

Reconciliation and the Public/Private Distinction
The Role of Victims and Beneficiaries in South Africa's TRC*

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Introduction

The South African Truth and Reconciliation Commission (TRC) has been the largest, most public and best funded truth commission to date. It especially stands out from other commissions because it sought not only the truth, but also reconciliation. In assessing its potential as a model for other countries, careful attention ought to be paid to the ways in which the TRC pursued national reconciliation. Reconciliation should involve the (re)construction of a strong public/private distinction because the distinction was egregiously violated under apartheid. In tracing apartheid violations of the public/private distinction, a reading of privacy as inviolate personality will be developed. I will argue that the TRC blurs the distinction between public and private in its emphases on forgiveness, healing the nation and heroism. As such, the TRC fails to adequately redress the injustices of the past.

The focus on the public/private distinction follows Judith Shklar's claim that the prevention of cruelty requires, at minimum, some sort of boundary between the public and the private. Shklar's argument is deeply attuned to the injustice that governments inflict upon their subjects, especially that of moral degradation and physical cruelty. Likewise, a truth commission's basic role is to "put cruelty first" by acknowledging the "truth" about the violence of the past in order to make possible a non-violent, democratic future. I contend that if the TRC seeks to demonstrate unquestionably that the "public good" does not automatically justify intervention in the lives of citizens, it must also be cognizant of its own role as a public body that deals in personal pain and suffering. Part of "never again" ought to include distinguishing between public and private; the boundary between the two serves as a preventive barrier to injustice because it signifies a realm beyond legitimate state control.

The construction of a strong public/private distinction is not meant to embrace the

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entirety of reconciliation. But, as Shklar points out, the prevention of cruelty “is simply a first principle, an act of moral intuition.”¹ And it is absolutely foundational: “if democracy means anything morally, it signifies that the lives of all citizens matter.”² I will argue that the TRC could have better met this obligation. The manner in which the Commission inscribed personal narratives of pain within the national narrative of reconciliation reveals a murky dynamic between public and private. Specifically, there was a tendency to gloss over the role that beneficiaries of apartheid could play in reconciliation and a disproportionate reliance upon victims of gross human rights abuses to carry the burden of reconciliation.

Apartheid Violations of the Public/Private Distinction

In basic apartheid law, political repression and extra-judicial violence, the South African state violated the ordinarily prescribed bounds of public authority. In conceptualizing the public/private distinction, I will start with what the distinction should *not* be. A full enumeration of the injustices perpetrated under apartheid cannot be presented here.³ Briefly, when the National Party came into power in 1948 there were scattered pieces of legislation that disenfranchised the black population, appropriated land, controlled urban influx and reserved skilled mining jobs for whites or coloureds only. The transition from colonial indirect rule to full-blown apartheid commenced with the enactment of a series of laws that forced a rigid separation between the races in social, political, economic and geographic terms.

The cornerstone of apartheid legislation is the Population Registration Act of 1950. This act stipulates the classification of all South Africans into racial categories: White, Indian, “Coloured” and African (Bantu).⁴ A person’s racial classification affected, among other things, marriage and conjugal relations, property, residence, movement, education, economic status, and voting rights. Mixed marriages were prohibited by law. Blacks were prohibited from owning

¹ Judith N. Shklar, “The Liberalism of Fear,” in Nancy Rosenblum, ed., *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), 30.

² Judith N. Shklar, *The Faces of Injustice* (New Haven: Yale University Press, 1990), 35.

³ For more detailed discussions, see Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, (Princeton, N.J.: Princeton University Press, 1996); John Dugard, *Human Rights and the South African Legal Order*, (Princeton, N.J.: Princeton University Press, 1978); Kader Asmal, Louise Asmal and Ronald Suresh Roberts, *Reconciliation through Truth: A Reckoning of Apartheid’s Criminal Governance*, (Cape Town: David Philip Publishers, 1997); Anthony Marx, *Lessons of Struggle: South African Internal Opposition, 1960-1990*, (New York: Oxford University Press, 1992); Nicholas Haysom and C. Plasket, eds., *Developments in Emergency Law*, (Johannesburg: Centre for Applied Legal Studies, 1989); Max Coleman, ed., *A Crime Against Humanity: Analysing the Repression of the Apartheid State*, (South Africa: David Philip Publishers / Mayibuye Books / Human Rights Committee: 1998).

⁴ Originally the Act had three categories: White, Bantu and Coloured. Coloured was then divided into seven sub-categories: Cape Coloured, Cape Malay, Griqua, Chinese, Indian, other Asiatic, and other Coloured. The definitions have been frequently amended (Dugard, *Human Rights*, 61). I will generally follow the TRC’s terminology – white, African, Indian (which could also include other “Asiatic” groups) and Coloured (people of mixed descent) when discussing apartheid categories. “Black” will generally refer to persons of African descent, unless there is specific reference to Black Consciousness, which exploded the term “black” to include all non-whites.

land outside designated “homelands” and they needed special permission to live in urban areas.⁵ Permission was also needed to travel between areas and pass laws required that all male Africans present a passbook upon demand or within reasonable time to fetch it.

White skilled job reservation and the suppression of non-white wages were matched by an inferior system of “Bantu” education. At least six times more money was spent on white schools than on African schools.⁶ Africans were intended as cheap, unskilled labour for South African industry and agriculture. Migrant workers (i.e. men lacking permission to live in urban areas) had to live in hostels and were not permitted to bring their families with them. Overcrowding in the hostels could be so extensive that men were forced to sleep in shifts. In the townships (home for those who qualified to be urban residents), water and electricity systems were inadequate and environmental hazards were a continual problem. Conditions in the homelands were as dismal as those in urban areas, if not worse. Simply put, the homelands were not economically viable – a condition often worsened by typically despotic governance. Urban dwellers at least had better access to employment, however exploitative that was, and were not forced to live apart from their families, with the men migrating “home” once a year.

Political resistance to apartheid was met with a battery of security laws, including provisions for permanent emergency powers. Repressive legislation included the suppression of communism, the criminalization of civil disobedience, the banning and/or censorship of publications, the banning or banishment of individuals,⁷ and the banning of political organizations and political gatherings. Government officials were given broad powers to detain without trial anyone suspected of being a communist or a terrorist, and to place individuals in solitary confinement. Permanent emergency powers included the ability to impose curfews and to deploy troops in the townships.

The battery of security laws legally permitted the repressive measures listed above. However, the line between “lawful” repression and the illegal use of state power became increasingly blurred. For example, solitary confinement is itself a form of torture.⁸ However, in 1964, the Appellate Division determined that the point of the 90-day (solitary) detention law was

⁵ This policy originated in the 1913 Land Act and the 1936 Development Trust and Land Act but was more rigidly enforced under apartheid, particularly through the Group Areas Act of 1950. Although Blacks comprise 70% of the population they were permitted access to only 13.6% of the land. Forced removals of “black spots” (or in rare cases, “white spots”) is one of the saddest stories of apartheid. In total some 3.5 million people were forced from their homes.

⁶ International Commission of Jurists, *South Africa: Human Rights and the Rule of Law*, Geoffrey Bindman ed. (London: Pinter Publishers, 1988), 43.

⁷ Individual banning orders restricted freedoms of movement, association and expression. A banned person was confined either to a certain district, suburb, or house or apartment and had to report periodically to the police station. Attendance at political gatherings, and even social gatherings was prohibited. The number of visitors that a banned person could receive was also limited. It was illegal to publish or quote a banned person.

⁸ See Don Foster with Dennis Davis and Diane Sandler, *Detention and Torture in South Africa: Psychological, Legal & Historical Studies* (London: Currey, 1987), 136 and A.S. Mathews and R.C. Albino, “The Permanence of the Temporary – An Examination of the 90- and 180-Day Detention Laws,” 83, (1966) *South African Law Journal*, p.16-43.

“psychological compulsion.” Detainees had no right to reading material because that would alleviate the “tedium” necessary for inducing detainees to talk.⁹ Given the legal sanction of solitary confinement and other repressive measures, and the conviction that South Africa was facing a total onslaught in the midst of widespread ungovernability, it was an easy slide into the practice of state terror.

There is no doubt that the state systematically engaged in the administration of torture. Foster *et al* found in a 1984 study that 83% of detainees (93% of black detainees) were subjected to some form of physical torture and that all were subjected to psychological torture.¹⁰ Other elements of state terror include the deployment of hit squads that harassed or killed activists and bombed or burglarised liberation offices. This included covert cross-border attacks on exiled ANC activists and members of SWAPO (South West Africa's People's Organization). Within South Africa, the state fomented so-called “black on black” violence by playing upon existing social, political and ethnic tensions. “Third force” activities included the provision of training to the IFP and the deliberate or tacit sanctioning of its activities against the ANC. Security forces also colluded with vigilante groups so as to manipulate hostilities toward the UDF and the ANC.

State, Privacy and Identity

The relation between state and society is a question that has long occupied political theorists. How we draw the boundary between public and private has significant bearing on conceptualisations of the role and legitimacy of government. In differentiating between public and private spheres, we are drawing boundaries in terms of access, interest, and agency.¹¹ Thus, we can speak of public space, public information or public resources. Private interests are distinguished from public interests on the basis of who benefits from an activity or enterprise. In terms of agency, a public official may be permitted certain functions that would be illegal if carried out by a private citizen. At the same time, public agents can be held accountable and can be required to justify their actions in a way that private citizens cannot.¹²

The elements of access, interest and agency can be mapped onto depictions of the public/private distinction that fall under two major groupings: visible versus hidden and

⁹ See David Dyzenhaus, *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy*, (Oxford: Clarendon Press, 1991), 101. (*Rossouw v. Sachs* 1964 (2) S.A. 551.)

¹⁰Foster *et al*, *Detention and Torture in SA*, 102-105. The TRC collected 21,000 victim statements covering a broad range of human rights abuses. Statistical breakdown is unavailable, but the TRC does say a large proportion of these victim statements allege torture. Violence perpetrated by the liberation movements, including the use of torture within ANC camps and IFP killings, are not the focus of analysis here (although they are included within the TRC’s count of gross hrv victims).

¹¹ Stanley I. Benn and Gerald F. Gaus, “The Public and Private: Concepts and Action,” in Benn and Gaus, eds., *Public and Private in Social Life* (London: Croom Helm Ltd., 1993).

¹² *Ibid.*, 10.

individual versus collective.¹³ I am interested in both groupings, particularly with respect to the question of agency and corresponding issues of control and accountability. In asking what constitutes the realm of legitimate state coercion and justifications for it, we must try to identify what is it that stands “against the state.” In common parlance, we tend to speak of the private sphere as standing in opposition to the public sphere of government. Various mechanisms, such as open and fair elections, civil dissent, rights, rule of law, and an independent judiciary, ensure the legitimacy of public transgressions into the “private” sphere. These mechanisms prevent the “privatization” of power for individual gain and they sanction state action by providing authorization from the collective.

Where visibility and scrutiny hold state accountable to society, public refers both to the administrative state and to the “public spirit” of collective self-determination through political participation.¹⁴ In other words, there is no single definitive “public” sphere or, for that matter, “private” sphere. Public, for example, might refer to the realm of legitimate state jurisdiction, but also to civic engagement, social interaction, or simply, publicity. Private can refer to an entire sector of non-governmental relations, despite these being a form of social interaction. Private relations, especially those of intimacy or domesticity, generally stand opposed to public interference. However, private can also refer to that which should remain out of public view, such as urinating or sexual activity.

We must be cautious not to oversimplify social life with a single binary opposition.¹⁵ Traditional depictions of the public and private spheres run into a number of problems. The place of the economy is particularly tricky. If it is treated as the public vis-à-vis the family, political engagement is eclipsed. If the economy is treated as private vis-à-vis the state, other forms of social relations and especially family life, are obscured from sight. Feminist work has demonstrated the traditionally exclusionary nature of the public/private distinction, where women are confined and rendered invisible within the private.¹⁶ When public and private are treated as static spatial realms, such as household and political assembly, the politicization of “private” issues is resisted or denied.¹⁷ Thus, although the emphasis on the private as a realm of freedom is not misplaced within the context of state violence, we must also note how the private can be a realm of unfreedom.

¹³ Norberto Bobbio, “The Great Dichotomy: Public/Private,” in *Democracy and Dictatorship*, trans. Peter Kennealy (Minneapolis: University of Minnesota Press, 1989).

¹⁴ See Jeff Weintraub, “The Theory and Politics of the Public/Private Distinction,” in Jeff Weintraub and Krishan Kumar, eds., *Public and Private in Thought and Practice* (Chicago: University of Chicago Press, 1997).

¹⁵ *Ibid.*

¹⁶ Carole Pateman, *The Disorder of Women* (Oxford: Polity Press, 1989), 121-122; Jean Bethke Elshtain, *Public Man, Private Woman*, (Princeton: Princeton University Press, 1981).

¹⁷ Hannah Arendt's disdain for political action on the basis of social compassion similarly decries the household entering the realm of politics. For a defense of Arendt's rigid distinction between the social and the political, see Hanna Fenichel Pitkin, “Justice: On Relating Public and Private,” *Political Theory* 9, 3 (1981), 327 and Patricia Boling, *Privacy and the Politics of Intimate Life* (Ithaca: Cornell University Press, 1996).

On the basis of these different conceptual problems, it follows that the division between public and private cannot be treated as a single rigid dichotomy. Rather, the distinction is fluid and permeable, encompassing social sectors, spatial realms, issues, interests and activities. The pitfalls of designating a single public or private sphere must be avoided. While I do not agree with feminists such as MacKinnon that the boundary between public and private should be collapsed, we must acknowledge that sometimes the personal is political. There can be no veto against “private” issues such as marital rape entering the realm of public debate (although we can insist that the politicization of personal issues conform to principles of equality, freedom and respect). In another vein, the reconstruction of South African society requires state intervention in traditionally private spheres through economic redistribution, land reform, and affirmative action. Thus, the liberal emphasis on the economy as *the* private realm will not be forwarded here.¹⁸

Rather than delineating static public and private spheres, I will focus on the idea of privacy itself, which is present in both “public” and “private.” There is much debate about whether privacy consists in “informational privacy” or “decisional autonomy,” “the right to be let alone,” “inviolate personality” or “restricted access.”¹⁹ While I cannot enter into this debate here, I note that under apartheid all of these categories, which appear to point toward different definitions of privacy, were violated. Yet, these different violations are alike in the injurious effect they had on personhood. Accordingly, I propose that at its core, privacy is best characterized as inviolate personality.²⁰

It is not a right to privacy per se that is at stake in my analysis. As Thomson points out, our interests in privacy may well be covered by rights to autonomy, bodily integrity, or property, etc.²¹ But *contra* Thomson, privacy is not “derivative” from these rights. It has coherent value on its own – as a good that is protected by a cluster of rights including, sometimes, privacy-

¹⁸ Cohen and Arato’s model of civil society specifically addresses the need for social reconstruction in transitional societies. They differentiate public and private twice: once within the “system” and again within the “lifeworld” (society). In the system, the public state is differentiated from the private economy. The lifeworld is also divided into public and private spheres. This model permits a strong public/private distinction within the context of the lifeworld vis-à-vis the state without inhibiting redistributive policies in the state/economy relationship. Cohen and Arato write, “state intervention into the economy is not automatically equivalent to state penetration of the private sphere...and the limitation of the private economy need not be seen merely as the other side of the growth of state intervention.” *Civil Society and Political Theory* (Cambridge: MIT Press, 1992), 430-431.

¹⁹ See Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” in Schoeman, ed., *Philosophical Dimensions of Privacy*, p. 75-103 for the classic formulation of the right to be let alone. See also Judith Wagner DeCew, *In Pursuit of Privacy: Law, Ethics and the Rise of Technology*, (Ithaca, N.Y.: Cornell University Press, 1997); Anita Allen, *Uneasy Access: Privacy for Women in a Free Society*, (New Jersey: Rowman and Littlefield Publishers, 1988); Patricia Boling, *Privacy and the Politics of Intimate Life*; Jean L. Cohen, “Rethinking Privacy: Autonomy, Identity, and the Abortion Controversy,” in Weintraub and Kumar, eds., *Public and Private in Thought and Practice*.

²⁰ Bodily integrity constitutes the *sine qua non* of privacy but owing to space constraints, I will not develop the argument here.

²¹ Judith Jarvis Thomson, “The Right to Privacy,” in Ferdinand David Schoeman, ed., *Philosophical Dimensions of Privacy: An Anthology* (New York: Cambridge University Press, 1984).

specific rights.²² Even though privacy is closely related to autonomy and freedom, these are separable phenomena. This is evident in that the systematic denial of basic human rights in South Africa had implications larger than the sum of its parts. The abrogation of mobility, education, civil liberties and political rights penetrated into the sense of self-worth. I will argue that apartheid policy, including repression and terror, had insidious effects on personhood that constitute an invasion of privacy. The dehumanizing nature of state policy and practice struck at the sense of who I am, who I want to be, and who I can be. We can be very vulnerable in asking ourselves who we want to be and it is this vulnerability that calls for protective arch of privacy.

The injustices of apartheid point toward a reading where, above all else, privacy is a condition that secures the moral capacity to develop and express our sense of identity within different relationships of our choosing or to be reserved in relationships not of our choosing. This reading of privacy steers away from an atomistic conception of the individual, emphasizing instead that we are shaped through social and intimate interaction within a multiplicity of relationships (“relational privacy”). Although no person can fully control the processes that shape her identity, privacy provides a shield against state scrutiny and control.²³ As such, privacy is a condition that is present in both “public” and “private” spheres. As DeCew writes, privacy provides a refuge “within which we can shape and carry on our lives and relationships with others – intimacies as well as other activities – without the threat of scrutiny, embarrassment, judgment, and the deleterious consequences they might bring.”²⁴

Privacy enables conditions of secrecy, anonymity, and confidentiality that allow us to “edit” ourselves and to establish different roles and presentations to the world at large. Solitude and intimacy foster the capacities for critical self-evaluation and moral judgment because they help us to withdraw from the normalizing effects of state policy.²⁵ Privacy marks what is beyond the legitimate interests of the state, and as such, establishes the basis for the independence and autonomy to be who we want to be (insofar as this is ever possible). Privacy also facilitates the formation of relationships in which we express our self-identity and act according to our judgments.²⁶ Furthermore, privacy serves other (democratic) values such as plurality, spontaneous human interaction, critical morality, independent judgment, toleration, human dignity and personal autonomy.²⁷ Privacy enables the development of self-confidence and

²²Privacy cannot be legally protected in all cases. For example, eavesdropping is not against the law but nonetheless ignores personal privacy. Furthermore, other rights conceivably might be derived from a core conception of privacy. See DeCew, *In Pursuit of Privacy*, 29.

²³ I leave aside questions of privacy between individuals within society (what DeCew refers to as tort privacy, as opposed to constitutional privacy, in American jurisprudence.)

²⁴ DeCew, *In Pursuit of Privacy*, p. 64.

²⁵ I acknowledge but cannot tackle here a Foucauldian argument about the normalizing effects of privacy doctrine. See Ferdinand David Schoeman, *Privacy and Social Freedom* (New York: Cambridge University Press, 1992) for a discussion of privacy as a form of social control.

²⁶Schoeman, *op cit*.

²⁷ See Annabelle Lever, “Feminism, Democracy and the Public/Private Distinction.” Lever thoroughly responds to the feminist (MacKinnon’s) critique of privacy by outlining the democratic and intrinsic value of privacy. See also

politically relevant skills insofar as ideas can be tested with trusted individuals before entering the public fray.²⁸

Jean Cohen provides an interpretation of privacy that is particularly appropriate to the apartheid context. Cohen argues that privacy protects “the constitutive minimal preconditions for having an identity of one’s own.”²⁹ These include the capacity for ethical self-realisation, the right to be different, the ability to make decisions in areas of personal concern without justification to anyone, and the right to have a voice for self-expression in public and private. Moreover, the capacity to shape one’s identity within different contexts hinges upon the idea of recognition. Cohen writes:

On the one side, by securing everyone’s juridical personhood and decisional autonomy *equally*, privacy rights protect the claim of every concrete individual, no matter how different or odd, to be treated as a peer by members of the community. On the other side, privacy rights shield the personal dimensions of one’s life from undue scrutiny or interference.³⁰

This formulation can be directly linked to the idea of human dignity because it entails respect for each individual’s capacity to make choices and to express oneself.

Most importantly, privacy “*militates against the imposition of an identity onto one which one does not freely affirm and embrace.*”³¹ Nothing could more clearly or more strongly grasp the nature of apartheid violations of privacy. The Population Registration Act violated privacy through the imposition of racialised identities. The Act violated relational privacy by fragmenting society into discrete categories, thereby fracturing the capacity for socialization and intimacy. And it shattered the boundaries of intimacy by tearing apart families through inconsistent classification and by prohibiting mixed marriages. An appeal for re-classification could spark a humiliating witch-hunt into a person’s family history, social habits and physical appearance – all exercises exemplifying undue scrutiny.³²

Subsequent violations of human rights flowed from one’s racial classification. The ability to develop one’s abilities and self-expression were severely curtailed through limitations on place of residence, education, employment and political activity. Systematic attacks on basic

Ruth Gavison, “Privacy and the Limits of Law,” in Ferdinand David Schoeman, ed., *Philosophical Dimensions of Privacy*, (New York: Cambridge University Press, 1984 [1980]). I disagree with Gavison’s claim that we should not formulate privacy in terms of control, but do agree with her functional analysis of privacy.

²⁸ Annabelle Lever, “Privacy Rights and Democracy: A Philosophical Examination,” unpublished manuscript, May 1998, 37.

²⁹ Cohen, “Rethinking Privacy,” 153.

³⁰ *Ibid.*, 154.

³¹ *Ibid.*, p. 155, emphasis added.

³² Dugard, *Human Rights*, p. 62.

human rights, which in themselves are an appalling transgression, also struck deeply at the core of personhood – an area in which the state has no legitimate purview unless it accords with fundamental rights and democratic authorization. Hence, the apartheid state overreached its bounds not only by destroying the very mechanisms that hold state accountable to society, but also by invading the privacy of selfhood in the process.

Steve Biko, founder of the Black Consciousness Movement, described the deeply pervasive nature of apartheid:

Born shortly before 1948, I have lived all my conscious life in the framework of institutionalised separate development. My friendships, my love, my education, my thinking and every other facet of my life have been carved and shaped within the context of separate development.³³

Years of living under the system, he argued, resulted in a profound sense of inferiority among black people. The “spiritual poverty” that Biko identified seems to me to be directly analogous to the reading of privacy forwarded here. The internalisation of racism – the belief in apartheid’s claim that “black is an aberration from the ‘normal’ which is white”³⁴ – had a debilitating effect on self-identity and self-esteem.

Moreover, the distorted sense of self had profound implications for domestic anti-apartheid efforts. We should note that Black Consciousness emerged in the seventies – the “decade of peace” where dissent largely had been crushed. In Biko’s words: “All in all the black man has become a shell, a shadow of a man, completely defeated, drowning in his own misery, a slave, an ox bearing the yoke of oppression with sheepish timidity.”³⁵ In Biko’s view, Blacks in the liberation movements let themselves be dominated by white liberals who were, at heart, unwilling to give up their privilege. Until Blacks could “learn to assert themselves and stake their rightful claim,” they would be “useless co-architects of a normal society.”³⁶

Black Consciousness set about building people’s sense of worth by infusing a pride in being black. Although formal membership was not high, its ideas permeated and galvanized a large section of the urban population.³⁷ The effect of Black Consciousness was highly apparent in the spontaneous demonstrations by Soweto students in 1976 against the distorted teaching of history and the forced teaching of Afrikaans. This sparked nation-wide protests among Blacks and can be considered a turning point in the struggle history. Although not the only factor, rebuilding people’s sense of self-worth helped to awaken political opposition.

³³ Steve Biko, *I Write What I Like*, (London: Bowerdean Publishing, 1996 [1978]), p.27.

³⁴ *Ibid.*, p. 49.

³⁵ *Ibid.*, p. 29.

³⁶ *Ibid.*, p. 20 – 21.

³⁷ Marx, *Lessons of Struggle*, p. 53.

State repression further contributed to the invasion of privacy. Banning, for example, struck at a person's being. Mandela recalls that banning "induces a kind of psychological claustrophobia that makes one yearn not only for freedom of movement but spiritual escape."³⁸ The constant effort involved in obeying the banning rules, sometimes combined with the knowledge that one was very vulnerable to assassination and physical threat, could create conditions of cumulative psychological stress. Banning also strained family relations because families became, in effect, the restrictee's jailors and home became the jail.³⁹ Social and family gatherings, such as weddings or birthday parties, were not allowed. In 1976, the Appellate Division held that "gathering" consisted of "any number from two upwards," thus raising the possibility that intimate relations could be denied or punished.⁴⁰

Solitary confinement might appear to be the epitome of privacy, but it has an insidiously damaging affect on personhood. Foster, Davis and Sandler write:

Further stress is induced by the prisoner's need to shield the inner, more covert aspects of personality, a need to protect against "losing control" that so obviously gives the upper hand to the interrogator. Similarly the role of the prisoner may itself be used as a manipulative device by interrogators. The need to "keep face" as a prisoner, in relation to fellow prisoners, is a stressful, demanding task. The psychological need to maintain a positive self-image, and to maintain a consistent role in the face of a situation where talk itself may be dangerous and where silence is manipulated [i.e. presumption that the prisoner is hiding something], constitute a highly stressful situation and at least partly account for the considerable number of persons who have given some statement or information against even their dearest wishes...⁴¹

The consequences of detention extended beyond the individual into a violation of relational privacy. Detention was used to imply collaboration, to break apart comrades, families and communities, and to turn people into informers. Coerced evidence was used against the detainee or against fellow detainees. This could lead to a lengthy prison sentence, social ostracism, or worse in the case of those forced to be witnesses for the state.

Solitary confinement involves a manipulation of public and private that aims to break an individual. These dynamics are even more apparent in the structure of torture.⁴² Torture is a

³⁸ Mandela, *Long Walk to Freedom* (New York: Little, Brown and Company, 1994), 144.

³⁹ "Forgetting to report or failing to notice that an additional person had joined the group of people one was talking to could have resulted in a criminal charge. There was no space for spontaneity or forgetfulness." Coleman, *A Crime Against Humanity*, 75.

⁴⁰ *S v. Wood*, cited in Dugard, *Human Rights*, 161.

⁴¹ Foster *et al*, *Detention and Torture in SA*, p. 78.

⁴² The United Nations defines torture as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons...Torture constitutes an aggravated and deliberate form of cruel,

political act perpetrated in the most private of circumstances in the name of the public good. Elaine Scarry describes the practice as “an almost obscene conflation of private and public” that combines isolation and exposure in their most extreme forms.⁴³ Torture is “an undoing of civilisation” that translates the objectified attributes of felt pain into an emblem of state power.⁴⁴ The infliction of intense physical pain dissolves the outside world for the victim. It is not only the omnipresence of pain that makes this happen, but also the manner in which pain is inflicted. The comfort and shelter of the world are stripped away and everything becomes a weapon. Everyday domestic objects are used – suffocation with rubber tubes or wet canvas bags, immersion in bathtubs, banging heads against walls, floors or doors.⁴⁵

When pain destroys consciousness of the world, when civilization is “unmade,” there is no world to betray in answering the “question.” Scarry depicts this as the separation of body and voice. In confession, the victim becomes all body and the torturer, all voice. The victim experiences a separation of body and self when pain becomes the vehicle of “self-betrayal” in submitting to the interrogation. This inner separation constitutes a violent rupture of the human being as an embodied self. Scarry writes:

The “self” or “me,” which is experienced on the one hand as more private, more essentially at the center, and on the other hand as participating across the bridge of the body in the world, is “embodied” in the voice, in language. The goal of the torturer is to make the one, the body, emphatically and crushingly present by destroying it, and to make the other, the voice, absent by destroying it.⁴⁶

The incontestability of the victim’s pain is converted into a fiction of incontestable state power. The reality of pain is denied – and blindness to the victim’s pain is a large part of this power. The response to pain is contempt not compassion. Confession is marked as betrayal. In forcing a confession, “the torturers are producing a mime in which the one being annihilated shifts to being the agent of his own annihilation.”⁴⁷

inhuman or degrading treatment or punishment.” UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴³ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 53.

⁴⁴ *Ibid.*, 38; 51.

⁴⁵ Scarry’s analysis does much to explain the dynamics of torture. However, her analysis neglects the gendered subtexts of torture. Scarry assumes too readily that the private realm always symbolizes comfort. Sexual torture or other forms of torture used specifically on women reinforce and exacerbate women’s subordinate position in society. Nevertheless, the thrust of Scarry’s analysis remains intact: public and private are manipulated to the benefit of the state. See M. Brinton Lykes, Mary M. Brabeck, Theresa Ferns, and Angela Radan, “Human Rights and Mental Health among Latin American Women in Situations of State-Sponsored Violence,” *Psychology of Women Quarterly*, (1993), 17, 525-544.

⁴⁶ Scarry, *Body in Pain*, 49.

⁴⁷ *Ibid.*, p. 47.

The consequences of torture and, to a lesser extent, solitary confinement can amount to a complete breakdown of an individual (I leave aside the potentially devastating physical and economic consequences.) Psychological sequelae include anxiety, depression, irritability, paranoia, sexual dysfunction, sleep disturbances, concentration difficulties, impaired memory, and fear of authority. Persons with post-traumatic stress disorder re-live the traumatic event in response to external triggers. Self-loathing, shame and the sense of having a “contaminated identity,” particularly if “broken” to “confess,” often result.⁴⁸ Survivors of torture sometimes experience difficulty relating to others, even family members. Emotional withdrawal, a sense of alienation, and domestic violence are not uncommon responses. In short, the effects of torture on personhood and personal relationships represent the apex of privacy violations perpetrated by the apartheid state.

Public and Private Narratives of Reconciliation: The Burdening of Victims

The TRC was assigned four main tasks in respect of its primary mandate to promote “national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past.” These were:

- a) to establish “as complete a picture as possible of the causes, nature and extent” of gross human rights violations;
- b) to grant amnesty to perpetrators who make full disclosure with regard to politically motivated acts;
- c) to restore the dignity of victims of gross violations of human rights by establishing the fate and whereabouts of victims, by granting victims an opportunity to relate their accounts and by recommending reparations; and
- d) to compile a comprehensive report including recommendations for the prevention of gross human rights violations.

Public human rights violations hearings were held across the country and 21,000 victim statements were taken (not everyone was able to testify). During the amnesty hearings a total of 849 amnesties were granted out of 7112 applications. Special and institutional public hearings were also conducted to examine the broader context of apartheid or particularly controversial issues.

Given the many tasks assigned to the TRC and the different ideological positions of Commissioners and participants, it is not surprising that reconciliation became a multi-faceted, complicated concept. The conflicts and violence in South Africa created social divisions on many inter-related levels. Consequently, we can speak of national reconciliation between blacks and whites, of interpersonal reconciliation between individual victims and perpetrators, and of community reconciliation between people caught in local “black-on-black” violence. We might also speak of personal reconciliation in the sense of overcoming the anger or grief that stems from trauma.

⁴⁸Judith Lewis Herman, M.D., *Trauma and Recovery*, (New York: Basic Books, 1997), 93.

Reconciliation is said to involve different components, such as truth, justice, healing, acknowledgement and forgiveness, which lead to the transformation of society. Each component of reconciliation has varying implications for the nature of transformation sought. Van der Merwe suggests that a process of reconciliation involves progressive stages of transformation.⁴⁹ He distinguishes four “spheres” of reconciliation: behaviour, attitudes, values and identity. If these spheres of reconciliation are diagrammed as four concentric circles, the transformation of behaviour represents the outermost circle. Intervention focusing on behaviour results in a shift from conflict to cooperation. Intervention aimed at changing attitudes (second outermost circle) strives to overcome hatred, anger, stereotyping and other negative orientations. Intervention aimed at changing values looks at “the basic understanding of what constitutes fair or appropriate forms of behavior between groups and individuals.” Finally, at the innermost circle, intervention aimed at changing identity seeks a “supra-ordinate” identity that can transcend divisions and impel a change in one's self-understanding vis-à-vis the “other.”

Following this model, reconciliation can range from peaceful co-existence resulting from a shift in behaviour and attitudes to a deep moral transformation resulting from critical re-assessment of values and identities. The former might be termed a weak account of reconciliation while the latter is a strong vision of reconciliation. The TRC embraced both over the course of its mandate. My focus here will be the narratives of forgiveness, healing the nation and heroism. These narratives represent a public intervention aimed as transforming personal identity – but with a disproportionate emphasis on victims’ identities. They conflate personal processes with nation reconciliation, resulting in an inappropriate emphasis on the role the victims, rather than perpetrators or beneficiaries, have to play in reconciliation.

There has been much criticism that during the Human Rights Violations hearings there was a push for forgiveness, often within a religious framework.⁵⁰ TRC Chair Archbishop Desmond Tutu maintains that reconciliation starts with forgiveness. Importantly, forgiveness is a unilateral act. It would be “palpably unjust” to make the victim a prisoner of the perpetrator’s whim were forgiveness contingent upon apology.⁵¹ Rather, it is hoped that the victim’s act of forgiveness will infuse the perpetrator with the spirit of acknowledgement and contrition.

The extent to which a pressure to forgive was exerted is difficult to measure. On the one hand, during the victim hearings Commissioners expressly linked reconciliation more often with other concepts such as truth, healing, heroism, human rights culture and peaceful coexistence,

⁴⁹ Hugo Van der Merwe, *The Truth and Reconciliation Commission and Community Reconciliation: An Analysis of Competing Strategies and Conceptualizations*, (Dissertation, 1999, www.wits.ac.za/csvr), Ch. 2, 5-10.

⁵⁰ See Graeme Simpson, “Tell No Lies, Claim No Easy Victories – A Brief Evaluation of South Africa’s Truth and Reconciliation Commission,” (Presentation at conference on: “Dealing with Apartheid and the Holocaust – A Comparative Perspective,” Yale Law School [March 1998]), [www.wits.ac.za/csvr.papdare.htm]; Belinda Bozzoli, “Public Ritual and Private Transformation: The Truth Commission in Alexandra Township, South Africa, 1996,” *African Studies* 57:2 (1998), 167-195; Wynan Malan, “Minority Position,” *TRC Report*, vol. 5, chapter 9.

⁵¹ Desmond Tutu, *No Future without Forgiveness* (London: Random House, 1999), 220. Tutu explains, “Jesus did not wait until those who were nailing Him to the cross had asked for forgiveness. He was ready, as they drove in the nails, to pray to His Father to forgive them and He even provided an excuse for what they were doing.”

than with forgiveness or religion.⁵² Yet, on the other hand, Tutu's influence on the TRC, as well as the overall number of clergy on the Commission, had significant impact. There was undoubtedly a religious tone to the proceedings, which opened with prayers and were peppered with comments about how God has blessed South Africans with the strength and spirit for reconciliation. Certainly, there has been a perception among victims of an expectation of forgiveness.⁵³

Even if no explicit pressure to forgive was placed upon victims, the narrative of forgiveness remains problematic. The magnanimity of black people that has been lauded by the media and the TRC has not been reciprocated. There were no mechanisms for direct restitution on the part of perpetrators and amnesty (quite reasonably) was not contingent upon remorse. And even though forgiveness within one's own heart might be crucial to overcoming the trauma of victimization, this process cannot be ascribed to the nation as a whole. As Chapman points out, forgiveness may be unilateral but reconciliation is always mutual.⁵⁴

It is incongruous to speak of forgiveness in terms of national reconciliation. Forgiveness is a personal phenomenon. Forgiveness cannot be granted on behalf of anyone else. It is highly doubtful that any expression of collective forgiveness in South Africa could claim to be fully representative. Moreover, the narrative of forgiveness also presumes that there is something to forgive. But it is not at all apparent that the majority of white South Africans understand even basically what needs to be forgiven. After all, one could note with sarcasm today, it appears that *nobody* supported apartheid. And a vast majority continues to claim ignorance of state perpetrated abuses.⁵⁵ Finally, it is not clear who is being forgiven: if victims absolve perpetrators, are beneficiaries also forgiven?

Although the TRC does locate gross human rights violations within the broader context

⁵² See Carnita Ernest and Rosemary Nagy, "Commissioner and Victim Perspectives on Reconciliation," in *Evaluating the Truth and Reconciliation Commission: Findings from Empirical Research*, edited by Hugo van der Merwe and Audrey Chapman (forthcoming). This research is part of a larger three-year project at the Centre for the Study of Violence and Reconciliation (CSVr) that is funded by the American Association for the Advancement of Science.

⁵³ Interview with Duma Khumalo, June 15, 2001. Duma Khumalo was a member of the Sharpeville Six, wrongly imprisoned on death row. He now works for the Khulumani victim support group. See also Centre for the Study of Violence and Reconciliation (CSVr) & Khulumani Support Group, "Survivors' Perceptions of the Truth and Reconciliation Commission and Suggestions for the Final Report" (11 Workshops from 7 August 1997 and 1 February 1998), [www.wits.ac.za/csvr].

⁵⁴ Audrey R. Chapman, "Coming to terms with the Past: Truth, Justice, and/or Reconciliation," paper presented at conference "TRC: Commissioning the Past," 7-9 June 1999, University of the Witwatersrand, 16.

⁵⁵ In a recent survey the Institute for Justice and Reconciliation found that 76.6% of whites indicated that they were "unaware of state atrocities perpetuated against opponents of apartheid." James L. Gibson and Helen Macdonald, "Truth – Yes, Reconciliation – Maybe: South Africans Judge the Truth and Reconciliation Process," Research Report, Institute for Justice and Reconciliation. Rondebosch: Institute for Justice and Reconciliation, June 2001. [www.ijr.org.za]. To what extent is ignorance blissfully willed? I hesitate to hazard a guess. Although it is difficult to believe that white South Africans did not know about torture and assassinations, given international awareness and domestic resistance, people maintain that they really did not know, or, at least, did not want to know.

of apartheid, it also weakens the link through talk of healing the nation.⁵⁶ There has been ample criticism, and rightly so, that the idea of healing the nation is overly simplistic.⁵⁷ In order to forge a common identity of South Africans as a “wounded” people in need of healing, it seems reasonable to expect a thorough understanding of the nature of the wounds. However, the TRC’s primary focus on gross human rights violations, rather than on the everyday abuses of apartheid, precluded a sophisticated reporting of the workings of apartheid.

Talk of healing may be appropriate at the level where the TRC directed most of its efforts, that is, with respect to individual victims. But talk of healing the nation treads on dangerous ground because it tends to create a misleading picture of the past. In socio-economic terms, not everybody suffered under apartheid. Indeed, a minority benefited and continues to benefit from it. And although whites have been damaged by apartheid in complicated ways, this should not be morally equated with the suffering of the oppressed majority.⁵⁸ In short, like forgiveness, healing is a personal concept that is ill-suited to the level of nation.

The final narrative of reconciliation that I wish to address is one where public and private are most explicitly merged. The heroism narrative is one that extols the sacrifices made for democracy by gross human rights victims. In one sense, this theme extends solace and consolation to an individual deponent by providing an explanation of *why* a loved one died. As one deponent stated, “this New South Africa has emerged from the blood of our children. They just should be remembered and should not have died in vain.”

Yet, in another sense, the heroism narrative produces an unsophisticated story of the past that does not match the complexities of apartheid or the liberation struggle. The death, for example, of an ordinary white person in a bomb attack is not the same in either its political motives or implications as the death of an alleged informer by necklacing or the assassination of an anti-apartheid activist. Although “a gross violation is a gross violation, whoever commits it and for whatever reason”⁵⁹ the story cannot end there. Each individual instance of suffering cannot be located within the national frame in the same way, but the heroism narrative tends to

⁵⁶ In his opening speech at the start of the Human Rights Violations hearings, Archbishop Tutu said, “We are charged to unearth the truth about our dark past, to lay the ghosts of that past so that they will not returned to haunt us and that will thereby contribute to the healing of the traumatised and wounded people *for all of us in South Africa are wounded people*. And in this manner to promote national unity and reconciliation” [emphasis mine].

⁵⁷ Brandon Hamber and Richard Wilson, “Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies,” Paper presented at the *Traumatic Stress in South Africa Conference*, Johannesburg, 27-29 June, 1999 [www.wits.ac.za/csvr]; Michael Humphrey, “From Terror to Trauma: Commissioning Truth for National Reconciliation,” 2000, 6(1) *Social Identities*: 7-27; Jeremy Cronin, “A luta dis -continua? The TRC final report and the nation building project,” paper presented at conference *The TRC: Commissioning the Past*, 7-9 June 1999, University of the Witwatersrand [www.trcresearch.org.za/papers]; Michael Ignatieff, “Articles of Faith,” (1996) *Index on Censorship*, 5, 110.

⁵⁸ For example, the beneficiaries of apartheid suffered through international condemnation, being deceived by their own government, being punished or ostracized for taking an anti-apartheid stance or through the loss of their own humanity by participating in the system.

⁵⁹ *Report*, 1, 1, 52. The TRC does embrace a just war doctrine and argue that those who fought to sustain apartheid cannot be morally equated with those who fought against it.

do exactly that.

The moral message that everyone suffered to produce a better society depoliticizes the systemic context of the violations. Richard Wilson makes an astute argument that the TRC held the “absolute category” of the evil of apartheid as the unmitigated cause of human rights violations: “Further elucidation and analysis of racism and apartheid [including class, gender, and ethnicity] is not needed for building the nation, only moral recognition” of the wrongdoing in specific acts.⁶⁰ A focus on the contributions that individual victims have made to the new South Africa and the denunciation of apartheid do little to address ongoing systemic inequalities. This is exacerbated by the second component of the heroism narrative, where individual victims, because of their lack of bitterness, are held as an example to the nation. As a result, the impetus for reconciliation is located in the victims rather than the owning up to responsibility on the part of perpetrators and beneficiaries. The costs of reconciliation are simplified by the implicit suggestion that a generosity of spirit means nothing further needs to be done.

Overall, the narratives of forgiveness, healing the nation and heroism have the effect of blurring the distinction between public and private by ascribing personal phenomena to the nation as a whole. These narratives rest on a simplistic account of past and future that skirts over the collective responsibility of apartheid beneficiaries. Although the TRC categorically affirms that gross human rights abuses were systematically perpetrated, the broader context of abuse is largely overlooked because of the focus on individual perpetrators rather than structural factors. Reconciliation thus appears to consist in widespread condemnation of individual acts that are either dissociated from the broader system, or located within a system that is portrayed as having hurt everybody. As such, it is far too easy to condemn a few “bad apples” without interrogating the everyday abuses of apartheid and the continuing fact of white privilege.

The Truth Commission also blurs the distinction between public and private in its treatment of victims as a group. The TRC’s major point of access to the nation was in the highly publicized victim hearings. Consequently, it is not surprising that in large part, national reconciliation is premised upon a shift in victim identities: as forgiving rather than angry, as generous rather than demanding. I suggest that this is an imposition, an infringement of privacy reminiscent of apartheid violations of the public/private distinction. To recall the reading of privacy drawn from the discussion of apartheid, the invasion of privacy is the imposition of an identity that one does not freely embrace. While I do not deny the sensitive, victim-centered orientation of the hearings, the secondary purpose of reaching out to the nation should not be overlooked. In this respect, the public good of social transformation was seen to justify a very personal kind of intervention on the part of the commission.

The legitimacy of retribution or unwillingness to forgive was overshadowed by the restorative justice paradigm. Victims’ anger was channeled; one deponent said to me that under

⁶⁰ Richard Wilson, “From Historical Truths to Legal Facts: the Truth and Reconciliation Commission in South Africa,” Paper presented at the University of Toronto, Munk Centre for International Studies Conference on “Justice, Memory and Reconciliation,” 16 February, 2000, p. 30. See also See Mahmood Mamdani, “When does Reconciliation turn into a Denial of Justice?” Presentation at the HSRC, Pretoria, 18 February, 1998.

the circumstances it seemed “churlish” to say one would *never* forgive.⁶¹ While deponents generally recognized the ritualistic nature of giving testimony, the experience could nonetheless be one of extreme vulnerability and even re-traumatization.⁶² Reconciliation is said to be a costly process, but one has to wonder at whose expense, particularly when the government has not yet issued long-term reparations to victims.⁶³

The psychological and emotional risks that deponents undertook were unmatched by other sectors of society. Most notably, unremorseful perpetrators have been granted amnesty. In the political hearings, former president FW de Klerk denied knowledge of covert hit squads, despite ample evidence to the contrary. Not a single judge turned up to the legal hearings in order to address the role the judiciary played in perpetuating apartheid repression.⁶⁴ In the business hearings some argued that business suffered under apartheid despite direct involvement in furnishing supplies for state repression and indirect benefit through wage caps, the hostel system, and the reservation of land.⁶⁵ And, fundamentally, racism and racialized socio-economic disparity continue to plague South Africa.

Nevertheless, victims’ stories of pain and suffering were molded to produce a *nationally* cathartic narrative of a post-conflict society. The ascription of personal phenomena to the nation as a whole, the simplifying emphasis on individual abuses rather than collective, structural injustices, and the expectation that victims’ magnanimity would enable the transformation of society have produced a very limited impetus for beneficiaries to take responsibility for the past. Taking responsibility does not require apology or friendships on an individual level. But it does involve a personal acknowledgement of privilege and a commitment to transform society – not through acts of charity, but through acts of corrective justice and civic patriotism. Such commitment has largely been absent.⁶⁶

Reconciliation necessarily involves public intervention to facilitate changes in attitudes, values and understandings of self and others. But the Truth Commission pursued its course in a lopsided manner. Regrettably, its imposition of reconciled, forgiving identities affects the very

⁶¹ Interview with Maggie Friedman, June 14, 2001.

⁶² See Yazir Henry, “Where Healing Begins,” in Charles Villa-Vicencia and Wilhelm Verwoerd, eds., *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa* (Cape Town: University of Cape Town Press, 2000).

⁶³ The Constitutional Court’s *Azapo* decision held that amnesty with respect to civil liability of the state did not violate victims’ constitutional right to have “justiciable disputes settled by a court of law” because, in part, of the reparations provision.

⁶⁴ See David Dyzenhaus, *Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order* (Oxford: Hart Publishing, 1998).

⁶⁵ See TRC, *Final Report*, volume 4, chapter 2.

⁶⁶ White responsibility is far too broad a topic to cover here. The first point of note is that the white community is very diverse, in terms of culture, language, generations and political ideology. While not everyone supported apartheid, everyone benefited from apartheid. For a sample of arguments surrounding white responsibility and denial see www.idasa.org.za/debate.asp and www.homeforall.org.za.

same group that was most grievously victimized by apartheid. By overreaching the bounds of privacy with victims, thereby faintly resonating the apartheid history of privacy intrusion, the commission failed to redress the injustices of the past as fully as possible. The TRC missed an opportunity to build on the motto “never again” because it did not express strongly enough the bounds of the public good with respect to privacy. As a result, it unwittingly undercut its own goal of demonstrating that the lives of all citizens matter.

The burden of moral transformation, of critical evaluation of self-identity in relation to others, needs to be shifted away from the victims of apartheid. If the TRC had conducted a more sophisticated analysis of workings of apartheid, including the connection between everyday human rights violations and gross abuses, it might have better opened the door for an assessment of white identity. This would have been an improvement over relying on the magnanimity that is seemingly inherent in blackness.⁶⁷ Of course, the obvious question to be raised is how the public incursion into the private identities of beneficiaries can be justified in light of the need to build a strong public/private distinction. Does this not constitute the imposition of a racialised collective identity reminiscent of the past?

Conclusion

At the start of this essay, I argued that the boundary between public and private is permeable and fluid. This permeability is apparent in the socio-historic factors impinging on the process of reconciliation in South Africa. The case for public intervention aimed at the identity transformation of beneficiaries cannot be fully elaborated upon here. However, as Verwoerd writes, “the acceptance or rejection of the burden of being an apartheid beneficiary is...a question of identity. It is not only about money, land, education, it is [also] about who I am and who we want to be in the new dispensation.” In accepting the obligations that come with being an apartheid beneficiary, one “comes home to an important part of oneself. And in the process of ploughing back tainted privileges one becomes part, one *feels* part, of building a country that is truly ‘a home for all her sons and daughters’ [Luthuli].”⁶⁸

With respect beneficiary responsibility, I can respond in brief to the theoretical dilemma posed above with two answers, one that looks backward and one that looks forward. First, white South Africans who voted for the National Party and benefited from apartheid can be held, in part, accountable for state violations of privacy. Thus, it is not inappropriate to suggest the need for reflection on the modes of identity that were used to justify apartheid (the “myth” of the

⁶⁷ Krog writes, “Tutu believes that black people have access almost to a superior humanity, which enables them to do things that surpass cold logic...What the world lacks, black people have.” Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*, (New York and Toronto: Random House, 1998), 145.

⁶⁸ Wilhelm Verwoerd, “The TRC and Apartheid Beneficiaries in a New Dispensation,” talk delivered at *Politics and Promises: Evaluating the Implementation of the TRC’s recommendations*, CSVr, Johannesburg, 27 October 2000. [www.wits.ac.za/csvr/articles/artcrver.htm]. Albert Luthuli was a Nobel Peace Prize Laureate and president of the ANC in the 1950s.

Afrikaner nation) and the war against communism (civilized order in the face of disorder).⁶⁹ This apparent infringement of privacy would actually serve to strengthen the public/private boundary. To encourage such a process, the TRC should have engaged in a more sustained analysis and recognition that the system as a whole was dehumanizing, not just torture.

Secondly, this is not a call to vilify or abandon the Afrikaner or white identity. Rather, it is a call to renew that identity through engaged commitment to the future. In part, this entails recognition that many of the current social ills are rooted in the past. Racial segregation has existed for so long; it takes a mental shift to see that poverty and housing are “our” problems rather than somebody else’s (black) problems. To act for the future, rather than withdrawing to the safety of fenced racial enclaves, requires a sense of shared fate with fellow South Africans.⁷⁰ Quite apart from the reasonable claim that there is a collective moral obligation to redress imbalances created in the past, South Africans also have to make the best of living with one another. To step out of the mentality of being part of a now besieged minority is to embrace a renewed identity, one that perhaps includes race but is not racialised.⁷¹

Reconciliation comprises social transformation and inner transformation. Moreover, the two are interconnected. But, instead of its narratives of forgiveness, healing the nation and heroism, the TRC needed an approach to reconciliation that was better balanced in respect of the legacy it sought to overcome. A more sustained analysis of the connection between gross violations and the everyday injustices of apartheid would respect the privacy of individual victims who testify in public, while providing a space for private self-reflection and public action among beneficiaries. This, if Verwoerd is correct, would not be a burden but a liberation.

⁶⁹ See Jonathan Allen, “Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission,” *University of Toronto Law Journal* 49 (1999), 315.

⁷⁰ See Melissa S. Williams, “Citizenship as Identity, Citizenship as Shared Fate, and the Functions of Multicultural Education,” paper presented at the Conference on Collective Identities and Cosmopolitan Values: Group Rights and Public Education, 21-25 June 2000, Montreal, 17.

⁷¹ The intersection of race and class cannot be addressed here. Key factors to consider include the emergence of black upper and middle classes, Coloured voting patterns on the Western Cape (in support of the New National Party) and political affinities between poor whites and poor blacks. For the latter in municipal politics see Tom Lodge, *South African Politics since 1994* (Cape Town, SA: David Philip Publishers, 1999), especially ch. 4.