Dealing with the Past:

Balancing Truth and Justice

In Establishing Reconciliation

Analysing the Process of Transitional Justice in South-Africa and Rwanda

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Words: 10.475

Abstract

This thesis examines the focal concepts and approaches in the field of transitional justice and argues for its positive contribution in the field of International Relations. It asks the question to what extent the method of truth-seeking is engaged in the implementation of measures of transitional justice and thereby fostering the reconciliation side of the spectrum or the opposite of dissension. The analysis suggests that reconciliation is part of the larger peace process and dissension is related to the process of othering. Reconciliation is further understood as being a reciprocal process with the creation of a shared historical narrative. In creating a truth-seeking framework and applying its indicators on the cases of South-Africa and Rwanda, an insight is created on the contribution of truth-seeking methods in transitional justices. Furthermore, this research argues that establishing a thick form of reconciliation is the aim of truth-seeking and the indicators of the created framework are designed to consider to what extent the disrupted narrative, which constitutes the underlying problem, is resolved through the means of dialogue and sympathising.

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APPENDIX I: Declaration by Candidate

DECLARATION BY CANDIDATE

I hereby declare that this thesis, "Dealing with the Past: Balancing Truth-Seeking and Justice in Reconciliation", is my own work and my own effort and that it has not been accepted anywhere else for the award of any other degree or diploma. Where sources of information have been used, they have been acknowledged.

Name: Sara Charlotte Minderhout

Signature:

Date: 30/06/2016

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1. Introduction

"Truth, justice, vengeance, and forgiveness are all words used in describing transitional justice. A courtroom is the main avenue for justice yet the truth is not necessarily imperative in a courtroom. Which takes precedence after mass atrocities, truth or justice? After mass atrocity, reconciliation is the ultimate goal. Citizens need to learn to live together in peace, and do so with confidence that the government is not going to allow human rights violations to occur."[1]

The question how societies most effectively recover from conflict and mass atrocities, in order to become stable and peaceful states, has been of main concern within the international community. In the aftermath of World War II and the creation of the United Nations (UN), the world did not become a less violent unity. The horrendous acts that have taken place in South Africa, Rwanda and other states, urges the international community to find means in order to respond. These means are not easily created while the concept of sovereignty remains the fundament on which the treaties of the international community are based. Nevertheless, the practice of international crime tribunals, the foundation of the International Criminal Court (ICC), and most significantly the Universal Declaration of Human Rights (UDHR), form examples of world politics moving away from emphasising state sovereignty towards a more unified mechanism when dealing with severe crimes.

However, what *mechanisms* are efficient in ensuring peaceful coexistence and stability in a post-conflict situation, remains subject to debate. Considering the mass atrocities that have prevailed, it occurs that conflict, in general, takes place between different groups. This differentiation can be understood more in-depth when looking into the process of othering. The theory of othering emphasises how social cleavages within states can fracture society and how this eventually can result in violence to erupt. This eruption of violence and conflict more often takes place on an intra-state level than the more classical level of conflicts taking place between states, therefore, this puts pressure on the concept of sovereignty.[2] Substantial work has been done by the international community in conflict areas, trying to prevent violence from taking place. Prevention of conflict generally emphasises methods that can contribute to overcoming

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[1] Martha Minnow, *Between Vengeance and Forgiveness* (Boston: Beacon Press, 1998), 2.
[2] Anthonie Holslag, "The Process of Othering form the "Social Imaginaire" to Physical Acts: An Anthropological Approach," *Genocide Studies and Prevention: An International Journal* 9, no. 1 (2015): 96-113.

different identities as demonstrated in deeply entrenched social cleavages. However, prevention of conflict remains to be excruciatingly difficult while the international community remains to struggle with hybridising pre-emptive intervention with the right of sovereignty. Nevertheless, once conflict takes place the international community has a direct cause in which it can steer the effect. Therefore, the emphasis remains to evolve around intervention during and after conflict. This research, therefore, focusses on the methods used to conflict and how this effectuated peaceful coexistence and political freedom or capturing this situation in one word: reconciliation. When trying to effectuate reconciliation, overcoming differences between groups and their specific identities poses a challenge. The method that can create an overarching national identity can be considered as that of creating a shared narrative. As quoted above, reconciliation is arguably the ultimate goal after mass atrocities have taken place and creating a shared narrative might effectuate reconciliation. However, when creating a shared narrative, the memory of mass atrocities and the experience thereof by different groups in society on which it had different impacts, poses impediments in shaping a shared historical narrative. Therefore, the hypothesis of this research considers the method of truth-seeking, which is used as an instrument in the process of transitional justice, to be a catalyst for the eventual outcome of the transitional process.

The research question and the sub-questions engage with the broader subject of International Relations (IR) in the field of Transitional Justice. This research especially engages with post-conflict situations considering countries that find themselves within the spectrum of the process of transitional justice. The main research question is as follows:

To what extent is the transitional justice mechanism of truth-seeking successful in establishing reconciliation?

In order to look into the implications of truth-seeking within the process of Transitional Justice, the research inquires the following sub-questions:

What is transitional justice and what theoretical approach is suitable for creating an in-depth and encompassing understanding of the concept? Through answering this question, several views of transitional justice and its role and relevance within IR are discussed. This discussion results in a framework composed of the theories' best practices, which is used to further investigate the significance of truth-seeking within the transitional justice process.

How can the mechanism of truth-seeking be used in order to contribute to creating more stable and peaceful states? This question contributes to the understanding of the empirical

notions of the truth-seeking mechanism. Because the answer investigates to what extent the method of truth-seeking has been able to create more peaceful and just societies. In creating an answer to this question, a comparative case study is conducted between the cases of South-Africa and Rwanda, which both went through an intensive transitional justice period after mass atrocities had taken place. These countries and the particular conflicts that have taken place differ exceptionally, while the international community has changed its approach on how to respond to mass atrocities significantly after the South-African case. Therefore, this research compares these cases in order to discover in what way the truth-seeking method has been successful in contributing to the transitional justice process.

This research contributes to understanding the effectiveness of the particular method of truth-seeking and how this can be shaped and implemented by the international community. The UN aims to align its member states according to a framework of norms[3], through the use of several incentives. By using transitional justice, a state can become aligned to the desired framework. Transitional justice is in general considered to have contributed to democratic consolidation, respect for human rights, minority protection, conflict resolution, and stability throughout the world. Therefore, transitional justice seems to be the source of many world issues being discussed within IR. Nevertheless, the focus and emphasis on the judiciary have caused the development of the concept to foremost take place amongst law scholars. However, this research considers the place of transitional justice within the field of IR, while IR can deliver an added value to a mere legal interpretation of the process.[4] This research argues that IR adds the contextual knowledge which is needed to elevate transitional justice from a transition of the judiciary to a broader change which also includes a transition of the executive- and legislative institutions.

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[3] This framework of norms can be considered to entail the Charter of the United Nations (UNC).

[4] Bert Ingelaere, "From Model to Practice: Researching and Representing Rwanda's 'Modernized' Gacaca Courts," *Critique of Anthropology* 32, no. 4 (2012): 388.

2. Concepts and Approaches

"Law has become the vehicle by which countries in the 'developing world', including post-conflict states or states undergoing a constitutional transformation, must steer the course of social and economic, legal and political change. These developments can be seen as part of a tendency towards convergence within the wider set of discourses and practices in global governance."[5]

In order for this research to answer the question to what the transitional justice mechanism of truth-seeking is successful in establishing reconciliation, a theoretical approach is developed. For this research, several elements from different theories which have contributed on explaining the process of transitional justice, are discussed. The research emphasises how to define a framework throughout which transitional justice can reach reconciliation. However, defining how transitional justice takes place requires considering the concept itself, while it does not have a very prominent role within theories of IR and there is no consensus on a definition of the concept.[6] Therefore, first, the concept in general is discussed. Secondly, the concepts of truth, justice, and memory are considered as intertwined and at the heart of transitional justice, therefore, those specific concepts and their interrelation are discussed. Thirdly, the notion of reconciliation is considered and in what way this manifests itself. Last, the considered best practices are combined in order to develop an encompassing framework to test the process of transitional justice in a comparative case analysis between South-Africa and Rwanda.

2.1. Discussing Transitional Justice

Transitional justice in its most basic explanation entails a set of initiatives that spark the process from a society where there exists impunity to a society with a *just* and stable judiciary in place.[7] However, 'just' can differ over time and local interpretations can differ from ideas of the

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[5] Ruth Buchanan and Peer Zumbansen, *Law in Transition: Human Rights, Development and Transitional Justice* (Oxford: Hart Publishing, 2014), i.
[6] Walter B. Gallie, 'Essentially Contested Concepts,' *Proceedings of the Aristotelian Society,* 56, 1955, 167-198.
[7] Ruti G. Teitel, *Globalizing Transitional Justice – Contemporary Essays* (Oxford: Oxford University Press, 2014) Introduction, pp. xi-xii.

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international community.[8] Nevertheless, it can be argued that the image of a 'just' society, in general, is based on the international idea that liberalism demands justice and, therefore, this envisioned just society is a liberal democratic society.[9] Therefore, the field of transitional justice is occupied with trying to efficiently deal with a state's past in which its regime has committed gross violations of the 'just' regime uphold by the international community. The transition of a state towards a different, more democratic, regime is in the first place accompanied by the rule of law. However, the transition towards a more democratic and just rule of law is problematic, since international law has foremost been created by nations seen as the precedent 'great powers', therefore, international law has been criticised as only presenting views and customs of a small number of Western states. Thus, one can find legitimacy for transitional justice towards a just society within natural law theory. This theory upholds the idea that every human being is entitled to have human rights, which are inalienable, eternal and independent of culture or nationality.[10]

> "Law in the proper sense is right reason in harmony with nature. It is spread through the whole human community, unchanging and eternal, calling people to their duty by its commands and deterring them from wrong-doing by its prohibitions… This law cannot be countermanded, nor can it be in any way rescinded. We cannot be exempted from this law by any decree of the senate of the people… There will not be one such law in Rome and one such law in Athens, one now and another in the future, but all peoples at all times will be embraced by a single and eternal and unchangeable law; and there will be, as it were, one lord and master of us all – the god who is the author, proposer and interpreter of that law."[11]

Therefore, the classical liberal idea of the process of transitional justice is to create a response grounded on legal measures. These should recognize victims of human rights violations through a set of reinforcing measures and should take group identity and historical memory into consideration. Those measures are respectively: prosecutions, truth-telling, reparations

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[8] When considering the concept of transitional justice during the Cold War, transitional justice referred to a set of initiatives used to move societies from an authoritarian- or totalitarian regime to a democratic regime.

[9] Further considerations and different ideals of a just society, falls outside the scope of this research. This research considers a 'just society' as being a liberal democratic one.

[10] Stephen Peté and Max du Plessis, 'Reparations for Gross Violations of Human Rights in Context' in: Max du Plessis and Stephen Peté (eds), *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses* (Antwerpen-Oxford: Intersentia, 2007): 3-28.

[11] Cicero, *The Republic and The Laws* (Oxford: OUP, 1998): 68-69.

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programs, memorialization projects, and reforming abusive institutions. [12] Furthermore, contemporary transitional justice can be considered as a key towards peacebuilding and establish long-term stable democracies. [13]

It can be argued that the concept has become more pragmatic and politicised because the concept of transitional justices can be seen as tied to periods of political change in which repressive predecessor regimes are being confronted with legal repercussions. This can be considered as the genealogy of the concept which is determined in three phases:

1. After 1945, the post-war phase: interstate cooperation, war crimes trials, and sanctions as reflected in the Nuremberg Trials of Germany.
2. After the collapse of the Soviet Union, the wave of democratisation phase: nation building emphasised, accountability for political leaders toned down, and is less important than the move towards more local stands of justice.
3. End of the twentieth century, the globalisation phase: transitional justice is the norm, expanding on the discourse of humanitarian justice. [14]

Considering this genealogy approach, transitional justice is part of broader developments in history, because the outcome of a specific transition is shaped by the transitional context and the local political context. The local context is unwanted, while it can affect the legitimacy of transitional justice. Therefore, the genealogical method is a rather critical one and concludes that the concept of transitional justice cannot be understood without placing it in the specific momentum of contemporary global politics. Transitional justice considerably takes place during a period of political change in which the 'political change' depends on the situation of global politics. This political change is where the process of transitional justice comes to play. This notion, of being intertwined and depending on other processes, underlines the difficulty of associating transitional justice with a broader, general concept or approach, because this political change differs on a case-by-case basis, while the gap between the local situation and the desired 'just' society constantly differs.

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[12] Paige Arthur, *Identities in Transition – Challenges for Transitional Justice in Divided Societies* (Cambridge: Cambridge University Press, 2010), pp. 1 – 14.
[13] Clara Sandoval Villalba, "Transitional Justice: Key Concepts, Processes and Challenges", *Institute for Democracy & Conflict Resolution – Briefing paper*, (2011).
[14] Ruti G. Teitel, "Transitional Justice Genealogy", *Harvard Human Rights Journal*, 16, 69 (2003), pp. 69 - 94.

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Currently, the situation of global politics can arguably be understood to remain in the third phase: globalisation. However often confronted with periods of political change, globalisation is one of the most disruptive and significant developments. Within globalisation, it is common for a certain generic understanding to come into existence.[15] Therefore, the local context does not seem to affect the legitimacy of transitional justice nor does it seem to undermine the globally shared meaning of a 'just' society. Nevertheless, the local understanding can form a risk of missing the broader power politics associated with globalising transformations and can pose the risk of a deviating implementation. Therefore, this tension between the local and the supranational can be considered as one of the main issues when conceptualising, or rather implement transitional justice.[16]

Considering the situation states find themselves in when entering the process of transitional justice, four transitional categories can be noted. First, a situation in which a conflict results in outright victory. Second, a situation in which a regime loses legitimacy but remains in effective control of armed forces. Third, a situation in which military rulers support a civilian government following negotiations on their terms. Last is a situation that can best be described as a gradual transition from dictatorship towards democracy.[17] Considering these different starting situations, the process of transition towards a more just society and the methods used in respect thereof, should also differ and be adapted to the specific situation.

2.1.1. Justice, Truth, and Memory

Interpreting transitional justice as the means towards a just end makes it significant to consider what concept of justice can be effective in relation to dealing with the past. However, within the field of transitional justice the concept of justice is closely related to truth and memory and therefore, a closer look into these concepts and how they relate to each other is conducted.

The basic idea of justice is that if one does something unjustifiably wrong to another, one should compensate the other for its wrongdoing. This has created the idea that if gross human rights violations have taken place, strong obligations for reparations exist. This is, however, more complex than it seems at first glance. Being obliged to make reparations through

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[15] Nevertheless, one should notice that a generic understanding within the international community does not exclude the existence of differing understandings on the local level.

[16] Ruti G. Teitel, "Transitional Justice Genealogy", *Harvard Human Rights Journal*, 16, 69 (2003), pp. 69 - 94.

[17] Paul F. Seils, "Reconciliation in Guatemala: The Role of Intelligent Justice", *Race & Class: Institute of Race Relations*, 44, 1 (2002), pp. 33–59.

replacing or repairing what has been damaged, makes sense when considering material damage. However, considering gross violations and the physical damage that this brings about, makes it a rather difficult job to determine what kind of reparations should be made. However, reparative justice is considered to follow from the basic idea of justice and should, therefore, be part of the transitional justice process. However, the past is in the past and cannot literally be repaired.[18] Furthermore, justice might conflict with other factors.

> "The requirements of justice may conflict with those of liberty, utility and humanity, and we cannot confidently say *a priori* which should prevail… Humanity may prevail over justice, when, for example, punishing wrongdoers according to their desert may seem cruel because of their ill health. The utility might 'trump' justice if the utility is great and the injustice slight. The priority of prudence over justice has been accorded considerable weight when new democracies have had to decide whether or not to prosecute alleged perpetrators of gross human rights violations under the previous regime, while the stability of the new democratic regime remains uncertain."[19]

Nevertheless, liberal theories of justice have laid the foundation for the legitimacy of human rights. Although these rights assume the existence of the autonomous self, the individual autonomous self has a sense of identity, which is partially constituted by memory and memory is collective, containing a certain shared belief within a group. Therefore, reparative justice is a combined concept of communitarian and liberal ideas. The concept of reparative justice is based on the notion of a historical nature of the self: partially individually formed and partially by the collective memory of the community the individual belongs to.[20] However, in order for transitional justice to be successful justice needs to go beyond the basic notion of reparative justice and try to establish a form of historical justice, restorative justice. This type of justice is able to prevent injustice from happening because injustice is considered to be historically constructed. This form of justice tries to overcome memories of extreme injustice which can haunt descendants and the history of people and therefore maintain conflictual relations

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[18] Michael Freeman, 'Back to the Future: The Historical Dimension of Liberal Justice' in: Max du Plessis and Stephen Peté (eds), *Repairing the Past? International Perspectives on Reparations for Gross Human Rights Abuses* (Antwerpen-Oxford: Intersentia, 2007): 29-51.
[19] Ibid, 32.
[20] J. Thompson, *Taking Responsibility for the Past: Reparation and Historical Justice* (Cambridge: Polity, 2002): vii.

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between communities. Therefore, when analysing the contemporary state of justice, it is necessary to recognise restorative justice in order to overcome existing inequities.[21] Within society it is of importance to recognise the victims, those who are suffering from consequences of the past, and not to consider them equal citizens, because this creates the risk of misunderstanding the cause of conflicts. In order to overcome running the risk of misunderstanding groups in society that have been victims of extreme injustice in the past, their history should be acknowledged. Foremost, because on the one hand historical injustices create, whether deliberate or deliberate, a positive self-esteem for descendants from the generation that flourished from the injustice. While on the other hand, the descendants of the victimised group in society have inherited a lower self-esteem and fewer advantages.[22] Therefore, it is of importance to not only have reparations in place on the material level but when including restorative justice, reparations also can be made on the physical level giving attention to the memory of the victimised groups in society.

Nevertheless, arguments exist that liberal societies cannot provide equal citizenship, even after recognising victimised groups, because liberal societies unjustly disadvantage certain groups, for example, indigenous people. Liberal societies are mainly focused on individual rights, while restorative justice requires collective rights in order to implement the liberal principle of an equal right to justice. This form of hypocrisy is reflected within society while the dominant culture can defend itself without needing certain rights; the subordinate culture in society is not self-evident and needs special rights. This results in the situation that Will Kymlicka calls 'unequal citizenship'.[23] James Tully agrees to some extent with Kymlicka and argues for a replacement of liberal constitutionalism when dealing with a multicultural society and replace this with 'intercultural dialogue'.[24] Different approaches to justice exist and can be classified as follows:

Approaches to justice:
1. Classical Liberalist: justice requires full respect for human rights and equal citizenship in a

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[21] Michael Freeman, 'Back to the Future: The Historical Dimension of Liberal Justice' in: Max du Plessis and Stephen Peté (eds), 29-51.

[22] J. Thompson, *Taking Responsibility for the Past: Reparation and Historical Justice,* 66-106.

[23] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995).

[24] James Tully, *Strange Multiplicities: Constitutionalism in an Age of Diversity,* (Cambridge: Cambridge University Press, 1995).

democracy. Collective rights are suspicious, may threaten individual rights.

2. Group-sensitive Liberal Justice: consider the former of not being egalitarian, while it fails to recognise cultural hierarchy creating structural inequalities. Defends collective rights for subordinate groups on the ground of historical injustice.

3. Historical-communitarian Justice: criticises classical liberalism of being influenced by the imperial past. Criticises the former of failing to recognise the worth of minority cultures. Defends collective rights based on the thought that cultural inequalities have a historical origin, while the injustice lies in the contemporary inequality, and does not have a historical origin.[25]

Considering the classical liberal approach to justice, it ignores historical injustice and therefore the effect it can have on culture and group identity within societies. The classical liberal approach 'suffers from a moral amnesia that overlooks the crime of the past in designing social policies for the present'.[26] Forgetting, or denying, can create the risk of unequal citizenship. Therefore, liberal justice needs to recognise and rectify historical injustices, while the rule of law and human rights otherwise fail in establishing a just and stable society.[27]

Nevertheless, which aspects of conflict should be recognised and rectified remains an uneasy task when dealing with a post-conflict situation. Therefore, the link between justice with truth and memory is a tense, but rather a significant one. Truth can be considered to uphold the story, or narrative, of the conflict not only told from the victors' point of view but also placing the victims point of view. In order for the truth to serve as a catalyst within the transitional justice process for reconciliation, stories need to be memorised. However, remembering has in many cases been subject to the politics of memory: carefully positioning particular political agendas in the nations scene from the early days on.[28] Therefore, memory can also be problematic within the transitional justice period while some events are deliberately forgotten or overlooked. Thus, knowing the truth of conflicts that have taken place is significant, while it can downplay mythmaking which is a phenomenon that can be found within the transitional justice spectrum not as a positive aspect, while it has been argued that historical injustices need to be rectified in order to create an inclusive society in which equal

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[25] Michael Freeman, 'Back to the Future: The Historical Dimension of Liberal Justice', 29-51.
[26] Ibid, 37.
[27] Ibid, 35-40.
[28] Renáta Uitz, 'The Incomplete Transition in Hungary' in: Nico Wouters (eds), *Transitional Justice and Memory in Europe 1945-2013* (Cambridge-Antwerp-Portland: Intersentia, 2014): 289-324.

citizenship can be achieved. However unwanted mythmaking, a selective memory can be found throughout history, and throughout the tradition of giving meaning to certain historical events. The selective memory, or narrative, that is being created is a negotiated mix of selective remembering and selective forgetting; a compromise that changes over time, because of later societal experiences and with the addition of 'new' historical research. [29]

The concepts of memory, truth and justice are not easily explained independently because they are substantially intertwined. Nevertheless, these concepts are key to understanding the process of transitional justice and their meaning and place within the process should properly be understood. Memory can be considered as a consolidation of selectively chosen 'truths', which entail facts that are based on empirical research and narratives from the existing social cleavages. Furthermore, the most significant contribution of memory within transitional justice is found in social reconstruction. It can be argued that states in transition first enter a 'turn the page' phase and afterwards develop memory policies which confirm the status-quo as created through the measures of transitional justice.

> "In a broad sense, the politics of memory can include many different types of policies aimed at the creation or reinforcement of a national memory(...) Politics of memory is therefore juxtaposed to bottom-up civil society agency, and to local and popular memories. The struggle between the top-down consensual politics of memory and alternative memories is an essential dynamic. Powerful as this national institutional memory might be, it is clearly far from all-controlling."[30]

Memory can interchangeably be understood as a collective remembrance and is considered in this research as being at the core of the TJ process. Memory is shaped by a social process of which the politics of memory is part of. Memory can be considered as a dynamic sociocultural process with struggle and power as main steering factors towards justice or the contrary.[31] Nevertheless, truth forms the foundation on which particular representations of memory are based. Thus, truth, memory, and justice are pivotal factors within the process of transition.

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[29] Luc Huyse, 'Comparing Transitional Justice Experiences in Europe' in: Nico Wouters (eds), *Transitional Justice and Memory in Europe 1945-2013* (Cambridge-Antwerp-Portland: Intersentia, 2014): 351-368.
[30] Ibid, 379.
[31] Ibid, 371.

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2.1.2. *The Notion of Reconciliation*

The aim of transitional justice is generally seen as establishing justice, truth, reconciliation and forgiveness.[32] These concepts are intertwined and one can hardly establish justice without truth, or forgiveness without creating a certain level of reconciliation. Nevertheless, this research argues that reconciliation is the overarching aim of the process of transitional justice; aiming to establish a certain level of understanding and coexistence between conflictual social cleavages in society. However frequently used, the concept of reconciliation is confusing, and therefore, remains significant to explain in more detail.

> "If reconciliation (..) is to take place, there must be some agreement about what happened and why. Former enemies are unlikely to be reconciled if what accounts as a lie for one side are verities for the other."[33]

Regarding reconciliation, 'thicker' and 'thinner conceptions can be described. A thin concept of reconciliation is explaining it as coexistence. However, perceiving reconciliation as mere coexistence between previous conflictual social cleavages in society creates the risk of a fragile and superficial conception. Therefore, in addition to the prerequisite of coexistence, reconciliation can be seen as cases in which formal questions have been resolved fairly and some significant shifts have occurred in the way the conflicting sides perceive each other. These shift in perceiving the other can be argued to entail sympathising.[34]

> "Sympathizing can be understood as the process in which we project ourselves into the circumstances in which others operate. (…) Sympathy, is a virtue, a conscious attempt to put ourselves in the place of others before we make up our minds about them. Sympathy requires specific, detailed knowledge about the lives of others."[35]

Adding sympathising to coexistence creates a thick conception of reconciliation. However, it

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[32] Clara Sandoval Villalba, "Transitional Justice: Key Concepts, Processes and Challenges", *Institute for Democracy & Conflict Resolution – Briefing paper*, (2011).

[33] David A. Crocker, 'Reckoning with Past Wrongs: A Normative Framework,' in: Carol A.L. Prager and Trudy Govier (eds.), *Dilemmas of Reconciliation, Cases and Concepts,* (Waterloo: Wilfried Laurier University Press, 2003): 45.

[34] Nir Eisikovits, *Sympathising with the Enemy: Reconciliation, Transitional Justice, Negotiation,* (Dordrecht-Leiden-Boston: Martinus Nijhoff Publishers, 2010): 6-15.

[35] Ibid, 10-11.

can be argued that coexistence can also become a thicker notion if the different groups in society are also accepted as fellow citizens. This marks the ongoing debate between liberal social solidarity[36] theorists, who see a thick version of reconciliation as necessary, versus the theory of democratic reciprocity[37], which considers the thin concept of reconciliation. Nevertheless, both theories agree on the practical notions of reconciliation which should entail working together in the public sphere and being actively involved with the different social cleavages. These practices contribute to overcoming differences and to creating mutual understanding and respect for the 'other'. There should be preventative measures, a system of institutionalised peaceful coexistence, in place which protects a society from lashing back into violence. This constitutes a very pragmatic approach to reconciliation based on the idea that reconciliation should first and foremost establish the ground for different social cleavages to interact and to cooperate with each other, especially through dialogue. [38]

According to Nir Eiskowitz, the reconciliation spectrum ranges from the thin, too modest and often considered as the 'liberal' view, up to the thick, maximal and 'restorative' understanding of the concept.[39] He considers the South African interpretation of reconciliation as an example of restorative reconciliation, while the transitional justice process promoted a 'healing of society' in which the dictum was 'no future without forgiveness'.[40] This concept requires full knowledge of the perpetrators' activities and forgiveness from the victims, while the focus is on a Christian notion of healing. However, this utopian conception of reconciliation has a biased approach and therefore, this research uses a different approach to reconciliation. This research combines the social solidarity and agonistic account in order to establish an essentially thick conception of reconciliation. The social solidarity account considers reconciliation as a necessary tool for narrative restoration. This approach finds disruptions in individual- and collective identity after the conflict has taken place. Overcoming and

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[36] Mark J. Osiel, *Mass Atrocities, Collective Memory, and the Law* (New Brunswick: Transaction Publishers, 1997).

[37] Amy Gutmann and Dennis Thompson, 'Moral Foundations of Truth Commissions,' in: Robert Rotberg and Dennis Thompson (eds.), *Truth versus Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000): 22-44.

[38] Nir Eisikovits, *Sympathising with the Enemy: Reconciliation, Transitional Justice, Negotiation,* (Dordrecht-Leiden-Boston: Martinus Nijhoff Publishers, 2010): 44-57.

[39] Ibid, 49.

[40] These were the words of Desmond Tutu, the archbishop of Cape Town. He was head of the Truth and Reconciliation Commission in South Africa and therefore the Commission has been largely criticised for having a Christian bias and aiming for a utopian conception of reconciliation in the transitional justice process.

incorporating these disruptions into a 'new' narrative creates reconciliation. Therefore, the incorporation of the atrocities that have taken place and the hopes for the future into personal narratives is crucial. However, the creation of a common narrative on the individual and group identity level is subject to group dynamics and therefore problematic to achieve.[41] When considering the agonistic account of reconciliation, it is seen as a process based on allowing a political system to regulate the lives of citizens. The process is open-ended and focusses on the creation of a dialogue engaged with past grievances between the different groups in society. This dialogue puts the focus on understanding the struggle and wrongdoings from the past, which can significantly contribute to the current system of politics. The created dialogue should remain intact, even if recognition of wrongdoings is already in place. Because recognising wrongdoings, on the one hand, creates ground between former conflictual social cleavages, on the other hand, it poses an impediment to creating community between these groups.[42]

In placing this research within the spectrum of reconciliation, it does so in between the restorative view, which focusses on healing a restoration, and the liberal view, which focusses on the rule of law. When combining the social solidarity and agonistic views of reconciliation, the emphasis within reconciliation lays on the creation of group identity and dialogue. Both eventually lead to establishing reconciliation which is a process creating social coherence through sympathising, bridging social cleavages in society. This understanding establishes a thick conception of reconciliation, in which a form of cooperation should be established, which entails substantially more than mere coexistence.

2.1.3. *Method of Truth-Seeking*

This research inquires truth-seeking on its effectiveness in contributing to reconciliation. Therefore, it is firstly considered what kind of 'truth' is looked for, and secondly, what the method of truth-seeking entails. Based on these findings, the comparative case study later expands, looking further into the actual practices of the truth process.

What actually underlies the notion of truth? According to Hannah Arendt, truth is, in fact, an outcome of bridging reality and judgement through imagination. This imagination comes out of a combination of thinking and experiences, which together form the lens people

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[41]Suzanne Dwyer, "Reconciliation for Realists," *Ethics and International Affairs,* 13, 1, (1999), pp. 81-98.
[42] Andrew Schaap, "Political Reconciliation Through a Struggle for Recognition," *Social and Legal Studies,* 13, 4, (2004), pp. 523-538.

use to look through in order to make sense of the world. Nevertheless, people cannot have a direct link with the world, but have this link through politics. Therefore, when uncovering the truth, it is not only significant to consider experiences, but also politics matter, while this creates the link between different peoples living in the same state, deciding the place of a particular state in the world.[43]

> "Nach-denken (thinking) never reaches the originally found truth, is never quite adequate, therefore thinking only ends with the end of the life. Like life is fed from the source of birth, thinking being related only to it from the root of the truth. (…) Like life, necessarily moving further and further away from its origin, also thinking removes itself from truth. But this thinking, originally inspired by the truth but nevertheless always removing from it, only makes truth vivid: truth lives and works like the event in the memory. This is a reality. (…) The pure experience, the medium where I experience event and truth just never constitutes reality, it even is starry-eyed.[44]

Arendt means by saying truth never constitutes reality and always moves further away just like life moves away from its birth, that this is because it cannot be wholly reached through thinking. Nevertheless, within transitional justice, the truth at stake are the systematic violations of internationally recognised human rights. It is crucial to investigate what violations took place and by whom in order to reckon with the past and move forward. [45]

These investigations can be conducted through the truth-seeking method, however, other measures and institutions need to be created in order to act upon the findings of this method. Therefore, truth-seeking can be described as a quasi-legal institution and should be accompanied with trials in order to have judicial punishment in place.[46] Although truth-seeking might constitute less coercive power, it can be considered a substantial method, while the victims and perpetrators are recognised, and it complements the transitional justice process with a certain level of legitimacy and moral credibility.

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[43] Wolfgang Heuer, "Imagination is the Prerequisite of Understanding" (Arendt) The Bridge Between Thinking and Judging," *Hannah Arendt, Filosofia e Totalitarismo,* (2005), pp. 1-12.

[44] Hannah Arendt, *Denktagebuch* (Munchen-Zurich: Tome II, 2002): 489. (Translated by Wolfgang Heuer)

[45] David A. Crocker, 'Truth Commissions, Transitional Justice, and Civil Society,' in: Robert Rotberg and Dennis Thompson (eds.), *Truth versus Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 2000): 99-118.

[46] Ibid, 99.

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Truth-seeking takes place through truth commissions which can be recognised by undertaking the following:

- They deal with the past.
- They investigate continued patterns of abuses and not specific cases.
- They operate for up to two years and then submit reports summarising their findings.
- They are usually official bodies sanctioned by the state.[47]

These characteristics of a truth commission are useful not for an eternal truth-seeking quest, but it can deliver full, or at least some, knowledge of what has happened to disappeared- or deceased people.[48] The truth commissions aim for coming to terms with the past, resolving the problem of a disrupted narrative. The commissions discover and reveal past wrongdoings by a government or wider segments of society. This method allows for a more comprehensive picture to be created in contrast to the justice method in which a trial emphasises the story of the victim. Truth commissions strive for an uncovering of human rights violations and severe wrongdoings. Nevertheless, what makes these commissions truly unique is their creation of a forum for both perpetrators and victims in order to confess on wrongdoings, apologise and forgive. This forum creates the arena for the conflicting social cleavages to interact with each other and resolve the disruption in narrative through mutual understanding. [49]

However, truth-seeking through the instalment of a truth commission has also been firmly criticised for its trade-off with justice, while truth commissions commonly have an amnesty clause in place when "full disclosure of all the relevant facts relating to acts associated with a political objective" is given.[50] Therefore, it can be argued that there is no safeguard against impunity, as long as the wrongdoings can be linked to having a political objective. This trade-off between coming to terms with the past and forgiving instead of penalising people has sparked debate around the effectiveness of truth commissions. At its core is the understanding that restorative justice, coming to terms with the past and moving forward, weighs out the narrow form of retributive justice, having trials and making reparations. In order to discover

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[47] Nir Eisikovits, *Sympathizing with the Enemy: Reconciliation, Transitional Justice, Negotiation,* 103.

[48] Muhammed Haron, *South Africa's Truth and Reconciliation Commission: An Annotated Bibliography* (New York: Nova Science Publishers, 2009): 83.

[49] Nir Eisikovits, *Sympathizing with the Enemy: Reconciliation, Transitional Justice, Negotiation,* 103-131.

[50] "Promotion of National Unity and Reconciliation Act 34 of 1995," Parliament of the Republic of South Africa, 19 July 1995, http://www.justice.gov.za/legislation/acts/1995-034.pdf.

whether truth should indeed be weighed out against justice, this research considers the truth commissions of South-Africa and Rwanda. It is considered whether the truth-seeking method is the focal catalyst for reconciliation, and how successful it can rebuild the interpersonal ruins that have been created through conflict. This comparative research on the actual contribution of truth commissions to the process of reconciliation is relevant, while there is no consensus on how these commissions should operate. Truth commissions are relatively understudied, while the interest in truth commissions has substantially increased:

> "There has been little comparative research in this area, despite a multitude of questions. No definition or parameters of truth commissions have been identified. There have been few explorations of the constraints, limitations, and challenges common to such official truth-seeking bodies, and no serious look at what objectives such commissions can realistically be expected to fulfil. And while new truth commissions are now being developed, there has yet been no comprehensive survey of past truth commissions."[51]

2.1.4. *The Process of Othering*

After deliberating on the different concepts of transitional justice, one concept cannot be bypassed; the concept of othering. For this research considers reconciliation to be the envisioned aim of transitional justice which takes place within the bigger process towards peace, and can be considered as being on the positive side of the spectrum. The 'other' side, the negative side of the spectrum, can be understood as dissension which takes place within the process of othering. Therefore, it is significant to deliberate on the process of othering.

Othering can be understood as a process in which different groups are created. The process explains how ultimately the self is solidified by destroying the cultural, social and physical aspects of the other. First, within the process of othering, the 'selfing' process takes place in which aspects of identity are confirmed as belonging inherently to the self. Furthermore, the ideas that are used to define the self and the other are not new, but in many cases old and remanufactured. This can indeed be found in several narratives that have been capable of, and contributed to, the idea of a necessary pre-emptive strike, the point where ideas

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[51] Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," *Human Right Quarterly,* 16, 1, (1994): 598-599.

turn into physical acts. Last, there is physicality embedded in the process of Othering which becomes more overtly present during warfare in general, and in particular during mass atrocities.[52] In order to understand how the ideas of the other and the self can turn fatal, one should consider how violence progresses within society. [53]

Therefore, arguably truth-seeking can contribute to effectuating the positive or negative side of the spectrum, between reconciliation or othering. Indicating the place of a society on this spectrum is decisive when considering further steps to be taken in order to continue the process of transitional justice.

2.2. Operationalizing Transitional Justice

Considering an overarching approach, towards discovering the empirical notions of the transitional justice process, a combination of several concepts has been discussed. These concepts and their interrelation, form the basis for the constructed framework that aims to bridge the gap between the thin liberal and the thick restorative conceptions of reconciliation in order to find out how the method of truth-seeking contributes in its establishment. Through a combination of the social solidarity and agonistic account, while both approaches contribute meaningful insights on the concept of reconciliation.

When defining transitional justice, this research considers it as the fundamentally envisioned process which influences, in essence, a transition towards a thicker form of democracy and a just society after mass atrocities or human rights violations have taken place. This vision of transitional justice comes with the intended mission of establishing the process of reconciliation. Regarding the transitional justice process, different methods contribute to the process which reinforces each other. Considering these methods this research considers the hypothesis that truth-seeking is the focal catalyst of the transitional justice process and if executed efficiently, creates spill over effects into the larger process of creating peace, a stable, and just society.

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[52] Sacha Minderhout, "The Tense Concept of Genocide," *Leiden University Research Essay,* May 2016.
[53] Anthonie Holslag, "The Process of Othering form the "Social Imaginaire" to Physical Acts: An Anthropological Approach," 96-113.

Figure 1: The Process Towards Reconciliation.

Zooming in on the truth-seeking method, multiple factors can be recognised in contributing to creating reconciliation and its place in the process towards peace. This research considers reconciliation as peace process, being on the positive side of a spectrum on which the negative side is dissension, a result of the process of othering which can be triggered if the factors are not being implemented. The social solidarity theory considers the emphasis should be on a restoration of the disrupted narrative while the agonistic account emphasises the open-ended process of dialogue to be beneficial in reaching reconciliation. Meanwhile, for reconciliation to be more than mere coexistence, citizens should be able to sympathise with each other. These factors taken together, create an encompassing framework in order to analyse whether a thick or a thin conception of reconciliation is established in post-conflict situations.

The framework[54] has three factors which generate different outcomes in practice. Considering the element of dialogue, it can be implemented top-down through governmental institutions and its rate of diversity, which should reflect the social cleavages in society. Dialogue can also be reinforced through collective remembrance in the form of memorial monuments or commemorations, remembering the mass atrocities that have taken place can strengthen the dialogue between groups.[55] The second element of sympathising can best be enforced bottom-up through the acceptance of different identities which is reflected in an active and diverse civil society. Furthermore, sympathising can be sparked through a combined top-down and bottom-up approach through the acknowledgement of past abuses, generally

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[54] See Figure two.

[55] Nuala C. Johnson, "The Contours of Memory in Post-Conflict Societies: Enacting Public Remembrance of the Bomb in Omagh, Northern Ireland," *Cultural Geographies,* 19, 2, (2011): 237-258.

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expressed through an official recognition or apology by a government or a representative of a certain social cleavage.[56] The third element considers the restoration of a disrupted narrative which can only be fully restored if a 'new'[57] shared historical narrative is created. However, as discussed, narratives change over time and are not static and therefore the process towards reconciliation or dissension is reciprocal of the process creating a shared narrative. Nevertheless, an inclusive democracy can create a sense of belonging to the same nation and should be firmly institutionalised in order to create a national identity, which is at all times momentary and should, therefore, be actively developed by the ruling government. If the government is actively engaged in developing an inclusive national identity, this identity has the potential to become all-encompassing, binding the numerous identities that exist within society in order to create peaceful coexistence.[58]
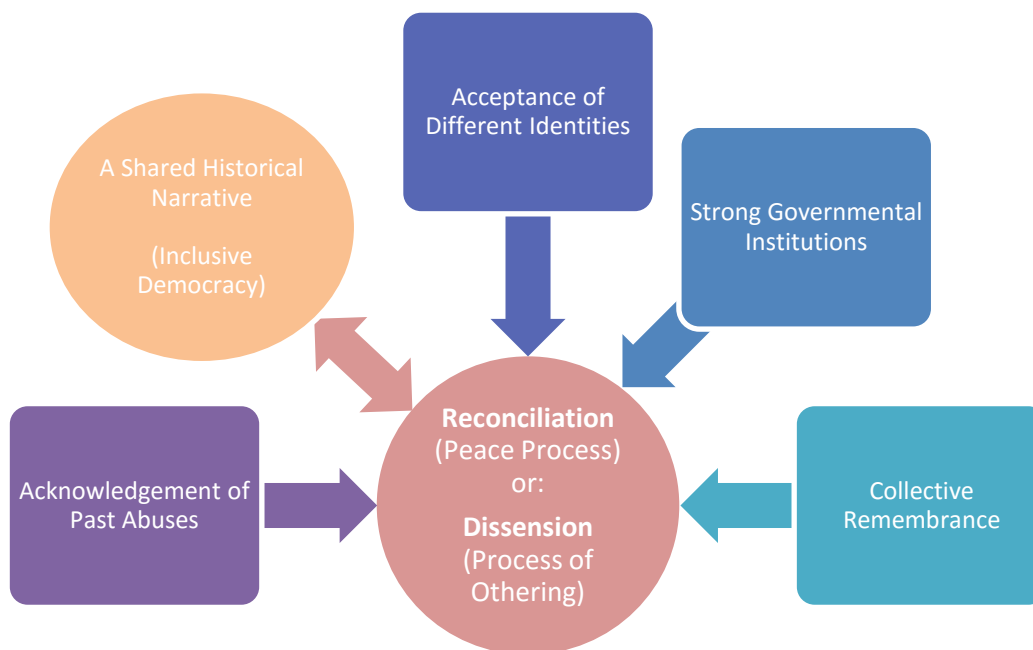

Figure 2: The Factors of Truth-seeking Resulting in Reconciliation or Dissension.

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[56] Andrew Schaap, "Political Reconciliation Through a Struggle for Recognition," 523-538.
[57] Although the narrative can be a newly created one, the narrative can also build on aspects of the former disrupted narrative.
[58] Paige Arthur, *Identities in Transition – Challenges for Transitional Justice in Divided Societies*, 1 – 14.

3.   Comparative Case Study

"The prominence of qualitative measures in IR reflects these methods' advantages in studying complex and relatively unstructured and infrequent phenomena that lie at the heart of the IR subfield. (…) Almost every major research program in the IR subfield has benefited from the application of case study methods."[59]

The use of a case study method is considered as a beneficial method for doing research within the field of IR. Although the method has been firmly criticised for being unconnected, a-theoretical and idiographic, the method is able to study unstructured and infrequent phenomena that take place in the global arena and contributes to cumulatively improving understandings of world politics.[60] As discussed, transitional justice is a complex process and can, therefore, be considered as being somewhat of an unstructured and infrequent phenomenon. Considering this research, the cases of Rwanda and South-Africa are chosen for their least-similar case design. The cases are dissimilar in all but the independent variable of the transitional justice process that takes place and shares the dependent variable of reconciliation. This approach is applied to show the relation between the common independent variable to the outcome through a causal path: the framework of truth-seeking. [61]

This qualitative approach to a least-similar comparative case study is used, while it allows for a detailed inquiry and contributes to developing differentiated and more closely focused concepts.[62] Or as David Collier has argued:

> "Special contributions are made by researchers who are experts at 'extracting new ideas at close range.' These scholars are deeply engaged both with theory and with the close analysis of cases, giving them an unusual capacity to see the general in the particular."[63]

The process tracing element adds to an understanding of the hypothesised causal mechanism and to which extent traces of this mechanism can be uncovered.[64]

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[59] Andrew Bennett and Colin Elman, "Case Study Methods in the International Relations Subfield," *Comparative Political studies,* 40, 2, (2007): 171.
[60] Ibid, 172.
[61] Ibid, 174-176.
[62] Ibid, 178.
[63] David Collier, "Letter from the President: Data, Field Work, and Extracting New Ideas at Close Range," *APSA-CP – Newsletter of the Organized Section in Comparative Politics of the American Political Science Association,* 10, 1, (1991): 1-6.
[64] Andrew Bennett and Colin Elman, "Case Study Methods in the International Relations Subfield," 183-185.

3.1. South-Africa and Rwanda: Setting the Scene

Nowadays, South-Africa and Rwanda can be considered as two cases that find themselves in a relatively stable political situation. This situation should not be taken for granted, considering the gruesome human rights abuses both states had to deal with quite recently.

In the following, both cases are contextualised and inquired through the truth-seeking framework in the post-conflict situation in order to examine for both cases their place on the spectrum between reconciliation and dissension.

3.1.1. Brief History of Conflict

Considering the situation in Rwanda, the country has experienced an extreme situation of human rights violations in the form of genocide. It can be argued that the acts of genocide committed in 1994, can be attributed to a disruption of the shared narrative. There were three main racial groups in place: Tutsi, Hutu and Twa, the latter did not play a significant role in the conflict.[65] These groups and their different identities were constructed during the colonial rule of Belgium. During the period of colonisation, they politicised the different identities of the Hutu being inferior agriculturalists and the Tutsi being the civilised herders. Therefore, when Rwanda became independent from their former coloniser in 1962, the political developments followed ethnic lines with parties differentiating themselves by means of ethnicity. This sparked violence between the rivalling Hutu and Tutsi groups leading to many casualties from 1962 onwards. Many Tutsi's had fled to neighbouring countries and several, who lived in exile in Uganda, formed the Rwandan Patriotic Front (RPF) in 1990, determined to return to Rwanda. They signed the Arusha Peace Accords in 1993 with the Hutu government which was associated with the employment of UNAMIR, the UN peacekeeping operation. Nevertheless, one year later when the president crashed because his plane had been shot down by a missile, a power vacuum emerged. This power vacuum sparked the acts of genocide when Hutu's violently seized power and murdered many Tutsi and moderate Hutu.[66] Therefore, the genocide that had taken place in Rwanda can be considered as the result of disruption of the narrative and through a process of othering, the state found itself far into dissension on the spectrum of

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[65] Linda Melvern, *a people Betrayed: The Role of the West in Rwanda's Genocide* (New York: Zed Books, 2000), 59-68.

[66] Ibid*, 60-65.

transitional justice.

South-Africa found itself in a racial struggle that was led by its black population against the privileges of the white population as installed through the policy of apartheid. This political system created a racially segregated state in which the white population oppressed the black and coloured population. This cumulated in a situation in which several black nationalist parties were created of which the African National Congress (ANC) became the most prominent one in overturning the Nationalist Party which was the party that approved and implemented apartheid. The struggle for political influence by the black population was accompanied by severe human rights violations of which torture, letter-bombs, and disappearances are only a tip of the iceberg.[67] This violent struggle eventually came to a halt when in 1993 a political deal was struck between the main negotiating parties that aimed for a transition towards a democratic South-Africa, between the ANC and the apartheid government. [68]

3.1.2. Scope of the Truth-seeking Committees

In South-Africa, a provision for amnesty was included in the creation of the truth commissions. This was considered as a substantial trade-off with justice, while it was yet to be seen how much truth could contribute in effectuating reconciliation. The Promotion of National Unity and Reconciliation Act was signed between the negotiation powers, the ANC and the National Party, and formed the basis on which the official body of the South African Truth and Reconciliation Commission (TRC) was established. The scope, as stated in the founding act, included the following: establishing a complete picture of the human rights violations, facilitating the granting of amnesty, restoring the human and civil dignity of victims by granting them an opportunity to relate their accounts of violations of which they were the victims, and recommending reparation measures. Therefore, three committees were created: The Committee on Human Rights Violations, the Committee on Amnesty, and the Committee on Reparation and Rehabilitation. [69] These three different committees contributed to the abundant investigative powers. The Committee on Human Right Violations sat publicly and the many oral investigations of the victims were broadcasted on television, reaching a substantial part of

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[67] Hlonipha Mokoena, "The House of Bondage: Rise and Fall of Apartheid as Social History," *Safundi the Journal of South African and American Studies,* 15, 3, (2014): 383-394.

[68] Antje du Bois-Pedain, *Transitional Amnesty in South Africa* (Cambridge: Cambridge University Press, 2008), 17.

[69] Ibid, 19.

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the population.[70]

In Rwanda there was no national act that established a truth-seeking commission, rather it was established by international actors.[71] Rwandan NGOs invited NGOs from the US, Canada, France, and Burkina Faso to create the International Commission of Investigation on Human Rights Violations in Rwanda.[72] This commission was therefore objectively investigating the situation, which is different than in the TRC case. The scope of the commission was to investigate, conduct interviews, review government documents, and take testimony. The commission executed this through establishing the Gacaca courts. Although the commission was welcomed by president Kagame, after the investigations had been conducted several attacks on individuals who had testified took place and also killings by government forces took place who murdered an estimated total of 400 people.[73]

3.2. Policies of Transitional Justice: Possibilities and Limitations

Considering the process of transitional justice in the cases of South-Africa and Rwanda, they are both flexible within the spectrum between dissension and reconciling. Their place on the spectrum being depicted by the thick or thin conception of reconciliation that has been reached. The truth commissions contribute substantially to the conception of reconciliation, however, form a substantial trade-off with criminal prosecutions. Nevertheless, the TRC has been able to reflect not only national jurisprudence but also being a form of restorative justice.

> "We contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment. In the spirit of Ubuntu, the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he has injured by his offence… Thus we would claim that justice, restorative justice, is being

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[70] Antje du Bois-Pedain, *Transitional Amnesty in South Africa*, 18-21.
[71] Maya Goldstein Bolocan, "Rwandan Gacaca: An Experiment in Transitional Justice," *Journal of Dispute Resolution,* 2, (2004), 355-400.
[72] Priscilla B. Hayner, "Fifteen Truth Commissions – 1974 to 1994: A Comparative Study," 631.
[73] Ibid.

served when efforts are being made to work for healing, for forgiving, and for reconciliation."[74]

What has not been taken into account by the current framework, is how truth-seeking is limited in missing a form of coercive power. Therefore, further research on what form of coercion could be possible when executing a firm truth-seeking process.

3.2.1 Examining the Framework of Truth-seeking

Considering the truth-seeking framework, findings are displayed in figure three. Considering the first element of creating an open-ended dialogue, it can be argued that the TRC, particularly the Committee on Human Rights Violations, has established a dialogue between the disrupted racial narratives that were in place. The public hearings of the victims and perpetrators have served as a forum where the different social cleavages in society gathered in order to confess, punish, and forgive. However, the current political situation does not provide a very positive outlook, while the different social cleavages in society are underrepresented in government institutions. Nevertheless, the dialogue is actively stimulated through two official annual commemorations, creating actively collective remembrance of the conflict that took place between the different social cleavages. Considering Rwanda, the Gacaca courts created a public forum for dialogue to take place. However, the current situation is quite negative, while the government has de facto no opposition in place. Nevertheless, a very strong and prominent place has been created for collectively remembering the genocide that took place. This takes the form of the annual commemoration at the UN headquarters and a hundred days of the official mourning taking place in the country.

The element of sympathising has delivered some crucial insights on civil society and acknowledgement. In South-Africa, there is a substantial amount of NGOs active and although more indicators could be considered, this is a positive indication of having an active civil society. Furthermore, an official apology by the apartheid government has been made, recognising their wrongdoings which increase the level of sympathising between the social cleavages making sympathising a solid element. However, in Rwanda, this element is substantially weakly implemented and currently even deteriorating. Although the rebel group that was mainly responsible for the atrocities, the FDLR, has officially apologised for their wrongdoings, the concept of apology is recently being reinvented. According to president Kagame, the descendants of Hutu that were involved in the genocide should apologise for the wrongdoings of their ancestors. An apology is important in order for the different social cleavages to sympathise with each other in the post-conflict situation, however, emphasising the existence of victimhood and perpetrators within everyday society does not contribute to creating an inclusive identity.

Therefore, in considering on which end of the spectrum both countries find

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[74] Desmond Tutu, *No Future without Forgiveness* (New York: Image/Doubleday, 1999): 54-55.

themselves, South-Africa is slightly on the positive side of being in the process of reconciliation. However, the government should actively try to strengthen the dialogue between the different social cleavages and create more diversity within its institutions in order to effectuate a shared narrative. Rwanda finds itself just on the negative side of the spectrum, slightly towards dissension, considering the institutions of government are not diverse and the government is actively stimulating the creation of a fragmented narrative of victims and perpetrators.[75]

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[75] An overview and the sources used for this chapter, can be found in figure three.

Truth-seeking element:	South-Africa	Rwanda
Dialogue: - Diverse government institutions	- Partially, ANC outweighs and overrules its opposition in several bodies of government[76] -	- Weak, there is an opposition in place, however, they have been a continuous target of violence[77] -
- Collective remembrance	- Day of Reconciliation[78] - International Human Rights Day[79] +	- 'Kwibuka', meaning remembrance, 100 days of official mourning every year from April till July[80] +
Sympathizing: - Civil society active and diverse	- Strong, with 439 NGOs active in the country[81] +	- Weak, only 13 NGOs active in the country[82] -
- Acknowledgement of past abuses apology or recognition	- Apology by the National Party and recognition of the injustices[83] +	- Apology by the Hutu rebel group FDLR.[84] - Kagame considers Hutu relatives should keep apologising.[85] +-
Narrative Restoration: - Inclusive democracy actively creating a national identity	- Weak, while social cleavages are not strongly presented in government institutions -	- Weak, president Kagame and his party have been the leading party in the conflict -
- Shared historical narrative	- Developing towards *reconciliation*	- Developing towards *dissension*

Figure 3: Table of Truth-seeking Elements in South-Africa and Rwanda.

[76] The ANC is the leading party with 62% of the seats in the National Assembly. "State Parties in the NA," Government of South Africa, http://www.parliament.gov.za/live/content.php?Category_ID=148.

[77] The Rwandan Patriotic Front (RPF) of Paul Kagame has 76% of the votes and the opposition generally display loyalty to his government as soon as they become representatives in parliament. Jesko Johannsen, "Fighting for Recognition: Political Opposition in Rwanda," *Deutsche Welle,* September 9, 2015.

[78] "Day of Reconciliation 2016," South African Government, http://www.gov.za/speeches/day-reconciliation-2016-23-dec-2015-0953.

[79] "International Human Rights Day 2016," South African Government, http://www.gov.za/speeches/international-human-rights-day-2016-23-dec-2015-0947.

[80] "Kwibuka," Genocide Archive of Rwanda, http://genocidearchiverwanda.org.rw/index.php/Category:Remembrance_and_Memory_preservation.

[81] "Southern Africa," Wango Worldwide NGO Directory, http://www.wango.org/resources.aspx?section=ngodir&sub=region&regionID=18&col=BFB07D.

[82] "Rwanda," Wango Worldwide NGO Directory, http://www.wango.org/resources.aspx?section=ngodir&sub=list&regionID=0.

[83] Andrew Meldrum, "Apartheid Party Bows Out with Apology," *The Guardian,* April 11, 2005.

[84] Jeevan Vasagar, "Hutu Rebels Apologise for Rwanda Genocide," *The Guardian,* April 1, 2005.

[85] Ignatius Ssuuna, "Genocide: Debate Rages on Over Call for Apology," *The East African,* July 20, 2013.

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4. Conclusion

In uncovering to what extent the mechanism of truth-seeking is successful in establishing reconciliation, multiple findings are significant. First, reconciliation can best be considered as part of a process, being part of a spectrum on which the opposite is dissension. Within this spectrum, reconciliation is part of the larger peace process and dissension can be linked to the process of othering.

Secondly, when performing truth-seeking a substantial trade-off is made between restorative- and retributive justice. Truth-seeking aims at restorative justice, which is the form of justice best used in overcoming a disruption of the national narrative and in creating an open-ended dialogue between the existing social cleavages.

Third, the truth-seeking method can be implemented through the elements of dialogue, sympathising, and narrative restoration all contributing in different forms to the process.

Finally, in comparing two different cases of truth-seeking it can be concluded that although South Africa has been criticised for the methods of the TRC, it finds itself slightly on the positive side of the spectrum towards a thicker form of reconciliation. This can be concluded, while there is an active civil society in place, although representation in parliament could be improved in favour of the social cleavages which constitute a minority. Regarding Rwanda, the truth-finding methods through the instalment of the Gacaca courts have contributed less positively in the process of transitional justice. With an almost one party rule in government, the other social cleavages are disadvantaged. Even more pressing is the issue of transferring the burden of apology to the next generation of Hutu. This policy of apology emphasises the different identities of victims and perpetrators. This fracture can arguably be seen as moving the national identity away from being inclusive and instead reinforce differences and activate the process of othering. Therefore, Rwanda can be found towards dissension on the spectrum. Thus, truth-seeking *an sich* cannot be said to effectuate reconciliation. However, it is substantially significant to conduct further case studies in the field of truth-seeking in order to create a recommended model of truth-seeking that can be used as the example for countries aspiring the establishment of a thick form of transitional justice: reconciliation.

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6. Appendices

Appendix II: The Process Towards Reconciliation.
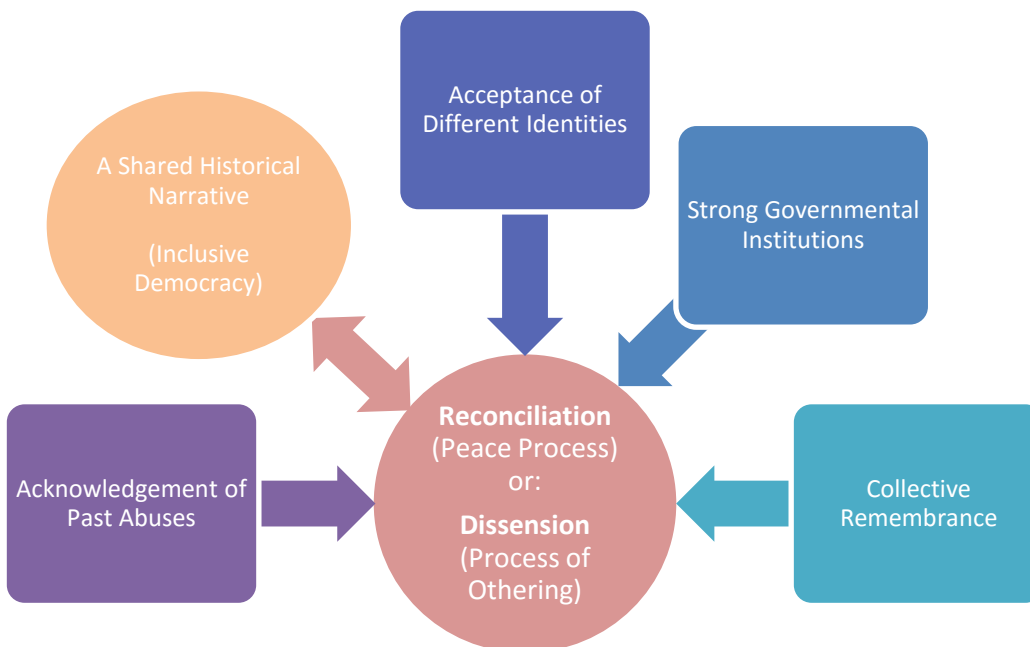
Appendix III: The Factors of Truth-seeking Resulting in Reconciliation or Dissension.

Truth-seeking element:	South-Africa	Rwanda
Dialogue: - Diverse government institutions	- Partially, ANC outweighs and overrules its opposition in several bodies of government[86] -	- Weak, there is an opposition in place, however, they have been a continuous target of violence[87] -
- Collective remembrance	- Day of Reconciliation[88] - International Human Rights Day[89] +	- 'Kwibuka', meaning remembrance, 100 days of official morning every year from April till July[90] +
Sympathizing: - Civil society active and divers	- Strong, with 439 NGOs active in the country[91] +	- Weak, only 13 NGOs active in the country[92] -
- Acknowledgement of past abuses apology or recognition	- Apology by the National Party and recognition of the injustices[93] +	- Apology by the Hutu rebel group FDLR.[94] - Kagame considers Hutu relatives should keep apologizing.[95] +-
Narrative Restoration: - Inclusive democracy actively creating a national identity	- Weak, while social cleavages are not strongly presented in government institutions -	- Weak, president Kagame and his party have been the leading party since the conflict -
- Shared historical narrative	- Developing towards *reconciliation*	- Developing towards *dissension*

Appendix IV: Table of Truth-seeking Elements in South-Africa and Rwanda

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[86] The ANC is the leading party with 62% of the seats in the National Assembly. "State Parties in the NA," Government of South Africa, http://www.parliament.gov.za/live/content.php?Category_ID=148.

[87] The Rwandan Patriotic Front (RPF) of Paul Kagame has 76% of the votes and the opposition generally display loyalty to his government as soon as they become representatives in parliament. Jesko Johannsen, "Fighting for Recognition: Political Opposition in Rwanda," *Deutsche Welle,* September 9, 2015.

[88] "Day of Reconciliation 2016," South African Government, http://www.gov.za/speeches/day-reconciliation-2016-23-dec-2015-0953.

[89] "International Human Rights Day 2016," South African Government, http://www.gov.za/speeches/international-human-rights-day-2016-23-dec-2015-0947.

[90] "Kwibuka," Genocide Archive of Rwanda, http://genocidearchiverwanda.org.rw/index.php/Category:Remembrance_and_Memory_preservation.

[91] "Southern Africa," Wango Worldwide NGO Directory, http://www.wango.org/resources.aspx?section=ngodir&sub=region&regionID=18&col=BFB07D.

[92] "Rwanda," Wango Worldwide NGO Directory, http://www.wango.org/resources.aspx?section=ngodir&sub=list&regionID=0.

[93] Andrew Meldrum, "Apartheid Party Bows Out with Apology," *The Guardian,* April 11, 2005.

[94] Jeevan Vasagar, "Hutu Rebels Apologise for Rwanda Genocide," *The Guardian,* April 1, 2005.

[95] Ignatius Ssuuna, "Genocide: Debate Rages on Over Call for Apology," *The East African,* July 20, 2013.

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