

Chapter 9

Freedom in the Grounding of Transitional Justice

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Abstract The South African truth and reconciliation commission (“TRC”) during the post-apartheid era has made such commissions a staple of efforts to heal societies torn by conflict and internal strife. In this paper, I analyze the means by which TRCs help remedy such internal conflict. In particular, I focus on the tensions often noted between the role of TRCs as a means of creating population-level outcomes (such as a general reduction of conflict or violence) with the demands of justice for victims of past abuses for recompense or retribution. Such a tension is, I argue, a genuine one that cannot easily be resolved. This tension is analogous to a similar tension between what I refer to as “relational freedom” operating in many communalistic societies, and an alternative notion of freedom I refer to as “nyang.” As I present these two conceptions of freedom, the former is characterized by the ability of individuals to develop connections and relationships with others in their community, and puts a premium on the forging of consensus and the avoidance of conflict. The latter is a more individualistic notion that, among other things, stresses the importance of accommodating conflict and constructing a *modus Vivendi* that allows individuals with conflicting beliefs and desires to live in peace without consensus.

Drawing on this analogy, I argue that TRCs should be seen not as some all-purpose approach to conflict resolution, but as a means of bridging the gap between genuinely conflict-torn states and structures capable of channeling conflicts through political institutions rather than having those conflict erupt into violence. TRCs thus emerge as a more than just a process for airing grievances, but as an important part of a strategy for moving developing societies away from their traditional (and often quite fragile) communalistic, consensus-based organization and toward a more individualistic and robust system built on the ideal of *nyang*.

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South Africa's Truth and Reconciliation Commission (TRC) has played a key role in helping that country avoid what many feared would be a bloody period of retribution after the end of apartheid. The South African success has been particularly significant in giving TRCs a reputation as a useful method for helping heal societies torn apart by internal conflicts. As a result, TRCs have sprung up in trouble spots the world over and for a variety of different kinds of conflicts.¹ At a London Conference held in January 2010, for instance, Afghan President Hamid Karzai presented a plan for reconciliation and reintegration of the Taliban,² and Palestinian factions in the West Bank and Gaza have reportedly considered TRCs in order to reconcile their differences.³

But the appeal of TRCs is not limited to societies torn by internal armed conflict. The promise of TRC has led some in the United States to propose TRCs as the remedy for all kinds of ills. For example, over the protests of their own city government, residents of Greensboro, North Carolina, organized a TRC to investigate a 1979 massacre of five protestors killed by members of the Ku Klux Klan and the American Nazi Party.⁴ In 2009, the Senate Judiciary Committee Chairman Patrick Leahy proposed a TRC to address various acts of the Bush Administration, such as the firing of the U.S. attorneys in the Justice Department, the use of torture, the creation of secret prisons, the illegal detention of American citizens, the warrantless wiretapping of U.S. citizens, and the alleged misleading of Congress to authorize a disastrous war in Iraq.⁵ Less ambitious examples include a proposal for a TRC to deal with the use of steroids in baseball.⁶

TRCs thus appear to be a highly adaptable tool for resolving a wide variety of kinds of conflict in very different societies and circumstances. But can TRCs really be an effective method of dealing with conflict and injustice in so many different situations? Put another way, does the effectiveness of TRCs presume any particular facts about the populations involved, and, if so, what are those facts?

¹ For instance, the *Comisión Nacional sobre la Desaparición de Personas* (National Commission for Forced Disappearances) was created in Argentina in the aftermath of the 'Dirty War' of the 1970s and early 1980s, the Indian Residential Schools Truth and Reconciliation Commission in Canada dealt with issues involving indigenous peoples, and the *Comisión para el Esclarecimiento Histórico* (Historical Clarification Commission) in Guatemala investigated abuses during four decades of military governments. Several other TRCs have been established in Africa, including Rwanda's *gacaca*, Ghana's National Reconciliation Commission, Liberia's TRC, Morocco's Equity and Reconciliation Commission, and Sierra Leone's TRC. For an extensive list of TRCs (and their associated documents and reports), see the United States Institute of Peace website at http://www.usip.org/publications-tools/latest?filter1=**ALL**&filter0=**ALL**&filter2=2222&filter3=**ALL**&filter4=**ALL**.

² "Is Negotiating with the Taliban the Solution for Afghanistan?" ASDHA Conference, 25, 26 and 27 January 2011.

³ See, for example, Wing (2008).

⁴ See Greensboro Truth & Reconciliation Commission, at <http://www.greensborotrc.org/>, Magarrell and Wesley (2008), Cunningham et al. (2010).

⁵ Stein (2009) and Cavallaro (2009).

⁶ Abrams (2009).

In this paper, I examine the relationship between TRCs and two types of facts about the populations involved in those TRCs: the dominant views of those populations regarding personal freedom, and the basis for political cooperation within those populations. I argue that TRCs are not neutral with respect to either the particular conception of personal freedom a population generally holds or to that population's general view of what is required to ground political cooperation. As a consequence, TRCs should be expected to be more successful when applied to those populations that have a compatible understanding of freedom and cooperation, than to other populations.

I do not claim, of course, that the “fit” between TRCs and particular populations is determined solely by how those populations generally conceive of freedom and cooperation, for there are bound to be several other respects in which TRCs promote certain values at the expense of others. But I believe that appreciating the relationship between TRCs and the concepts of freedom and cooperation gives us both a more nuanced understanding of how TRCs function, as well as an interesting and fruitful way to understand the likely effects and the potential limits of TRCs.

In Sect. 9.1, I present a general characterization of TRCs, and draw on Emile Durkheim's notion of anomie to account for the broad appeal of TRCs as a means of dealing with the aftermath of conflict. In Sect. 9.2 I discuss the commonly recognized limits on the ability of TRCs to deliver justice to the victims of conflict. I argue that instead of regarding those limits as a general objection to the use of TRCs, we should take those limits to show instead that using TRCs requires trading off one good for another, e.g., while it may not deliver justice with respect to certain goods, it may do so with respect to other goods. The appropriateness of using a TRC in any particular case, then, depends on whether it delivers what is needed or valued in that particular case. As a consequence, assessing the utility or appropriateness of TRCs demands looking closely at the circumstances in which they are used and the particular values of the populations involved.

In that sense, TRCs are just like other particular institutions we associate with a system of justice in that in particular cases, they may produce certain outcomes we value, but do not purport to deliver everything we might want. By recognizing that TRCs promote certain kinds of outcomes but not others, we can begin to identify general circumstances in which TRCs are more likely to be appropriate than in others. In Sect. 9.3, I examine the relationship between TRCs and personal liberty or freedom. I present two different conceptions of freedom; the first of which is what Isaiah Berlin called “negative liberty,” and the second is what I refer to as “relational freedom,” a conception of freedom exemplified in certain highly communal traditional cultures of Africa (in particular, the Nso, an ethnic group in the North West of Cameroon). I argue that as a means of restoring personal connections and relationships in post-conflict societies, TRCs are particularly appropriate for use in those populations that prize relational freedom over negative liberty.

In Sect. 9.4, I discuss the relationship between TRCs and a population's general understanding of how to secure the bases for cooperation. I contrast the approach

employed in the United States and other liberal democracies that is predicated on constitutional protections for minorities and for the orderly transition of power from one group to another, with the consensus-based approach of many traditional African cultures. I argue that TRCs can be seen as particularly well suited for dealing with problems of transitional justice in those communities that prize consensus as a basis for cooperation.

Section 9.5 concludes with some suggestions as to how the more fine-grained analysis of the effects of TRCs should influence our views both of the nature of TRCs and of how we might more effectively respond to conflict in the future.

9.1 TRCs and Anomie

Any general discussion of TRCs requires formulating a concept of “the TRC method” that captures the salient properties of particular instances. While even a quick survey of particular TRCs shows that while there is no obvious set of necessary and sufficient conditions for being a TRC, there are certain general characteristics that most examples share.

One commonly used definition of TRCs characterizes them as focusing on past injustice, rather than on preventing future ones; as investigating patterns of abuse over time, rather than a specific event; as being established for a limited time, rather than being a permanent institution; and as being supported by the state.⁷ In addition, TRCs have developed so as to serve principally as a forum for publicly airing grievances and creating a shared account that the facts underlying injustices, rather than prosecuting those who perpetrated those injustices.⁸

With this general concept of “the TRC process” in mind, let’s consider what makes the TRC process so attractive. From a normative perspective, they are desirable because they hold out the promise of a fair and nonviolent means of responding to mass injustice. That is, they provide a deliberative and dispassionate venue for those most closely affected by injustices to voice their opinions. This is a way to pay respect to those individuals and their suffering, while at the same time tempering any anger or demand for vengeance by those individuals. Further, TRCs have a rehabilitative effect, since by participating in the process, former oppressors acknowledge their vulnerability by expressing repentance, while their victims have the opportunity to demonstrate strength by being magnanimous.

Apart from their attractive normative features, TRCs also have significant practical virtues. For instance, in conflict-ridden societies or states in transition between regimes, there may simply be no institutions with the credibility or authority to hold wrongdoers

⁷ Hayner (2001).

⁸ In this capacity, the TRC process aims to produce an “official story” as to what happened: “Their goal is to create a rigorously-constructed ‘truth,’ thereby ‘redu[cing] the number of lies that may be circulated unchallenged in public discourse.” Cunningham et al. (2010) (quoting Ignatieff 1996).

accountable; in such cases, a TRC could be a useful mechanism for resolving issues without having to submit them to discredited institutions of the former regime. TRCs may also allow decision-makers to delegate judgments on divisive and controversial issues to some other body, much as “blue-ribbon commissions” and expert advisory boards are sometimes used to make particularly hard decisions.⁹ Finally – and most tragically – the TRC process may make it the only practical means of addressing injustices when a society has been devastated by conflict or its more conventional methods of investigation and prosecution are overwhelmed by mass atrocities.¹⁰

So how exactly do TRCs achieve these various ends? One way to think of how TRCs works is to think of the state and the effects of internal conflict along the lines suggested by Emile Durkheim, who introduced the concept of *anomie* to refer to a disequilibrium brought about by crises such as war, internal conflict, or economic collapse. According to Durkheim, anomie arises when an individual either lacks a purpose or pursues aims that are unattainable:

[O]ne does not advance when one proceeds toward no goal, or – which is the same thing – when the goal is infinity. To pursue a goal which is by definition unattainable is to condemn oneself to a state of perpetual unhappiness.¹¹

Social institutions such as religion and marriage serve both to give individuals a purpose and – more significantly – to constrain the scope of individuals’ aims and desires to match their capacities and resources. These institutions do this by making individuals aware of others and their relationship to those others, since “[m]an is the more vulnerable to self-destruction the more he is detached from any collectivity, that is to say, the more he lives as an egoist.”¹²

The happiness of individuals thus requires that they be aware of others and the way that their relationships to others limit what they should desire or pursue. In that sense, a properly functioning society is similar to a healthy body that maintains a proper balance among its component organs:

The state of anomie is impossible whenever interdependent organs are sufficiently in contact and sufficiently extensive. If they are close to each other, they are readily aware, in every situation, of the need which they have of one-another, and consequently they have an active and permanent feeling of mutual dependence (Durkheim 1972, 184).

⁹For a discussion of the political considerations that have led to the adoption of TRCs, see Roper and Barria (2009).

¹⁰Some human rights activists have claimed that criminal prosecution is a superior response to widespread human rights violations, but that practical limits on the number of lawyers, judges, courtrooms, or time may make TRCs the best available alternative. See Minow (2001: 237). For instance, the formal legal system in Rwanda following the 1994 genocide was so devastated that it was estimated that it would take more than a century for that system to process the hundred thousand prisoners accused of participating in the genocide. See Zorbas (2004). In part, the inability of formal legal institutions to handle the massive number of cases prompted the January 2001 *gacaca* law, which is a form of TRC. See Zorbas (2004).

¹¹See Durkheim (1966).

¹²Durkheim (1972).

On this account, the truth-telling function of TRCs is important, not simply because it reveals the truth, but because it reveals certain *kinds* of truths – those regarding connections among people and their effects on each other. Anomie arises when persons become isolated from one another and no longer recognize their obligations to each other or their interdependency. As a forum for bringing oppressors and victims together and airing grievances, a TRC is a way to make different sides of a conflict to acknowledge each other and the effects of their past interactions. Thus the transparency created by TRCs may help create the “active and permanent feeling of mutual dependence” required for individuals’ happiness by forcing oppressors, victims, and the rest of the population to acknowledge how their actions affect each other.

9.2 Why TRCs?: Considerations of Justice

The account given in Sect. 9.1 helps to explain the intuitive value of the TRC process. But it also brings out the apparent tension between TRCs and considerations of justice that many observers have noted. Seen as a tool for restoring the internal “balance” of a post-conflict state, the TRC process is concerned with individuals, but principally as a means to a broader end, much as a utilitarian is concerned with individuals’ happiness only as a means of maximizing total happiness. And, just as utilitarians have difficulties accounting for moral intuitions about justice, so too advocates of TRCs have been said to give short shrift to considerations of justice for the individual victims of conflict.¹³

It is not hard to see the potential tension between TRCs and justice. Our judgments of the justice of political arrangements rest ultimately on their impact on individual rights, liberty, and dignity. From that perspective, institutions are just only insofar as they support the just treatment of individuals. But if there is no necessary connection between restoring the internal balance among the members of a population and treating each of those members justly, then the internal logic of the TRC process – which is ultimately concerned with publicly recognizing injustices and the role of wrongdoers in perpetrating those injustices – imposes no requirement that individuals be treated justly.¹⁴

This potential tension between the aims of the TRC process and individual justice has often been recognized. As reported by the authors of South Africa’s TRC *Final Report*, for instance, a “common refrain” from observers of the process was

¹³ See, for instance, Kiss (2001).

¹⁴ I assume that to the extent that the potential clash between the TRC process and justice for the individual is realized, that is generally an unintended consequence of the process. However, as other commentators have noted, there may be particular instances in which TRCs are intentionally used to disadvantage particular groups or to favor certain interests unjustly. See, for example, Rettig (2008).

that “We’ve heard the truth. There is even talk about reconciliation. But where’s the justice?”¹⁵ Another commentator on the South African TRC process noted that while the process helped to create the bases for reconciliation, individual South Africans were unlikely to be compensated for the injustices they suffered:

Although only a few South Africans are likely to receive prompt and ample state compensation for their injuries, given the parlous state of the economy, they can fully participate in the politics of memory, which easily transmutes into the restoration of their dignity and perhaps in due course, for others, reconciliation with their erstwhile enemies and tormentors.¹⁶

Indeed, a common criticism of the TRC process is that it forces “messy compromises” that may be “inconceivable or offensive to some” – compromises with deeply held moral intuitions about the importance of giving individuals (both victims and their persecutors) their just deserts for the sake of reconciliation and peace.¹⁷

Individuals thus occupy an uncomfortable position vis-à-vis the nation in the TRC process. As a method of transitional justice, TRCs are teleological: they are primarily intended to help survivors of conflict realize a new, more just society. But if TRCs (and methods of transitional justice generally) aim at creating or restoring *peaceful coexistence*, there are more and less legitimate ways to achieve that aim. For instance, oppressors could be unfairly coerced into peaceful coexistence by locking them up, gagging some, stripping others of their freedom, ostracizing some, and killing the rest. Alternatively, victims could be required to simply swallow their sense of injustice and move on with their lives for the sake of eliminating conflict. Neither of those “solutions” to the problem of conflict is completely morally acceptable – yet it is unclear precisely how we should compromise victims’ legitimate claims for remedies against oppressors’ equally valid claims for fair and just treatment and the overarching desire to make peace from conflict.

When considering the legitimacy of TRCs, we must attend not just to the desired outcome of the processes on the population as a whole, but also the compromises on individual justice and individual rights required to achieve that outcome. If politics is to be a genuine alternative to violence, both the destination and the path to that destination must be legitimate. From this perspective, approaches to transitional justice – including TRC – must consider the consequences for the individuals involved.

But for all the understandable concerns about the limits of TRCs to deliver justice to individuals in the aftermath of widespread conflict, I believe we should take those limits as telling us more about when and where TRCs are appropriate than as a general objection to TRCs. Indeed, I argue here that TRCs are really no different from other institutions we use to address wrongs, in that each makes particular compromises vis-à-vis justice in order to promote certain aims or values at the expense of other aims or values.

¹⁵ Quoted in Kiss (2001: 70).

¹⁶ Dale (2002).

¹⁷ Zorbas (2004).

First, if we think of justice as a fair allocation of certain types of goods, TRCs actually seem an ideal method of dispensing justice with respect to at least some goods. According to political philosopher John Rawls, for instance, “self-respect” or “self-esteem” is the fundamental social good for a system of justice, and TRCs appear quite capable of dealing with the fair allocation of that good. That is, on Rawls’ account, self-respect relates to a person’s sense of his own worth, the belief that “the conception of his good, his plan of life is worth carrying out;” and to one’s “confidence in one’s ability, so far as it is within one’s power, to fulfill one’s intentions.”¹⁸ By helping to publicize the injustices suffered by victims and the culpability of oppressors, TRCs help to acknowledge the importance of the victims and the moral significance of their suffering, and so naturally be seen as a way of supporting their self-respect.¹⁹

Viewing the TRC process as an institution that aims at supporting the self-respect of victims, we can see that process as a fairly conventional institution of justice, one that shares many of the general problems that arise in more conventional institutions of justice. For instance, to the extent that TRCs are supposed to help fix the facts underlying past injustices, that presumes that there is a single true history to tell. But which history is that? A state in conflict is, almost by definition, a collection of individuals with different experiences, conflicting perspectives, and potentially incompatible goals, all of which may lead to divergent histories of the events. Whose version should be privileged? Do the accounts of the victims automatically trump those of the oppressors? Are the oppressed to be considered a single, undifferentiated mass, whose grievances can be perfectly reflected in a handful of their most articulate representatives? When the oppressed speak, do they speak frankly, i.e., from the bottom of their hearts without duress or fear?

The fact that TRCs do not redistribute other goods such as income and wealth that might also affect victims’ self-respect is a limitation, of course. But it is hardly unique to TRCs, for other institutions used to deal with injustices suffer similar limitations. Formal adjudication, for instance, may promise those who have been wronged more tangible remedies than the TRC process does, but may do so by subjecting the victim to embarrassment or humiliation that the TRC process would not.

TRCs share other limits that criminal courts and formal legal proceedings exhibit with respect to delivering justice to victims. In the criminal justice system in the United States, for instance, known wrongdoers are routinely granted immunity or reduced penalties in exchange for providing information used to apprehend and

¹⁸ Rawls (1999: 386).

¹⁹ As Shelby Weitzel (2004) has argued, this acknowledgment of wrongdoing by the wrongdoers themselves is essential for the victim of that wrongdoing to exhibit forgiveness, rather than condonation. As presented by Weitzel, forgiveness is an act that is compatible with (and potentially a source of) self-respect, and it implies that someone other than the victim regards the wrongdoing as morally significant. Condonation, in contrast, is an acceptance of the wrongdoing in a way that denies the moral significance of that wrongdoing – and in so doing, undermines the self-respect of the victim.

prosecute other, presumably more dangerous, offenders. So, just as the TRC process trades off the ability to punish wrongdoers in exchange for eliciting facts about wrongdoing (and about other wrongdoers), so too do formal criminal justice systems sometimes deny victims of crime retributive justice for the sake of some other, presumably more valuable, objective.

Similarly, the civil legal system in the United States sometimes trades off considerations of retributive justice for some other purpose. Judges are typically seen as being charged with applying the law fairly and objectively to the parties before it. But to apply the law, judges often must first decide what the law is, and to do that, they look past the parties before them to the effects of a given interpretation on the next parties in a similar situation.²⁰ That, however, is just another form of balancing the consideration for particular individuals so closely linked to conceptions of retributive justice against legitimate, but quite different, concerns as to what is best for the broader population.²¹

My point here is not to downplay the importance of understanding how justice for the individual can be achieved from within the TRC process. Rather, I want to underscore the fact that a TRC is just one institution among many. Like other more conventional institutions that deal with crime, conflict, and abuse, it necessarily balances a variety of different and legitimate objectives against each other. Are TRCs ill suited to dispense retributive justice in the sense of punishing wrongdoers? Perhaps – but that merely shows that it is incomplete in particular respects, just as alternatives to TRCs are.²²

Recognizing the limits of TRCs with respect to justice (or rather, justice with respect to certain goods) does, however, prompt us to ask whether the compromises TRCs

²⁰This is particularly the case for those judges highly influenced by the law and economics approach to the analysis of legal rules and institutions. According to one of the most influential advocates of this approach, Judge Richard Posner, legal rules should be efficient (from an economic point of view). See, generally, Posner (1973). To the extent that adjudication requires formulating a specific rule the court follows, this attention to economic efficiency requires the judge to consider not just what seems right for the parties before it, but also how the rule applied will affect future behavior of other parties.

²¹Similar tradeoffs are made when judges consider exercising their equitable powers. Judges are sometimes thought to be responsible for applying the law so as to do justice, rather than blindly applying rules. The institution of a court of equity, as opposed to a court of law, grew out of a recognition that the letter of the law sometimes imposes a rigidity that is inconsistent with the spirit of the law. In the United States, for instance, while the distinction between courts of equity and courts of law has largely disappeared in the United States, federal bankruptcy courts have very broad equitable powers, and “should invoke [those] equitable principles and doctrines, refusing to do so only where their application would be inconsistent with the Bankruptcy Code.” *In re Beaty*, 306 F.3d 915,922 (9th Cir. 2002). Yet courts are legitimately wary about invoking their equitable powers too often, since that may create moral hazard, i.e., may allow considerations of individual justice to remove the incentives that individuals have to protect themselves against certain types of risks.

²²Thus objections to TRCs based on their apparent inability to deliver justice are not like similar objections to utilitarianism. The latter purports to be a complete moral theory, in which case its failure to account for strong moral intuitions regarding justice is a serious objection. The former is merely one institution among (potentially) many, and so does not purport to deliver everything we might desire in a system of justice.

make are appropriate in the context in which they are used. For instance, when the injustices to be remedied are principally material – in Rawlsian terms, income and wealth – the justice dispensed by TRCs is bound to be disappointing, even insulting, to the victims of the injustices. In other cases, however, the injustices to remedy relate to matters of recognition or standing in a community, in which case the TRC might actually be the optimal means of dispensing justice. By taking a closer look at precisely what values or ends the TRC process tends to promote or degrade, we stand to learn something about how that process might be more effectively deployed in the future.

9.3 TRCs and Personal Freedom

In this section, I consider the effect that TRCs have on the personal liberty or freedom of the individuals in the affected population. Just as TRCs appear to be better suited to deliver certain kinds of justice than other, I argue here that TRCs also are not neutral with respect to the kind of personal freedom that members of different populations might value.

To do this, I first contrast two different concepts of personal freedom. The first is what Isaiah Berlin famously referred to as “negative liberty,” or the right to be left alone to act as one chooses.²³ Negative liberty depends on the absence of constraints on, or interference with, agents’ possible action by other human beings. Thus, greater negative liberty means greater isolation or independence from the effects of others’ actions.

I contrast negative liberty with what I call “relational freedom”. This conception is exemplified in certain traditional African communities such as those of the Nso. In contrast to negative liberty and its equating of independence and freedom, this concept of relational freedom presumes – indeed, requires – a background network of familial relations. On this conception of personal freedom, the thicker the network of affective dispositions available to an individual, the more opportunities there are for the exercise of freedom. As I have explained in greater detail elsewhere, an individual’s behavioral and attitudinal patterns towards familial networks constitute that individual’s virtues, or his dispositions to act in certain ways toward others.²⁴ The need for background conditions of a familial network privileges a distinctive set of affects to both promote and deter certain ranges of behavior to give individual persons the opportunity for purposeful action and autonomy.²⁵

Relational freedom, then, is a matter of an individual’s capacities to act in certain ways by virtue of being highly connected to others, as opposed to an individual’s degree of freedom from outside constraints. In the sense I intend, then, relational freedom can be likened to Berlin’s own contrast to negative liberty, i.e., positive

²³ Berlin (1969).

²⁴ See generally Wingo (2010).

²⁵ See Wingo (2010).

liberty. It has been suggested, for instance, that Berlin's notion of positive liberty (as articulated in *Four Essays on Liberty*) indicates that the "self" that enjoys positive liberty "is collective (i.e., national, or rather nationalist), and that its 'realization' might involve very severe restrictions, both on individuals' negative freedom, and (partly in consequence) on the possibility of their *individual* self-realization."²⁶ The interdependence among individuals implied by positive liberty (at least on this reading) closely tracks the idea that relational freedom arises through an individual's personal ties to others.²⁷

There is a quite natural affinity between the TRC process and relational freedom, in that TRCs aim to strengthen or restore relations among people on different sides of conflicts. Widespread conflict severs these relationships, not just by literally causing the deaths of the members of one's network, but by displacing them or erecting barriers of hatred, fear, or resentment. Repairing these connections and forging new ones is a way of undoing at least part of the harm created by conflict. But this process of repairing severed social ties is a leading characteristic of the TRC process, for as one commentator has noted, TRCs and African methods of conflict-resolution are each intimately tied to the repairing of social ties – the same kinds of social ties that form the basis of relational freedom:

Africans believe that when two people fight, the entire village is affected. Therefore, conflict resolution requires not just a settlement between the two disputants, but also an effort to repair frayed social relationships. ...South Africa's Truth and Reconciliation Commission (TRC), established after the dismantling of apartheid in 1994, based itself on this African tradition.²⁸

The distinctive nature of relational freedom in communalistic societies can be brought out by contrasting it to negative liberty, for these two conceptions of freedom are, if not incompatible, at least in tension. One way to see the tension is to note the significant differences in the communities that embrace one or the other conception. Eccentricities, so celebrated by John Stuart Mill, are a hallmark of negative liberty – yet are frowned upon in the communalistic cultures that prize relational

²⁶ Grant (1999: 1221).

²⁷ There is, to be sure, a sense in which relational freedom will strike one who thinks of personal freedom principally in terms of negative liberty as a kind of interconnectedness or community that, while perhaps valuable in its own right, should be distinguished from personal freedom per se. I take that intuition as resting on the presumption that there can be no distinctive sense of personal freedom within communities that do not share Western liberal presumptions about the primacy of individuals. Recognizing relational freedom as a viable alternative to negative liberty requires in part acknowledging that "Western political systems are based on a concept of the citizen which appears of little relevance to Africa," and that "[t]he notion of the individual in Africa, with due allowance for the differences found in various parts of the continent, is again one which is inclusive rather than exclusive," one on which "individuals are not perceived as being meaningfully and instrumentally separate from the (various) communities to which they belong." Chabal and Daloz (1999: 52). While that conception of individuals appears to be incompatible with negative liberty, it does not imply that Africans have no meaningful sense of personal freedom, but rather that their conception must accommodate their view of the relationship between individuals and the community.

²⁸ Ayittey (2009).

freedom. Similarly, the association between freedom and home ownership is strongest in the Anglo-American tradition that produced Mill and Berlin.²⁹ Such a notion of the “home” – a place identified with one’s inner self, a essentially private sphere to be shielded from outside interference – is alien to the communalistic world.

More generally, the live-and-let-live attitude cherished by advocates of negative liberty is anathema to those for whom isolation was a sure road to social, spiritual, economic, and even physical death. For those, ancient slavery was not the worst thing that could have happened to an individual person – ostracism was. Banishment was not merely geographical separation, but dispossession of an individual from her relational network, the wellspring of relational freedom.

Recognizing these critical differences between relational freedom and negative liberty sheds light on the role of TRC and the way that it promotes certain values. Significantly, TRCs have been particularly important in resolving conflict in Africa, with TRCs having been used in Liberia, Morocco, Algeria, the Democratic Republic of Congo, Ghana, Sierra Leone, Côte d’Ivoire, Nigeria, South Africa, Burundi, Ethiopia, Chad, Uganda, and Zimbabwe, in addition to those still at work in Kenya and Rwanda. There are, undoubtedly, many different factors that contribute to the use of TRCs in Africa. But one of those factors, I think, is that TRCs are particularly amenable to the sense of relational freedom that has traditionally had a hold on Africans. For those who prize relational freedom, then, TRCs offer not just a means of revealing truths about past injustices and recognizing the moral significance of victims’ suffering, but also helps to repair the social basis of personal freedom.

9.4 Models of Responding to Conflict

The TRC process also has a close connection to a particular view of how we should deal with conflict. All human societies face deep conflicts – be they religious, ethnic, cultural, tribal, racial, social, economic or historical – but not all human societies respond to conflict in the same way. Ethnic, cultural, and religious differences simply do not threaten the stability of the United States in the way they do to countries like Nigeria, Liberia, Somalia, Rwanda, Iran, and Sierra Leone. One reason is that the former has generally (at least since the American Civil War) channeled these differences into political action, action that in turn is shaped and constrained by a constitutional system. In contrast, conflict in the latter regularly overwhelm political channels, sending floods of violence across the state despite efforts of well-meaning reformers to quell the cultural, religious, and ethnic storms that feed the deluge.

What accounts for this difference? Why should liberal democracies like the contemporary United States be more dexterous in dealing with the pressures and tensions of differences among individuals and groups than other kinds of systems in the

²⁹ See the distinction and the discussion on private and public sphere in Arendt (2005: 114–15, 122–3, 127–9, 135–40, 142, 149–51).

developing world have? One explanation appeals to the political institutions found in these states. The political institutions of the former can *accommodate* deep differences among individuals and groups and still find it possible to cooperate within a political system; the latter seem much less capable of doing that.

To see why, step back a bit and look at some different ways one might respond to conflict in general. Consider a group of people sharply divided over an issue, with each side both passionately committed to its view and unwilling to continue to live in a divided community. In such a situation, there are at least three general possible outcomes:

Fighting ↔ Cooperation ↔ Flight

“Cooperation” here is intended to be a fairly weak concept, one that implies merely that the conflicting sides agree to carry out their conflict within the political system, and to accept the policy decisions resulting from that system. “Fighting” and “Flight” are what happen when the parties fail to achieve cooperation in that weak sense. Fighting implies that neither side of the conflict relents and the conflict escalates to the point at which violence breaks out; this is the case in a civil war, with the sides slugging it out until either one group is destroyed, conquered, or forced to withdraw or both collapse from exhaustion. Flight entails that one or the other side withdraws from the conflict; this would be the case with secession.³⁰

Intuitively, cooperating is preferable to either alternative in most circumstances. For those of a liberal bent in particular, the idea of cooperating suggests a tolerant community, one in which rival parties peacefully reach a position to which each member of that group or community can plausibly be said to have consented.³¹

For purposes of this essay, then, I presume that for most divided populations, it is better to cooperate within a political system and continue to live together rather than resort either to fighting or flight. But even if we assume that cooperation is better than either alternative, it isn't obvious what basis is required for cooperation. Does it require some deep consensus on every policy decision, and if so, must this consensus be morally justified or can it merely be an orthodoxy or set of (potentially unjustified) social norms? Or does cooperation require only the most superficial deal or *modus vivendi* sufficient for the parties each to endorse the same actions? Does it imply that there is no significant dissent, or can we have cooperation even though the population remains sharply divided on many important issues?

The answers to those questions depend on the particular population involved and how they are prepared, as a matter of their history and political institutions, to respond to conflict. In the United States, for instance, significant proportions of the

³⁰ For a general discussion of the factors affecting individuals' decisions to remain “loyal” to a community, rather than to engage in some form of “exit” from that community (either by engaging in flight or by fighting), see Hirschman (1970).

³¹ There are, of course, circumstances in which resolving differences by fleeing or fighting is intuitively preferable to any kind of cooperation. If cooperation requires compromising with the devil (or some sufficiently oppressive party), that will be too high a price to pay.

population usually disagree over certain central policy decisions, such as enacting national healthcare reform legislation or continuing the wars in Iraq and Afghanistan. Despite those differences, however, Americans generally cooperate in the sense that they accept as legitimate those decisions that have been duly enacted, even if they vehemently disagree with those decisions. Consensus is rare – yet there is cooperation in the sense that those that disagree do so while continuing to work within the same political community. Indeed, Justice Robert Jackson celebrated the absence of any means of enforcing consensus when he wrote that “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.”³²

One reason this is possible is because the United States protects the “losers” in that political community. As a liberal state, of course, the United States recognizes minorities’ rights and (for the most part) protects those rights against the will of the majority. But the United States also has constitutional features that protect access to the electoral system. That is, the Constitution gives hope to today’s electoral losers that they will be winners tomorrow. The effect is to enhance the political system’s ability to tolerate internal dissent and disagreement, and give today’s losers incentive to remain within the system, rather than opting out for fear that a single loss will mean they are forever shut out of power.³³

This is one approach to achieving cooperation. On it, the electoral process – or more generally, the mechanism used to select policies – is structured not to remove disagreement, but to accommodate it by giving different groups a fair shot in the future at being able to decide which policies are adopted. In simplistic terms, it is like letting everyone have a turn: in that case, everyone still has reason to continue to work within the system – notwithstanding the fact that there may never be consensus on any of the policies adopted.

This approach to conflict admittedly leaves much to be desired. In an ideal world, people should be able to reach agreement one issue at a time, deliberating coolly over each issue and coming to an agreement on that matter that each side finds acceptable. The approach I am describing, however, suggests a very different process, one which produces a series of zero-sum outcomes on which one party prevails and the other loses. Parties in such a system are neither aiming to reach a middle ground that respects the desires and objectives of all the disputing groups, nor are they nobly struggling for a principle on which they will not compromise. Such a system does not rest on consensus regarding decisions, but rather a grudging willingness to endure losses today in the hopes that there will be victories tomorrow.

Finding a way to cooperate is important to the extent that we disagree – and we disagree about many, many things. But the aim of cooperation is very limited,

³² *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

³³ The classic source of the view of the U.S. Constitution as policing the political process is Ely (1980), and its themes are echoed in Breyer (2005). I have discussed the role of constitutional protections and other safeguards for the political system in Wingo (2004).

minimalist sense in which I am using the term is not to end these disagreements. Rather, it offers us a tool to act in the presence of disagreement and conflict, and to find ways to “go on” in ways that at best protect the parties from one another, but will usually never totally satisfy each. Cooperation in this minimalist sense, then, is an enterprise devoted to managing conflict: much as the realistic goal of medicine is to control disease rather than eradicate it, the practice of politics is a means of addressing the conflicts that are a natural part of social life rather than eliminating them.

This is, however, not the only way to achieve cooperation within a community. An alternative approach is simply to insist on consensus, and require that everyone “get on board” with a policy before enacting it. This is the approach we find in many traditional African communities. Among the Nso people of Cameroon, for instance, the way to deal with internal dissent over what course of action to take is to sit down and talk: Members of these communities will literally sit down and talk and talk and talk for as long as it takes to iron out their differences and achieve a consensus – not just a promise to go along with a decision they disagree with, but a genuine consensus³⁴:

In crisis-resolution, the African tradition entails consultation and decision-making by consensus. When a crisis erupted in a typical African village, the chief and the elders would summon a village meeting and put the issue to the people. There it was debated by the people until a consensus was reached.³⁵

Consider the following example from my own people, the Nso. Like many indigenous African societies, the first option for the Nso in dealing with internal conflict is to expel the difference that led to the conflict. This does mean in the first instance casting out those individuals who have caused the conflict (although eventually it might come to that), but instead calls for certain ritual processes intended to reintegrate the community.³⁶

Faced with internal sources of conflict, the Nso first come together in search of the *phamakoi* that divided individuals, with the shared understanding that such divisions – even if they directly affected only a few, would eventually threaten the survival of all. That is referred to as the time of reckoning and atonement (or *suliy* in Lamnso, the language spoken by the people of Nso).

The *suliy* process involves individual family members and family heads – the *a Fai* (“a” stands for plural) – coming together in public before the watching eyes of all and speaking the truth to the listening ears of all. This transparent ritual of truth utterances is followed by a swearing ceremony in which each member swore to the ancestors (believed to be living in the spiritual realm) that their words represent the truth and nothing but the truth. They then stand on a broom, a symbol of purifying

³⁴I have discussed such approaches to conflict resolution in Wingo (2004).

³⁵Ayittey (2009).

³⁶In a continent historically plagued by under-population, African communities didn’t have the luxury of using exile or imprisonment as a first option for dealing with those who violated social mores.

the differences that led to conflict. The process is then sealed by a blood-letting sacrifice to the ancestors, another symbol of purification of the society. The “polluted” persons involved in the conflict are given small slivers of sticks to clean their mouths, and the ceremony ends with their throwing those slivers – now infused with all that ailed the community – behind them, a gesture symbolizing their determination never again to utter a word on the matter. All this was to ensure survival in a world where the welfare of the whole as a unified body was paramount.³⁷

Such a ritual is intended to reintegrate all but the most deviant into the community, and reinforces the values of unity and consensus. Those values are not totally arbitrary, but instead reflect the rational response to the particular demands of their environment and history. Consensus was a key to survival in a harsh environment, and the development of political communities bound together by common lineage, blood, and ritual served as a useful means of achieving such a consensus.³⁸

The character of social and political institutions that one finds in different societies around the world reflects not just conscious human design, but also the various pressures, and forces that have acted on those societies over time and the resources available to those societies. In the case of communalistic societies, like those found in Africa and the Middle East, political institutions were developed in response to harsh environments that required individuals and groups to band together for survival.³⁹ As such, the history of places like Africa and the Middle East is not that of rugged individualists. It is one in which, in evolutionary terms, the environment selected for societies that prized the whole over the part. The interdependence of individuals in communalistic societies is captured by a statement from the Kenyan-born Anglican priest and theologian, John Mbiti: “I am, because we are; and since we are, therefore, I am.”⁴⁰

Such communities exhibit a remarkable – even beautiful – internal coherence and structure, and in their particular practices exhibit many virtues. The Nso purification ritual described above, for instance, shares several features of what members of a modern liberal state would regard as a legitimate institution. First, the process recognized and respected the victim as an individual. Second, each individual with an interest in the proceeding was allowed to participate and to voice her interests and

³⁷ See Wingo (2010).

³⁸ Ryszard Kapuściński, a long-time observer of African politics and culture, remarked on the profound importance of unity and social connections in Africa: “Individualism is highly prized in Europe, and perhaps nowhere more so than in America; in Africa, it is synonymous with unhappiness, with being accursed. African tradition is collectivist, for only in a harmonious group could one face the obstacles continually thrown up by nature.” He illustrated this with a revealing anecdote: “One day a group of children surrounded me. I had a single piece of candy, which I placed in my open palm. The children stood motionless, staring. Finally, the oldest girl took the candy, bit it into pieces, and equitably distributed the bits.” Kapuściński (2002: 36).

³⁹ For an excellent overview of how Africa’s geographic and environmental features and the selective pressures that those features imply have shaped traditional social and political structures in Africa, see Reader (1998). See, in particular chapter 28, in which Reader discusses how the demands of labor-intensive agriculture shaped a range of African social institutions, from slavery to the tradition of clientalism to the highly communal nature of indigenous communities.

⁴⁰ Mbiti (1996: 141).

concerns. Third, the individuals involved are approximately equal economically and socially, a fact that mitigated the risk of exploitation of one group by another. Fourth, free and frank speech was encouraged, by way of creating a special environment for speaking out without fear of reprisal. And fifth, reconciliation grew out of the living experience of the members of the society, a condition I have referred to elsewhere as conferring “living legitimacy” on the result.⁴¹

But the internal coherence and structure of these communities come at a price, for they cannot easily withstand internal dissent. They take on a wonderful organic unity that seems constitutionally incapable of surviving the internal differences that are a matter of course in any truly diverse modern state. As they have arisen in many parts of Africa, this fragility has not been a handicap, since it traditionally has been easy for dissenters to exit such societies.⁴² The effect of this is that those traditional structures have not had to develop the means of dealing with internal dissent. As long as flight was a viable option, it may well have been the rational alternative to cooperation. But when flight has become more difficult – as it has with the modernization of African states, the only alternative to cooperation is fighting. There is no middle ground left.

The limitations of this kind of communalistic consensus approach are evidence in many of the conflicts that have plagued (and continue to plague) Africa in the post-colonial period. That is, while consensus-based politics may have been effective among relatively small, homogeneous, and familial-based communities, the focus on consensus becomes a liability outside the special circumstances of those traditional communities. As applied to modern African states whose borders cut across ethnic and tribal lines and whose populations are diverse multi-ethnic, multi-lingual, multi-cultural, and multi-religious mixes. Consensus among strangers bound together not by common blood or origins can be very difficult if not impossible to find.

Yet to a remarkable extent, modern-day African politics still reflects this consensus-based approach.⁴³ As Archbishop Tutu has said of South Africa, “social harmony is for us the summum bonum – the greatest good. Anything that subverts or undermines

⁴¹ See generally Wingo (2001). Under the conditions of living legitimacy, the process of reconciliation is not foisted onto members, it is their own.

⁴² See, for example, the analysis by Jeffrey Herbst (2000), in which he traces the traditional weakness of African states to the traditional difficulties with controlling territory. In a section entitled “The Primacy of Exit,” Herbst notes that the large amounts of open land and rain-fed agriculture meant that relatively little investment was needed for persons to move from one place to another. As a result, “it was often easier to escape from rulers than to fight them. Africans, on the basis of sensible cost-benefit equations, would, more often than not, rather switch than fight” (Herbst 2000: 39). See also the analyses of Harms, Asiwaju, and Barfield referenced by Herbst.

⁴³ One particularly interesting sign of this continuing commitment to consensus is the design of the Apartheid Museum in South Africa. As described by Teeger and Vinitzky-Seroussi, the form and content of the museum is dedicated at creating consensus: “through its controlled form, the Apartheid Museum seeks to offer a consensual reading of the past. . . . The Apartheid Museum is careful to ensure that the consensual form be translated into consensual content. Thus it sets up a content that, much like its architecture, is carefully controlled to elicit consensus and not conflict.” Teeger and Vinitzky-Seroussi (2007: 64).

this sought after good is to be avoided like the plague. Anger, resentment, lust for revenge . . . are corrosive of this good.”⁴⁴ Such a sentiment is attractive on its face, but too firm an adherence to the aim of harmony understood as the absence of disagreement or dissent has an ugly side. For instance, the African institution of “one-party democracy” (or even “no-party democracy”) is in part supported by the African practice of consensus and avoidance of conflicts.⁴⁵ Kwasi Wiredu has argued for this uniquely African version of consensual democracy on the grounds that multi-party democracy is too divisive, and only helps to further divide ethnic groups in African countries.⁴⁶ And in an interesting contrast to the constitutional protections in place in the United States to maintain the integrity of the electoral process described above, corruption of the electoral process by those seeking to quash opposition is a disturbingly regular event across Africa.⁴⁷

African responses to the problems of ethnic conflict also reflect the presumption that the way to control conflict is to eliminate the differences between the conflicting parties (rather than finding some other mechanism for accommodating those differences). In post-genocide Rwanda, for instance, the constitution forbids Hutus and Tutsis to identify with their ethnicities.⁴⁸ Similarly, reform-minded Africans in Ghana and Nigeria have written into their constitutions provisions that forbid political parties from identifying themselves along ethnic lines,⁴⁹ and the Nigerian constitution

⁴⁴ Tutu (1999: 35).

⁴⁵ In their intriguing analysis of the synthesis of traditional African institutions and modernization, Chabal and Daloz highlight the difficulty in finding a place for opposition in African political systems. They argue that “[w]hereas in the West, the practice of democratic elections is, with the exception of coalition governments, a zero-sum game – there are recognizable winners and losers, each with a proper constitutional role – the same cannot apply in Africa. If the notion of the individual and the meaning of representation are bound up with the identity, defence and furtherance of the interests of the community, then there can be no place in the political system for an opposition with no means of delivering resources to its constituents. To be in opposition is of no intrinsic or even political value.” Chabal and Daloz (1999: 55).

⁴⁶ Wiredu (Wiredu 1995).

⁴⁷ In reporting on the patterns of abuse in African, George Ayittey has remarked that “the destruction of an African country, regardless of the professed ideology of its leader, always begins with some dispute over the electoral process.” Ayittey (2009). He also reports that manipulation or blockage of the electoral process set off civil strife or war in several African states, including Rwanda, Sierra Leone, Zaire, Liberia, Congo, Algeria, and Nigeria.

⁴⁸ Constitution of the Republic of Rwanda, ch. II, art.9 (“The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof: . . . eradication of ethnic, regional and other divisions and promotion of national unity, . . . [and] the constant question for solutions through dialogue and consensus.”); id. title III, art.54 (“Political organizations are prohibited from basing themselves on race, ethnic group, tribe, clan, region, sex, religion or any other division which may give rise to discrimination.”).

⁴⁹ See Constitution of the Republic of Ghana, ch. 7, para.55(4) (“Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.”); Constitution of the Federal Republic of Nigeria, Part III.D, para.222(e) (“No association by whatever name called shall function as a party, unless – . . . the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria.”).

actually makes it a duty of the national government not only to allow, but to “encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties.”⁵⁰

The unfortunate effects of this coupling of the traditional African value of consensus and highly diverse populations that lack that consensus are written in blood on recent African history. For instance, even given the intimate connections within small, homogeneous traditional African communities, dissent would arise, but the vast unsettled expanses of Africa in the past provided plenty of room for flight to those who rejected the orthodoxy. The fragile nature of traditional African communities and their inability to accommodate dissent help to account for this time-honored tradition of Africans “voting with their feet.” Not surprisingly, then, Africa today accounts for a disproportionate share of the world’s refugees, and refugee crises in places like Darfur, Chad, Kenya, Liberia, Sierra Leone, Somalia, and Zimbabwe remind us of the cost of “cleansing” a community of dissent in order to maintain a desired degree of consensus.⁵¹ And this tradition has been complicated by the fact that those who seek to exercise their exit option no longer simply move into unclaimed territory, but into that of a neighboring sovereign state that is often intent on keeping those strangers from settling permanently.⁵²

These examples provide a sobering lesson on the need to develop ways to respond to conflict rather than simply avoid it. As I’ve already noted, for most of African history, the tradition of consensus and conflict avoidance are highly rational, intelligent strategies, given the advantages this attitude provided in an environment where survival was for so long a precarious thing. But however rational or intelligent this commitment might have been then, it has had some disastrous effects in Africa today. The commitment to consensus, after all, does not imply that all differences must be resolved – it only means that differences be eliminated, and often the easiest way to do that is for one party or the other to pick up and leave – a response that has had a negative impact across the continent.⁵³

The fragility of the highly consensus-driven institutions and traditions of Africa can be seen in a variety of other systems as well. For instance, while there are legitimate criticisms of the monarchical regimes that cover the Arabian Plate, their survival is not wholly accidental. The regime they support is intertwined with a

⁵⁰ Constitution of the Federal Republic of Nigeria, ch. II, para.15(3)(c).

⁵¹ According to the UN High Commissioner for Refugees, in 2002 Africa hosted 25.7% of the world’s refugees, despite having only about 15 % of the world’s population. According to Herbst (2000), “Certainly, one of the reasons that Africa [hade] the largest number of refugees in the world [as of 1994] is that the speed at which boundaries have become consolidated has overwhelmed people seeking, as their ancestors did, to vote with their feet” (230).

⁵² See Herbst (2000: 229–30).

⁵³ For instance, one Cameroonian analyst has attributed sub-Saharan Africa’s poor record on development to certain common features of “African culture,” in which he includes “a tendency to ‘convivial’ excesses [and] the primacy of conflict avoidance.” Etounga-Manguelle (1993), quoted in Chabal and Daloz (1999: 128).

variety of time-honored traditions and “coping strategies” that at least in the past had value. From the rigid theocracies that admit no accommodation to shifting realities to the consensus-based indigenous structures, we find a range of practices and institutions that exemplify fragility. Fragile political institutions have many virtues: they often embody clear principles, untainted doctrine, impeccable structures, and perhaps even special aesthetic qualities. What they do not have is the flexibility to accommodate the kind of conflict that will inevitably arise in any political system that allows members of a diverse population to voice their honest interests and beliefs. A fragile system is incapable of tolerating political practice that is non-violent but competitive, that is built of negotiation, give-and-take, grudging concessions and compromise.

It is surely the case that there is no single, easily identifiable reason why certain parts of Africa and the Middle East seem so plagued by conflict. Indeed, it may be that the strife and instability in those regions is inevitable, given the legacy of colonialism and Western dominance, the manipulations of the United States and Soviet Union during the Cold War, religious differences, and ethnic strife – each of which is an important factor contributing to the problems in those regions. But in addition to all these factors, the political violence we find in Africa and the Middle East appears to reflect a certain incapacity to respond to the events and forces that contribute to conflict. That is, the violence we find in these regions does not necessarily imply that differences between parties there are deeper or more passionate than those found between groups in Western Europe or North America. Rather, the different outcomes may reflect differences in how different states try to foster cooperation within increasingly diverse populations in order to respond to problems as they arise. Institutions in Western Europe and North America can accommodate fairly substantial differences among citizens by rejecting the need to ground that cooperation on consensus. Those in many parts of the Africa and the Middle East, in contrast, still rely on consensus and orthodoxy as bases for cooperation, and as a consequence, lack the willingness or ability to engage in the kind of politics – the give-and-take, the compromising, and the ‘unprincipled’ deal-making – that seems necessary to respond to challenges as they arise.

Such unwillingness to engage in this kind of politics does not necessarily mean one is unreasonable or an ideologue unwilling to bend on the most insignificant point of principle. Indeed, one of the reasons that violent conflict in so much of the developing world is so tragic is that while such violence extracts a terrible cost, there are often rational supports for the institutions and practices that sustain that violence. As I have already noted in the context of indigenous African communities, for instance, institutions and the attitudes of members may be so firmly entrenched that undermining them may just not be an option.

It seems reasonable to believe, given the long history of religious and ethnic strife, that these forces of religious and ethnic identity are barriers to the kind of peace and stability required for other kinds of political reform. Unfortunately, things are not this simple. Differences such as these are often differences between the most basic touchstones for the identity of people. One does not put on or take

off a religious conviction or ethnic identity like a coat or a pair of shoes. And for that reason, traditions such as these are typically too much a part of people ever to eliminate or significantly reduce.

9.5 Conclusion: The Future of TRCs

As my discussion above should indicate, TRC have a natural affinity for communalistic societies and for those societies in which networks of personal connections are particularly important, insofar as the TRC process is generally directed toward illuminating the ways that individuals (including oppressors and their victims) are related and repairing the connections that have been severed by conflict. What that suggests is that, notwithstanding the apparent broad appeal of TRCs throughout the world, there are general circumstances in which TRCs will be more useful or appropriate than in other circumstances. That is, in those places that are particularly dependent on strong social ties among individuals or that put a premium on consensus as a means of grounding cooperation, TRCs will be a valuable tool for repairing the basis for a functioning state. By examining the particular effects of TRCs with respect to conceptions of personal freedom and approaches to conflict and cooperation, we gain some insight into where they are most likely to be useful in restoring the internal balance of the community disrupted by conflict. This contributes to our understanding of how TRCs operate and the types of effects we should expect from them – two things needed in order to apply this device in an intelligent approach to dealing with the aftermath of conflict. For instance, recognizing the role that TRCs play in shore up the foundations of relational freedom may lead us to consider ways that the TRC process might be tailored in particular applications to focus first on those who have been made most vulnerable by conflict, i.e., those that were made ‘socially dead’ by being cut off from familial networks.

At the same time, however, there is clearly work to be done in the way of identifying the particular effects of TRCs on different populations. For instance, by providing a forum for individuals to testify to their own experiences and name their oppressors, TRCs provide individuals the chance – perhaps for the first time in their lives – to exercise free speech. This freedom to speak imposes its own special burden, and calls on individuals to exercise certain ‘civic muscles’ such as self-expression and self-determination that is part of being a citizen in a liberal democratic state. The TRC process, then, may have a role to play that goes beyond merely revealing the truth about the conflict and healing divisions, and can play a part in the civic education of citizens of a post-conflict state. TRCs are not a panacea for states torn apart by conflict; as I have argued here, it is important that we take a realistic view of what TRCs can and cannot deliver, and try to identify with some detail the kinds of values and outcomes that the TRC process is likely to produce. Still, there is reason to think that despite its limits, the TRC

process has an important, and perhaps unique, role to play in supporting certain conceptions of freedom and model of cooperation, as well as helping to transform the way citizens of a post-conflict state respond to conflict so as to avoid such widespread conflicts in the future.

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