

Complicit and Implicated Testimonies: Exploring Limits and Opportunities for Transitional and Transformational Justice through South Africa's Institutional Hearings

Michelle E. Anderson

Abstract: In seeking to reorient a newly democratic nation within which those who were wronged and those who perpetrated wrongs would need to coexist, the South African Truth and Reconciliation Commission (TRC) created a much-critiqued moral equivalency between perpetrators from all political affiliations, as well as a stark victim-perpetrator binary. The commission's focus on gross human rights violations precluded meaningful discussion of structural violence or colonial legacies; relatedly, it also left little room for recognition of complicity or implication in its many forms. Michael Rothberg refers to the positionality of 'the implicated subject' as 'violent innocence', which suggests the difficulty of addressing such a position within mechanisms like the TRC. The TRC did, however, hold institutional hearings at which people could voluntarily testify about their roles in apartheid. These hearings provide terrain for exploring testimonies from complicit and implicated subjects, which this article does through the lens of the television news series, *Truth Commission Special Report*. The series constituted a primary news source for most South Africans on TRC happenings; many viewers would have been implicated subjects themselves. Examining complicity or implication as it appears within the TRC institutional hearings and their media coverage allows for discussion on the language of complicity and implication in testimony, its media representation in a transitioning South Africa, and the role of these testimonies in transitional justice. The mediated nature of these testimonies also allows for reflection on how engaging with testimonies of complicity and implication may influence viewers' understandings of their own culpability after violence.

Keywords: South Africa, truth commission, testimony, complicity, implicated subject

Introduction

The South African Truth and Reconciliation Commission (TRC) is among the most extensively studied transitional justice processes to date, and one of the most studied sets of post-conflict testimonies in recent historical memory. Established to guide South Africa's transition from apartheid to democracy, the TRC

Journal of Perpetrator Research 7.2 (2025), 71–102
DOI: 10.21039/jpr.7.2.192 © 2025 by the Author



This article is published under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <https://creativecommons.org/licenses/by/4.0/>

aimed to document gross human rights violations of bodily integrity, establish the fate of victims, restore victim dignity through testimony, recommend reparations, grant amnesty to those who fully disclosed their crimes, propose institutional reforms, and publish its findings in a final report.¹

This article explores the potential role of testimonies of complicity and implication in transitional justice through the South African TRC's institutional hearings and their media coverage. While most TRC testimony came from victims and perpetrators, a small number of 'institutional hearings' offered representatives from specific sectors or professions the opportunity to voluntarily reflect on their individual or collective roles in apartheid. Though brief and few in number, these hearings were unique amongst the TRC's international predecessors and offered a different perspective on complicity and implication in post-conflict testimony – one shaped by the agency of those who chose to speak. Testimony given voluntarily and without legal incentive does not necessarily offer greater truth or value than that provided in amnesty hearings; however, it presents a distinct terrain for examining how implicated subjects articulate their roles. The relationship between voluntariness and truth-telling is complex, as testimony may be shaped by various incentives beyond legal obligation; this relationship underlies the interrogations presented in this article.

The TRC's institutional hearings are publicly accessible today through the archive of the television news series *Truth Commission Special Report*. The South African TRC was the first truth commission to allow extensive media involvement, marking 'a turning point in the international perception of open hearings' and forging the media as a new actor in the transitional justice landscape.² One of the country's most widely consumed news sources on the TRC was the South African Broadcast Corporation (SABC) television series, *Truth Commission Special Report*,³ which aired weekly between 1996 and 1998. Each episode combined footage from ongoing TRC hearings with journalistic commentary and investigative reporting. TRC scholar Annelies Verdoolaeg posits that:

- 1 Paul van Zyl, 'Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission', *Journal of International Affairs*, 52.2 (1999), 647-67.
- 2 'Public Hearings: Platforms of Truth, Dignity, and Catharsis', *International Center for Transitional Justice*, 24 March 2017, <<https://www.ictj.org/news/public-hearings-platforms-truth-dignity>> [accessed 6 March 2025].
- 3 Gunnar Theissen, 'Object of Trust and Hatred: Public Attitudes toward the TRC', in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, ed. by Audrey Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008), pp. 191-216 (p. 202).

Taking *Special Report* as a representation for this whole media spectre would be a gross simplification. However, if we consider the success of *Special Report*, we can suppose that the programme was one of the most influential media representations of the TRC. It therefore makes sense to analyse this media coverage and to question its impact on South African society.⁴

Special Report's coverage of testimonies at the TRC's institutional hearings provides a lens for exploring complicity and implication in South Africa and their mediatisation in a transitional justice context.

HISTORICAL CONTEXT: FROM APARTHEID TO THE TRC

Testimonies of complicity and implication within a transitional justice process are inherently contextual and partial, existing only in relation to the complexities of the past.⁵ The institutional hearings within South Africa's TRC must therefore be understood within the broader context of South Africa's apartheid system, in place from 1948 to 1994, while also acknowledging that this history is informed by a much longer timeline of settler-colonialism and its legacies of structural inequality.

The apartheid government maintained its dominance through economic, spatial, and physical violence that institutionalised white supremacy and racial capitalism. These systems depended not only on political actors, but also on the complicity of sectors such as law, business, health, and media, where professionals enforced segregationist policies, profited from exploitation, or failed to challenge state brutality. Many of these institutions were central to maintaining apartheid's social order, even if they were not its architects.

By the early 1990s, sustained internal resistance⁶ and international pressure⁷ led to negotiations culminating in South Africa's first demo-

4 Annelies Verdoolaeghe, 'Media Representations of the South African Truth and Reconciliation Commission and Their Commitment to Reconciliation', *Journal of African Cultural Studies*, 17.2 (2005), 181-99 (p. 196).

5 Ruti G. Teitel, 'Transitional Justice as Liberal Narrative', in *Globalizing Transitional Justice: Contemporary Essays* (Oxford: Oxford University Press, 2014).

6 Leonard Monteath Thompson, *A History of South Africa*, 4th edn (New Haven: Yale University Press, 2014).

7 'International pressure' is a grossly oversimplified summary of the combined factors that together led to the negotiated end of apartheid. These pressures included trade embargoes, financial boycotts, and loss of support for apartheid (or loss of animosity toward so-called communist movements) with the end of the Cold War.

cratic elections in 1994. A central compromise of this transition was the inclusion of an amnesty provision that prioritised truth-telling over criminal prosecution. As political studies scholar André du Toit has argued, this model facilitated disclosures that contributed to historical reckoning, but often prioritised individual confession over systemic accountability.⁸ This tension between truth and justice is similarly reflected in testimonies at the institutional hearings, where complicity and implication were acknowledged but rarely linked to tangible accountability.

Following South Africa's first democratic election, the new leaders faced the monumental task of transforming a nation deeply scarred by oppression, inequality, and violence. Apartheid's spatial and socioeconomic legacies persisted, and many South Africans could be categorised as victims, perpetrators, or both. The TRC, established through the 1995 Promotion of National Unity and Reconciliation Act, became the central mechanism for fostering national unity, and positioned South Africa at the forefront of the 'transitional justice industry'.⁹ Its three committees – the Human Rights Violations Committee, the Amnesty Committee, and the Reparations and Rehabilitation Committee – were tasked with truth-seeking, amnesty review, and recommending redress. Uniquely, the TRC placed reconciliation alongside truth-seeking as a core objective.¹⁰ As David Schalkwyk observes, the commission occupied two seemingly discordant duties, one being a 'secular, forensic investigation,' and the other being 'a site of confession, reconciliation, and forgiveness.'¹¹ The latter was largely shaped by chairperson Archbishop Desmond Tutu, who infused the process with Christian concepts of reconciliation,¹² including forgiveness as a discursive vehicle.¹³

8 André du Toit, *Amnesty Chronicles: The Inner History of the Amnesty Negotiations During the South African Transition, and the Origins of the TRC's Amnesty Process* (Stellenbosch: Beyers Naudé Centre for Public Theology, 2022).

9 Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Lanham: Lexington Books, 2008).

10 Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), p. 97.

11 David Schalkwyk, 'Truth, Reconciliation, and Evil in South Africa', in *Truth, Reconciliation, and Evil*, ed. by Margaret Sönsner Breen (Leiden: Brill, 2004), pp. 3-41 (p. 5).

12 Ibid.

13 There is a large body of scholarship on forgiveness as a concept; it can refer either to 'interpersonal forgiveness, [meaning] the kind of forgiveness that exists between people, whether it be one individual forgiving another, family members engaged in mutual forgiveness, or even one nation forgiving another,' in addition to spiritual forgiveness, though the two are not mutually exclusive. See Robert D. Enright and Joanna North, 'Introducing Forgiveness', in *Exploring Forgiveness*, ed. by Robert D. Enright and Joanna North (Madison: University of Wisconsin Press, 1998), pp. 1-8.

In seeking to reorient a newly democratic nation within which those who were wronged and those who perpetrated wrongs would need to coexist, the TRC created a much-critiqued moral equivalency between perpetrators from all political affiliations, as well as a stark victim-perpetrator binary. The commission's focus on gross human rights violations precluded meaningful discussion of structural violence or colonial legacies; relatedly, it also left little room for recognition of complicity in its many forms. This structure and scope have drawn significant criticism. Scholars such as Mahmood Mamdani have argued that its narrow definitions of both victim and perpetrator and focus on violations of bodily integrity excluded various other forms of abuses that occurred under apartheid.¹⁴ Institutions and individuals who sustained apartheid while not committing direct atrocities went largely unexamined, as did the resulting benefits accrued by many white South Africans.¹⁵ Those who were complicit or implicated in apartheid's systems were not prompted to confront their roles in perpetuating or benefiting from others' suffering;¹⁶ the only space where this seemed to happen was in a small number of institutional hearings for civil society.

INSTITUTIONAL HEARINGS AT THE TRC

The TRC primarily sought information on gross violations of human rights through victim and perpetrator testimonies;¹⁷ however, the commissioners recognised the need to acknowledge structural factors underlying apartheid violence. The research director of the TRC, Charles Villa-Vicencio, articulated one intent of the institutional hearings: 'We are trying to enable South Africans of all levels to acknowledge their guilt. There are different levels, but the bystander is still part of it.'¹⁸

14 Mahmood Mamdani, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)', *Diacritics*, 32.3-4 (2002), 33-59.

15 Mahmood Mamdani, 'Reconciliation Without Justice', *Southern African Review of Books*, 46 (1996), 3-5.

16 Kay Schaffer and Sidonie Smith, 'Human Rights, Storytelling, and the Position of the Beneficiary: Antjie Krog's *Country of My Skull*', *The Humanities in Human Rights: Critique, Language, Politics*, 121.5 (2006), 1577-1584.

17 Jasmina Brankovic, 'Responsabilidad y Reconciliación Nacional en Sudáfrica', *Ediciones InfoJus: Derechos Humanos*, 2.4 (2013), 55-86.

18 Tina Rosenberg, 'Recovering from Apartheid', *New Yorker*, 18 November 1996, p. 95. As cited in Lyn S. Graybill, *Truth & Reconciliation in South Africa: Miracle or Model?* (Boulder: Lynne Rienner Publishers, 2002).

Volume Four of the TRC Final Report also describes the rationale behind the institutional hearings. In response to the mandate's objective to establish a sense of the 'antecedents, circumstances, factors and context' that allowed human rights violations to occur, the commission identified a selection of institutions that had, 'over the years, come under attack for what was seen by some as their complicity with the apartheid system. What the Commission sought to find out was how these institutions saw themselves and how, brought together with those who had opposed them, a part of the enigma of the South African evil could be unravelled.'¹⁹

Each institutional hearing spanned two to three days, providing a platform for individuals and groups from these sectors to voluntarily testify about their experiences and roles within apartheid. While some were solicited, others came forward unprompted.²⁰ Importantly, testimonies given at institutional hearings were not considered for prosecution or amnesty; rather, they served to contextualise the TRC's findings on gross human rights violations.

The TRC Final Report's findings point to the complicity or implication of various state and civil society sectors.²¹ It found that the media and faith community created favourable ideological conditions for apartheid; business knowingly profited from apartheid; prisons materially aided systematic repression of oppositional political activity; the legal system, health sector, and media failed to challenge racism in their work; and the health sector falsified medical reports and death certificates of detainees.²² However, these findings are not necessarily reflective of the testimonies themselves. With the exception of the faith community, the majority of those who provided testimony at the institutional hearings tended toward defensiveness and justifying their involvement rather than to acknowledge implication, whether individually or collectively.²³

This discrepancy underscores the difficulty of addressing complicity and implication within transitional justice. While the TRC aimed to uncover the truth and foster reconciliation, the actual testimonies often revealed tensions between accountability, justification, and the

19 'The TRC Report', *Truth and Reconciliation Commission*, vol. 4, para. 6 <<https://www.justice.gov.za/trc/report/>> [accessed 26 April 2025].

20 Ibid.

21 Mark Sanders, *Complicities: The Intellectual and Apartheid* (Durham: Duke University Press, 2002).

22 'The TRC Report', vol. 4, pp. 91-92, 100.

23 Audrey Chapman, 'Truth Recovery through the TRC's Institutional Hearings Process', in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, ed. by Audrey Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008), pp. 169-88.

complexities of historical and structural roles in perpetuating injustices. These tensions raise questions about what makes testimony meaningful within a transitional justice process.

While an ideal outcome might be for ‘implicated subjects’ to take accountability and commit to transformation, their testimony also has the potential to serve other important functions, such as shaping public understanding and historical memory. Even so, the way in which individuals positioned themselves within these testimonies raises important questions about the language of responsibility. To explore these questions, this article draws on existing frameworks of complicity and implication.

Complicit, or just implicated?

Acknowledgment of complicity at the TRC’s institutional hearings remained largely discursive. The term ‘complicit’ often referred to individuals described or self-identified as bystanders or beneficiaries – terms the commission left undefined, which left interpretation up to the public. Conceptualisations of complicity, the bystander, the beneficiary, and a newer framework proposed by Michael Rothberg known as ‘the implicated subject’ offer tools to explore testimonies from the TRC’s institutional hearings, as featured on *Special Report*.

DEFINING COMPLICITY

Complicity refers to involvement in actions that are ‘causal contribution to the wrongdoing of another’ which can take several forms.²⁴ Traditional legal understandings of complicity indicate, as Rothberg has summarised, ‘a strong sense of criminal wrongdoing’ that ‘operates in proximity to notions of criminal guilt.’²⁵ In other words, complicity in the traditional legal sense indicates action and agency and is therefore criminally indictable in a court of law. Karl Jaspers’ seminal 1947 work, *The Question of German Guilt*, describes the critical distinction between legal guilt, which pertains to clear violations of law, and moral

24 Chiara Lepora and Robert E. Goodin, ‘Complicity and its Conceptual Cousins’, in *On Complicity and Compromise* (Oxford: Oxford University Press, 2013), pp. 31–58

25 Michael Rothberg, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019).

guilt, which implicates individuals and societies in the broader ethical failures of injustice. He argues that moral culpability extends beyond legal accountability, emphasising the responsibility of individuals and groups in maintaining unjust systems even when their actions do not directly violate the law.²⁶

In the context of humanitarian ethics, Chiara Lepora and Robert E. Goodin have offered an inventory of concepts related to complicity, including co-operation, conspiring, collaboration, collusion, connivance, condoning, consorting, and full joint wrongdoing. While they posit that each of these carries a different level of moral blameworthiness, this does not impact the importance of each act in contributing to the wrong.²⁷ Even so, these categories of complicity are defined by their association with a specific act, making them less able to describe involvement in structural violence.²⁸

Christopher Kutz's conceptualisation of complicity emphasises 'participatory intent', that is, individuals may be complicit in injustice even if their specific actions do not directly cause harm. Kutz argues that complicity should not be limited to those who physically carry out harm, but should also include those who contribute to, sustain, or benefit from unjust systems.²⁹ This perspective broadens traditional legal notions of culpability, showing how individuals within larger institutions or social structures can be morally implicated in wrongdoing despite not being directly involved in violent acts.

In the South African context, each of these concepts of complicity help explain how individuals and institutions contributed to the maintenance of apartheid, even when not directly enacting violence.

THE BYSTANDER

While complicity suggests active participation in wrongdoing, the concept of the bystander introduces another critical dimension: passivity in the face of known injustice. Traditionally, a 'bystander' is defined by their

26 Karl Jaspers, *The Question of German Guilt*, trans. by E. B. Ashton (New York: Dial Press, 1947).

27 Lepora and Goodin.

28 Susanne C. Knittel and Sofia Forchieri, 'Navigating Implication: An Interview with Michael Rothberg', *Journal of Perpetrator Research*, 3.1 (2020), 6-19; Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011).

29 Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000).

absence of resistance or opposition to wrongdoing when it is witnessed or known about; their inaction is not punishable by law but can deem them morally guilty.³⁰ At the TRC institutional hearings, many individuals from across sectors positioned themselves in testimony as bystanders, claiming they lacked the power to resist state-sanctioned injustice.

Mary Fulbrook complicates the traditional notion of the bystander by tracing how widespread passivity and conformity helped sustain Nazi rule. Her concept of a 'bystander society' illustrates how ordinary individuals contributed to systems of repression by complying with dominant norms and failing to question state actions, highlighting conditions that create bystanders but also placing into question the presumed passivity of bystanders.³¹ This blurring of passivity and participation challenges assumptions that bystanders are morally neutral, raising questions about their position on a spectrum of implication and therefore, their role within transitional justice processes.

Zygmunt Bauman relates bystanders to perpetrators on the basis that both seek to justify their actions through denial. Bauman argues that a bystander's 'denial of guilt (or pretention of innocence, which amounts to the same)' often hinges on claims of ignorance or lack of opportunity to intervene.³² Mark Drumbl underscores the role of the bystander by stating that complicity and acquiescence of the bystander 'falls outside of the criminal law paradigm but constitutes an essential prerequisite in order for violence to become truly massive in scale.'³³

Rothberg critiques the concept of the bystander for often relying on a defined and shared space,³⁴ as was the focus of Primo Levi's seminal conceptualisation of 'the gray zone' and its reliance on spaces of enclosure.³⁵ This framework excludes individuals who fail to act against larger injustices that are known but not directly witnessed. Rothberg contends that most bystanders are not merely innocent onlookers, but that they bear responsibility for the historical and structural contexts they inhabit and the events they witness, irrespective of proximity.³⁶

30 Zygmunt Bauman, 'From Bystander to Actor', *Journal of Human Rights*, 2.2 (2003), 137-151.

31 Mary Fulbrook, *Bystander Society: Conformity and Complicity in Nazi Germany and the Holocaust* (New York: Oxford University Press, 2023).

32 Bauman.

33 Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), p. 26.

34 Rothberg.

35 Primo Levi, 'The Gray Zone', in *The Drowned and the Saved*, trans. by Michael F. Moore, vol. 3 of *The Complete Works of Primo Levi*, ed. by Ann Goldstein (New York: Liveright, 2015), pp. 2414-2415.

36 Knittel and Forchieri.

Finally, Christina Morina and Krijn Thijs argue that the triad of victim, perpetrator, and bystander is too rigid to reflect lived experience. Based on their work in Holocaust history, they emphasise that these roles are fluid, overlapping, and often historically contingent.³⁷ This perspective aligns with critiques of the victim-perpetrator binary created by the South African TRC, as well as Rothberg's call for a broader categorical framework that would allow for more expansive and dynamic understandings of implication.

THE BENEFICIARY

The term beneficiary refers to individuals who are not directly involved in committing crimes or violence but who contribute to and benefit from oppressive regimes.³⁸ Under apartheid, this included those who materially or socially benefited from racial hierarchies and systemic exclusion, even if they did not actively enforce them. Beneficiaries may have perpetuated violence through support or indifference.³⁹

Scholars debate how to situate beneficiaries within frameworks of culpability and justice. While Robert Meister asserts that beneficiaries should be categorised alongside perpetrators in order to ground redistributive and material claims,⁴⁰ Mark Drumbl takes a more moderate view, placing beneficiaries as morally blameworthy (because 'atrocities would not reach truly epidemic levels but for the vigorous participation of the masses'⁴¹) but less so than direct perpetrators. Meister and Drumbl do, however, agree that beneficiaries bear some level of moral responsibility and that existing mechanisms of justice fail to address this. Transitional justice scholar Hugo van der Merwe similarly argues that transitional justice should work to broaden understanding of what responsibility for human rights abuses looks like, and in fact 'not draw the line too sharply between perpetrators and the 'innocent' members of society [...] Holding people accountable needs to be extended beyond the conventional bounds of criminal responsibility.'⁴²

37 *Probing the Limits of Categorization: The Bystander in Holocaust History*, ed. by Christina Morina and Krijn Thijs (New York: Berghahn Books, 2019).

38 Mamdani, 'Reconciliation Without Justice.'

39 Drumbl, p. 26.

40 Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2011).

41 Drumbl, p. 25.

42 Hugo van der Merwe, 'Delivering Justice during Transition: Research Challenges', in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, ed. by Hugo van der Merwe, Victoria Baxter, and Audrey Chapman (Washington, DC: United States Institute of Peace, 2009), pp. 115-42.

While ‘beneficiary’ offers greater nuance than terms like complicit or bystander, Rothberg argues that not all forms of implication can be reduced to inaction or benefit, pointing to examples such as diasporic groups involved in nationalistic projects without direct personal gain, or descendants of perpetrators who inherit historical entanglements;⁴³ these cases require a broader framework.

THE IMPLICATED SUBJECT

The limitations of categories such as complicit, bystander, and beneficiary prompted Rothberg to propose a broader framework: ‘the implicated subject.’ He draws on Timothy Kaufman-Osborn’s view that complicity is ‘predicated on a relational understanding of conduct, one that reminds us that human action is always implicated with as well as conditioned by the actions of others.’⁴⁴ While acknowledging the relational nature of both complicity and implication, Rothberg distinguishes the two in that complicity even in its broadest sense implies causality, while implication allows for more nuanced positionalities within structures and across time.⁴⁵

This is not to say there is no overlap; Rothberg is careful to note that ‘complicity presupposes implication, but implication does not always involve complicity.’ Rather than offering a fixed definition, the implicated subject functions as an umbrella category for individuals who participate in injustice indirectly. Rothberg offers numerous descriptors of the implicated subject’s possible positionality and activities, and often only draws boundaries when stating what the implicated subject is not:

Implicated subjects occupy positions aligned with power and privilege without themselves being direct agents of harm; they contribute to, inhabit, inherit, or benefit from regimes of domination but do not originate or control such regimes. An implicated subject is neither victim nor perpetrator, but rather a participant in histories and social formations that generate the positions of victim and perpetrator.⁴⁶

⁴³ Knittel and Forchieri.

⁴⁴ Timothy V. Kaufman-Osborn, ‘“We are all torturers now”: Accountability After Abu Ghraib,’ *Theory & Event*, 11.2 (2008) <<https://muse.jhu.edu/article/240332>> [accessed 6 March 2025]. As cited in Rothberg, *The Implicated Subject*, p. 13.

⁴⁵ Rothberg, *The Implicated Subject*.

⁴⁶ *Ibid.*, p. 1.

This framework allows for consideration of subjects who are involved in histories of violence without intent or even awareness – a position Rothberg calls ‘violent innocence’.⁴⁷ It also creates space to think across proximity and time from institutional actors who sustain unjust systems to those who continue to benefit from their legacies. It enables a multidimensional consideration of justice⁴⁸ beyond the potentially limiting frameworks of criminal liability or contemporary human rights paradigms.⁴⁹

In the context of transitional justice, this framework makes it possible to address forms of involvement that evade traditional categories of criminal liability. It also foregrounds the question of how people reckon with moral responsibility when their implication is diffuse, indirect, or entangled with broader social systems. Testimony from implicated subjects may acknowledge responsibility or commit to future action, but it may also offer evidence for documenting injustice and deepen understandings of the systemic conditions that sustained harm.

GUILT AND RESPONSIBILITY

The concept of the implicated subject is rooted in a significant body of scholarship on collective responsibility. A key distinction in this discourse is between guilt and responsibility. Hannah Arendt defines guilt as individual and tied directly to specific crimes, whereas responsibility arises from membership in a nation-state that perpetuates injustices.⁵⁰ In both building on and contesting Arendt, Iris Marion Young specifies that guilt is retrospective and individual, and responsibility arises from collective actions that contribute to structural injustices, rather than mere membership in a nation-state. While Young narrows the bounds of who can be considered ‘responsible’, she broadens its scope beyond national borders. She also broadens its temporal applicability by arguing responsibility must involve future action towards transforming structural injustices.⁵¹ Rothberg adopts this diachronic

47 Rothberg., p. 20.

48 Ibid., pp. 32–33.

49 Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge: Harvard University Press, 2018).

50 Hannah Arendt, ‘Collective Responsibility’, in *Responsibility and Judgment*, ed. by Jerome Kohn (New York: Schocken Books, 2003), pp. 147–58.

51 Young and Nussbaum.

framework for the implicated subject, and in doing so, seeks to address the challenge of pursuing accountability for actions that fall outside of the purview of criminal and human rights law.

While these frameworks inform the below exploration of complicit and implicated testimony, I choose to use the term accountability instead of responsibility. Responsibility can be assigned but may not be accepted; in contrast, accountability implies ownership and commitment to that responsibility. I find that accountability better captures the ideal outcome of transitional justice, in which the whole of society, irrespective of moral blameworthiness for the past, takes ownership toward a more just future. In the context of the South African TRC's institutional hearings, testimonies that move from guilt to responsibility and ideally, to accountability, may facilitate consideration of how individuals implicated in apartheid and its vestiges might still contribute to future justice.

Complicity and Implication at the TRC Institutional Hearings

The term 'violent innocence' shows the difficulty of addressing the position of the implicated subject within justice processes that are primarily concerned with individual guilt and retribution. The exception to this at the South African TRC was the institutional hearings, which provide an opportunity to explore testimonies of implication and complicity, and to consider how the implicated subject might – or might not – fit into processes of transitional justice.

The ways in which concepts of complicity and implication are woven into testimony are highly contextual. In the case of South Africa's institutional hearings, testimonies were shaped by various factors including the TRC's ideological and rhetorical landscape, the timing of the commission, and the identities and intentions of the narrators. Central to these testimonies is the narrator's claim of action or implication in apartheid-era injustices, their acknowledgment of accountability for those actions or implications, and whether their testimony included future-oriented actions. This forward-looking perspective aligns with transitional justice's aim to address past injustices while promoting societal healing and transformation.

INSTITUTIONAL HEARINGS AT THE TRC:
AS SEEN IN *TRUTH COMMISSION SPECIAL REPORT*

Select footage from the institutional hearings were afforded a place in the weekly hour-long *Truth Commission Special Report* episodes. This is important because, according to Ron Krabill, 'without mass media – particularly broadcast media – the TRC's much-heralded process of providing a public platform [...] would have been severely limited by constraints of physical time and space only to those present at any given hearing.'⁵² Due to its massive and sustained viewership, *Special Report* played a critical role in exposing a large portion of the South African public to the institutional hearings. Of course, *Special Report* was unable to cover the full extent of the institutional hearings due to time constraints and the need to fulfil news values. While further research could utilise the transcripts from the entirety of the institutional hearings, this article focuses solely on the hearings that appeared on *Special Report*. This provides critical insight into South Africa's transition as a whole because the media was a key factor in shaping public perceptions of the TRC, political transition, and perhaps even viewers' understandings of their own positionality within the transition and the new dispensation.

Special Report covered, with varied length, the institutional hearings on the health sector, prisons, the legal profession, the business sector, faith communities, and the media. The below discussion of testimonies from institutional hearings as they appeared on *Special Report* includes attention to whether people or groups acknowledged, denied, or deflected individual or collective involvement in apartheid's violent structures, and any discussion of intended future-oriented action.

THE HEALTH SECTOR

Episode 53, segment 3,⁵³ paints a stark picture of the health sector's complicity and active involvement in human rights violations under the apartheid regime. *Special Report* journalist and anchor Max Du Preez opens the segment with the statement that 'during the apartheid era there were health workers who colluded with the state, often turning a blind eye to police brutality and torture.' While the term 'collusion'

52 Ron Krabill, 'Symbiosis: Mass Media and the Truth and Reconciliation Commission of South Africa,' *Media, Culture & Society*, 23.5 (2001), 567-85 (p. 568).

53 'Episode 53', *Truth Commission Special Report*, South African Broadcasting Corporation, 22 June 1997.

indicates complicity, 'turning a blind eye' was a generous turn of phrase. As the testimonies illustrate, medical professionals were often direct enablers of state violence.

Footage from the health sector hearing highlights specific egregious cases, notably the death in detention of apartheid activist Steve Biko. The segment depicts how medical professionals failed Biko at multiple stages. A doctor testified that Biko was found with a brain injury, manacled to a metal grill, yet no urgent medical care was provided. Instead, doctors falsified medical certificates, allowed him to be transported 750 miles in a Land Rover rather than a hospital bed, and ultimately left him to die on a stone floor. The segment also includes a former medic breaking his silence on apartheid-era military medical practices. His testimony describes how Black South Africans were used for medical practice procedures: 'We were sent to Tembisa Hospital on Friday and Saturday evenings to practice on people because, quite frankly, it didn't matter if we made a mistake because they were Black people. And many mistakes were made.'

These testimonies starkly illustrate the systemic dehumanisation embedded in the apartheid-era medical system, reinforcing that medical complicity was not only about silence or inaction but also about active participation in racialised harm. The TRC Final Report concluded that medical professionals' 'most common offense was a failure to carry out their duties within internationally accepted guidelines of medical ethics and human rights,'⁵⁴ but that these failures did not constitute gross human rights violations.⁵⁵ *Special Report* subtly critiques this categorisation, highlighting testimony that problematised the TRC's distinction between complicity and perpetration.

The segment also shows as a TRC commissioner 'slams' the submission made by the medical branch of the South African military under apartheid: 'We have to face our past. The omission at the centre of this submission is the complete silence around the war in which the [South African Defence Force] was involved.' *Special Report* chose to present a clear and serious indictment of the health sector. Viewers are left with no question about the direct involvement of the medical

54 The TRC's Final Report found that during the years being investigated, while South African doctors were 'expected' to take the Hippocratic Oath or the Declaration of Geneva, ethics was taught at medical schools only on an ad hoc basis, 'therefore, no uniformity in the way in which health professionals were made aware of, or given guidance on, incorporating issues of medical ethics and human rights into daily practice.' See 'The TRC Report', vol. 4, chapter 5, paras. 3 and 7 <<https://www.justice.gov.za/trc/report/>> [accessed 26 April 2025].

55 'The TRC Report', vol. 4, chapter 5, para. 13.

profession in the violence of apartheid but left with little sense of resolution. The episode's only testimony that alluded to future-oriented action was given by the doctor discussing Steve Biko's death:

Steve Biko was a medical student and under ordinary circumstances he would today have been a practicing doctor. His legacy to South African medicine has to be thoroughgoing correction of those issues in this story that might conceivably ever allow it to happen again.

While important, the impact of this statement for viewers is arguably tempered by the fact that it is unclear from the episode if or how this doctor was involved in Biko's death outside of his membership in the profession, or what influence he may have on the conduct of his peers.

THE LEGAL PROFESSION

Episode 72, segment 4,⁵⁶ provides brief coverage of the institutional hearing for the legal profession. Du Preez sets the scene; 'Without the complicity of the judicial system apartheid couldn't have worked. The state needed the courts to apply apartheid laws, and they did.'

The segment highlights the notable absence of many former members of the judiciary from the hearings, both in person and through written submissions. While five of the country's current top judges sent a letter acknowledging the legal profession's central role in maintaining apartheid, their absence indicates unwillingness among legal professionals to confront how their work perpetuated apartheid oppression and violence. However, the testimonies that were given expose the institutional complicity of South Africa's legal system. A testimony from Dullah Omar, the new Minister of Justice, shown early on in the segment acknowledges that the judicial system failed victims because the fundamental objective was to protect the state:

Our criminal law system paid scant regard to what happened to victims. Victims came to court as witnesses and complainants. After giving their evidence they were thanked for having given their evidence and told to go. But crime was essentially regarded as a crime against the state, and quite correctly it is a crime against the state, but the wrong to the individual – to the victim – has been solely neglected in our history.

⁵⁶ 'Episode 72,' *Truth Commission Special Report*, SABC, 2 November 1997.

This admission, while notable, frames legal failures as systemic rather than personal, subtly positioning lawyers as passive participants rather than active enforcers of apartheid's legal violence. However, this shifts in a more self-implicating direction when another legal professional testifies:

We were all part of a system sometimes for very good reason, but we all did play some role in upholding the framework of apartheid and therefore the framework that sustained gross violations of human rights.

Yet rather than interrogating the specific ethical responsibilities of legal professionals, many witnesses deflected blame onto the broader system. One speaker insisted, 'It is impractical and unrealistic to think that the courts could have stopped those excesses.' This aligns with the Nuremberg-style 'just following orders' defence, which attempts to minimise the agency of those within oppressive legal systems by implying they had no power to act otherwise. However, some counterarguments emerged; one lawyer critiqued, 'They sit here and by rote talk about being regretful of what they did, but they didn't do anything else. They never once even decided not to do something when they clearly had the power to do it.' This critique underscores how the legal sector largely failed to engage in substantive self-reckoning. Attorneys-General, in particular, evaded scrutiny over their role in upholding apartheid laws, insisting that they had 'not served a political master' and had merely applied the law as it was written. This mirrors testimonies from other implicated sectors, where those who benefitted from or sustained apartheid attempted to frame themselves as neutral functionaries. This combined with the total absence of judges suggests a broader unwillingness from the sector to confront judicial complicity.

THE BUSINESS SECTOR

Episode 74, segment 3,⁵⁷ includes footage from the institutional hearing for the business sector, in which business representatives provide testimonies with a range of language around complicity, implication, and accountability.

The segment opens with a statement from a representative of the tobacco company, the Rembrandt Group, who acknowledged, 'the fact

⁵⁷ 'Episode 74', *Truth Commission Special Report*, SABC, 16 November 1997.

that whites have been advantaged within the private sector is undeniable.' He admits that the Rembrandt Group did not do enough to advance black management but attempts to minimise this by claiming that their efforts would have been insufficient to counter apartheid. Next, the segment features a representative from the electricity company Eskom, who offers an 'unconditional' apology on behalf of the company for not doing all it could to counter apartheid's injustices.

This is followed by testimonies from other business representatives who defend their practices. A representative of an Afrikaner business alliance justifies their support of separate development by claiming it was believed to benefit everyone. A representative from a manufacturer of heavy industrial products asserts that 'no definition of direct human rights violations [...] could possibly be attributed to business generally during that period.' The word 'direct' attempts to distance the private sector from the TRC's definition of perpetrators and positions the speaker, as Jeremy Gordin put it, the 'luxury of moral indignation.'⁵⁸

A member of the SA Chamber of Commerce is then shown echoing the belief that it was 'impossible' that any form of collective culpability could be placed on the business sector for the injustices within apartheid. *Special Report* chose several clips in which business leaders try, one after the other, to blame the former government for creating the imbalance that favoured white business, deflecting accountability upward.

Jay Naidoo, the former General Secretary of the Congress of SA Trade Unions, provides a counterpoint as the final clip in a series of testimonies, asserting that it is disingenuous for businesses to deny their beneficiary status:

Overwhelmingly, no one can stand up here and claim to be speaking the truth when they say that business were not the direct beneficiaries of apartheid. In fact, the core of apartheid was a perpetuation of a cheap labour system.

This segment then highlights the testimony from Anglo-American mining company's representative, Bobby Godsell, perhaps as a foil to the aforementioned businesspeople and an illustrative example of Naidoo's assertion. As one of South Africa's largest industries during apartheid, mining was an integral part of the business sector; therefore, Godsell's testimony held significant weight. Mining's profitability

⁵⁸ Jeremy Gordin, 'Foreword', in *A Long Night's Damage: Working for the Apartheid State*, ed. by Jeremy Gordin (Saxonwold: Contra Press, 1998), pp. 13-38 (p. 23).

relied on a state-engineered migrant labour system that subjected Black South Africans to low pay, harsh working conditions, poor living standards, and severe neglect of their health and well-being.⁵⁹ Godsell acknowledges the sector's failures, such as not providing the minimal required housing for workers and maintaining segregated workplaces. He states unequivocally that 'all white South Africans fared very much better than their black compatriots throughout the apartheid decades. So, all white South Africans are beneficiaries of apartheid.'

Despite some acknowledgements of the business sector's complicity and benefit from apartheid, none of the representatives offered reflections on future-oriented action that would ensure equitable business practices. They also all rebuked a proposal for a wealth tax on South Africans with assets over two million Rand, indicating a lack of willingness to relinquish their beneficiary status or tangibly contribute to South Africa's processes of transformation.

THE FAITH COMMUNITY

Episode 75, segment 4,⁶⁰ provides coverage of the institutional hearing for the faith community. A *Special Report* journalist summarises the hearing activities:

Christians of all denominations, Jews, Muslims and Hindus asked for forgiveness as Bishops, Pastors, Rabbis, Imams and other religious leaders, one after the other confessed their sins of the past. Their passivity, even complicity, but mostly their silence over the evil system of apartheid.

The testimonies from the faith community, as shown on *Special Report*, reveal a widespread acknowledgment of wrongdoing, complacency, and complicity. Many religious leaders recognised the harms resulting from their actions and inactions and offered apologies. For example, a Bishop from the Church of England in South Africa admitted, 'We allowed ourselves to be misled into accepting a social, economic and political system that was cruel and oppressive. We should have been more aware, more vocal and more insightful, but we were not. For this we are guilty.'

59 Jonathan Crush, Alan Jeeves, and David Yudelman, *South Africa's Labour Empire: A History of Black Migrancy to the Gold Mines* (Boulder: Westview Press, 1991).

60 'Episode 75', *Truth Commission Special Report*, SABC, 23 November 1997.

These apologies were not limited to white churches but also came from traditionally black and coloured churches, Hindu communities, and Muslim communities, all sharing similar sentiments of regret for not having done more to oppose apartheid. However, perhaps the most significant testimony came from the Dutch Reformed Church (NG Kerk), the former white state church. The representative began by stating that he could not speak for all members of the NG Kerk, but admitted:

We had indeed taught our people wrongly with regard to apartheid as a biblical instruction. If you teach them that this is the way of the Bible, in fact you instruct them how they should act and in this regard certainly the church has confessed that it is guilty and we are experiencing an inner struggle to change around and turn around in this regard.

This testimony not only acknowledges wrongdoing and guilt, but also points to future-oriented action intended to change the church's complicit behaviour. However, while acknowledging complicity, it subtly frames it as a theological misinterpretation rather than a deliberate moral failure. The phrase 'we had indeed taught our people wrongly' suggests a past-tense distancing rather than engaging with any ongoing legacies of this teaching. Unlike the Catholic Church, which explicitly admitted that during apartheid the church divided itself into Black and white spaces, the NG Kerk's testimony does not engage with the structural segregation that persisted within religious institutions even after apartheid's formal end. This is not the only instance in which responses differed across religious traditions. One of the most striking moments came from the Zionist Christian Church (ZCC), the largest church in Southern Africa, whose leader refused to testify publicly. Despite personal appeals from Archbishop Desmond Tutu, the ZCC's legal counsel simply responded, 'No reason, that's our style. That's how we do things.' While many religious leaders recognised their roles in legitimising apartheid, others maintained distance, declining to publicly account for their past positions.

Even so, unlike the business, legal, or health sectors, where testimonies frequently relied on bureaucratic justifications, many religious leaders embraced a moral reckoning, calling on their congregations to pursue reconciliation and justice. This difference is illustrated, for instance, by the testimony of a Muslim religious leader, who expressed anger at his own community's silence following the detention and death of Imam Abdullah Haron:

25,000 people attended his funeral, and not a single voice in the Muslim community was raised about the nature of his death and all the injuries on his body. Not a single voice from the religious leadership of the Muslim community. And this silence, Mr. Chairman, held for seven years nonstop at a Mosque level and in a Muslim publication level. Of course, I speak with anger—by God, I’ve got a damn right to be angry.

This moment underscores the nature and breadth of bystanders in South Africa. While other religious leaders apologised in theological terms, this testimony directly confronted silence. The hearing closed with Archbishop Tutu’s acknowledgment that, compared to the defensiveness seen in other institutional hearings, most religious representatives accepted responsibility. The emphasis on moral accountability did make the faith community hearing distinct from others; however, as seen in the NG Kerk’s careful wording and the ZCC’s silence, full institutional reckoning remained elusive.

THE MEDIA

In Episode 66,⁶¹ *Truth Commission Special Report* acknowledges, in a self-reflective moment, the role of the media in perpetuating apartheid. *Special Report*’s acknowledgement of their own broadcast company, SABC, as ‘the chief propagandists of the state’ is essential. Not only does such a recognition lend itself to building public trust in the media, but it also shows as journalists acknowledged their own implication and accountability for past and future. Du Preez introduces this episode:

Hello. We as journalists have been reporting on the appearances of activists, guerrillas, soldiers and policemen before the Truth Commission week after week the last 18 months, but we ourselves could not escape the wide net of the Truth Commission because they are supposed to get as detailed a picture as possible of what went wrong in South Africa’s past. For three days this week the Truth Commission focused on the media during the apartheid years. If we had done our jobs properly would people today have been able to say about the horrors of apartheid ‘we did not know?’ Tonight, we report on ourselves.

61 ‘Episode 66’, *Truth Commission Special Report*, SABC, 21 September 1997.

Despite Du Preez' claim on behalf of the media, footage from the institutional hearing on the media shows many white media practitioners employing similar narrative strategies of justification and deflection as those used by other sectors. Former SABC editors and executives are shown blaming state censorship and pressure for the ideologies they propagated. However, *Special Report* journalist Mondli Makhanya critiques this upward deflection, arguing that it places too much blame on the state and that journalists and media outlets rely too heavily on apartheid's restrictive information laws as an excuse for not exposing the atrocities happening throughout apartheid-era South Africa.

A former SABC editor claims that SABC 'made mistakes,' but still deflects accountability to the state, explaining that the media board was appointed by the South African president, and therefore was required to work under that political party's influence. He argues the SABC under the new ANC governance is doing the same. While acknowledging the collective misdeeds of the SABC during apartheid, he denies personal responsibility.

In contrast, three well known media spies each fully claim responsibility for their role in 'manipulating South Africa's print and broadcasting media in a clandestine propaganda war.' However, many journalists and media spies involved in the former white-dominated media remained involved in the media even after the transition began, including Craig Kotze, who became the media advisor to the new police commissioner. This example, among others, suggests that the media was still grappling with its own transition even as *Special Report* aired.

In closing, Du Preez states that 'the old SABC did untold damage to our nation through the propaganda that was dished out on the screen. It became, not the voice of the people, but his master's voice.' This contrast implies that the new SABC – *Special Report* included – is striving to be what its predecessor was not.

THE LANGUAGE OF COMPLICITY AND IMPLICATION EMPLOYED AT THE TRC

While *Special Report* could only highlight some of the testimonies given at the TRC's institutional hearings, it is clear that the hearings included individuals whose complicity or implication warranted a wide range of 'moral blameworthiness'. However, this article does not seek to delineate who in these hearings should be considered complicit, implicated, or even a perpetrator, or to rank their blameworthiness. Instead, it focuses on the

form and function of testimonies of complicity and implication within a transitional justice context. This complements existing scholarship such as that by Jacob Dlamini in his work on collaboration in apartheid South Africa through the lens of askaris, particularly his examination of self-incriminating testimony.⁶² Dlamini's study of former apartheid collaborators highlights how narratives of complicity often serve as self-justification rather than genuine reckoning, a dynamic also visible in many institutional hearing testimonies.

Some testimonies, such as those at the health sector hearing, challenge the boundaries between complicity and perpetration. The TRC defined perpetrators as those who were directly involved in gross human rights violations; this approach was widely critiqued both at the time of the commission and in scholarship since. What was described at the health sector hearing reinforces that the TRC's reliance on a western legal framework and its definition of gross human rights violations resulted in a too-narrow definition of perpetration, without a satisfying or useful alternative forum for justice to hold accountable individuals whose actions fell even slightly outside of those bounds, much less those whose implication was more nuanced.

Across almost all sectors, narrators claimed actions that indirectly supported and perpetuated apartheid's system of violence, but deflected accountability for those actions. The denial of responsibility through upward deflection to the state or other superiors is also commonly seen as justificatory discourse in perpetrator testimony. This trope has been characterised as 'the obedient soldier' or 'the Nuremberg Defense,'⁶³ referencing Germany's post-WWII penal code under which 'dispassionate' participation in mass murder could not be prosecuted under first degree murder, resulting in a slew of defence arguments based on the narrative, 'I was just following orders.' While someone who is complicit or implicated in structures of violence is not seeking to avoid a murder charge, they are similarly trying to avoid accountability. In the case of the TRC's institutional hearings, the accountability that narrators sought to avoid was only a moral one, as the hearings had no possibility of direct consequence built into their structure. However, to admit accountability as an implicated subject, particularly as a

62 Jacob Dlamini, *Askari: A Story of Collaboration and Betrayal in the Anti-Apartheid Struggle* (Oxford: Oxford University Press, 2015).

63 Don Foster, 'Popular Representations of Perpetrators,' in *The Theatre of Violence: Narratives of Protagonists in the South African Conflict*, ed. by Don Foster, Paul Haupt, and Marésa de Beer (Cape Town: HSRC Press, 2005), pp. 27-54 (p. 52).

beneficiary, might provide the groundwork for future efforts toward social transformation in which there would be tangible consequences. An awareness of this is evident in the business sector hearing when representatives rebuked the idea of a proposed wealth tax. It is of course more palatable for an implicated subject to position themselves as having completed the 'moral act' of claiming a misdeed and even apologising for it, but without having to give up ongoing benefits of this implication. Perhaps this is why so many implicated subjects came forward to testify at the institutional hearings just to deny accountability.

Another related justificatory discourse seen primarily in the business sector hearing involved narrators claiming they did not have the power to counter the injustices of apartheid, therefore bore no responsibility for their inaction. Narrators attempted to position themselves as bystanders to lessen their moral blameworthiness; however, it would be difficult to categorise anyone who spoke at the institutional hearings as 'just' a bystander, especially the business sector leaders who mobilised this rhetoric. Further, if we are to align with Rothberg's thinking, no one is truly a passive bystander, as the decision to not act still has consequence.

Only a small number of testimonies shown on *Special Report* went so far as to intimate an intent to change their actions. In cases where testimonies did suggest future-oriented action, it was offered in a collective sense. While Young's conceptualisation of responsibility is collective, when presented as such in an individual testimony (even by the most well-intending narrator), it raises doubts about the likelihood that enough people will have the same individual notion of accountability to achieve such a transformation. At the faith community hearing, the representative of the NG Kerk said the church community was, at the time of the hearing, 'experiencing an inner struggle to change around and turn around in this regard'.⁶⁴ As the church of the apartheid state, this was particularly notable; however, the statement itself is noncommittal and lacks detail. A similar statement was made in the health sector hearing; as noted earlier, in his submission on Steve Biko's death, a doctor stated that the health profession needed to ensure 'thoroughgoing correction' of the practices that led to Biko's death.⁶⁵ While necessary, this future-oriented statement is as broad and noncommittal as the one provided by the NG Kerk, perhaps with even less clarity on how this particular narrator would contribute to a sector-

64 'Episode 75', *Truth Commission Special Report*, SABC, 23 November 1997.

65 'Episode 53', *Truth Commission Special Report*, SABC, 22 June 1997.

wide transformation. Lastly, discussion of the media's accountability and intent to transform did not come from the media hearing at all, but rather from the *Special Report* narrative that it layered over its reporting.

Testimony, Transition, and Transformation

The United Nations defines transitional justice as processes through which societies attempt to come to terms with legacies of past conflict, repression, violations, and abuses to ensure accountability, serve justice, and achieve reconciliation.⁶⁶ Complicit testimonies can enrich these processes by offering insights into systemic violence and promoting accountability and transformation at societal and structural levels.

As its name suggests, South Africa's TRC sought to unearth the 'truth' about apartheid. However, its reliance on testimonies from victims and perpetrators resulted in an incomplete narrative that privileged those most directly involved in violence and who had a vested interest in establishing a particular moral positionality. While any testimony is individual and therefore biased and limited in scope, transitional justice processes that seek to establish a record of past violence surely benefit from the inclusion of testimonies not only from victims and perpetrators of direct violence but also from individuals complicit or implicated in the structures that allowed such violence to occur. These additional forms of testimony help build a more nuanced understanding of past injustices, particularly their structural dimensions.

South Africa's institutional hearings were an exception to the majority of the TRC hearings and their focus on victims and perpetrators of gross human rights violations. The institutional hearings sought to understand the 'antecedents, circumstances, factors and context' of apartheid-era South Africa that enabled such widespread gross human rights violations. An unofficial but clear sub-objective was to catalyse public understanding and acknowledgement of the role of 'ordinary South Africans' in perpetuating structures of violence.⁶⁷ While these

66 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', *United Nations Security Council*, 23 August 2004, <<https://www.unhcr.org/media/rule-law-and-transitional-justice-conflict-and-post-conflict-societies-report-secretary>> [accessed 6 March 2025].

67 Recalling commissioner Charles Villa-Vicencio's statement 'We are trying to enable South Africans of all levels to acknowledge their guilt. There are different levels, but the bystander is still part of it.'

hearings certainly included testimonies of complicity and implication, they were mostly ineffective in prompting the narrators to acknowledge accountability for past, ongoing, and future implication. This may have been a result of the influence of the TRC's broader ideology; even though the institutional hearings were voluntary, comparatively unstructured, and not associated with potential consequences, participants may have engaged as if they were participating in a quasi-legal process (like the rest of the commission) in an effort to absolve themselves of the moral crime of complicity or implication.

Even so, it would be difficult to blame such an outcome on South Africa's TRC, specifically. Rather, transitional justice mechanisms in their current forms may simply not be equipped for meaningful engagement with concepts of complicity or implication. Transitional justice mechanisms often rely on western legal and human rights frameworks as their foundation. Such frameworks are retributive and primarily concerned with past direct harm, making them unable to address indirect (and often ongoing) harms such as structural violence. This is not to say legal approaches are not useful in efforts toward political and social reconstruction following conflict; however, as Brandon Hamber has problematised, often too much is expected of these processes:

There is an expectation that the emotional testimony of victims and the uncovering of how past atrocities were committed and by whom will prevent impunity, transform social relations and the meaning of past violence, and affect how people will act in the future. This is at best only partially true.⁶⁸

South Africa's TRC had elements of reconciliation (which implies something forward-looking) alongside its quasi-legal processes. Within this, it positioned forgiveness as the end goal, which removed opportunities for recourse that would lend to true social justice. This shortcoming has been compounded by the commission's failure to follow through on recommendations for reparations and prosecutions made in its Final Report. While the institutional hearings were a positive addition from prior truth commission

68 Brandon Hamber, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (New York: Springer, 2009), p. 168.

models,⁶⁹ the concept was underdeveloped and its findings severely underutilised, focusing on filling out the historical narrative rather than contributing to social and structural transformation. In doing so, the institutional hearings allowed implicated subjects to acknowledge past implication without reckoning with the ongoing nature of this positionality or its benefits. Despite the potential of the institutional hearings, South Africa's TRC missed an important opportunity to explicitly recognise 'the nexus of past and present modes of implication,'⁷⁰ which are also critical to understanding and pursuing accountability for the future.

In reflecting on the shortcomings of the South African TRC and in support of Rothberg and Young's theories of implication and responsibility,⁷¹ mechanisms for justice after past conflict, repression, violations, and abuses must facilitate both transition and transformation. Within this, testimonies of complicity and implication can and should serve an important role in identifying past and ongoing implication in order to lay the groundwork for dismantling violent systems and promoting social justice. This does not imply that testimony is valuable only if it leads to explicit commitments to transformation. Testimonies of complicity and implication also contribute in other ways, such as by clarifying the historical record, revealing structures that sustained injustice, and offering insights into how systems of oppression operated. These functions remain crucial even when an implicated subject does not articulate an intent to engage in future social justice efforts, although accountability arguably remains a key aspiration – perhaps even a prerequisite – for meaningful social transformation in the aftermath of injustice.

While the TRC's institutional hearings offered a unique space for complicity and implication to be acknowledged, their overall impact remains in question. The following discussion considers both the limitations and the untapped potential of such testimonies within transitional justice frameworks.

69 *Special Report* highlighted the value that some people placed on the institutional hearings as a space in which they could acknowledge their complicity and apologise. In Episode 75, segment 4, a member of the Apostolic Faith Mission is shown as he states, 'The TRC is the only forum with some credibility and acceptability available to us in which we can publicly apologise to all those who had been hurt by the travesties of the past. It is the most effective way available to us which we can use to offer help and healing to those who had committed unacceptable, often even gruesome deeds against fellow South Africans and that offer goes for people on all sides of the line'.

70 Rothberg.

71 Young and Nussbaum.

THE LIMITS AND OPPORTUNITIES OF COMPLICIT AND IMPLICATED TESTIMONY FOR JUSTICE

Even in the most optimal setting, no testimony or narrative can be full or true, nor can it be expected to serve as the sole vehicle for transformation. This is especially the case in the context of a truth commission, which heavily shapes narrative form and content.⁷² However, this does not negate the importance of such testimonies for transitional or transformational justice mechanisms. As Raya Morag has put forth in the context of perpetrator narratives,

Even if the post-traumatic perpetrator were capable of diverse forms of self-awareness through confession, the outcome of the confession would be redefined, necessarily, as a social dilemma. In other words, the perpetrator's ethical insight must be tested against society's willingness to accept responsibility rather than its willingness to accept the perpetrator.⁷³

Morag extends the responsibility of narrative as a tool for transformation beyond the narrator to also include the audience. Regardless of how a perpetrator – or in this case, a complicit or implicated subject – presents themselves through testimony, that testimony can be used by members of society at large as an opportunity to reflect on their own culpability. Herein lies the importance of media coverage like *Special Report*.

The South African TRC improved the existing model of truth commissions through its inclusion of institutional hearings, but if this had not been coupled with unprecedented levels of media coverage, it would have surely had less impact. By showcasing testimonies from across implicated sectors, media coverage of the TRC's institutional hearings offered the South African public a selection of testimonies in which they were more likely to see themselves. Many, if not most, viewers of *Special Report* were likely implicated subjects in some way. While it cannot be known without audience research (for which the time has long passed), *Special Report's* coverage of complicity and implication in its various forms may have prompted some viewers to critically reflect on their own implication and, ideally, accountability.

72 Don Foster, 'Confessions, Apologies, and Perpetrators', in *Memory, Narrative and Forgiveness: Perspectives on the Unfinished Journeys of the Past*, ed. by Pumla Gobodo-Madikizela and Chris N. van der Merwe (Cambridge: Cambridge Scholars Publishing, 2009), pp. 170–87.

73 Raya Morag, *Waltzing With Bashir: Perpetrator Trauma And Cinema* (London and New York: I.B. Tauris, 2013), p. 275.

It also might be surmised that *Special Report* intentionally sought to prompt these types of reflections. In discussion of the institutional hearings, Du Preez states that these hearings have become 'a very important exercise, not only for the Commission who has to write a full report about our past, but for us as citizens. It gives us a chance to look at what went wrong in the past and it stimulates debate among the different groupings called to testify.'⁷⁴ In one of its final episodes on the 'meaning of evil', *Special Report* quotes Andre du Toit who stated that in South Africa, 'there is no privileged position of innocence', suggesting that the evils of apartheid were made possible by a nation of implicated subjects.⁷⁵

Where testimonies of complicity and implication perhaps did not provide a satisfactory resolution such as acknowledgement of guilt and accountability, *Special Report* often added its own layer of interpretation. In providing these interpretations that served as part metaphorical indictment, part suggestion of what future-oriented accountability could and should look like, *Special Report* helped its viewers to interrogate the position of the implicated subject. As Rothberg posits, this interrogation 'offers epistemological and eventually, political advantages precisely because it helps us access realms of social ignorance that are built into systems of power and privilege.'⁷⁶ This is not, of course, an adequate replacement for an effective justice mechanism, but it does raise important moral and practical questions about the role of media in prompting viewers toward self-reflection on their positionality as implicated subjects, their accountability for the past, present, and future, and their role within ongoing processes of social justice and transformation.

74 'Episode 74', *Truth Commission Special Report*, SABC, 16 November 1997.

75 'Episode 82', *Truth Commission Special Report*, SABC, 22 February 1998.

76 Rothberg, p. 34.

Works Cited

- Arendt, Hannah, 'Collective Responsibility', in *Responsibility and Judgment*, ed. by Jerome Kohn (New York: Schocken Books, 2003), pp. 147-58
- Bauman, Zygmunt, 'From Bystander to Actor', *Journal of Human Rights*, 2.2 (2003), 137-51
- Brankovic, Jasmina, 'Responsabilidad y Reconciliación Nacional en Sudáfrica', *Ediciones InfoJus: Derechos Humanos*, 2.4 (2013), 55-86

- Chapman, Audrey, 'Truth Recovery through the TRC's Institutional Hearings Process', in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, ed. by Audrey Chapman and Hugo van der Merwe (Philadelphia, PA: University of Pennsylvania Press, 2008), pp. 169-88
- Crush, Jonathan, Alan Jeeves, and David Yudelman, *South Africa's Labour Empire: A History of Black Migrancy to the Gold Mines* (Boulder: Westview Press, 1991)
- Dlamini, Jacob, *Askari: A Story of Collaboration and Betrayal in South Africa* (Oxford: Oxford University Press, 2015)
- Drumbl, Mark, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007)
- du Toit, André, *Amnesty Chronicles: The Inner History of the Amnesty Negotiations During the South African Transition, and the Origins of the TRC's Amnesty Process* (Stellenbosch: Beyers Naudé Centre for Public Theology, 2022)
- Enright, Robert D., and Joanna North, 'Introducing Forgiveness', in *Exploring Forgiveness*, ed. by Robert D. Enright and Joanna North (Madison: University of Wisconsin Press, 1998), pp. 1-8
- Foster, Don, 'Popular Representations of Perpetrators', in *The Theatre of Violence: Narratives of Protagonists in the South African Conflict*, ed. by Don Foster, Paul Haupt, and Maréa de Beer (Cape Town: HSRC Press, 2005), pp. 27-54
- Foster, Don, 'Confessions, Apologies, and Perpetrators', in *Memory, Narrative and Forgiveness: Perspectives on the Unfinished Journeys of the Past*, ed. by Pumla Gobodo-Madikizela and Chris N. van der Merwe (Cambridge: Cambridge Scholars Publishing, 2009), pp. 170-87
- Fulbrook, Mary, *Bystander Society: Conformity and Complicity in Nazi Germany and the Holocaust* (New York: Oxford University Press, 2023)
- Gordin, Jeremy, 'Foreword', in *A Long Night's Damage: Working for the Apartheid State*, ed. by Jeremy Gordin (Saxonwold: Contra Press, 1998), pp. 13-38
- Graybill, Lyn S., *Truth & Reconciliation in South Africa: Miracle or Model?* (Boulder: Lynne Rienner Publishers, 2002)
- Hamber, Brandon, *Transforming Societies after Political Violence: Truth, Reconciliation, and Mental Health* (New York: Springer, 2009)
- 'Public Hearings: Platforms of Truth, Dignity, and Catharsis', *International Center for Transitional Justice*, 24 March 2017, <<https://www.ictj.org/news/public-hearings-platforms-truth-dignity>> [accessed 6 March 2025]
- Jaspers, Karl, *The Question of German Guilt*, trans. by E. B. Ashton (New York: The Dial Press, 1947)
- Kaufman-Osborn, Timothy V., '"We Are All Torturers Now": Accountability after Abu Ghraib', *Theory & Event*, 11.2 (2008) <<https://muse.jhu.edu/article/240332>> [accessed 6 March 2025]

- Knittel, Susanne C., and Sofia Forchieri, 'Navigating Implication: An Interview with Michael Rothberg', *Journal of Perpetrator Research*, 3.1 (2020), 6–19
- Krabill, Ron, 'Symbiosis: Mass Media and the Truth and Reconciliation Commission of South Africa', *Media, Culture & Society*, 23.5 (2001), 567–85
- Kutz, Christopher, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000)
- Levi, Primo, 'The Gray Zone', in *The Drowned and the Saved*, trans. by Michael F. Moore, vol. 3 of *The Complete Works of Primo Levi*, ed. by Ann Goldstein (New York: Liveright, 2015)
- Lepora, Chiara, and Robert E. Goodin, 'Complicity and Its Conceptual Cousins', in *On Complicity and Compromise* (Oxford: Oxford University Press, 2013), pp. 31–58
- Mamdani, Mahmood, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)', *Diacritics*, 32.3–4 (2002), 33–59
- , 'Reconciliation Without Justice', *Southern African Review of Books*, 46 (1996), 3–5
- Meister, Robert, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2011)
- Moyn, Samuel, *Not Enough: Human Rights in an Unequal World* (Cambridge: Harvard University Press, 2018)
- Moon, Claire, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Lanham: Lexington Books, 2008)
- Morag, Raya, *Waltzing with Bashir: Perpetrator Trauma and Cinema* (London and New York: I.B. Tauris, 2013)
- Probing the Limits of Categorization: The Bystander in Holocaust History*, ed. by Christina Morina and Krijn Thijs (New York: Berghahn Books, 2019)
- Rosenberg, Tina, 'Recovering from Apartheid', *New Yorker*, 18 November 1996
- Rothberg, Michael, *The Implicated Subject: Beyond Victims and Perpetrators* (Stanford: Stanford University Press, 2019)
- Truth Commission Special Report*, South African Broadcasting Corporation (SABC), 1996–1998
- Sanders, Mark, *Complicities: The Intellectual and Apartheid* (Durham: Duke University Press, 2002)
- Schaffer, Kay, and Sidonie Smith, 'Human Rights, Storytelling, and the Position of the Beneficiary: Antjie Krog's *Country of My Skull*', *The Humanities in Human Rights: Critique, Language, Politics*, 121.5 (2006), 1577–1584
- Schalkwyk, David, 'Truth, Reconciliation, and Evil in South Africa', in *Truth, Reconciliation, and Evil*, ed. by Margaret Söner Breen (Leiden: Brill, 2004), pp. 3–41
- Teitel, Ruti G., 'Transitional Justice as Liberal Narrative', in *Globalizing Transitional Justice: Contemporary Essays* (Oxford: Oxford University Press, 2014)

- Theissen, Gunnar, 'Object of Trust and Hatred: Public Attitudes toward the TRC', in *Truth and Reconciliation in South Africa: Did the TRC Deliver?*, ed. by Audrey Chapman and Hugo van der Merwe (Philadelphia: University of Pennsylvania Press, 2008), pp. 191-216
- Thompson, Leonard Monteath, *A History of South Africa*, ed. by Lynn Berat, 4th edn (New Haven: Yale University Press, 2014)
- 'The TRC Report', *Truth and Reconciliation Commission* <<https://www.justice.gov.za/trc/report/>> [accessed 26 April 2025]
- 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', *United Nations Security Council*, 23 August 2004, <<https://www.unhcr.org/media/rule-law-and-transitional-justice-conflict-and-post-conflict-societies-report-secretary>> [accessed 6 March 2025]
- van der Merwe, Hugo, 'Delivering Justice during Transition: Research Challenges', in *Assessing the Impact of Transitional Justice: Challenges for Empirical Research*, ed. by Hugo van der Merwe, Victoria Baxter, and Audrey Chapman (Washington, DC: United States Institute of Peace, 2009), pp. 115-42
- van Zyl, Paul, 'Dilemmas of Transitional Justice: The Case of South Africa's Truth and Reconciliation Commission', *Journal of International Affairs*, 52.2 (1999), 647-67
- Verdoolaage, Annelies, 'Media Representations of the South African Truth and Reconciliation Commission and Their Commitment to Reconciliation', *Journal of African Cultural Studies*, 17.2 (2005), 181-99
- Wilson, Richard A., *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001)
- Young, Iris Marion, *Responsibility for Justice* (Oxford: Oxford University Press, 2011)

Michelle E. Anderson's scholarship focuses on topics at the intersection of law and policy, human rights, and inequities. Michelle's experience spans the United States, Northern Ireland, the Palestinian territories, and several African countries, particularly South Africa, where she has researched and consulted on political conflict, post-conflict recovery, and access to justice. She received her PhD from the University of Cape Town for her thesis on the relationship between perpetrators, media and transitional justice.