

Overcoming Moral Blind Spots; In Defense of Truth
Commissions

by

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Introduction

We are all heir, at least, to persons or events marked, in an essential, interior, ineffaceable fashion, by crimes against humanity.¹

The precedent of large-scale crimes committed against humanity is unshakably ours. History has known us to venture into this bleakest point along the spectrum of the human condition innumerable times, and these moments haunt any attempt at new, political action. The weight of this specter can be a burden that has the potential to drown out future action before it can take off. But as a weight, precedent also serves as an anchor to all conversations concerning potential political action, grounding it and connecting it with the historical context from which it emerges. A balance in the relationship of past traumas to present possibilities must therefore be found, so that history can be addressed in such a way that the potential for new political action is not closed out altogether. Transitional justice attempts to provide this balance and to create a space in the aftermath of human rights abuses for a new political and moral code to be articulated. Supporters of transitional justice claim that only by addressing the abuses of the past will new governments find the strength to secure influence, learn from previous atrocities, and move their countries in a direction more amenable to the respect of human rights. This process may open difficult questions, but it is the failure to address these past traumas rather than the traumas themselves that holds the potential to disrupt a move towards more positive politics.

¹ Jacques Derrida, *On Forgiveness* (New York: Routledge, 2001), 29.

While human rights abuses are old, the term for them is relatively new and the notion of addressing them in the public sphere through different forms of transitional justice is even newer. Transitional justice, according to the International Center for Transitional Justice, “is a response to systematic or widespread violations of human rights.” Its goals are to seek “recognition for victims and to promote possibilities for peace, reconciliation and democracy...after a period of pervasive human rights abuse,” while simultaneously maintaining the stability that new governments require for safe and successful transitions.² In practical terms this new category of justice is deployed through the mechanisms of reparation programs, institutional reform, memorialization efforts, criminal prosecutions, and national truth commissions. Born in Latin America and Eastern Europe, these embodiments of transitional justice are only two decades old. In other regions of the world, this species of justice is even younger and still in its infancy.

The South African Truth and Reconciliation Commission (TRC), which was mandated through the Promotion of National Unity and Reconciliation Act of 1995 and has now become a model for truth commissions worldwide, has only seen a little over a decade pass since its conclusion. In this time, studies intending to illuminate the impact of the TRC have come back with unclear conclusions and so far the empirical evidence gathered on the success of this Commission is largely unimpressive. However, one consistency among the findings is that in every post-Commission measurement of South Africa, the TRC seems to fall far short of its own stated goals. In the wake of its unverifiable success, the TRC has become dismissed

² “What is Transitional Justice?,” *International Center for Transitional Justice*. Accessed September 28, 2010. <<http://ictj.org/en/tj/#1>>.

as a moment of ceremony whose short lifespan prevents it from having any lasting influence on the future wellbeing of the nation that hosted it. It became hyperbole to suggest that truth commissions could create reconciliation.

These lukewarm assessments were what initially brought me to this project. I could not reconcile my understanding of truth commissions as modern and forward-looking with these findings. I consequently embarked on this thesis to determine how an idea that sounded so enlightened could have been so ineffective once implemented. The brief period of time I spent in South Africa provided me with a line of investigation with which to start. While I was there, I realized the absurdity of expecting that the South Africans I met, taught, lived with, and learned from would live every day of their lives affected by the legacy of the TRC. For most of them, the Commission's work existed only faintly in the background, brought forward mainly for history lessons. The rest of the time it was pushed aside by the more pressing realities of living in post-Apartheid South Africa: AIDS, high unemployment, housing crunches, high crime rates, methamphetamine epidemics, township sprawl, and the continuing failures of the education system. How was it possible that their individual lives could be affected by the TRC, and how could anyone hope that truth commissions could take a nation full of individuals—each with a lifetime worth of emotions and opinions—and somehow produce national unity?

And yet, recovering from Apartheid remains a real concern. Somehow the needs and beliefs of individuals do need to add up to something much larger. Successfully navigating the moment of transition might not be enough to secure reconciliation, but the possibility of peace is knocked off the horizon altogether when

the moment of transition is botched. My hope is that through this project, I will be able to mediate this tension, between the lives of individuals and the health of a nation as a whole. To do this, I have brought together my two disciplines of Philosophy and Government. This seemed necessary as I believed that there is a parallel between the tension that exist between these two fields and the tension I see at the heart of this project. While familiarizing myself with the literature surrounding truth commissions, I came to find that neither the political science nor the philosophical approach to the question of transitional justice could encompass both the realities of the individual emotions and beliefs of citizens and the imperative need for national reconciliation. This was in line with what I had learned from my two majors over the course of the last four years: both fields have their blind spots.

For example, in his essay *On Forgiveness*, Jacques Derrida contributes to the debate by arguing that truth commissions disregard the emotional needs of victims and cheapen the meaning of forgiveness by bringing them into the political sphere through testimony. Here Derrida protects the emotions of individuals, but it comes at the price of giving up on reconciliation. In the political sciences, truth commissions are approached as institutions that respond to policy recommendations and whose success can be measured in quantifiable ways. Individuals are seen only through aggregate trends of mental health, income per capita, and national survey statistics. While important, these indicators are not the ideal lens through which to see the unique moral codes and ethical needs of individuals during moments of transition. I believe, however, that there can be a fruitful marriage of these two approaches. Blind spots can cancel out. The goal of this thesis is to find a way to think about

reconciliation justice, that entertains pragmatic political approaches to overarching change, but that never loses sight of the needs of individual citizens.

In this thesis, I will present my argument in four chapters. The first chapter will discuss how the needs and emotions of individuals are overlooked during the process of truth commissions, and why it is imperative that they are attended to during transition. Drawing off of Derrida's essay *On Forgiveness*, chapter one argues that truth commissions, through their testimony, reports, and recommendations, should not delve into questions of personal forgiveness, but should instead remain focused on the political and public question of reconciliation. The reason for this limited scope is that forgiveness cannot enter into the political sphere without being manipulated by ulterior political motivations. Such manipulation robs forgiveness of its meaning. As a fundamentally private act, forgiveness operates outside of the rational bonds of political discourse. Without distinguishing forgiveness from reconciliation, transitional justice would come to be synonymous with cheap amnesty, foreclosing the possibility of individuals holding on to feelings of bitterness, anger, and blame. To restrict the range of appropriate victim reactions to trauma would be a violation of the right to the freedom of emotional response. As the violation of human rights is directly counter to the goals of reconciliation, forcing forgiveness becomes costly. Therefore, if reconciliation can be achieved without constraining the ways in which victims and perpetrators settle their debts of wrongdoing, national unification need not come at the price of individual wellbeing. This leaves us with the question of what reconciliation without forgiveness should look like. Here, Derrida must be left behind as his view gives up on the possibility for meaningful reconciliation

altogether.

Before moving forward to answer this question of how to improve the truth commission model in chapters three and four, chapter two focuses on the case study of the TRC in order to first determine what went wrong. The South African case was cherry picked because it offers the most avenues for investigation because it conflated forgiveness and reconciliation more than other truth commissions. I argue that the reliance on the Christian understanding of forgiveness and reconciliation, in which the two terms are often used as synonyms or interlocking actions, was the cause of this conflation. While the close relationship between forgiveness and reconciliation is significant and valuable within the context of the Church, it proved to be less than ideal for nation building. The conflation led the TRC to disregard the emotional needs of victims unwilling to forgive and set overly ambitious goals of what it hoped to accomplish. The cost of this failure on the victims who testified had secondarily harmful effects. Not only damaging to the victims, the disillusionment that resulted from these failures has also impeded the current literature from articulating recommendations for improvement. In order to develop this form of transitional justice into a more promising option for nations in the aftermath of atrocity, there needs to be a way of pursuing reconciliation without entailing forgiveness.

The third chapter I address the concern that such a limited reconciliation might be best pursued through traditional criminal trials. I compare truth commissions with criminal trials by focusing on the variable of punishment. Comparing instances of criminal prosecution to the institution of amnesties, I will argue that the primary purpose of prosecution is not revenge but rather the reestablishment of social norms, a

goal that amnesty is equally able to accomplish. Justice primarily comes from public recognition that certain actions trespass against agreed upon rules and punishment is only one way of marking this recognition. I will further argue that there is a distinction between blanket amnesties that leave past abuses unchallenged and conditional amnesties that are accompanied with public acknowledgment of wrongdoing, and that in the context of truth commissions only the latter are relevant. Finally, I will show that truth commissions are ultimately better suited than criminal trials to secure public reaffirmation of social norms and process the enormous quantity of guilt faced by transitional nations.

In chapter four, I argue that truth commissions are not only able to prompt this acknowledgment among perpetrators, but also among the general public and that it is this acknowledgment of personal wrongdoing, more than the discovery of truth or the pursuit of amnesty, that can secure peaceful transition in the aftermath of atrocity. Here acknowledgment does not signal a superficial or fleeting recognition of wrongdoing but rather a drastic internal shift of ethical standards that entails the recognition of previously unnoticed moral blind spots. The acknowledgment serves as the basis for the creation of new moral codes during transition that will replace the previous regime's corrupted value system. Having explained how these blind spots are initially created and how truth commissions are well suited to help individuals overcome them, I will make recommendations for how the current model for truth commissions could be improved. It is my belief that truth commissions do not need to concern themselves with truth, forgiveness or even reconciliation. The truth will always be contested, forgiveness will happen freely if it is appropriate, and

reconciliation is too large a goal for truth commissions to take on. Instead, truth commissions should focus specifically on opening up public spaces in which victims could safely share private stories without being pressured to forgive, fit into a larger narrative, or concern themselves with truth finding. The purpose of these spaces, which in their silence would refrain from judging, editorializing, or assessing the victim's stories, would be to inspire self-reflection, cautious forgiveness, and the critical re-assessment of personal moral codes among perpetrators, victims, and bystanders alike.

I recognize that there are a number of vulnerabilities to the argument that I have advanced. To begin with, my vague policy prescription is not free of the original criticism leveled against truth commissions, which is that these short ceremonies do not have the leverage or resources to impact anything in the long term, be it national reconciliation or the reconstruction of moral codes. Acknowledgement of evil cannot rectify past wrongs, which does little for the victims who have lost loved ones, homes, rights, or a sense of security. Furthermore, people's moral views may be too deep-seated to be easily swayed by the testimony of others, and without any attendance requirement, there is no reason the average citizen would feel compelled to take the commissions seriously. While I agree that truth commissions cannot secure full reconciliation on their own, due to their length and scope, I do believe that they help retain reconciliation among the realm of post-atrocity options. Without truth commissions, the likelihood of peace is significantly diminished. And while they do not necessitate the shift in moral codes that is central to my argument, they do facilitate these shifts, and they do this to a greater degree than other forms of

transitional justice. Claudia Card, the author of the book *The Atrocity Paradigm*,

writes:

If it is unrealistic to expect that within our future as a species there will be no more atrocities, it is all the more important that philosophers also consider how we may better live with that knowledge and with the aftermath of evils we fail to prevent or escape.³

That evil will continue forever to be a part of the spectrum of human actions is a reality that philosophers and policymakers alike must face. No truth commission, or any political institution, will ever be able to fully root out the moral blind spots that make evil action possible. But some institutions will do so better than others. Given the frequency with which atrocity occurs, we cannot afford to throw out one of our most valuable tools of transitional justice simply because it is unable to secure reconciliation overnight. It is in this spirit that I undertook the project that follows: to articulate a defense of truth commissions that recognizes their shortcomings and suggests possible avenues of improvement.

³ Claudia Card, *The Atrocity Paradigm* (New York: Oxford University Press, 2005), 8.

Mapping Forgiveness and Reconciliation

I. Defining Success for Nations Pursuing Transitional Justice

In the aftermath of atrocity, when conflict has finally ceased to perpetuate itself and tensions have begun to die down, calls for forgiveness and reconciliation promptly begin. In the name of these two ideals, truth commissions have been established, criminal trials have been mobilized, and silent denial has been justified. Those responsible for the reconstruction of torn nations have debated these three alternatives at length to determine the best way to secure a peaceful transition away from regimes of human rights abuse. What is rarely questioned, however, are the ultimate goals of forgiveness and reconciliation; the logic that both are precursors to peace is largely uncontested. As it is generally assumed that both are always appropriate, many important questions about forgiveness and reconciliation have not been asked. How can they be measured and what does it look like when either is achieved? Who are they for, every citizen or just the political elites? And what do ‘forgiveness’ and ‘reconciliation’ even mean? In any other context, an objective that was as difficult to define, measure, and attain as forgiveness and reconciliation would be challenged before it was trumpeted as the standard of success. Unfortunately, the relentless pursuit of these goals can at times backfire and derail a transitioning nation from its path toward reconstruction. In this chapter I will explain the conditions under which the insistent search for forgiveness can result in negative consequences and offer suggestions for how transitioning nations can approach forgiveness and reconciliation in ways that do not counter the larger project of peace.

Within the current literature on transitional justice, both terms lack conceptual clarity. Each picks out an imprecise action, the boundary between the two is vague, and neither is clear on the specifics of how it might be secured. The terms have simply come to stand in for the process of attaining general peace. Under this interpretation, any conflicted nation that promotes forgiveness and reconciliation within its borders will move farther away from conflict and instability and closer to success, whatever that may mean. It would not be hard to offer a cursory definition for both reconciliation and forgiveness and to further make a case that they are inextricably linked. What, then, is at stake in clarifying these terms? More than a simple question of semantics, to clarify these terms will be to clarify what ‘success’ means in the context of transitional justice. With ambiguous guidelines for transition, assessment of any approach becomes particularly difficult. How can a policy of denial be compared to the use of truth commissions or criminal trials, if they are being evaluated against such an amorphous goal as forgiveness and reconciliation? And once assessed, how could any of these methods be improved? If forgiveness and reconciliation are to be the end goal and standard of success for nations recovering from regimes of human rights abuse, then both concepts will need considerable specificity infused into their definitions.

In this chapter I will define both of these terms by highlighting the most important way in which they differ. Drawing off of Jacques Derrida’s essay *On Forgiveness*, in which he argues that forgiveness in the public realm is a meaningless absurdity, I will argue that while forgiveness has no place in the political realm, reconciliation is a legitimate goal for governments to pursue during transition away

from abusive regimes. Forgiveness reflects a private and internal emotional process for the victim while reconciliation represents a public and political interaction between two or more parties. So while the two terms often apply to the same situations and can impact the other, they are distinct. The two terms only appear to be linked because they are so often conflated, but it is both possible to forgive without reconciliation and to reconcile without forgiveness. In this chapter I will go on to show that this conflation is common and can be especially harmful in the context of truth commissions. The consequence of this confusion falls on the victim, who loses control of the decision to forgive and as a result becomes constrained in his emotional reaction towards the perpetrator. It is for each victim to decide whether or not he wants his personal feelings to align with his public actions. As soon as forgiveness is forced into the realm of the political, this decision is no longer his and the act of forgiveness loses meaning altogether. Despite this, reconciliation remains an important goal that must be pursued. It is my belief that it is possible for transitional justice to distinguish between forgiveness and reconciliation and to proceed with the latter without constraining the individual emotional needs of citizens being asked to reconcile. In chapters three and four I will elaborate on what reconciliation without forgiveness would look like.

II. Why Forgiveness and Reconciliation Should Be Distinct

Here I will argue for a distinction between political reconciliation at a societal level and explicit forgiveness at an individual level. For while it is possible to speak of forgiveness between groups and reconciliation between individuals, it seems that on the whole it is more helpful to discuss forgiveness in relation to individuals and

reconciliation in relation to larger social units. Card writes that group forgiveness is problematic:

A group does not literally have a heart to change, neither feelings of hostility toward nor the capacity for compassion for perpetrators. What can it mean for even an individual to forgive a group? Groups lack feelings of contrition, although they can apologize and make amends. Group forgiveness is not simply reducible to members of one group forgiving members of another. Often, those who apologize or accept an apology are not those who did or suffered the wrong but belong to a later generation.⁴

A group cannot reasonably forgive any more than it can be forgiven because forgiveness reflects an internal and personal change of emotion within the victim towards the perpetrator. Therefore, even if there were “such a thing as national or state responsibility for genocide, for mass murder, and for drumming up an artificial hatred among the ordinary people,” it would be impossible to say anyone could forgive these acts; they could neither sincerely generate the emotion nor find someone to exonerate.⁵ And if they tried nonetheless, the forgiveness would be misguided, as “collective guilt would point fingers at the innocent as well as the guilty.”⁶ Likewise, no one person can ask for forgiveness from a group. For example, “no one would have the presumption to forgive the Nazis for the Holocaust. Even if the state of Israel on behalf of the Jewish people were, incredibly, to make some such declaration, it would be a sham.”⁷ This is the subject of Holocaust survivor Simon Wiesenthal’s autobiographical story *The Sunflower*. Asked by a dying Nazi soldier to do this very act while still an inmate of a concentration camp, Wiesenthal was unable to decide

⁴ Card, *The Atrocity Paradigm*, 175.

⁵ Steven Alkalaj in *The Sunflower* by Simon Wiesenthal (New York: Schocken Books, 1998), 104.

⁶ Smail Balic, *The Sunflower*, 111.

⁷ Adam Morton, *On Evil* (New York: Routledge, 2004), 125.

between forgiveness and blame, and settled instead on silence. Many of the symposium responders to his autobiography were of the opinion that he “had no right to [forgive] in the name of the people who had not authorized [him] to do so.” Forgiving “what people have done to you yourself” is within the rights of and up to the individual, but it would be “a terrible sin to burden your conscience with other people’s sufferings.”⁸ In short, while it is not inconceivable to talk about group forgiveness, at the very least the idea is unhelpful and at most offensive. As soon as someone is present at the moment of forgiveness other than the forgiver or the forgiven, the lines of responsibility become muddled; “a third party has no proper role other than mediator.”⁹

Reconciliation seems more appropriate when the needs of others are at stake, as it is tied to the task of the destruction and reconstruction of large, social mechanisms for which no one is clearly responsible. These social mechanisms in turn enable harms to be committed against more than a single individual and diffuse responsibility. Reconciliation thus embodies a pragmatism that allows the group as a whole to move forward with or without forgiveness between the parties directly involved. To clarify this distinction, consider the example of a woman who becomes pregnant as the result of rape. While it is not obvious whether she should forgive the perpetrator or not, it is without question that she should “forgive the child...who becomes embroiled in a traumatic mother-child relation” and “through no act of her or his own, comes to represent the violence of the rapist-father.”¹⁰ To make this

⁸ Simon Wiesenthal, *The Sunflower*, 65.

⁹ Balic, *The Sunflower*, 111.

¹⁰ Robin May Schott, “The Atrocity Paradigm and the Concept of Forgiveness,” *Hypatia* 19, No. 4 (2004): 208.

distinction captures the intuition that forgiveness has more to do with settling a score between the victim who was directly injured and the perpetrator who was directly responsible. With reconciliation there are more interests at stake and there are people involved who fit neither the role of victim or perpetrator. For example, a betrayed husband may need to consider forgiveness in regards to his wife, but as soon as there are children in the mix, reconciliation intuitively seems to be a more appropriate term. This is because there is the larger social unit of the family in the balance: the children are not betrayed by their mother's unfaithfulness in the same way as their father, but clearly their needs must be attended to during the reconstruction process.

In practice, this distinction is rarely recognized and the conflation of these two terms happens often; “while philosophers may distinguish between forgiveness and absolution, *we* might not really differentiate” as it is difficult to understand how the two are different “cognitively, emotionally, and culturally.”¹¹ But such theoretical ambiguity comes at a real cost. The value in pursuing such careful conceptual analysis is that it serves as a safeguard against the devaluation of the terms. When the line between the two terms becomes blurred, it is tempting to make them synonymous and conclude, “the public form of forgiveness is reconciliation.”¹² However, there is an important distinction between the internal emotions dealt with through forgiveness and the external relationships cultivated through reconciliation. Forgiveness is “a way of cleansing one’s own soul,” while reconciliation “addresses the relationship between the wrongdoer and moral forces—the church, the state, the ‘authorities,’” or

¹¹ Sharon Lamb, *The Trouble with Blame*, (Cambridge: Harvard University Press, 1999), 165.

¹² John T. Pawlikowski, *The Sunflower*, 221.

any other institution that sets the moral norms for a society.¹³ When this distinction is lost, victims may feel expected to alter their personal emotions for the sake of external relationships. This will happen when there is an assumption that forgiveness is a part of reconciliation or that reconciliation is furthered by the presence of forgiveness. Forgiveness is then subsumed into and cheapened by the larger political goal of reconciliation, because victims are pressured by the church, the authorities, and the state into forgiving because their religion demands it, for the perpetrator's benefit, or for 'the greater good' of society. Since forgiveness entails such an enormous emotional investment for the victim and is an end in and of itself, this popular belief that reconciliation should mobilize forgiveness for its own ends is particularly harmful. It may afford that society reconciliation, but it will come at the cost of closing off the public sphere to personal emotion.

III. Defining Forgiveness

To explain the intuition that forgiveness belongs in the realm of private emotions and non-political interactions, I will elaborate on the definition of forgiveness below through the metaphor of debt to describe the relationship between victim and perpetrator. The task of defining a term as theologically and philosophically loaded as 'forgiveness' is not an easy one. Derrida begins his inquiry with a cascade of questions:

What do I forgive? And whom?... Does one forgive *something*, a crime, a fault, a wrong, that is to say, an act or a moment which does not exhaust the person incriminated, and at the limit does not become confused with the guilty, who thus remains irreducible to it? Or rather, does one forgive *someone*, absolutely, no longer marking the limit between the injury, the moment of the fault, and

¹³ Lamb, *The Trouble with Blame*, 165.

on the other side the person taken as responsible or culpable?¹⁴

These details of who and what to forgive and the specifics of when forgiveness is appropriate are crucial to its definition; many theologians and philosophers alike have argued that forgiveness given incorrectly can cause more damage than when it is not given at all. In the Oxford English Dictionary, to forgive is “to grant free pardon and to give up all claim on account of an offense or debt.” Spelled out in this definition is a clear loss for the forgiver: in granting forgiveness the claim to repayment is relinquished and the debt canceled. While ‘debt’ has a strong financial connotation, transaction as a metaphor is helpful. Often, perpetrators are thought of as incurring a debt through their crimes. When the act of wrongdoing is committed, the victim loses something to the perpetrator. This loss is not limited to the theft of material goods; victims are more often robbed of the right to safety, freedom, or self-esteem. Therefore, the debt acquired by the perpetrator is for the well being that they have cut short. This burden of repayment is then placed on the perpetrator, regardless of whether or not they recognize the debt, and the repayment is owed to the victim, their family, or society at large. Punishment, reparations, and repentance can be understood as the units of this reimbursement. When the victim forgives, therefore, they are waving the ability to punish the wrongdoer, the right to call in the debt and the entitlement to feelings of anger or bitterness.

Card picks up on this debt metaphor when she offers her own “paradigm of forgiveness.” Starting from the understanding that “evils change moral relationships among those who become perpetrators, bystanders, beneficiaries, or victims,” Card

¹⁴ Derrida, *On Forgiveness*, 38.

measures this change in moral relationships in terms of the debt owed to the victims by the perpetrators.¹⁵ The role of bystanders and beneficiaries in this equation will be addressed in chapters three and four. Card makes her reliance on the debt metaphor explicit: “like creditors and benefactors who can forgive or exact debts, voluntarily releasing others or holding them to obligations, victims have moral powers to release or hold perpetrators to obligation.”¹⁶ Forgiveness is only one of many moral powers available to the victim. Others include the right to “blame or resent...and, if politically empowered, to punish or retaliate, exact reparations and apologies, and to pardon or show mercy.”¹⁷ Using one or several of these moral powers, the debt created between victim and perpetrator will be resolved through rectification, which “aim[s] to correct imbalances, redress wrongs, settle scores, put things right between us.”¹⁸

In Card’s account, forgiveness thus takes on a transaction-like nature and comes to involve a “renunciation of hostility” and “remission of punishment” in exchange for “apology and contrition.”¹⁹ In this definition of forgiveness, the fact that perpetrators “remain morally dependent on [their victims]...for release” implies that some of this dependence disappears during forgiveness, which here is the act of release. Thus, as in the dictionary definition, the victim stands to lose certain entitlements should they choose to forgive.²⁰ Sharon Lamb’s definition of forgiveness from her book *The Trouble with Blame* reinforces this interpretation: “forgiveness

¹⁵ Card, *The Atrocity Paradigm*, 167.

¹⁶ *Ibid.*, 167.

¹⁷ *Ibid.*, 167-168.

¹⁸ *Ibid.*, 169.

¹⁹ *Ibid.*, 174.

²⁰ *Ibid.*, 167-8.

conveys that the victim no longer holds a grudge for the harm done to her.”²¹ Again, the victim loses some entitlement to feeling. In this case, grudges must be relinquished.

It should be noted that this loss has nothing to do with blame, because granting forgiveness is separate from making a statement about the morality of the original crime act or the behavior of the perpetrator. There is no contradiction inherent in forgiving someone and still believing his crime was immoral or illegal. Lamb calls this the distinction “between forgiveness and absolution,” where forgiveness has only to do with “the state of the mind of the victim,” and absolution has to do with whether the perpetrator still needs to be “held responsible for his act,” or that “he has done enough penance” and “no longer need face his ‘just desserts.’”²² A person can forgive or withhold forgiveness from a murderer in court and it would have no impact on the judge’s sentence. Forgiveness also need not have anything to do with the behavior of the perpetrator. Card’s paradigm of forgiveness does stipulate the contrition of the perpetrator, but others have argued that a victim can freely give or withhold forgiveness regardless of whether the perpetrator is repentant, indifferent, or dead. This is different still from the *correctness* of forgiveness, which is the much more controversial point of when forgiveness should occur, if at all. As Card mentions at the start of her chapter on forgiveness: “there is no consensus among philosophers regarding the value of forgiveness or even the conditions of its possibility.”²³ Thus, with forgiveness unrelated to moral or legal standards, the

²¹ Lamb, *The Trouble With Blame*, 164.

²² *Ibid.*, 164.

²³ Card, *The Atrocity Paradigm*, 173.

repentance of the perpetrator, or the appropriateness of the timing, this leaves the state of the victim's resentment as the only fundamentally important variable in determining whether or not forgiveness will occur.²⁴

Reducing the act of forgiveness down to the victim's emotional state makes it easier to see how the victim's loss to the right of resentment can be recognized as necessarily entailed in the act of forgiving. Once the victim has internally turned away from resentment, forgiveness can be extended to the perpetrator. Falling once again into the debt metaphor, forgiveness can therefore be qualified as the intimate transaction of the right to bitterness or anger from the victim to the perpetrator. This sacrifice of the right to resentment is in addition to the cost imposed by the original crime. The double loss is the victim's alone to shoulder and through forgiveness the victim finishes twice as impoverished. In the symposium on forgiveness that follows Wiesenthal's story, several authors note that this very cost would have been imposed on Wiesenthal had he forgiven. At the time it was asked of him, formal forgiveness "would have cost him a great deal."²⁵ Indeed, this cost would have existed for Wiesenthal whether he forgave or not, either as the cruel withholder of forgiveness or as the sole carrier of the dead man's confession. In both instances, it was the victim being called to sacrifice something while the burden of the Nazi's guilt was transferred to his shoulders. Furthermore, if Wiesenthal forgave, he would have incurred a cost regardless of the truthfulness or sincerity of his words. Had he been forced to forgive in a way that was "an empty formula and consequently a lie," he would have had this untruthfulness on his conscience. And worse, had the forgiveness

²⁴ Lamb, *The Trouble With Blame*, 164.

²⁵ Balic, *The Sunflower*, 110.

been sincere, it would have cost Wiesenthal the right to resent a man who would thereafter haunt him for the rest of his life.²⁶

Therefore, I contend that the decision to cancel debt is for the victim alone to make alone. Simon Wiesenthal writes that “forgiveness is an act of volition, and only the sufferer is qualified to make the decision.”²⁷ In *The Human Condition*, Hannah Arendt agrees, calling the exchange “an eminently personal ... affair.”²⁸ The forgiver must weigh the benefit of engendering positive feelings and reactions against the cost of losing another right to the perpetrator. And forgiveness is expensive internally; “it forgets the victim. It negates the right of the victim to his own life. It blurs over suffering and death. It drowns the past. It cultivates sensitiveness towards the murderer at the price of insensitiveness towards the victim.”²⁹ Even Archbishop Desmond Tutu, one of biggest proponents of forgiveness in conflict resolution, recognizes that “forgiveness is not facile or cheap. It is a costly business that makes those willing to forgive even more extraordinary.”³⁰ So while the outside world might pressure the victim into forgiving, as they see only that the “face of forgiveness is mild,” internally the victim knows it to be a burden that is “stony to the slaughtered.”³¹ It is this cost imposed on the victim that makes the decision to forgive a powerful moment of volition, and it is because free will is inexorably linked to the act that forgiveness is irreducible to reconciliation.

²⁶ Primo Levi, *The Sunflower*, 192.

²⁷ Wiesenthal, *The Sunflower*, 98.

²⁸ Hannah Arendt, *The Human Condition*, (Chicago: University of Chicago Press, 1998), 241.

²⁹ Cynthia Ozick, *The Sunflower*, 216.

³⁰ Tzvetan Todorov, *The Sunflower*, 265.

³¹ Ozick, *The Sunflower*, 217.

IV. Defining Reconciliation

‘Reconciliation,’ conversely, is more externally oriented towards the interactions between people and less reliant on internal emotions than forgiveness. It is not a state to be bestowed by one person on another contingent on the dissipation of resentment, but rather a renewing of relations cultivated through a joint effort separate from personal feelings. Reconciliation, although initially used in the context of Christian theology, has come to connote a return to a once unified and peaceful state of being. The decision to reconcile, therefore, does not belong to the victim, as all parties must agree to reunite. However, it remains unclear whether the burdens that result from the decision to reconcile nonetheless remain largely with the victim, as is the case with forgiveness. To continue the metaphor of debt, there is a potential that the costs for those involved may be differently distributed than with forgiveness. Reconciliation would be indistinguishable from forgiveness from the perspective of the victim, if she stands to gain less than the perpetrator from the agreement and if the perpetrator is made to sacrifice nothing. For example, if reconciliation simply means that the perpetrator is granted amnesty and the victim is asked to move on from past trauma, then the double burden placed on the victim through forgiveness is similarly at work here. However, this understanding of cost should perhaps be challenged: while the debt analogy may still work for reconciliation, it does not follow that the transaction happens in quite the same way.

A potential alternative understanding of the expenses associated with reconciliation is hinted at in Adam Moron’s definition of reconciliation in his essay,

On Evil. Morton suggests that reconciliation involves less of a focus on settling past scores and more of an emphasis on creating a shared and fruitful future:

To be reconciled with a person is to accept that person as someone with whom one could cooperate in shared projects, placing aside feelings of hostility or injury that might make such cooperation impossible.... This does not mean that one ceases to think that the person has done wrong... One simply takes him as another human being with whom one can to some extent look towards the future. This is easiest when the recovery from evil is central among the shared future-directed projects, when the reconciled people can work together to heal a society or make individual lives move forward.”³²

This shift in focus from repayment to reconstruction alleviates the cost of past atrocity for the victim. While he must necessarily still bear the burden of the original crime, in order to move on, he need not carry the second burden of magnanimity alone. This is because the cost of reconciliation does not come from the victim’s pockets. It is borrowed instead from the future, taken from the idea of a unified nation or community. This future is made possible through cooperation, but as Morton notes, addressing hostility is not a prerequisite: “it does not require that either person cease to condemn the actions of the others.”³³ Nelson Mandela has echoed this sentiment about reconciliation, writing that while “I am often asked how it is that I emerged without bitterness from so long a time in prison...in such circumstances, personal bitterness is irrelevant...instead we must insist with quiet resolve on a firm policy of undoing the continuing effects of the past.”³⁴ So while bitterness may be irrelevant to reconciliation, it is not incompatible with it. This is not the case with genuine forgiveness, during which it would be impossible to maintain resentment.

³² Morton, *On Evil*, 125.

³³ *Ibid.*, 127.

³⁴ *Ibid.*, 126-127.

Personal feelings are therefore put aside rather than relinquished, and the work of reconciliation is fueled by the partnership of victims and perpetrators. This partnership is therefore less emotionally costly, because the victim remains entitled to feelings of anger or bitterness. Reconciliation is also more beneficial for the victim than forgiveness, because the victim stands to gain more than the supposedly therapeutic alleviation of bitterness and resentment that comes with forgiveness. Reconciliation does not double the costs of past atrocities for the victims because it also allows them to benefit from the transaction by being able to participate in and gain from the reconstructed society where “recovery from evil is central among the shared future-directed projects.”³⁵ Unlike forgiveness, where the perpetrator enjoys the bulk of the benefits, during reconciliation the victim has hope of breaking even by taking advantage of a political environment where the goal is the creation of a society from which everyone can benefit. Mandela defines this society as one in which victims and perpetrators will “join hands” in “identifying the nature and scope of past wrongs and taking methodological steps to remove them.”³⁶ In this context, victims will be helped in the task of making “individual lives move forward,” including their own. Together with the perpetrators, they will “recover from evil” and “undo... the continuing effects of the past.”

This is a very optimistic gloss of reconciliation, however, as this joint effort can occur with tensions running anywhere from mere toleration to friendship, if it works at all. The Oxford English Dictionary sets a high standard for the kind of relationship that reconciliation should establish between people, defining it as “the

³⁵ Ibid., 125.

³⁶ Ibid., 126-127.

action of restoring estranged people or parties to friendship.” In truth, the degree of amity necessary between conflicting parties before it counts as reconciliation is contested, given that the degree of conflict in transitioning nations tends to be considerably more than ‘estrangement.’ For example, making friendship between the victims and perpetrators of genocide the prerequisite for reconciliation borders on precluding it altogether. Simply living in the same geographical region stains relations. In *The Sunflower*, Sidney Shachnow, survivor of a Lithuanian concentration camp, asks of a Nazi soldier guilty of brutal murder, “I personally think he should go to hell and rot there. I doubt very much that my God would grant him forgiveness. After all, what does it take to serve in hell?”³⁷ The point is strongly made but is nonetheless a good one: there are some crimes that are widely believed to be unforgiveable. If such a crime’s perpetrators cannot be forgiven, how can a nation even begin to hope that it will be able to engender friendship among its citizens? Card points out that this is especially true when perpetrators face no punishment for their former crimes: “If living with ordinary freed felons is a challenge, how are victims to live with war criminals who have escaped, received amnesty, served limited sentences, or even been elected or appointed to influential social or political positions?”³⁸ The challenge of mutual acceptance could be even more complicated in instances where there is not a “clear “perpetrator” side and a clear “victim” side,” when “both sides are perpetrator. Or, even harder to resolve, each side thinks that they are the victims and the others are the perpetrators.”³⁹ Furthermore, if the state of

³⁷ Sidney Shachnow, *The Sunflower*, 243.

³⁸ Card, *The Atrocity Paradigm*, 173.

³⁹ Morton, *On Evil*, 130.

conflict reaches further back than any other precedent, “largely because the societies never worked properly to begin with,” then there will be no reference, “nothing to go back to, no previous state or relationship one would wish to restore. In these stark circumstances, ‘reconciliation’ does not even seem like the right word, but rather ‘conciliation.’”⁴⁰

Other definitions set the bar much lower, such as David Crocker’s broad standard of “nonlethal coexistence,”⁴¹ which make reconciliation much more plausible, but at the expense of simultaneously making it much less effective. Morton agrees and writes that reconciliation “does not mean...that one feels affectionately towards [the perpetrator].”⁴² Others academics find middle ground between Crocker’s definition and the ‘friendship’ of the Oxford English Dictionary with “democratic decision-making and reintegration.”⁴³ Such a collaboration would be much harder to achieve than the absence of conflict, as it would “involve addressing fundamental social inequalities” before democratic decision-making could even occur.⁴⁴ Joint participation in democratic political action might not require the emotional energy entailed in friendship, but such “nation building” nonetheless calls for a considerable amount of good will and collaboration. If this standard is also set too high to be a practical expectation for the kinds of relationships established through reconciliation, it becomes unclear what meaningful reconciliation would comprise of. The simple cessation of conflict is unsatisfying, but the installation of democracy may be excluding other possibly successful approaches to unity. An Afrikaner journalist

⁴⁰ Jonathan D. Tepperman, “Truth and Consequences,” *Foreign Affairs* 81, No. 2 (2002): 142.

⁴¹ *Ibid.*, 142.

⁴² Morton, *On Evil*, 125.

⁴³ Tepperman, “Truth and Consequences,” 142.

⁴⁴ *Ibid.*, 142.

during the South African Truth and Reconciliation Commission, Antjie Krog, offers a helpful rule of thumb, arguing that reconciliation is a “return to the sort of social consensus or harmony on which the smooth functioning of society depends.”⁴⁵ While this definition still lacks specificity and gives little information on how it might be achieved, it is a helpful starting point to expect that reconciliation amount, at least, to a functioning society. I believe that a functioning society should have just enough good will to keep its essential social services operating, but need not necessarily include any emotional connections between varying factions.

For example, imagine that in South Africa today a Coloured elementary school teacher teaching both Afrikaans and English struggles to show the same degree of warmth to her black, Xhosa-speaking students as to her Coloured, Afrikaans-speaking students. Perhaps she conflates racism with the real fact that the Xhosa students lag severely behind in a bilingual school where both languages are foreign to them. Nonetheless, she does not refuse to teach them, and perhaps, over the years, she will come to find a teaching approach that includes rather than marginalizes. It is conceivable that over time, there will be “a change of attitude on both sides, with each recognizing the motives of the whole other person.”⁴⁶ In this case, where the two races may not yet be fully reconciled, as there is still much work to be done, they also exist side by side in such a way that the education system at least functions, albeit poorly. It could be argued that such a society is does not embody “smooth functioning,” and that it sets the bar far too low. Considering, however, that the nations unable to achieve reconciliation transition more often into

⁴⁵ Ibid., 142.

⁴⁶ Morton, *On Evil*, 127.

failed states rather than semi-functioning democracies, leaving room for improvement might be a reasonable goal for a young nation with a traumatic past. Given that “reconciliation turns out to be tremendously difficult to achieve or even understand,” it would still be an important success if reconciliation short of perfect harmony were achieved.⁴⁷ The final goal is not that reconciliation be rendered perfectly, but that it opens rather than closes avenues of improvement for that nation.

V. Teasing Out Two Overlapping Circles

Still, the argument could be made that the above distinctions are irrelevant if the two terms are conceptually inseparable. If this were the case, the moment a nation embarked on reconciliation, for example, forgiveness would necessarily occur. It is important, therefore, to determine whether forgiveness and reconciliation occasionally overlap or are inextricably linked; does forgiveness actually “imply a willingness to renew relations? Must forgiver and forgiven reconcile? Must friendship now be possible between them?”⁴⁸ The relationship between the two terms remains unclear in the literature and is occasionally inconsistent within an individual body of work. Martha Minow writes in her book, *Between Vengeance and Forgiveness* that “forgiveness seems to rule out ... non-reconciliation,”⁴⁹ while Steven Alkalaj argues in *The Sunflower* “you cannot have reconciliation without at least a shred of forgiveness.”⁵⁰ Derrida writes paradoxically that neither can entail the other but also that neither can exist alone, writing “the two poles are irreducible to one another,

⁴⁷ Tepperman, “Truth and Consequences,” 144.

⁴⁸ Card, *The Atrocity Paradigm*, 179.

⁴⁹ Martha Minow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998), 9.

⁵⁰ Alkalaj, *The Sunflower*, 104.

certainly, but they remain indissociable.”⁵¹ Morton sees forgiveness and reconciliation as distinct but is conflicted about which one encompasses the other. He believes “reconciliation is not forgiveness. It has a deeper aim,”⁵² but writing a little later claims “reconciliation is both more and less than forgiveness.”⁵³ Card also wavers on the possibility of separating the two concepts, writing that “one can renounce hostility without becoming open to renewal of relations or friendly association,”⁵⁴ while simultaneously recognizing “the thought that willingness to reconcile is implied by forgiveness might explain some inclinations to find atrocities unforgivable.”⁵⁵ However, simply because the terms are commonly seen in conjunction does not mean that they are truly irreducible to one another.

The philosophical concept of ‘supervenience,’ which “formalizes the intuitive idea that one set of facts can fully determine another set of facts,”⁵⁶ may help tease out the relationship between forgiveness and reconciliation. Applying this logic to the conceptual analysis of the two terms, one concept should be entailed by the other. If forgiveness supervenes on reconciliation, then the pursuit of reconciliation will necessarily involve forgiveness. If it is the other way around, then the act of forgiveness will necessitate reconciliation. However, reconciliation without forgiveness is as possible as forgiveness without reconciliation. To use one of Morton’s examples, it does not seem problematic that a betrayed wife could forgive her husband but want nothing else to do with him, opting to move on without looking

⁵¹ Derrida, *On Forgiveness*, 51.

⁵² Morton, *On Evil*, 124.

⁵³ *Ibid.*, 127.

⁵⁴ Card, *The Atrocity Paradigm*, 179.

⁵⁵ *Ibid.*, 179.

⁵⁶ Chalmers, *The Conscious Mind*, (New York: Oxford University Press, 1997), 32.

back. Alternatively, she could be reconciled to her husband without forgiving him; they may adopt “an attitude of separating the aspects of each other's personalities that they can and cannot accept,” becoming “reconciled with each other, as a means to continuing a family life... Forgiveness can come later.”⁵⁷ Derrida agrees with this distinction commenting that “even if I say ‘I do not forgive you’ to someone who asks my forgiveness, but whom I understand and who understands me, then a process of reconciliation has begun.”⁵⁸ Since it would possible on the first account to grant forgiveness and not reconciliation, and vice versa in the second account, it seems that neither concept is entails the other.

However, in the context of a nation trying to rebuild itself after an era of serious human rights abuse, intuitively it is incredibly difficult to imagine that a victim would actually shelf her resentment long enough to collaborate with those she views as perpetrators; not everyone can be a Nelson Mandela. For most, forgiveness might be a prerequisite to reconciliation. This would be significant: if reconciliation cannot proceed without forgiveness then the victim will still be stripped of her entitlements to bitterness, anger, and blame. And while it is possible to grant forgiveness without the repentance of the perpetrator, for many, the perpetrator’s willingness to sympathize with the victim’s point of view is a necessary condition for forgiveness. Such a change of heart is one of the first steps of reconciliation. It demonstrates the willingness that Mandela called for to undo the continuing effects of the past. What this seems to suggest is that while the concepts of forgiveness and reconciliation can be theoretically separated and that there is indeed a “significant

⁵⁷ Morton, *On Evil*, 126.

⁵⁸ Derrida, *On Forgiveness*, 48-49.

difference between *forgiveness* and *reconciliation*,” in reality they are more often than not inexorably linked and so, “unfortunately, in the popular mind ... the two notions easily become intertwined” and considerably muddled.⁵⁹ This is significant because the conflation of terminology risks more than semantic slippage. The failure to distinguish forgiveness from reconciliation risks diminishing the free will of victims at precisely the moment when the support of individual agency is most important.

VI. Conflating Forgiveness and Reconciliation

In his seminal essay, *On Forgiveness*, Derrida argues that political institutions seeking to establish reconciliation are often guilty of confusing forgiveness and reconciliation, as they tend to inappropriately bring forgiveness into the “juridico-political” sphere.⁶⁰ However, after laying out his argument, I will go on to show that Derrida is ultimately guilty of conflating the terms himself, because he concludes his essay without making a recommendation for how reconciliation might proceed without forgiveness. The implication is that because public forgiveness is impossible, reconciliation must be as well. The essay was written in response to the “proliferation of scenes of repentance” and “confession, forgiveness, or apology which have multiplied on the geopolitical scene since [WWII], and in an accelerated fashion in the past few years.”⁶¹ Believing that in these geopolitical scenes of repentance “the word most often abused is ‘forgive,’”⁶² Derrida puts forward a definition of forgiveness with distinctly high standards:

⁵⁹ Pawlikowski, *The Sunflower*, 220.

⁶⁰ Derrida, *On Forgiveness*, 46.

⁶¹ *Ibid.*, 28.

⁶² *Ibid.*, 39-40.

I shall risk this proposition: each time forgiveness is at the service of a finality, be it noble and spiritual (atonement or redemption, reconciliation, salvation), each time that it aims to re-establish a normality (social, national, political, psychological) by a work of mourning, by some therapy or ecology of memory, then the ‘forgiveness’ is not pure—nor is its concept.⁶³

The definition sets the bar high because it requires that forgiveness be given only for the unforgiveable, an illogical and impossible demand. But in response to these anticipated criticisms, Derrida tells us that if forgiveness is expected or easy, it becomes meaningless and that, “if one is only prepared to forgive what appears forgivable, what the church calls ‘venial sin’, then the very idea of forgiveness would disappear.”⁶⁴

Therefore, when it is granted for any other reason than to signal the impossible and incredible internal emotional reorientation of the victim towards the perpetrator, it is being granted because it is convenient. This is not forgiveness, but deception. If a husband forgives his wife for infidelity not because he truly has come to understand and accept her actions towards him but because divorce seems terrifying and embarrassing, then this is not forgiveness. He succumbs instead to other pressures, having perhaps to do with his family life and social standing. But forgiveness must interrupt expectations and internal emotions, not mask them. The pardon in the case of the husband seems unexceptional, but forgiveness “is not, it *should not be*, normal, normative, normalizing. It *should* remain exceptional and extraordinary, in the face of the impossible: as if it interrupted the ordinary course of

⁶³ Ibid., 31-32.

⁶⁴ Ibid., 32.

historical temporality.”⁶⁵ Because invoking forgiveness for the unexceptional is to use it incorrectly, if victims are asked to forgive when they do not truly feel forgiveness, the resulting forgiveness is insincere and inappropriate. It must instead be reserved for “what in religious language is called mortal sin, the worst, the unforgivable crime or harm.”⁶⁶ Short of this, forgiveness simply holds no meaning. Pure forgiveness is therefore impossible in a social or political arena because by definition these arenas demand that acts have ramifications beyond the emotions of the forgiver.

Derrida argues that the conflation with reconciliation happens the moment forgiveness enters the hands of these politicians, religious leaders, or heads of corporations because it must necessarily then be “at the service of a finality.” He was prompted to put this reminder in print by the sight of “not only individuals, but also entire communities, professional corporations, the representatives of ecclesiastical hierarchies, sovereigns, and heads of state ask[ing] for ‘forgiveness.’”⁶⁷ Since forgiveness cannot be scripted or expected, it should be precluded from making an appearance in the speeches of politicians, during criminal trials, or in the public hearings of truth commissions. It is in these scenes of public repentance, therefore, that forgiveness is “confounded; sometimes in a calculated fashion, with related themes: excuse, regret, amnesty, prescription, etc.”⁶⁸ The problem with forgiveness being co-opted towards these related themes is, as I outlined in my distinction between forgiveness and reconciliation above, that forgiveness is meant to occur only between two entities that have no motivations other than wanting to address a past

⁶⁵ Ibid., 31-32.

⁶⁶ Ibid., 32.

⁶⁷ Ibid., 28.

⁶⁸ Ibid., 27.

wrongdoing. Because these related themes “come under law, a penal law from which forgiveness must in principal remain heterogeneous and irreducible,” they belong within the public realm and therefore are not synonymous with forgiveness.⁶⁹ The irreducibility of forgiveness into the penal law comes from the fact that the language of forgiveness is entirely different from the language of political statutes. For the political sphere to appropriate this language is, therefore, not only inappropriate, but absurd.

It may be difficult at this point to understand why Derrida wants to make this distinction between ‘pure’ forgiveness and forgiveness that has been tarnished by ulterior political motivations, given that when nations pursue reconciliation, the ulterior political motivations are largely noble and decent. Indeed he writes, “these transactions can certainly appear honourable; for example, in the name of ‘national reconciliation.’”⁷⁰ So Derrida offers us another example, in which the transaction is less than honorable and the value of making a distinction between political and the personal spheres is much clearer. As he left the White House in 2000, Bill Clinton mass-pardoned Puerto Ricans imprisoned for terrorism. This took place right as Hilary Clinton was campaigning for the senate seat in New York, where there is a significant Puerto Rican population.⁷¹ It seems the forgiveness here was less than genuine. Imagine another example, where a university pardons a star athlete for plagiarism. Here the school has also not practiced pure forgiveness, as it stands to benefit too much from the act. Derrida’s concern is that every time forgiveness makes

⁶⁹ Ibid., 27.

⁷⁰ Ibid., 39-40.

⁷¹ Ibid., 30.

an appearance in the political arena, “there is always a strategical or political calculation in the generous gesture of one who offers reconciliation or amnesty.”⁷² Even when these political calculations are for the greater good, they can be harmful, as they nonetheless put pressure on individuals to forgive when forgiveness might not be emotionally appropriate. So while Derrida commends reconciliation and transition as signaling “no doubt, a *universal urgency* of memory,” and agrees that “it is *necessary* to turn towards the past,” he firmly restates that “*it is necessary* to take this act of memory, of self-accusation, of ‘repentance’, of appearance at the same time beyond the juridical instance, or that of the Nation-State.”⁷³ True forgiveness will not happen in the political arena; one must move beyond politics to find it.

VII. Turning Victims into Citizens

Once forgiveness ceases to be an end in of itself, victims may be pressured into forgiving, even when doing so is not in their best interest. The pressure comes from the belief that forgiveness is the cost of citizenship in the new and reconciled nation. In a volatile transitional society, if the victim decides to withhold forgiveness, this might undermine other citizens’ perceptions of social stability by making them worry that the continuation of hostile feelings will spark new conflict. Victims who do not forgive are left believing they have failed to contribute to the greater good of society and have fallen short of their duties as citizens. Because public shows of good will and symbolic gestures of peace carry enormous weight during reconciliation, it is precisely in these moments that forgiveness is most often co-opted, amounting only

⁷² Ibid., 40.

⁷³ Ibid., 28.

“to a therapy of reconciliation.”⁷⁴ Derrida warns that in this pragmatic process which necessarily falls into the public realm of politics, victims must not allow themselves to be defined “through and through by the political, and above all not by citizenship, by the statutory belonging to a Nation-State.”⁷⁵ Participating in society may mean giving up certain freedoms as compromise, but it is unnecessary for that sacrifice to fall most heavily on victims. When reconciliation and forgiveness become expected, “we effectively pathologize anger, close down the survivor’s own process, and reinforce societal messages” in an attempt to include victims in society in the aftermath of atrocity.⁷⁶ Despite their duties as citizens, it would be improper to use a victim’s role as citizen as leverage for securing forgiveness.

Such forced forgiveness can be harmful to the victim. For example, in the context of domestic abuse, there is a concern that forgiveness “may simply provide the offender easy opportunities to repeat the offence.”⁷⁷ Were a victim forced into forgiveness and reconciliation in such a context, they might be putting themselves at risk for additional harm. Inopportune forgiveness can also bring about other, less literal harms. When the victim forgives, she loses her entitlement to anger, her status as victim, and the right to dwell on the past. Derrida gives the example of:

A victim of terrorism, a person whose children have been deported or had their throats cut, or another whose family was killed in a death oven. Whether she says ‘I forgive you’ or ‘I do not forgive’, in either case I am not sure of understanding...this zone of experience remains inaccessible and I must respect its secret.⁷⁸

⁷⁴ Ibid., 41.

⁷⁵ Ibid., 55-56.

⁷⁶ Lamb, *The Trouble With Blame*, 163.

⁷⁷ Card, *The Atrocity Paradigm*, 179.

⁷⁸ Derrida, *On Forgiveness*, 55-56.

In such instances of incomprehensible atrocity, it is difficult to justify taking away the small consolation of emotional freedom that would entitle this mother to withhold forgiveness. For someone who may have already lost so much through the original crime, these further losses might be too expensive. What makes this loss so costly is not that the victim is left unable to demonstrate specific negative emotions, which on its own can seem a small indignity compared to the cost inflicted by the original crime. The real injustice is that the free will of the victims is unnecessarily restricted in exchange for membership in the new post-transitional society.

VIII. Stepping Beyond Derrida

Derrida's deconstructive account is unsatisfying. The problem is that he makes two claims that, when taken together, leave little room for pragmatic response and cause him to be guilty of the very conflation he initially pointed out. The first is that there can be no forgiveness in the public sphere; "as soon as the victim 'understands' the criminal, as soon as she exchanges, speaks, agrees with him, the scene of reconciliation has commenced, and with it this ordinary forgiveness which is anything but forgiveness."⁷⁹ The second is that reconciliation has no real substance of its own; it only is constituted by false forgiveness. But if forgiveness and reconciliation are inexorably linked, and the presence of forgiveness during reconciliation is a crime against the victims, then he seems to be suggesting that reconciliation must be thrown out altogether as well, or at least he gives no clue on how to salvage it. The closest Derrida comes to a recommendation is through the following questions: "must forgiveness saturate the abyss? Must it suture the wound

⁷⁹ Ibid., 48-49.

in a process of reconciliation? Or rather, give place to another peace, without forgetting, without amnesty, fusion, or confusion?”⁸⁰ But “another peace” that punishes perpetrators, does not forget crimes, and does not invoke forgiveness without creating confusion is an ambiguous policy prescription at best. Instead he concludes: “I remain ‘torn’ (between a ‘hyperbolic’ ethical vision of forgiveness, pure forgiveness, and the reality of a society at work in pragmatic processes of reconciliation). But without power, desire, or need to decide.”⁸¹ Perhaps he does not need to make a decision between the two paradoxical options of ideal forgiveness and pragmatic policy, but anyone concerned with making transitional justice work must.

Given the need to separate forgiveness from the political, how can reconciliation be salvaged as a reasonable goal for nations transitioning away from eras of atrocity? How can Derrida’s argument that “forgiveness is thus mad,” that “alterity, non-identification, even incomprehension, remain irreducible” to it, and that “it must plunge, but lucidly, into the night of the unintelligible” be respected without letting go of reconciliation?⁸² Derrida may want to claim that reconciliation is essentially the hijacking of personal sentiments for political gain, but without the goal of reconciliation, the list of nations that would fall instead into endless cycles of self-perpetuating violence would be long and bloody. Indeed, Derrida is not so bold as to give up on reconciliation altogether, backsliding in the final pages of his essay and writing, “of course, no one would decently dare to object to the imperative of reconciliation. It would be better to put an end to the crimes and discords.”⁸³ Derrida

⁸⁰ Ibid., 50.

⁸¹ Ibid., 51.

⁸² Ibid., 48-49.

⁸³ Ibid., 50.

knows better than to entirely ignore the practical concerns of reconciliation while endorsing his paradoxical and impractical definition of forgiveness. There must be a way to balance the needs of transitioning societies and the emotional freedom of victims.

While I agree with Derrida's second claim that forgiveness is frequently conflated with reconciliation within the realm of transitional justice, I do not believe that the two should continue to be confused. It is conceivable that reconciliation could occur without necessitating forgiveness whatsoever. Individuals could maintain their right to bitterness and anger should they so choose, without slowing down the process of reconciliation. Making this distinction allows reconciliation to proceed without limiting the spectrum of appropriate feelings in the aftermath of conflict. It is true that during past truth commissions, "the structure of the testimonies may have [had] the effect of limiting the full range of emotions that emerge in the aftermath of mass violence. Such limitations hamper[ed] the impact that testimonies could have on understanding of justice and the restoration of political life."⁸⁴ But if it were possible for these testimonies to continue without pressuring victims to settle with forgiveness and if there were safeguards against the victims being labeled as selfish for holding on to their anger, then a form of reconciliation that does not tamper with the private emotions of individuals will have been articulated. Functioning societies have always depended on their citizens to give up certain rights and make certain sacrifices in order to operate smoothly, but these sacrifices must be carefully negotiated against individual rights so that the individual is never entirely sacrificed for the greater good.

⁸⁴ Sonali Chakravarti, "More Than "Cheap Sentimentality,"" *Constellations* 15, No. 2 (2008): 233-234.

As Martha Nussbaum notes in her list of basic human capabilities, the right to emotional freedom is as fundamental as the rights to life, bodily health and control over one's environment.⁸⁵ It is important for victims to recognize the violation of their rights, for "if we do not resent the violation of our rights, then we do not take our rights very seriously."⁸⁶ This self-serving protection of personal rights is not counter to the goal of reconciliation, but very much in line with it. The aim is not to have one group of people reconciled to a second group that enjoys a greater range of personal freedoms. For the suffering victim, "the secret of [their] experience remains. It must remain intact, inaccessible to law, to politics, even to morals: absolute."⁸⁷ Victims therefore have the right not to have their experiences reduced by reconciliation into easily understood lessons and their role simplified into those of magnanimous forgivers. There is room for unadulterated anger in the political sphere, and reconciliation need not close off this space. Forgiveness and reconciliation must therefore be assessed in terms of the options they open and close, and the cost that each may place on the victim, but most importantly, they must remain distinct concepts. Chapter two will offer a case study of South Africa's Truth and Reconciliation Commission to demonstrate the dangers of this conflation, while chapters three and four will build off of the Commission's mistakes in order to elaborate on precisely what reconciliation that does not necessitate forgiveness looks like.

⁸⁵ Martha Nussbaum, "Women and equality: The capabilities approach," *International Labour Review* 138, No. 3 (1999): 235.

⁸⁶ Lamb, *The Trouble With Blame*, 161.

⁸⁷ Derrida, *On Forgiveness*, 55-56.

Assessing South Africa's Truth and Reconciliation Commission

I. A Case Study on the Dangers of Conflation

The confusion between forgiveness and reconciliation is of more than theoretical importance. In the case of the South African Truth and Reconciliation Commission (TRC), the abstract conflation between these two terms discussed in the last chapter found itself actualized in the aims of the TRC. The TRC is an especially helpful case study because it conflated forgiveness and reconciliation more than other truth commissions. To date, the TRC is the only commission to trade amnesty for truth. This was done in the uniquely ambitious hope of achieving reconciliation through testimony rather than prosecution.⁸⁸ This inclusion of amnesty in the Commission's proceedings involved questions of forgiveness and reconciliation because it was sold to the public by exalting forgiveness of unpunished perpetrators as a virtue and proffering reconciliation as the reward for moving on without prosecutions. Although the decision has been frequently emulated since, the TRC's choice to include reconciliation in its name and mandate was made at a time when it was still an uncommon goal for truth commissions. Prior to South Africa's TRC, only Chile's National Commission for Truth and Reconciliation, which operated from 1990 to 1991, opted to include additional goals beyond truth in its title. The TRC is also a helpful case study because of the religious overtones in the proceedings that were brought to the table by Commission Chair Archbishop Desmond Tutu. The

⁸⁸ Joanna R. Quinn and Mark Freeman, "Lessons Learned: Practical Lessons Gleaned from inside the Truth Commissions of Guatemala and South Africa," *Human Rights Quarterly* 24, No. 4 (2003): 1127.

involvement of the Church was not a problem on its own, but within Christian theology forgiveness and reconciliation are often used as synonyms or interlocking actions. This played a significant role in the articulation of the Commission's aims.

Since the Commission's goals were based on an unclear distinction between forgiveness and reconciliation, its pursuit of these aims placed unnecessary pressure on the victims. This was harmful to the victim's long-term psychological and emotional health, and cultivated disappointment in the Commission's work among the general public. Both of these outcomes only made it more difficult to foster an environment amenable to reconciliation. After outlining how the conflation of forgiveness and reconciliation in the case of the TRC led to a set of overly ambitious goals, I will show how the cost of this failure on the victims who testified had secondarily harmful effects. Not only damaging to the victims, the disillusionment that resulted from these failures has also impeded the current literature from articulating recommendations for improvement. In order to develop this form of transitional justice into a more promising option for nations in the aftermath of atrocity, a new set of expectations must be advanced. Teasing out forgiveness and reconciliation and a better understanding of the Commission's pitfalls will open up a new conversation about the ways truth commissions can help nations transition away from past eras of abuse. This will help create a roadmap towards a more successful model for truth commissions in the future.

II. Overly Ambitious Goals

In the most basic articulation of truth commissions, "the mandate of the truth commission is simply that which is implied by its name: to establish a common truth

and to report on that truth which has been found.”⁸⁹ In reality, truth commissions embody a diverse and complex set of aims. Mixed in with the goal of finding truth can be the hope that the discovered truth will lead to a movement away from conflict and towards peace, the expectation that discovered facts will help secure prosecutions, and the anticipation that media attention garnered by the commissions will force the power holders of the previous regime to make greater concessions than promised. Truth commissions are also expected to forward along recommendations to the new government at the close of their investigations and often the focus of these recommendations is large in scale. Commissions seek to rectify injustices that had permeated infrastructure at the institutional level and “typically make reform recommendations to prevent the repetition of past crimes and, thereby, identify ways to help former opponents live side by side peacefully.”⁹⁰ Because “these goals themselves—to find out what happened, punish the guilty, unite the country, put the past behind—are often fundamentally irreconcilable” it is no surprise that most truth commissions fall far short of this broad range of goals.⁹¹

Furthermore, in the case of the TRC, the goal of reconciliation was thrown into the mix; “this much used (but seldom defined) word permeated all of the Commission’s work. At the first hearing, a huge banner hung from the wall reading “Truth: The road to reconciliation.”⁹² The explicit inclusion of reconciliation only served to raise the bar is only raised higher. In their article “Lessons Learned: Practical Lessons Gleaned from inside the Truth Commissions of Guatemala and

⁸⁹ Ibid., 1124.

⁹⁰ Brahm, “Uncovering the Truth,” 24.

⁹¹ Tepperman, “Truth and Consequences,” 145.

⁹² Ibid., 135.

South Africa, authors Joanna R. Quinn and Mark Freeman report that during the TRC, “National as well as individual reconciliation became the overriding priorities of the TRC. They note that this resulted in confusion between two very different notions of reconciliation, and also raised expectations to unmanageable level.”⁹³ One of the commissioners from the TRC that the authors interviewed, Richard Lyster, went so far as to recommend that in the future, “truth commissions be limited to uncovering the truth or else risk succeeding at neither truth nor reconciliation.”⁹⁴

Ultimately the TRC was unable to live up to all of its stated goals. Established in 1995 to investigate human rights abuses that took place during Apartheid between the period of 1960 and 1995, the TRC is “by far the most famous example of the genre” and also the largest, having processed over 8,000 amnesty applications and investigated 21,297 statements of victims and their families.⁹⁵ It was also unprecedented in funding and reach, enjoying the “unparalleled recourses” of “search-and-seizure powers, the right to issue court-backed subpoenas, and most controversially, the power to grant individual amnesties.”⁹⁶ Despite these advantages, however, the TRC’s legacy has turned out to be a mixed bag of successes and disappointments. While some still believe that without this “remarkable act of grace by people who had suffered terribly” South Africa would have been lost to civil war in the post-Apartheid era,⁹⁷ others extend significantly less credit to the Commission. A poll conducted in South Africa at the close of the Commission “reported that two-thirds of South Africans felt the Commission’s revelations had only made them

⁹³ Quinn and Freeman, “Lessons Learned,” 1125.

⁹⁴ *Ibid.*, 1125.

⁹⁵ Tepperman, “Truth and Consequences,” 132.

⁹⁶ *Ibid.*, 132.

⁹⁷ *Ibid.*, 132.

angrier and contributed to a worsening of race relations.”⁹⁸ These failures could easily be pinned on the fact that despite the scale of the TRC, resources were still limited and that the task in front of the TRC was undeniably formidable. However, in order to make the TRC a more effective tool of transitional justice, it would have taken more than simply increasing the amount of available time and money; resources will always be limited, but institutions can nonetheless be successful within that constraint. I believe that the TRC would have had a more positive effect had its goals and the rhetoric surrounding them been considerably clearer.

III. Theological Definitions of Forgiveness and Reconciliation

The expectations around what the TRC could accomplish were further heightened by the use of religious rhetoric throughout the transitional justice debate. Believing the goals of national reconciliation and the Christian injunction to forgive were closely intertwined and knowing that religion had the capacity to “serve... as a source for peace building structures that uphold the rule of law, embrace international conventions and promote human rights,” Tutu welcomed religious language and symbolism into the TRC’s proceedings.⁹⁹ He was joined by Mandela, a leader whose “insight into the capacity of grace to transform people and nations put most theologians to shame.”¹⁰⁰ Led by these “two much-beloved figures—then President Nelson Mandela, a secular saint, and the TRC chairman, Archbishop Desmond Tutu, a religious one,”¹⁰¹ the TRC was infused with religious overtones and thus easily came to adopt goals in line with Christian rather than secular understanding of

⁹⁸ Ibid., 135.

⁹⁹ Megan Shore, *Religion and Conflict Resolution: Christianity and South Africa’s Truth and Reconciliation Commission* (Burlington: Ashgate, 2009), 173.

¹⁰⁰ Graybill, “Ethical and Theological Perspectives,” 44.

¹⁰¹ Tepperman, “Truth and Consequences,” 132-133.

forgiveness and reconciliation. From the start, “church people were instrumental in prompting the government to establish a truth commission” and about one-third of the appointed commissioners came from the church.¹⁰² Two of its most distinguished commissioners, chair Archbishop Tutu and deputy chair Dr. Alex Boraine were “respectively, a former archbishop in the Anglican church and a former president of the Methodist church of Southern Africa.”¹⁰³ During the opening ceremony of the TRC all “commissioners received a candle and an olive branch, symbols of the quest for truth and peace and they were blessed by Jewish, Christian, Buddhist, Muslim, and traditional African religious leaders,”¹⁰⁴ and Archbishop Tutu, who believed “a great deal would depend on the “spirituality of the commissioners,”¹⁰⁵ wore his purple robes during the entire time he presided over the Commission.¹⁰⁶ Mary Burton, who worked through the Commission and sat through all the testimonies, described the archbishop’s stance:

“The people, particularly the victims who were testifying, whether they were Christian or not, they wanted to shake his hand, they wanted to be touched by him, his presence was important to them. And his purple robes lent a solemnity to the occasion that I think was very important. So he had that sense of what people wanted and what people needed and what he could give to them.”¹⁰⁷

Tutu’s presence in the political realm resonated with a nation that was 77 percent Christian.¹⁰⁸ Mandela was also able to harmonize his political stance with Christian logic, as his “understanding of the power of symbolic acts of reconciliation

¹⁰² Graybill, “Ethical and Theological Perspectives,” 46.

¹⁰³ Ibid., 46.

¹⁰⁴ Ibid., 46.

¹⁰⁵ Ibid., 47.

¹⁰⁶ Commission on Truth and Reconciliation, “The Public Hearings; Analysis of Gross Violations of Human Rights,” Vo. 5, Ch. 1, in *Truth Commission Report*. (2003), 3.

¹⁰⁷ Ibid., 3.

¹⁰⁸ Graybill, “Ethical and Theological Perspectives,” 47.

surpasse[d] that of the canniest religious leaders.” In a place where “theological discourse on political matters is taken seriously...the principles under which the TRC operate[d were] heavily influenced by Christian theology and ethics” and the doors to religious symbolism and rhetoric were wide open.¹⁰⁹ This allowed the Commission to slip easily into the use of the Christian interpretation of forgiveness and reconciliation, which sees the two as fundamentally linked and mutually reinforcing. These goals were then placed, undifferentiated, at the forefront of the Commission’s work.

The theological link between the two concepts is captured in reconciliation’s primary definition, listed in the OED as: “the action of restoring humanity to God's favour, esp. as through the sacrifice of Christ; the fact or condition of a person's or humanity's being reconciled with God.” In Christianity, reconciliation occurs first and foremost between man and God and is a part of salvation. It is therefore soteriologically linked to forgiveness because this reconciliation with the divine is made possible only through Christ’s forgiveness.¹¹⁰ The link exists not only when forgiveness and reconciliation occurs between man and the divine, but also when it is exchanged between humans. In the parable of the prodigal son, the lesson extracted is that the father not only forgives his son but also reconciles him back into the family by giving him “the ring, robe, sandals, and festive celebration.”¹¹¹ In this story, had the father only forgiven his son, he would not have allowed him back into the family or celebrated his return; allowing the son back into the fold of the family was a sign of

¹⁰⁹ Ibid., 46.

¹¹⁰ Jason C. Harris, telephone interview with author, March 20, 2011.

¹¹¹ Katrina J., Zeno, “Beyond Forgiveness to Reconciliation,” *The Christian Broadcasting Network*. Accessed March 10, 2010. <http://www.cbn.com/spirituallife/BibleStudyAndTheology/Discipleship/Beyond_Forgiveness_to_Reconciliation.aspx>.

reconciliation. The two are related because one without the other would be unsatisfactory and insufficient. Without forgiveness the son would be in the home but unwelcome and without reconciliation the son would be forgiven but abandoned. In His love for us God sets the standard and does both; “when we return, the Father not only forgives us, He reconciles us to the family ... He reintegrates us into the life of the family.”¹¹²

IV. Bridging the Private and the Public with ‘Ubuntu’

In line with this interpretation of forgiveness and reconciliation as related and mutually reinforcing, Tutu believes that forgiveness does not exist only in the private emotional realm, but also plays a crucial political role. It was not enough for the father to make the private decision of forgiveness towards his son; he had to make the public decision to pull the son back into his family. This in turn had an effect on the other members of the household, such as the bitter oldest son. In the same way, for Tutu it was not be enough for the emotions of victims in South Africa towards their perpetrators to remain private and internal, these emotions belonged on the public stage so that they could have an impact on the larger goal of reconciliation. Forgiveness does not simply contribute to reconciliation, forgiveness makes reconciliation possible: it “is not some nebulous thing. It is practical politics. Without forgiveness, there is no future.”¹¹³ In this regard both Mandela and Tutu were able to lead the nation by example, for “if they, who had both suffered so much and led the fight against the old regime, were ready to forgive, surely the nation could follow.”¹¹⁴

¹¹² Ibid.

¹¹³ Wiesenthal, *The Sunflower*, 267.

¹¹⁴ Tepperman, “Truth and Consequences,” 132-133.

To encourage the nation to follow suit, forgiveness was first connected to personal well being, as much of the “discourse around the TRC focused on the importance of bearing witness to the past, and on the healing powers of forgiveness.” It was only partly in jest when Tutu famously said: “resentment and anger are bad for your blood pressure and your digestion.”¹¹⁵ This therapeutic approach to forgiveness and the personal emotions that accompanied it was then linked to the welfare of the greater public. Tutu explained to participants who hesitated to forgive that “if you live with hatred and revenge in your heart, you dehumanize not only yourself, but your community.”¹¹⁶

To make this jump between the self and the larger community Tutu invoked the traditional African notion of ‘ubuntu,’ in which reconciliation places an “emphasis on restoring evildoers to the community rather than on punishing them.”¹¹⁷ Derived from a Xhosa expression ‘People are people through other people,’ ubuntu “conveys the view that an environment of right relationships is one in which people are able to recognize that their humanity is inextricably bound up in other’s humanity.”¹¹⁸ Thus victims of the crimes committed during Apartheid were left believing the decision to forgive—one that was wholly theirs to make—could have a positive or negative effect on both the perpetrator and the wider community and that this larger impact was the victim’s responsibility. Furthermore, bitterness and anger were not framed as entitlements, but obstacles in the way of national harmony. To

¹¹⁵ “*Truth and Reconciliation*,” *Focus on Africa Magazine*, BBC, (January-March 2000,) 53.

¹¹⁶ Tepperman, “Truth and Consequences,” 135.

¹¹⁷ Rosenberg, “Recovering from Apartheid,” 88.

¹¹⁸ *Ibid.*, 88.

hold on to them made one not only selfish, but also inhuman, as Archbishop Tutu argued:

Ubuntu says that I am human only because you are human. If I undermine your humanity I dehumanize myself. You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for vengeance.¹¹⁹

Tutu does not explicitly state that judicial proceedings would have counted as ‘vengeance.’ However, in the context of the TRC where amnesty was being proffered in exchange for participation in the Commission, his position on criminal trials is implied. An interest in seeing criminals brought to justice can often reflect a robust respect for the rule of law, however under ubuntu such desires undermined the unity the Commission were trying to bring about. Tutu reaffirms this interpretation with his statements concerning retributive justice. Wanting to protect the post-conflict path taken by South Africa from being considered “a moral second best,” he argued instead that because they followed ubuntu, South Africa had “advanced beyond penal and retributive justice to something called ‘restorative justice.’”¹²⁰ This logic went a long way towards convincing his nation to stand behind the TRC’s work, but the rhetoric came at a price.

V. Weighing the Victim’s Burden

While the close relationship between forgiveness and reconciliation is significant and valuable within the context of the Church, it proved to be less than ideal for nation building. “Commissions have a bad habit of reflecting the prejudices

¹¹⁹ Ibid., 88.

¹²⁰ David A. Crocker, “Truth Commissions, Transitional Justice, and Civil Society.” In *Truth v. Justice; The Moral Efficacy of Truth Commissions: South Africa and Beyond*, edited by Robert I. Rotberg, and Dennis Thompson, 99-121. Princeton: Princeton University Press, 2000, 7.

and agendas of their framers,”¹²¹ and in this case Tutu’s religious influence on the Commission’s goals left only 17 percent of South African’s believing that after the Commission, “people would become more forgiving as a result of the TRC.”¹²² Even as the Commission was taking place, “not everyone was as keen on reconciliation as Mandela and Tutu” and they faced opposition on the question of amnesty and the use of religious terminology to justify it.¹²³ Some commissioners wondered “whether [Tutu’s] religious position and demeanor at times perhaps clashed with the secular activities of the truth commission,” and some even openly contested his robes, arguing that their religious connotation was inappropriate for a government-mandated initiative.¹²⁴ Mary Burton remembers when the other commissioners confronted the Archbishop with this view: “We said to [Archbishop Tutu] quite strongly “this is not a religious commission.”” and Tutu defended his decision, arguing, “the people want it.”¹²⁵ While he only had the best interest of his nation at heart, Derrida writes that it was nonetheless “with as much good will as confusion, it seems to me, Tutu, an Anglican archbishop, introduced the vocabulary of repentance and forgiveness” into this political and public moment of reconciliation.¹²⁶ Amnesty could have been justified without asking victims to forgive, but this would only have been possible had forgiveness and reconciliation been distinct goals.

With the Christian imperative to forgive mixed in with the public definition of reconciliation, the victims testifying ended up facing significant political pressures to

¹²¹ Tepperman, “Truth and Consequences,” 140.

¹²² *Ibid.*, 135.

¹²³ *Ibid.*, 133.

¹²⁴ Quinn and Freeman, “Lessons Learned,” 1128.

¹²⁵ Commission on Truth and Reconciliation, “The Public Hearings,” 3.

¹²⁶ Derrida, *On Forgiveness*, 42.

forgive. Giving up blame became exchangeable for the benefits of citizenship in a reconstructed society and the victims found themselves pressured to cash in their anger too quickly. This pressure was harmful to many of these victims and “comments suggesting that truth commissions are essential for social and individual catharsis” do not fully “appreciat[e] perhaps that commissions can also pose a risk of sharpening social or political differences, or in the case of individuals, caus[e] retraumatization rather than healing.”¹²⁷ One study in South Africa found that “contrary to the expectations of the truth commissioners, it seems that participation in the TRC inhibits the forgiveness of victims...Those who submitted a statement to the TRC were four times more likely to be forgiving than those who testified; and those who were not engaged in the TRC process at all were 7.7 times more likely to be forgiving than those who testified.”¹²⁸ Being forced through the process of reconciliation led victims to put personal and private emotions in front of the world unnecessarily. So while it may be admirable that students in South Africa can find Mandela’s name in their textbooks and learn about the values of truth and forgiveness, but it is not clear that must come at the price of their parent’s disavowal of all entitlements to bitterness.

One victim reported: “I didn’t cry at the TRC. But I broke down afterwards. The treatment was very bad, how they handled the situation. I can say I hate the TRC. I really do not want to go back. Even with the reparation.”¹²⁹ It seems that for some victims, reconciliation forced a tradeoff between the wellbeing of individuals and the

¹²⁷ Quinn and Freeman, “Lessons Learned,” 1146.

¹²⁸ Roman David, *Victims on Truth Commissions*, (paper presented at the annual meeting of the Law and Society, J.W. Marriott Resort, Las Vegas, Nevada, May 25, 2009), 19.

¹²⁹ David, “Victims on Truth Commissions,” 18.

wellbeing of the aggregate whole. Another source of frustration for the victims was the organization of the TRC, as evidenced by this victim testimony:

[I felt] very angry at the way they dealt with [other] victims, at the promises... this anger was also related to a lack of organization. They had no systematic way to do things at all. They did not inform victims properly. The way of dealing with people on the ground was frustrating. People heard that they were called one day before. They lacked a plan. Therefore they left so many people aside. Also the budget was not sufficient. It was flawed since the very beginning. They should have stopped pretending what they were really doing.”¹³⁰

The experience of individuals interacting with the TRC day to day was therefore not always positive. While it could be argued that the feelings of individuals are not as important as the health of the nation as a whole and the end, in this case, justified the means, it must still be recognized that for some, psychological harm on an individual level was the price of the “low-cost, “feel-good” solution of truth commission in the aftermath of Apartheid.¹³¹ In the end, some of the individuals who testified were left only with meager reparations and a lot of bitterness. In this way, the rhetoric of ubuntu hurt victims through its conflation of forgiveness and reconciliation, as it left victims with restricted emotional freedom.

VI. A Brief Review of the Literature

As a result of these mixed results, the literature published since the TRC’s final 1998 report has grappled with the difficult task of measuring the legacy of the TRC. In reaction to the first wave of laudatory articles that came out roughly contemporaneously with the Commission’s work was a second wave of literature that sought to measure up the TRC’s impact with its own stated goals. This second,

¹³⁰ Ibid., 19.

¹³¹ Brahm, “Uncovering the Truth,” 22.

critical wave documented a number of concrete ways in which the TRC fell short of the success usually attributed to it, but it did not positively assert alternatives. The third, ongoing wave currently grapples with the most nuanced claim of the three by attempting to rehabilitate the TRC in light of its shortcomings rather than in spite of them. However, because the term confusion between forgiveness and reconciliation set such high standards for success, it has left the literature on the subject blocked, unable to move beyond the inevitably failures of the TRC in order to articulate recommendations for improvement. In order to increase the successful impact of truth commissions, a new set of expectations must be developed using a greater sensitivity of terms.

In the first wave of literature, it was largely uncontested that truth commissions had a positive effect on the nations that hosted them. One study found a “statistically positive relationship between having conducted a truth commission and Polity’s democracy measure, among Latin American countries.”¹³² The general belief was that “if collected properly, without bias or influence” the testimony gathered by truth commissions would result in an “authoritative, single history of the state” which would then “become the starting point from which a new democracy forms, a foundation of shared experience.”¹³³ At the time Desmond Tutu, Nelson Mandela, and Alex Boraine campaigned for the virtues of reconciliation, amnesty, and truth. Archbishop Tutu writes in his foreword in the Truth and Reconciliation Commission’s final report:

¹³² Ibid., 25.

¹³³ Rodio, “Settling Past Accounts,” 6.

Wherever one goes, South Africa's peaceful transition to democracy, culminating in the Truth and Reconciliation process, is spoken of in reverent tones, as a phenomenon that is unique in the annals of history, one to be commended as a new way of living for human kind. Other countries have had truth commissions, and many more are following our example, but ours is regarded as the most ambitious, a kind of benchmark against which the rest are measured.¹³⁴

Nelson Mandela spoke of these virtues as being *prima facie* the best options facing post-Apartheid South Africa, stating that, "If there are dreams about a beautiful South Africa, there are also roads that lead to their goal. Two of these roads could be named Goodness and Forgiveness." No deeper justification was needed, as the aims of forgiveness, reconciliation, amnesty, and truth were obviously virtuous and therefore obviously self-justifying.

For example, frequently employed by the first advocates of the TRC was the logic that without a truth commission, South Africa would have inevitably fallen into civil war. It was the decision to set up a truth commission that saved the country from the "real danger that the settling of scores would produce an era of atrocity in which the main victims would be the formerly powerful" and enjoy instead "less violence than anyone had expected and a remarkably general cooperation in building a new society."¹³⁵ Such an argument implies that not only was truth and forgiveness necessarily good, it was also causally necessary. In 1997, when he was still Mandela's deputy, Thabo Mbeki said

Within the ANC the cry was "to catch the bastards and hang them." But we realized that you could not simultaneously prepare for a peaceful transition. If we had not taken this route [and

¹³⁴ Archbishop Desmond Tutu, foreword to *Truth Commission Report*, 1. http://www.info.gov.za/otherdocs/2003/trc/5_7.pdf

¹³⁵ Morton, *On Evil*, 120.

allowed for amnesties] I don't know where the country would be today. Had there been the threat of Nuremberg-style trial for members of the Apartheid state security establishment we would never have undergone a peaceful change."¹³⁶

Without a truth commission, then, South Africa would have never made it to the new millennium without a civil war. Furthermore, no one questioned that "testimony was seen as fundamental to the catharsis deemed necessary for the therapeutic reconstitution of the post-Apartheid nation."¹³⁷ At the time, the claims that testifying would be a positive and healing experience for the victims still remained unchallenged.

In reaction to this first wave came a second, more critical response in the literature on the TRC. Every assumption that was uncontested by the creators and supporters of the Truth and Reconciliation Commission was scrutinized by the second wave. For example, the idea that civil war would have inevitably followed had the TRC mandate not been adopted may still be popular among black South Africans according to a 2001 survey, but "the difference in the opinions of blacks and whites is startling...with only a small minority of whites...agreeing that the TRC helped avoid a civil war."¹³⁸ Another critical approach comes from those who compared the TRC's stated goals with the practical measurement of poverty levels before and after the Commission's report was published. While forgiveness and reconciliation may be important for spiritual health, for those who lived and suffered in a country with systematic human rights violations (including perpetrators as well as victims), the practical measures of human development are also important benchmarks. In the

¹³⁶ Tepperman, "Truth and Consequences," 133.

¹³⁷ Ben-Ze'ev, Ginio, and Winter, *Shadows of War*, 154.

¹³⁸ James L. Gibson, "The Truth About Truth and Reconciliation," *International Political Science Review* 26, No. 4 (2005): 347.

pragmatic words of a demobilizing Sierra Leonean soldier: “Joining a militia meant a warm meal and some measure of security. What am I now being asked to reintegrate into, to reconcile with? Poverty?”¹³⁹ On this assessment the TRC does poorly: the second wave of literature established that the reimbursements offered by the government to victims who testified were not only severely delayed, but also woefully inadequate upon arrival.¹⁴⁰

Other empirical evidence undermined the claims that there was anything therapeutic in taking the stand at one of the Commission’s hearings. Studies conducted in post-Apartheid South Africa show *higher* rates of anger and Post Traumatic Stress Disorder among the population of South African’s who testified.¹⁴¹ Truth commissions provided the opportunity for these individuals to publically express important political grievances, but they “often provide[d] victims with only a few minutes to tell their story and no follow-up support after their testimony.”¹⁴² Part of the problem was that the focus of the Commission on political crimes undermined the TRC’s attempt to sympathize with the individuals who had suffered. By limiting its focus to “acknowledging as victims only political activists,” the TRC was unable to fully attend to the needs of “ordinary people. The only reconciliation the TRC can now expect is between two elites.”¹⁴³ The entrance of the private sphere into the public was also difficult for the judges and large audiences of these heavily covered

¹³⁹ Karin Alexander, Diana Batchelor, Alexis Durand, and Tyrone Savage, “Truth Commissions and Transitional Justice: Update on a Select Bibliography on the South African Truth and Reconciliation Commission Debate,” *Journal of Law and Religion* 20, No. 2 (2004-2005): 525-565.

¹⁴⁰ David, “Victims on Truth Commissions,” 19.

¹⁴¹ David Mendeloff, “Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice,” *Human Rights Quarterly* 31, No. 3 (2009): 592-623.

¹⁴² Brahm, “Uncovering the Truth,” 20.

¹⁴³ Tepperman, “Truth and Consequences,” 141.

trials. “There is a fragile line between the emotions that are worthy of sympathy and those that are either self-indulgent or too difficult to understand,”¹⁴⁴ and the general public is confronted with the latter, the “emotional exhaustion and uncertainty” may turn them off to the project of reconciliation altogether. There is a limit to the amount of testimony on human rights abuses a single individual can absorb.¹⁴⁵ Even Archbishop Tutu suffered a number of breakdowns during the trials.¹⁴⁶ One journalist’s account captured this bleak angle of the endeavor: “week after week; voice after voice; account after account...It is not so much the deaths, and the names of the dead, but the web of infinite sorrow around them. It keeps on coming and coming. A wide, barren, disconsolate landscape where the horizon keeps on dropping away.”¹⁴⁷

Furthermore, the report the Commission released its 2003 was disappointing in several ways. For a truth commission, “the truth turn[ed] out to be a surprisingly elusive goal.” The TRC’s report narrative of South Africa’s recent history reaffirmed that “one need not be a postmodernist to recognize that historical narratives are partly constructed rather than merely discovered, and that power and interests affect the process.”¹⁴⁸ The intensely personal stories of individuals were “susceptible to coercive narratives that are meant to bolster the legitimacy of the state the structure”¹⁴⁹ and were therefore used and rewritten for political ends, albeit noble

¹⁴⁴ Chakravarti, “More Than “Cheap Sentimentality,”” 228.

¹⁴⁵ *Ibid.*, 223.

¹⁴⁶ Graybill, “Ethical and Theological Perspectives,” 46.

¹⁴⁷ Chakravarti, “More Than “Cheap Sentimentality,”” 223.

¹⁴⁸ Tepperman, “Truth and Consequences,” 140.

¹⁴⁹ Brahm, “Uncovering the Truth,” 22.

ones.¹⁵⁰ The truth the Commission purported to find might have been less contested and harmful than the truths of the Apartheid government, but they were created all the same. Additionally, because the Commission lacked the leverage it needed to garner real change by the time the report was published, the effects of its recommendations were also somewhat disappointing. Although the report “recommends and urges that, as head of state, the President of the Republic of South Africa apologizes to all victims on behalf of those members of the security forces of the former state and those armed forces of the liberation movements who committed gross violations of human rights,”¹⁵¹ former President F. W. de Klerk has yet to offer anything but a shallow apology in which he refused to admit the National Party deserved to be held responsible for Apartheid. In the end, the TRC was unable to convince the ex-perpetrators and bystanders that they should have acted differently;¹⁵² it failed to punish the guilty for their crimes,¹⁵³ it failed to effect real institutional change against poverty and inequality,¹⁵⁴ it failed to capture the ‘micro’ truth of individual suffering,¹⁵⁵ it was unable to produce a overarching narrative that did not fall prey to the biases of its authors,¹⁵⁶ and it remains to be seen if it will fail to prevent human rights abuses from happening again. With all these criticisms piled against it, the Commission ends up looking like a short-lived, theatrical, and shallow moment of political ceremony incapable of adequately addressing the intractable problem posed

¹⁵⁰ Ibid., 18.

¹⁵¹ Commission on Truth and Reconciliation, “*Recommendations*,” Vol. 6 Sec. 5, Ch. 7 in *Truth Commission Report* (2003): 728.

¹⁵² Gibson, “The Truth About Truth and Reconciliation,” 354.

¹⁵³ Brahm, “Uncovering the Truth,” 22.

¹⁵⁴ Roman, “Victims on Truth Commission,” 19.

¹⁵⁵ Audrey Chapman and Patrick Ball, “Comparative Lessons from Haiti, South Africa, and Guatemala,” *The John Hopkins University Press* 23, No. 1 (2001): 10.

¹⁵⁶ Ibid., 10.

by past human rights abuses. In the end, however, no one in the second wave is willing to give up on the TRC altogether, although it remains unclear what, exactly, was successful about this experiment in truth and amnesty. The third wave seeks to understand this undefined value in such a way that takes into account the obvious and numerous weaknesses of the TRC.

VII. Renewing the Debate over Transitional Justice

The third wave attempts a foundational justification for truth commissions, despite the flaws established by the second wave. Richard Dale captures the tension of this enterprise:

The TRC report can be regarded in different lights: as a morality play, as a catalogue of sordid human rights abuses, as an interracial and interethnic discourse, as a quantitative and qualitative recounting of torture and atrocities, as a mea culpa for individual South Africans, as a damning indictment of white domination as practiced in a whole range of social institutions, as an exposé of police and defense force sub rosa activities and as the politics of silence, remonstrance, shame and complicity. At its most compelling, it is a genre of national autobiography (leaving aside the nettlesome methodological issue of reification), and it might serve a model for other nations struggling with the comparable legacies and carrying equivalent human rights abuse baggage.¹⁵⁷

All of these uses make clear the pros and cons of a truth commission. A morality play is instructive, but its value of instruction is one imposed by the authors upon the viewers. However, the morals imposed, such as forgiveness or reconciliation, cannot be forced; they are lessons that need to come naturally from within the viewers. A catalogue of abuses is an important historical documentation of Apartheid, but it will necessarily be incomplete and fall short of the truth, given the TRC's imperfect tools

¹⁵⁷ Richard Dale, "The South African Truth Commission," *Journal of Conflict Studies* 21, No. 2 (2001), 2.

of detection, and an increased knowledge of the truth may not necessarily reduce the trauma of the past among victims and family members. An exposé may narrow post-Apartheid South Africa's collective historical memory, but it may not convince those who were not already in favor of the TRC to begin with, and as historical narrative, it is extremely vulnerable to manipulation at the hands of its authors.

Admitting thus to some of the criticisms leveled against the TRC, such as the relativity of the final reports 'historical truth,' the fact that in South Africa inequality continues to consistently fall along racial lines, and the empirical knowledge that victim's trauma continues long after a day's worth of testimony, the current literature seeks to reconcile the goals of the TRC with its impacts. Academics are still looking for a foundational justification that recognizes the TRC will never be rehabilitated on the basis of positive empirical evidence alone; the third wave has only been able to respond to a few of the second wave's criticisms. Believing that "the most appropriate response to such problems, however, should be not to blame the commissions for what they cannot accomplish, but to appreciate them for what they indisputably can," the third wave attempts to break through the stated tradeoff in the literature and articulate an understanding of truth commissions that clarifies what they can and cannot do.¹⁵⁸ The purpose of the exercise is to determine whether, in the end, truth commissions should be kept in the transitional justice toolbox or not.

Ultimately, the literature prioritizes recognizing victories such as "the fact that there have been no revenge killings in the country since the TRC started its work,"¹⁵⁹ and that "De Klerk's political career has been ruined and he will never return to

¹⁵⁸ Tepperman, "Truth and Consequences," 144

¹⁵⁹ Ibid., 145

office.”¹⁶⁰ The third wave is certain that while “they may not have lived up to the giddy promises of their founders...both the Guatemalan and the South African commissions made invaluable contributions to the health of those countries”¹⁶¹ and that “well-planned commissions can nevertheless make an essential contribution to justice and harmony in fragile societies.”¹⁶² Reflecting the torn position of the wider literature, the commissioners themselves have admitted themselves that while “we needed more time, greater resources, better staff, better training, better internal coordination, and better management,” they nonetheless staunchly maintain, “nevertheless, it was an intense and remarkable experience, and we partially achieved some important objectives.”¹⁶³ Together with the commissioners, the third wave is equally unwilling to give up on truth commissions altogether and to make the causal claim that because they have no measurable positive impact, the experiment of truth commissions necessarily has failed and ought not be tried again. Instead, past mistakes are used as an opportunity for improvement. Pragmatically admitting to the many flaws that plagued the TRC

Is not a romantic view, but it is a useful and real perspective and one that ought to be known by those setting up or working in truth commissions around the world today. For not only must public expectations about the benefits of truth commissions be kept in check, so too must those of commissioners and commission staff.¹⁶⁴

The hope is that in documenting these shortcomings, this young embodiment of transitional justice can be improved. Above, Dale suggests that the value of the TRC

¹⁶⁰ Ibid., 145

¹⁶¹ Ibid., 144

¹⁶² Ibid., 139.

¹⁶³ Quinn and Freeman, “Lessons Learned,” 1147.

¹⁶⁴ Ibid., 1147.

is as a model. The task ahead is to decide what should be kept and what should be discarded. This begs the question: if forgiveness is stripped of meaning in the political setting of a truth commission, but reconciliation remains a goal we should stay committed to, how can reconciliation be achieved without sacrificing the value of forgiveness?

VIII. Moving Forward

In order to keep the literature on the TRC moving forward and keep reconciliation as a goal worth pursuing, I propose that a new set of expectations be advanced. Even with unlimited resources the TRC could not have met all of the expectations that had been set for it. When reconciliation means bringing about prosperous transition, sincere apologies, and a full and lasting union between a broken people and the perpetrators who wronged them, it asks for more than any truth commission could deliver. The TRC muddled up these goals, trying to take on reparations, amnesty, and forgiveness as part of its mandate, but reconstruction, unity, and conflict resolution will never be achieved through testimony alone. The reality is that the TRC represents a brief ceremonial moment in the long process of transition filled with compromises and imperfections that “stem from the imperfect situation out of which they arise.”¹⁶⁵ They are “not magic elixirs, either for individuals or societies. They have the potential to play an important role at important moments in a political transition, but they are only one among many mechanisms necessary for comprehensively dealing with a legacy of mass abuse.”¹⁶⁶ As such, they can only

¹⁶⁵ Tepperman, “Truth and Consequences,” 145.

¹⁶⁶ Quinn and Freeman, “Lessons Learned,” 1146.

contribute so much to reconciliation. However, truth commissions do have the capacity to significantly aid the process of transition.

For this to occur, I suggest that re-envisioning reconciliation without entailing the separate aim of forgiveness would help focus the goals of truth commissions and in turn make truth commissions more effective tools of transitional justice. To refocus these goals would not simply mean to make them limited to the point of being easily achievable, although reconciliation without forgiveness admittedly is less lofty a goal than reconciliation as it is currently understood. However, as chapters three and four will demonstrate, even this more limited mandate will prove to be an enormous challenge for truth commissions. For truth commissions to contribute to reconciliation, I will argue that instead of forgiveness or even truth, they will need to pursue ‘acknowledgment.’ Truth commissions are already designed to maximize public acknowledgement of past atrocities. The acknowledgment is both of the content of the testimony and the fact that in a new, transitioning society it is possible for the once marginalized to bear witness. It is an acknowledgement of the right of all citizens to speak, contribute, and collaborate in the new society’s navigation of transition. But most importantly, it is an acknowledgment of the corrupted moral code that made past atrocities possible and acknowledgment of the shared goal of rewriting this code. In chapters three and four, I will offer a more detailed account of how acknowledgment can best be prompted and what it entails.

Establishing Responsibility in the Aftermath of Atrocity

I. Reconciliation Without Forgiveness

After determining that forgiveness and reconciliation must be separate in chapter one and outlining the shortcomings of a case study that fails to meet this standard in chapter two, the question of what reconciliation without forgiveness would look like remains. I am unwilling to give up on reconciliation altogether, despite the risk that during reconciliation individuals may be coerced into inappropriate emotional involvement. Reconciliation without forgiveness is possible, so long as carefully navigating the tension between the needs of individuals and the demands of the state remain a priority. How can this be made into reality? In chapter one I described reconciliation as being the renewing of relations between two or more parties that occurs separate from internal emotions. The collaboration is fueled by faith in the fruitful future that unity will bring. If forgiveness is not going to contribute to this process in the aftermath of atrocity, then some other mechanism of addressing past wrongdoing is needed in order to bring about this collaboration since it is difficult to believe that antagonistic parties will come together on their own.

Historically, criminal trials have served this role, operating on the assumption that the rule of law engenders citizens with a common faith in their society that helps them recover in the aftermath of atrocity and rehabilitates former perpetrators. In this chapter I will argue that while criminal trials can serve as valuable instruments of transitional justice, truth commissions are better positioned to prompt unity and to open rather than close avenue for reconstruction. It is tempting to approach this

relying on the popular retributive/restorative justice dichotomy by aligning criminal trials with the former and truth commissions with the latter. Retributive justice is retroactive by definition, making it “backward looking rather than promoting social renewal,” while restorative justice attempts to deal with transgressions through its forward-looking stance, aiming for reconciliation and restoration.¹⁶⁷ However, this dichotomy does not do the legwork needed to complete a fair comparison of criminal trials and truth commissions, because both kinds of justice look backwards as well as forwards in their proceedings. Punishment is not only about revenge and truth commissions do not always achieve healing. A more fruitful point of comparison is the use of punishment in criminal trials and its absence in the amnesty of truth commissions.

By focusing on what punishment seeks to accomplish rather than assuming it is revenge, my analysis avoids the pitfalls of the restorative/retributive justice dichotomy. Comparing instead instances of criminal prosecution to the institution of amnesties, I will argue that the primary purpose of prosecution is not revenge but rather the reestablishment of social norms, a goal that amnesty is equally able to accomplish. This may seem counterintuitive, as amnesties are often thought of as a possible “soft option” for corrupt governments that tend to undermine social norms rather than establish them.¹⁶⁸ However, I will argue that there are two kinds of amnesty—blanket amnesties that leave past abuses unchallenged and conditional amnesties that are accompanied with public acknowledgment of wrongdoing—and

¹⁶⁷ Eric Brahm, “Uncovering the Truth,” *International Studies Perspectives* 8, No. 1 (2007): 17.

¹⁶⁸ *Ibid.*, 22.

that in the context of truth commissions only the latter are relevant. Justice primarily comes from public recognition that certain actions trespass against agreed upon rules. Punishment's role is only one way of marking this recognition and I will show that truth commissions are ultimately better suited than criminal trials to this herculean task of securing public reaffirmation of social norms and process the enormous quantity of guilt faced by transitional nations.

II. Retributive Justice

Historically, conflict resolution has been the province of criminal trials, which constitute the retributive form of justice. For hundreds of years trials have provided the setting in which perpetrators and victims have negotiated questions of guilt and reconciliation through reparations “and have been the standard mechanism for arranging punishment.”¹⁶⁹ Criminal law serves to “deter future offenses, to segregate dangerous individuals, and to give victims a sense that their sufferings have been addressed” through punishment.¹⁷⁰ Trials have evolved and adapted enormously since their inception, depending on the needs of the cultures and societies that rely upon them. As the articulation of legal norms became more refined and the scope of recognized crimes grew, this institution of justice kept pace and remained the mediating tool of choice. For most societies, some variation of judicial proceedings is synonymous with the very notion of justice; rarely is justice thought to take other forms. Retributive justice is driven by the logic of revenge; wherein justice is the infliction of suffering on the wrongdoer commensurate with the harm the criminal has imposed on his victims.

¹⁶⁹ Tepperman, “Truth and Consequences,” 130.

¹⁷⁰ Morton, *On Evil*, 133.

Revenge as justice is problematic, because it runs the risk of becoming the justice of victors, such as during the Nuremberg trials or President of Zimbabwe Robert Mugabe's decision to undertake large-scale land redistribution from white Zimbabweans. Such tactics, "with their emphasis on absolute justice, are only possible where there is a clear military victory."¹⁷¹ Without the tempering effect of accountability, victor's justice can walk the line between a legal system based on the principals of proportional retribution and unadulterated revenge. The later can be counterproductive to the goals of justice because it tends to perpetuate violence rather than address it, preventing crimes from being "safely...fixed in the historical past;" instead "they remain locked in the eternal present."¹⁷² Revenge is also problematic for those who believe punishment to be the imposition of a second evil, separate from the initial crime act. Those who believe violent acts to be immoral regardless of the context "feel uncomfortable seeking revenge and intentionally making [the perpetrator] suffer."¹⁷³ For some the utilitarian gloss cannot justify retribution and even if punishment is "useful inasmuch as it makes amends or discourages a fresh offense... the initial offense remains and the "price" is always (even if it is "just") a new offense and a new source of pain."¹⁷⁴ Doubling the suffering created by the initial act of wrongdoing through punishment cannot make up for the fact that ultimately "when an act of violence or an offense has been committed it is forever irreparable."¹⁷⁵ Revenge only adds to the first offense a second irreparable act, the

¹⁷¹ Lyn S. Graybill, "Ethical and Theological Perspectives," *Ethics & International Affairs* 12, No. 1 (1998): 61.

¹⁷² Minow, *Between Vengeance and Forgiveness*, 14.

¹⁷³ Lamb, *The Trouble with Blame*, 166.

¹⁷⁴ Levi, *The Sunflower*, 191.

¹⁷⁵ *Ibid.*, 191.

responsibility for which lies in the prosecutor's hands. Such dirty hands make "pure retribution ...unsavory."¹⁷⁶

III. Restorative Justice

Restorative justice is less reliant on precedent and is not as strictly committed to the strongly rational approach employed by retributive justice. In fact the "lack of trials is an essential aspect of the commissions' identity and a lightning rod for supporters and critics alike. The commissions generally operate without judges, courtrooms, and the cumbersome trappings (and safeguards) of legal procedure."¹⁷⁷ Instead, truth commissions operate on the assumption that there is value in bringing emotion, personal testimony, and partiality into the political sphere in order to attend to the needs of both victims and perpetrators and the trappings of legal procedure would hamper that goal. Therefore, "rather than privileging the law, professionals, and the state," restorative justice engages "those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships" to "reestablish mutual responsibility for constructive responses to wrongdoing."¹⁷⁸ When South Africa opted to pursue restorative rather than retributive justice, it chose amnesty over criminal trials in the hopes of sidestepping the "bitterness and frustration" that results from "unsuccessful prosecutions."¹⁷⁹

¹⁷⁶ Lamb, *The Trouble with Blame*, 166.

¹⁷⁷ Tepperman, "Truth and Consequences," 130.

¹⁷⁸ "What is Restorative Justice?" *Suffolk University, Center for Restorative Justice*. Accessed February 10, 2011. <<http://www.suffolk.edu/research/6953.html>>.

¹⁷⁹ Archbishop Desmond Tutu, foreword to *Truth Commission Report*, by Commission on Truth and Reconciliation, (2003): 1. <http://www.info.gov.za/otherdocs/2003/trc/5_7.pdf>

While truth commissions are driven by the noble hope that “by avoiding prosecutions, they can delve widely into institutional injustices in the past. And by broadening their focus commissions allow victims, not just violators, to tell their stories,” this is only “how truth commissions are supposed to work” in theory.¹⁸⁰ One of the problems with restorative justice, however, is that some who practice it feel it is an incomplete form of justice, as wrongdoing is ultimately left unpunished. Willie Hoffmeyr, a member of the ANC Parliament writes of the decision to pursue amnesty: “we had to accept very early on that we would not get *complete* justice...We could have chosen the revolution and overthrow route, but we chose the negotiations route, and that means having to live and work with and rebuild the country together with people who have treated us very badly in the past and against whom we have very strong feelings.”¹⁸¹ Even when the victims are attended to and communities are rebuilt, there can remain strong dissatisfaction at the idea of allowing perpetrators to maintain all the rights of a normal citizen without having to pay dues for their transgressions.

However, the reality is that the decision to pursue criminal trials in the aftermath of atrocity is constrained by a number of factors. Given that it is “impossible to try everyone” and “pursuing legal accountability may be morally inappropriate and practically difficult where crimes have been widespread and occurred long ago,” trials may be out of the question even when there are no objections to using retributive justice.¹⁸² More common, however, are the obstacles

¹⁸⁰ Tepperman, “Truth and Consequences,” 131.

¹⁸¹ Graybill, “Ethical and Theological Perspectives,” 61. Italics mine.

¹⁸² Brahm, “Uncovering the Truth,” 18.

posed by the political landscape during transition. One study has shown that “the balance of forces at the time of the transition is frequently implicated as the most important variable in explaining where truth commissions are likely to emerge.”¹⁸³ Truth commissions provide a realistic compromise for weak governments in transition. Former regimes are more willing to acquiesce to holding them, as they are not punitive like retributive trials.

In South Africa, because “the ANC did not ride victorious into Pretoria on tanks but rather came to power through a negotiated settlement,” the restriction of compromise was a political reality for the post-Apartheid government.¹⁸⁴ “The National Party demanded that its supporters be indemnified from criminal prosecutions through an amnesty agreement,” and this ultimately trumped the many voices pushing for retributive justice at the time.¹⁸⁵ The 1994 Promotion of National Unity and Reconciliation Act therefore “focused on the construct of restorative justice rather than on retributive justice” because it was “the result of a negotiated settlement between representatives of the old and the new regimes, which took into account the slim chances of successful prosecution of perpetrators.”¹⁸⁶ Dullah Omar, one of the ANC negotiators, explained the chance to establish a stable democracy was worth more than the prison sentences of Apartheid’s criminals: “the amnesty clause in our interim constitution is the result of political negotiations...without that amnesty provision, there would have been no political settlement. It was the one issue that

¹⁸³ Ibid., 29.

¹⁸⁴ Graybill, “Ethical and Theological Perspectives,” 61.

¹⁸⁵ Ibid., 61.

¹⁸⁶ Dan Stein, Soraya Seedat, Debra Kaminer, Hashim Moomal, Alien Herman, John Sonnega, and David R. Williams, “The impact of the Truth and Reconciliation Commission on psychological distress and forgiveness in South Africa,” *Social Psychiatry* 43, No. 6 (2008): 463.

stood in the way of democratic elections...and we had to concede that the amnesty problem would be dealt with after the elections.”¹⁸⁷ As this case illustrates, without the option of truth commissions, only clear winners would have an avenue for post-conflict resolution.

IV. A Limiting Dichotomy

While the dichotomy between these two kinds of justice has some clarifying value, it is largely unhelpful as a theoretic tool as it is overly simplistic. Already the terms ‘retributive’ and ‘restorative’ carry negative and positive implications respectively. When set in opposition, their goals become similarly polarized. The former seems focused on backwards looking punishment and revenge and the latter on forward looking reconciliation and rebuilding. Retributive justice, as embodied by criminal trials, seems to represent a medieval, vengeance-driven morality, while restorative justice appears enlightened and modern. While there are important distinctions between criminal trials and truth commissions, both attempt to balance backward and forward looking stances. Judges in criminal trials consider the retroactive question of retribution alongside the proactive issues of deterrence and rehabilitation. Commissioners of truth commissions are concerned with future nation rebuilding, but recognize that it will follow from a well-documented and agreed upon past. Additionally, although the rigidity that precedent imparts on criminal trials gives retributive justice an ethic of inflexibility while restorative justice seems better equipped to adapt to the local needs of each community, too much flexibility is not always desirable, as it can come at the expense of legality and proportionality.

¹⁸⁷ Graybill, “Ethical and Theological Perspectives,” 61.

Finally, despite the appearance that retributive and restorative justice are fundamentally at odds in their goals, truth commission expert Priscilla Hayner has argued that “truth commissions increase the possibility of prosecutions rather than the other way around.”¹⁸⁸ Therefore, not only are both criminal trials and truth commissions attempts to support the notion of justice and reinforce the rule of law, but also in a practical sense, more than one prosecution has been secured using evidence gathered during truth commissions and many truth commissions have existed alongside on-going criminal prosecution.

Some authors, who worry that the normative ethic embodied by international criminal justice represents another arm of Western morality, have grabbed onto this contrast between the strict universalism of Western legal standards and the adaptable, particular approach of truth commissions. In a culturally sensitive gloss of African justice, these authors cite the African philosophy of ‘ubuntu’ as exemplifying an alternative better suited to traditions that fall outside the Western cultural hegemony. Archbishop Desmond Tutu, speaking on the Truth and Reconciliation Commission in a *New Yorker* article outlined these “different kinds of justice. Retributive justice is largely Western. The African understanding is far more restorative—not so much to punish as to redress or restore a balance that has been knocked askew.”¹⁸⁹ However, when the retributive/restorative dichotomy becomes aligned with the forms of justice supposedly practiced by the global north and south, the ability to talk about universal norms of right and wrong is compromised. While a definition of justice should allow for local flexibility and its advocates should be careful to look for the ways their own

¹⁸⁸ Tepperman, “Truth and Consequences,” 143.

¹⁸⁹ Tina Rosenberg, “Recovering from Apartheid,” *New Yorker*, November 18, 1996, 88.

cultural lens may confuse that which is particular to the West and that which is universal, there is no reason to close out universal norms from justice altogether. Additionally, this assignment of styles of justice to differing cultures makes certain articulations of justice exotic and its practitioners foreign. The suggestion that other nations need an altogether different kind of justice adds divisions where none are needed and only serves to entrench the distinction between the West and the other.

Instead of relying on the retributive/restorative dichotomy that pervades the literature on transitional justice, I propose focusing on the variable of punishment in order to determine whether criminal trials or truth commissions are better suited to bring about reconciliation without forgiveness. I argue that the alternatives of criminal prosecution and amnesty represent more than simply backwards and forwards looking responses respectively, but rather that both primarily attempt to reestablish social norms in the aftermath of atrocity. The goals of revenge and pardon are secondary to this primary aim. Because justice is primarily derived from socially agreed-upon standards of moral behavior, truth commissions are better placed to promote justice because they go farther in re-establishing these standards. This may seem counterintuitive, since restorative justice tends to be accompanied by amnesties, which are controversial and tend to arise where the guilty retain power and block the implementation of criminal justice. However, I will argue that there are two kinds of amnesties—those implemented out of denial that leave the status quo unchallenged and those accompanied with a public acknowledgment of wrongdoing—and that while the former is an inferior option to criminal trials, the later is a viable and potentially preferable substitute.

V. Signaling Justice

During the Truth and Reconciliation Commission, even though restorative justice was agreed upon and pursued, “the renunciation of punishment” ultimately constituted “the most controversial aspect of the TRC.”¹⁹⁰ That the TRC’s failure to punish was seen as the largest shortcoming of this instance of restorative justice signals that punishment’s role in transitional justice is not superficial, but a key variable in determining the differing advantages and set backs of criminal trials and truth commissions. For many, punishment is inextricably linked to their notions of justice. In her book *Between Vengeance and Forgiveness*, Martha Minow writes that while retributive justice has its drawbacks, “vengeance is also the wellspring of a notion of equivalence that animates justice.”¹⁹¹ When punishment is cut out of the system of justice altogether, victims must suffer the indignity of victimhood without recourse to action. This sends the message that “the victim was less worthy or valuable than the wrongdoer,” and that the victim’s understanding of the shared social code is less important than the perpetrator’s self-seeking interpretation.

The victims’ unjust suffering creates an inequality between those who violate social norms and those who are the casualties of those violations, an inequity that is rectified when the perpetrators suffer justice. Many find great reassurance in the idea that their society upholds the ideal of giving perpetrators their ‘just deserts.’ Jean Améry, one of the Sunflower symposiasts and a Holocaust survivor, points out that Wiesenthal took up Nazi hunting after the Holocaust, and went on to “make sure that the arm of worldly justice, weak and ineffectual as it is, still reaches...[the criminals]

¹⁹⁰ Graybill, “Ethical and Theological Perspectives,” 57.

¹⁹¹ Minow, *Between Vengeance and Forgiveness*, 10.

who live here among us.”¹⁹² Améry believes that in the end, it is Wiesenthal’s career in criminal prosecutions rather than his sensitive response to a dying Nazi’s confession or the story he tells in *The Sunflower* that really has left a more lasting significance.¹⁹³ Given this understanding of fairness, “no trial means no justice” and truth commissions are guilty of creating this perversion of justice.

By preventing the reinstatement of balance between victim and perpetrator, amnesty is an inadequate substitute.¹⁹⁴ Reed Brody of Human Rights Watch offers Haiti as an argument against prioritizing truth commissions over criminal trials, as Haiti was “told by international donors that it would get no support for prosecutions of past crimes because a truth commission for the country had already been funded.”¹⁹⁵ This is a problem for truth commissions as they rely on the self-incriminating testimony of perpetrators, testimony that commissions can only coax out with promises of pardons and amnesty. By using amnesty these “deals with the devil” send the message that while the legal system acknowledges a class of acts as criminal, certain actors can commit them without punishment.¹⁹⁶ Not only unfair to victims who have suffered substantial and long-term losses, this arbitrariness also undermines the rule of law. This can have a detrimental impact on the long-term legitimacy of the new state. This is particularly pertinent when the pardons are not rare exemptions for outstanding cases, as they would be in a normally functioning judicial system, but blanket amnesties for entire regimes and when their crimes are human rights violations of the largest magnitude.

¹⁹² Jean Améry, *The Sunflower*, 109.

¹⁹³ *Ibid.*, 109.

¹⁹⁴ Graybill, “Ethical and Theological Perspectives,” 58.

¹⁹⁵ Tepperman, “Truth and Consequences,” 143

¹⁹⁶ Brahm, “Uncovering the Truth,” 22.

Steven Alkalaj, one of the symposiasts in *The Sunflower*, points out that the crimes in these circumstances are too grave and too large to be ignored and argues “if genocide goes unpunished, it will set a precedent for tomorrow’s genocide.”¹⁹⁷ Alkalaj further wonders how a nation could even go on to consider forgiveness or reconciliation if perpetrators have not been punished first, writing, “without justice, there can never be reconciliation and real peace.”¹⁹⁸ If the transition government contains a lot of these pardoned criminals, commissioners may undermine the commission’s purpose by insuring that they will have “no enforcement powers to see their will done.”¹⁹⁹ This leaves them “largely toothless,”²⁰⁰ and ultimately able to accomplish for the “victims, too little” and “for perpetrators, and perhaps bystanders, too much.”²⁰¹ By this account, punishment is the best way to change moral codes and to prevent victims from feeling forgotten, overpowered or helpless in the face of known and unknown truths.

VI. Amnesty Or Amnesia?

However, since there are two kinds of amnesty, the criticism that truth commissions implement unjust amnesties is somewhat misdirected, because truth commissions are coupled with productive and conditional amnesties rather than blanket amnesties. Incompatible with truth commissions, the latter occurs when perpetrators retain power and institute blanket amnesties so that they will not need to confess, undergo punishment, or make any repayments towards their victims. Instead they institute a norm of silence as an “insurance policy...to protect the given order,

¹⁹⁷ Alkalaj, *The Sunflower*, 104.

¹⁹⁸ *Ibid.*, 104.

¹⁹⁹ Brahm, “Uncovering the Truth,” 22.

²⁰⁰ *Ibid.*, 22.

²⁰¹ *Ibid.*, 23.

even at the cost of truth.”²⁰² Support for silence tends to come from those who fear that opening discussions on past abuses will prove to be too tumultuous for their young, transitioning nations. Rather than perpetuate the strife and bitterness initiated by the original conflict, leaders prefer to move on and leave the past untouched.

Amnesty serves as a:

Legal remedy providing a way in which societies wrestling with intractable political and social conflicts can draw an arbitrary line separating a then when legal and other grievances were pursued and a now when, in the interest of the collective, no further reckoning is permitted... It tries to bypass the paralysis, which can attend to the settling of scores *ad infinitum*.²⁰³

Leaders, believing that dialogue will only reopen painful wounds and lead to more violence, make blanket amnesties on entire armies or echelons of public servants who helped maintain the former regime’s mores. These “political or strategic silences” are justified by the “hope...that the passage of time can lower the temperature of disputes about these events, or even heal the wounds they cause,” without ever needing recourse to more active forms of treatment.²⁰⁴

Such silence on the part of the state is obviously an unacceptable and unstable response to the atrocities of mass violence. While it saves the young transitioning nation from facing the potentially destabilizing process of holding former regimes accountable, it also sets a precedent in which the rule of law has already been entirely undermined before a new nation can even get off the ground. For a nation seeking to head in the direction of democracy, its “consolidation...can only be complete when the populace begins to internalize democratic norms. These norms include rule of

²⁰² Efrat Ben-Ze’ev, Ruth Ginio, and Jay Winter, *Shadows of War; A Social History of Silence in the Twentieth Century* (New York: Cambridge University Press, 2010), 29.

²⁰³ *Ibid.*, 17-18.

²⁰⁴ *Ibid.*, 5.

law, individualism, and personal responsibility.”²⁰⁵ By opting to ignore past human rights abuses, rule of law is not upheld, responsibility for old crimes is assigned to racial groups or large institutions rather than to the individuals actually responsible, and bystanders are not made to recognize their implicit role. This use of silence by a transitional state can take the form of the active institution of blanket amnesties or the passive omission of the past from history books and public discourse. In the late 1970s, for example, at the end of Francisco Franco’s dictatorship, “Spain’s new democracy chose peace over justice, order over the open investigation of the abundant evidence on atrocities,” and the new socialist government opted not to look into the abuses committed during the 1936-39 civil war.²⁰⁶ In this sense, silence is a cheap solution because it requires little action or sacrifice from leaders, as they need not acknowledge their own possible complicity in the conflict or the potential reparations due to the victims. Instead, it is up to the victims to bear the cost of the previous regime’s costly decisions, as they are robbed the right to apologies, confessions, retributive punishment, or reparations.

This policy of silence precludes the possibility of discussing past abuses altogether and endorses the “shocking implication that the perpetrators in fact succeeded, a stunning indictment that the present audience is simply the current incarnation of the silent bystanders complicit with oppressive regimes.”²⁰⁷ Amnesty thus allows evildoers to set a tone of amnesia in which the status quo that existed

²⁰⁵ Emily B. Rodio, “Settling Past Accounts: Assessing the Impact of Truth Commissions on Democratization” (paper presented at the annual meeting of the International Studies Association 48th Annual Convention ‘Politics, Policy and Responsible Scholarship,’ Hilton Chicago, Chicago, February 28, 2007), 6.

²⁰⁶ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 5.

²⁰⁷ Martha Minnow, *Between Vengeance and Forgiveness*, 5.

during the previous regime continues for lack of opposition. The status quo is maintained by those in power:

Who at one point in time deem it appropriate that there is a difference between the sayable and the unsayable, or the spoken and the unspoken, and that such a distinction can and should be maintained and observed over time. Such people codify and enforce norms, which reinforce the injunction against breaking into the inner space of the circle of silence.²⁰⁸

Until silence is broken, it allows for “a continuation of [evildoer’s] crime” and allows the moral code that allowed evil to take place to remain unchallenged.²⁰⁹ There comes to be a reinforcement mechanism between the inaction of the bystanders and the silence of the regime; “by implicitly exemplifying the undiscussability of atrocities and abuser, such *silent bystanders* essentially enable their denial.”²¹⁰ It suits those who failed to act to remain silent on their inaction, and it suits those in power to capitalize off this silence in order to fuel their public denial of past events, which in turn weakens “the cultural capacity and resources needed to bear witness,” in the aftermath of the trauma.²¹¹ Without a clear break from this past of abuse and silence in the face of abuse, “even if we refuse to deal with the past, the past would be still dealing with us.”²¹²

Thus, while the lack of acknowledgment that accompanies amnesties may appear on the surface to be the *failure* to act, they ultimately constitute an actively “socially constructed space in which and about which subjects and words normally

²⁰⁸ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 4.

²⁰⁹ Manes Sperber, *The Sunflower*, 248.

²¹⁰ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 38.

²¹¹ *Ibid.*, 155.

²¹² Nenad Dimitrijevic, “Justice Beyond Blame: Moral Justification of (The Idea of) A Truth Commission,” *The Journal of Conflict Resolution* 50, No. 3 (2006): 379.

used in everyday life are not spoken.”²¹³ Therefore the decision to remain silent is not omission but commission by those empowered to define the scope of acceptable discourse. Leaders engage in the conscious, political act of establishing boundaries around “the sayable and the unsayable” in public discourse, and individuals make the purposeful decision to stay within those boundaries. The silence is over facts and truths that are generally known, but cannot be spoken about publically. These “uncomfortable truths hidden in plain sight”²¹⁴ are created through the “phenomenon commonly known as a *conspiracy of silence*, whereby people collectively ignore something of which each one of them is personally aware.”²¹⁵ For these conspiracies to work, all parties must be engaged in the task of silence, as “it takes at least two persons to dance the familiar conspiracy tango—one not to tell, the other not to ask.”²¹⁶ Once established, these norms are perpetuated by the “underlying *meta-silence*, the fact that the silence itself is never actually discussed among the conspirators.”²¹⁷ Meta-silence reflects the internalization of the artificial injunctions on speech created through political maneuvers by those in power. Individuals play along, coerced by both their “personal sense of comfort” and a “collectively imposed taboo.”²¹⁸ The result is a chorus of silence.

VII. The Worrying Paradox

However, all of these critics fail to note that the very crimes they claim cannot be left unpunished are precisely those that perpetrators cannot adequately be punished

²¹³ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 4.

²¹⁴ *Ibid.*, 32.

²¹⁵ *Ibid.*, 32.

²¹⁶ *Ibid.*, 36.

²¹⁷ *Ibid.*, 39.

²¹⁸ *Ibid.*, 39.

for. How can a perpetrator be punished for mass murder and torture when they only have one life to give? Amnesty may be unsatisfying, but so too is punishment. Card notes in the passage below that even when perpetrators are brought to justice, a remainder of suffering continues to exist:

Punishment goes some way towards neutralizing resentment by acknowledging the injustice and removing at least some of the offender's profit from it. Yet punishment does not go the whole distance...punishment need not do anything to alleviate harm suffered by victims of the offense. Victims are sometimes surprised at how unsatisfying it can be simply to see the offender brought low, especially if the crime was atrocious and its harm enduring²¹⁹

Card hints above that it is the victims of crimes that generate lifelong suffering and loss who are most likely to be left unsatisfied; it seems that there is more to justice than retribution. For some victims, watching perpetrators go through the criminal trial system is not enough to bridge the gap between the harm they have suffered and the perceived harm they have made their perpetrators suffer through punishment, even when the harshest sentences are delivered. Furthermore, the victim may ultimately find that the severe retribution they demanded in anger become a burden on their own conscious. Based on the principal of proportionality, "the obvious angry response to murder is to kill the murderer." However, the logic breaks down quickly, as "a person can only die once, so we are left with no scaled-up response to multiple or atrocious murder." To scale up would mean adding torture to the revenge murder or killing the perpetrators family members, but for many victims "the price ... has become too

²¹⁹ Card, *The Atrocity Paradigm*, 171.

high: we cannot do this while keeping our own self-respect. In extreme cases it just isn't possible to feel an appropriate amount of anger; it would kill us."²²⁰

In these contexts the crimes are often so terrible or so widespread (or both) that punishment seems ill suited to achieve the goals of retribution, as it cannot match the scale of the original wrongdoing. Morton also picks up on the disconnect between atrocities and criminal prosecutions, writing: "There is a worrying paradox here: some acts are beyond forgiving, but they are beyond punishment too, as nothing one could do to individual perpetrators would be proportional to what they [have] done."²²¹ Card writes in *The Atrocity Paradigm* that "torture, for example, is seldom punished and that when it is, the penalties tend not to be commensurate with the offense and are usually inflicted on lesser ranking perpetrators rather than on those responsible for the orders."²²² This was precisely what occurred during a recent and long overdue trial for war crimes committed during the Cambodian Genocide. The commandant of the notorious S-21 Detention Center, Kaing Guek, was sentenced nineteen years for his role in the torture and deaths of over 14,000 people.²²³ That roughly works out to Guek serving one day for the deaths of two Cambodians every day of those nineteen years. Faced with these numbers, the logic of retribution falls apart, especially given that it is unlikely that those most responsible for the genocide will live to be prosecuted (Pol Pot has already died).²²⁴ In another example, at the Tehran Conference before the Nuremburg Trials, Joseph Stalin suggested that the

²²⁰ Morton, *On Evil*, 131.

²²¹ Ibid., 124-125.

²²² Card, *The Atrocity Paradigm*, 171.

²²³ Phnom Penh, "Scarred, not Healed," *The Economist*, July 29, 2010. <<http://www.economist.com/node/16703385>>.

²²⁴ Ibid.

allies execute anywhere from 50,000 to 100,000 German staff officers. Highlighting the ludicrous logic underlying the request, Franklin D. Roosevelt jokingly offered that perhaps 49,000 would suffice.²²⁵ However, in these cases, amnesty is no more satisfying than prosecution. Pardoning all the Nazis would have been no better a suggestion and would have struck many as terribly unjust.

Arendt famously wrote that because “the alternative to forgiveness, but by no means its opposite, is punishment, and both have in common that they attempt to put an end to something that without interference could go on endlessly” it follows that “men are unable to forgive what they cannot punish and that they are unable to punish what has turned out to be unforgiveable.”²²⁶ For Arendt, such acts earn the Kantian label of ‘radical evil,’ as they “transcend the realm of human affairs and the potentialities of human power, both of which they radically destroy wherever they make their appearance.”²²⁷ Does this mean we cannot punish where we cannot forgive or those acts that qualify as truly diabolically evil? While Derrida disagrees that what cannot be punished is the same as what cannot be forgiven and writes “the juridical concept of the *imprescriptible* is in no way equivalent to the non-juridical concept of the unforgiveable,” he does not deny that the imprescriptibility of certain crimes remains a problem.²²⁸

Both Arendt and Derrida agree that punishment in certain contexts falls short: there are evils too big or too deep to find their reciprocals in the statutes. Card points out that punishing unforgiveable crimes is problematic “if punishing allows

²²⁵ Simon Sebag Montefiore, *Stalin: The Court of the Red Tsar* (New York: Random House, Inc., 2003), 470.

²²⁶ Arendt, *The Human Condition*, 241.

²²⁷ *Ibid.*, 241.

²²⁸ Derrida, *On Forgiveness*, 33.

the offender to pay for the crime and thereafter be done with it.” However, she takes on Arendt, pointing out that if “we cannot forgive what cannot be paid for,” we are left able to “forgive only ordinary wrongs, not extraordinary ones” when “it is for extraordinary wrongs that forgiveness seems most needed and valued.”²²⁹ Derrida shares this view with Card, although he diverges with her on its implications. While Derrida concludes that forgiveness should have no role in the politics of transition, Card believes “not that we *cannot* forgive extraordinary wrongs but that often we ought not, that forgiveness should be granted only slowly and with caution, depending on what else the perpetrator does (by way of confession, apology, reparation, regeneration).”²³⁰ While Derrida’s deconstructive approach has no pragmatic traction, Card’s conditional forgiveness opens up an avenue for understanding the difficulty of addressing unforgiveable crimes.

VIII. Amnesty with Acknowledgment

By making forgiveness contingent on confession, apology, reparation, and regeneration, Card draws attention to perpetrator responses. These gestures signal that the perpetrator also understands her previous actions as transgressions of the social order and is willing to make up for prior acts. This is significant because victims do not only seek the satisfaction of revenge, but also affirmation: the simple acknowledgement that they have been wronged. In fact, Sharon Lamb, who has had extensive experience as a practicing clinical psychologist, writes “it is my experience that victims are *primarily* looking for some larger group, some human company to join them in labeling what happened to them as wrong and to acknowledge that they

²²⁹ Card, *The Atrocity Paradigm*, 176.

²³⁰ *Ibid.*, 176.

have been injured.”²³¹ Primo Levi corroborates this, writing of “ the common nightmare of camp inmates of eventually escaping and then “telling their story and not being listened to.”²³² If nothing else, the victim knows the crime to have been an act of injustice, allowing her to maintain in her own mind the distinction between right and wrong that the perpetrator lacked during the commission of the crime. This acknowledgement is crucial, particularly in places where human rights abuse has become the norm and crimes have become woven into the institutional fabric of the nation.

In these circumstances, crimes are no longer only private acts between individuals. They become reaffirmations of the perverted social code and these “public crime calls for public confession.”²³³ This is precisely the public signaling that punishment seeks to accomplish. That sentences imposed through criminal trials are able to communicate “social values in a broad and explicit way” is “one of the strongest arguments for punishment.”²³⁴ Punishment serves as a public marker for the transgression of social norms, which “can communicate something important to the victim. Although it does not erase the crime or the injury, it pronounces social opinion about her relative responsibility, proclaims that what happened to her was wrong, validates her rights, and thus allows her the luxury of not having to overstate her own rights and her own suffering.”²³⁵ Revenge is secondary to this initial acknowledgement, as revenge already assumes a wrong has been committed. But if

²³¹ Lamb, *The Trouble with Blame*, 168. Italics mine.

²³² Morton, *On Evil*, 131.

²³³ Mary Gordon, *The Sunflower*, 153.

²³⁴ Lamb, *The Trouble with Blame*, 167.

²³⁵ *Ibid.*, 169.

the victim lacks this primary step of external affirmation, they may come to believe that no crime has occurred.

This is important. If victims do not only seek the satisfaction of revenge, but also affirmation, and if this acknowledgement constitutes the crucial, primary step in the process of reconciliation, then a new avenue has been opened for dealing with unforgiveable and un-punishable crimes. Punishment is tangential to this redress, so long as acknowledgment is secured in some form. Above I demonstrated how blanket amnesties promote the opposite of acknowledgment by institutionalizing denial. However, amnesty does not need to imply denial and the lack of criminal prosecutions is not synonymous with silence. During truth commissions, any amnesty that takes place necessarily is occurring side by side with the investigation into the truth. Passive and active silence is undone by the work of the commission, which publically acknowledges the abuses of the past era. Amnesty in this context, therefore, serves a very different role. For example, during the TRC, perpetrators were granted amnesty after demonstrating a willingness to participate in the larger process of reconciliation by coming forwards and testifying.

IX. Turning Perpetrators into Citizens

In this moment, when the perpetrator comes forward to acknowledge that she has broken the social contract, she not only acknowledges the agreed upon moral code, but also that something positive must be done to return balance to the social order. Punishment, through the imposition of suffering, is also meant to extract from perpetrators the realization that a debt to society has been incurred and must be repaid. It is not clear, however, that punishment is the best way of bringing this

realization about or exacting this payment. It is true, amnesty on its own is an inadequate form of justice, because it cannot afford victims the acknowledgment they deserve. But the punishment of perpetrators for serious human rights abuse can also leave victims unsatisfied, as it does not necessarily beget a willingness among the perpetrator to make amends and when it does, there is little an incarcerated or executed criminal can do to contribute to the rebuilding of society. Truth commissions, on the other hand, through the way they are set-up and the message they send, are able to instill within participants a sense of responsibility without recourse to punishment. In this regard, they provide a service that criminal trials cannot deliver as effectively. Truth commissions help to engender responsibility both among the perpetrators by focusing on the reinstatement of perpetrators as citizens rather than outcasts, and among the wider population by involving them into the process as active audience members.

Truth commissions help make citizens of perpetrators because they do not use the coercion central to criminal trials. Punishment may signal to the perpetrator that they have violated society's norms, but it will not necessarily prompt remorse. Lamb writes of her experience working with victims of sexual assault, where "several perpetrators who have admitted their wrongs to their victims in private... lied about and denied their offenses in the more public spheres of the courts." Adversarial trials prompt such inconsistencies wherever they are in operation because "democratic guarantees protecting the rights of defendants place those rights at least in part ahead of truth-seeking."²³⁶ Within these courtrooms, every fact is contested and truth

²³⁶ Minow, *Between Vengeance and Forgiveness*, 9.

belongs to the side best able to fit their story to the legal precedent. There is an incentive for perpetrators to convince themselves that the law was on their side, or that some valid exception is at play in their case. Therefore when punishment is imposed, it is often on an individual who truly believes the law ought not apply to them in this instance. Lamb notes that in this case, punishment “work[s] in such a way as to invite denial,” when it should instead “invite remorse, penance, self-reflection.”²³⁷ While truth commissions may also be unable to extract remorse from every perpetrator, by opting out of punishment I believe they avoid antagonizing potential sincere repenters in this same way. While perpetrators in truth commissions opt to come forward on their own accord, incarcerated criminals become involved with this system of justice against their will and may therefore never come to atone. They may instead remain unrepentant, acquiring only a sense of bitterness and restlessness over time. Alone, punishment will not tempt many perpetrators to think seriously about their previous actions or re-evaluate whether the beliefs they held prior might actually be immoral. In this context, I believe the truth commissions do a better job of engendering reconciliation.

Punishment only bestows pain on the punished; it does not necessarily bestow the knowledge that the suffering is deserved. Lamb uses the apt metaphor of the milder disciplinary action taken on children: “with children, “time-outs” have little impact unless combined with supports that help children use their “time-outs” constructively. Isolation in and of itself does not bring about self-reflection.”²³⁸ The analogy is helpful; the child initially needs to be taken out of the context of the

²³⁷ Lamb, *The Trouble with Blame*, 172.

²³⁸ *Ibid.*, 170.

wrongdoing so that they can come to associate the removal from the original space with their bad behavior. But time outs only work if, once punished, the child desires to return into the company of others. Sending a student to detention who would rather sit in silence doing nothing than working in the classroom is only reinforcing the refusal to participate. So while punishment reestablishes the balance of fairness and reinforces societal norms, “there remain questions of individual response. How are perpetrators and victims to think, feel, and act in relation to one on another after an atrocity, even if such measures are taken?”²³⁹ Separating perpetrators from society may be an effective method of imposing the victim’s revenge on the perpetrator, but revenge is a fleeting goal. In order to create a lasting relationship between the perpetrator and their victim (or society at large where there is not living victim), there must be something more than punishment.

Card writes: “for punishment to reform the wrongdoer, there has to be a chance for repentance and a chance for reparation;” the perpetrator needs to feel that they are working towards re-admittance into society.²⁴⁰ During truth commissions, perpetrators are asked to come forward on their own, invited back into the fold of the public sphere rather than forced into its margins. In the United States, felons lose a host of rights afforded to normal citizens even after their period of incarceration has ended. Many opportunities for employment are closed to felons and housing can be difficult to secure. Depending on the state, felons may be barred from voting while on parole, probation or in many states, the right is revoked permanently. Besides the literal removal from society that incarceration represents, these lost rights are also

²³⁹ Card, *The Atrocity Paradigm*, 172.

²⁴⁰ *Ibid.*, 172.

symbolic of the legal system's bias towards exclusion rather than inclusion. This is why Sharon Lamb suggests we shift the attention from society's response onto the actions of the perpetrator, writing:

When we focus on blaming perpetrators, we put aside questions of whether victims or society should forgive them, asking instead whether perpetrators should forgive themselves, whether they should indeed beg for forgiveness. When a perpetrator asks to be forgiven, he acknowledges that his violations are to be resented—he, we hope, repudiates his act. By expecting this acknowledgement from perpetrators we help them to focus on *their* responsibility, leaving forgiveness to be dealt with at some later time, quite possibly the very distant future.²⁴¹

For Lamb, the act of requesting forgiveness is more important than forgiveness or punishment, because as a signal it contains more information; it demonstrates both remorse and willingness to reform. Given that “offenders who do not take responsibility for their crimes, or who blame their victims, have a higher recidivism rate,” this willingness of the perpetrator to cooperate is crucial.²⁴² Ultimately it is “responsibility” and not amnesty or forgiveness that “is the key to rehabilitation.”²⁴³

X. Involving Bystanders

Making citizens of only the perpetrators, however, will not be enough to promote transition into a functioning society. Those that are labeled as perpetrators during these proceedings are by no means the only individuals who contributed to the human rights abuses of the previous era. Widespread guilt tends to be present in places where human rights abuse has become institutionalized because the laws themselves become morally twisted or confused; Hitler was not a criminal in his own

²⁴¹ Lamb, *The Trouble with Blame*, 166-167.

²⁴² *Ibid.*, 173.

²⁴³ *Ibid.*, 173.

country. Even those citizens who were trying to remain lawful may have been complicit in the perpetuation of a system that supported human rights abuse. So while a well functioning criminal trial system usually signals a country with sound infrastructure, this no longer holds true when the criminal statutes being upheld are corrupt. Even after the regime has crumbled, the judicial system is prone to bias that may lead to “less vigorous investigation and punishment of old crimes,” especially during the strange and ceremonious moment of transition.²⁴⁴ Transitioning nations rarely have the institutional capacity or resources to replace the staff needed for a functioning judicial system. As a result, many of the same judges, lawyers, court recorders, and law enforcement officials will remain in place.²⁴⁵ Additionally, because the judicial system relies entirely on precedent, it can be unreliable in moments of drastic political change.

Thus most of the new nation’s inhabitants will have been tainted by guilt and complicity in some way by the time transition occurs. Usually only a fraction of those who have committed criminal deeds are connected to their crimes during truth commissions and countless more who are guilty of actions that are immoral but not criminal will go unnamed. The later group entails the many bystanders who committed no evil acts but were complicit in their failure to prevent or mitigate the evil of others. Even among those labeled as victims, there are individuals guilty of victimizing others. Generally in these settings there are no innocents and in nations recovering from institutionalized human rights abuse talking in terms of ‘perpetrators’ and ‘victims’ can be grossly oversimplifying the roles. The criminal trial approach to

²⁴⁴ Tepperman, “Truth and Consequences,” 130.

²⁴⁵ *Ibid.*, 130.

justice is an inadequate means to capture the way accountability is diffused in nations that sponsored massive human rights abuse because it fails to bring to light these other kinds of guilt; only the most sensational crimes are tried.

This is because criminal trials can usually only deal with one perpetrator at a time, and in times of widespread criminal action, secure only a limited number of prosecutions overall. This does little to instill a general sense of accountability. For example, the Nuremberg trials “covered 85,882 individual cases but secured only 7,000 convictions—and this for the Holocaust and all other Nazi atrocities.”²⁴⁶ The reason behind such limited reach is the “high standard of proof and extensive evidentiary requirements” that makes trials “complicated and expensive” for “fledgling governments ... strapped for cash.”²⁴⁷ Easily limited by resources, trials must therefore be selective about their scope, focusing “not on general social or economic forces, but on individuals, and one set of individuals at that: namely, the perpetrators and not their victims.”²⁴⁸ Bystanders are cut out of the process and either the low-ranking perpetrators are tried because they are easiest to charge, or the highest-ranking perpetrators are tried in a handful of sensational trials. While the former is unfortunate, because it leaves the guiltiest unpunished, the later is worse, because it makes it impossible for the bystanders to see themselves in those punished.

Since criminal trials only prosecute the most obvious criminals, they cannot serve as a lesson to the citizens who have morally failed each other in much smaller ways. Most citizens could not, rightly, see themselves in Pol Pot or Hitler but one

²⁴⁶ Ibid., 130.

²⁴⁷ Ibid., 130.

²⁴⁸ Ibid., 130.

does not need to match these men to be guilty of evil. Because these bystanders were at least somewhat complicit, even if it was through inaction, they should recognize their guilt in even the worst perpetrators. And it is crucial that they recognize their role in the previous regime if they are to contribute to rebuilding a new society after transition. How could a citizen who had lived through the Third Reich contribute to the creation of a new moral code for his society if he has not yet renounced his role in the twisted moral logic of the Nazi regime? As a member of that corrupted society, he played a part that he must now reject. It is crucial to the re-establishment of a new moral code that every individual involved in the former era of human rights abuse come to terms with their own complicity. But it is not always easy to understand the ways in which we have contributed to evils that are much greater than us.

A successful form of transitional justice will therefore be one that helps individuals in this process of self-realization. It is in these moments of transition, when all inhabitants of the former regime must be made into active participants of the new order, that truth commissions show themselves to be better positioned than criminal trials in engendering responsibility and change among parties involved in past abuse. While criminal trials only target a limited number of perpetrators who are obviously guilty, truth commissions are better able to demonstrate to a larger audience the ways in which they too contributed to the past regime of abuse. Chapter four will discuss the ways in which truth commissions are able to accomplish this. With these successes in mind, I will then suggest ways in which truth commissions could be improved by focusing on this ability to engender accountability among the general public, even if it is at the expense of charging criminals or finding ‘the truth.’

Closing in on Moral Blind Spots

I. Rebuilding Moral Codes

When the legal system is corrupted very few are entirely innocent; in these contexts even the omissions of bystanders are not morally neutral. Wiesenthal writes in *The Sunflower* that this was the case in Nazi Germany:

The question of Germany's guilt may never be settled. But one thing is certain: no German can shrug off the responsibility. Even if he has no personal guilt, he must share the shame of it. As a member of a guilty nation he cannot simply walk away like a passenger leaving a tramcar, whenever he chooses.²⁴⁹

In the aftermath of atrocity, once peace has been tentatively secured, deciding how to cope with this weighty and widespread guilt is the primary task of truth commissions. In chapters one and two I argued that the expectation that truth commissions are capable of adequately dealing with this guilt and further bringing about reconciliation, forgiveness, and national unity has led this form of transitional justice to fall out of favor, as it has fallen short of these lofty goals. Truth commissions, while imperfect, have the capacity to help transitioning nations, if in a limited way. Building off of chapter three, in which I argued that truth commissions should pursue the more specific goal of acknowledgment, in this chapter I will demonstrate why truth commissions are well equipped to engender acknowledgment and are ideally set up to allow larger audience to understand the ways in which they too contributed to the past regime of abuse. I will argue that prompting acknowledgement, more than the discovery of truth or the pursuit of amnesty, is the

²⁴⁹ Wiesenthal, *The Sunflower*, 93.

real calling of truth commissions and any attempt to advance this form of transitional justice should focus on these goals.

Truth commissions help nations with the recovery from corrupted moral codes by facilitating the needed shifts in ethical beliefs and engendering responsibility among citizens for past contributions to evil. They do this by drawing large audiences and helping individuals acknowledge the ways in which they are accountable for perpetuating the evils of the previous regime. This acknowledgment serves as the basis for the creation of new moral codes during transition that will replace the previous regime's corrupted value system. Here acknowledgment does not reflect a superficial or fleeting recognition of wrongdoing. Rather, acknowledgement signals a drastic internal shift of moral code requiring an overhaul of the tainted codes that allowed these trespasses to be committed in the first place. These gaps in ethical behavior can be thought of as 'moral blind spots' that will persist until explicitly challenged.

To notice these moral blind spots, I argue entire moral codes must first be rejected and the cognitive dissonance of participating in immoral action must be resolved. In this chapter I will employ Card's concept of 'gray zones' to explain how these blind spots are initially created. I will then argue that the tendency in the literature to make the label of 'evil' dependent on the actor's intentionality is too restrictive and loosening these standards will help with transition. In the context of recent and widespread human rights abuse, limiting the discussion of evil to purposeful actions excludes the crimes of those perpetrators and bystanders who acted blindly in light of their moral blind spots. I believe that during the process of

transition, when moral codes need to be rewritten from scratch, it is best to err on the side of assigning too much accountability. Finally, I will put forward recommendations for how the current model for truth commissions could be improved. By taking on the role of silent mediator, commissions could help open up a public space in which victims could safely share private stories without being pressured to forgive, fit into a larger narrative, or work towards the greater aim of truth finding. The purpose of this space, which in its silence would refrain from judging, editorializing, or assessing, would be to inspire self-reflection, cautious forgiveness, and the critical re-assessment of personal moral codes.

II. Gray Zones

The need for radically new moral codes in the aftermath of atrocity comes from the confusion that an inconsistency between the legal statutes and moral norms creates; “in extreme cases, times of horror, people sometimes have to act against what their consciences have learned to tell them,” because the ethical laws they were raised with are fundamentally wrong.²⁵⁰ Hannah Arendt gives the example of “overwhelming majority” of German citizens, who “must have been tempted *not* to murder, *not* to rob, *not* to let their neighbors go off to their doom.”²⁵¹ To understand how these corrupted moral systems spread from epicenters of evil to entire societies, Card, borrowing a term coined by Primo Levi, has developed the helpful concept of the ‘gray zone’ to discuss the unclear boundaries of moral responsibility in contexts of institutionalized evil. Those who are unambiguously evil create gray zones when

²⁵⁰ Morton, *On Evil*, 59.

²⁵¹ *Ibid.*, 59.

they orchestrate circumstances within which their victims cannot help but act immorally.

Levi first used the term to describe the *Sonderkommando*, prisoners forced to work the crematoriums during the Holocaust. He called the creation of these squads “National Socialism’s most demonic crime,” as it forced victims to take the burden of guilt from their oppressors by contributing to the Third Reich’s Final Solution. Leaving them “deprived of even the solace of innocence,” these gray zones spread not only suffering, but also the guilt of complicity.²⁵² While Levi believes the Nazi’s creation of these squads is unarguably evil while “agent’s choices *within* gray zones are often morally problematic” but “not unqualifiedly evil,” the fact that certain prisoners became members of these units is morally unclear.²⁵³ While they obviously would have faced death had they resisted, some prisoners did opt to die immediately, rather than become involved with these squads. Even in these dire conditions, the option to choose was still open. Nevertheless, given the extraordinary insanity of the Holocaust, it seems almost inappropriate to discuss the logic of morality or free agency. The context “confuse[s] our need to judge” and leaves us stranded without any clear landmarks for differentiating between noble and immoral action.²⁵⁴

In these circumstances a Kantian understanding of morality, which would call the failure of the *Sonderkommandos* to exert this agency immoral, is unsatisfying. It is here that Card’s concept of gray zones is a helpful tool, as it is more sensitive to the “complexities of human relationships” when making assertions about the morality of

²⁵² Primo Levi, *The Drowned and the Saved* (New York: Random House, Inc., 1989), 53.

²⁵³ Card, *The Atrocity Paradigm*, 213.

²⁵⁴ *Ibid.*, 220.

actions.²⁵⁵ Evil is better understood as circumstantial rather than innate, where the innocent have “moral luck” to thank in equal parts with their own agency for their innocent status. By this account, the extreme circumstances are considered and it is acknowledged that in contexts of institutionalized evil the line between victims and perpetrators will become unclear. For Card, the truly evil operate within these contexts of ethical crisis by opening up the gray zones of moral asphyxiation. They create worlds where survival (physical or social) comes at the cost of moral integrity. In these zones their evil rubs off on their victims, who may in turn victimize others. Thus understood, evil functions as a web, with the world’s Eichmanns and Pol Pots at their center and lesser wrong-doers branching out from there, each contributing to the creation of more transgressors.

The image of a web of evil is compelling; it conveys the stickiness of toxic relationships. It captures the fact that the hardest evils to understand are those done within the most immediate relationships in their social network. Soldiers who torture strangers is a less difficult evil to understand than Germans who turn in their Jewish neighbors, and this makes more sense than mothers who torture their children. And yet it is the latter kind of evil that is most entrenched, because it is tied at the root to the power dynamics of social relationships. How do we root out evil as radical as that? It is not the relationship to the center of the web that constrains moral thought. Those Germans who committed immoral acts leading up to and during World War II were not each directly connected to Hitler. They may have heard his speeches and attended his rallies, but they chose to join or resist by accepting or refusing the more

²⁵⁵ Ibid., 211.

immediate politics of their brothers and sisters, parents and friends. The closer the relationship, the greater the leverage that individual has, the stickier the obligation. A brother's political stance will often be more influential than a distant statesman; the opinion of classmates will carry more weight than a principal's injunction to nonviolence. The metaphor of the web helps illustrate the difficulty with which someone could extract himself from an amoral environment untarnished.

This puts the focus on the social aspect of evil and is a helpful tool for analyzing social settings pervaded by an upheaval of the moral law. These webs are found in nations such as Nazi Germany or Apartheid South Africa as well as in corrupted institutions, such as Abu Ghraib. These webs hold true for the obvious injustices, like the Holocaust, but also for the more insidious evils of sexism, racism or homophobia where they are institutionalized but not necessarily overt. Card explains:

The evils of everyday misogyny, racism, homophobia, and anti-Semitism ... take shape gradually, over a lifetime or even centuries. They are less readily noticed or identified, and yet they shape our options and perceptions. They may inflict social rather than biological death, or permanent deformation, disability, or unremitting pain. They can produce self-hatred.²⁵⁶

Thus an individual raised in this context has limited recourse to a social or moral system outside of what they know, because the evil is structural. Taking social cues from parents and teachers, they learn to interact differently towards people who are different, until they come to think of what would normatively be called evil as acceptable within the tangle of their social web. Within these contexts, evil gains an insidious hold and operates on its own momentum. The work of transitional justice

²⁵⁶ Ibid., 233.

must be to challenge this evil at its root and to alter the fundamental moral norms in the transitioning society. This will require more than the superficial treatment of legal statutes.

III. Definitions for Evil and Wrongdoing

When a gray zone drowns out the ethical norms of a society, it results in moral blind spots in that nation's inhabitants. One of the symposiasts in *The Sunflower* confirms the damage that this lack of moral contemplation can do when it is pervasive within a society:

Thousands and perhaps hundreds of thousands of Germans who participated in and committed genocide and crimes against humanity returned to their homes and to quiet, peaceful lives, without their consciences ever bothering them, without ever feeling any remorse.²⁵⁷

Moral blind spots did not only prevent these guilty Germans from feeling remorse for their deeds; they allowed those individuals to commit their crimes in the first place. In a sense this releases perpetrators from full responsibility; they failed to act with full agency because they were partially unaware of their crime. For Levi and Card, it is only those at the center of the web that inhabit a diabolical and radical kind of evil in which crimes are deliberate. Card tells us “diabolical evil, on my view, consists in placing others under the extreme stress, even severe duress, of having to choose between grave risks of horrible physical suffering or death (not necessarily their own) and equally grave risks of severe moral compromise, the loss of moral integrity, even moral death.” Adam Morton agrees in his book *On Evil*, writing that “evil centers on atrocity: death, pain, and humiliation imposed on others” and that “we have a visceral

²⁵⁷ Moshe Bejski, *The Sunflower*, 116.

revulsion from extremely evil acts;” we know it when we see it. An evil agent’s actions “produce atrocities deliberately, and with a specific kind of deliberation, in which evil-doers look away from the fact that the victims are fellow human beings,” and “the point of view of the victims of evil is usually that of incomprehension. How could anyone do this to me?”²⁵⁸

By this standard, the generation of German citizens caught in the crossfire may be guilty of wrongdoing, but they were not evil. Their decisions are not upsetting in the way the decision to butcher or torture or orchestrate genocide are upsetting and while their failure to act might be morally condemnable, it is comprehensible. Evil is not comprehensible. Morton writes “we find the origins of atrocity so puzzling that we label the mystery Evil, and we grope desperately for explanations of it.”²⁵⁹ Inherent in an evil action is an obscured motive; we may be able to understand why someone was motivated to act in an evil way (money, power, sadism), but we cannot possibly understand how she was able to override her ethical code in the pursuit of that aim. The distinction between evil and wrongdoing thus has not only to do with the nature of the crime, but the motivations behind it: evil implies a diabolical intention for which there are no circumstantial excuses.

Individuals label an action as evil in order to communicate that they “react to this with simple uncomplicated condemnation, putting aside excuses and forgiveness.”²⁶⁰ To argue that inhabitants with moral blind spots are capable of evil is therefore controversial because it risks diluting the term by using it to describe the

²⁵⁸ Morton, *On Evil*, 13-14.

²⁵⁹ *Ibid.*, 2.

²⁶⁰ *Ibid.*, 4-5.

relatively petty actions of bystanders and facilitators of evil for whom many extenuating circumstances apply. Without a distinction between the unthinkable and the unfortunate, the failure to prevent murder would be just as bad as the decision to commit it. Clearly the murderer is guiltier and more evil than the person who fails to stop it. “To call what Hitler or Pol Pot did “wrong” seems to understate its nature almost to the point of error,” and to call a German or Cambodian bystanders evil seems to overestimate its nature in equal excess.²⁶¹ Instead, it seems accurate to reserve the term for only the worst atrocities and to make a distinction between atrocities and wrongdoing. On this view, a dictator who orchestrates genocide is fundamentally diabolical while the child soldier who is coerced to join his army and kill in his name is not guilty of evil but of serious wrongdoing. The distinction is that were it not for the circumstances, this child would have acted differently, therefore the moral error is not fundamental to his decision-making process. The dictator, on the other hand, not only volunteered to participate in evil, but created it freely.

IV. Why Evil and Wrongdoing Should Not Be Distinct

However, I believe that there are problems with such a distinction, especially in the context of transitional justice. Obviously it seems unfair to say the child acted evilly, given the important mitigating factors that absolutely must be taken into account when judging this child. However, to say that he committed wrongdoing is to say that this child merely lapsed in his moral decision-making process. This does not accurately capture the child’s decision. He did not lapse from ethical behavior, because this child has no notion of what ethical behavior would entail. His

²⁶¹ Ibid., 3.

circumstances have prevented an ingrained sense of morality from ever taking root. Instead, the corrupt social cues he saw around him in the buildup and commission of genocide guided him. For him “there [was] no easy way of telling when the rules are really right, and when they are a cultural excuse for evil.”²⁶² The dehumanization, the routinization of violence, the justification of participation all made it possible for him to ultimately agree to go forward in the moment of murder. To say that the child acted wrongly rather than evilly is to say that the context and not the child are to blame for the child’s actions and that in any other circumstance the child would have behaved more ethically. This may all be true, but it is unhelpful to a society transitioning away from mass human rights abuse to claim that in better times, individuals would have acted more humanely. This lack of internalized morality is not the child’s fault, but it is a grave problem. To talk only in terms of agency when discussing evil is therefore limiting. The child may not be evil, but his actions and his moral code were and these need to be addressed during transition.

Unlike ‘forgiveness’ and ‘reconciliation,’ which benefit from clear distinction, there is an advantage to allowing wrongdoing and evil to overlap: labeling even the most minute perpetuations of human rights abuse as evil is an important step in transitioning away from that system of atrocity. Given that every inhabitant of a regime of abuse is guilty of being overwhelmed by the circumstances and transition will require the establishment of a new moral code, it seems more fitting to err on the side of taking too much responsibility for past actions. Even for the coerced child, there was a glimmer of agency in the moment he chose to slaughter. Increasing

²⁶² Ibid., 59.

accountability, regardless of the incredible extenuating circumstance, will help to fill in moral blind spots and safeguard against their recreation in the future. Thus in the moment of transition, it is helpful rather than distracting to call the child's actions evil because they drew off of a moral code that was fundamentally corrupted. After transition, individuals on the periphery of evil should not think they had momentary lapses from moral action, because that suggests moral action was available to them. But this would not get at the insidious ways that evil can be perpetrated by individuals who believe themselves to be acting morally while in the midst of a gray zone. It is this kind of evil that inhabits moral blind spots and is most difficult to prevent.

V. Magnitude Gap

The unfortunate reality is that most decent individuals are simultaneously capable of doing terrible things without having the imagination it takes to label their own actions as transgressions. Morton writes:

Much of the misery of the world is caused by the thoughtlessness, callousness, or ignorance of perfectly ordinary people, acting in ways that we could not easily classify as evil. Much misery happens not because a small number of people act out of hatred or sadism but because a large number of people act with limited care or imagination.²⁶³

The lack of intention among most perpetrators makes it difficult to label these moral failings as evil, but depending on the point of view, most evils are unintentional. They may seem intentional to the victim, but usually the perpetrator is not fully aware of the harm they are inflicting or the victim's point of view. It is a failing of human psychology that "perpetrators commonly do not understand their deeds as atrocities"

²⁶³ Ibid., 5-6.

and thus “the magnitude gap” between the perceptions of perpetrators and victims on the same act exists even for the smallest crimes. Morton writes: humans “learn sweeping techniques. We learn strategies for not noticing that our actions lead to atrocity and that our actions are evil. In this way the most decent well-meaning responsible people are complicit in evils of which they are at most dimly aware.”²⁶⁴ Thus, even the best intentioned citizen can lack the crucial self-awareness needed to escape the immediate influences of a gray zone.

This makes it unlikely that anyone guilty of the crimes of conspiracy, abetting, omission, or silence in the face of human rights abuse would qualify their own moral failings as evil. Indeed, it is unlikely that even the worst criminals whose are unambiguously guilty of atrocity would consider themselves evil, because there are barriers in human psychology that prevent individuals from attributing their own failings as dispositional. Because of “the fundamental attribution error,” most will justify their actions using circumstantial excuses.²⁶⁵ For example, a torturer’s victims might see him as diabolically evil while he will explain that had he not done his job, he too would have been tortured. This limits our moral capabilities day to day and results in an unbelievable discrepancy between the number of wrongs committed in the world and the number of individuals willing to concede that they are guilty of wrongdoing. Fueling this blindness is the human inability to “make two leaps of imagination: to see the motivation of someone who has done something appalling, and to see how someone could be appalled by something we have done with a clear

²⁶⁴ Ibid., 58.

²⁶⁵ Ibid., 6.

conscience.”²⁶⁶ When this lack of imagination pervades, it not only blinds individuals to their own moral shortcomings, it also fuels the dehumanization of enemies.

Therefore problem with reserving the term ‘evil’ for only the worst atrocities is that it allows individuals to further themselves from evil and those they deem capable of it. It prevents individuals from coming to terms with the fact they might be evil. Morton writes:

We rarely think of ourselves in these terms. We think of ourselves as rarely straying too far from decency, and when we do stray, we think we know the reasons why. We cannot imagine participating in genocide or in the sadistic rape of a child. So, we think, the psychology behind these acts must be very different from ours; they must come from reasons we can hardly grasp, which put them beyond the scope of ordinary understanding and into a category of wrongdoing that lies beyond any possibility of excuse.²⁶⁷

This failure to attempt to understand evildoers thus precludes the possibility of recognizing the ways in which they are relatively normal. “To the extent that intuitive understanding of someone’s action is essential to interacting with them, we are often at a loss how to respond to evil-doers” because their ethical decision making process appears impenetrable; “we don’t know how to handle them” so they are kept at arms length.²⁶⁸ This othering of evildoers makes the task of understanding how decent individual could possibly be guilty of atrocity unnecessary and this lack of thoughtfulness increases the likelihood of moral blind spots. The notion of evil villains “appeal[s] to a kind of imaginative laziness in us. We prefer to understand evil in terms of archetypal horrors, fictional villains, and deep viciousness, rather than to strain our capacities for intuitive understanding towards a grasp of the difficult

²⁶⁶ Ibid., 8.

²⁶⁷ Ibid., 4-5.

²⁶⁸ Ibid., 21-22.

truth that people much like us perform acts that we find unimaginably awful.²⁶⁹

There is hypocrisy in this: “when we categorize people as fundamentally unlike the rest of us we make it easier to overcome ...the barriers against harming our fellow humans.”²⁷⁰ Moral blind spots allow for the dehumanization of evildoers that in turn perpetuates the toxic relationships within a gray zone.

VI. Three Snapshots of Passive Evil

In the smallest of actions, individuals allowed the Third Reich to continue too long and the dismantling of Apartheid to come too slowly. One South African journalist made this link between small and larger acts of violence at the time of the Commission while explaining the “ghastly practice” of necklacing:

There is a whole process that leads finally to the brutality of the necklace as a method of murder ... Nobody said, “I began by saying no. And then I stayed away from school. And then I picked up a postcard. And then I wrote a little poem. And then I pleaded with so and so. And then I was in the street protesting with my legal method of protestation. And then I got my first hand grenade, my first petrol bomb and then my first stone.” This is how things developed. So there was a whole process that led to the climax which was the necklace murder itself.²⁷¹

For each instance of violence, for each normatively evil action, there must first come a lifetime of small deeds, grievances, accomplishments, omissions, and influences that have led up to that moment. In places where evil is widespread, no one is totally innocent of contributing, as everyone has had a hand in some minute way in the slow creation of the violent climax. In the case of a necklace murder, there are the obvious guilty killers. But they are almost always only a handful of people in an enormous

²⁶⁹ Ibid., 100.

²⁷⁰ Ibid., 5.

²⁷¹ “TRC Videotape Collection,” *Yale Law School*. Tape 7, episode 7.

mob, every member of which is responsible for creating the mentality that allows murder to occur. But even beyond those who were present is a network of responsible individuals. For every person contributing to the mob is a family that could have prevented them from going, a teacher that made violence a more compelling form of protest and non-violent action, and a nation that gave each person a lifetime of suffering to protest.

In the spirit of overcoming these blind spots and avoiding the hypocrisy of ‘imaginative laziness,’ below are three examples that flesh out the ways in which individuals can perpetuate evil in the context of gray zones without the active intention to do harm. Through these individuals, the evils committed by gray zone webs only manage to grow exponentially larger because hundreds or thousands of individuals participate in the perpetuation of evil in the smallest of ways. Moral codes outline not only the major transgressions of murder, torture, and rape; they must include as well the minute acts that allow the greater evils to occur. The stories to follow therefore do not focus on the most blatant acts of evil, but attempt to indirectly capture the tangles of a corrupted moral code. By providing these examples, I am drawing off of Morton’s claim:

As you get to know [a perpetrator] better and reflect on what it is like to be him, you get a feeling for the way he thinks. You can feel your way through problems his way, seeing where his resolve slips and where distraction seizes him. Doing this does not make you more like him. It makes you *less* like him, because it helps you avoid his mistakes.²⁷²

²⁷² Morton, *On Evil*, 19.

The hope, then, is through these examples to reproduce in the faintest way, the experience of listening to and reflecting on the testimony produced by truth commissions.

Consider the Coloured elementary school teacher mentioned in chapter two. She believes herself to be moral and acts in accordance with those beliefs. She is an educator, not a mercenary, and she cares about her children. When she berates one of her students for distracting the class, she believes that she is acting in their best interest and filling her role as instructor. However, raised under Apartheid, even as an adult the moral blind spots of her upbringing will persist. Reflected in the increase of black students in her classroom, she sees the end of Apartheid, but also the encroaching spread of the black township down the road on her home Ocean View, which is the development to which she was relocated as a child during Apartheid under the Group Areas Act. The black township is called Masiphumelele, Xhosa for ‘we will succeed.’ Suffering from devastating poverty, it arrived in 1994, along with the epidemic of methamphetamines that flooded into the Cape when trade sanctions were lifted at the close of Apartheid. Ocean View is otherwise boxed in by the Atlantic and Indian oceans to the South and an exclusive white community—whose borders have become only barely permeable since 1994—to the East. While she may not be conscious of it, when this teacher enters the classroom, she brings with her these frustrations and anxieties.

Imagine that the seven-year old student that she is berating did nothing more than accidentally tumble off his chair, and that he is only one of two black, Xhosa-speaking students in this predominantly Coloured classroom at an English/Afrikaans

bilingual school. In the moment in which she snaps at this student and then turns to the only other black student—uninvolved and quietly sitting at the other end of the classroom—and blames him as well, she is unaware of how her life history has culminated into this moment and how she, as teacher, has led to their dehumanization and segregation in the smallest way. But as she shouts, the message that she sends to the other students is clear: not only was this student so dumb that he could not sit on a stool, he was also sufficiently malicious to use his stupidity purposefully as a distraction to the class. In her daily frustrations with the inability of her Xhosa students complete the assignments in English and Afrikaans, frustrations that are reciprocated and augmented by the students themselves, she loses sight of the fact that in another setting, all of these children could achieve equally. In this way, she has created a relationship with her Afrikaner students and placed them in a specific relationship towards their black classmates that only serves to extend the web of Apartheid, now obsolete, another 30 years into the future

In another classroom of the same school, a teacher leads his class of 7th graders through exercises in multiplication and the past tense. With over thirty students, the class is large and while their Coloured teacher is good at his job, he shows inconsistent emotional investment in his students. Several volunteers arrive at the school for a two-month long mentor program in which struggling students are placed with tutors daily for one-on-one sessions in reading and math. Over a month goes by and all of the lower end performers are signed up for tutor sessions. It is only then that it occurs to this teacher to point out one of the few black students in his class and to recommend that she sign up for the lessons as well. The girl turns out to be

illiterate. She had arrived from rural Transvaal three years prior, and in that time it was deemed much easier to bump her up at the end of each academic year than to put her at her real reading level and send her back to the first grade. Although it is not his malicious intention, every time the teacher writes a question on the board for the class, they are never truly directed towards her. Every homework assignment goes uncompleted and every test administered is a pointless exercise. Requiring her to remain in a classroom whose two languages she cannot understand is cruel. That she is illiterate and forgotten is no individual's fault. However, blaming the nation's failing educational system and recent traumatic history is unsatisfying because they are disembodied problems, it leaves little in the way of pragmatic action, and blaming them does not capture everything that is wrong with the way this child is treated. What of the teacher's decision to wait over a month before recommending her, leaving only three weeks in the tutor program from which she could benefit? Even if two months is not enough to replace seven years of learning, the accidental negligence of the teacher signals to the student that she is not worth the attention and that she does not need to try to better her situation. This is too bad, because Annalisa, who learned her name and the sound of every letter in the English alphabet in a week, was particularly bright.

Finally, imagine a son who was raised in Germany under the Third Reich or under Apartheid South Africa and who was led to believe that he, as a white male, was at the top of the human hierarchy. It is no surprise that such a son might go on to discriminate against, torture, or murder those that are different than him. He becomes guilty for acts that are at once incomprehensible and expected. Others raised the same

way may have broken free of this tangle of relationships and chosen not to commit these atrocities, but it is understandable how he could fail to overcome this moral disadvantage. Now consider his mother. Wiesenthal describes the mother of the Nazi soldier in *The Sunflower*, whose only crime was to live her life as any mother would during peacetime, in the following passage:

I looked at the old lady who was clearly kindhearted, a good mother and a good wife. Without a doubt she must often have shown sympathy for the oppressed, but the happiness of her own family was of paramount importance to her. There were millions of such families anxious only for peace and quiet in their own little nests. These were the mounting blocks by which the criminals climbed to power and kept it.²⁷³

Her decision to live a peaceful life in the context of war was unimaginative; she simply continued along as if the context had not changed. But the reality of her surroundings called for different action. To be a good mother, and to leave unchallenged her assumption that her son was incapable of brutal murder contributed to genocide. And to the families of her son's victims, her decision not to intervene in his moral upbringing was appalling, callous, thoughtless, and perhaps evil. Thus, although indirect, her contributions were necessary to the success of genocide. She had the responsibility of recognizing her roles in her son's crimes and the "responsibility of rising above her personal pain and telling the world what her son had done. She could have warned parents about the need to convince their children to opt against evil."²⁷⁴

²⁷³ Wiesenthal, *The Sunflower*, 91.

²⁷⁴ Stein, *The Sunflower*, 255.

VII. A Case for Taking Responsibility for Accidental Evil

It is true that she was an inhabitant of a gray zone. As a German living through the war and as a woman in a patriarchal society, there was only so much that she could do. However, given that she tells us “I stood helplessly between my man and my child,” as a mother and wife perhaps she could have made a greater effort to intervene when her son and husband stopped talking once her son joined the S.S.²⁷⁵ Perhaps if she had conceived of the possibility that her son was capable of terrible evil, she would have warned him more explicitly about the consequences of his path. It is impossible to say, and she is impossible to judge, but she remains likewise impossible to exonerate; truly she inhabited a gray zone. In one of the videos of the South African Truth and Reconciliation Commission, the mother of such a male cries at the news that her son went so far as to commit murder. Looking to the camera, she pleads other parents to petition their government to “make indoctrination a crime,” believing that it was the Christian National Social Movement, to which he belonged, that forced her son’s hand to murder.²⁷⁶

However, André Stein, one of the symposiasts in *The Sunflower* and a psychologist who specializes in the treatment of survivors, holds the Nazi soldier and his mother to a higher standard and rejects circumstantial excuses. He explains: “to invoke Karl’s youth and his mother’s advanced age is morally sloppy. The magnitude of the crime and the broad popular participation in it allows no consideration other than the welfare of the survivors, the sacredness of the victim’s memory, and the

²⁷⁵ Wiesenthal, *The Sunflower*, 90.

²⁷⁶ “South African Truth and Reconciliation Commission Videotape Collection,” *Yale Law School*. Tape 7, episode 7, airdate: June 23, 1996. Accessed February 10, 2010. <http://trc.law.yale.edu/video_episodes.htm>.

prevention of future genocides.”²⁷⁷ Stein sees no harm in erring on the side of giving the mother too much responsibility, writing that, “by remaining silent and scared, she must take some of the burden of a guilty collective conscience. We must not forget that millions were murdered by a nation of good sons. Every woman who doggedly holds on to a pristine moral image of her son is a collaborator in his crime.”²⁷⁸ While she killed no one, and is not directly accountable for her son’s murders, this single German mother is complicit through her omissions, and for those she must take responsibility. While Wiesenthal chose not to hold her accountable when first interacting with her, over the years he came to hold the same position as Stein, noting in retrospect that his mercy had been a mistake and that “perhaps her tears might help to wash away some of the misery of the world.”²⁷⁹

Card reminds us of an important point: there are “people who have lived under the extreme stress of gray zones” that have “not abandoned the categories of morality, nor ceased responding in moral ways emotionally, nor ceased entering relationships of truth and holding one another responsible. Simon Wiesenthal asks himself continually whether he was doing the right thing.”²⁸⁰ Wiesenthal does present us with a powerful argument for holding people responsible despite the presence of a gray zone. A tortured inmate of a concentration camp, he was left alone in a room with a dying Nazi and asked to listen the soldier’s confession. He could have tortured or killed the Nazi or said any number of truths or lies that would have been terrible for the Nazi to hear. Wiesenthal did none of these things. In fact, the thought did not

²⁷⁷ Stein, *The Sunflower*, 255.

²⁷⁸ *Ibid.*, 255.

²⁷⁹ Wiesenthal, *The Sunflower*, 94.

²⁸⁰ Card, *The Atrocity Paradigm*, 227.

even cross his mind. Instead he remained silent, while he swatted away flies from the soldiers face and held his hand, and even now, Wiesenthal worries that might not have been enough. While there is only so much that can be asked of a victim/perpetrator while in the midst of a gray zone, and although it is clear that “oppressive institutions, whether they favor or disfavor us, offer an inhospitable context for developing or maintaining moral integrity,” if, even in the most amoral settings, an individual had the moral sensitivity to recognize herself in the perpetrators she labels as evil and if she could appreciate why others might label her as evil, this would go a long way towards re-establishing justice.²⁸¹

VIII. Turning Bystanders into Citizens

In order to recover in the aftermath, moral codes must be rewritten from scratch. These new codes cannot be borrowed from other systems with more robust constitutions or stronger judicial systems, because the re-creation of moral codes must amount to more than an imported legal system. An imported system may be better than nothing but moral codes are for each individual to produce and uphold; they cannot be borrowed in their entirety. For example, it is one thing to adopt a law that makes discrimination based on race illegal across an entire country, and another for a single individual to recognize the ways she fails this legal standard and vow to change even her smallest actions to be inclusive of different races. A functioning society in the aftermath of atrocity is going to need the latter; change will come from the ability of individuals to internalize ethical action and not only the laws that put those expectations into writing. Therefore, part of the new moral code must be produced

²⁸¹ Ibid., 213.

organically from within the transitioning nation. At the moment of transition, all citizens—and not just the guiltiest—are responsible for recognizing his or her role in the webs that permitted and sustained the existence of institutionalized evil. Thus, while most evil may be circumstantial and not innate, it nonetheless requires that individuals be expected to recognize their responsibilities before, during, and after gray zones emerge. It is this that truth commissions, over and above criminal trials, are best equipped to do.

This is because truth commissions maximize the number of individuals prompted to think of the many ways they resemble the normal criminals confessing on stage. Rather than watching the sensational trials of Eichmann or Pol Pot, citizens will be watching their neighbors, their police officers, and their local politicians describe the choices, emotions, and unchallenged assumptions that went into the commission of wrongdoing. The number of citizens exposed to the content of the commissions will be greater than for criminal trials, because unlike trials, commissions are open to the public and media; “the TRC’s hearings were held in public, ...followed by press conferences, and broadcast daily on the radio throughout South Africa and the world. A weekly TV round-up became a much-watched event.”²⁸² Larger audiences will also form due to the fact that while judges presiding over criminal trials are entitled to physically exclude jurors for certain pieces of information or audience members sitting behind the bar for the entire trial if they are disruptive, truth commissions are open to emotional participation and complete disclosure of information. Furthermore, criminal trials are led by professionals with

²⁸² Tepperman, “Truth and Consequences,” 132

an in depth understanding of the law who frequently use shorthand because of their familiarity with the material, procedure, and the other professionals in the room. The content of truth commissions, on the other hand, is designed to be emotionally accessible to the audience.

This means more opportunities for audience members to understand the experiences of others through a shared emotional lens. A mother crying over her brainwashed son will resonate with other mothers just as a businessman guilty of operating a profit off of the exploitation of his employees might resonate with other businessmen, particularly if their stories are emotional. Such unprompted and unlimited testimony will be easier in a truth commission where witnesses have more freedom with their testimony, as they are not bound by evidentiary rules or restrained by scripted direct examinations or the aggressive cross examination format. In addition to maximizing the size of the audience and the emotional connection between viewers and participants, truth commissions also leave audience members with a greater freedom to interpret the information before them. While jurors are strictly instructed as to the legal standards they should consider while deliberating, audiences of truth commissions are free to make and walk away with whatever lessons they choose. By no means will every citizen be prompted to consider their moral blind spots and even among those who are, there will still be individuals who come to hold views more evil than they held before the truth commission. However, this is not enough of a reason to hold off on the national exercise of thoughtfulness altogether. Imagine, for example, an individual who was pushed to join a racist political party by his brother. This information might be excluded as hearsay in the

court of law, but would be included during a truth commission. While it would not necessitate the realization, it would at least give the opportunity for every individual listening a chance to pause and think of times when they may have influenced someone close to them politically and the ways that made them responsible for both of their actions. By maximizing both the number of citizens who can be involved with truth commissions, the amount of information they can access, and the freedom of those audience members to interpret the testimony as they wish, truth commissions are better positioned to rebuild a broken moral code from scratch.

Through this testimony, inhabitants of gray zones will be freer to acknowledge their complicity without the specter of punishment. Perpetrators will know that they have been complicit, because unlike with amnesty or denial, truth commissions confront wrongdoing by fleshing out the details and implications of individual actions. There may be no punishment that follows, but social opinion on the morality of individual actions will be available to each person; participants will know when they have been testifying as victim, confessing as perpetrator, or both. This will in turn allow them and the audience members who identify with them “to imagine and create new alternatives,” “take responsibility for their choices in relation to other victims,” and “somehow create ways to meet the challenges of extreme moral stress and ... remain ashamed when they think they have failed.”²⁸³ Perpetrators must be held accountable for their actions in this way, even if they too suffered as victims. This may seem harsh, but in this context accountability does not involve punishment. Instead accountability means a willingness to reassess one’s moral code and

²⁸³ Card, *The Atrocity Paradigm*, 234.

recognize while past actions may have been acceptable in the previous era, post transition they are unambiguously wrong. Accountability means coming up with new ways of interacting with victims and striving to be more aware of the ways in which moral compasses can be tricked by amoral environments. It is not a matter of admitting guilt for a single crime, but admitting that in every unthinking action that reaffirmed the perverted moral code, the perpetrator is guilty of sustaining an evil that was much larger than them.

IX. Moving Slowly Towards Reconciliation

I recognize that my new model for truth commissions is vulnerable to the criticism that by focusing solely on acknowledgment and narrowing the scope of issues that truth commissions are meant to grapple, the tradeoff between individual and societal needs has not yet been fully remedied; a tension remains. I have relied on an overly neat division between the private and public spheres, but in reality the role of the individual emotions cannot be fully excised from truth commissions. These open ceremonies necessarily mix up these two spheres by asking individuals to come forward out of individual responsibility and agency to deliver unique and private testimony in public. Even when forgiveness is not called for, a larger political narrative is still at work pulling the subjective into its fold. Before stories are even told, they have already been classified into the categories of victim and perpetrator. Despite best intentions, testimony will inevitably be prompted and shaped by the commissioner's questions as it is delivered. As commissioners extract these personal histories, they already know that this information will be later cobbled together into a

cohesive recounting of historical events from which normative moral lessons will be drawn.

Thus, while transitional justice pursued through truth commissions may be a social and public affair, it remains one that rests on the testimony of individuals. Inevitably the personal becomes enmeshed in the larger political momentum of transition as it is almost impossible to avoid limiting the testimony selected for the commission, disrupting the flow of the testimony as it is being given, or withholding editorialization of the testimony in the report once the commission has closed. Given that individuals are necessary to this process, to say that ‘reconciliation’ and ‘forgiveness’ are wholly separate in the context of truth commissions comes to have no real significance, because while this may be theoretically true, in practice personal and public spheres will be consistently mixed up during the proceedings of truth commissions.

I believe that it is possible to lessen this tension between the wellbeing of the citizen and the state. There is nothing inherently problematic with bringing the personal into the political, so long as it is not being manipulated and is being entered in as its own end. The South African Truth and Reconciliation Commission failed to meet this standard; the TRC rhetoric used testimony to promote religiously infused themes of forgiveness and reconciliation. But commissioners did not need to concern themselves with creating a compelling story of transformation and transition out of the stories of its constituents and publish it in the commission report. The work of reconciliation is not creating a narrative that commands collective approval, nor is the point of truth commissions the manufacturing of an overly produced commission

report that captures the truth of the previous regime. The same truth will appear drastically different to the victims and perpetrators of the same crime. The purpose of truth commissions is instead to create a space for the acknowledgment of stories and voices that were disregarded under the previous era of atrocity and the definition of reconciliation is the rebuilding of moral codes through that acknowledgment. To this end of withholding judgment while endorsing acknowledgment, if truth commissions culminated in the promotion of local and depoliticized discussion spaces, I believe this would do more to engender acknowledgment and thoughtfulness among citizens than the publishing of a manicured report. Truth commissions could use resources to help local communities set up spaces for story telling rather than truth finding, sending around best practices rather than voluminous reports. To acknowledge these voices and these stories is to bring them into the realm of what is known publically and hence the realm of what effects political action.

X. Truth Commission as Silent Mediator

One responder to *The Sunflower* argued that in the private moment of “rectifying a misdeed ...a third party has no proper role other than mediator.”²⁸⁴ It is precisely in this capacity that I believe truth commissions are best able to create depoliticized discussion spaces. By bringing these diverse private experiences to the attention of the public, truth commissions serve as mediator between the individual and the political. The subjective is allowed entry into the political sphere without being co-opted by ulterior motives because in reconciliation-as-acknowledgment, truth commissions do not create truth or generate moral lessons. Instead, they create

²⁸⁴ Balic, *The Sunflower*, 111.

audiences who are at once private decision makers and an aggregate, social unit. By hearing of the ways in which bystanders were complicit or perpetrators had alternatives to criminal action, audience members will be better placed to judge how they themselves acted, without needing to take the stand themselves. It is by responding as individuals that audiences are able to connect intuitively with the testimony and associate, sympathize with the testifier, and bridge the gap between the individual and the social.

In order to make room for these new voices, commissions must be silent on questions of truth or normative moral lessons before, during, or after the recounting of testimony. Individuals need to be given pause to bring new stories to light and break the silence of denial without constraint. Silence on the part of the commission becomes a positive response for transitional societies and a valuable tool, as it is at times better suited for the breaking and remaking of moral codes in the aftermath of trauma than speech. Thus silence, like speech, begins as “morally neutral” and it is the responsibility of individuals to make sure that it is “deployed in morally defensible ... ways.”²⁸⁵ So long as it is understood to represent alternative to vocal acknowledgement of past abuses rather than an act of complicity, “to be silent is still to speak.”²⁸⁶ For example, when Wiesenthal remained silent on the Nazi soldier’s deathbed, his silence was constructive. First, had he forgiven the Nazi soldier, it would not have reflected his own beliefs; “to utter that simple sentence would have been a lie anyway. Silence emerged as the only authentic means of

²⁸⁵ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 10.

²⁸⁶ *Ibid.*, 10.

communication.”²⁸⁷ Second, in his silence Wiesenthal actively took up the role of witness and comforter, acknowledging not the Nazi’s confessions, which he was in no place to accept, but the humanness of the narrator. Many responders commended Wiesenthal for his humanity. One interprets Wiesenthal’s actions as follows:

Some might call it a *lack* of response, since Simon leaves the room in silence. But I find him responding throughout, again and again: allowing the SS man to hold on to his hand, remaining seated on the bed when revulsion—at times fear—make him want to leave, chasing away the fly from the dying man...And years later, when he visited Karl’s mother in Stuttgart, he made the decision not to rob the lonely old woman of the fond memories of her “good” son. All this, in my view, constitutes a significant and human response on his part.²⁸⁸

It would not have been wrong for Wiesenthal to withhold his compassion as well as his forgiveness, and yet in an exemplary and impressive gesture, Wiesenthal gave a sense of humanity to a man guilty of inhuman acts.

There is room for such a silence within the proceedings of truth commissions. During the TRC in South Africa the role of the ‘comforter’ was a real one, as the Commission “hired briefers to inform witnesses about the legal implications of their testimony, to debrief them after testimony, and to provide ongoing psychological support.”²⁸⁹ Known also as the ‘Cry People,’ they literally comforted witnesses, embracing them and wiping away tears while maintaining their own silence and withholding judgment on the testimony given. The comforter “does not speak before the Commission, attesting to nothing except the singularity of the witness whom she attends and the need for us who listen to recognize the suffering the witness

²⁸⁷ Ozick, *The Sunflower*, 217.

²⁸⁸ Eva Fleischner, *The Sunflower*, 139.

²⁸⁹ Ben-Ze’ev, Ginio, and Winter, *Shadows of War*, 169.

underwent.”²⁹⁰ In this silent acknowledgment is an “ethical turn to the other,” through which the comforter reinforces precisely that which “the silence of denialism corrodes:” those minute acts of humanity that preclude the possibility of evil from taking root.²⁹¹ By staying away from the notion of concrete truth, evidence, or facts, truth commissions have the potential to offer a broad snapshot of the past. Truth commissions open their stage to diverse witnesses and delve into the details and specifics as the testimony comes out, rather than being limited by specific legal statutes. This salvages the millions of individual and daily acts of omission and commission that enabled these mass human rights abuses from collective amnesia.

These are the details for which individuals are accountable and it is entirely within the realm of the possible that each individual take responsibility for these minor ethical failings that they committed while within their moral blind spots. This is harder to see while focusing on the larger picture. When looked at in the aggregate, it is possible to say many Nazi soldiers were manipulated by their social context. One survivor of the Cambodian genocide writes, “I can forgive the soldiers of the Khmer Rouge, those who actually did the killing... I have always felt that the soldiers were trapped. Most of them came from the jungle, were uneducated and very poor. They were taught to kill. They were brainwashed.”²⁹² But when each of these individuals is looked at in their own right, with all the extenuating circumstances and details of their lives, as was the soldier in *The Sunflower*, it becomes easier to see the minute moments during which they failed to exert agency and instead perpetuated the

²⁹⁰ Ibid., 169-170.

²⁹¹ Ibid., 170.

²⁹² Dith Pran, *The Sunflower*, 231.

criminal standards of their society. It is these moments that are forgotten when the stories of past atrocity are not told. The moment when the Nazi soldier in Wiesenthal's story acts against the wishes of his parents and joins the S.S., in the moment that his mother lets him leave without warning him that he is capable of evil, and in the moment that the elementary school teachers neglects his student, each agent is freely choosing to commit evil, albeit in confusing moral circumstances.

Even though Wiesenthal opted for silence during the war, refusing to engage with the dying Nazi soldier who begged for forgiveness and again when introduced to the soldier's mother after the war, years later he broke his silence by publishing his story. His story is followed by a symposium of responses by over fifty distinguished men and women, including the Dalai Lama, Desmond Tutu, and Primo Levi. The novel makes Wiesenthal break from silence thorough and fully public. As Holocaust survivor his story and "the entire Nazi story—lays bare the *sins of complicity and the sins of omission and denial* that render our participation in evil so profound;" sins whose weight Wiesenthal could not bear until death."²⁹³ And while many authors of Holocaust biographies have said their experiences escape words and that "even to speak, to grope for words to describe horrific events, is to pretend to negate their unspeakable qualities and effects," silence is also not a viable option; it too "is also an unacceptable offense."²⁹⁴ In publishing his story, Wiesenthal has opened up a space for discussion. It was "Wiesenthal's own personal confession, reaching out to many hearts by breaking silence about the complexities in his own."²⁹⁵ One of the

²⁹³ Matthew Fox, *The Sunflower*, 147.

²⁹⁴ Martha Minnow, *Between Vengeance and Forgiveness*, 5.

²⁹⁵ Card, *The Atrocity Paradigm*, 187.

responders to his story, Albert Speer, a currently incarcerated Nazi soldier, sought out Wiesenthal to confess his own moral guilt, which he writes is “not subject to the statute of limitations, it cannot be erased in my lifetime.”²⁹⁶ Such apologies would be impossible had Wiesenthal maintained his silence. Even while sitting in the hospital room with the dying Nazi soldier while still a prisoner of a concentration camp, “despite [his] fear and loathing,” Wiesenthal never “[shrank] before the task—heroic under the circumstances—of seeing a distinctly individual person.”²⁹⁷ Such a small gesture stands in opposition to the small acts of omission or commission, which lead to the perpetuation of evil. Through this role of comforter, Wiesenthal was able to create a space for confession, testimony, and acknowledgment. Had he stormed out of the room or fought with the soldier, this story would be unavailable for future generations to examine and digest. It is impossible, in the aftermath of abuse, to talk about the stories of the perpetrators who never confessed, repented, or asked for forgiveness. This is what distinguishes silence that closes doors rather than opens possibilities for reconciliation.

Regardless of the truth of the facts recounted by either the soldier or Wiesenthal, the story provides an emotional account of an act of senseless violence and without this story, the act would have long since faded away without ever serving as lesson. One responder to *The Sunflower* writes, “silence, in fact, may be the better response—our silence to yours—in the hope that by listening quietly and more closely to your experience, we might learn from it, rather than moralize about it.”²⁹⁸

²⁹⁶ Albert Speer, *The Sunflower*, 245.

²⁹⁷ Rebecca Goldstein, *The Sunflower*, 149.

²⁹⁸ Hubert G. Locke, *The Sunflower*, 201.

While Wiesenthal by no means became reconciled with this Nazi soldier as a result, in his acknowledgment of the Nazi's story and suffering, Wiesenthal foreshadowed the goal of truth commissions: to be witness, listener, and comforter. With acknowledgment as the building block of reconciliation, I believe the roadmap for improving on the truth commission model becomes much clearer: truth commissions should focus on mapping the landscape of human rights abuses more thoroughly, but not necessarily more accurately. The aim should be to create a detailed rather than truthful account of how the previous abusive regime was perpetuated, from the large-scale human rights violations to the small and everyday acts of average people. In the preface to Priscilla Hayner's book *Unspeakable Truths*, Michael Ignatieff wrote that the goal of a truth commissions is to "narrow the range of permissible lies."²⁹⁹ Equally important, however, is to widen the scope of recognized wrongs.

Acknowledging these debts between perpetrator and victim requires a shared value judgment on the original crime-act, regardless of whether the victim of that crime can be repaid for the loss of rights or chooses to forgive and waive the debt. In order to share this value judgment, a new moral code must be jointly drafted. The value of *The Sunflower* as an educational tool here becomes evident: it contains not only a compelling and thought-provoking story, but also includes over fifty varying interpretations. A reader is left not the passive recipient of a single, cohesive moral lesson, but with a confused sense of what would have been the appropriate response to the Nazi soldier's confession. Such confusion inspires reflection and a more serious contemplation of Wiesenthal's prompt: "change places with me and ask

²⁹⁹ Priscilla B. Hayner, *Unspeakable Truths* (New York: Routledge, 2001), 21.

yourself the crucial question, “what would I have done?”³⁰⁰ It is only through this vicarious act that the reader can begin to think not only of what would have been the appropriate response, but also what it would have taken to meet that standard. If they are left believing that forgiveness was appropriate, they had better be able to put themselves in Wiesenthal’s shoes and envision what it would take to act so magnanimously in that setting. An audience able to walk away with an arsenal of complicated and not always consistent take-away lessons, all of which they reached on their own, would be a more valuable asset to a nation in transition than if that audience was indoctrinated with a single moral story. The new moral code will not be perfect or cohesive, but from this it will derive its richness and resilience.

³⁰⁰ Wiesenthal, *The Sunflower*, 98.

Bibliography

- Alexander, Karin, Diana Batchelor, Alexis Durand, and Tyrone Savage. "Truth Commissions and Transitional Justice: Update on a Select Bibliography on the South African Truth and Reconciliation Commission Debate." *Journal of Law and Religion* 20, No. 2 (2004-2005): 525-565.
- Arendt, Hannah. *The Human Condition*. Chicago: University of Chicago Press, 1998.
- Ben-Ze'ev, Efrat, Ruth Ginio, and Jay Winter. *Shadows of War; A Social History of Silence in the Twentieth Century*. New York: Cambridge University Press, 2010.
- Brahm, Eric. "Uncovering the Truth: Examining Truth Commission Success and Impact." *International Studies Perspectives* 8, No. 1 (2007): 16-35.
- Card, Claudia. *The Atrocity Paradigm*. New York: Oxford University Press, 2005.
- Chakravarti, Sonali. "More Than "Cheap Sentimentality": Victim Testimony at Nuremberg, the Eichmann Trial, and Truth Commissions." *Constellations* 15, No. 2 (2008): 223-235.
- Chalmers, David. *The Conscious Mind*. New York: Oxford University Press, 1997.
- Chapman, Audrey R., and Patrick Ball. "The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala." *The John Hopkins University Press* 23, No. 1 (2001): 1-43.
- Crocker, David A. "Truth Commissions, Transitional Justice, and Civil Society." In *Truth v. Justice; The Moral Efficacy of Truth Commissions: South Africa and Beyond*, edited by Robert I. Rotberg, and Dennis Thompson, 99-121. Princeton: Princeton University Press, 2000.
- Dale, Richard. "The South African Truth Commission." *Journal of Conflict Studies* 21, No. 2 (2001): 146-150. Accessed September 28, 2010. <<http://journals.hil.unb.ca/index.php/jcs/article/view/4272/4849>>.
- David, Roman. "Victims on Truth Commission." Paper presented at the annual meeting of the Law and Society, J.W. Marriott Resort, Las Vegas, Nevada, May 25, 2009.
- Derrida, Jacques. *On Cosmopolitanism and Forgiveness*. New York: Routledge, 2001.
- Dimitrijevic, Nenad. "Justice beyond Blame: Moral justification of (The Idea of) A Truth Commission." *The Journal of Conflict Resolution* 50, No. 3 (2006):

368-382.

- Gibson, James L. "The Truth about Truth and Reconciliation in South Africa." *International Political Science Review* 26, No. 4 (2005): 341-361.
- Graybill, Lyn S. "South Africa's Truth and Reconciliation Commission: Ethical and Theological Perspectives." *Ethics & International Affairs* 12, No. 1 (1998): 44-62.
- Harris, Jason C., telephone interview with author, March 20, 2011.
- Hayner, Priscilla B. *Unspeakable Truths*. New York: Routledge, 2001.
- Lamb, Sharon. *The Trouble With Blame*. Cambridge: Harvard University Press, 1999.
- Levi, Primo. *The Drowned and the Saved*. New York: Random House, Inc., 1989.
- Mendeloff, David. "Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice." *Human Rights Quarterly* 31, No. 3 (2009): 592-623.
- Minow, Martha. *Between Vengeance and Forgiveness*. Boston: Beacon Press, 1998.
- Morton, Adam. *On Evil*. New York: Routledge, 2004.
- Nussbaum, Martha. "Women and equality: The capabilities approach." *International Labour Review* 138, No. 3 (1999): 227-245.
- Penh, Phnom. "Scarred, Not Healed." *The Economist*, July 29, 2010. <<http://www.economist.com/node/16703385>>.
- Phelps, Teresa Godwin. *Shattered Voices; Language, Violence, and the Work of Truth Commissions*. Philadelphia: University of Pennsylvania Press, 2004.
- Quinn, Joanna R., and Mark Freeman. "Lessons Learned: Practical Lessons Gleaned from inside the Truth Commissions of Guatemala and South Africa." *Human Rights Quarterly* 24, No. 4 (2003): 1117-1149.
- Rodio, Emily B. "Settling Past Accounts: Assessing the Impact of Truth Commissions on Democratization." Paper presented at the annual meeting of the International Studies Association 48th Annual Convention 'Politics, Policy and Responsible Scholarship,' Hilton Chicago, Chicago, Feb 28, 2007.
- Rosenberg, Tina. "Recovering from Apartheid." *New Yorker*, November 18, 1996.
- Schott, Robin May. "The Atrocity Paradigm and the Concept of Forgiveness."

Hypatia 19, No. 4 (2004): 204-211.

Sebag Montefiore, Simon. *Stalin: The Court of the Red Tsar*. New York: Random House, Inc., 2003.

Shore, Megan. *Religion and Conflict Resolution: Christianity and South Africa's Truth and Reconciliation Commission*. Burlington: Ashgate, 2009.

"South African Truth and Reconciliation Commission Videotape Collection." *Yale Law School*. Tape 7, episode 7, airdate: June 23, 1996. Accessed February 10, 2010. <http://trc.law.yale.edu/video_episodes.htm>.

Stein, Dan J., Soraya Seedat, Debra Kaminer, Hashim Moomal, Alien Herman, John Sonnega, and David R. Williams. "The impact of the Truth and Reconciliation Commission on psychological distress and forgiveness in South Africa." *Social Psychiatry* 43, No. 6 (2008): 462-468.

Tepperman, Jonathan D. "Truth and Consequences." *Foreign Affairs* 81, No. 2 (2002): 128-145.

Truth and Reconciliation Commission of South Africa Report. Government of South Africa, Commission on Truth and Reconciliation. March 21, 2003. <http://www.info.gov.za/otherdocs/2003/trc/5_7.pdf>.

"Truth and Reconciliation," *Focus on Africa Magazine*, BBC, (January-March 2000).

"What is Restorative Justice?" *Suffolk University, Center for Restorative Justice*. Accessed February 10, 2011. <<http://www.suffolk.edu/research/6953.html>>.

"What is Transitional Justice?," *International Center for Transitional Justice*. Accessed September 28, 2010. <<http://ictj.org/en/tj/#1>>.

Wiesenthal, Simon. *The Sunflower*. New York: Schocken Books, 1998.

Zeno, Katrina J. "Beyond Forgiveness to Reconciliation." *The Christian Broadcasting Network*. Accessed March 10, 2010. <http://www.cbn.com/spirituallife/BibleStudyAndTheology/Discipleship/Beyond_Forgiveness_to_Reconciliation.aspx>.