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Searching for Justice in Post-Apartheid South Africa: How Reparations Have the Potential to Move South Africa Towards a Better Future

Margaret J. Eisenhardt

Introduction

Restorative justice is far from a new concept, dating back to indigenous groups throughout the world, but the modern practice being used today is a revolutionary approach to justice that many countries and local governing bodies are beginning to incorporate into their current justice systems (Zehr, 2015). Howard Zehr, a leading advocate and user of restorative justice, defines the practice as a “process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible” (Zehr, 2015, p. 39). Restorative justice seeks to right the wrongs that have been committed, and it can be applied in various ways to differing situations. There is no required structure for how to utilize restorative justice, which is why it may be applied easily to different contexts. The organic manner in which restorative justice functions provides a lot of promise as different justice entities are able to incorporate its principles into their own practices in various ways, which is an attractive aspect to many groups around the world.

With the appealing focus on healing and forgiveness and the flexibility of how to incorporate restorative practices, many places are beginning to consider the potential restorative justice has as an alternative to the criminal justice system. South Africa is one such place that was intrigued by the ideas of restorative justice, and leaders of the country made the decision to utilize restorative practices in their efforts to revive their country once apartheid ended in 1991. The decision to incorporate restorative justice into the country’s post-conflict efforts continues to shape South Africa to this day, and some South Africans believe that the restorative efforts were not substantial in moving the country forward to reach justice and reduce disparity and pain. Within

this reflection I will be sharing some of the insight I gained while traveling through the country of South Africa, specifically focusing on sharing the perspectives of individuals I spent time with during my stay there.

Background

Apartheid was a time of intense racial segregation and violence amongst all members of the country, and wounds were felt by members of every community from the pain that people suffered and the injury people caused to one another.

As the leaders of South Africa began to evaluate how to address the many harms committed to their country during apartheid, they realized that they needed to do so in a way that did not focus on the impossible task of imprisoning each person involved in the abundance of harms committed. Rather than criminalizing, leaders decided to use restorative justice in the search of healing and forgiveness. Desmond Tutu explains this in his book *No Future Without Forgiveness* (2000):

Our nation sought to rehabilitate and affirm the dignity and personhood of those who for so long had been silenced, had been turned into anonymous, marginalized ones. Now they would be able to tell their stories, they would remember, and in remembering would be acknowledged to be persons with an inalienable personhood. Our country's negotiators rejected the two extremes and opted for a "third way," a compromise between the extreme of Nuremberg trials and blanket amnesty or national amnesia. (p. 30)

He then continues to elaborate on this idea of forgiveness by saying: "thus to forgive is indeed the best form of self-interest since anger, resentment, and revenge are corrosive of that summum bonum, that greatest good, communal harmony that enhances the humanity and personhood of all in the community" (p. 35). South Africa emphasized this forgiveness piece, and

thought it would be the only way forward. Values of healing, relationship building, and story telling that are the foundation for restorative practices were believed to be the best approach to rebuilding South Africa, and these values became the backbone of the program developed to address the harms and consequences of apartheid (Tutu, 2000).

The South African government developed the Truth and Reconciliation Commission, otherwise known as the TRC, with hopes that it would bring forth peace to a torn and hurting country. The intention was to accomplish this by allowing South Africans to share their pain with the world in order to bring about closure. It also would enable offenders to provide closure to the unanswered questions that weighed on the minds of many South Africans. This storytelling process would be the primary effort to reunite the country, rather than taking a criminal justice approach such as the Nuremberg Trials that took place in Germany just a few decades before, which focused on criminalizing individuals through trials held in 1945 and 1946. Desmond Tutu explained in his book *No Future Without Forgiveness* that the decision to use restorative justice was made because not only would it be impossible to criminalize on such a large scale, but also because the country wanted to rebrand itself as the ‘rainbow nation,’ and create an atmosphere of friendship and community. South African leaders critically analyzed other mass human rights violations, and through those experiences, they were able to see that a new approach was necessary that empowered individual people and brought the nation together. This is why storytelling became so important; it provided an outlet for marginalized voices to be heard and for the truth to be revealed. This component was the part of the TRC that was emphasized post-apartheid.

Along with facilitating storytelling, the TRC would also recommend reparations to the president of South Africa. Section Two of the Summary of Reparation and Rehabilitation Policy that was created for the TRC states:

Reparation will be given only to those formally declared victims by the Commission. The Commission will decide if someone is a victim by looking at all the information they have on the gross human rights violation suffered by that person. It may be possible, in certain circumstances, that the relatives and dependents of victims will also qualify for reparation.

The TRC makes clear that individuals who have either made a statement in front of the commission, or who were mentioned by another individual in a statement, need to be determined victims by the commission, and then it will be proposed to the president that they should receive reparations.

This idea was well intended but had many flaws. With South Africa's struggling economy, it was very challenging to be able to provide resources to individuals who were suffering. It also was not guaranteed that someone would receive reparations, and many individuals either were not considered victims, or the proposal never was approved for them to receive reparations. There also was a limited number of individuals who were able to speak in front of the Commission, due to the high volume of people who were interested in doing so and the small timeframe there was to allow everyone to be heard. Once the TRC ended after its set seven years, so did recommendations for reparations (Tutu) This limited time frame and high volume of people needing assistance made it difficult to meet the needs of every individual who requested to be heard through the TRC, and it left many individuals feeling unrecognized, which is something I heard frequently when travelling through South Africa.

I was fortunate enough to have the opportunity to travel to South Africa during the summer of 2017 where I learned how apartheid has affected, and continues to affect, the people of South Africa. Through interacting with locals throughout the country I was able to hear from diverse

voices about how the country is moving forward. Unfortunately, many individuals feel a lot more needs to be done to address the harms committed during apartheid, and that the pain resulting from apartheid is increasing as the needs of the people are being neglected. Many individuals feel that the TRC was developed with restorative goals in mind, and while it did work to heal the past and bring forth justice, it left many people feeling unheard.

During my time abroad in South Africa, families opened up their homes to us and allowed us to spend a few days with them during our journey. I stayed with two separate families in very different areas. One family I stayed with lived in Soweto, which was one of the many areas of segregation that was formed during apartheid and continues to remain that way to this day (Apartheid Museum, 2006). While staying in Soweto, I did not encounter any other white people, and the family I stayed with told us that is not uncommon. They informed us that it is very rare to see whites enter their community, and they explained that it is not because whites are unwelcome, it is because whites do not want to enter a black space, or take the time to learn about their experience and culture.

The mother of the family I stayed with emphasized this point many times throughout our stay with her. She expressed that she would love for white South Africans to enter their townships so that they can build a community with one another, but more important she expressed that she wants her children and her grandchildren to be around whites so that they learn that they too are ordinary people just like them, because often times when growing up children believe that whites are superior to them and are unable to see their own worth. My host mother argued that one of the biggest challenges they face is raising their children to believe that everyone is the same even though they are separated in many aspects of society.

I had many conversations like this with the family throughout my stay. One of the most monumental conversations we had was about the TRC. They shared that they think the amount of harm the TRC did to communities was almost more than the good it did. They elaborated by explaining that the TRC was a good thing for those who were able to share their stories, but for people who were watching what was happening through the media it was a painful process that continued to open old wounds. One of the main points they emphasized was that though hearing stories and understanding what happened is important, compensation was necessary for many families who lost so much during apartheid, and most families feel that they were not properly compensated. They provided an example of a family member of theirs who went through the TRC process. The family member was able to share their story of abuse, and they were told that they would receive reparations for what they had endured. They said that despite going through this long and painful process, the family member never received any reparations. This was a common occurrence, according to the family.

The family then explained that few people would be told that they would receive reparations, but even fewer individuals actually received anything. This is due to the messy and complicated process of the TRC, and the family argued that the TRC should have been better developed to ensure that people's needs were met. This perspective that the family offered seems to be a shared idea amongst the community in Soweto, because other members of my trip shared that they had similar discussions with the families they stayed with as well. A common theme we all heard from our families was that the TRC was well intended, but it did not do enough to address the needs that arose from apartheid, and it was an extremely painful process for many individuals who faced violence and injustice throughout their lives.

I stayed with another host in the small farming town of Bethulie, and the woman who hosted me shared thoughts similar to the host family I resided with in Soweto. Though non-white people live in her town, it would appear to any visitor that it is a white area. The woman herself is white, and she explained that any minority group in the area was pushed to the outskirts of the town through a history of segregation and hatred, and despite segregation legally ending, it still persists in individual communities. She emphasized that black South Africans continue to suffer greatly from lack of resources, and that the country does not do enough to make sure their needs are being met. She shared views similar to those of the family I stayed with in Soweto in regards to the TRC as well, and though she thinks it had positive things to offer, she expressed that the TRC did not do enough to fix the economic and social issues that plague communities around the country.

This was a common response when we asked people how they felt about the TRC, which leads me to believe that the TRC should have emphasized the “Reparations and Rehabilitation” aspect of their plan much more than they did. It may be argued that had the area of reparations been properly handled with the turn of the post-apartheid government, then there may be less trouble, specifically in regard to poverty, in the townships of South Africa. However, in the second half of this essay, I want to consider how reparations can play a role in a restorative justice approach.

Viewing Reparations through a Restorative Lens

As Howard Zehr (2015) describes, restorative justice is founded on five principles:

- Focusing on harms and consequent needs
- Addressing obligations resulting from those harms
- Inclusive, collaborative process

- Involving those with a legitimate stake in the situation
- Seeking to put right the wrongs

Through focusing on these five principles, reparations may be viewed as a strong restorative approach as they work to put right the wrongs of apartheid through community rebuilding and healing. In order to begin the reparation process, South Africa would need to first analyze what harms were committed during apartheid, and what the consequent needs of these harms are in regard to reparations.

Focusing on Harms and Consequent Needs

Many long-term problems have resulted from the harms committed during apartheid. These harms influence not only those who were alive during that time, but also generations to follow. Apartheid set up a nation of segregation that still exists today even though the laws of apartheid have been abolished for several years. Black South Africans today still face inadequate housing, extreme poverty, poor education, limited job opportunities, and isolation from other communities. These social harms prevent black South Africans from fully being able to participate and contribute to South African society.

It is enraging to see the strong disparities that continue to exist amongst South African communities. While driving along the highway in Cape Town, one could look to their right and see pristine green yards and big white houses nestled between trendy shops and restaurants. This image of the coastal beauty starkly contrasts with the view to the left side of the road where black people can be seen living on the open land next to the road with makeshift homes of trash and scraps. Similarly, in Johannesburg we would pass endless rows of mansions hidden behind elaborate iron gates knowing we were a few minutes away from the streets where children run and jump through disease-ridden water. In Bethulie, marginalized people are separated from the main

community of whites so much that you can only see their existence by standing at the top of a hill that overlooks the entire stretch of land that makes up the town. From that hill, we were able to spot the township that is pushed away from the rest of the community.

This trend was evident in every area we travelled to. White people live in a world of luxury and beauty while black South Africans are subjected to life threatening conditions just a few blocks away. This is a result of the segregation that has remained from apartheid, as well as the lack of resources for black South Africans who live in those separated communities.

Not only is the divide clear from physically looking at South Africa, but statistics further outline racial inequalities. A study on living conditions in South Africa in 2015 concluded that “[w]hite-headed households had an income roughly 4,5 times larger than black African-headed households” (Stats SA, 2017, p.15). Recent studies show that not only is poverty increasing in South Africa, but in 2015 absolute poverty affected over 13 million children in South Africa, and 30,4 million people experiencing poverty (Lehohla, 2017), and more than ninety-percent of households that are in poverty in South Africa are black South African families (“Living Conditions Survey”, 2015).

When considering the harms that black South Africans continue to face post-apartheid, it is necessary to see that these different harms are intertwined, with each one influencing the others. Therefore, they all should be addressed together as South Africa considers the overarching problem of a lack of resources. Black South Africans are unable to escape poverty if there is a poor education system and a lack of opportunities for work and involvement in communities outside of the townships. Crime rates will relentlessly rise and tensions will continue to build as these poor communities face hardships they are unable to escape. In order to attend to these individual needs,

it is important to recognize the harm that is being committed, which is the lack of access many South Africans have to resources.

Addressing Obligations Resulting from Those harms

There are a few actions that would need to take place in order to address the harms resulting from apartheid. The first being that there is a need to compensate South Africans for the damages brought upon their communities during apartheid. This includes compensating families who lost loved ones that provided the family income, compensating people who lost their homes due to attacks and destruction during apartheid, and compensating towns who lost buildings and resources during apartheid. Some potential examples of this would include creating housing projects through the government that aim at assisting those who were displaced during apartheid, or implementing new government policies that ensure water and electricity are provided to people who were restricted from resources during apartheid. This would provide reparations in the sense that people would be given something that was taken away from them, as many people lost their homes and resources during apartheid. Not only would it benefit the individuals who receive the housing and utilities, but it also would work to reduce homelessness and informal housing settlements, which has led to a series of harmful outcomes throughout townships and cities in South Africa.

Another example of reparations would be putting more money into the education system so that members of the black community are able to grow up with the skills and degrees necessary to be involved in South African society. The family I stayed with in Soweto explained that the education system was drastically hurt during apartheid and has received little assistance ever since the new government has come into power. They explained that this has led to more black South African children falling behind in school, and consequently life, as they are not able to start businesses or careers of their own. By neglecting the education system, particularly schools in

black areas, the South African government is again failing to address the harms that were imposed on black communities during apartheid.

All of these demands require funding and efforts from somewhere, which ideally would come from the government's funding, just as past reparations were supposed to. This proves to be one of the reasons that these needs have not been met. While in South Africa, people constantly informed us of the struggling economy that has existed for a long time, as well as the corrupt government that has always had a challenging time accomplishing tasks in office. This makes it extremely difficult for any social or economic changes to be made, but if government officials could successfully collaborate and legitimately invest their efforts into bettering the country, then there is potential for South Africa to focus on enhancing their communities and amending the problems that continue to be present throughout the country, which is a necessary obligation the government has for its citizens.

Inclusive, Collaborative Process & Involving Those with a Legitimate Stake in the Situation

The TRC was the primary program created after apartheid to address the harms that South Africa was facing. It was intended to provide both victims and offenders a chance to share their story, which was an inclusive and collaborative process, but the TRC itself was formed with little to no input from victims and offenders of apartheid. If South Africa were to devise a new program that aims at relieving the aftermath of apartheid through reparations, it would be ideal if the victims and offenders of apartheid were directly involved in developing a new plan. Victims and offenders know what is needed the most, such as the family I stayed with in Soweto. They have firsthand experience of what harms are being neglected, and how they can be addressed in a way that best fits individual communities. If these people could have their voices heard, then a more

comprehensive program would be developed that ensures it addresses the problems people are facing on the ground.

How South Africa Can Move Forward by Seeking to Put Right the Wrongs

These reparations would not take away the pain that has been inflicted on individuals, or bring back things that were lost, but it would help to rebuild hurt communities. This would need to be done by allocating more funds to programs that ensure individual needs are met within each community of South Africa, as well as starting specific rebuilding efforts aimed at relieving areas that have been destroyed and neglected during apartheid and the years to follow. These initiatives would create a healthier and happier future for South Africans that is full of more opportunities for oppressed individuals to integrate into South African society and the global world as a whole. This requires that the South African government meets their obligation to right the wrongs of apartheid, which is currently what is lacking, according to the host families I was with throughout South Africa.

Reparations may not be the traditional idea of restorative justice, but when thinking of it as restoring communities by putting money and resources into them, then it certainly could be. Restorative justice seeks to right wrongs and work towards a better future. By providing resources to those who were abused and harmed during apartheid, people are then able to restore their damaged homes and communities and work towards a better future for their children and grandchildren. Maybe it is too much of a stretch to define the idea of reparations as a restorative approach, and perhaps a distributive approach to justice would be a more appropriate categorization, but even if that were so, restorative ideas can be used to evaluate and understand the needs of the country, and guidance for how to take adequate steps to address those needs for a better, and more just, future.

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