

The Presence of the Past: South Africa's Truth Commission as a Model?

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I. The Purchased Revolution

There are not many cases where a privileged ethnic minority has negotiated itself out of power, although it was capable of continuing to rule, albeit with rising costs. Even more rare seem situations where a dominant ethnic minority loses power *peacefully* to a different ethnic majority with whom it now has to co-exist in the same state, despite a legacy of past discrimination and accumulated bitterness. The few examples that come to mind include the English in Québec, the Russians in the Baltic Republics and the Chinese in Malaysia. However, in all these cases, the option of relocation or support and protection of fellow ethnic minorities by neighbouring "kinship states" facilitated the transfer. Only in the Afrikaner case does the new ethnic minority stand entirely on its own.

How did this extraordinary case of dramatic, peaceful capitulation come about? Contrary to almost every available stereotype about the model personality type of the Afrikaner, when the chips were down, Afrikaner negotiators meekly handed over power without even seriously attempting to bargain any special group privileges. Pre-transitional analyses abound, describing the Afrikaner's obduracy, brutality and almost suicidal instinct for self-preservation and collective survival. A variety of strategies, apart from bloody revolution, were concocted to ease a minority out of power: sham consociationalism, confederation, partial partition. None seriously

considered the possibility that Afrikaners would enthusiastically, through consensus-seeking negotiations, help to construct a process of dislodging themselves from power and into a liberal democratic constitution. They even agreed that political decision-making should be based on unqualified majority rule, knowing full well that this would be exercised by black South Africans whom they had subjected to systematic apartheid domination for decades. Why?

The relatively peaceful South African transition was greatly facilitated by the vast resources at the disposal of the state and the private sector-led economy. The negotiated revolution would not have been possible without the security of pensions and the incentive of vast retrenchment packages. The literature on transition has underrated the availability of by-outs as a precondition for compromise by hard-liners in power. In many ways, the so-called South African miracle is better dubbed the "purchased revolution". On the other side, members of the liberation armies who were not incorporated into the official defence force also receive a small pension. Many other potential trouble-makers were bought off by being put on the payroll of the public service.

It was legal continuity and a relatively rich economy that allowed key security bureaucrats from the old regimes to abandon control of the state peacefully for a golden handshake. Huge payouts were handed out to police generals who retired for "health reasons" or easily found alternative employment in the private sector. African military rulers and their underlings elsewhere who depend on the state as the main source of income cling to their power because they face not only loss of office, but economic insecurity, unless they have siphoned off revenue into foreign bank accounts.

At the moral level, however, a purchased revolution amounts to a compromise that satisfies neither side. The elitist pact leaves a moral vacuum for activists who had been indoctrinated with notions of a "just struggle" and feel cheated out of victory by virtue of the fact that the old oppressors continue in their privileged roles in the economy and, to a lesser extent, in the civil service. The apart-

heid bureaucrats, on the other hand, resent being demonized by so-called “terrorists”, against whom they merely upheld, in their view, “civilized standards of law and order”. Since both have to co-exist with each other now, they cannot vent their antagonisms as before and instead wage a symbolic war about the moral highground. The grand spectacle of a public Truth Commission fulfills the need to clarify the moral winners and losers in the negotiated revolution. It is part of an ongoing struggle about political legitimacy and has little to do with learning from the past so that the past does not haunt the future.

In addition, the compromise between the ANC and the Afrikaner state ignored other influential societal segments interested in the outcome of the long struggle. Domestic NGOs, who had bravely sided with the ANC during the anti-apartheid protest, found themselves increasingly marginalized by the returning exiles. The ANC simply absorbed and dissolved their United Democratic Front organization. Traditional liberals at the English-language universities, in the alternative press, in many professions and particularly, the churches, were neither part of the deal nor necessarily future beneficiaries. Initially sidelined to the role of interested onlookers, the TRC (Truth and Reconciliation Commission) would bring them again into the centre of the new order: the clergy and associates assumed the role of reconcilers and arbitrators of the past. The international community, too, had been excluded from the negotiations but was nevertheless keen to influence the shape of the future. It was American private funds (Soros) that financed through the “Justice in Transition Institute” the important preparatory work for the TRC legislation. It was the European Community, particularly Holland and Denmark, that generously assisted the TRC with police investigators, legal assistance and funding.

Paradoxically, many of the politicians centrally involved with the negotiations, including a skeptical Mandela and Mbeki and a weary de Klerk, initially considered that a Truth Commission might undermine reconciliation. They had to be persuaded of the need for

a cleansing exercise, if only for the sake of the victims. Within the ANC, it was the Justice Minister, Dullah Omar—for a long time closer to the ideologically rival Unity Movement and himself a target of state assassination attempts—who skillfully pushed for a Truth Commission. In effect, by 1995 the pressure to fill the moral void of the purchased revolution had built up to such an extent that all major political actors would have lost face had they openly opposed investigating a past in which they said they had few actions to regret and nothing to hide. Only the form and scope of a Truth Commission remained controversial. Significantly, both the ANC and the National Party wished to limit publicity about the past. As Alex Boraine (1997) recalls: “There was a stage in that debate when the majority of the parties in Parliament agreed that the proceedings should be closed. It was at the intervention of 23 NGOs that a strong demand was made that the legislation be amended”, so that the TRC would operate in public. There was the obvious temptation to exploit the past for current political purpose. The specter of delegitimizing a political opponent by dragging corpses out of the closet proved tempting for all party strategists. What they did not reckon with was a high moral drama developing its own dynamic beyond the control of its scriptwriters with all the state’s main actors at the centre stage.

II. The Politics of Memory

Analysts of the “politics of memory” (Jelin, 1994; Ash, 1997 b) have identified four basic ways in which a new democracy can deal with its unsavory past: (1) Amnesia or forgetting, practiced in the Spanish transition from the Franco dictatorship, in post-war Japan and Russia. Churchill, too spoke of a “blessed act of oblivion” in 1946. Democracy does not necessarily depend on *Geschichtsbewältigung* or *Vergangenheitsaufarbeitung* in the way Germany successfully grappled with its Nazi past. (2) Disqualification or “lustration”. The purge of collaborators from public office has been implemented most

thoroughly in the Czech Republic and the former GDR. However, the disqualification of civil servants presupposes skilled substitutes who are not available in sufficient numbers, due to South Africa's apartheid education. The acceptance of the compromise also relied on the continued tenure of the average Afrikaner bureaucrats. Forty-two percent of all "economically active" (i. e. employed) Afrikaners worked for the state in what could be called a unique nation of civil servants. (3) Nuremberg type tribunals are the hallmark of victors. In contrast, the South African transition was based on a continuing stalemate. Neither side had been defeated. (4) Truth Commissions, first practised in Latin America, represent a unique compromise between war tribunals and dealing with past atrocities on both sides by ignoring them. Amnesia would have shortchanged millions of victims of racial laws and weakened the moral foundations of the new order. Imposing justice or revenge, on the other hand, was ruled out by the need for reconciliation in an ethnically divided society. Bilateral indemnity for past crimes formed a crucial precondition for the relatively peaceful changeover of political power. Amnesty upon full disclosure proved the mutually acceptable formula for future co-existence.

Truth commissions with amnesty provisions reflect power relationships. Where a previous murderous régime has been totally defeated or a state ideology fundamentally discredited, either justice is sought (i. e. Rwanda) or the past is buried (i. e. Eastern Europe). At the most, the children of perpetrators ask awkward questions several decades later. Where remnants of the old régime still hold the power of disrupting the new rulers, they turn to the slogan of national reconciliation, even if the perpetrators are responsible for massive genocide. In this vein, Cambodia's Prime Minister Hun Sen rejected international demands for trials of Khmer Rouge leaders Khien Samphan and Nuon Chea with the argument: "We should dig a hole and bury the past and look to the 21st century with a clean slate." The weak rulers make a virtue out of necessity with the admonition: "We should not welcome them with guns, bullets, prison

or handcuffs but a bunch of flowers for the spirit of reconciliation” (Hun Sen).

Countries which established truth commissions generally share a Western legal tradition or at least are interested in maintaining legitimacy with the West. Some Eastern European or South Asian societies care little about their credibility in a global human rights culture and therefore reject Western insistence on grappling with their unsavoury past. Where abuses are denied and the state collaborates in deception about past crimes, truth commissions gain special significance. They generally perform well in shedding light on disappearances and individual state crimes (as during Latin American military rule) but are limited when they try to answer wider sociological questions as to what caused the crimes. Thus, the South African TRC hardly focused on the apartheid system per se but on the atrocities committed to keep minority rule in power.

Investigations of the past always threaten to open a Pandora’s box and undermine carefully constructed national identities and mythologies. Japan rejects being reminded of Nanking; France suppresses Vichy and other collaboration with the Nazi occupiers; Czech expulsion of millions of Germans remains a national taboo. The United States still has no national memorial for slavery or the near genocide of the native population. Celebrated and remembered is a nation’s own suffering, not what it has done to others. In Bosnia, three separate versions of truth compete with one another and the authorities actively prohibit investigations of their own groups. If a multi-ethnic Bosnian truth commission with international participation could narrow the contradictory versions of events, minimal preconditions for reconciliation would have been laid. At least the ongoing indoctrination of the next generation of warriors would be undermined.

The South African TRC has been conceived as having three different tasks, each reflected in separate subcommittees.

1. The *investigative* function of ascertaining the truth about gross
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- human rights violations and granting amnesty on this basis.
2. The *therapeutic* task of providing a platform for victims to tell their story, to recognize their suffering officially and publicly, provide counseling and consolation for survivors.
 3. The *compensatory* task to provide financial or symbolic restitution to victims in the form of pensions, one-time compensations or symbolic recognition such as memorials.

Notwithstanding the exceptional personal stature of some commissioners, all 17 commissioners are burdened with their own public past and individual idiosyncrasies. Some had just returned from exile for several decades and were relatively unfamiliar with South African sensitivities, others were strongly influenced by their own gender, racial or liberal biases which hampered their collective interaction. In the end, such inevitable irritations were smoothed over when they became public but did not exactly enhance the commission's image as an impartial body beyond the daily fray of political squabbles.

The Afrikaans press has been relentless in debunking the TRC to the extent that the National Party initiated a formal court challenge, charging that Tutu and Boraine violated their mandate of impartiality in denigrating de Klerk's appearance before the TRC. The case was settled out-of-court with a public apology or clarification by Tutu. The English media, by contrast, played the politically correct line of expressing horror about the revelations while many commentators also reveled in the predicaments of the TRC.

The amnesty commission—formally independent of the TRC and comprised of judges—further added to the impression of partisanship by ignoring its own constituent legislation. Inexplicably, it granted amnesty to 37 ANC applicants without requiring them to specify for which “acts, omissions or offenses” they were seeking indemnity. Instead, the ANC office-bearers had accepted joint responsibility for the actions of ANC guerrillas, a procedure which had been disallowed in the case of apartheid régime defenders. The

ANC stance was aptly characterized by the Democratic Party's Dene Smuts as seeking amnesty "for everything in general and nothing in particular". Both the National Party and the TRC itself applied to the High Court for a ruling on the controversial amnesty decision. However, since the TRC application was only filed after the NP had done so, the impression was fostered that the TRC would have prevaricated indefinitely had it not been forced by the NP (National Party) to act. Indeed, the TRC action was informally strongly resented by some ANC leaders involved as was the widely publicized indictment of liberation forces in the final TRC report that the ANC wanted to suppress with court action just as de Klerk did the verdict on him. It is to the credit of the TRC to have finally withstood the pressure.

South Africa's TRC faces several major predicaments. They could be labelled: (1) the problem of legislated reconciliation; (2) official truth and common memory; (3) individual culpability vs. collective benefits; (4) knowledge without acknowledgment; and (5) blame and identity maintenance. These five predicaments are sketched in turn.

III. Legislated Reconciliation

Revealing the truth is said to reconcile the nation but the opposite could also happen: the more gory the revelations, the greater the clamor for justice through retribution. In short, the truth can undermine reconciliation—and herein lies the basic contradiction of the South African commission. Sacrificing justice for truth is readily acknowledged by the architects of the TRC. In the words of Kader Asmal (Hansard 1995:1382), trials and redress through the courts had to be foregone "because the pains of justice may traumatize our country", and it helps "to consolidate democracy by avoiding continuing confrontation with former powerholders. However, this argument neglects the possibility of a different confrontation with those denied justice, incited and traumatized by the very amnesty

that was supposed to de-traumatize the nation. The TRC's necessary "evil compromise" (Tutu) assumes only a white backlash if redress through courts were possible and neglects the rage of the victims against clemency. TRC advocates further argue that political criminals are beyond rehabilitation because of their ideological fanaticism, that conviction would be difficult and costly to secure in an overburdened justice system that would be confronted with shredded evidence and that confessions for amnesty therefore provide the only chance for survivors and relatives "to know what happened and who is responsible" (W. Vervoerd, 1997). All these valid arguments against adversarial litigation merely underscore the fact that individual justice is sacrificed for a higher level of stability of the social order. This social justice of pragmatically securing peace for the majority at the expense of the justifiable claims of a minority can be as legitimately defended and prioritized as individual justice.

Genuine reconciliation also presupposes a certain degree of forgetting. In the post-war German debate, Habermas (1996) has stressed that the "crass demand for reconciliation" necessitates "the promotion of forgetfulness". Just as the old Nazis were exculpated as allies in the Cold War, so the apartheid advocates are now needed for growth and development. Cynics argue that the TRC merely uses the victims as legitimizing decoration for the ritual of exculpation in which the real beneficiaries are the past rulers. Yet reconciliation, or at least peaceful coexistence, remains the prerogative of a society in which colonial settlers are as legitimately at home as their colonized subjects. Afrikaner/white minority rule fits neither into the category of "criminal regimes" nor "regimes of criminals", as Tina Rosenberg (1995) has labelled the distinction between Eastern Europe and Latin American military dictatorships.

It has also been pointed out that "reconciliation" amounts to the imposition of a religious value on unwilling participants. Noble gestures of forgiveness are mocked and exploited by popular demagogues who find themselves investigated for their misdeeds. Winnie Madikizela-Mandela, for example, complains: "When the TRC treats

me like a leper and its chairperson hugs our former oppressors, then I worry about what type of reconciliation we are festering". Forgiveness cannot be engineered by bringing perpetrators and victims into contact. Only victims can forgive and some crimes remain literally "unforgivable". A strong minority opinion holds, as articulated by literary critic Benita Parry (1995/96) that "no government or leader has the moral authority to grant a people's pardon to their erstwhile oppressors, since here the consent and participation neither party has been solicited and procured". While this position has been adopted and even legally pursued by prominent South African survivors, such as the Biko, Mxenge, and Ribeiro families, it can be argued that the people through their elected ANC representatives as well as their opposition negotiated precisely such consent. Initially, inclined to indemnify themselves, the ANC and NP at least concurred with the ritual of public confessions before the pardon. Amnesty, however, does not require remorse that could expediently be feigned. Headed by two clergymen and a theologian as the chief research officer, the TRC thinking unfortunately slips frequently into the theological discourse of atonement and repentance. When Tutu feels "deeply distressed" by de Klerk's denial of "culpability" for gruesome acts committed by his security forces that "negate" his apology for apartheid, he applies religious assumptions of absolution requiring remorse. Absolution by a well-meaning former archbishop is limited to the faithful, who value "healing" or the African philosophy of "ubuntu". It suggests that your own humanity can only be realized by recognizing the human qualities of your enemy. This remarkable forgiveness also resonates well with the Buddhist tradition. The Burmese Nobel laureate Aung San Suu Kyi (1997) even feels "affection" for the oppressor. She emphasizes the potential of rehabilitation and says "that although he has done that deed, it does not mean that he is irredeemable...Anybody who is broad-minded will know that a murderer is not wholly a murderer." Timothy Garton Ash (1997 a), on the other hand, has pointed out that, "the reconciliation of all with all is a deeply illiberal idea". Some values are

irreconcilable. Liberalism teaches how to coexist tolerantly with irreconcilable conflicts rather than engineer totalitarian closure or normative homogeneity.

IV. Official Truth and Common Memory

Claiming that “truth made public is itself a form of justice,” may be true for the victims who have their suffering publicly recognized and their dignity restored. The perpetrators, however, emerge unshamed—claiming they merely fulfilled orders or fought a war against alleged foreign communists who are now fellow citizens. Torturers are said to be punished through “public shaming”. However, this presupposes a moral reference group that most perpetrators avoid by isolating themselves happily in their own ethnoracial enclave with similar beliefs. Yet seeing former regime representatives admit to and apologize for their misdeeds is in itself a gain. Nobody can now deny past atrocities. As Michael Ignatieff (1996) has written: “Truth commissions can reduce the number of permissible lies in a society”, the Orwellian skepticism about an official truth notwithstanding.

The ambitious goals of some TRC commissioners, however, also aim at producing “a new written history” (Richard Lyster). Boraine (1997) writes that South Africans “desperately need to create a common memory”. Lyster speaks of establishing a “publicly sanctioned history” which can be “taught in schools”. Historian Hermann Giliomee (*Cape Times*, October 9, 1997), one of the most vocal TRC skeptics, has criticized this as the mindset of totalitarian systems with “the concomitant idea that those who question the official historical truth had to be severely punished”. In response, the TRC research officer Charles Villa-Vincencio (*Cape Times*, October 16, 1997) has accused Giliomee of “paranoia”. Indeed, it is hard to envisage how 17 commissioners could arrive at a common history even if “they have reached deep into the most cruel and lonely corners of our national psyche” (Lyster). Hundreds of professional historians have not accomplished this task in more homogeneous

societies. It is naïve to expect contradictory versions of history to be wiped out. Recording past atrocities, as necessary as this exercise is, does not establish common ground among warring factions. Nation-building does not flow mechanically from an official history. Its claims will inevitably be challenged by those whose interests are short-changed by the “publicly sanctioned” version of the past. The Canadian philosopher, Will Kymlicka (1995:189) has pointed out that successful nation-building may even presuppose amnesia in as far as “to build a common identity in a multination state probably requires an even more selective memory of the past”. Not all national minorities are likely to accept such a devaluation of their history in equal fashion. Resistance to amnesia will obviously originate more from the vanquished than the victors, because they can lay claims for compensation, liberation or simply the moral high-ground from their suffering.

A more realistic view points to history as a never-ending argument. A more moderate educational goal hopes for the permanent critical engagement with contradictory interpretations of the past. Such a perspective does not invalidate the achievements of truth commissions that unearth new evidence under difficult circumstances. The skepticism towards a “publicly sanctioned history” merely pricks inflated claims for a more realistic and ultimately “truer” scenario of a cacophony of voices without consensus.

Particularly in a climate of post-modern relativism, all sides legitimately claim the truth for themselves and “teaching the truth” does not help in a dispute over the curriculum. In his recent book *We are all Multiculturalists Now*, Nathan Glazer states: “Truth is a more difficult ground for the social studies today than it once was. In academic field after field, truths are constantly challenged ... Furthermore, no one really insists that truth is the only criterion for judgement on curriculum in the social studies” (Glazer in Appiah, 1997:33). In short, the truth of one party is the lie for the other side.

Perhaps one could settle for two kinds of truth: a factual truth that an historical event took place and an interpretative truth con-

cerning the meaning of the event. For example, nobody of a sound mind should be allowed to deny the holocaust but there can be many legitimate explanations as to what caused it and what it meant to the victims and perpetrators.

After distinguishing various kinds of truth—dialogical, narrative, healing truth versus factual or forensic truth—the TRC comes close to embracing an instrumentalized truth. Truth becomes a mere means to an end when it is asserted that “nor can such (factual, objective) information be separated from the purposes it is required to serve” (1, 5, 44). The TRC explicitly concludes from its founding act that “it was required to help establish a truth that would contribute to” the bridging and healing of South African society. Thus information which is likely to contradict this goal becomes inadmissible at the worst or is neglected at best. Instrumentalizing fact-finding inevitably produces a selective truth: suppressing what does not serve the stated ends and highlighting features that serve the stated purpose.

A one-sided notion of truth is also evident in the Commission’s harsh response to a considered minority report. Commissioner Wynand Malan introduces his dissenting statement with a brief description of his personal moral journey out of the National Party fold. Yet the Commission’s response almost ridicules this confession and terms it “inappropriate” by referring to the Act that stipulates independent, impartial, unbiased commissioners. By implication, the TRC claims to have reached this stage of objectivity as opposed to the mere “subjective” position of Malan. Yet most social scientists know by now that we are all saddled with the ideological baggage of our past. We reach “objectivity”, if ever, by reflecting critically on our own subjectivity. We go beyond our inevitable bias by putting ourselves in the position of opponents and try to truly understand their motivations, even if we fundamentally disagree. From Max Weber to Gadamer and Habermas’ “communicative rationality”, this hermeneutic approach to conflicting claims of “truth” would seem the most promising to reach a minimalist mutual understand-

ing of opposing camps. Yet the TRC report displays little patience with this perspective as evidenced in the treatment of Malan's dissent. Instead, the TRC moralizes by labeling as "impertinent" Malan's characterization of victims' stories as often exaggerated and second-hand.

In summary, claims that truth commissions can heal a torn nation through a shared truth can be disputed both because the truth is liable to be constructed differently by competing interests and also because nations do not possess collective psyches. Guilt can therefore be ascribed only individually and not collectively. It is doubtful, whether a "traumatized" nation can be cured by having a repressed memory restored. Medical metaphors are misleading when applied to collectivities. The benefit of tribunals or truth commissions lies in disaggregating the misdeeds of individuals from the blame of all. From this perspective the South African TRC serves the opposite of "an exercise in Afrikaner bashing", as Constand Viljoen, the former head of the military claimed.

V. Individual Culpability versus Collective Benefits

The white editor of a South African influential paper has postulated that "only a collective apology from the white community...can lead to a real reconciliation" (John Battersbey, *The World Today*, January 1997). Not only does this demand presuppose collective guilt, falsely including those whites who opposed apartheid, but leaves unresolved who can speak for a deeply divided racial collective. However, all whites were beneficiaries, regardless of their attitudes.

Even white apartheid opponents could not escape the material advantages and symbolic status that arbitrary racial membership bestowed upon them. Differential wages for employees with the same jobs and qualifications, vastly different educational, medical and living conditions in first-world suburbs versus impoverished townships, legally privileged race as nowhere else in the world. Poor Croats, Serbs or Muslims in Bosnia may also be victims of compet-

ing élites that readily mobilized them for mutual destruction. However, only in South Africa did all whites become beneficiaries of their ethnicity, regardless of merit or class.

Mahmood Mamdani (1995) has pointed to the difference between Rwanda where there are many perpetrators but few beneficiaries of genocide, and apartheid South Africa with few perpetrators and many beneficiaries. The focus of the TRC on “gross human rights violations” obliterates the beneficiaries of systemic discrimination and the countless ordinary victims of apartheid. Should the beneficiaries pay compensation? Can victims and beneficiaries be defined in racial terms, as there were also black beneficiaries and white victims? Can there be reconciliation without economic justice?

The impoverished parents who lost their child, the single mother who mourns her husband, or the brain-damaged survivors of torture clearly cry out for financial compensation. However, can the degree of suffering be differentiated financially, just as insurance companies calculate different rates for different kinds of mutilations? Should there be a means test? In short, can pain be measured and impartially flagged with a price tag?

Realizing these difficulties, the TRC had recommended equal annual payments of R 20 000 (CAD \$7000) to 22 000 victims for six years. This would amount to 0.25 % of the national budget but even this token gesture is likely to be substantially scaled down by a government committed to reducing the budget deficit. Whether private business would chip in to foot the reparations bill through a one-time corporate tax or a more general wealth tax is equally doubtful.

The TRC has highlighted *individual* gross human rights violations and *individual* fates of victims at the expense of institutional and corporate complicity. Although bodies such as political parties and professional associations (medical, judiciary, business, media) and churches were invited to reflect on their contribution to sustaining or legitimizing apartheid, most denied such a role. From the

ANC to the NP or military command they all took “collective responsibility” for the misdeeds of their underlings which they claimed they “never condoned” or were even aware of, although they should have known about it or in most cases, could have prevented it, had they shown the political will. Locked into political competition for votes or credibility, political parties, including the ANC, can hardly be expected to discredit themselves by admitting to their involvement in breaking principles of natural justice.

VI. Knowledge versus Acknowledgment

Unlike the Chilean Presidential Commission, André du Toit (1997) has pointed out, “the TRC is essentially a public and democratic enterprise”. As a parliamentary commission it was forged through heated public debates, public hearings about the suitability of commissioners and regularly televised proceedings. Hence, the TRC reflected the new political power relations with the representatives of the old regime underrepresented, unlike the parity of the eight person Chilean Commission.

Although charged with quasi-judicial impartiality by the “Promotion of National Unity and Reconciliation Act” of 1995 and staffed by commissioners “who do not have a high political profile”, most commissioners played highly active roles in the long anti-apartheid struggle. It would be hard to find any “fit and proper person” with a low political profile in a highly politicized society. However, the TRC is also accused of letting political bias influence its procedures and judgements. Hermann Giliomee (*Cape Times*, October 23, 1997) has charged the TRC with concentrating “at a ratio of 22—2, on acts committed by officials of the old regime” and failure to select evidence on human rights violations of the liberation forces. Indeed, the commission could have subpoenaed more individual ANC leaders rather than letting them off by claiming collective responsibility. Yet the massive accumulation of evidence about atrocities of apartheid state agents together with majority

pressure also overwhelmed the commission. Hence, the perceived leanings of most commissioners and particularly their staff towards a broad ANC version of history affected the legitimacy of the TRC in the eyes of competing parties whose leaders feared to be perpetually discredited. This impression was reinforced by the harrowing accounts of victims, seeking acknowledgments and, hopefully, some later compensation. Unlike the dramatic impact of the Argentinean *Nunca Mas* report which was released after long in camera investigations about the disappeared, *Nunca Mas* was spread over three years in South Africa. Moreover, the names of perpetrators were not kept secret but the faces of the torturers appearing each day in the South African media. Such a public discourse undoubtedly contributes to historical education or political immunization but whether it establishes a unifying truth is questionable.

The partisan composition of the TRC has not only jeopardized black-white reconciliation, but the broad ANC sympathies of most commission members led them to virtually ignore the Natal conflict. The boycott of the TRC by the IFP, itself largely a result of the perceived bias of the TRC, allowed the commission to sideline this most controversial part of recent South African history. In the words of IFP leader and Natal premier Ben Magubane (*Focus*, April 1998, p. 24):

“Look, we still haven’t got to the bottom of the assassination campaign which murdered some 400 IFP leaders. The TRC has obstinately refused to look into this, it’s a disgrace. Without any doubts at all, MK hit squads were roaming the province, running guns in from the outside, and were conducting a large-scale strategy of targeted murders.” ANC supporters assert the same about apartheid-trained IFP defense units, the IFP-leaning KwaZulu police and various Third Forces fomenting attacks on ANC activists. It is precisely because of such conflicting histories that have acquired mythological certainty among feuding constituencies that the TRC should have investigated

this tragic episode in the country's transition. Whether a frank account of the atrocities committed on both sides would have furthered reconciliation, however, remains an open question.

Despite the expectations of the old security establishment, no blanket and collective amnesty was granted. Instead, amnesty was made contingent on full disclosure by individuals and demonstration that their crimes were politically motivated and proportional to their assigned role in the conflict (Noorgard principles). This trade-off between full confessions and amnesty has not been practiced anywhere else. Amnesty applicants are not granted their request automatically but are subject to investigation and cross-examination in a public inquiry or, if the commission deems it necessary, in-camera hearings. Only if perpetrators disclose what they did, why they did it and on whose orders they were acting, do they meet the conditions for clemency. In this way, "justice is traded for the truth. Several hundred amnesty applications have been declined and some evasive perpetrators have been recommended for prosecution.

Whether the threat of future prosecutions of those who refuse to apply for amnesty will be realized, remains to be seen. The success rate is mixed with regard to crucial senior political actors. The top military brass had nothing to reveal, as did most senior apartheid politicians. Leaders of the Zulu-based IFP boycotted the TRC as an instrument of their ANC enemies. Yet the police chiefs related their stories to the commission, mostly out of spite for their civilian bosses of the NP whom they perceived as refusing to take responsibility for their own orders. This breaking of the ranks of a once solid ethnonationalist supremacy clarified the lines of command, although the originators of most atrocities were long known. While the TRC officially confirms widespread *knowledge*, it has mostly failed to secure *acknowledgment*. However, even if the unlikely case were true that de Klerk as chief executive of the state suspected or knew nothing of the misdeeds of his security forces one could still expect an acknowledgment of the atrocities because they were committed

in the name of the apartheid state and its defense.

In different societies different euphemisms signaled the order to kill to the footsoldiers. A decorated Croat police official by the name of Mercer uttered “clean-up all that shit” and meant Serb prisoners were to be liquidated. Afrikaner police generals suggested that “a plan should be made” and the underlings understood. Another signal read that an activist should be “removed from society permanently”, eliminated (“elimineer”) or wiped out (“uitivis”). Members of the State Security Council now all maintain that such phrases meant detaining rather than killing. The search of the TRC for explicit orders proves fruitless because no such commands were necessary or if they had been made explicit they would not have been recorded as former Foreign Minister Pik Botha pointed out. Therefore, apartheid politicians cannot be easily accused of acts of *commission* but are guilty of *omission*. The politicians hide behind what is legally known as “plausible deniability”. They continue to receive their fat state pensions while the footsoldiers carry the can and are justifiably angry with their former bosses.

There is the possibility that a TRC reinforces the fallacy that the past has been put behind the nation, what the Germans termed 1945 “Stunde Null” (hour zero) as if a new counting has begun despite the continuing legacy of an abominable past. Instead of actively engaging with the past, Adorno warned, the past is always in danger of being committed to oblivion through the process of accounting for it “once and for all”. The ultimate success of the TRC will be measured not in how complete or “accurate” a picture of the past it has painted, but in how much future political education it will generate. Walter Benjamin suggests that proper mourning consists of recalling past injustices in order to nourish current struggles for emancipation. Notions of justice are derived from the narratives of past iniquities, although, as Nietzsche has reminded us, a consciousness shaped solely by the vanquished dead forgets the living.

VII. Blame and Identity Maintenance

Attributing blame is much easier when it involves a discredited institution, such as the military in Latin America or a defunct communist party in Eastern Europe, than a powerful professional body, let alone an entire ethnic community as in South Africa or the former Yugoslavia. When atrocities are committed in the name of an ethnic group, the entire identity of all group members is on trial. The benign self-image and ethnocentrism of ethnic identity is being destroyed in what members perceive as a “cultural suicide”. Whenever acknowledged group leaders admit collective responsibility for past crimes, they risk being excommunicated by rivals for having misinterpreted the noble intent or good-natured “essence” of an ethnic identity. Hence the extraordinary reluctance of Afrikaner institutions, even the main Calvinist church (NGK), to share the blame and admit guilt for the fundamental principles of apartheid. The Church apology to “those who were hurt by apartheid and the churches role in it” still fails to grasp that every black person, but even white overlords, were dehumanized by an official racial system. Moreover, that system enjoyed the voluntary and overwhelming support of whites in repeated free, democratic elections.

The limits of sharing blame were clearly brought home when the TRC invited the business, the judiciary, the media and the medical professions to account for their role in supporting apartheid. Here the TRC took on a powerful establishment and predictably drew a blank in most cases. Most spokespersons admitted that their groups perhaps could have done more to fight apartheid but stressed far more forcefully that their hands were tied by laws, that they did their best under the circumstances and they too suffered additional costs under racial laws.

How entrenched interests sidestepped culpability is best shown by the submissions of judges. After all, the legal profession applied the apartheid laws and frequently failed to defend human rights or even protest against the abolition of civil liberties. While South African judges were legally independent—unlike the Nazi lackeys

of Freisler's *Volksgerichtshof* who took direct orders from government—very few ever used their independence to comment on the unacceptable character of racist laws or even used their latitude in sentencing in favor of victims. Collusion between the bench and the police characterized the apartheid judiciary, because most judges willingly agreed with a system of which they were an integral, unthinking part. While admitting some blame for this role, the judicial submissions stress “the unwarranted attempts to denigrate its very substantial contribution to society during a contentious and troubled era in the life of the country” (submission by four Appeal Court Judges). Concern that their appearance before the TRC would detract from the authority of the bench also led to the surprising situation that not a single judge—even the few black ones—testified before the hearing. Collegial solidarity, professional arrogance and identity concerns about the integrity of the bench had won the day. More surprisingly, the TRC did not dare to subpoena judges, although the option was discussed at length (Interview, 13 December, 1998). In the end, the majority of Commissioners felt they had enough adversaries already and “we did not want to pick another fight”.

The relationship between the TRC and the regular courts remained ambivalent after October 1996 when some high-ranking apartheid functionaries, such as the former Minister of Defence, General Maguus Malan, were acquitted of murder and conspiracy in a 1987 massacre. In a similar controversial case earlier, justice Louis Harms, as head of a commission, found little evidence of alleged police hit-squads, despite well-known incidents to the contrary. If the TRC were to intervene into the judicial process by subpoenaing acquitted individuals or questioning judges, it would set itself up as a kind of “High Court”. Such a role of finding the “real truth” would be exercised by lay people of a commission that does not apply tested legal procedures of establishing evidence. The TRC would be accused of being a law unto itself and undermining the independence and integrity of the courts.

Desmond Tutu had to make the crucial point that a “trial does not guarantee the truth and a conviction” and “acquittal in a criminal court says very little about moral guilt or innocence”. After all, a court relies on proven evidence. “Reasonable doubt” in planning murky political violence can be easily established and allows an obvious perpetrator to get off scot-free. It is of little surprise therefore that many apartheid functionaries prefer the risk of being tried in regular courts to pleading for amnesty before the TRC. Had two former commanders of a special police unit not directly implicated some of their prominent colleagues, even the bait of amnesty would have been insufficient to entice them to testify before the TRC.

In other professions, recounting support and assistance to white supremacy has led to renewed racial acrimony within organizations. For instance, black health care activists denounced the role of their colleagues as “an outpouring of liberal self-flagellations”. Liberal white doctors, on the other hand, proudly point to the progressive stance in integrating hospitals, often against or ahead of the law. Yet their opponents insist that “the struggle in the health service during the 1980s was largely black-driven and, in fact, doctors played a very small role” (P. Naidoo, 1997). The truth, as usual, lies in the grey middle in-between. While a few courageous individuals jeopardized their careers over their protest about the maltreatment of prisoners or others forewent the cushioned practice in the suburbs for a harsh service in the townships, doctors also went along when children, shot by police in Soweto, were brought into casualty wards marked with red stickers so that they could later be identified. The scandalous neglect of a battered Biko by a district surgeon highlighted only the most publicized failure of a profession whose members range from politically conscious heroes to many more apolitical, compliant cowards.

VIII. The Ordinary Face of Evil

Hannah Arendt, of all analysts of political evil, has probably come

closest to conveying the pathetic mediocrity of the bureaucratic criminal. After observing the Eichman trial in Jerusalem, she concluded that the horrendous Nazi crimes were not committed by psychopathic monsters but ordinary, common characters, killers who otherwise looked and behaved like you and me. The shallow facelessness of apartheid murderers has also struck many observers of the South African amnesty hearings. The front-page headline of the *New York Times* (November 9, 1997) reads: "As Evil Shows its Banal Face" and reports: "Jeffrey Benzien was one of the many minor but effective functionaries who made apartheid work for South Africa's white Government. Every day, the paunchy, graying police officer left his home in this city's tidy suburbs and went to a police barracks where he extracted confessions with torture".

However, the difference between the Eichmans and the Bothas/de Klerks of this world must also not be overlooked. "The Nazis had succeeded in turning the legal order on its head, making the wrong and the malevolent the foundation of a new 'righteousness'" (Elon, 1997). In a legal order that placed dehumanized Jews explicitly outside the law, evil became the civic norm, and participation in genocide a national duty. In such totalitarian systems of pervasive indoctrination, ordinary individuals lose the sense of committing evil. They are locked into an overturned value system where normal empathy and solidarity with victims appears abnormal treason. Unlike Nazis, the South African police also went to great lengths to disguise their atrocities. When detainees died under torture, an independent inquest was usually allowed and would have revealed the misdeeds. Therefore, a tortured corpse had to be disposed of with an explanation, which frequently was that the detainee had escaped from custody or jumped through a window of a high-rise building. For example, in the murder of Stanze Bopape, police lieutenant Charles Zeelie described to the TRC how he put on the dead man's shoes and ran through a maize field to stage with colleagues a mock escape. The group then returned to John Vorster Square and distributed false statements about the "escape". In another case, police

bought a meal for a dead detainee so that the prison records made it appear that the person was alive and well when in fact his torturers had already killed him. These deceptive actions indicate that the police expected reprimands or, more likely, bureaucratic hassle and unwelcome questioning if they had openly admitted their misdeeds at the time.

In contrast, most of the apartheid torturers and certainly their political bosses, were conscious of their immorality. The Afrikaner political leaders all professed to not knowing and had they known, not tolerating the murder of opponents. While this certainly can be viewed as a shabby excuse for human rights violations by omission, it also testifies to a need to affirm standards of behavior that Hitler or Stalin could ignore. Apartheid ruled through the law, that pretended to apply equally to whites and blacks alike. Unlike Jews, who were placed outside of the law, apartheid required the appearance of due process of Western laws to secure the compliance of a majority population. The rule of law appealed to international legitimacy. Above all, belief in the "just rule" over colonized subjects was necessary for the moral self-concept of the overlords themselves. When this firm belief in the beneficial goodness of separate development began to erode, the ruling group itself split. One faction argued that "no rules apply" when survival is at stake, while the majority fortunately conceded the evil of apartheid for both moral reasons and rising costs. Which factor played a greater role is difficult to discern, but both costs and lack of morality reinforced each other in undermining the will to rule.

In the authoritarian order of South Africa, an outspoken opposition against apartheid had never been totally silenced as in totalitarian Nazism or Stalinism. For the ruling white minority, peaceful protest and voting for anti-apartheid parties was legal, with the exception of groups defined as "communist". Enfranchised whites at least could exercise choices. Given the moral choices available and the ever-present articulate moral attacks on the immoral order, the responsibility and guilt of the supporters of evil actually increases.

Their serial torturers may turn out as insipid and banal as the *Schreibtischmörder* (killers at the desk) analyzed so insightfully by Ahrendt, but their indoctrination into moral callousness would also seem, on the whole, more ambivalent, more voluntary, less successful and less pervasive. Most killers interacted with their victims, tried to turn them, tried to cover up for their own atrocities, and sometimes even paid compensation for illegal behaviour when the victim survived the torture and could reach a sympathetic newspaper.

IX. Conclusion: Mourning and Affirming

The psychiatrist Vamik Volkan (1997:226) has warned facilitators of ethnic conflict resolution to be “wary of trying to accelerate reconciliation between former enemies”. The potentially powerful gesture of a group leader asking its victims for forgiveness, Volkan aptly suggests, requires the prior groundwork of mourning. “Forgiveness is possible only when the group that suffered has done a significant amount of mourning. The focus should be on helping with the work of mourning and not on the single (seemingly magical) act of asking forgiveness”. The attempt at legislated reconciliation, combined with the theologically inspired instant absolution through confession, shortchanges the necessary mourning. After such periods of genuine mourning, reconciliation may be the outcome but cannot be the precondition of conflict resolution.

Confession elicits debates about who is entitled to hear them, and, even more controversially, who is qualified to forgive. “On the ecclesiastical side”, writes David Beresford (1997), “confession tends to be between man and his maker—the only ones qualified to judge whether the truth has been told and forgiveness merited. The idea of man being required to confess ‘the truth’ to man in the name of the law dressed up in the robes of the church takes one back to the Inquisition”. Tutu replies to this argument that the TRC lacks the “electric prods” to be called an inquisition. The degree of force as

evidenced in the torture instruments, however, is a red herring which masks Tutu's contentious assumption of a moral universe articulated and represented by the High Church. In contrast to the times of the Inquisition, the dominant one church has disappeared and made space for many religions let alone a large segment of non-believers. The TRC religious ritual with the chairperson in his red garb falsely assumes a general deference to one creed and moral style.

Yet although the South African TRC did not uncover much more than has been known before, it confirmed, or rather reconfirmed, beyond doubt what otherwise could have been denied as partisan speculation or exaggeration. In short, as Richard Goldstone has remarked, "the TRC covered 34 years of apartheid history in 2½ years which no court could have done". Above all, the South African TRC affirmed the victims by providing them with a public platform to tell their story. To have given voice to the tortured voiceless has finally defeated the tormenters, although the trauma can never be erased. It is for this reason and the continued material legacy of apartheid that the commission had to fail in its second goal of reconciliation. That restorative justice through revealing "affords perpetrators the opportunity to come to terms with their own past" (1, 4, 3) remains an elusive theological ideal in a divided society where the past shapes the future.

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