South Africa

Identity played a significant role in both the conflict in South Africa and in Rwanda. In South Africa racial identity was shaped and reinforced by a political system of racial divisions beginning with colonisation and further created and reinforced under Apartheid.³ Apartheid used race as a means of determining access to social services, education, employment opportunities, housing, and political inclusion/exclusion. Even before the official implementation of Apartheid in 1948 existing discrimination based on perceived or constructed ethnic identity was present in the colonies that today makeup South Africa. Race was first used as a political tool during the rule of the British and Dutch over their colonies. Both of these European powers perpetuated interracial tensions and oppression of the non-Europeans.

Active legal segregation in the colonies (that would later form South Africa) began with the system of pass laws introduced in the Cape Colony and the Colony of Natal during the 1800s. These laws limited the movement of blacks from the designated tribal lands to lands occupied by whites and coloureds that were under British rule. These laws also restricted blacks' movements within the white areas and forced blacks to carry passes at all times.⁴ Discrimination continued with a battery of subsequent legislation that increasingly encroached on the rights of non-European races. For example, in 1892 the black population had to meet financial and education requirements to vote. The 1910 South Africa Act removed the right of blacks to hold a seat in

³ The concept of race used in this thesis refers to social and political constructs. Race is not considered to be biologically determined.

⁴ "Politics and Governance: South African History Online," South African History Online, South Africa 2008, <http://www.sahistory.org.za/index.html>.

Parliament and enfranchised mainly the white population.⁵ Later legislation removed the black population's ability to own land outside of designated reservations and enforced residential segregation.⁶ Blacks were also prevented from practicing skilled trades in white areas.⁷

In 1948 the National Party (NP), a conservative pro-white party, won the national election on a platform of Apartheid.⁸ The new government used earlier discriminatory practices and legislation to form a basis for their new increasingly systematic separation of the races and oppression of all non-Europeans. Apartheid achieved these goals through increased enforcement of previous discriminatory legislation and the addition of further restrictions.⁹ A detailed exploration of Apartheid policy is beyond the scope of this project, but it is important to note that a large number of the policies that were introduced post-1948 segregated almost all aspects of life. Some of the main pieces of legislation that supported the creation of racial identity and separation of the races included the Population Registration Act (1950) and the Group Areas Act (1950).¹⁰ The Population Registration Act forced everyone to register their racial heritage in one of four categories: White, Black, Coloured, or Indian. Everyone was then issued identity cards that specified the holder's racial group.¹¹ The new racial categories were important to Apartheid because they forced racial divisions in society and made deprivation of services, jobs, housing, and political rights based race.

⁵ Rob Davies, Dan O'Meara, and Siphon Dlamini, *The Struggle for South Africa*, New Ed., (London: Zed Books Ltd, 1988), 7.

⁶ *ibid*, 1.

⁷ *ibid*, 14.

⁸ Hein Marais, *South Africa Limits of Change*, Second ed., (Cape Town: University of Cape Town Press, 2001), 16.

⁹ *ibid*; *Politics and Governance: South African History Online*.

¹⁰ William Beinart, *Twentieth-Century South Africa*, (Oxford: Oxford University Press, 1994), xv.

¹¹ Gail Weldon, "Post-conflict Teacher Development: Facing South Africa," *Journal of Moral Education* 39, no. 3 (2010): 354.

A second important piece of legislation was the Group Areas Act. This Act forced physical separation of the races and assigned specific land to specific races.¹² The physical separation of the races was increased under the Promotion of Bantu Self-Government Act. This Act deprived black residents of their national citizenship and instead gave them citizenship in one of ten tribally based self-governing homelands known as *Bantustans*. The land allotted to the black population was only 13% of the total country.¹³ This Act also began the process of forced resettlement, during which much of the black population lost their land in urban areas and were relocated to underdeveloped areas far away from their employment. Between the passing of these Acts and reforms introduced in 1985, over 3.5 million Africans were forcibly relocated into new homelands.¹⁴

The introduction of Apartheid did not go unchallenged by the non-European population. Resistance during the early period of Apartheid consisted of non-violent opposition in the form of popular uprisings and protests. The movement was inspired by the teachings of Gandhi. Unfortunately, the acts of anti-Apartheid resistance were often met with police brutality, which although resulting in great physical and psychological harm to the victims, also increased local support for resistance.

One of the main resistance organizations was the African National Congress (ANC). Formed in 1912, the ANC played a critical role in the broader anti-Apartheid movement throughout the entire Apartheid period.¹⁵ In 1949, the ANC began its

¹² *ibid*, 354.

¹³ Marais, *South Africa Limits of Change*, 16.

¹⁴ *Politics and Governance: South African History Online*.

¹⁵ Beinart, *Twentieth-Century South Africa*, vii.

Program of Action.¹⁶ This program included a series of strikes, boycotts, and civil disobedience. Unfortunately, these tactics did not result in significant reforms. In 1959, a splinter section of the ANC formed the Pan Africanist Congress (PAC) in hopes of achieving greater success through different tactics.¹⁷ The PAC became one of the main forces behind the demonstrations against the pass books. During the 1970s another non-violent resistance group known as the Black Consciousness Movement formed. It promoted psychological liberation through black pride and resurgence in African customs. The Black Consciousness Movement was especially inspiring to students and motivated black student groups in secondary and university level education to become increasingly vocal. Although the non-violent resistance won much support from the local black population, no real political change was forthcoming. Instead government sponsored violence increased, which led to the adoption of new tactics for the resistance movements.

On March 21st, 1960 the PAC organized a non-violent anti-passbook campaign in the township of Sharpeville. During the demonstration the police opened fire on the protesters killing 69 people.¹⁸ A state of emergency was later declared and 18,000 people were arrested, including the leaders of the ANC and PAC.¹⁹ Both organisations were then banned. With the banning of the ANC and the PAC both organizations were forced underground and soon after made a dramatic shift away from the previous tactics of non-violence.²⁰ The ANC formed a military wing known as the *Umkhonto we Sizwe* (MK).²¹

¹⁶ Marais, *South Africa Limits of Change*, 22.

¹⁷ *ibid*, 25.

¹⁸ *ibid*.

¹⁹ *Politics and Governance: South African History Online*.

²⁰ Marais, *South Africa Limits of Change*, 25.

²¹ *Politics and Governance: South African History Online*.

The MK, led by Nelson Mandela, began a campaign of sabotage on tactical state structures. The PAC also formed a militant wing named *Pogo*.²² During the 18 months after their formation these two groups committed over 200 acts of sabotage many with deadly results.²³

Alongside the growth of armed resistance, the black youth population also began to mobilise against Apartheid. Inspired by the black consciousness movement, black youth began their own series of demonstrations. One of the main causes for their mobilisation was proposed legislation stipulating that Mathematics and the Social Sciences be taught in Afrikaans.²⁴ In response to this new legislation 15,000 children converged on Orlando West Junior Secondary School in Soweto on June 16th 1976 to protest.²⁵ The sheer number of students intimidated the state, who quickly mobilised the local police to disperse the students. Teargas was fired and when the students remained the police grew frightened and opened fire. Two middle school students and 21 others were killed, with reports that up to 100 other students were killed in the protests that followed in the surrounding areas.²⁶ The murder of children increased the tension dramatically between the Black and white populations, and tensions further escalated in 1977 when Steve Biko, the leader of the Black Consciousness movement, was taken into custody and killed by police.²⁷

In addition to the ANC, PAC, and youth movement a number of other anti-Apartheid organizations emerged in the 1970s and 1980s. Community based

²² *ibid.*

²³ *ibid.*

²⁴ *ibid.*

²⁵ Beinart, *Twentieth-Century South Africa*, xv.

²⁶ *Politics and Governance: South African History Online.*

²⁷ Davies, O'Meara, and Dlamini, *The Struggle for South Africa*, 307.

organizations, including trade unions, churches, and women's groups, grew rapidly and became increasingly vocal in resisting Apartheid. These groups were diverse in politics and tactics but all shared an opposition and active resistance to Apartheid. Many of these groups came together under the umbrella of the "mass democratic movement." Even a minority of the white population began to resist Apartheid policies. Around 20% of the white population supported one of the opposition parties, the Progressive Federal Party, and their anti-Apartheid leanings.²⁸

Political violence experienced a major increase during the late 1980s as the townships became a focal point of resistance against the Apartheid government. The township residence resisted Apartheid through rent boycotts, and even overthrew township councils with unofficial governing bodies often led by militant youth.²⁹ The activists within the townships also established people's courts to punish those accused of being government agents. Those considered supporters of the national government often were met with violent treatment, such as petrol bombs, beatings, and necklacing.³⁰

The MK also increased their attacks during this period and began attacking Apartheid forces and civilians including targets located in the heart of urban white South Africa. A good example of this is the car bombing of the South African Air Force Headquarters and South African Defence Force Military Intelligence Headquarters in Pretoria on May 20th, 1983.³¹ This attack killed 19 and injured over 200 South African Defence Force and South African Police personnel.³²

²⁸ *Politics and Governance: South African History Online.*

²⁹ *ibid.*

³⁰ Beinart, *Twentieth-Century South Africa*, 241.

³¹ *Politics and Governance: South African History Online.*

³² *ibid.*

Due to the rising anti-Apartheid sentiment during the 1980s, the national government became increasingly focused on internal security and a powerful state security apparatus was established to brutally suppress all political opposition. On July 20th 1985, President Botha declared a State of Emergency in 36 magisterial districts to counteract the growing unrest. Close to 8,000 people were detained under the internal securities act and 22,000 charged with offences arising from protests.³³

External pressure to Apartheid also continued to grow with strong international sanctions coming into force in 1986.³⁴ Due to the increased internal violence and external pressure the national government began to loosen Apartheid. Between 1986 and 1988 some of the petty Apartheid laws were repealed. By 1987, partly due to international sanctions, South Africa's economy had dropped to the lowest rate globally.³⁵ President Botha realised that South Africa could not continue on its current trajectory and began having unpublicised meetings with Nelson Mandela. White intellectuals also began to reach out and eventually a group of them met with the ANC in exile for talks.

A stalemate had been reached between the ANC and the NP. The ANC had weathered lengthy state repression but their armed resistance had never matured to the point of being a military threat to white rule. The ANC had also suffered attacks on their military bases in neighbouring states such as Angola by Apartheid forces.³⁶ All of these factors combined to make an overthrow of the Apartheid state impossible.³⁷ At the same

³³ Beinart, *Twentieth-Century South Africa*, 246.

³⁴ Martin J. Murray, *The Revolution Deferred: The Painful Birth of Post-Apartheid South Africa*, (London: Verso, 1994), 29.

³⁵ Marais, *South Africa Limits of Change*, 67.

³⁶ *ibid*, 69.

³⁷ *ibid*, 69.

time, the national government suffered from the rising costs of Apartheid which included: ungovernable townships, strong international sanctions, and a growing “mass democratic movement.”³⁸ Neither side seemed able to win in a protracted conflict.

In 1989, Botha suffered a stroke and resigned. His successor F.W. de Klerk moved decisively toward increased negotiations. In his 1990 address he promised to repeal discriminatory laws, allow anti-Apartheid groups such as the ANC, release Mandela, return freedom of the press, and suspend the death penalty.³⁹ Negotiations began in 1990 with a good will gesture of the release of all political prisoners and return of exiles.⁴⁰ In 1992, negotiations gained further support due to an all white referendum with over 60% support for ending Apartheid. Unfortunately, during this period there was also a breakout of violence between different black political affiliations in many areas of the country. The province of Natal, in particular, was the site of ongoing violence between supporters of the Inkatha Freedom Party (IFP) and the ANC. The 1992 Biopatong Massacre resulted in the deaths of 45 and the Bisho massacre later that year resulted in 29 dead and 200 injured.⁴¹ Sporadic violence persisted right up to the day of the first general election with universal suffrage in 1994. Thankfully the election itself was peaceful with 2.7 million South Africans casting their votes.⁴² The ANC won nearly 63 percent of the vote and on May 10th 1994 Nelson Mandela was sworn in as president.⁴³

³⁸ *ibid*, 67-68.

³⁹ *ibid*, 67.

⁴⁰ Pumla Gobodo-Madikizela, "Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission." in *The Social Psychology of Intergroup Reconciliation*, eds. Arie Nadler, Thomas E. Malloy and Jeffrey D. Fisher, (New York: Oxford University Press, 2008), 60.

⁴¹ Murray, *The Revolution Deferred: The Painful Birth of Post-Apartheid South Africa*, 182-184.

⁴² *ibid*, 209.

⁴³ *ibid*, 211.

At this point in the discussion it is important to note the type of political transition that South Africa experienced because it affected the understanding of truth that was later employed by the TRC. When classifying transitions it is important to identify both the nature and duration of the regime, and the nature and duration of the transition process.⁴⁴ Both the regime and the process can be either endogenous or exogenous and of short or long duration.⁴⁵ South Africa had been under an endogenous repressive regime for over 45 years.⁴⁶ Its process of transition also ended up being endogenous even if supported and aided by external actors.⁴⁷ As discussed earlier, both countries opted for national reconciliation processes rather than international ones.

The South African Truth and Reconciliation Commission- Setup

After its political transition to democracy, South Africa needed to come to terms with its long history of human rights abuses, racism, and discrimination.⁴⁸ For instance, during the Apartheid period over 18,000 people were killed, 80,000 opponents of Apartheid were incarcerated, and of those incarcerated 6000 were tortured.⁴⁹ The sheer number of human rights violations required some form of redress. The next step in the healing process was the Truth and Reconciliation Commission (TRC). The National

⁴⁴ Jon Elster, *Closing the Books Transitional Justice in Historical Perspective* (New York; Cambridge: Cambridge University Press, 2004), 73-74.

⁴⁵ *ibid.*, 73-74.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Gobodo-Madikizela, *Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission*, 57.

⁴⁹ Lyn S. Graybill, "Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods," *Third World Quarterly* 25, no. 6 (2004): 1117.

Unity and Reconciliation Act of the South African Parliament created the TRC in 1995.⁵⁰ It ran for two years and like the political transition was an endogenous process.

Due to pre-election violence and escalating tensions post-election, the TRC chose to pursue a broad and open interpretation of truth to avoid retaliation of Apartheid supporters. The TRC was mandated to focus on three issues. First, it worked to establish as complete an understanding as possible of the past human rights violations committed by all parties of the political conflict.⁵¹ Second, it provided a forum for victims of human rights abuses to speak publicly about the abuses they suffered.⁵² Third, the TRC was empowered to grant amnesty to perpetrators of politically motivated human rights abuses that made a full disclosure of their involvement.⁵³ The TRC mandate also established that the time period under investigation would be from 1960 until May 10th 1994 when President Mandela was inaugurated.⁵⁴ The year 1960 was chosen as the starting date because it was the year in which the Sharpeville massacre took place and armed resistance began.

The idea of the TRC began after the election of Nelson Mandela in 1994.⁵⁵ There was considerable input from civil society and hundreds of hours of discussion about its form and structure before the South African Parliament passed the National Unity and

⁵⁰ Dan J. Stein et al., "The Impact of the Truth and Reconciliation Commission on Psychological Distress and Forgiveness in South Africa," *Social Psychiatry & Psychiatric Epidemiology* 43, no. 6 (2008): 462.

⁵¹ Gobodo-Madikizela, *Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission*, 59.

⁵² *ibid.*

⁵³ Christo Thesnaar, "Restorative Justice as a Key for Healing Communities," *Religion & Theology* 15, no. 1/2 (2008): 58.

⁵⁴ *ibid.*

⁵⁵ Mark Freeman and Priscilla B. Hayner, "The Truth Commissions of South Africa and Guatemala" in *Reconciliation After Violent Conflict A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), 177.

Reconciliation Act in 1995.⁵⁶ The Act empowered the TRC to grant individual amnesty, search premises and seize evidence, subpoena witnesses, and run a sophisticated witness protection program.⁵⁷ The selection committee for commissioners included representatives from human right organizations. It received over 300 nominations from the public and interviewed 50 publicly. Then 25 candidates were sent to Mandela for final selection. Two other commissioners were added to provide political and geographical balance.⁵⁸ There were a total of 17 commissioners appointed.⁵⁹ The TRC was chaired by Anglican Archbishop Desmond Tutu.⁶⁰ The TRC also had a staff of 350 and a budget of 18 million USD per year for the first two and a half years and a smaller budget during the subsequent three years of organizing and writing the report.⁶¹

The TRC was composed of three committees. First, The Human Rights Violations Committee collected statements from victims and witnesses and recorded the extent of the violations. This committee was charged with “establishing and making known the fate or whereabouts of victims” as well as “restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are victims.”⁶² Second, the Amnesty Committee processed and made decisions of individual amnesty applications. Applicants who had committed human rights violations needed to make a “‘full disclosure of all the relevant facts relating to acts associated with a political objective’ between 1960 and 1994.”⁶³ Third, The Reparations and Rehabilitation Committee designed and made recommendations for

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 140.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ *ibid.*, 177.

⁶² *ibid.*, 129-130.

⁶³ *ibid.*, 140.

a national reparation program. Special institutional hearings were also held focusing on the role of business, health, media, judiciary, trade unions, and faith communities in supporting or opposing racism.⁶⁴ In addition, hearings were held on special issues including: conscription, prisons, women, youth, and specific historical events.⁶⁵ The procedure of the TRC was uniquely constructed to increase knowledge about the past as well as to insure some measure of individual accountability.

The TRC began its hearings in 1996 and over a period of two years took testimony from 23,000 victims and witnesses.⁶⁶ Two thousand of those testimonies took place in public hearings.⁶⁷ During the course of the TRC over 80 public hearings took place across the country.⁶⁸ Victim and perpetrator hearings ran in tandem and were widely televised. The TRC Special Report had 1.1 million to 1.3 million television viewers each week during its first year.⁶⁹ The TRC also had special hearings of key institutions or sectors of society and their participation or response to abusive practices.⁷⁰ Other hearings were held on thematic issues and specific events in South Africa's recent history.⁷¹

The most controversial aspect of the TRC was its ability to grant amnesty to those who had committed human rights violations due to political motivation. The concept of amnesty underwent numerous challenges both constitutionally and legally.⁷² Yet, a

⁶⁴"TRC: The Facts," BBC News, October 30, 1998, http://news.bbc.co.uk/2/hi/special_report/1998/10/98/truth_and_reconciliation/142369.stm.

⁶⁵ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 140.

⁶⁶ *ibid*, 177.

⁶⁷ *ibid*

⁶⁸ Nevin Aiken, "South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation," *University of Wyoming* (2011): 9.

⁶⁹ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 140.

⁷⁰ *ibid*, 177.

⁷¹ *ibid*.

⁷² *ibid*.

survey conducted at the end of the Commission's mandate showed that 63% of those who responded supported conditional amnesties, as long as perpetrators who did not apply or were denied amnesty were prosecuted.⁷³ The idea behind "truth for amnesty" was that it would use court prosecutions to scare high-profile members of the former regime to testify.⁷⁴ By November of 2000, over 7112 people had applied for amnesty. Of these 840 were granted amnesty and 5,392 applications were refused.⁷⁵ South Africa's amnesty program was different from other forms of amnesty in that it was criteria driven.⁷⁶ It was not a blanket amnesty for all supporters of the Apartheid regime nor was it automatic. Applicants had to file for each violation separately, and each violation was assessed on its own merits.⁷⁷

The final five volume (3,500 pages) report was released in October 1998.⁷⁸ There was no commitment made to implement its recommendations, notably the recommendations of reparations.⁷⁹ The amnesty committee continued processing applications until May 2001, and the South African Truth and Reconciliation Commission officially closed on November 30th 2001 with the finalization of the last of the amnesty decisions.⁸⁰

⁷³ Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 28.

⁷⁴ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 177.

⁷⁵ Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 9.

⁷⁶ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 140.

⁷⁷ Brandon Hamber, "Ere their Story Die': Truth, Justice, and Reconciliation in South Africa," *Race & Class* 44, no. 1 (2002): 63.

⁷⁸ *ibid.*

⁷⁹ Thomas Brudholm, "The Justice of Truth and Reconciliation," *Hypatia* 18, no. 2 (2003): 189.

⁸⁰ *TRC: The Facts*, 1.

Rwandan History and Context

In Rwanda, similar to South Africa, identity played an important role in the conflict, with the creation and solidification of racial identity being politically motivated. Before colonization many Rwandans shared the same language and similar culture. The labels of Tutsi, Hutu, and Twa referred more to economic and social status and then to ethnicity.⁸¹ Social mobility was possible during pre-colonial times through marriage and a change in economic circumstances.⁸² According to the current government's official history, the pre-colonial period did not divide people into racial categories, but instead all people viewed themselves as Rwandan or "The King's people."⁸³ Inequality was largely economic, primarily between the King's court and the peasants.⁸⁴

The first official introduction of racial divisions came with colonization. Rwanda was first colonized by the Germans in the period between 1890 and 1916.⁸⁵ The colony was later transferred to the Belgians in 1916 at the end of the First World War.⁸⁶ During this time period, Europe was strongly influenced by racial scholarship. Colonial anthropologists therefore were quick to classify the three ethnic groups in Rwanda and then assign them historical traditions based on previous racial research.⁸⁷ The Tutsi were classified as Ethioped, the Hutu as Bantu, and the Twa as Pygmoid.⁸⁸ The colonial anthropologists also introduced the "Hamitic hypothesis," which argues that the Tutsi

⁸¹ Peter Uvin, "The Gacaca Tribunals in Rwanda" in *Reconciliation After Violent Conflict A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), 140.

⁸² *ibid.*

⁸³ Susanne Buckley-Zistel, "Nation, Narration, Unification? The Politics of History Teaching After the Rwandan Genocide." *Journal of Genocide Research* 11, no. 1 (2009): 34.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*, 35.

⁸⁸ *ibid.*

migrated to Rwanda from northern Africa and that the Hutu and Twa were the original inhabitants.⁸⁹ This theory has since been proven false, but was one of the early factors in creating strong ethnic divisions in Rwanda.

During this period colonial powers often relied on a combination of systems of direct and indirect rule.⁹⁰ For instance, a local ruling class was established and then co-opted from the native population to act as agents of the colonial administration. In Rwanda, the Tutsi were made the ruling class because their physical appearance was thought to most closely resemble the European ideal, and their facial features were seen to express stature and nobility.⁹¹ This system of governance was an important early factor in creating ethnic divisions because it established the Tutsi as rulers over the Twa and the Hutu majority.⁹²

Through their influence in the colonial government the Tutsi gained access to superior education, colonial, social and economic resources, as well as higher administrative positions.⁹³ As Buckley-Zistel explains,

Because of the discriminatory provision of resources, the imposition of the exclusive structures and the assertion of pressure through the colonial state-building process, collective identity became increasingly meaningful, further limiting the initial degree of flexibility between individual Hutu, Tutsi, and Twa and turning them into homogeneous categories.⁹⁴

⁸⁹ Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 90.

⁹⁰ Marie Béatrice Umutesi, "Is Reconciliation between Hutus and Tutsis Possible?" *Journal of International Affairs* 60, no. 1 (2006): 158.

⁹¹ Buckley- Zistel, *Nation, Narration, Unification? The Politics of History Teaching After the Rwandan Genocide*, 35.

⁹² Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 90.

⁹³ Buckley- Zistel, *Nation, Narration, Unification? The Politics of History Teaching After the Rwandan Genocide*, 35-36.

⁹⁴ *ibid*, 36.

It was during this period that the stereotypes or identities of the Tutsi and Hutu began to be strongly ingrained. The Tutsi were viewed as superior in “knowledge, administration, and warfare strategies.”⁹⁵ The Hutu were viewed as inferior. The Twa were marginalized and remained in a neutral position. In 1935, the Belgian authorities began to issue identity cards with the race of each Rwandan citizen, which further ingrained racial identities.⁹⁶

Civil war erupted in 1959 with Hutu activists killing Tutsi. In 1961, the Belgians under growing pressure from the Hutu majority, transferred power to the Hutu, before granting Rwanda independence on July 1, 1962. The local Tutsi rulers were overthrown, attacks were carried out on ordinary Tutsi, and many Tutsis were forced into exile in neighbouring countries.⁹⁷ It was these exiled Tutsi and their descendants who later formed the foundation of the Rwandan Patriotic Front (RPF) whose goal became armed return to Rwanda.

As Umutesi outlines, renewed fighting began in 1990 when the RPF attacked Rwanda from Uganda.⁹⁸ The attack was accompanied by massacres of people who lived near the border of Rwanda and Uganda. The majority of victims were Hutu. RPF incursions continued and began a long period of internal turmoil, which served to exacerbate ethnic tensions. Conflict between the RPF and the Hutu government of President Habyarimana continued until a peace accord was signed in August 1993. The Arusha accords developed a power sharing agreement between the RPF and

⁹⁵ *ibid.*

⁹⁶ Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 90.

⁹⁷ *ibid.*

⁹⁸ Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 159-160.

Habyarimana's government. Hutus generally viewed the accords as giving victory to the Tutsi RPF, because it granted them legitimacy.⁹⁹

It was during the period of the Arusha Accords that the concept of "Hutu Power" once again arose to prominence.¹⁰⁰ Hutu power was the collective consciousness that Hutus should never again submit to Tutsi rule. Instead, Hutu should assert their dominance and reclaim their homeland from the Tutsi immigrants. Hutu began to assert their dominant position and strengthen their identity through songs, stories and radio broadcasts. An excellent example is this excerpt from the national radio station, Radio-Télévision Libre des Mille Collines, "We must fight the *inkotanyi*. Finish them off...exterminate them...sweep them out of the country...because there is no refuge, no refuge for them! There is none, there is none!"¹⁰¹ *Inkotanyi* is a derogatory term that refers to cockroaches. These radio broadcasts amplified the already strained tensions, and further entrenched Hutu and Tutsi identities being based on mutual hatred.¹⁰²

On April 6 1994, President Juvenal Habyarimana's plane was shot down over the Rwandan capital of Kigali.¹⁰³ It was the match that ignited the simmering ethnic tensions. In the next hundred days, an estimated 500,000 to 800,000 Tutsi and moderate Hutu were slaughtered by Rwandan soldiers and Hutu gangs; at least 500,000 women were raped; and 25,000 to 45,000 Hutu were killed by the Rwandan Patriotic Front in its

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ Christine Kellow and H. Leslie Steeves, "The Role of Radio in the Rwandan Genocide," *Journal of Communication* 48, no. 3 (1998): 120; Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 157-171.

¹⁰² Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4 (2001): 410.

efforts to win the civil war and in revenge attacks by Tutsi survivors.¹⁰⁴ The killing did not cease until the RPF took Kigali on July 4th 1994. The RPF then established themselves as the national government of Rwanda. Millions of Hutu fled Rwanda into neighbouring countries' refugee camps.

Before the attacks, the population of Rwanda was 8,000,000 of which 85% were Hutu and 14% were Tutsi.¹⁰⁵ During the genocide, Rwanda lost an estimated 850,000 people, not including refugees who fled the country. Rwanda lost its human infrastructure; its teachers, judges, and politicians and continued to be a polarized nation. Killers and victims remained as neighbours: living side by side because of lack of economic resources to relocate. The situation in Rwanda in the immediate post-genocide was dire. It was within this context that the Gacaca Court System was developed and implemented.

The classification of the Rwandan regime and transition is slightly more complicated than the South African case. The repressive regime in Rwanda was internally formed, even if it was heavily influenced by Rwanda's recent colonial past. So while it may seem endogenous there were strong exogenous influences.¹⁰⁶ The regime was temporally long with conflict stemming from the transition from colonialism in 1962 until the genocide in 1994. In terms of the transitional process, Rwanda initially worked with the exogenous process of the United Nations International Criminal Tribunal Rwanda located in Arusha, Tanzania. This system was later rejected by the Rwandan government and the endogenous traditional process of Gacaca was implemented. The

¹⁰⁴ Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 88.

¹⁰⁵ Ervin Staub, Laurie Anne Pearlman, and Vachel Miller, "Healing the Roots of Genocide in Rwanda," *Peace Review* 15, no. 3 (2003): 287.

¹⁰⁶ Elster, *Closing the Books Transitional Justice in Historical Perspective*, 73-74.

transition process was temporally short with the RPF's capture of Rwanda from government and militia forces 100 days after the genocide began.

The Rwandan Gacaca Court System

Like South Africa, Rwanda after the genocide was also faced with the difficult task of creating a path out of the staggering human rights abuses and longstanding racial tensions. Initially, the Rwandan government relied on the western legal system. Unfortunately, the judiciary in Rwanda was in ruins and was unable to handle the large volume of trials required.¹⁰⁷ The sheer volume of detainees overwhelmed it. For instance, as of 1999 there were over 120,000 detainees in custody¹⁰⁸ and over the next five years only 6000 files were processed.¹⁰⁹ At this rate, the processing of the remaining detainees would have taken over 100 years.¹¹⁰ Another solution was clearly needed and in 2004 the traditional based Gacaca Court System was established. This system was implemented by the RPF dominated government, which maintains strong military and political control in Rwanda since the genocide. Due to the RPF's strong position they were able to create a system which employed a much narrower use of truth than what as the case in South Africa.

The Rwandan Gacaca Court System was established in 2004 and reorganized in 2006 with the passing of Organic Law No 28/2006.¹¹¹ While the TRC process ended in

¹⁰⁷ "Gacaca Jurisdictions: Achievements, Problems, and Future Prospects." in *National Service of Gacaca Jurisdictions*, Rwanda, available from

<http://www.inkiko-gacaca.gov.rw/PPT/Realisation%20and%20future%20persective.ppt>.

¹⁰⁸ Staub, Pearlman, and Miller, *Healing the Roots of Genocide in Rwanda*, 287.

¹⁰⁹ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects*, 3.

¹¹⁰ *ibid.*

¹¹¹ *Organic Law No 28/2006*. Parliament of Rwanda, Republic of Rwanda, 2006.

1998 the Rwandan system is still underway. Its mandate is to prosecute and try “the perpetrators of the crime of genocide and other crimes against humanity that were committed between October 1, 1990 and December 31, 1994.”¹¹² The main goals of the Gacaca Court system are to: disclose the truth about genocide events; speed up genocide trials; eradicate the culture of impunity; reconcile and strengthen unity among Rwandans; and to prove Rwandan society’s capacity to solve its own problems.¹¹³

Gacaca has its origins in a traditional method of justice that saw villagers meet on the grass and bring their disputes before village elders.¹¹⁴ Disputes were resolved and restitution was provided to the victim. The new incarnation of Gacaca was viewed by the government as an effective method for dealing with the large backload of cases and provided a means for sharing the truth about the genocide and creating a space for reconciliation.

The current Gacaca Court System is divided into four different administrative levels. The lowest level is the cell and deals with category four crimes.¹¹⁵ This category of crime includes any offences against property.¹¹⁶ The second level of the Gacaca system is the sector. The sector is responsible for category three crimes,¹¹⁷ which include committing a criminal act (or being an accomplice to a criminal act) without the intention of causing death.¹¹⁸ The third level is the district. The district deals with category two crimes.¹¹⁹ Category two crimes include being the author, co-author, or accomplice of deliberate homicides or serious attacks that lead to death, persons who caused injury with

¹¹² *ibid.*

¹¹³ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 13.

¹¹⁴ *Graybill, Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

¹¹⁵ *ibid.*

¹¹⁶ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects*, 7.

¹¹⁷ *Graybill, Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

¹¹⁸ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 7.

¹¹⁹ *Graybill, Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

the intention of causing death, or persons who committed serious violence.¹²⁰ The fourth and final level of the Gacaca system is the province. The province is responsible for hearing appeals from the district level.¹²¹

The final category of crime, category one, is the responsibility of the regular court system.¹²² Category one crimes include anyone who acted as: planners, organisers, instigators, and supervisors of the genocide; leaders at the national, provincial, and district level whether in political, military, religious, or militia positions; well known murders who distinguished themselves by the zeal and/ or wickedness of their killings; and those who committed rape or acts of sexual torture.¹²³

Community involvement is the foundation of the Gacaca Court. Judges (*Inyangamugayo*) are elected from the local community based on their integrity.¹²⁴ They are then sent to Kigali for a brief period of legal training. Upon returning to their communities the judges work to investigate and collect information about the local events during the genocide. This information is then employed to identify perpetrators to stand trial, as well as to establish the classifications of the perpetrators' crimes. Once those involved in the genocide have been established, the detainees are returned to their local community to stand trial.

The Gacaca trial is based on dialogue. There are no lawyers, and anyone can get up and speak against or in defence of the accused.¹²⁵ The accused is then afforded the opportunity to speak in their own defence or to confess. The goal of the trial is to

¹²⁰ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 7.

¹²¹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

¹²² Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 93.

¹²³ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 6.

¹²⁴ Allison Corey and Sandra F. Joireman, "Retributive Justice: The Gacaca Courts in Rwanda," *African Affairs* 103, no. 410 (2004): 83.

¹²⁵ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 14-15.

uncover as much about the events during the genocide as possible. Once everyone has had the opportunity to speak, the judges agree on a proper punishment based on the seriousness of the crime, including whether the perpetrator voluntarily confessed.¹²⁶ The punishments range from community service (TIG) to life imprisonment.¹²⁷ The punishment also usually includes a method of compensation to the victims. This compensation can include the restoration of property, the repayment of the value of ransacked property, or performing work of an equal value to the property to be repaired.¹²⁸ Since the start of the Gacaca system, over 12,103 courts have been established in Rwanda,¹²⁹ 260,000 judges have been trained,¹³⁰ and 40,000 prisoners have been released to stand trial in their local communities.¹³¹ With this historical and institutional background in mind we will now turn to a review of the current literature on both countries' post-conflict processes.

¹²⁶ Nagy, *Transitional Justice and Legal Pluralism in Transitional Context: The Case of Rwanda's Gacaca Courts*, 94.

¹²⁷ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 10.

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

¹³¹ Allison Corey and Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 83.

Chapter 2- Literature Review

Introduction

This chapter will review the core debates and key issues in the dominant literature on Truth Commissions, the South African Truth and Reconciliation Commission, and the Rwandan Gacaca Court System in order to situate this thesis within broader debates on post-conflict institutions, especially the literature focused on South Africa and Rwanda. The first section will examine scholarly work which discusses the role and functions of TRCs and the perceived benefits and drawbacks of the TRC process. The second section will turn to explore the main debates surrounding the structure and successes of the South African TRC, followed by a section on the Gacaca process.

Truth Commission Literature

A core focus of scholarly literature on TRCs examines what a TRC is, why a TRC is selected and what the perceived strengths and limits of such a process are. This section will draw heavily of the work of Priscilla Hayner, Mark Freeman, and Martha Minow (leading scholars in the field of truth commissions) who provide a well established overview of the purpose of TRCs.

What is a TRC? Priscilla Hayner defines Truth Commissions as “bodies set up to investigate a past history of violations of human rights in a particular country.”¹ Daan Bronkhurst offers an expanded working definition,

A truth commission is a temporary body, set up by an official authority (president, parliament) to investigate a pattern of gross human rights violations committed over a period of time in the past, with a view to issuing a public report, which includes victims' data and recommendations for justice and reconciliation.²

Dancy, Freeman, Hayner, Kim, and Wiebelhaus-Brahm identify other key functions of Truth Commissions which expand upon Bronkhurst’s working definition. According to these scholars, TRCs are tools of transition, which investigate and report on abuses and recommend reforms with the goal of preventing future abuses.³ TRCs serve as sanctioned fact finders and are temporary bodies.⁴ Truth Commissions also formally acknowledge past wrongs that have been silenced and denied.⁵ As these scholars note, Commissions are officially sanctioned, authorized, and empowered by the state.⁶ They are non-judicial bodies, but have some measure of de jure independence and are also usually created at a point of transition and focus mainly on the past.⁷ Commissions investigate patterns of abuse and specific violations committed over a period of time.⁸ Commissions complete their work with the submission of a final report that contains

¹ Priscilla B. Hayner, “Fifteen Truth Commissions- 1974 to 1994: A Comparative Study,” *Human Rights Quarterly* 16, no.4 (1994), 600.

² Daan Bronkhurst, *‘Truth and Justice’ A Guide to Truth Commissions and Transitional Justice*, 2nd ed., (Amsterdam, the Netherlands, 2006).

³ Mark Freeman and Priscilla B. Hayner, “Truth-telling” in *Reconciliation After Violent Conflict A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), 124-130.

⁴ Geoff Dancy, Hunjoon Kim, Eric Wiebelhaus-Brahm, “The Turn to Truth: Trends in Truth Commission Experimentation,” *Journal of Human Rights* 9, no. 45 (2010): 49.

⁵ Priscilla B. Hayner, “More than Just the Truth,” *UNESCO Courier* 54, no. 5 (2001): 38.

⁶ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 125; Priscilla Hayner, “Commissioning the Truth: Further Research Questions,” *Third World Quarterly* 17, no.1 (1996), 21.

⁷ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 125; Hayner, *Commissioning the Truth: Further Research Questions*, 20.

⁸ Dancy, *The Turn to Truth: Trends in Truth Commission Experimentation*, 48.

conclusions and recommendations.⁹ Finally, Truth Commissions focus on human rights violations and humanitarian norms.¹⁰

The next main focus within the TRC literature concerns the question of why a Truth Commission would be selected as the institution of transition over traditional legal proceedings. Roper and Barria contend that TRCs are often a part of a negotiated settlement where there is no clear victor.¹¹ Hayner argues that the main differences between Truth Commissions and trials is that Commissions focus on the larger picture, on thousands of victims, whereas trials focus on specific events and individuals.¹² Courts rarely investigate various social or political factors which led to the violence, or the internal structure of the abusive forces, and do not make policy recommendations or recommendations on the reform of the military or political system.¹³ Court records are also not widely read like Truth Commission reports.¹⁴ Hayner states, “Truth Commissions can set in motion a process of grieving and recovery, but they are not the only answer to confronting crimes of the past. Trials are crucial, while traditional healing practices can also assuage wounds.”¹⁵

Scholars also have also sought to answer this question: what benefits do TRCs have upon the transitioning society? Hayner and Freeman argue that Truth Commissions have a wide range of documented benefits. These include their ability to establish the truth about the past and the promotion of accountability toward perpetrators of human

⁹ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 125.

¹⁰ *ibid.*

¹¹ Steven D. Roper and Lilian A Barria, “Why Do States Commission the Truth?” *Human Rights Review* 10 (2009), 374.

¹² Hayner, *More than Just the Truth*, 38; Hayner, *Commissioning the Truth: Further Research Questions*, 21.

¹³ Martha Minow, “Between Vengeance and Forgiveness,” *Negotiation Journal* October (1998), 325

¹⁴ *ibid.*

¹⁵ Hayner, *More than Just the Truth*, 38.

rights violations.¹⁶ Other benefits include the provision of a public platform for victims and the ability to inform and catalyze debate.¹⁷ Truth Commissions can also recommend victim reparations and any necessary legal and institutional reform, and can promote social reconciliation and assist in consolidating a democratic transition.¹⁸ For instance, when a Brazilian woman (who had lost a family member during the dictatorship in her country) was asked the question, “Why do we want a truth commission?” She answered, “To harness political forces, to have an inquiry with significant powers, and to get to the truths which are still missing.”¹⁹

If Truth Commissions have so many positive aims, why they are not employed more? According to Freeman there are numerous reasons why Truth Commissions may not be used in a transitional situation. First, a Truth Commission may negatively contribute to the situation if there is fear of ongoing or renewed violence in a post-conflict society.²⁰ Second, a different mechanism may be selected if there is lack of political interest, and/or alternative mechanism or preference.²¹ Finally, there may be insufficient resources and lack of basic institutional structures to establish a Truth Commission if there are other urgent priorities such as survival or rebuilding.²²

Freeman also states that there are potential risks to employing a Truth Commission. First, if the Commission is formed with improper motives, such as revenge or transfer of blame, it may lead to negative outcomes.²³ Second the commissioners

¹⁶ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 125.

¹⁷ Minow, *Between Vengeance and Forgiveness*, 325

¹⁸ *ibid.*

¹⁹ Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, (New York: Routledge, 2011), 19.

²⁰ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 127.

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

themselves could be biased, thereby affecting the process in a negative manner.²⁴ Third, there may be unrealistic expectations fostered by the Commission that can lead to renewed frustration and distress for victims.²⁵ According to Hayner, it is therefore important to remember that “[r]econciliation and recovery is a process that can take generations.”²⁶

A final focus of TRC literature is the question of what affects the success of the TRC process. Freeman argues that some of the constraining factors of a Commission’s work include: negotiations over amnesty, destruction of evidence by the outgoing regime, fear of reprisal, corruption in the judiciary or army, and social identification with perpetrators.²⁷ Factors that can help to enable the work of Truth Commissions include: public support through a vigorous and engaged civil society, widespread social identification with the victims of abuse, and persistent international attention and pressure.²⁸ Finally, Truth Commissions need operational independence and political and governmental support including direct financial support.²⁹

Pricilla Hayner also notes that Truth Commissions are each unique in their form, structure, and mandate.³⁰ It is therefore important to take note of the following factors in assessing each individual Truth Commission: its objectives, period of operation, type of violations under investigation, period of time under consideration, functions, powers, sanctions, and follow-up.³¹ With these general issues and questions in mind, we will now

²⁴ *ibid.*, 128.

²⁵ *ibid.*

²⁶ Hayner, *More than Just the Truth*, 38.

²⁷ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 128.

²⁸ *ibid.*

²⁹ Hayner, *More than Just the Truth*, 38.

³⁰ Hayner, *Commissioning the Truth: Further Research Questions*, 20.

³¹ Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 131.

turn to explore some of the key topics and debates in core scholarship surrounding South Africa's TRC and Rwanda's Gacaca Courts.

South Africa TRC Literature

The main emphasis of scholarly work on the South African TRC examines the perceived successes and failures of different institutional aspects of the TRC. Most of this scholarship explores the effectiveness of individual amnesty (Gibson, Graybill, Krog, Minow, and Shore), the use of religious language (Krog, Minow, Shore, and Wilson), the role of testimony in healing (Graybill, de Ridder, and Stein), or issues of economic inequality (Mamdani). Within this work, there are diverse views on the success of the TRC, from those who praise its processes and outcomes, to those who are very critical and point to the limitations and problems with the process and its outcome. This section will begin with the debates on the overall effectiveness of the South African TRC and will then move on to the topical debates mentioned above.

Many scholars (Cobban, Gerwell, Krog, Shore, and Stein) argue that the South African TRC was overall a success. Amanda Shore, for instance, argues that the TRC can be considered a success because it fostered a peaceful transition from Apartheid to democracy.³² Jakes Gerwell supports this point by noting that, "notwithstanding the complex divisions and differences of various sorts, levels and intensities, [it] is decidedly not an unreconciled nation in the sense of being threatened by imminent disintegration

³² Megan Shore, "Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution," *Political Theology* 9, no. 2 (2008): 162.

and internecine conflict.”³³ Helena Cobban found in South Africa that 75% of black citizens were satisfied with the work of the Truth Commission.³⁴ Dan Stein’s study also revealed that the population as a whole had a moderately positive attitude toward the TRC, and supports a view that the TRC provides knowledge and acknowledgement of the past.³⁵ More specifically, Antjie Krog notes that the TRC broke new ground by being the first TRC to individualize amnesty, allow victims to testify in public, and was the first “to allow people from both sides of the conflict to testify in public at the same forum as victims.”³⁶

One area of focus in the literature is the South African policy of offering individual amnesty for perpetrators of human rights violations that were politically motivated. Minow contends that amnesty was needed to forge successful democracy.³⁷ Shore supports Minow stating that the South African TRC’s decision to offer individual amnesty was a reasonable long-term compromise to achieve peace.³⁸ She notes that although there were no formal costs to those who received amnesty, they were forced to pay certain social costs as a result of their public testimony.³⁹ These informal consequences included: social stigma and prejudice, paying large fees for attorneys, and

³³ Cited in Jonathan Tepperman, “Truth and Consequences”, *Foreign Affairs* 81, no. 2 (2002): 145.

³⁴ Helena Cobban, "International Courts," *Foreign Policy*, no. 153 (2006): 24-25.

³⁵ Stein, *The Impact of the Truth and Reconciliation Commission on Psychological Distress and Forgiveness in South Africa*, 462.

³⁶ Antjie Krog, "'This thing called reconciliation...!' forgiveness as part of an interconnectedness-towards-wholeness," *South African Journal of Philosophy* 27, no. 4 (2008): 354.

³⁷ Minow, *Between Vengeance and Forgiveness*, 322

³⁸ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 172.

³⁹ *ibid*, 174.

condemnations from friends and family.⁴⁰ Shore also states that the TRC met the basic requirement of justice in the form of justice as recognition.⁴¹

Shore does, however, note some of the negative consequences of amnesty. Her view is supported by Gibson and Graybill. While Shore does view amnesty as a reasonable compromise, she also notes that amnesty has been argued to be a missed opportunity for justice.⁴² James Gibson finds fault with the TRC's granting of amnesty because it creates a justice deficit and makes retributive justice "elusive, if not impossible."⁴³ Amnesty International also argues against the use of amnesty because granting amnesty for crimes against humanity violates international law and convention.⁴⁴ Shore notes that another problem with offering amnesty is that in return for accepting the concept of amnesty, victims were supposed to receive financial and symbolic reparations from the state.⁴⁵ Gibson notes that these reparations were crucial to victims because they had sacrificed their ability to institute civil claims against those who received amnesty.⁴⁶ Yet, no substantial reparations have yet been paid to the victims years after the Commission's completion.

Graybill also argues that individual amnesty lacked the component of an apology, which meant that the TRC did not follow Joseph Montville's formula of "acknowledgement and contrition from perpetrators, followed by forgiveness from the

⁴⁰ James L. Gibson, "Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa," *American Journal of Political Science* 46, no. 3 (2002): 544.

⁴¹ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 174.

⁴² *ibid.*, 162.

⁴³ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 541.

⁴⁴ Cited in Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 541.

⁴⁵ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 167.

⁴⁶ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 542.

victims.”⁴⁷ To receive amnesty perpetrators only had to confess to their crimes and demonstrate that they were politically motivated. The perpetrators did not have to apologise.⁴⁸ Graybill highlights that there were very few instances where perpetrators met their victims.⁴⁹ Victims felt resentful because of the lack of apology and punishment, as well as the lack of meaningful reparations.

A second focus of the South African literature is the TRC’s use of traditional religious and African concepts. Minow contends that religious language supplanted political and human rights concerns due to the strong involvement by religious leaders and churches.⁵⁰ Shore argues that the use of religious discourse added authenticity to the process⁵¹ and the traditional African concept of *ubuntu*⁵² created a moral and spiritual dimension that fostered accountability.⁵³ Krog also maintains that *ubuntu* provided a coherency to the Commission that allowed the Commission to complete its work without incidents of revenge.⁵⁴

Both Krog and Shore suggest that a rethinking of certain terms is required in order to analyse the TRC. Krog contends that analysis of the TRC often insufficiently accounts for the world view of *ubuntu* and therefore some may view the process as incoherent or morally and legally confused.⁵⁵ A key point they advance is that a rethinking of the terms of justice, reconciliation and truth is needed to understand the workings of the TRC

⁴⁷ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1120.

⁴⁸ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 543.

⁴⁹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1120.

⁵⁰ Minow, *Between Vengeance and Forgiveness*, 321.

⁵¹ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 169.

⁵² Ubuntu is an African concept of being human through the community. It has a large focus on interconnectedness.

⁵³ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 169.

⁵⁴ Krog, *This thing called reconciliation...’ forgiveness as part of an interconnectedness-towards-wholeness*, 353.

⁵⁵ *ibid.*

and its successes.⁵⁶ This point is critical to the argument presented in this thesis. Wilson takes an opposing position to Shore and Krog and argues against the idea that the use of religious discourse and traditional African concepts benefited the Commission. Instead, Wilson contends that the TRC artificially merged religion and the legal discourse of human rights and that this merger negatively affected the writing of an official history.⁵⁷ Even Shore admits that although the TRC's use of religious discourse did provide meaning to some victims, it also alienated others due to the lack of punishment for perpetrators.⁵⁸

A third focus in the literature explores whether the use of testimony leads to healing and reconciliation. Lynn Graybill argues that the TRC operated under a simplistic view of healing and contends that revealing does not automatically result in healing.⁵⁹ Trudy de Ridder also argues that testifying did not always lead to healing for the victims, noting that after an initial rush of relief felt by victims who testified, the victim often experienced a return and intensification of symptoms.⁶⁰ Stein agrees that sharing testimony is not necessarily always helpful to survivors.⁶¹ In his study, Stein found that there was a positive relationship between increased distress and anger, having a TRC relevant experience to share, and negative perceptions of the TRC.⁶²

⁵⁶ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 175.

⁵⁷ Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001) 20.

⁵⁸ *ibid.*

⁵⁹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1120.

⁶⁰ Trudy de Ridder, "The Trauma of Testifying: Deponents' Difficult Healing Process", *Track Two* 6, no. 3& 4 (1997): 32.

⁶¹ Stein et al., *The Impact of the Truth and Reconciliation Commission on Psychological Distress and Forgiveness in South Africa*, 462.

⁶² *ibid.*

A fourth and final focus in the South African literature explores the social-economic issues associated with the process. While there is less scholarship focused on this issue, several prominent scholars have critiqued the TRC for its lack of attention to economic inequalities and the importance of addressing socio-economic issues in the reconciliation process. One of the most prominent scholars who has drawn attention to this limitation of the TRC is Mahmood Mamdani. Mamdani argues that the TRC's focus on truth leading to reconciliation was problematic because it failed to take into consideration the larger socio-economic deprivation of the black population as a result of apartheid.⁶³ Limited attention to socio-economic issues meant that the whole truth about Apartheid conditions was not revealed or included in the TRC's official history. The scholarly debates on the South African TRC clearly cover a wide range of specific issues and a vast spectrum of opinions on its successes. As we will see in the next section, the scholarly debates on the Gacaca process do not contain as large a variance when evaluating its success.

Gacaca Literature

Like the South African literature, scholarship on the Gacaca Court system largely focuses on evaluating the effectiveness of the institution. Because the Gacaca process is still underway some of debates are speculative. The main scholarly debates focus on: the public and government perceptions of the Gacaca process, the scope of the Courts'

⁶³ Mahmood Mamdani, "Reconciliation without Justice," *Southern African Review of Books* 46 (November/December 1996) http://web.uct.ac.za/depts/sarb/X0045_Mamdani.html (accessed July 2011).

investigation, the lack of due process rights and evidentiary rules, false confessions, the allocation of the survivors' fund, and the likelihood of re-traumatisation.

One focus of the Gacaca literature examines how the Gacaca process is perceived by the Rwandan public. It is important to note that the current population distribution of Rwanda is 84% Hutu, 15% Tutsi, and 1% Twa.⁶⁴ In support of the Gacaca system, Lyn Graybill states that initial support among Rwandans was high. She points to the strong turnout for the election of Gacaca judges, which stood at 90%.⁶⁵ Graybill also found that 87% of Rwandans expressed a willingness to act as witnesses.⁶⁶ Allison Cory argues that the Rwandan government's use of Gacaca as a means of bringing perpetrators to justice more rapidly is important to "the process of justice, reconciliation, and healing."⁶⁷ Susan Thompson and Rosemary Nagy disagree with these positive assessments of Gacaca and instead insist that, "the justice and reconciliation rendered via Gacaca works to mask social and ethnic differences among Rwandans without sufficiently delving into the complex truths of violence and reconciliation."⁶⁸ After a series of interviews carried out by Thompson and Nagy in 2006, both scholars reached the overwhelming conclusion that the Gacaca process was more focused on performance than actual reconciliation or justice.⁶⁹

A second focus of the Gacaca literature looks at how Gacaca is perceived by the government. Since there is limited academic research on the benefits of Gacaca, information presented by the Rwandan national government is included in this section. It

⁶⁴ Central Intelligence Agency, "Rwanda," *The World Factbook*, July 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html>.

⁶⁵ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1123.

⁶⁶ *ibid.*

⁶⁷ Allison Corey and Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 82.

⁶⁸ Susan Thompson and Rosemary Nagy, "Law, Power, and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts," *The International Journal of Transitional Justice* 5 (2011), 28.

⁶⁹ *ibid.*, 29.

is important to note that this information is from a public awareness campaign created by the government and its claims have not been evaluated by scholars. Nevertheless, the governmental claims provide an important perspective on the intended goals of the Gacaca Courts. The Rwandan government argues that there are nine main benefits of the Gacaca process.⁷⁰ First, Gacaca removes suspicion within communities by denouncing the guilty parties. Second, Gacaca is helping to eradicate the longstanding culture of impunity within Rwanda. Third, it enhances collaboration between individuals while they work to disclose the truth about the events of the genocide. Fourth, Gacaca provides justice from and within the population. Fifth, it does not require a large capital investment and can be maintained on a third world budget. Sixth, it assists in distinguishing the innocent from guilty parties. Seventh, every inhabitant is a lawyer, prosecutor, and witness opening the process to everyone within a community. Eighth, the penalties assigned are designed to assist in reintegrating the guilty party back into society and to begin reconstruction of the country. Finally, Gacaca allows relatives of those killed to locate and bury the remains of loved ones with dignity. While scholars may not disagree with these potential benefits of the Gacaca process, few studies to verify these claims have been undertaken as of yet.

A third focus of the Gacaca literature concerns the scope of the Courts' investigation. The Gacaca Courts make a clear distinction between crimes of genocide and war crimes and this distinction has been identified by numerous scholars (Corey, Hayner, Joireman, Umutesi, and Uvin) as the main concern with the Gacaca process.⁷¹ There were numerous human rights violations committed against the Hutu population

⁷⁰ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects*, 14.

⁷¹ Corey/Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 73

(who have generally been viewed as the aggressors during the genocide and the immediate aftermath.) Hutu who protected Tutsi or were deemed sympathetic were often killed during the genocide by other Hutu aggressors. Hutu were also killed when the RPF began retaking the country. Hutu who had participated in the genocide or were suspected of participation tried to flee the country and the RPF often hunted them down during their retreat.

Under the Gacaca System, human rights violations committed against Hutus have been categorised by the Rwandan government as crimes of war while the human rights violations committed against the Tutsi population are categorised as genocide. Because the Gacaca process only deals with genocide, only crimes against Tutsi are investigated. Umutesi contends that this imbalance does not contribute to reconciliation, but instead creates and increases the frustrations of the Hutu majority.⁷² Corey and Joireman support Umutesi and argue that, “the Gacaca process will contribute to the insecurity of all Rwandan citizens in the future, since it pursues inequitable justice, accentuates the ethnic divide and will be interpreted as revenge.”⁷³ A common argument in the literature contends that Gacaca is simply a form of victors’ justice and can never lead to true reconciliation.⁷⁴ Corey asserts that the forced categorization of human rights violations during the genocide and its aftermath created an ethnic divide. This divide associates Hutu as perpetrators and Tutsi as victims instead of associating the crimes committed during the genocide with the individuals who committed them.⁷⁵

⁷² Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 158.

⁷³ Allison Corey and Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 73.

⁷⁴ *ibid.*

⁷⁵ *ibid.*, 88-89.

A fourth focus within the Gacaca literature concerns some of the major procedural flaws with the Gacaca process, which include the deprivation of due process rights and evidentiary rules.⁷⁶ Allison Corey demonstrates that the community elected judges are not well versed in legal interpretation and may face challenges interpreting and adjudicating extremely complicated cases and administering just sentences.⁷⁷ Another area of concern identified is that the accused lack any form of legal representation.⁷⁸ Corey also argues that those who do testify often suffer from intimidation and violence and lack any form of state protection.⁷⁹

A fifth focus within the Gacaca literature looks at the concerns surrounding false confessions. Umutesi states that there have been instances where Hutu have been forced to confess to crimes that they did not commit or face returning to jail.⁸⁰ This is due to the elected community judges having the authority to decide whether a party has made a full and truthful confession. Hutu who are accused of crimes during the genocide often feel pressured into making false confessions to gain lighter sentences, as truthful confessions are often deemed incomplete. Umutesi also argues that in court jurisdictions where survivors are the minority the survivors often refuse to charge perpetrators out of fear of retaliation.⁸¹

A sixth focus within the Gacaca literature looks at the distribution of the survivors' fund. The survivors' fund is paid into by all convicted parties as well as the government. This fund is worth over \$15 million a year and has been set aside for Tutsi

⁷⁶ Allison Corey and Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 84.

⁷⁷ *ibid.*, 85.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 166.

⁸¹ *ibid.*

survivors.⁸² One of the uses of the fund is that it covers the basic expenses and tuition for Tutsi children, even covering the expenses for children who were not in regions affected by the genocide. Yet, Hutu children are not eligible for the fund, even if their parents were killed during the genocide.⁸³ Umutesi argues that, “This situation engenders resentment, frustration, and rancor among the Hutu population.”⁸⁴

A seventh and final focus within the Gacaca literature centers on how the Gacaca process will affect victims of the genocide. Staub, Pearlman, and Miller argue (after visiting a Gacaca Court outside of Kigali in 2003) that the process was likely to reactivate trauma for all parties involved as well as generate hostility between the Hutu and the Tutsi.⁸⁵ They emphasize the need for support, preparation before the commencement of the process, and opportunities to process their experience afterwards. Staub advocates that control is central to differentiating recovery from re-traumatization during the process. The more in control the individual feels over their experience, the more likely it is that they can incorporate their experience constructively into their life.⁸⁶

On the other hand, Umutesi contends that the process of reconciliation will be a long road to travel, but the first step is defining what reconciliation actually means.⁸⁷ In making this argument she references Zartman who defines reconciliation as, “to arrive at a pacified society where free and equal individuals acknowledge each other and are capable of facing up to a history full of violent acts, and above all, are able to surmount

⁸² *ibid*, 169.

⁸³ *ibid*.

⁸⁴ *ibid*.

⁸⁵ Staub, Pearlman, and Miller, *Healing the roots of genocide in Rwanda*, 291.

⁸⁶ Ervin Staub, "Promoting Reconciliation After Genocide and Mass Killing in Rwanda- And Other Postconflict Settings: Understanding the Roots of Violence, Healing, Shared History, and General Principles." in *The Social Psychology of Intergroup Reconciliation*, eds. Arie Nadler, Thomas E. Malloy and Jeffrey D. Fisher (Toronto: Oxford University Press, 2008), 291.

⁸⁷ As cited in Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 164.

that history.”⁸⁸ It is interesting to note that Umutesi, Shore, and Krog all feel that deeper exploration of the concepts of truth, justice, and reconciliation are needed to further our understanding of these two institutions and their processes. Such a position is supported here, with this thesis doing just that. Indeed, this thesis goes further to argue that exploration of these concepts is crucial to developing the most effective processes possible for future post-conflict situations.

Comparison of the TRC and Gacaca Court System

Before concluding this chapter it is interesting to note that there have been very few comparative studies of the South African TRC and the Rwandan Gacaca Courts. In fact one of the few scholars who has directly compared the two institutions is Lynn Graybill. Graybill used some of the main strengths and weaknesses of both institutions as a point of comparison and clearly deemed the Gacaca process as more likely to lead to reconciliation than the TRC’s process. Her conclusion was based on three main points. First, Gacaca requires apology as a precondition for a reduced sentence, unlike the TRC which only required an admission of guilt for amnesty.⁸⁹ Second, Gacaca has compensation written directly into the legislation, with all perpetrators contributing to a government fund for victims, unlike the TRC during which the South African government promised reparations to the victims but distributed a much smaller amount

⁸⁸ *ibid*, 164.

⁸⁹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1124.

then first agreed upon.⁹⁰ Finally, Gacaca has a community service component that perpetrators contribute to in order to help rebuild their communities.⁹¹

Given the limited scholarship which compares the two countries and their post-conflict institutions, this thesis contributes to the scholarship of reconciliation and begins to address gaps in the literature by offering both a comparison of the two systems, and one way of comparing these and other institutions and processes. A goal of this thesis is to provide one way, or one particular focus, to compare the two institutions with the goal of identifying how the understanding of truth affects justice and reconciliation in both institutions. The current criteria that exist for such endeavours (transitional justice criteria and Truth Commission criteria) do not provide a means of comparing the functionality and results of two different systems with similar goals.

Further, as noted in previous sections an overall limitation in current scholarship on both countries is the lack of focus on the concepts of truth, justice, and reconciliation and the relationship between these terms in the structure and functioning of the truth process and institutions created. These terms are often linked in post-conflict texts, but are rarely or adequately defined. Considering the philosophical and political nature of the three concepts, the assumption of a universally understood and accepted definition is too narrow. Each of these concepts is politically loaded and can serve numerous goals depending on their interpretation. With these debates in mind we will now turn to an in-depth exploration of the concepts of truth, justice, and reconciliation in the TRC and Gacaca Courts.

⁹⁰ *ibid.*

⁹¹ *ibid.*

Chapter Three- The Relationship between Truth, Justice, and Reconciliation

Introduction

This chapter will explore the relationship between truth, justice, and reconciliation in the South African TRC and the Rwandan Gacaca Court System. The following sections will demonstrate that the application of both justice and reconciliation were affected by the understanding of truth employed by each country. This chapter will begin by providing an overview of how truth can be understood in post-conflict situations, which will be important for situating the later discussion of how both countries used the concept of truth. Next the specific application of truth in each country will be explored and compared.

The second section will focus on justice. This section will begin with an overview of the four main types of justice used in post-conflict situations, in order to situate the later comparison of the TRC's and Gacaca Courts' application of justice. Finally, the effect of truth on the application of justice will be investigated.

The final section will explore the concept of reconciliation. This section will begin with an overview of what reconciliation is, who the participants are and what steps are normally included. From there, the process of reconciliation in both countries will be compared and linked to the effects of truth. By the end of this chapter the influence of truth on justice and reconciliation in both institutions should be clearly visible.

Truth

A recent major study by the Center for Strategic and International Studies and the Association of the United States Army found truth-telling to be one of four pillars of successful peace building.¹ But what is truth? The application of the term truth can be challenging due to the numerous ways in which this concept can be understood. Often, when the concept of truth is employed it is assumed to have a singular definition, which is linked to the process of knowing all relevant information. In philosophy, correspondence theory and identity theory define something as true “if it corresponds to the way things actually are—to the facts.”² Therefore there is no “difference between truth and the reality to which it is supposed to correspond”³ The problem with this understanding of truth is its incredibly broad scope, and the challenges of applying such a definition to post-conflict situations in which not all facts or information are readily accessible. As Clark notes, “‘truth’ in post-conflict societies is a far more ambiguous and problematic concept than supporters of criminal trials and truth and reconciliation commissions (TRCs) sometimes appear to assume.”⁴

Given the diverse understandings of truth often used, it is no surprise that numerous forms of truth and truth-telling have been identified in post-conflict literature. These forms include but are not limited to: scientific truth, moral or value judgements, the truth claims of a religious condition, truth as an existential commitment and action,

¹ David Mendeloff, "Truth-seeking, Truth-telling, and Postconflict Peacebuilding: Curb the Enthusiasm," *International Studies Review* 6, no. 3 (2004): 356.

² Michael Glanzberg, "Truth," *Stanford Encyclopaedia of Philosophy*, Spring (2009).

³ *ibid.*

⁴ Janice Natalya Clark, "Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship," *International Criminal Law Review* 11 (2011): 242.

and the truth about historical events.⁵ It is important to recognize that although each of these ways of understanding truth may interconnect with the others, they must also be recognized as distinct. This interconnection and distinctiveness in the varying understandings of truth is due to the fact that each form of truth requires an appropriate framework of arriving at and verifying claims.⁶ Therefore, which form of truth is used often depends on the forms that are realistically available for arriving at and verifying claims, and which forms of truth will be accepted by the community at large. The differing historical, transitional, and political circumstances facing a country will inherently affect its understanding of truth. For example, a negotiated end to a conflict may result in a broader understanding of truth, while a military victory may result in a narrower version of the truth. Each country's individual circumstance must be considered when looking at the truth that was used in its post-conflict institutions. It is also important to note that each form of truth uses systematic coherence as a character of a significant whole.⁷ This means that within each system of truth there is a coherent system of understanding and application.

The form of truth used often depends on the types of information gathering available. While hard evidence like exhumed bodies, official reports, or audio-visual evidence is often preferred for a forensic approach to truth, these sources are not usually available in post-conflict situations. Documentation of systematic human rights violations is often destroyed by the outgoing regime, and bodies are often buried in undocumented locations. Thus, the bulk of information about the events that took place

⁵ John W. de Gruchy, *Reconciliation: Restoring Justice*, (Minneapolis: Fortress Press, 2002), 155.

⁶ *ibid.*

⁷ Glanzberg, *Truth*.

and those who were affected during the conflict period may need to come from witness testimony.

Unlike the facts that may emerge from a scientific or historical understanding of truth, testimony is a dialogical process with many facets and open to problems and limitations due to human nature. For example, witnesses can only see the situation through their own perspective and there are many mechanisms that may distort and cloud memory and reality.⁸ Their version of events might also be shaped by “social location, past experiences, loyalties, values and interests.”⁹ Therefore there are usually differences between what happened, and the perceptions and narratives of the event as told by individuals.¹⁰ As such, truth in these situations will often be incomplete; and it might be nearly impossible to arrive at or grasp the whole truth, especially in a scientific or historical sense.¹¹ Yet even when information may be contradictory, clouded, or incomplete it is still possible to uncover a large amount of the truth, and this is arguably sufficient to achieve certain goals.¹²

Alongside anticipated outcomes resulting from truth-telling processes, there may also be other unplanned consequences. For example, once a new understanding of the truth about a period develops, it often will set a new standard for defining other claims.¹³ “When the ‘truth’ becomes known, when certain critical knowledge is publically recognized, the shared knowledge often sets in motion other legal responses, such as sanctions against the perpetrators, reparations for victims, and institutional changes.”¹⁴

⁸ de Gruchy, *Reconciliation: Restoring Justice*, 159.

⁹ *ibid*, 155.

¹⁰ *ibid*.

¹¹ *ibid*.

¹² *ibid*, 156.

¹³ Ruti G. Teitel, *Transitional Justice*, (Oxford: Oxford University Press, 2000), 88.

¹⁴ *ibid*.

Because of these consequences of the truth-telling process it is important for authorities to decide how, when, and to whom should the truth be told. Truth inevitably will be contentious; it therefore becomes a question of what to do with the truth that is uncovered.

Another important consequence of truth-telling is its effects on political consensus. By building a new national narrative political forces are often able to unite communities behind new goals. The problem comes when certain testimony or events do not fit with the official truth narrative. In reality several different versions of truth may chafe and collide.¹⁵ To avoid dissenting accounts, incentives are often offered to victims and perpetrators to participate in the official historical process.¹⁶ Offering incentives means that the exploration of the truth is often affected by a society's tolerance for multiple representations of the truth.¹⁷

Unlike the neat clear philosophical definitions of truth that were presented at the beginning of this section, a definition of truth that can be used to discuss and assess Truth Commissions and other post-conflict institutions is less clear cut. Conflict situations are full of emotion, individual conflicts, and personal views on events. As noted above, discovering facts from the period in question can be difficult and often is clouded by the perspectives of those who participated. Therefore, uncontested provable facts may be few and far between. What this means is that truth as an absolute does not function as a definition in these circumstances. As Forsberg states, "facts alone will not help to form a shared past."¹⁸ Instead, a more practical and realistic approach is to view truth as a

¹⁵ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 248.

¹⁶ Teitel, *Transitional Justice*, 89.

¹⁷ *ibid.*

¹⁸ As cited in Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 248.

vibrant, varied, and active process. The process of truth is a conversation that the community engages in to establish a more unified and agreed upon narrative of the events of a specific period. Truth is an ongoing process and should be an opportunity for every group involved to contribute to the national discourse. The process should allow participants to develop the most broad and inclusive narrative possible, in which every group is allowed to share their perspective and grievances. A synthesis of perspectives is needed for truth to be accepted by all groups as the new national narrative about that period. As de Gruchy notes, truth is only personal when interacted with, when lives are affected, and perspectives and relationships with the other change.¹⁹ “Truth, for truth’s sake is a pretty pointless exercise...unless it is coupled with some form of social transformation.”²⁰

Truth- South Africa

“Only by knowing the truth can we hope to heal the terrible wounds of the past that are the legacy of Apartheid. Only the truth can put the past to rest.”²¹

- South African President Nelson Mandela.

South Africa applied a fairly inclusive approach to gaining the truth about the events that took place during Apartheid. This was due to the fact that there had been significant violence in the years leading up to the 1994 election. For example, the IFP and ANC had intense conflicts in the province of Natal and the white racist party the

¹⁹ de Gruchy, *Reconciliation: Restoring Justice*, 163.

²⁰ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 256.

²¹ As cited in Gobodo-Madikizela, *Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission*, 60.

AWB was threatening to overthrow the government. An inclusive approach to truth was needed to quickly and immediately deal with the violence in the post-1994 period.

The inclusive approach to truth was reflected in the South African Truth and Reconciliation Commission's mandate, which included investigating human rights violations committed by both sides of the conflict.²² Anyone was allowed testify to the Commission about human rights abuses they had witnessed or suffered, and anyone could apply for amnesty for human rights violations they had committed. As TRC vice chairperson Dr. Alex Boraine explains, "South Africa has decided to say no to amnesia and yes to remembrance..."²³ The objective of this remembrance was "to establish as complete a picture as possible of the causes, nature, and extent of the gross violations of human rights which were committed during the period from March 1st 1964 to [May 10th 1994]."²⁴ Truth was placed front and centre in the process and was viewed as vital to understanding the events of Apartheid, aiding victims in healing and preventing new future violations of human rights.²⁵

The TRC also took the important step of recognizing that there were going to be a variety of types of truth presented to the Commission and therefore used four categories to define them. The four categories included: objective, factual, or forensic truth; personal or narrative truth; dialogical truth; and healing or restorative truth.²⁶ These four types of truth were readily referenced in the five volume report that was published in

²² *ibid*, 59.

²³ Alex Boraine, *Justice in Cataclysm: Criminal Tribunals in the Wake of Mass Violence*, lecture in Belgium, July 1996. <http://www.polity.org.za/polity/govdocs/speeches/1996/sp0720.html>

²⁴ de Gruchy, *Reconciliation: Restoring Justice*, 156.

²⁵ Hamber, *'Ere their Story Die': Truth, Justice, and Reconciliation in South Africa*, 63.

²⁶ Allison Corey and Joireman, *Retributive Justice: The Gacaca Courts in Rwanda*, 73. Corey offers an expanded understanding on these four categories of truth as defined by the TRC.

1998.²⁷ The main focus of the TRC remained on uncovering the truth about historical events and how they were reported.²⁸ Yet, by recognizing the various forms of truth available, the TRC was able to present a much more inclusive picture of the events that took place during Apartheid.

The South African TRC did have its challenges uncovering truth. Recall from Chapter One that the TRC's constitution and mandate chose to focus on specific violations of human rights and not the larger social and economic inequalities caused by Apartheid. The focused nature of the TRC meant that it was incapable of uncovering the whole truth as experienced by Apartheid victims.²⁹ South Africa made this choice consciously and chose, due to the potential for violence and white capital flight, to search for acceptable truths.³⁰ As Bell notes, "There was broad agreement that too much of the truth would be a dangerous thing."³¹ Therefore, the TRC chose to acknowledge only individual victims."³² Another choice the TRC made was to focus on the accounts of perpetrators and political victims and gloss over the everyday beneficiaries of Apartheid. Structural problems created by Apartheid such as economic and educational inequalities were only briefly touched on. The result of this choice was that the vast majority of the victims remained in the same socio-economic position after the process ended as before the TRC began.

A second set of factors that hindered the uncovering of truth in South Africa were: memory and recall, time restraints, and emotional reasons.³³ Each of these factors

²⁷Freeman and Hayner, *Reconciliation After Violent Conflict A Handbook*, 125

²⁸ de Gruchy, *Reconciliation: Restoring Justice*, 156.

²⁹ *ibid.*

³⁰ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 251.

³¹ As cited in Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 251.

³² *ibid.*

³³ de Gruchy, *Reconciliation: Restoring Justice*, 157.

hindered the process, especially considering the period under investigation spanned over 34 years. A third hindrance was the fact that the South African military did not play an active role in the TRC process. As Tutu notes the military, “hardly cooperated with the Commission at all. This left a considerable gap in the truth-gathering process...There is much truth that the nation still needs to know if our healing and reconciliation are to be lasting and effective.”³⁴ Participation by the military would have greatly expanded information about human rights abuses for the Commission, because the military was a key participant in Apartheid oppression. The military, however, was not forced to participate for fear of retaliatory action.

A final hindrance to gathering a fuller truth was the unwillingness of perpetrators (both members of the military and civilians) to disclose the full range of their activities even with the promise of amnesty.³⁵ Many perpetrators made only partial disclosures, with the view of gaining amnesty, which left many victims’ families still uncertain about the circumstances leading to their deaths. Only about 10% of victims who reported human rights abuses to the Commission were actually able to gain new information from the process (such as the identity of the perpetrator or whereabouts of a loved one.)³⁶ All encompassing truth recovery was challenging given that the TRC had only 60 investigators to look into over 35,000 violations reported by the approximately 22,000 victims that testified to the Commission.³⁷ “In retrospect, no one could seriously have expected the TRC to uncover the ‘whole truth and nothing but the truth’”.³⁸

³⁴ As cited in Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 250.

³⁵ de Gruchy, *Reconciliation: Restoring Justice*, 158.

³⁶ Hamber, *'Ere their Story Die': Truth, Justice, and Reconciliation in South Africa*, 65.

³⁷ *ibid.*

³⁸ de Gruchy, *Reconciliation: Restoring Justice*, 159.

Although the South African TRC was not able to uncover the full truth about all Apartheid era violence, it did serve the important purpose of making public knowledge the events that were uncovered. The goal of a Truth Commission cannot be simply to uncover the truth, but it must also focus on getting local communities to accept, acknowledge, and internalise this new concept of truth.³⁹ One valuable aspect of having such a public process for truth-telling as the South African TRC was that it aided in having the previously denied truth recognized.⁴⁰ The TRC was able to counter many well established myths, misunderstandings, and polarising beliefs between racial groups that were accepted under Apartheid.⁴¹ The public nature of the TRC, with its vast media coverage allowed both national and international viewers to track the Commission's hearings and their findings. The vast media coverage and five volume report created an undeniable historical record that makes the denial of Apartheid violence next to impossible.

Truth- Rwanda

People should participate in the Gacaca Court.
 Work in the morning and then go to the Gacaca.
 People should speak the truth.
 What happened was in the daylight.
 You watched it,
 That's why you must speak the truth.

—Reconciliation song in the genocide play *Ongera Urebe Ibyaye Mu Rwanda* (Once Again See What Happened in Rwanda)⁴²

³⁹ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 250.

⁴⁰ Hamber, 'Ere their Story Die': *Truth, Justice, and Reconciliation in South Africa*, 64.

⁴¹ Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 33.

⁴² As cited in Ananda Breed, "Performing Reconciliation in Rwanda," *Peace Review* 18, no. 4 (2006): 507.

In Rwanda, truth has also been an important feature of their post-conflict institutions. The nationally created Gacaca Courts are specifically charged with discovering the truth about the 1994 genocide.⁴³ Yet because of the specific factors surrounding Rwanda's transition after the genocide, it uses a narrower definition of truth than South Africa. In Rwanda the RPF-led government has held strong military and political control over the country since the genocide. Because of the military's strong position the government has been able to use a narrower version of truth; this narrower version restricts who can be viewed as a victim. Truth still plays a crucial role in their post-conflict institutions, but, as this section will demonstrate, it is less inclusive of all those affected by the genocide.

During the Gacaca Court process each village meets and is encouraged to share their knowledge about the events that took place in the surrounding area. The judge then reads the names of the dead aloud and asks the assembled villagers to share what they know about each person's murder, how it happened, and who performed the killing.⁴⁴ Anyone can come forward with information, and lighter sentences are offered to offenders who confess and tell about their role in the killings.

The search for truth about the events that took place in Rwanda during the genocide is considered critical by the national government to the processes of both justice and reconciliation. By discovering what actually took place, the government believes that suspicion decreases in the local community, because the guilty party is identified and

⁴³ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 14-15.

⁴⁴ *ibid.*

denounced.⁴⁵ It also believes that rumours and distrust are reduced and neighbours can start the long process of learning to trust each other again.⁴⁶

Truth is critical to justice in the Gacaca Courts. The Courts function by gathering information about the genocide and believe that during this process the innocent are being distinguished from the guilty.⁴⁷ The guilty party can then be properly prosecuted.⁴⁸ It is only by learning the truth that the trial process is even possible.

The Gacaca Courts have been quite successful in terms of gathering a widespread understanding of the events of the Rwandan genocide. In one sector alone, 635 local leaders were found to have participated in the genocide, 2,732 members of the community confessed to participating, and over 45,000 bodies have been recovered and given a proper burial.”⁴⁹

Yet in Rwanda, truth-telling is not an open process despite the successes stated above. For example, the Rwandan government in its National Unity and Reconciliation policy has put limits on the amount of truth that can be shared and when it can be shared. The limits of truth will be explained in greater detail later in the section. In the words of one Tutsi survivor, “The harsh politics of reconciliation forbid survivors to speak in any fashion about the killings, except when invited to give evidence, during ceremonies, mourning periods or *Gacaca* trials.”⁵⁰ Even outside of the Gacaca Courts truth is being suppressed on a national scale and at every level.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ Breed, *Performing Reconciliation in Rwanda*, 511.

⁵⁰ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 258.

A second area where truth finding is blocked stems from the official definition of what constitutes the crime of genocide and what constitutes a war crime. The Rwandan Government passed a law that recognizes the crime of genocide as a human rights violation against a Tutsi.⁵¹ Human rights violations that happened during the same time period against a Hutu are defined as a war crime.⁵² The Gacaca Courts only deal with crimes of genocide.⁵³ Therefore, this leaves the process of uncovering the truth incomplete, and voids any meaningful dialogue between the Hutu victims and others. Hutu victims are unable to express their view of events and the suffering they experienced. "To become a real tool for the reconciliation of the Rwandans, the Gacaca Courts must permit everyone to express their own ideas of the truth in order to arrive at a truth accepted by everyone."⁵⁴ Until everyone affected by the genocide is able to express their perceptions of the events it is unlikely that an accepted national narrative about that period can ever be reached.

The Rwandan approach to truth can be compared to the South African approach, in that both institutions share the practice of victims being invited to share their experiences and heal. Both institutions have based their practices around the belief that sharing serves as an important opportunity for victims to integrate that period into their current lives.⁵⁵ Sharing provides victims with an opportunity to fully recognize the trauma they suffered and begin to heal.⁵⁶ Gobodo-Madikizela argues that the first step in

⁵¹ Breed, *Performing Reconciliation in Rwanda*, 511.

⁵² *ibid*, 507.

⁵³ *ibid*.

⁵⁴ *ibid*.

⁵⁵ Pumla Gobodo-Madikizela, "Trauma, Forgiveness and the Witnessing Dance: Making Public Spaces Intimate," *Journal of Analytical Psychology* 53, no. 2 (2008): 170.

⁵⁶ Gobodo-Madikizela, *Transforming Trauma in the Aftermath of Gross Human Rights Abuses: Making Public Spaces Intimate Through the South African Truth and Reconciliation Commission.*, 59.

dehumanization is silence; silencing the victim and the conscience.⁵⁷ Therefore by having the opportunity to relate their experiences, victims are able to reclaim their humanity and force the perpetrator to confront their actions.⁵⁸

There are also differences in how both countries approached truth and truth-telling. While both the TRC and the Gacaca Court system offered opportunities for victims to share their experiences, the Rwandan government chose to narrowly define who was a legitimate victim. This difference is quite significant in how the Rwandan system functioned – largely because this definition narrowed the focus and scope of the process, and will likely shape its final outcome. The exclusion of the Hutu victims has compromised the Gacaca Court System's ability to create an inclusive national narrative of truth. This more limited version of truth may undermine Rwanda's ability to heal and move forward from the genocide. In contrast, South Africa created the opportunity for all sides of the conflict to share an inclusive dialogue; that will make the TRC arguably more effective in the long run than the Gacaca Court System. The following section will explore how the South African and Rwandan concepts of truth interacted with the qualities of justice and reconciliation within the two institutions.

Justice

So how does truth affect the application of justice? Several studies undertaken in post-conflict situations have verified that victims and survivors have a strong preference

⁵⁷ Gobodo-Madikizela, *Trauma, Forgiveness and the Witnessing Dance: Making Public Spaces Intimate*, 170.

⁵⁸ *ibid.*

for justice and accountability through truth-telling.⁵⁹ Victims and survivors believe that truth-telling will bring relief from emotional and psychological pain.⁶⁰ Truth-telling is believed to lead to a heightened sense of justice, which diminishes the desire for vengeance and increases likelihood of reconciliation and peace.⁶¹ Truth-telling is also believed to lead to healing of psychological trauma, which diminishes the desire for vengeance and increases the chances of reconciliation and peace.⁶²

Justice therefore is another crucial aspect of the healing process, and is heavily affected by truth. Without a full understanding of the events during a conflict period, a complete, non-biased sense of justice can be difficult to reach. Crimes on both sides need to be recognized and dealt with if all parties are going to accept that justice has been served. All crimes during the period in question must be held to the same standard of justice. Thus, an inclusive national narrative is required in order to have an even-handed application of justice for all those involved in the conflict.

Justice can vary in its method, but not in its application. Once a system of justice had been selected it must be equally applied to all within its jurisdiction. For the purpose of this thesis, four main forms of justice (as identified by Gibson, Gobodo-Madikizela, and Huyse) will be used. The four forms of justice are: distributive or compensatory, historical, retributive, and restorative.⁶³ The following explanations are to assist in identifying the four methods and should not serve as commentary on their effectiveness.

⁵⁹ David Mendeloff, "Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice," *Human Rights Quarterly* 31, no. 1 (2009): 595.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ Luc Huyse, "Justice" in *Reconciliation After Violent Conflict A Handbook*, eds. David Bloomfield, Teresa Barnes, and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2005), 97.

The first method of justice is distributive and focuses on compensation for the victims.⁶⁴ Distributive justice can include: financial reparations, return of assets, and service preformed by the perpetrator to benefit the victim. As Gibson notes, the second method of justice is historical; this type of justice gives the victim a voice.⁶⁵ It allows the victim to tell their story and in return they find out the truth about what happened and who did it. Historical justice also works to have the state acknowledge the wrongs committed.

The third form of justice is retributive. Retributive justice focuses on punishing the offender. It is often employed when individuals who are dissociated from the victim or act and its consequences desire punishment for the offender.⁶⁶ The crime is viewed as an offence against the state under retributive justice. Therefore, it is the state's responsibility to prosecute the offender on behalf of the victim, with the intention that the victim will find closure with the punishment of the offender.⁶⁷ This is not always the case, as many victims do not gain a sense of closure.⁶⁸

The fourth and final form of justice is restorative. Restorative justice focuses on healing and restoration.⁶⁹ It is "a process whereby all the parties with a stake in a particular offence come together to respond collectively on how to deal with the aftermath of the offence and its implications for the future."⁷⁰ As outlined in the book *Reconciliation After Violent Conflict*, restorative justice is concerned with restoration of the victim and community.⁷¹ The victim is elevated in the restorative system to a higher prominence through increased involvement, input, and services. Perpetrators become

⁶⁴ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 542.

⁶⁵ *ibid.* 556.

⁶⁶ *ibid.*

⁶⁷ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 56.

⁶⁸ *ibid.*

⁶⁹ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 540.

⁷⁰ *ibid.*

⁷¹ Huyse, *Reconciliation After Violent Conflict A Handbook*, 111.

directly accountable to the person or community victimized. The process emphasises the perpetrator accepting responsibility for their actions and then making amends whenever possible. Restorative justice also promotes community involvement and recognises the community's responsibility for social conditions that contribute to offender behaviour.

Each of these methods has their strengths and weaknesses and a brief discussion thereof will provide context to the following sections. Distributive justice's strength lies in providing compensation to the victim, which may assist them to move forward with their life. Its weakness lies in the fact that not all states or institutions may have the resources needed to support such a system. This is especially true in post-conflict situations in third world countries. Historical justice's strength lies in its ability to use pre-established procedures to form a coherent and stable practice. Each case is handled in the same manner as the previous cases. One weakness of this system is that properly trained staff may be in short supply in post-conflict situations.

Retributive justice's strength is that it is well established in international society and has a long history to draw on. Yet Huyse has identified numerous problems with this system when applied in post-conflict situations.⁷² First, in post-conflict situations the application of retributive justice may reignite the conflict. Second, there may not be the financial resources or personal available to support a retributive system. Poorer nations and those devastated by conflict may lack the resources to fund such a system. Third, an adversarial trial system may hinder reconciliation. Forth, criminal courts can restrict flow of information.⁷³ Fifth, the evidence necessary for convictions may have already been

⁷² Huyse, *Reconciliation After Violent Conflict A Handbook*, 97.

⁷³ *ibid*, 104.

destroyed by the perpetrators. Finally, trials are designed to identify individual guilt not patterns in atrocities, which may leave the root causes of the conflict underexplored.⁷⁴

A popular alternative to retributive justice is restorative justice. Restorative justice has been credited with numerous strengths by Huyse. First, restorative justice usually takes place in the local community, therefore providing easy access for all participants.⁷⁵ Second, it is usually carried out in the local language and is based on simple procedures that do not require lawyers, which contributes to its participatory nature. Third, restorative justice serves to assist in educating all members of the community about rules of conduct, which situations are likely to lead to a relapse in the conflict, and how to peacefully resolve conflict. Finally, restorative justice benefits the larger community by employing noncustodial services thus reducing prison overcrowding; freeing funds for social development; allowing perpetrators to contribute to the economy and victim compensation; and by preventing economic and social dislocation of the family.⁷⁶

At the same time Huyse has identified some negative consequences that may result from restorative justice. First, during the community discussions the final decision reached may be affected by unequal power distribution amongst the participants.⁷⁷ This in turn may reinforce existing inequalities. Second, the traditional leaders who are often appointed to facilitate the process may favour certain parties. Third, overall procedural

⁷⁴ *ibid.*

⁷⁵ *ibid.*, 112.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

safeguards may be insufficient due to the flexible and customisable nature of the process.⁷⁸

It is also important to note that restorative justice has a strong basis some in African cultures.⁷⁹ The Xhosa concept of *ubuntu* is a clear example. *Ubuntu* is a concept that originates in the expression, “People are people through other people.”⁸⁰ Under this philosophy it is believed that by assisting both the victim and the perpetrator in regaining their humanity and reintegrating them into society that the larger community is able to heal.

These four forms of justice are not mutually exclusive. They can be used in tandem and in different combinations. Using a larger variety of forms of justice does not necessarily improve the judicial process, nor does using fewer forms indicate a weaker judicial system. Each country’s individual historical, transitional, cultural, and political circumstances will play a crucial role in determining what form justice should take. The important point is that the form(s) selected are applied even-handedly. The key necessity of all the forms is that they all rely on the identification of a victim, a perpetrator, and a crime. All four forms of justice require the truth about the event(s) in question in order to function.

With this overview of the four types of justice in mind, we now turn to a discussion of the TRC’s and Gacaca Court System’s use of justice. As will be shown the two institutions employed different combinations of the four types of justice. Rather than determining which type of justice is superior, the following sections will work to identify which institution employed an even-handed application of justice to the crimes

⁷⁸ *ibid.*

⁷⁹ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 543.

⁸⁰ *ibid.*

committed during the period in question, and to speculate what the possible long-term implications will be.

Justice- South Africa

The TRC mainly used three forms of justice; restorative, historical and distributive. The TRC employed historical justice by acting as a semi-judicial body. It was in this capacity that it heard witness testimony about events that occurred during Apartheid, as well as examined applications for amnesty. The TRC used historical justice in its hearings by allowing victims to testify and recognizing at the state level that they had been wronged, and by uncovering what had happened and who had committed the crime. The TRC did not, however, prosecute those accused of perpetrating human rights violations and therefore did not employ retributive justice. This choice was likely influenced by the threat of violence during the transitional period and the large white presence in the military.

The TRC also used distributive justice, as the victims were supposed to be compensated for their suffering by the government. Reparations were offered in exchange for a victim's surrender of the right to prosecute those who had sought amnesty.⁸¹ Unfortunately, the government only paid interim reparations to the victims, and has since taken little action.⁸² Initially the Reparations and Rehabilitation Committee of the TRC recommended that each of the 22,000 victims receive a onetime payment of between R2,000-6,000. This would then be followed by a longer term plan which would

⁸¹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1119.

⁸² *ibid.*

have the government paying out R2,864,400,000 over six-years, which would be roughly R17,000-24,000 per year per victim.⁸³ Victims were also to receive a large range of education, housing, and health services. Unfortunately, after a series of delays victims received only an interim payment of R3,000 and over the five years after the TRC's completion a single one-time payment of R30, 000 (\$4000 USD).⁸⁴

The TRC did not use retributive justice. Retributive justice was not used because the TRC did not punish the perpetrators in any traditional sense, which is a main component of retributive justice. The perpetrators did however have to pay their own legal fees, suffer the humiliation of a public confession, and deal with censor from family and friends.⁸⁵ The TRC process was based on a restorative justice process, but suffered from the lack of apology required from amnesty applicants. The application for amnesty only required that the act committed had been for political gain, and that the perpetrator must confess.⁸⁶ No apology, punishment, or reparation was demanded of the individual. The offer of amnesty and its requirements made many sceptics argue that there had been a deficit of justice.⁸⁷ The issue of amnesty also seemed to excuse human rights abuses.⁸⁸

The rules of the system meant that the victims lost their civil right to prosecute the offender, and they received very little compensation in return. As Brudholm notes,

If the government does not follow up on the Commission's recommendation to introduce a policy of reparations toward the victims, and if in the end political criminals, whether they were refused amnesty or did not even apply for it, will benefit from a general amnesty, then the whole TRC process looks bleak from the victims' perspective.⁸⁹

⁸³ Brandon Hamber, "Repairing the Irreparable," *Ethnicity & Health* 3/4, no. 5 (2000): 217-218.

⁸⁴ Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 10.

⁸⁵ Hamber, 'Ere their Story Die': *Truth, Justice, and Reconciliation in South Africa*, 71.

⁸⁶ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 540.

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ Brudholm, *The Justice of Truth and Reconciliation*, 189.

In fact in a survey of over 400 survivors not one of the groups of victims thought that justice had been served.⁹⁰ One can speculate that if meaningful reparations had been paid, victims may have been more satisfied with the judicial process.

Overall, South Africa was even-handed in their application of both historical and distributive justice. Having more investigators to investigate the whereabouts and participants in specific human right abuses may have been beneficial in gaining a fuller picture. Yet, overall historical justice was applied even-handedly to all participants. In terms of distributive justice there were some concerns over the waiting period and amount of the reparations, but overall the reparations that were issued were even-handedly distributed.

Justice- Rwanda

In Rwanda, the Gacaca Court System employs a mixture of distributive, historical, retributive and restorative justice. In terms of distributive justice, the government established a victim relief fund that it contributes 8% of its revenue toward and that all perpetrators pay into.⁹¹ In term of historical justice, the Gacaca Courts provide an opportunity for both victims and perpetrators to share their story. The local community is also included, and asked to provide information about the event in question. Retributive justice is incorporated through the punishments assigned to the convicted. The punishment can range from a life sentence to community service.

⁹⁰ Mendeloff, *Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice*, 605.

⁹¹ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1124.

Finally, restorative justice is included in the system through community participation. Everyone affected by the event has the opportunity to participate and share his or her story. Perpetrators are offered the opportunity to come forward of their own accord, confess, apologise and make restitution. These confessions often result in a lighter sentence being given, such as community service. The community service assigned can range from the reconstruction of victims homes, to repairing schools and hospitals, maintaining green spaces, and agricultural labour.⁹²

Yet there are limitations in the process based on the way in which truth is understood and truth-telling takes place. While the Gacaca system does use all four forms of justice, there are some limitations in the way each form is employed. Distributive justice is not even-handed, because the survivors fund only supplements Tutsi children, and does not include Hutu children who may have lost family in the genocide. Historically, retributively and restoratively, the Gacaca Courts are not even-handed in their application of justice because of their narrow definition of who can be viewed as a victim. This is due to the fact that the Gacaca Courts do not try crimes that were committed during the same period as the genocide by the Tutsi RPF against Hutu civilians. President Paul Kagame insists that the Gacaca Courts are not the appropriate forums for hearing cases against RPF soldiers that also committed gross human rights violations,⁹³ even though somewhere between tens of thousands and 100,000 Hutu civilians were killed.⁹⁴ The Gacaca Courts are supposed to be a national system, but the definition of truth being used means that a large segment of the population is not being heard. Due to the fact that both sides of the conflict are unable to be heard publicly, it

⁹² *ibid.*

⁹³ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 56.

⁹⁴ *ibid.*

has been argued that the Gacaca system is just a form of victor's justice. As Lemarchand and Niwese note, "impunity remains the rule for crimes committed by the RPF within and outside Rwanda."⁹⁵

Justice- Conclusions

The comparison of these two systems may seem daunting due to their different judicial approaches, so it is important to remember that the main criteria for assessment in this thesis is whether each system was employed even-handedly within their jurisdiction and not on the procedural differences. While the Rwandan system seems to have a more comprehensive judicial system involving all four types of justice, it has one main limitation that may undermine its overall success. The Gacaca Court has a good balance between historical, distributive, retributive, and restorative justice, but it lacks a unified version of truth and even-handed application. Not every victim of the conflict period is able to testify and the perpetrators of human rights abuses against the Hutu population are not being held accountable. The Hutu population is being excluded from sharing their experiences and version of the truth and the differentiation between human rights violations against Tutsi as genocide and the human rights violations against Hutu as war crimes has created a two tiered system and has the potential to breed hatred and resentment.

The South African TRC, even with all of its procedural flaws such as limited reparations and the incomplete testimony of amnesty applicants, will likely have a stronger affect on reconciliation and healing in the long-term. The TRC, although not

⁹⁵ Cited in Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 251.

utilising as wide a range of forms of justice as did the Rwandan system, did have an even-handed application. All sides of the conflict were able to share their version of what had occurred, and were able to ask for amnesty. The use of an inclusive understanding of truth meant that victims, perpetrators, and crimes on both sides of the conflict were recognized. The TRC may not have had the strongest judicial methods, but they did apply justice evenly to all sides, which is crucial to the acceptance of judicial procedure by all parties.

Reconciliation

Reconciliation, like justice, is also heavily influenced by truth. “Truth-telling is a pre-condition of reconciliation because it creates objective opportunities for people to see the past in terms of shared suffering and collective responsibility.”⁹⁶ Reconciliation is the recognition of the ‘other’ and their equality.⁹⁷ In the reconciliation process, the victim offers forgiveness of the act committed, and the perpetrator recognizes that the act was wrong and apologises. Both parties can then move on and begin to rebuild their lives, and their country. Truth is critical to this process. If a full understanding of the crimes committed on both sides is not present, then it follows that there will be both victims and perpetrators who have not forgiven or apologised. Without a full sense of truth, there will be sectors of the population who are unable to participate in the reconciliation process. “To be able to forgive one needs to know whom one is forgiving

⁹⁶Huyse, *The Process of Reconciliation*, 21.

⁹⁷ Graybill, *Pardon, Punishment, and Amnesia: Three African Post-Conflict Methods*, 1124.

and why. That is why truth is so central to this whole exercise.”⁹⁸ It is also important to note that a negative relationship between truth and reconciliation exists. When truth is buried it actively blocks reconciliation.⁹⁹ Clark’s research indicates that “the denial of truth breeds resentment, anger and frustration, and thus obscures the reconciliation process.”¹⁰⁰

Interestingly, justice and reconciliation do not necessarily accompany each other. Justice requires that a crime be acknowledged by the state as having been committed and then having some form of consequences. Reconciliation is the acknowledgement by both victim and perpetrator of the act and then a conversation between them, which may eventually lead to forgiveness, and apology.

The following discussion of reconciliation draws heavily on Thesnaar. A basic definition of reconciliation is that it prevents “once and for all, the use of the past as the seed of renewed conflict.”¹⁰¹ Reconciliation should consolidate peace, end the cycle of violence, and be a foundation for democratic institutions.¹⁰² As Thesnaar notes, reconciliation should concentrate on healing the wounds caused by the offence and repairing relationships.¹⁰³ It needs to encourage the full participation and consensus of all parties. Reconciliation should heal what is broken and reunite that which was divided. It also needs to embrace full and direct accountability and must include either material or symbolic reparation of the damage caused. Finally, reconciliation should strengthen the community and prevent further harm.

⁹⁸ Hamber, *'Ere their Story Die': Truth, Justice, and Reconciliation in South Africa*, 68.

⁹⁹ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 242.

¹⁰⁰ *ibid*, 257.

¹⁰¹ Huyse, *Reconciliation After Violent Conflict A Handbook*, 19.

¹⁰² *ibid*.

¹⁰³ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 59-61.

Reconciliation does not necessarily entail a return to a previous pre-conflict political and social set-up, especially if the previous state of affairs contributed to the conflict in question.¹⁰⁴ Instead, as Thesnaar contends, reconciliation can be very proactive in correcting historic wrongs and forging a new future that will allow both sides to recognize each other, and move forward. Reconciliation can also refer to the restoration of ideas.¹⁰⁵ Concepts like dignity, and equality, or even property ownership can be restored to the victim.¹⁰⁶ The focus must be on creating a unified path forward.

As Thesnaar notes, the reconciliation process has three main participants; the victim, the perpetrator, and the community.¹⁰⁷ Each of these participants plays a crucial role in the reconciliation process. The first participant in reconciliation is the victim. The victim is the recipient of the wrongful action, or trauma. Once the trauma has occurred, it often remains with the victim subconsciously as unfinished business. The trauma can then lead victims to re-enact the harmful event in some manner, often as violent actions at a later date. This re-enactment increases the culture and language of violence within the society as a whole and therefore clearly needs healing for both the benefit of the victim and the society.

The first step in the healing process is witnessing. Witnessing is an opportunity for the victim to share their experience and begin to be able to integrate it into their lives.¹⁰⁸ By sharing their experience and pain they can begin to recognize the trauma and heal. The second step is the victim having the *opportunity* to grant forgiveness and offer

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*, 60.

¹⁰⁶ *ibid.*, 60-61.

¹⁰⁷ *ibid.*, 61.

¹⁰⁸ *ibid.*

reconciliation.¹⁰⁹ Forgiveness is essential to the victim, because it assists in working through the unfinished business of trauma.¹¹⁰ Forgiveness re-humanises the victim and it allows the victim to complete herself and revoke from the perpetrator “the fiat power to destroy.”¹¹¹ “Far from being an unnerving proposition and a burdensome moral sacrifice, compassion, for many, is deeply therapeutic and restorative.”¹¹²

Many argue that the most valuable form of forgiveness in the reconciliation process is when the victim offers forgiveness so that the perpetrator can begin to change and heal. Forgiveness brings healing to both the victim and the perpetrator and allows an interconnected path toward healing. Power is with the victim in this process, because only they can originate the process by forgiving.¹¹³ It is important to remember that forgiveness does not automatically heal the perpetrator; they too must want to change and reform.¹¹⁴

The second participant in the reconciliation process is the perpetrator. The perpetrator’s role is to confess, to express remorse, and to provide some form of restitution.¹¹⁵ First, the perpetrator must bear witness; they must listen to their victim explain the events. The act of bearing witness forces the perpetrator to confront their depravity, and to put a face to the pain and suffering that they caused.¹¹⁶ Silencing of the victim (and the conscience) is the first step in dehumanisation. As Godobo-

¹⁰⁹ It is important to note that forgiveness is the choice of the victim and may not always be possible depending on the victim’s ability to move forward from the trauma. Reconciliation is a challenging process and does ask a lot of the victim.

¹¹⁰ Gobodo-Madikizela, *Trauma, Forgiveness and the Witnessing Dance: Making Public Spaces Intimate*, 170.

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ Krog, *This thing called reconciliation...’ forgiveness as part of an interconnectedness-towards-wholeness*, 357.

¹¹⁵ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 60.

¹¹⁶ Gobodo-Madikizela, *Trauma, forgiveness and the witnessing dance: making public spaces intimate*, 170.

Madikizela suggests, by listening to the victim the perpetrator is re-humanising the victim.¹¹⁷ Bearing witness is often the first step of re-humanising the perpetrator as well. As the perpetrator listens they can begin to feel the suffering of the victim, and may gain a sense of remorse. It is this strong sense of remorse that allows the perpetrator to begin to regain their own sense of humanity that was lost when they committed the crime. The remorse and pain of the perpetrator draw them into a relationship with the victim. The ability to feel empathy is rekindled within the perpetrator and they are able to apologise and ask for forgiveness. The act of asking for forgiveness can also be an important healing step for the victim, and allows both parties to begin to move forward.

The third and final participant in reconciliation is the community. The community is crucial to the reconciliation process because it is when relationships in society breakdown that the initial vacuum of empathy is created.¹¹⁸ By witnessing and acknowledging the victim, the community begins a public narrative of what were previously personal events. Bystanders are forced to consider their indirect role. The larger community as a whole can also acknowledge the societal problems that led to the conflict and then begin to work past them and to heal. As Gobodo-Madikizela argues, “when the conditions for the emergence of forgiveness are created, they serve to re-animate the empathic sensibilities damaged by violence both between individuals and within communities.”¹¹⁹

After internal conflict and vast human rights violations it is critical that reconciliation bring healing and progress within a state and its society. Professor William Zartman defines reconciliation as the ability, "to arrive at a pacified society where free

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

and equal individuals acknowledge each other and are capable of facing up to a history full of violent acts, and above all, are able to surmount that history"¹²⁰ The challenge lies in what kind of reconciliation process will be effective to allow both the victims and perpetrators to come to some form of understanding; to be able to recognise each other as equal and with the right to exist. An effective reconciliation process is central to breaking the cycle of violence and allowing progress and stability.

There are numerous forms of reconciliation and processes that can be followed to achieve reconciliation. Reconciliation can range from the very formal, secular or institutional, to the deeply spiritual, personal, or religious.¹²¹ The methods employed also span a wide range and can include: healing the wounds of survivors, some form of retributive or restorative justice, historical accounting through truth-telling, and reparation of the material and physiological damage of victims.¹²²

While there may be a wide range of definitions and methods most reconciliation includes three basic steps.¹²³ First, fear needs to be replaced with non-violent coexistence. Second, when fear no longer shapes social interactions the main parties can begin to build trust and confidence. Finally, the last step is to develop empathy. While these steps need to be tailored to the local context, there are some key principles that are often associated with successful reconciliation. First, the reconciliation process needs to concentrate on healing the wounds caused by the human rights violations and it must repair relationships.¹²⁴ Second, reconciliation should promote the full participation and

¹²⁰ As cited in Umutesi, *Is Reconciliation between Hutus and Tutsis Possible?*, 164.

¹²¹ Clark, *Transitional Justice, Truth and Reconciliation: An Under-Explored Relationship*, 258.

¹²² Huyse, *Reconciliation After Violent Conflict A Handbook*, 23.

¹²³ *ibid*, 19-21.

¹²⁴ Gibson, *Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa*, 542.

consensus of all parties.¹²⁵ Third, reconciliation needs to heal what is broken and reunite that which was divided. Fourth, reconciliation must embrace full and direct accountability and include either material or symbolic reparation of the damage caused.¹²⁶ Finally, reconciliation should strengthen the community and prevent further harm.¹²⁷

With this basic understanding of reconciliation in post-conflict situations in mind, we now turn to an exploration of our two specific cases. The next two sections will examine what reconciliation processes were employed by the South African TRC and the Rwandan Gacaca Court System and how the concept of truth affected the reconciliation process in both cases.

Reconciliation- South Africa

The South African TRC included a strong element of reconciliation. In fact its purpose was, “to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past.”¹²⁸ A challenge for South Africa stemmed from the lack of a clear definition of reconciliation.¹²⁹ Hamber identified at least five competing definitions of reconciliation in South Africa. They include: a non-racial ideology of reconciliation; an inter-communal ideology of reconciliation; a

¹²⁵ *ibid*, 540.

¹²⁶ *ibid*.

¹²⁷ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 61.

¹²⁸ *ibid*.

¹²⁹ Hamber, *'Ere their Story Die': Truth, Justice, and Reconciliation in South Africa*, 66.

religious ideology of reconciliation; the human rights ideology of reconciliation; and the community building ideology of reconciliation.¹³⁰

In terms of the first, Hamber suggests that a non-racial ideology of reconciliation views reconciliation as removing the racial identities that arose from past policies. Non-racial citizens are created through confession and acknowledgement. These citizens are then able to function within a “harmoniously integrated social setting.”¹³¹ The inter-communal ideology of reconciliation instead recognizes the distinct historical and cultural communities of South Africa and uses improved communication and understanding to enhance cooperation and coexistence at the individual and political level. Third, the religious ideology of reconciliation is based around the religious teachings of honesty and forgiveness. Religious ideology of reconciliation uses confession and repentance of past crimes to assist in rebirth and the rediscovery of our common humanity. Fourth, the human rights ideology of reconciliation uses the condemnation of inappropriate behaviour, truth gathering and the establishment of appropriate institutional and social safeguards to establish rule of law. Finally, the community building ideology of reconciliation focuses on rebuilding individual relationships which have broken down within communities.¹³²

The TRC used two main methods to ingrain reconciliation into its proceedings. The first method was the religious ideology of reconciliation which focused on the Christian value of forgiveness, and the second was the community building ideology of reconciliation, which focused on the traditional Xhosa concept of *ubuntu*. In terms of the first, Christian ideology played an important role in the TRC. The TRC was chaired by

¹³⁰ *ibid.*, 66-67.

¹³¹ *ibid.*

¹³² *ibid.*

an Anglican Archbishop, Desmond Tutu.¹³³ It used a form of religious conflict resolution and employed religious thought, symbols, and rituals.¹³⁴ The Christian concept of forgiveness was successful as a tool in reconciliation because religion had been a large part of the conflict both in negative and positive aspects. However, there were some problematic aspects of using Christianity in the reconciliation process because the Christian religious doctrine (specifically beliefs from the Dutch Reform Church) had been used to support Apartheid policies and their associated human rights abuses based on a racial hierarchy. At the same time religion and religious values informed some anti-Apartheid work, and some individuals and communities religious beliefs were viewed as a source of support during the Apartheid period.¹³⁵

A study done by Gibson highlights the importance religion played to some of the black population of South Africa.¹³⁶ Gibson found that there was a close statistical relationship between truth and reconciliation among the white, Coloured, and Indian population in South Africa. In these populations those who accepted more of the truth as it was shared during the TRC process were more likely to be reconciled. Yet, those in the black population who accepted more of the truth shared during the TRC process were no more likely to be reconciled than those who accepted less of the truth.¹³⁷ The interesting variable here was that in the black population there was a positive correlation between

¹³³ Thesnaar, *Restorative Justice as a Key for Healing Communities*, 61.

¹³⁴ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 164.

¹³⁵ *ibid.*

¹³⁶ James L. Gibson, "Does Truth Lead to Reconciliation?" *American Journal of Political Science* 48, no. 2 (2004): 207.

¹³⁷ *ibid.*

those who regularly attended church and the relationship to truth leading to reconciliation.¹³⁸ Clearly, this is an area where further research could be conducted.

The second method employed by the TRC was the Bantu concept of *ubuntu*. *Ubuntu* emphasises the importance of community and the humanity of each person.¹³⁹ It argues for the interconnectedness of the community, and that to achieve interconnectedness-toward-wholeness the community must embrace forgiveness and reconciliation.¹⁴⁰ *Ubuntu* means that the reality of the communal must take precedence over the reality of the individual.¹⁴¹ It is the community that defines the individual. Personhood is not intrinsic, but must be worked toward. Guided by the concept of *ubuntu*, the TRC put more weight on restoring moral community than they did on punishment and accountability.¹⁴²

The best example of the significance of *ubuntu* in the TRC comes from Cynthia Ngewu. Cynthia Ngewu is the mother of a young black man who was slain by the government in an incident that is now known as the Gugulethu Seven.¹⁴³ Her son and six others were recruited by a black government agent who pretended to be an African National Congress activist.¹⁴⁴ The seven young men were then led into an ambush, and killed as they tried to surrender.¹⁴⁵ At the time of the killing the government framed it as

¹³⁸ *ibid.*

¹³⁹ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 164.

¹⁴⁰ *ibid.*

¹⁴¹ Krog, *'This thing called reconciliation...'* *forgiveness as part of an interconnectedness-towards-wholeness*, 360.

¹⁴² *ibid.*

¹⁴³ Gobodo-Madikizela, *Trauma, forgiveness and the witnessing dance: making public spaces intimate*, 170.

¹⁴⁴ *ibid.*

¹⁴⁵ Krog, *'This Thing Called Reconciliation...'* *Forgiveness as Part of an Interconnectedness-towards-wholeness*, 355

a successfully halted terrorist attack.¹⁴⁶ Ms. Ngewu said this during the hearing after meeting the black government agent who asked for her forgiveness. “This thing called reconciliation ...if I am understanding it correctly ... if it means this perpetrator, this man who has 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.”¹⁴⁷

The use of the Christian ideal of forgiveness and the traditional concept of *ubuntu* both fostered a strong sense of unity and forgiveness, but they did not come without problematic consequences. Many scholars argued that the TRC artificially merged a Christian idea of forgiveness with human rights and that this led to an awkward and contradictory process.¹⁴⁸ Perpetrators of human rights abuses were identified, but they suffered very few consequences for their actions. It was because of the lack of consequences that the human rights ideology of reconciliation never came to full fruition. The Christian concept of forgiveness and *ubuntu* overrode western legal traditions that focus on prosecution, as well as tribal justice, which focus on revenge and punishment.¹⁴⁹ By forsaking the tribal judicial practices that focussed on punishment and revenge, the TRC alienated local tribal communities and some victims.¹⁵⁰ Victims were further frustrated by the lack of requirement of perpetrators to reform or change their actions.¹⁵¹

Reconciliation- Rwanda

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 165.

¹⁴⁹ *ibid.*, 166.

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

Although the Rwandan Gacaca Court System functions very differently than the South African TRC, it also has a strong element of reconciliation. “In Rwanda, the perpetrators and survivors continue to live together in the cities and on the hillsides. There is no geographic separation between them. Thus, the issue of reconciliation is very immediate to every Rwandan community.”¹⁵² The Gacaca system supports reconciliation through its search for truth about the events of the 1994 genocide, and its goal to reintegrate perpetrators back into their communities.

Like the South African TRC, the Gacaca Court System uses the community building ideology of reconciliation. The first step in the Gacaca reconciliation process is active participation of the community. Active participation contributes to political and personal reconciliation within the community by giving victims the opportunity to face their attackers, share their story, and convey their pent up emotions all within a safe environment.¹⁵³ Learning the truth about the events reduces suspicion, dispels rumours, and assists in starting to rebuild trust.¹⁵⁴

Unlike the South African TRC, the Gacaca Court System also uses the human rights ideology of reconciliation by identifying crimes, truth finding, and punishing perpetrators. Perpetrators are assigned penalties designed to help reintegrate them back into the community. The community service penalty is especially effective in helping to reintegrate perpetrators into their communities. It is designed to enable the perpetrator to collaborate with others in reconstruction of the community.¹⁵⁵ Perpetrators work alongside victims in cooperative and community works projects. The perpetrator is

¹⁵² *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 14-15.

¹⁵³ Shore, *Christianity and Justice in the South African Truth and Reconciliation Commission: A Case Study in Religious Conflict Resolution*, 166.

¹⁵⁴ *Gacaca Jurisdictions: Achievements, Problems, and Future Prospects.*, 14-15.

¹⁵⁵ *ibid.*

afforded the opportunity to give back to the community and the victim, as well as to begin to normalize their relations within society.

The non-racial ideology of reconciliation is also being employed although outside of the Gacaca framework. The Rwandan Government has removed ethnic identity from the state identity cards and has begun an official re-education program to remove the colonial imposition of multiple ethnicities.¹⁵⁶ In 2001, the government also instituted a new law on secretarianism and discrimination. Under this new law organizations and individuals can be brought up on charges for fostering divisionism or ethnic favouritism if they promote or represent one ethnic group.¹⁵⁷

The religious ideology of reconciliation was not employed in Rwanda because many of the Christian churches actively supported the genocide or turned a blind eye to the violence taking place. Neither the non-racial nor the inter-communal ideologies of reconciliation were fully employed. The Rwandan government frequently talks about equal citizenship and the end of ethnic/racial discrimination. However, violations of Hutu human rights during the genocide remain unpunished and with no means of bringing them to light. This is likely to undermine reconciliation in the medium or longer-term as large number of abuses have not been acknowledged or addressed. Perhaps partly linked to this limitation of the Gacaca system, Rwanda has yet to successfully remove racial identification or harmonized racial relations. As such, tensions may continue to build and/or shape conflict in the future.

¹⁵⁶ Lyndsay McLean Hilker, "Everyday Ethnicities: Identity and Reconciliation Among Rwandan Youth," *Journal of Genocide Research* 11, no. 1 (2009): 82.

¹⁵⁷ *ibid.*

Conclusion

Although the South African TRC and the Rwandan Gacaca Court System employed very different ideologies of reconciliation, both can be explored through the lens of truth. Since truth is crucial to the reconciliation process in both the identification of victims and perpetrators, a narrower version of the truth can seriously limit the process of reconciliation. Although South Africa neglected to clearly define reconciliation, it did provide an equal opportunity for all sides to identify victims and perpetrators under the community building and religious ideologies of reconciliation it did employ. Rwanda, on the other hand, has suffered from its inability to address human rights violations committed on all sides. Without the opportunity for the Hutu victims to participate in the reconciliation process and the creation of an inclusive truth, the Rwandan Gacaca Court System is unlikely to achieve its goals of truth, justice, and reconciliation.

Chapter Four-Conclusion

This thesis began with the following research question: how did the concept of truth affect the processes of justice and reconciliation in the South African TRC and the Rwandan Gacaca Court System? I hypothesised that there was a reciprocal relationship between truth, justice, and reconciliation; with justice and reconciliation being strongly influenced by truth. The relationship between these three concepts was explored through a comparison of the South African Truth and Reconciliation Commission and Rwandan Gacaca Court System. The TRC and Gacaca Courts made for a good comparison of the effects of truth on justice and reconciliation because of each country's decision to use internally created transitional institutions instead of relying on international judicial tribunals.

Chapter One served as context for later chapters by providing the necessary historical and contextual information needed to explore how the circumstances of each country shaped the understanding and use of truth employed by the institutions in both countries. It began with a brief overview of the history of systematic discrimination, ethnic/ racial tension, and human rights abuses in both countries that led to the conflicts, and the later need for a reconciliation process in each society. Next, it examined the formation of the institutions, their goals, focus and specific processes. It was especially interesting to note how the circumstances of each country's transition affected their understanding and application of truth. South Africa used a broader and more inclusive definition of truth, due, in large part, to the threat of continued violence in the post-1994 period and the strong white presence in the military and financial sectors which could

possibility have disrupted the transition process. Rwanda, due to the strong position of the RPF led-government was able to employ a much narrower definition of truth.

Chapter Two reviewed the core literature on Truth Commissions and discussed core focuses and scholarship of the South African TRC and the Rwandan Gacaca Court System in order to position this thesis within the broader debates on post-conflict institutions. It was interesting to note that limited comparative studies had been done on these two countries and that there was much more scholarship on South Africa. Yet the literature on both countries' post-conflict institutions tended to focus on a few core issues. The TRC literature focused on defining TRCs, why they are selected, and their perceived benefits and drawbacks. The South African literature evaluated the amnesty process, the use of religious language, and victim reparations. The Gacaca scholarship focused on the definition of victims, and procedural issues within the Courts.

Chapter Three explored the specific relationship between truth, justice, and reconciliation in the South African TRC and the Rwandan Gacaca Courts. It demonstrated that the application of both justice and reconciliation were affected by the understanding of truth employed by each country. This chapter overviewed the three main concepts (truth, justice, and reconciliation) and then compared how each institution employed them. The comparison between the South African TRC and the Gacaca Courts clearly showed that each institution's understanding of truth affected their application of both justice and reconciliation, and that this is likely to shape the medium and/or long-term outcome of these processes.

An open and inclusive approach to truth was applied in South Africa. All sides of the conflict were allowed to testify and seek amnesty. This meant that the justice

mechanisms of the TRC were employed even-handedly to all sides of the Apartheid conflict. The more inclusive approach to truth also affected the reconciliation process allowing for the broader identification of both victims and perpetrators and the crimes committed. As discussed in the reconciliation section in chapter three, the first step in any reconciliation process is the identification of the victims and perpetrators followed by giving the victims a voice. The inclusive approach to truth in South Africa enhanced the justice and reconciliation mechanisms of the TRC.

Unlike the TRC, the Gacaca Courts is currently being hindered by their limited approach to truth. By narrowly defining the crime of genocide and excluding war crimes from the Gacaca process a limited picture of the human rights violations of the genocide are explored. Since many of the Hutu victims are unable to share their experiences, truth-telling is limited in the Gacaca process. Justice is also affected as none of the perpetrators of crimes against Hutu are punished under the Gacaca system. Over the longer term, reconciliation is likely to be compromised as not all of the victims and perpetrators are able to be recognized and therefore begin the reconciliation process.

At this point it is interesting to turn to the question of how effective both institutions have been. South Africa has had a longer period since the conclusion of the TRC and therefore it is easier to begin to identify and evaluate the long-term effects of the TRC. Aiken notes that, “more than 15 years after South Africa’s initial transition to democracy, evidence suggests that substantial progress has been made in transforming the antagonistic interracial relations that characterized Apartheid.”¹ Many of the reconciliatory gains have been linked by various national and international observers to

¹ Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 11.

the work of the TRC and it is generally agreed that the process, for all of its faults, did assist in interracial reconciliation and a peaceful transition to a multi-racial democracy in South Africa.² Yet, there have been limits to the reconciliation process as noted by Dr.

Garth Stevens:

There's greater levels of integration at the levels of the new middle class, upper class, and new elites that are emerging in South Africa and at that level I do think you have greater levels of engagement, contact, trust, and friendship and I do think things have certainly changed for that particular cohort of the population. But for the large part of the population, where the majority of the black people continue to live in the same situations they did prior to 1994, are still located in townships, still remain lacking, still remain poor...For the majority of black people I have grave doubts they view other racialized communities very differently in South Africa...I think there are possibilities [for better relations], but it's for a very particular group in South Africa.³

The effect of the TRC in South Africa over the long-term has yet to be fully understood or assessed. More research undertaken at regular intervals would enhance the understanding of the TRC's effects on South Africa. Unfortunately, a project of that magnitude is outside the purview of this thesis due to its limited scope and focus.

The Gacaca system in Rwanda has not had the same scrutiny as the South African TRC and has not had as much time pass since its implementation. Indeed, as already noted, the process is still underway in the country therefore it is harder to assess the effectiveness of the process on reconciliation. More research is needed about Gacaca's effect in Rwanda both in the short term and long term. One of the few interesting studies undertaken on this subject was performed by Lyndsay Hilker in 2004-2005 when she conducted ethnographic fieldwork in the capital of Kigali. Hilker performed numerous in-depth interviews with Rwandan youth aged 15-35 that came from a variety of social

² *ibid*, 24.

³ As cited in Aiken, *South Africa Revisited: A Reassessment of the Truth and Reconciliation Commission's Contribution to Interracial Reconciliation*, 24.

backgrounds and experiences.⁴ Hilker observed that relationships between young people of different backgrounds seem generally harmonious.⁵ Ethnicity no longer seemed to be a key factor in large social situations or group interactions.⁶ Hilker also noted that, “In most cases where young people knew or thought they knew there was a difference in ethnicity between themselves and another person, this did not stop them from interacting with that individual or even forming a friendship.”⁷ In the words of Hassan (a native Rwandan youth), “My best friend is Didier and Didier is Hutu. In fact all of my friends are Hutu and I am the only Tutsi, but there are no problems between us.”⁸ It will be interesting to see how the Gacaca process affects Rwanda over the long term.

One area that could benefit from expanded research is the impact of the type of post-conflict transition on the later understanding of truth employed by transitional institutions. Do negotiated settlements generally lead to broader and more inclusive understandings of truth? Do unilateral military victories necessarily result in narrower definitions of truth? It raises an interesting question of whether Rwanda could have chosen to use a broader and more inclusive truth. Honestly, I am not sure. In my opinion Rwanda could have benefited from a broader understanding of truth, but how to cultivate that sense of openness in the face of such violent atrocities and power imbalances is a challenging question.

This project has expanded the understanding of the concepts of truth, justice, and reconciliation and their interrelations in post-conflict institutions. The conclusion reached is that all three qualities of truth, justice, and reconciliation are vital to the

⁴ Hilker, *Everyday Ethnicities: Identity and Reconciliation Among Rwandan Youth*, 82.

⁵ *Ibid.*, 84.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, 85.

healing and forward direction of post-internal conflict situations. Yet, it is important to note that truth strongly impacts both justice and reconciliation. This is why the South African Truth and Reconciliation Commission may yet lead to more favourable outcomes in terms of reconciliation over time. The TRC included testimony from both sides of the conflict. The Rwanda Gacaca Court System, by contrast, is only allowing testimony from Tutsi and moderate Hutu victims who suffered during the genocide, which denies a large portion of the population a voice. I suggest that Rwanda is unlikely to experience a full sense of justice or reconciliation as long as they continue to ignore the crimes committed by the current government. Both institutions have their strengths and weaknesses, but only the TRC committed itself to a broad national narrative. And it is this broad national narrative, underpinned by an understanding of truth that includes all parties, which will likely result in long-term reconciliation in South Africa. I hope that the understanding of these key concepts continues to expand and may one day assist in exploring the functioning of post-conflict institutions and aiding in the creation of improved recommendations or criteria for such systems.

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