

**A TRUTH AND RECONCILIATION COMMISSION FOR THE USA –  
A STARTING POINT FOR A NATIONAL DISCOURSE**

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*Truth and Reconciliation Commissions (TRCs) are a means for a nation to reconcile with its past, restore justice, and give victims the chance to speak about their experiences. TRCs can also be used in democratic states to deliver (historic) justice. This article looks at the possibility of a United States of America (US) TRC, based on the need for reconciliatory measures, including reparations for African Americans. This article argues that the current political unrest in the US demonstrates the need to explore different avenues for the pursuit of justice. A US TRC could be one option for a transition to a more just nation by addressing past and present injustices. It could offer an alternative to court proceedings to tackle the manifold, long-lasting injustices in the US and the unprocessed history of how Black people have been treated. The article will highlight current US reconciliatory initiatives, as well as obstacles to the emergence of a TRC in the United States. It will draw on the experience of other TRCs to propose ways in which these obstacles may be overcome. However, the article also highlights potential downsides of a US TRC by discussing the danger of democratic states using these fora to perpetuate the status quo, or to avoid the punishment of powerful people. The article stresses the importance of social and political cohesion for the establishment and effectiveness of a TRC.*

**Keywords:** Truth and Reconciliation Commissions, USA, Black Lives Matter, Canada, South Africa

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### I. INTRODUCTION

Human rights violations are often dealt with in an unsatisfactory way, leaving open wounds that can sometimes lead to more division. Examples of this can be found in many places, even in democratic countries, where dark chapters of history are acknowledged, but not addressed in a way that honors the victims and holds perpetrators accountable.<sup>1</sup> Restoring unity or furthering reconciliation in a nation is vital to promote justice – not only because it is a service a government owes to its people, but also because the aftermath of a past conflict is often still felt today in the form of unequal wealth distribution, racism, and structural inequalities.

An example of widespread historical injustices can be found in the US. Past human rights violations, especially those perpetrated against the Black population, have not been dealt with adequately. This can weaken national unity, because enduring discrimination leads to societal divisions.<sup>2</sup> Such disunity can be felt in contemporary debates brought to the fore by the Black Lives Matter (BLM) movement. The historical wrongs committed against African Americans date back several centuries. The lack of reconciliation

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<sup>1</sup> Ruti G Teitel, *Transitional Justice* (Oxford University Press 2000) 69.

<sup>2</sup> David R Cole, *Irreconcilable Differences: Limits to United States National Unity* (Lexington Books 2021).

with the history of slavery in the US leaves many African Americans without closure.<sup>3</sup> The link between slavery in the US and today's (socio-)economic situation of African Americans and the need for (financial) reparations have been widely discussed. However, opinions vary on which means of redress should be used.<sup>4</sup> Some claim that descendants of enslaved people should receive reparations.<sup>5</sup> This, it has been argued, could be accomplished through a holistic Truth and Reconciliation Commission (TRC) process that includes reparations and apologies.<sup>6</sup> Hunter finds historical evidence for

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<sup>3</sup> Ron Eyerman, *Cultural Trauma: Slavery and the Formation of African American Identity* (Cambridge University Press 2001).

<sup>4</sup> Maxine Burkett, 'Reconciliation and Non-Repetition: A New Paradigm for African-American Reparations' (2007) 86 *Oregon Law Review* 99; John Torpey and Maxine Burkett, 'The Debate over African American Reparations' (2010) 6; William A Darity, Bidisha Lahiri and Dania V. Frank, 'Reparations for African-Americans as a Transfer Problem: A Cautionary Tale' (2010) 14 *Review of Development Economics* 248; Glenn C Loury, 'Trans-Generational Justice – Compensatory vs. Interpretative Approaches' in Jon Miller and Rahul Kumar (eds), *Reparations* (Oxford University Press 2007); Rashawn Ray and Andre M Perry, 'Why We Need Reparations for Black Americans' (Brookings Institution, 15 April 2020) <<https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans/>> accessed 16 January 2022; Edith Y Wu, 'Reparations to African-Americans: The Only Remedy for the U.S. Government's Failure to Enforce the Thirteenth, Fourteenth, and Fifteenth Amendments' (2004) 3 *Connecticut Public Interest Law Journal* 403.; Allan D Cooper, 'From Slavery to Genocide: The Fallacy of Debt in Reparations Discourse' (2012) 43 *Journal of Black Studies* 107; Jeffrey Prager, 'Do Black Lives Matter? A Psychoanalytic Exploration of Racism and American Resistance to Reparations' (2017) 38 *Political Psychology* 637.

<sup>5</sup> Stephen Winter, *Transitional Justice in Established Democracies* (1st edn, Palgrave Macmillan 2014); Joe Feagin, 'A Legal and Moral Basis for Reparations' (*Time*, 28 May 2014) <<https://time.com/132034/a-legal-and-moral-basis-for-reparations/>> accessed 11 June 2021; Torpey and Burkett (n 4); Wu (n 4).

<sup>6</sup> Stephen Day, 'The US Needs Truth and Reconciliation' (*Fair Observer*, 21 April 2021) <[https://www.fairobserver.com/region/north\\_america/stephen-day-](https://www.fairobserver.com/region/north_america/stephen-day-)

sociopolitical and economic calculations for the uncompensated and stolen Black labor, the loss of property, the loss of home space and heritage, forcible rape, lynching, the loss of opportunity, and continued systems and practices of racial capitalism and racial domination.<sup>7</sup>

I argue that the US might indeed benefit from several transitional justice tools such as reparations, a TRC, and public apologies.<sup>8</sup>

Amid the persistent political tensions in the US, voices demanding reconciliatory mechanisms have become louder. For example, at the beginning of 2020, Congresswoman Barbara Lee announced plans to propose a resolution establishing the first United States Commission on Truth, Racial Healing, and Transformation (TRHT). This Commission would examine the effects of slavery, institutional racism, discrimination against people of color, and how US history impacts laws and policies today.<sup>9</sup> The resolution was supported by a broad coalition of Congress members and was officially introduced on June 4, 2020. It acknowledges the inequality in the country and commits to understanding its past so that the US population can move forward as a people. The Commission would aim to recognize and memorialize injustice properly and to be a catalyst for progress towards discarding the belief in a hierarchy of human values based on race.<sup>10</sup> It is yet to be seen if the resolution will be adopted and, if so, whether it will ultimately focus on one issue or minority, such as the Black community.

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capitol-hill-us-america-politics-american-society-america-world-news-71303/> accessed 17 January 2022.

<sup>7</sup> Marcus Anthony Hunter, 'Seven Billion Reasons for Reparations' (2018) 20 *Souls* 420, 421.

<sup>8</sup> Eric Wiebelhaus-Brahm, 'Truth Commissions and Transitional Societies' in Eric Wiebelhaus-Brahm (ed), *Routledge Handbook of International Criminal Law* (Routledge 2010) 369.

<sup>9</sup> H.Con.Res.100 116th Congress (2019–2020) Urging a United States Commission on Truth, Racial Healing, and Transformation.

<sup>10</sup> *Ibid.*

The above-described initiative and several other ones show that significant segments of the American public seem to be open and even demanding a conversation on race issues and inequalities.<sup>11</sup> A TRC could act as a forum for this dialogue. The purpose of this article is to suggest the use of a TRC to address issues of inequality in the US and to ask whether this idea is feasible. To do so, the article will first look at what TRCs are and how they can serve as an alternative justice mechanism for the US. Then, the political conditions in the US that could act as possible hindrances for a TRC will be evaluated to gauge the likelihood of the emergence of a US TRC. Other TRCs that have faced similar constraints will also be comparatively assessed. The article concludes that a truth dialogue with reconciliatory (fiscal) measures is indeed necessary, possibly in the form of a TRC, and its likelihood is dependent on political constraints, and in particular on social and political cohesion.

## II. THE THEORY OF TRCS

This section examines the theory behind TRCs and how they are traditionally used. Then, it considers the use of TRCs as an alternative justice mechanism when used in untraditional settings.

TRCs are non-judicial inquiries set up to determine the facts, causes, and societal consequences of past human rights violations. They focus on the testimony of victims of atrocities, acknowledging and recognizing the suffering of survivors. The results and recommendations of TRCs can have supportive effects on criminal and restorative justice, as they may incorporate reparations and institutional reform processes to redress past abuses and

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<sup>11</sup> Amy Sherman, 'Protests Renew Call for Reparations for African Americans' (Politifact, 18 June 2020) <<https://www.politifact.com/article/2020/jun/18/protests-renew-call-reparations-african-americans/>> accessed 11 June 2021.

prevent new ones.<sup>12</sup> The use of TRCs as a transitional justice mechanisms is increasing, and they have become an ever more popular object of academic inquiry. They can be helpful as a tool for addressing periods of colonialism, Apartheid, and structural racism that still affect the communities concerned.<sup>13</sup> Admittedly, sometimes a TRC can just be that: a tool to highlight human rights violations without being able to effectively implement the change that is needed. It is what comes after the TRC process that is equally crucial for the success of the TRC. Only when recommendations that have resulted from a fair, open, and authentic TRC process are taken seriously and implemented can one say that the TRC was a helpful tool.<sup>14</sup> Further, studies on the impact and effectiveness of TRCs are still limited and focus on single case studies.<sup>15</sup> The use of TRCs in long-standing democracies has not attracted a lot of attention in academia due to its novelty.<sup>16</sup>

TRCs can be adapted to the circumstances of the 'transitional' nation, resulting in differences in the variables defining their mandates. Hayner defines TRCs as (1) focused on the past rather than on ongoing events; (2)

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<sup>12</sup> 'Truth Commissions' (*International Center for Transitional Justice*, March 14, 2012) <<https://www.ictj.org/gallery-items/truth-commissions>> accessed 31 December 2020.

<sup>13</sup> Chandra Lekha Sriram and Suren Pillay, *Peace Versus Justice?* (University of KwaZulu-Natal Press 2009) 21-43; Rosemary Nagy, 'Transitional Justice as a Global Project: Critical Reflections' (2008) 29(2) *Third World Quarterly* 275.

<sup>14</sup> Eric Brahm, 'What Is a Truth Commission and Why Does It Matter?' (2009) 3 *Peace & Conflict Review* 1, 3.

<sup>15</sup> Elisabeth Bunselmeyer, *Truth, Reparations and Social Cohesion - Transitional Justice Lessons from Peru* (1st edn, Routledge 2020) 25.

<sup>16</sup> TRCs emerged in Latin America after the fall of authoritarian leadership and thus have been a tool to help countries establish democratic structures after addressing and solving human rights violations that took place during, e.g., dictatorship. Since TRCs traditionally helped form democracies, their use in consolidated democracies is something out of the ordinary. See Ian Dunbar, 'Consolidated Democracies and the Past: Transitional Justice in Spain and Canada' (2011) 8 *Federal Governance* 15.

investigating a pattern of events that took place over a period of time; (3) engaging directly and broadly with the affected population, gathering information on their experiences; (4) temporary bodies, intending to conclude with a final report with further recommendations; and (5) officially authorized or empowered by the state under review.<sup>17</sup> TRCs create an official record and fulfill demands for victim-centered truth to establish social healing and a future foundation.<sup>18</sup>

TRCs usually form part of a broader transitional justice plan, meaning that the government frequently uses other tools from the transitional justice toolkit to complement the TRC. These could include political reforms, educational programs, commemorations, or reparations planned alongside the TRC to provide redress.<sup>19</sup> However, the TRC is often the primary tool of reconciliation in this broader transitional justice plan.<sup>20</sup> It is a unique opportunity for victims, perpetrators, and the general public to come together and share their narratives and understandings.<sup>21</sup>

Most importantly, TRCs contribute to the formation of a shared, collective memory. They are advantageous in addressing injustices and in offering a platform for open discussions that create a shared truth. Especially in societies like the US, where human rights violations are denied or disregarded under the excuse that they are a 'matter of perspective', such a discourse is vital for the transition towards a more just society.<sup>22</sup> Consequently, a TRC is not only

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<sup>17</sup> Priscilla B Hayner, *Unspeakable Truths* (2nd edn Routledge 2011).

<sup>18</sup> Alexander Dukalskis, 'Interactions in Transition: How Truth Commissions and Trials Complement or Constrain Each Other' (2011) 13(3) *International Studies Review* 434.

<sup>19</sup> Brahm (n 14).

<sup>20</sup> Eduardo González, Elena Naughton and Felix Reátegui, *Challenging the Conventional: Can Truth Commissions Strengthen Peace Processes?* (International Center for Transitional Justice and the Kofi Annan Foundation 2014).

<sup>21</sup> Alexander L Boraine, 'Transitional Justice: A Holistic Interpretation' (2006) 60 *Journal of International Affairs* 17.

<sup>22</sup> Day (n 6).

valuable in countries that are facing regime change, but also in societies that are undergoing a transition to a more just and truthful society that reassesses their own history. Advocacy for such a change in society is currently happening in the US. Arguably, such societal changes and quests for truth often take place in long-standing democracies and can also be viewed as a 'transition 2.0' - transitional justice within a consolidated democracy, with the objective of creating a more just society.

A US TRC would fall into the category of these non-traditional TRCs due to it being a democratic state that is not in transition post-war or after a civil conflict. There are different types of TRCs, which can be event-specific, thematic, institutional, or sociohistorical in orientation.<sup>23</sup> For example, event-specific TRCs - like the Canadian one that focused on Indian Residential schools - examine an episode of human rights violations. Since a US TRC should look at the implications of historical wrongs for the current situation of African Americans and possibly other disadvantaged groups, it is advisable to form a sociohistorical TRC. Sociohistorical TRCs address historical wrongs that may have happened in the distant or recent past. The goal of such a TRC would be to define the lasting political and socio-economic consequences of past human rights violations.

### *1. TRCs as Alternative Justice Mechanisms*

Doubts have been raised about the integrity of TRCs in both transitional and non-transitional societies: are TRCs simply a tool to perpetuate the *status quo*, or do they represent a genuine effort to reconcile the nation?<sup>24</sup> Especially when high-ranking officials of the government, church, or community are likely to face long prison sentences after criminal proceedings, opting instead for a TRC seems like the less threatening and

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<sup>23</sup> Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge University Press 2006).

<sup>24</sup> Glen Sean Coulthard, *Red Skin White Masks - Rejecting the Colonial Politics of Recognition* (University of Minnesota Press 2014).



demanding route.<sup>25</sup> Opting for a US TRC could be perceived as an attempt to circumvent the prosecution of police officers and state officials because the US is not undergoing a regime change like other transitional countries. Nonetheless, TRCs are not a pre-trial chamber for subsequent criminal cases and have a specific goal and approach. The goal in trials is to have a deterrent effect by affirming the rule of law and punishing the wrongs committed through individualized accountability. TRCs have a more restorative and reconciliatory focus necessary for a society to function in the future. Using all or several of the available transitional justice measures creates a 'justice balance', because it uses restorative and retributive efforts leading to a more balanced approach.<sup>26</sup>

A possible route could also be the merging of prosecutions and a TRC, with different sequencing options.<sup>27</sup> A crucial precondition of a TRC is the need for a comprehensive transitional justice plan that is unique and that fits the political landscape.<sup>28</sup> Every TRC should be established with the specific needs of the country in mind. Moreover, establishing a US TRC should not be based on the motivation to halt the ongoing social protest or conflict, but instead offer a platform for conflicting narratives to be exposed. Finally, it is also fundamental to have a clear timeline for the transitional justice plan. Uncoupling a TRC from other redress tools, such as reparations, undermines

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<sup>25</sup> Thomas Obel Hansen, 'The Vertical and Horizontal Expansion of Transitional Justice: Explanations and Implications for a Contested Field' in Susanne Buckley-Zistel and others (eds), *Transitional Justice Theories: An Introduction* (Routledge 2014) 119.

<sup>26</sup> Olsen and others talk about the necessity for a broader transitional justice plan because TRCs by themselves have empirically proven to be not as successful. Tricia D Olsen, Leigh A Payne, and Andrew G Reiter, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy' (2010) 32(4) *Human Rights Quarterly* 980.

<sup>27</sup> Dukalskis (n 18).

<sup>28</sup> Evelyne Schmid, 'Transitional Justice: Information Handbook' (United States Institute of Peace 2008).

the aforementioned plan's credibility. For example, reparations alone 'can only assist, not generate or sustain, a critical reappraisal of the past'.<sup>29</sup>

### III. PROSPECTS FOR A US TRC

This section examines the feasibility of a US TRC by looking at the current political climate, as well as the social and political cohesion of the country.

The likelihood of a US TRC depends on two crucial points: (1) social cohesion (2) political cohesion. Social cohesion is a more horizontal concept, referring to interactions between citizens, whereas political cohesion is a more vertical concept, focusing on the relationship between citizens and the state. Social cohesion can be generated through bottom-up approaches that are being supported by the public and their wish to improve, e.g., race relations. Political cohesion is established either when top-down approaches are initiated by the government or when the government supports the efforts of civil society. Sometimes these two dimensions can even come together and reinforce each other.

Grassroots movements have advocated the idea of reconciliatory talks, which is evident in the initiatives that are already taking place, or the support that they receive from civil society and people in power. For example, district attorneys in Boston, Philadelphia, and San Francisco declared that they would form commissions addressing racial injustices and police brutality. The project is called the 'Truth, Justice, and Reconciliation Commission' to 'process and address the past injustices that simply were not given the time, attention, and dignity that they deserved'.<sup>30</sup>

Still, a considerable portion of people in the US (67%) is not in favor of individual fiscal reparations, which have been demanded for quite some

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<sup>29</sup> Ernesto Verdeja, 'A Normative Theory of Reparations in Transitional Democracies' (2006) 37 *Metaphilosophy* 449, 460.

<sup>30</sup> Truth, Justice, & Reconciliation Commission, (2020) <<https://www.tjrc.org/?source=glp-website>> accessed 21 November 2020.

time, to descendants of American slaves.<sup>31</sup> Some Americans do not see the connections between slavery, Jim Crow, and the contemporary structural injustices towards Black people. This dissonance could be due to the fact that federal efforts to provide fiscal redress are seen as unnecessary by some because slavery happened a long time ago.<sup>32</sup> Societal mobilization and advocacy can cause a shift in politics. Currently, there is a lack of social cohesion in the US on questions of reparations of past injustices. This is evident in the attitude of the general public and the government to this issue, for reasons of political orientation and feasibility questions. This is why many initiatives remain at city and not state level.<sup>33</sup> As Frum states, to this day, 'affirmative action ranks among the least popular thing that US governments do'.<sup>34</sup>

Political cohesion, i.e. governmental support for citizen's demands for justice, is even weaker. In a tense political climate, where former President Trump's 1776 Commission report dismissed systemic racism as identity politics, cries for a justice discourse became louder.<sup>35</sup> The lack of

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<sup>31</sup> Mohamed Younis, 'As Redress for Slavery, Americans Oppose Cash Reparations' (Gallup, 29 July 2019) <<https://news.gallup.com/poll/261722/redress-slavery-americans-oppose-cash-reparations.aspx>> accessed 16 February 2021; The US Congress refused for three decades to pass the bill *Commission to Study and Develop Reparation Proposals for African Americans Act* (116<sup>th</sup> Congress 2019–2020) [HR 40].

<sup>32</sup> PR Lockhart, 'What Slavery Reparations from the Federal Goverations Looks like in 2021' (NBC News, 12 May 2021) <<https://www.nbcnews.com/news/nbcblk/slavery-reparations-federal-goverations-looks-2021-rcna900>> accessed 17 January 2022.

<sup>33</sup> David Frum, 'The Impossibility of Reparations' (*The Atlantic*, 3 June 2014) <<https://www.theatlantic.com/business/archive/2014/06/thecity'sibility-of-reparations/372041/>> accessed 22 February 2021.

<sup>34</sup> Ibid.

<sup>35</sup> The commission was rescinded by President Biden. The President's Advisory 1776 Commission, 'The 1776 Report' (2021) 16 <<https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf>> accessed 22 February 2021.

governmental support, i.e. lack of political cohesion, especially during the Trump presidency, presses the nation more and more into partisanship. Yet, it is not necessarily civil society's job to provide justice through underfunded local initiatives. Politically cohesive initiatives take, successfully, place on a more local level: for example, the Asheville City Council in North Carolina voted unanimously for a resolution that apologized to its Black residents for the city's role in slavery, discriminatory housing practices, and other racist policies throughout its history. The resolution also envisions reparations in the form of investments in Black communities.<sup>36</sup> The city of Evanston, Illinois, followed this example and found innovative ideas to pay for the reparations, using tax revenues from newly legalized marijuana sales for funding.<sup>37</sup>

The lack of governmental support is palpable in debates about police violence.<sup>38</sup> The US faces a political atmosphere that demands change and recognition of injustices done to its Black community. The killings of George Floyd, Ahmaud Arbery, Breonna Taylor, and Rayshard Brooks are the latest in a persistent pattern of violence committed by state agents and citizens against African Americans.<sup>39</sup> These recent deaths have stoked strong

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<sup>36</sup> Nia Davis, 'Asheville Reparations Resolution Is Designed to Provide Black Community Access to the Opportunity to Build Wealth' (The City of Asheville, 20 July 2020) <<https://www.ashevillenc.gov/news/asheville-reparations-resolution-is-designed-to-help-Black-community-access-to-the-opportunity-to-build-wealth/>> accessed 22 February 2021.

<sup>37</sup> City Council of Evanston, *Establishing a City of Evanston Funding Source Devoted to Local Reparations*, 126-R-19, Evanston (14 November 2019).

<sup>38</sup> Rashwan Ray, 'How Can We Enhance Police Accountability in the United States?' (*Brookings*, 25 August 2020) <<https://www.brookings.edu/policy2020/votervital/how-can-we-enhance-police-accountability-in-the-united-states/>> accessed 17 January 2022.

<sup>39</sup> Elle Lett and others, 'Racial Inequity in Fatal US Police Shootings, 2015–2020' [2020] *Journal of Epidemiology and Community Health* *jech* <<https://jech.bmj.com/lookup/doi/10.1136/jech-2020-215097>> accessed 13 November 2020; Felicia Campbell and Pamela Valera, 'The Only Thing New Is the Cameras': A

requests to end police brutality and structural racism. 2014 was a turning point in the national conversation around police violence after the killings of Michael Brown, Laquan McDonald, and Eric Garner. Protests erupted in Ferguson, and a new movement for racial justice was established under the banner of BLM. What was true in 2014 is still valid in 2022: there are still symptoms of a centuries-old pattern of white supremacy in America, which the government does not sufficiently address.<sup>40</sup>

Structural issues, such as US police officers' protection through qualified immunity, impede political change that could lead to cohesion. Qualified immunity is a judicial principle that protects police from lawsuits unless the plaintiff can show that police have previously been found guilty of violating a person's right in the same way.<sup>41</sup> Nevertheless, a right is not fully established until an officer has been successfully charged for violating that right, opening a vicious circle that is hard to break because there are no precedents. The lack of political cohesion, i.e. lack of governmental support, is also the problem in the 'George Floyd Justice in Police Act' Bill, which is now with the US Senate and aims to reform police's qualified immunity, but splits opinions between Democrats and Republicans.<sup>42</sup>

If the government endorses a US TRC, the TRC could be the place of information and clarification. Through an open debate that touches upon the current issues marginalized people face and that sets the historical record

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Study of US College Students' Perceptions of Police Violence on Social Media' (2020) 51 *Journal of Black Studies* 654 <<http://journals.sagepub.com/doi/10.1177/0021934720935600>> accessed 13 November 2020.

<sup>40</sup> Campaign Zero 2020, <<https://www.joincampaignzero.org/>> accessed 22 November 2020.

<sup>41</sup> *Harlow v. Fitzgerald*, 457 US 800, 818 (1982). On April 20th, 2021, Derek Chauvin, the police officer that murdered George Floyd, was convicted on all counts of murder. Stephen Collinson, 'The Law Delivered Justice to George Floyd. America's Political Leaders Are up Next' (CNN Politics, 21 April 2021) <<https://www.cnn.com/2021/04/21/politics/joe-biden-derek-chauvin-trial-verdict/index.html>> accessed 17 January 2022.

<sup>42</sup> Collinson (n 41).

straight on how Black Americans became marginalized, the general public may be more inclined to support policy changes. First and foremost, the TRC could act as a way to confront American racism. A chance for Black Americans to speak up. A desirable secondary goal would be that a TRC could allow Americans to learn about the unfair treatments of marginalized people and why improvement is needed, and the wide gaps in attitudes and perceptions on race could potentially be altered. Although civil society organizations can mobilize the masses, governmental support is still necessary to form a successful TRC.

#### IV. REFLECTING ON OTHER TRCS

In this section, the article compares the US setting with other (international) TRC examples. These cases were chosen because they show similarities in historic wrongs, culture, and social/political division. Positive and negative aspects of the cases will be highlighted to draw inferences for a US TRC through a best practice approach. The following section will help show how some of these TRCs – namely South Africa, Canada, and the Greensboro TRC – have managed to find solutions for similar issues.

The South African TRC provided a way to address the country's socio-historic legacy. Its approach worked on a victim/perpetrator basis, making the proceedings before the TRC very individualized.<sup>43</sup> Consequently, the focus was on the crimes of Apartheid rather than on Apartheid itself. There was consensus that Apartheid was a 'crime against humanity', but only its symptoms or consequences were examined.<sup>44</sup> Yet, by putting the emphasis solely on crimes committed, the TRC failed to hold accountable people that *prima facie* did not feel responsible for the nation's state of Apartheid because

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<sup>43</sup> Mahmood Mamdani, 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)' (2002) 32 *Diacritics*, 33 <<https://philpapers.org/rec/MAMA0I>> accessed 11 June 2021.

<sup>44</sup> *Ibid.*

they did not actively commit crimes, but were rather bystanders. In a US TRC, the process should not be individualized, meaning that the bigger picture, namely the problems in institutions, actions, and laws, should be at the center and their effects on the present and future. Only by addressing the whole nation, through enhanced publicity, and by dissecting the US's structural problems will a US TRC honestly speak to its people and create a better understanding for social cohesion.

Canadian redress has been lobbied for by the affected groups, similar to the US. The emergence of grassroots movements was one of the catalyzing factors for the Canadian TRC.<sup>45</sup> It resulted from a large class-action lawsuit by Indigenous peoples and organizations and was a component of the Indian Residential School Settlement Agreement (IRSSA),<sup>46</sup> which could also be a possible route for the US to achieve political cohesion. Some might assume that the Canadian TRC was simply a way for the government and for churches, who were involved in the funding and operation of those schools, to circumvent retributive justice. However, it became apparent with time that a national discourse was indeed needed to offer survivors a platform.<sup>47</sup> The IRSSA also included financial compensation in various forms. The timing of the reparations became problematic when the reparations were separated from the TRC, because some survivors had not yet had the chance to speak about their trauma in counseling, which made them feel

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<sup>45</sup> Rosemary Nagy, 'Settler Witnessing at the Truth and Reconciliation Commission of Canada' (2020) 21 *Human Rights Review* 224; Matt James, 'A Carnival of Truth? Knowledge, Ignorance and the Canadian Truth and Reconciliation Commission' (2012) 6 *International Journal of Transitional Justice* 192.

<sup>46</sup> The IRSSA recognized the damage inflicted on Indigenous peoples by Canadian residential schools and established a multi-billion-dollar fund to help former students in their recovery that included a TRC, as per applicants' wishes. *Indian Residential Schools Settlement Agreement* <<https://www.residentialschoolsettlement.ca/settlement.html>> accessed 23 February 2021.

<sup>47</sup> *Ibid.*

dissatisfied.<sup>48</sup> Separating reparations from an overarching context that may include legal proceedings and a TRC may give the material compensation connotations of hush money. TRCs and reparations complement each other. If used nationally rather than locally, TRCs could recommend reparations in their final report to alleviate 'the consequences of suffering for those most directly affected'.<sup>49</sup>

One motivation for a Canadian TRC was to re-educate and re-write the ignored chapters of the country's history. The TRC managed to create shared views between Indigenous and non-Indigenous people. A 2019 study found that both believe that the process of attaining reconciliation should be advanced.<sup>50</sup> There is also recognition within Canadian society of the gaps in living standards between Indigenous and non-Indigenous people and the need to address them.<sup>51</sup> Additionally, most Canadians support several specific policies that could improve Indigenous well-being and advance reconciliation, such as increases in government funding for Indigenous schools and the transfer of self-government powers to Indigenous communities.<sup>52</sup> TRCs may positively contribute to enhancing understanding between the parties in conflict or in civil society at large for

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<sup>48</sup> Brandon Hamber and Richard A Wilson, 'Symbolic Closure through Memory, Reparation and Revenge in Post-Conflict Societies' (2002) 1 *Journal of Human Rights* 35, 16; Courtney Jung, 'Canada and the Legacy of the Indian Residential Schools: Transitional Justice for Indigenous People in a Non-Transitional Society' (2009) 295 *Aboriginal Policy Research Consortium International (APRCi)* 3 <<https://ir.lib.uwo.ca/aprci>> accessed 23 February 2021.

<sup>49</sup> Luke Moffett, 'In the Aftermath of Truth: Implementing Truth Commissions' Recommendations on Reparations - Following Through for Victims', in Jeremy Sarkin (ed), *The Global Legacy of Truth Commissions* (Intersentia 2019) 143.

<sup>50</sup> Environics Institute, '2019 Survey of Canadians: Toward Reconciliation: Indigenous And Non-Indigenous Perspectives - Final Report Confederation of Tomorrow' (2019) <<http://irpp.org>> accessed 27 October 2020.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*



taking reconciliatory steps and increasing government spending on minorities (such as the Black community in the US).

The Canadian example shows that a TRC can enhance the majority's support for the rights of minorities. The example also shows that sometimes a TRC can be established as a compromise, i.e. a settlement, through lawsuits. While this could be perceived as a circumvention of legal responsibility, a national truth discourse can be a means of restorative redress, too.

The initiatives mentioned in Part III, grassroots movements and cities' plans to redirect their budget, represent attempts to find community-based solutions to a national problem. This is the more practical solution due to the US's size, the number of people involved, and the present political climate. The Greensboro TRC is a prime example of a TRC that emerged because of a lack of political cohesion. There was a lack of political will and insufficient funding to extend it in terms of the commission's size and the proceeding's length.<sup>53</sup> The TRC, which came about after the Greensboro massacre (an ambush by the Ku Klux Klan and Nazi party members on a coalition of racial and economic justice protesters in North Carolina in 1979), emerged through a bottom-up approach. It managed to bring the perpetrators, victims, survivors, and their families together into a public forum to discuss not only the events of the day but also, and more importantly, the systemic racism that led to it. However, the recommendations of the TRC were not listened to, let alone implemented, by the city of Greensboro, which instead rejected the final report.<sup>54</sup> Although a community TRC based on strong social cohesion has its benefits, it can also lead to funding issues and obstacles to implementing the recommendations. These consequences result from a lack of political

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<sup>53</sup> Lisa Magarrell and Joya Wesley, *Learning from Greensboro - Truth and Reconciliation in the United States* (University of Pennsylvania Press 2010).

<sup>54</sup> Marnell Wesley and Lisa Joya, *Learning from Greensboro: Truth and Reconciliation in the United States* (University of Pennsylvania Press 2008) 138-39.

cohesion, in this case the lack of governmental support. Thus, a future US TRC needs enough support from the government and backing from civil society for it to thrive. After the election of Joe Biden, chances might be higher for TRC proposals to be endorsed by the government.

## V. CONCLUSION

To conclude, the feasibility of a TRC in the US is tied to many variables. This article has argued that African Americans deserve truth-telling concerning the US' past and recent instances of discrimination and police violence. The current political momentum can be used to start initiatives on either a local or national level. Ideally, it should be harnessed to support a national transitional justice plan that operates on a federal/regional level and gives as many people as possible the chance to interact and adapt to local conditions and needs. Such a plan is vital to offering social protest a platform, changing schools' curricula, coordinating media outreach, and administering reparations. Having a platform like a TRC can promote comprehension by non-Black Americans for the reasoning behind reparations and other measures. The issue of reparations has been raised many times before the government and in (primarily African American) scholarship. On a national level, these pleas have so far remained unsuccessful. However, the plans that have appeared over the past few years in the US on a local level could provide a blueprint for a national plan for reparations and wealth redistribution in the US.

The article has compared certain obstacles to a US TRC with those faced by other international TRCs established in Canada and South Africa, and has shown the benefits of using a TRC to take the first step into a justice discourse. Criminal convictions can happen alongside a TRC, combining retributive with restorative justice. This article does not claim that a TRC is an answer to all questions and issues surrounding human rights violations, but it is an alternative to traditional means of justice that can start a discourse. The (inter-)national examples also show that a TRC does not automatically

solve deep-rooted issues and achieve justice. The truth that emerges through a TRC process, however, might contribute to societal changes in ways that other mechanisms could not achieve. The emergence of more and more initiatives shows that the time is right for a truth-seeking endeavor.