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## Combating Systemic Racism With Truth Commissions

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Combating Systemic Racism With Truth Commissions

by

Katherine Miles

A Thesis

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University of Missouri-St. Louis

in partial fulfillment of the requirements for the degree

Master of Arts

In

Philosophy

Advisory Committee

William Dunaway , Ph.D.  
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## **Introduction**

The United States has struggled for years combating the different oppressive powers affecting Black Americans. In this paper, I argue that truth commissions realize the philosophical values found in transitional justice therefore making it an adequate tool to combat some of the negative psychological effects caused by systemic racism. One of the main philosophical principles found in transitional justice is the importance of correct assignment of moral responsibility; this is also evident in truth commissions. This is why I believe truth commissions are required to combat the psychological anguish that arises from systemic racism in the U.S.

In contrast, in the U.S., criminal justice fails to uphold the philosophical values found in retributive justice. Since the effects of racism have tainted our criminal justice system, it fails to uphold the philosophical principles and values it was built upon, such as the correct assignment of moral responsibility, desert, and justice by retribution. Deterrence and justice by retribution are also aspects of the criminal justice processes; however, there have been many times when these principles are discarded due to systemic racism. Now the criminal justice system is merely a reflection of systemic racism rather than a way to solve some of its issues.

To successfully showcase that a process that stays committed to its philosophical principles is needed to combat systemic racism's negative psychological effect, this paper will be separated into five parts. The first part of this paper will be focused on

defining and explaining important key terms such as systemic racism, racial gaslighting, transitional justice, and the process of truth commissions. In the first part, I will also describe why a participant's or a portion of society's psychological response to a process of justice provides evidence as to whether the trial or commission satisfies its philosophical principles.

The second part of this paper will focus on the following questions: What philosophical principles are truth commissions meant to uphold? I will answer this question by describing the main philosophical principle that I believe is at the base of transitional justice which is the correct assignment of moral responsibility. In the third part, I will describe the psychological effect that truth commissions have on its participants in general, as well as the effect that the first U.S. based commission, the Greensboro TRC, had on its participants. The evidence revealed in the third part will be used to demonstrate that truth commissions are committed to upholding its main philosophical principle.

The fourth part of this paper will focus on the following question: What philosophical principles are the criminal justice system in the U.S. meant to uphold? This question will be answered by explaining the main philosophical principles I believe are at the base of retributive justice. In the fifth part, I will describe the psychological impact that the criminal justice system has on its participants, primarily focusing on Black Americans. The evidence found in the fifth part will then be used to showcase how the criminal justice system in the U.S. is drifting away from its philosophical principles.

After the evidence of the psychological effects that truth commissions and criminal trials have on victims of systemic racism is gathered, the conclusion will compare each process's values and how they are currently upholding these values by looking at their psychological effects on participants and society as a whole. Overall, this paper aims to showcase which process is a better fit to combat the negative psychological effects of systemic racism on Black Americans'. However, it is also meant to demonstrate the benefits of having a process that stays true to its rich philosophical foundation.

I have to acknowledge that there has also been debate on the proper nature of political philosophy. Some may suggest that some political philosophies are too abstract and don't really have any tangible advice or useability in the society we find ourselves in. While in my studies I was introduced to an article titled: *Ideal vs. Non-Ideal Theory: A Conceptual Map*. Personally, at first glance, this paper didn't seem to be able to fit into the argument that I had for my own thesis. However, at a further glance, I think it is a piece of literature that is important to analyze when dealing with political philosophy in general. There needs to be a standard for political ideologies in order for us to properly implement them and understand all of their implications. I consider Transitional Justice to be a politically motivated philosophy that focuses on a type of end-state goal. This according to Valentini would place it under the category of an "non-ideal political theory".

*Keywords: systemic racism, transitional justice, truth commissions*

### **Part One: Key Terms & Why Psychological Response Matters**

For our purposes, we will define systemic racism as "the ways in which institutions, housing, Government, Education, Media, Business, Health Care, criminal justice, Employment, Labor, Politics, Church – perpetuate racism."<sup>1</sup> Stokely Carmichael explanation of systemic racism in 1967. (Gonzalez, 2007) The Anti-Defamation League defines racism as “the marginalization and/or oppression of people of color based on a socially constructed racial hierarchy that privileges white people.” (Anti-Defamation League, “Racism” 2020) Therefore, systemic racism can be seen as the process of racist ideologies governing the ways systems and institutions mistreat members of marginalized groups, primarily Black Americans. Examples of systemic racism include the following: higher instances of arrest for the same crime, disproportionate use of excessive and lethal force, lower hiring rates than white candidates, and poor access to educational, financial, housing, and healthcare resources.

Systemic racism is the product of explicitly racist acts and policies, one example of systemic racism affecting society can be seen by looking at the existence of redlining. Redlining is an example of an explicitly racist practice that has affected the present and future; the practice started in 1930. It was the process of banks denying mortgages to people of color and people who lived in mainly Black neighborhoods. (Brooks, 2020) Redlining was an explicitly racist policy that has resulted in future Black families having very little generational wealth, keeping more Blacks impoverished without adequate

housing. Even though now outlawed, the practice of Redlining has impacted the present; not only are cities like Chicago still deeply segregated, but there is still a housing crisis in Chicago's Black communities.

Transitional justice showcases the different ways countries and organizations evolve from conflict and repression to a more just state.<sup>2</sup> Transitional justice addresses systematic human rights violations whose nature makes it difficult or nearly impossible to address solely through the normal justice system. The goal of transitional justice is that the true transition from past oppressive systems occurs. Transition would require dismantling the oppressive structure and addressing current-day problems that may have developed because of its previously oppressive structure. Transitional justice measures are focused on addressing wrongdoings in order to improve the quality of life of the victims by remedying the damage caused by the past oppressive structure. Examples of transitional justice in the U.S. include police reform, reparations, prosecution initiatives, governmental reformations, and truth commissions. (Murphy, 2020)

Truth commission's are defined as non-judicial investigations made to determine the actualities, true causes, and social ramifications of past human rights abuses. Here are a few main characteristics of truth commissions: truth commissions gather evidence and establish historical context. They focus on the specific rights that protect a person's physical and mental integrity. They can gather evidence for long extended periods, and while gathering evidence, truth commissions do so in a victim-centered approach. Lastly, in the process of truth commissions, there must be an observance of a code of conduct; this is so gathering evidence still respects the people who need to give testimonials, respecting their human rights and upholding a standard of ethics. The

evidence and discoveries revealed in truth commissions can contribute to institutional reform, making sure new atrocities do not occur while also making sure painful histories do not repeat themselves. This allows societies afflicted by past atrocities to literally "transition" into a more fair and just society since the truth commission allows policymakers to address and rewrite previously held laws that allowed the atrocities to occur in the first place. The information found in truth commissions can help prevent atrocities by allowing societies to reconcile with their past and by recommending legislative, structural, or other changes intended to prevent atrocities from occurring.

In the 21st century, what a truth commission focuses on is starting to evolve and expand. Specifically, truth commissions are now examining violations of economic, social, and cultural rights. Although truth commissions are starting to focus on a wider range of areas, they still require independence, credibility, and effectiveness to be established. This is of utmost importance since truth commissions' effectiveness requires public support and official legislative change to prevent these atrocities. Truth commissions require the support of national political authorities because, without this support, the evidence-gathering phase will become increasingly difficult. According to Eduardo González and Howard Varney in the book, *Truth Seeking Elements of Creating an Effective Truth Commission*, truth commissions processes are not simple.<sup>3</sup> Usually, the executive or legislative branch of government establishes a truth commission. Also, truth commissions are established during times of political change or division.

One major objection to using truth commissions to combat a victim's psychological distress could be that it's the wrong tool. Instead, why not implement



standard methods of therapy or counseling, something in the field of psychology rather than in the field of law, political science, or philosophy?

The problem with this is that the psychological distress caused by systemic racism is the perceived perpetual helplessness and the inability to process the difficult emotions that systemic racism causes. (Abdullah, Graham, Calloway, West, 2017) Even if a therapist can allow the victim to understand that their pain is validated, the society afflicted by systemic racism would constantly reopen the wounds that the victim is trying to correct in therapy. It is possible to combat some of these psychological stressors with therapy or counseling; however, this does not stop systemic racism from having the ability to continue to psychologically distress victims. I argue that a huge portion of this psychological distress inflicted upon systemic racism victims comes from racial gaslighting.

Angelique Davis and Rose Ernst defines racial gaslighting as "the normalization of a white supremacist reality by pathologizing those who resist." (Davis and Ernst, 2017) Examples of racial gaslighting include refusing to listen to victims of racist acts, blaming victims, or denying the reality that oppressed group members are oppressed. Gaslighting often causes people to have feelings of confusion and powerlessness; since it is the constant denial and downplaying of someone's view on the reality of a situation. (Duignan, 2019) Racial gaslighting causes the same feelings of powerlessness. Arguably racial gaslighting has a much more detrimental effect on victims, especially if the larger population accepts the lies perpetrated from racial gaslighting. Racial gaslighting can happen at the interpersonal level, through depictions in the media, and even in the justice system. An example of racial gaslighting occurring in the criminal justice system is

prosecutors ignoring claims that a criminal act was racially motivated. Systemic racism psychologically impacts Black Americans in many indirect and direct ways; however, racial gaslighting is one of the tools of systemic racism that directly impacts Black Americans' psychological health.

Both truth commissions and criminal trials were created to have a certain effect on their participants. For both, the goal is to ignite some sort of psychological response in its participants; for truth commissions, it is to validate victims, and for criminal trials, it is to deter criminals from committing crimes again. These processes are deemed successful if they can ensure their intended psychological effect on the correct actors. This is primarily why a participant's psychological response indicates whether the trial or commission correctly upholds its philosophical values. The philosophical value of justice, truth, deterrence, validation, and the assignment of moral responsibility in these trials and commission has credence if the participants also experience such proceedings' intended psychological effects.

### **Part Two: What Philosophical Principles are Truth Commissions Meant to Uphold?**

The main philosophical principle in transitional justice is the importance of correct assignment of moral responsibility; this is also evident in truth commissions. To justifiably establish a telling of history, the correct assignment of moral responsibility is crucial, making it one of the fundamental philosophical concerns in transitional justice. By correct moral assignment, I mean establishing who is responsible for committing the wrongdoing, determining who is responsible for repairing the effects caused by the wrongdoing, and determining who the victims are. The assignment of moral

responsibility in transitional justice allows us to decide who is responsible for police reform, the distribution of reparations, and which people need to be present at truth commissions. In order for transitional justice processes to work how they were intended, there is a need to establish moral actors with by establishing victimhood and determining blameworthiness.

In the case of systemic oppression, it becomes a bit more muddled when assigning specific actors responsible for such a wide array of issues. Moral responsibility is usually ascribed to someone who knows of wrongdoing and has the power to stop that wrongdoing.<sup>4</sup> In the case of systemic oppression, I argue that members of society that benefit from others' oppression even without knowledge of this benefit are morally responsible for repairing the inequities that exist. They are morally responsible because although they may not be aware, they hold a position of power in society, which gives them the correct tools to mend some of the existing inequities. Not only does this mean that they are morally responsible for becoming informed, but they are morally responsible for acting in a way that diminishes the intentional or unintentional oppression of others.

Much of the racial tension we see in the U.S. results from the lack of acknowledgment that the societal system in which Blacks find themselves in is an unfair system. This lack of acknowledgment from the country itself has made it extremely difficult for the U.S. to transition from its racist roots' brutal reality. These tensions also increase because many people in privileged positions still remain unaware of the privilege they have. This unawareness allows these inequities to continue to exist; therefore, those unaware also bear an amount of moral responsibility in becoming

informed. Since truth commissions display an account of gathered information, this allows participants and society members to acknowledge that an atrocity occurred.

Truth commissions often allow victims to understand the intrinsic value of the type of wrong they have experienced while also providing knowledge and information to people who benefit from that wrong, allowing them to fix the issue correctly. This gives victims and perpetrators the ability to notice the past's moral ramifications and its effect on their present. Colleen Murphy states in chapter 4 of her book *The Conceptual Foundations of Transitional Justice*, that "Committing a wrong and having been wronged are morally significant in their own right. Ignoring the intrinsic moral claims associated with being a perpetrator of wrongdoing and a victim of wrongdoing would result in a theory that failed to ensure that transformation was justly pursued."<sup>5</sup>

Truth commissions honor this by clearly and complexly assigning responsibility to a system of preparators, allowing victims to express their experiences due to a system's unjust/inhuman policies. Through thorough investigations and allowing victims to testify their experiences, truth commissions can uphold the philosophical principle of assigning correct moral responsibility by carefully and articulately gathering evidence from victims and compiling it to show them to members of society. The establishment of a truth commission reveals the moral assignment made during the evidence seeking phase. During the evidence-seeking phase, the moral assignment is occurring; however, a truth commission allows that assignment to be made public. Since these experiences are made public, this allows victims to have a sense of validation, psychologically mending the wounds of racial gaslighting.

### **Part Three: Psychological Impact of Truth Commissions on Participants and Society**

Some psychological evidence suggests that these commissions act as a cathartic experience for victims, allowing them to process their experienced trauma adequately. In contrast, other evidence suggests that these types of trials can sometimes retraumatize victims. (Mendeloff, 2009) It is important to mention that each truth commission is unique since the formation of each arises from different atrocities that society is currently battling. Worldwide, more than 35 truth commissions have been established since 1970, each commission resulting in different psychological effects on its participants. (Hayner, 2011) Most of the empirical evidence on the psychological effect of truth commissions were gathered from commissions that occurred outside the U.S. However, we witness an interesting comparison when comparing the psychological effect truth commissions have had on participants in other countries versus the emotional impact similar commissions have had on Black American participants.

One example of truth commissions having a negative psychological impact on the participant's health can be found in Rwanda during the Gacaca court, which started in 2005. A study was done by Brounéus showcasing interviews with women who had participated in the Gacaca, which was a type of truth commission proceeding done to gather evidence on the horror of the Rwanda genocide.<sup>6</sup> Brounéus's study aimed to gather evidence on the participants' psychological effects from a commission of this manner. From her gathering, the women described the experience as isolating and retraumatizing. (Brounéus, 2008)

However, in the U.S., the psychological effect that truth commissions have had has mainly been positive, and in recent times truth commission processes have been

ferently sought after. One of the first established truth commissions in the United States was in Greensboro, North Carolina. The Greensboro TRC was created in response to the tragedy that occurred in Greensboro, North Carolina, on November 3<sup>rd</sup>, 1979. On November 3<sup>rd</sup>, the KKK and a group of American Nazis attacked a group of anti-klan protestors, shooting and killing five people. (Fowler, 2019) Local News stations recorded the shooting, which clearly showed that the KKK and the American Nazis were the aggressors. However, even with the tragedy displayed publicly, the assailants were eventually acquitted since the jury in both established criminal trials decided that they acted in self-defense. Because of these events, the Greensboro TRC was created.<sup>7</sup> After the tragedy of November 3<sup>rd</sup> and before the establishment of the Greensboro TRC, racial tensions became more apparent; White Americans and Black Americans had very different and conflicting stories as to what occurred. This only increased the need for an official fact-finding process to create a fact-based retelling of Greensboro's events in 1979.

In an article done by David K Androff, the findings on the psychological effects on the victims who testified at the Greensboro TRC were gathered. In the article presented by Androff, the victims were the survivors or people who lost someone to the violence. It is shown that many participants in the Greensboro TRC reported healing and validating experiences from their participation.<sup>8</sup> Seventeen victims of the Greensboro shooting were selected to better understand the psychological impact that testifying had on them. At the start of the truth commission, many selected participants initially reported feeling immense fear and anxiety. This fear and anxiety arose from the fear that somehow their experience and truth would be misconstrued. In order to maintain their

anonymity, their names were not revealed. One of the participants said, "I had to be so careful how I said things because I did not want to be misrepresented. I wasn't sure what the reaction would be from the public if it was negative."(Androff, 2018)

Even though the beginning stages of the truth commissions caused much anxiety to participants, after testifying, the participants reported to the interviewer that the experience was "wonderful and healing." Many participants stated how their involvement in the truth commission enabled a greater understanding of their role in the events. Respondent E said, "It was very educational and empowering for me." Androff's findings indicate that many participants showed that their participation in testifying allowed them to address the "emotional and psychological issues affecting them in unconscious and subconscious ways." Several other participants reported that the process of writing and testifying allowed them to release anger and pent up frustration. Respondents A and G compared the experience to a counseling session. (Androff, 2018) Another important finding was that the participants in the Greensboro TRC reported that they were treated far better in the truth commission than they were in the media and criminal trials.

The findings of the psychological impact of the Greensboro TRC showcase the benefits that these types of commissions can have on its participants. An interesting thing I noticed is that many of the statements, fears, and feelings demonstrated by the participants of the Greensboro TRC mimic those of victims of gaslighting. Elena Ruíz argues that gaslighting can become a structural phenomenon, especially within oppressive societies, creating racial gaslighting.<sup>9</sup> The Greensboro TRC acted to combat the racial gaslighting that many victims of the incident experienced by their community

and the criminal courts, who dismissed their claims and acquitted their perpetrators. Much of the pain that Black Americans face when it comes to systemic racism is the denial of their traumatizing experiences.

Although some truth commissions in other countries have been seen to be retraumatizing to victims, that does not seem to be the reality for Black Americans in the U.S. Recent events in 2020 have showcased the effects of racial gaslighting. One of the major demands made by the Black Lives Matter movement today happens to be that the U.S acknowledges the struggles that Blacks face. (Yates, 2016) To preserve their livelihood and showcase that discrimination based on race still occurs, Black Americans have formed a sort of unofficial revealing of these atrocities. With social media's power, we now see hundreds of videos taken by Black citizens themselves depicting the harsh realities of harsher treatment by law enforcement and other injustices. Black Americans have been forced to document this type of evidence themselves since the society in which they find themselves constantly denies these realities. Even with documentation of these abuses, many people blame the victim or deny that violence was racially motivated, adding on to the experienced trauma.

One prominent history-defining video that displayed police violence was the murder of George Floyd. On May 25<sup>th</sup>, 2020, Darnella Frazier, a 17-year-old, recorded the incident, which showed Derek Chauvin kneeling on George Floyd's neck. She posted the video onto Facebook, and from there, it instantly went viral. The video sparked hundreds of protests nationwide and exposed the reality of violence resulting from racism. (Nevett, 2020) Although the recording of Floyd's murder was not part of any official fact-finding commission, it played an influential role in the nationwide



discussion of systemic racism's ramifications. The recording also led to the arrest and charging of all of the officers involved in his killing. The video depicting Floyd's death may be very traumatizing to watch for many, especially for Frazier. However, revealing that video has allowed the U.S. to have a very needed discussion on its current race relations and issue of systemic racism. If one video could spark such a wave of conversation and action, the establishment of an official truth commission in recent times may have the ability to result in tangible change.

As mentioned earlier, truth commissions can be retraumatizing for victims. I believe that the posting of George Floyd's death is very similar to the experience that some participants in truth commissions have. Truth commissions would combat the continued psychological anguish caused by society's dismissal of this violence. Frazier made a statement that the whole experience was extremely traumatizing, and even though she was terrified, she felt that documenting the events was the right thing to do. In one of her statements, she says, "that could have been one of your loved ones, and you would want to see the truth as well." (Navett, 2020) After the release of the video, there was a widespread feeling of shock. However, many of the people who were interviewed on how the video made them feel state that although witnessing the violence was traumatic, the conversation that it brought to the U.S. was very encouraging. Since the video finally forced people to address systemic racism, vindicating the experience of many Black Americans.

Therefore, we can see that the formation of truth commissions in the U.S. to combat instances of systemic oppressions would psychologically help Black Americans and satisfy the subconscious need many Black Americans have for validating their

experiences. The psychological impact on Black Americans who testify and Black Americans who merely witness the commission may be different, but arguably both experiences would allow Black Americans to have their experienced reality of systemic racism validated. This is mainly because truth commissions can mend years of racial gaslighting's psychological wounds by actively fighting it through validating victims. This is seen by the commitment truth commissions have to assigning moral responsibility to those who deserve it and displaying those worthy of blame to members of society. In this sense, we can see that in the U.S. specifically, the formation of a truth commission for combating systemic racism's psychological effects fulfills what Black citizens are already attempting to establish: the formal acknowledgment of systemic racism. (Dunbar-Travis, 2020)

Since racial gaslighting can occur at the societal level, questions of moral responsibility and dissecting the fallacies created with the intent to racially gaslight victims becomes an issue of being able to showcase and establish the truth adequately. Though truth commissions were not created to minimize the effects of racial gaslighting, it still achieves this by validating victims with the establishment of truth. One of the core overarching philosophical values of truth commissions then is the importance of truth. We can see the process of truth commissions holding true to this value by the effect the Greensboro TRC had on its participants and the overwhelming number of Black citizens pushing for an official truth/fact-finding process that vindicates their experiences. (Davis, 2014) Many oppressed individuals and groups seek out the formal acknowledgment of their oppression, almost as if it is a psychological need to validate their truth. Therefore, based on the psychological needs of oppressed persons in the

U.S., we can see that if implemented more often in the United States, truth commissions would demonstrate its commitment to its philosophical values. Truth commissions would establish the truth and display those morally responsible for wrongdoings to all of society.

#### **Part Four: What Philosophical Principles is the Criminal Justice System in the U.S. Meant to Uphold?**

To show that the U.S. criminal justice system is failing to satisfy the philosophical principles found at its foundation, I will first need to show the philosophical ideas, values, and principles found at the foundation of criminal justice. The philosophical principles used to construct what we know as our criminal justice system can be found in the theory of retributive justice. In his book *Placing Blame: A Theory of the Criminal Law*, Michael Moore states that "criminal law is a functional kind whose function is to obtain retributive justice."<sup>10</sup> Therefore, since criminal justice is one of the avenues in which retributive justice is achieved, looking into the philosophical values of retributive justice will reveal the core philosophical values of criminal law/justice.

Retributive justice is committed to following these three principles, 1: that those who commit certain kinds of wrongful acts, morally deserve to suffer an equivalent punishment; 2: that it is intrinsically morally good—good without reference to any other goods if some legitimate punisher gives them the punishment they deserve; and 3: that it is morally impermissible to punish the innocent intentionally or to inflict disproportionately large punishments on offenders.<sup>11</sup>

From the three principles that retributive justice must follow, we can see that retributive justice is concerned with the philosophical ideas of assigning moral responsibility, desert, and obtaining justice through the means of punishment. By looking at aspects of the three principles that retributive justice must follow, I will showcase that these philosophical ideas rest in the foundation and building blocks of retributive justice. These three principles show that the correct assignment of moral responsibility is necessary. By correct moral assignment, I mean the correct assignment of blame, responsibility, and victimhood.

The first principle states that those who commit certain wrongful acts morally deserve a proportionate punishment. This is insinuating that there is an assignment of blameworthiness based on the choices of the perpetrator. One of the main aspects of moral responsibility has to do with morally deserving praise or blameworthiness.<sup>12</sup> If moral responsibility is not correctly assigned, then the process of retributive justice is unjustifiable. This is because it should follow that those that deserve punishment deserve blame. This directly leads us to the philosophical idea of desert.

Desert, specifically the just desert theory of justice, is one of the key components of retributive justice. (Walen, 2020) The first principle states that a wrongdoer deserves punishment; however, the punishment must be proportionate to the crime. This principle is insinuating that in retributive justice, desert is dispensed by evaluating the properties of the action committed. This idea is further expressed in the third principle that retributive justice follows: it is morally impermissible to intentionally punish the innocent or inflict disproportionately large punishments on wrongdoers. The just desert theory posits that justice is achieved if the punishment fits the crime; however, it is

unjust for a punishment to be given to those undeserving of punishment. (Walen, 2020) Desert is one of the main philosophical ideas that allows those using retributive justice measures to determine whether or not justice has been achieved. The idea of desert leads us to the last and one of the main philosophical ideas displayed in retributive justice: obtaining justice through punishment.

Retributive justice is primarily concerned with achieving justice through punishment. In this sense, we can see a link between obtaining justice and vengeance for wrongdoing in retributive justice. Although the punishment for wrongdoing must be proportionate to the crime, it is still the case in this view that justice requires punishment to those who committed wrongdoings. From this, we can see that retributive justice is perpetrator-focused. Even if the victim of wrongdoing forgives the perpetrator, justice has not been achieved unless the perpetrator has received their deserved punishment. This displays that retributive justice holds the philosophical stance that justice is intrinsically linked to wrongdoers' punishment.

Moral responsibility, desert, and obtaining justice by retribution or punishment seem to be some of the main philosophical ideas used to argue for the usages of retributive justice. In the U.S., forms of retributive justice are implemented by the use of a supposedly outside morally objective force, this force being the criminal justice system. Although not a philosophical idea, impartiality is something that must be present if the process of retributive justice is to remain practical and justifiably enforced by the state. The mentioning of a "legitimate punisher" implies that whatever or whoever distributes the punishment for the act of wrongdoing should do so impartially. Impartiality is required when obtaining justice by retribution. Impartiality ensures that

the perpetrator receives the punishment they deserve rather than a punishment someone may assume they deserve from biases rather than facts.

Similar to how truth commissions are a process developed to further the goals of transitional justice, criminal law/justice was arguably developed to further the goals of retributive justice. The criminal justice system can be described as a system that enforces the law by the implementation of the police, the courts, and corrections.<sup>13</sup> Its processes are meant to be reflective of the ideals found in retributive justice. As described above, we can see that the philosophical ideas found in retributive justice concern themselves with moral responsibility, desert, and obtaining justice by punishment, all of which require impartiality to be justified. However, as I argue in the next section, the criminal justice system is failing to remain impartial due to the effects of systemic racism.

### **Part Five: Psychological Impact of Criminal Justice on Participants and Society**

There are many cases in the U.S where someone could argue that justice through retribution is achieved and achieved so in a defensible manner. However, there are far too many cases where the criminal justice system has been used to further systemic racism rather than achieve retributive justice. By looking at the current negative psychological effects the criminal justice system has on Black Americans, we can see that the original philosophy of justice by retribution has been lost and clouded by ideas of racism. Instead of looking to the criminal justice system for justice, Black American citizens are growing an overwhelming fear of unjust apprehension by police and even murder at the hands of police. The many instances of police brutality and racial

gaslighting in police violence cases make it increasingly difficult for Black Americans to trust the police and criminal justice system as a whole. This constant fear and mistrust of those who are supposed to serve justice can impact the psychological health of many Black Americans, and also showcases that the criminal justice system is failing at implementing just punishments.

Black Americans are three times more likely than white Americans to be killed by police. (Roper & Richter 2020) Black Americans are also five times more likely than are white Americans to be killed while unarmed.<sup>14</sup> Police killings of unarmed Black Americans might compromise mental health among other Black Americans through various mechanisms, including loss, increased fear of victimization, greater mortality expectations, increased anxiety, and anger and resentment reactions. Many of these outcomes are expressed by the vast majority of Black Americans participating in protests around the United States. (Williams, Tsai, Venkataramani, Bor, 2018) Total mistrust of the criminal justice system and its aspects are constantly growing; primarily, this mistrust has led to calls to defund police. In Amanda Geller's study, a link between aggressive policing practices such as stop-and-frisk and black men's mental health was observed. In this study, we see an increase in negative mental health outcomes due to these aggressive practices.<sup>15</sup> According to Alexander Tsai police killings of unarmed Black Americans arguably cause around 55 million excess poor mental health days among Black Americans. (Tsai, 2019)

The police are an essential component of the criminal justice system. Police are meant to apprehend violators of the law and allow courts to provide fair punishment. Therefore, since police hold such an intrinsic role in delivering justice, they must also have a sense of impartiality when apprehending suspects. However, we see that police are abusing their

power and allowing their racist biases to affect how they serve justice. Instead of allowing a fair trial, police are taking justice into their own hands. However, this justice is not justice based on the principles of retributive justice; this is justice fueled by racism's fears and beliefs. The fact that there is an overwhelmingly large amount of police killings of unarmed Black citizens shows a false assignment of threat solely based on a person's skin. We begin to see that the criminal justice system fails to abide by the philosophical principles it was built on by also looking at the level of psychological damage that its procedures have caused Black citizens. The above data showcases that due to law enforcement's harsh treatment, not only do Black citizens fear the police, but the processes in which they apprehend suspects have proven to psychologically distress members of the Black community. It could be argued that these police officers are simply just not following protocol and, therefore, are not representing the principles that the criminal justice system upholds. However, when charges are brought against officers for misconduct, we often see little to no punishment for their offenses.

In many cases involving excessive force, the officer may be put on leave, but their punishment rarely fits their crime. This fact is common knowledge for many Black Americans, increasing the number of negative mental health outcomes. Therefore, from the evidence provided on police misconduct and the negative mental health outcomes stemming from aspects of systemic racism plaguing the criminal justice system, we can see that the criminal justice system fails to uphold the philosophical principles it was built on.



### **Conclusion**

The following metaphor may be able to coherently conclude the importance of staying true to one's philosophies. Let us say there is something wrong with three patients; the patients represent society. All three patients have the same psychological disorder; this disorder represents systemic racism. There are three doctors assigned to each patient, Dr. A, Dr. B, and Dr. C. Two doctors, Dr. A and Dr. B, provide medication to deter the effects of this disorder. Dr. C implements therapies shown to allow a patient to overcome the disorder's effects. The doctors represent the implementation of principles found in the philosophies of retributive justice and transitional justice in order to reach a more just society. Medication representing criminal justice, therapies representing transitional justice. The schools at which they learned how to administer treatment represent the school of retributive justice for administering medication and the school of transitional justice for how to administer therapy.

At the school of retributive justice, you have to use the correct dosage for the medication to work. At the school of transitional justice, in order for the therapy to work, you must implement the correct type of therapy. Let us say the medication at the right dosage does work and deters the progression and effect of the disorder of systemic racism. However, Dr. B ignored the principles of administering the correct dosage, following some other principle they think is correct, which causes the disorder to worsen. Dr. C uses the correct type of therapy, which also helps the patient overcome the disorder's effects. Both schools value the same thing: the rehabilitation of patients; however, they use different techniques and must follow specific principles in order to work. Once Dr. B did not abide by the principles of administration, it made the problem worse. In Dr. B's case, the patient has worse

symptoms and now finds ways to get the same medication illegally, causing a new addiction and dependence problem. Now Dr. B's patient uses the drug as a tool to get inebriated.

This metaphor explains what I argue is occurring in the U.S. with the criminal justice system. I do not consider the philosophical principles found in retributive justice to be insufficient; if its principles were followed correctly, I believe retributive justice could achieve defensible justice. However, I believe the problem arises when the principles of retributive justice are not followed but still attempted. Like Dr. B, the U.S. has clouded the principles of retributive justice with ideas of racism. This metaphor reflects how the criminal justice system is psychologically impacting society, specifically the African American community.

In conclusion, we can see that truth commissions uphold the philosophical principles on which it was built, those principles coming from the philosophical foundation of transitional justice. We can assert this by looking at the process's overall psychological effect on Black Americans. Although not impossible, it becomes increasingly difficult for the effects of systemic racism to corrupt the processes of transitional justice since it remains committed to the philosophical beliefs and to the principle that correct moral assignment is crucial for achieving peace and justice. For many Black Americans, combating systemic racism's psychological effects comes in the form of justice-seeking. Therefore, this yearning for justice can either be in the form of retribution or achieving peace. However, we see that when Black Americans seek justice by retribution through the criminal justice system, their cases are dismissed, or the punishment given to the individual preparators is not proportionate to the crime. This lack of punishment and dismissal then becomes a form of racial gaslighting.

One of the very tools for achieving justice through apprehension has also failed to remain true to its philosophical ideas. Instances of police brutality fueled by racial discrimination and Black Americans' false criminalization are examples of systemic racism at play, not retributive justice. Arguably the racist ideologies and philosophies that have built the framework of systemic racism can be seen in how the criminal justice system treats Black Americans. This mistreatment results in many negative psychological effects caused by fear, a lack of trust, and racial gaslighting. By the overwhelmingly high amounts of negative psychological outcomes from Black Americans experiencing or witnessing parts of the criminal justice at work, primarily in the apprehension stage, we can see that the criminal justice system is not following the philosophical principles it was founded on.

One of the main and most important lost principles comes from the third principle of retributive justice. That principle is: it is morally impermissible to punish the innocent intentionally. Until a fair trial is conducted, all of those apprehended should be protected under this principle. I believe this principle later evolved into the legal principle: the presumption of innocence, which states a defendant is innocent until proven guilty.<sup>16</sup> Many times, apprehended citizens who are Black end up being killed by police officers; this shows that they were presumed guilty and deserving of death without proper trial in those officers' eyes. This assumption of guilt based on either implicit or explicit biases of those who work in law enforcement demonstrates that the philosophies that uphold systemic racism impact how the criminal justice system treats Black Americans.

If the criminal justice system upheld the philosophical principles found in retributive justice, achieving justice for incidents of wrongdoings incited by race would be possible for Black Americans. Also, Black Americans would trust its processes, which would be proven

by its processes' psychological effect. Instead, what we see is the growing amount of psychological anguish caused by systemic racism, further intensified by the lack of proper treatment in criminal law. We also see an increasingly growing want for justice through validation and transition. In the very few instances of the implementation of transitional justice in the U.S., there is a slight positive correlation with positive mental health outcomes on individual participants and the Black community.<sup>17</sup>

Although truth commissions can retraumatize individual victims who testify, its target community usually gains a sense of validation. Truth commissions and processes involving the displaying of truth often achieve the intended psychological effects of validation on its target, the wider community of victims, and society. At a macro scale, both transitional justice and retributive justice have an intended target, that target being a society in need of justice or reform due to conflict. Since truth commissions stay true to the philosophies found in transitional justice, it acts as an adequate tool to combat systemic racism's negative psychological effects. Many of the negative psychological effects of systemic racism can be rectified by the dismantling of systemic racism and the institutions that uphold it. That is why a form of justice that stays committed to combating the conflicts within its society would minimize systemic racism's harms until it is completely removed.

## Footnotes

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- <sup>1</sup> See Bhavnani, Mirza, Meeto, Green (2009), p. 28 for more information on the definition of institutional racism.
- <sup>2</sup> See Rowan (2017) especially chapter 1, for a more in-depth analysis on the functions of Transitional Justice.
- <sup>3</sup> See González, and Varney (2013) chapters 2 and 3, for more information on the definition of truth commissions and its processes.
- <sup>4</sup> See Zimmerman (1997) for more discussion on requirements of moral assignment.
- <sup>5</sup> See Murphy (2017) chapter 4 for a more in-depth analysis on the significance of being deemed a perpetrator and being deemed a victim when dispensing moral assignment.
- <sup>6</sup> See Brounéus (2008) for more information on the psychological impact of the Gacaca on its participants.
- <sup>7</sup> See Jovanovic (2006) for more information on the creation of the Greensboro TRC.
- <sup>8</sup> See Androff (2018) for more information of the psychological impact of the Greensboro TRC.
- <sup>9</sup> See Ruíz (2020) for an analysis of cultural and racial gaslighting.
- <sup>10</sup> See Moore (2010) for more information on his theory of criminal law.
- <sup>11</sup> See Walen (2020) for more information on retributive justice and its formation.
- <sup>12</sup> See Talbert (2019) for more information on explaining moral responsibility and the assignment of blame and praise.
- <sup>13</sup> See Cocklin (1977) for more information on the structure and purpose of the criminal justice system.
- <sup>14</sup> See DeGue, Fowler, and Calkins, (2016) for a more in-depth statistical analysis on the disproportionate amount of harm and killings of Black Americans at the hands of the police.
- <sup>15</sup> See Geller, Fagan, Tyler, and Link (2014) for more information on aggressive policing and its negative impact on the mental health of Black Americans.
- <sup>16</sup> See Pennington (2003) for more background information on the origins of the legal principle: the presumption of innocence.
- <sup>17</sup> See Androff (2012) for evidence on the correlation of positive mental health outcomes and the Greensboro TRC.

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