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Evaluating the Truth and Reconciliation Commission

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ABSTRACT

Following a negotiated transition to democracy in South Africa, the Truth and Reconciliation Commission (TRC) was established to deal with crimes of the past regime. Despite the detail of submissions and the length of the Final Report, this article highlights the partiality of truth recognised by the Commission. The usefulness of acknowledged truth to deal with South Africa's past is shown to have been neutralised by wider concerns of social and criminal justice. In detailing the governmental reticence to provide reparations, the judicial disregard to pursue prosecutions, and the dismissal of responsibility for apartheid at a wider social level, the author argues that opportunities for reconciliation and developmental change are limited. Against the problems of crime, violence and unresolved land issues, the potential of the TRC to build a 'reconciliatory bridge' is called into question. The truth offered by the Commission increasingly appears of limited value.

INTRODUCTION

The repression that underpinned life in South Africa during apartheid is well known, as is the resistance to it (Monama 1996). From racial oppression to torture and massacre to economic deprivation, the violence suffered by the masses was upheld on economic, political and judicial terms (Johns & Davis 1991). Following the transition to democracy, with the inauguration of Nelson Mandela as president in 1994, South Africa was faced with the task of dealing with its past, as well as undertaking some action to deal with structural social injustice.

The Truth and Reconciliation Commission (TRC), heralded as the most ambitious and organised attempt to deal with crimes of a past regime through a concept of truth, came into force on 19 July 1995.[1] Emerging as a political strategy to acknowledge past suffering whilst

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promoting a future based on the concerns of social justice, the rule of law and reconciliation, the Commission has struggled to fulfil its objectives. This article argues that, although the TRC incorporated these broader concerns into the mandate of its three sub-committees, they were disregarded in practice. These sub-committees, which reflected concerns for 'human rights violations', 'amnesty' and 'reparation and rehabilitation', were not 'coupled with some form of social transformation' (Hamber 1998: 98). Lack of will to change is demonstrated by the reticence of the government, judiciary and business personnel to undertake agreed procedures and act on recommendations made by the Commission.

The foundation of this problem can be traced to the shift towards democracy in South Africa. The public transition from apartheid, established through a negotiated settlement rather than a revolutionary process, framed the Commission's powers (Boraine *et al*. 1994; Boraine 1998). Shaped by the historical context of this particular transition, the TRC was careful not to 'rock the structural boat'. Rather than pursuing truth and justice, as an integrated feature of social transformation, the Commissioners and, to a greater extent, the government of South Africa, maintained an agenda that avoided a challenge to the status quo.

With concerns articulated by the ANC for the need to avoid further social 'fragmentation' (Humphrey 2000: 8), and to place 'victims, and not perpetrators' as the 'beginning, the focus and the central point of the legislation' (Krog 1998: 5), the TRC presented a 'working relationship' between truth and justice. A focus on restorative justice was taken by the Commission (Tutu 1999) with an emphasis placed on mechanisms to restore victims and survivors, through reparations policy, state-led acknowledgement of suffering, and a condemnation, together with the transformation, of the system that implemented such widespread forms of abuse. The priority of changing the apartheid conditions of gross inequality and oppression provided a backdrop to the approval of the TRC by those who had suffered. More difficult to accept was the provision of amnesty to those who had undertaken violations of human rights. Placing amnesty of violations as a carrot to perpetrators in exchange for a full story, with the stick of prosecutions for those who did not come forward, the unburdening of the past through the documentation of truths from all sides took precedence over calls for 'natural' justice (AZAPO case 1996).

In response to these circumstances, this article explores and develops the historical, political and healing significance of truth-telling. It also

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discusses the difficulties faced by the Commission in accessing the truth of apartheid, and details how some truths, such as those from women, were underrepresented in the collection process. The TRC is demonstrated to have provided a partial truth, not only because of the Commission's limited mandate to examine 'gross human rights violations', but also as a result of the tactics and techniques of negotiation employed by those who gave evidence. With many perpetrators and beneficiaries of apartheid demonstrating a lack of responsibility for their actions, the question is raised of the potential of the TRC to effectively build a reconciliatory bridge between opposing groups in South Africa.

Alongside this debate on truth, the connected concerns of criminal justice and social justice have been negated. The dominant 'victim' response that places the rule of law as *the* means to obtain 'justice', that injuries can be assuaged through the courtroom, was displaced by the Commission. Any hope for criminal justice, by prosecuting and punishing individuals, was dashed both by the TRC's mandate and by subsequent judicial policy. Further, the social justice that underpinned the TRC philosophy has not been realised. The perpetrators of violence, and beneficiaries of apartheid, have had no obligation to make any substantive changes (Zehr 1997), and neither the TRC nor the government have sufficiently challenged the structural inequalities which contextualised apartheid policies. Many areas and 'communities' in South Africa remain dislocated and characterised by poverty, lack of good housing, poor education, limited health services and unemployment.

In the trade-off between the 'perceived route to peace' and 'justice', the TRC risks achieving neither. The effects of this stance can already be felt, with a governmental reticence to provide reparations to those designated as 'victims', judicial disregard for the implementation of prosecutions for non-participating perpetrators, beneficiary dismissal of responsibility for apartheid, and limited developmental change at a societal level. Balanced against the problems such as crime, violence, unresolved land issues and impoverished 'communities' in South Africa, the TRC could be said to have failed in its objectives. This article argues that, alongside the quest for truth, the central issues of social and criminal justice cannot be neutralised; without a thorough attempt to tackle the fall-out from apartheid, the Commission process can only symbolically promote reconciliation.

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THE POLITICS OF TRUTH

The desire to promote change in civil society and state mechanisms has led commissions, across the world, to question the nature of truth (Hayner 1994). Michael Ignatieff famously commented (1996: 113) that truth commissions can only 'reduce the number of lies that can be circulated unchallenged in public discourse'. Conversely, those involved in commissions, and associated memory projects, have insisted that truth-telling provides opportunities to heal, restore human dignity, demonstrate censure for horrific acts, encourage democracy, and promote reconciliation (Boraine *et al.* 1994; Tutu 1999; Zalaquett 1993; REMHI/ODHAG 1999). For these reasons, the Chilean Commission's Final Report, described truth as an 'absolute, unrenounceable value' (Zalaquett 1993: xxxi). The TRC's Final Report (1998: 1(5) 29–45) defined truth in detail, identifying four distinct notions of the concept. The first, factual or forensic truth, is based on the legal and scientific notion of presenting corroborated evidence obtained through impartial and objective procedures. The second, personal or narrative truth, is premised on a culmination of individuals' subjective stories to provide a multilayered set of experiences. The third, social or dialogue truth, is constructed through the debate and discussion of facts on a collective level. Finally, the fourth, healing and restorative truth, is truth that places given facts 'in context' in an attempt to acknowledge individual experiences.

These overlapping notions, exemplifying the subjective truth of individual stories alongside objective fact-finding and debate, informed the workings of the TRC. On one level, the notions can be viewed as problematic. The standard of evidence available to the Commission, given that 'truth' was predominantly drawn from individualised points of view, has been called in question. Yet, 'in the end', the process will be 'judged a success', by its arrival at 'acceptable truths' (Henderson 2000: 464). To this end, the Commission promoted truth as a concept for everyone. Following years of state denial in the aftermath of human rights violations (Cohen 1995), the TRC attempted to expose hidden stories and create a new 'truth', one that was made and owned *by* the people not *for* the people.

Indeed, the number of people who participated in the creation of this new South African truth was unexpected. With over 21,000 victim statements and more than 7,000 amnesty applications, Yasmin Sooka, a TRC Commissioner, stated (in interview with author, Johannesburg, 4.2.1998) that the extent and nature of violations had been inconceivable. She added:

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There have been different levels of self-deception, from those saying they didn't know these things were happening at all to those that say 'these things were kept away from us'. A lot of people did not know that killings, torture, abduction and ill-treatment were happening on *that* scale. Even those that worked within the movement have an acute sense of shock that it was *so* gross, they did not know the extent to which violence had descended.

Notwithstanding this surprising scale of violations, it remains clear that many activities have gone unreported. By way of illustration, the Commission recorded 5,695 killings in the latter part of the resistance, yet the Final Report (1998: 2(7) 7–15) estimates that 14,000 South Africans died in politically related incidents from mid 1990 to April 1994. Further, human rights organisations have compiled extensive case databases, few of which correlate to the TRC's own submissions (Wildschut 1997). It is evident that many individuals have failed to share their accounts with the truth-finding body. Despite this shortfall in truth-telling, the Commission has discovered the unknown narratives of apartheid. Such newly emerging truths have impacted on personal levels (as individuals have felt that, for the first time, they have been listened to by the state), and on collective levels (as stories have challenged the traditional perceptions of groups and individuals).

On a personal level, it is clear that those who suffered from state brutality were simultaneously demonised and dehumanised by the regime. The experiences of these people, predominantly from black ethnic groups, were disqualified from official knowledge. For these individuals, the simple act of publicly telling a story in their own language provided a sense of symbolic liberation (Bozzoli 1998; Hamber & Wilson 1998). One woman, Khabonina Masilela, undertook a 500 km journey from Swaziland to reach a Human Rights Violation (HRV) hearing at Piet Retief. There she recounted the day she was shot from an army helicopter at an ANC protest meeting in 1986. She concluded, 'I just thank the Commission to afford me this opportunity to come and relate my story because I had a broken heart' (HRV hearing, Piet Retief, 21.5.1997). At a hearing in July 1997, Mr Diliza Mthembu commented, 'If you feel like speaking, you have to speak it out until everything is out. Then maybe you will feel better. That is how I feel now' (HRV hearing, Johannesburg, 22.7.1997). In allocating a space for those who have been previously silenced, the Commission played a part in affirming that individual experiences of trauma are important at a societal level.

Previously disqualified, personal narratives have also provided a platform to confront the 'common sense' accounts perpetuated by state institutions (van Swaaningen 1997). For instance, the dominant

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stereotypical images of groups, and connected perceptions of 'their' behaviour, has been called into question by evidence brought before the TRC. Truth-telling has indicated that ANC supporters, who are widely accepted as the 'victims' of apartheid, have themselves undertaken horrific acts of brutality in the resistance to apartheid and in the control of other party members (ANC Party Political Recall, Cape Town, 12.5.1997). Conversely, a number of accounts have demonstrated that those commonly designated as 'perpetrators' have also been victimised or have shown an alliance to the resistance. Johan Smit, an Afrikaner whose son was killed by an ANC bomb stated (HRV Hearing, Johannesburg, 29.4.1996), 'I thought my son was a hero because he died for freedom for people … he died in the cause of the oppressed people.' This perspective confronts the expected Afrikaner response to ANC violence. Whilst a broad explanation of the South African past could therefore focus on the suffering experienced by the black population, these personal narratives indicate that the commonly identified stereotypes of groups in South Africa cannot be so readily accepted.

This attempt to acknowledge personal narratives, in an effort to 'undo power' (Breytenbach 1994) and challenge historical perceptions, has ensured that the TRC has retained a certain degree of legitimacy with the South African people. Yet, the Commission, undertaking most of its work under the public gaze, has also been in a position subject to much scrutiny and criticism (Hamber & Kibble 1999: 4). Whilst the Commission has been identified as providing a forum for diverse expression, acknowledgement of personal suffering and the promotion of a more truthful future it has also left South Africa 'ultimately unsatisfied' (Rosenburg 1999: xi).

A limited truth for South Africa

Such dissatisfaction stems from the question of whether this documented truth is, in and of itself, enough. With a mandate to deal principally with 'gross violations of human rights', the result of governmentally imposed restrictions on the Commission's reporting time and finances, the TRC was never in a position to record a full truth of South African life. As argued below, this has had adverse effects; in particular, with a limited acknowledgement of the structural and institutional nature of apartheid, opportunities for social transformation are restrained.

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Yet, even within its narrow remit, the TRC, like other truth commissions across the world, has had difficulties in accessing truth (Hayner 1994; Hamber 1998). As has been noted above, thousands of 'victims' have not shared their experiences with the Commission. Even with the TRC's promise of reparational assistance, many individuals did not want their truth to be recorded. Further, despite the innovative 'carrot and stick' approach, offering amnesty in exchange for perpetrators' detailed stories, yet threatening prosecution for those who remained silent, the majority of perpetrators have not come forward.

Given this scale of non-participation, the truth recorded by the Commission is, indisputably, a partial truth. However, the documented truth of events in South Africa has been inhibited by two principal factors. First, given the right to reparations offered to 'victims', and the desire of 'perpetrators' to avoid prosecution through the receipt of amnesty, the Commission has encountered tactical storytelling. Second, powerful groups and organisations have determined their own acceptable levels of truth through negotiation. With a desire to maintain positive identities in the new South Africa, these truth-tellers have not wanted to tell too much.

Most accounts submitted to the Commission have, arguably, been subject to a level of censorship. Witnesses relating their experiences have been careful about the content of their stories, as what they tell will impact on their future treatment. Individuals have had a strong interest in having their experiences categorised in a way that will identify them as being either a 'victim' (to receive reparation) or a 'perpetrator' (to receive amnesty). As such, with an eye on the benefits, many individuals have used tactical accounts in relating past events (Krog 1998). In aiming to fulfil a particular identification, individuals have made a political choice of what to tell and, of course, what to leave out. Here, truth is made to fit. In the words of a number of 'victims' filling in reparation forms, the truth-telling process has become a case 'of telling the best story' (Duval Smith 1998).

Ironically, with the awareness that the South African government is currently unwilling to adequately fulfil rights of reparation or to implement procedures for prosecution (detailed below), it could be argued that these forms of censorship may have been avoided. With hindsight, such political decisions to frame stories were not required, given the lack of ensuing actions these limitations on truth were unnecessary.

Politicians and business personnel have also embraced the political benefits of 'making truth fit'. As such, powerful individuals, using their

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influence, legal representation and money to sideline their own involvement in atrocities, have negotiated a lesser form of truth with the Commission (Asmal 1992). With a proclaimed desire for political stability, 'shameless' individuals such as Winnie Mandela, Chief Buthelezi and F. W. de Klerk have all managed to retain their power and status within South Africa, despite their involvement in brutal activities (Beresford 1999). In some instances, particularly where 'perpetrators' continue to hold powerful public positions, their refusal to present a full truth was accepted by the Commission. Following the limited statements given by Winnie Mandela, for example, Desmond Tutu articulated his continued support for her. Such symbolic acts of comradeship, shown also to Chief Buthelezi, have somewhat counteracted the impact of their participation in violent activities.

In line with this negotiated truth-telling by prominent public figures, numerous other state actors have failed to submit accounts of their involvement in violence despite the threat of legal action for non-compliance. In the long term, this could have a real impact on the Commission's potential to encourage reconciliation and healing in society. One man, Shiko Ntsoko, after explaining how he had been arrested and tortured at 17 years of age, spelt out the issue (HRV Hearing, Mabopane, 8.5.1997) stating:

> I will ask the then government to come and ask forgiveness from us because they really messed up our future. I want them to come and appear before you so that they can speak for themselves … to come and ask forgiveness, then I think my wounds would be healed.

Alongside such personal implications of healing, the silence and subsequent denial of responsibility taken by state actors could also impact on future societal stability and transformation. Graeme Simpson (1998), director of the Centre for the Study of Violence and Reconciliation (CSVR), has argued that state institutions are framed by popular mistrust. Furthermore, there is a growing perception that state personnel, who engaged in brutal activity yet who continue to work in public office, are not subject to accountability and the rule of law.

ATTRIBUTING ACCOUNTABILITY

To deal with negative public perceptions of state personnel, the Commission emphasised the concerns of accountability and responsibility in its procedures. In an unusual attempt to promote criminal justice in a relationship with truth, the TRC sought to provide the

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threat of the courtroom for those perpetrators who did not come forward. In practice, perpetrators of human rights violations have received little worry from the judiciary. Given a determined focus on the 'new criminals' of South Africa, identified as the disaffected black youths whose lives have been dictated by conflict, responsibility for past state crime has been neutralised.

With an authoritarian stance taken by criminal justice agencies to this new problem, there is no demonstration that the transition in South Africa has ushered in a new era of human rights thinking. Beneficiaries of apartheid, now sensing risks from violence, have remained indifferent to their role in the roots of the current crime problem, apartheid. They have ignored the 'spiral of responsibility' (Final Report 1998: 1(5) 103) which allows human rights violations to continue.

Alongside increased criminal justice demands for contemporary perpetrators of violence, those who suffered from human rights violations do not sense any judicial support. This twist on how past and current violence is perceived and responded to will have an impact on future possibilities for reconciliation and societal transformation.

Responding to demands for criminal justice

From its inception, the TRC has attempted to tackle perceptions of perpetrator non-accountability. The Commission undertook a unique bid to address criminal justice alongside truth-telling for, as Rolston (1996: 50) notes 'to seek truth without justice is to risk achieving neither'. This relationship between truth and justice was framed by the controversial tenet of amnesty as if a 'perpetrator' tells a full story of their involvement in politically led violations they cannot be brought to account in either civil or criminal courts (AZAPO case 1996). Yet, if a 'perpetrator' does not participate in the TRC, does not relate a full account or is deemed to have acted through non-political motives, the Commission may recommend the case for prosecution.

This amnesty provision was a damage limitation exercise that sought to smooth the transition to democracy in South Africa (Krog 1998). It did not only benefit the defeated regime but also suited the new administration, as the 'idea of amnesties' would 'cover all political ranks' (AZAPO case 1996: 8). Despite attempts to stop the amnesty provision by a number of victims' families, this compromise was said to be acceptable to the general population (Monama 1996). For perpetrators, it offered impunity for the cost of a story. For those who

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suffered, its acceptance was set in the context of the enthusiasm of the new democratic government that offered hope, developmental change and financial reparation.

Given this initial societal acceptance of amnesty, the question of justice has not dissipated. Writers (notably Llewellyn & Howse 1999; Markel 1999) have forcibly argued that the Commission has achieved justice on both restorative and retributive levels. Of course, there is a sense in which the requirement of 'perpetrator' disclosure, associated shaming and the acknowledgement of 'victim' suffering do amount to a significant form of justice. Yet, there continues to be a lack of judicial and governmental commitment to deal with those cases recommended for prosecutions.

When the Commission Report was published, Jan d'Oliveira, the Transvaal Director of Public Prosecutions, envisaged that there would be at least six years of prosecutions focused on those who held the highest ranks. Today, that seems a distant possibility. Moreover, with the work of the Amnesty Committee still continuing, less than 10 per cent of perpetrators have been granted a reprieve from prosecution (TRC Website 2000). With the majority of perpetrators being recommended for prosecution this lack of judicial action is subject to increased criticism.

At a Khulumani Support group meeting in February 1998 (CSVR & Khulumani 1998), there was a perception that 'perpetrators' had been rewarded by the system and are still benefiting from rewards (through the receipt of pensions and amnesty) while victims continue to suffer under the effects of apartheid. One woman commented (*ibid*: 4),

> The TRC (Truth and Reconciliation Commission) have not helped with anything here in Duduza. My son was shot. A boy of 15 years – shot with 4 bullets by a policeman. Last year when I went to the police to inquire I was told that the case ended on 5th February 1996. The policeman is still working here.

The Commission could be seen to be a 'generous process for perpetrators' who have been internationally condemned for their actions (*ibid*: 9). Thousands of people have been, and continue to be, victimised at the hands of still-serving police officers. As Duval Smith (1998: 18) opines 'how can they hope for justice?'

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Consolidating the rule of law for the new villains

On an ideological level, prosecutions may be difficult to achieve. The South African judiciary has not been overturned with the transition to democracy, and it continues to hold sway with the white elite (Dyzenhaus 1998). In addition, there are tensions about the cost and time of undertaking prosecutions. South Africa has a major crime problem, and violent crimes like rape, car-jacking and murder are on the increase (McCrum 1999). They form a principal focus of current political debate. As such, the judiciary and the political parties collectively claim that it is more important to focus on the current situation rather than tackling past, state crime.

Undoubtedly, the prevailing level of crime is South Africa poses immediate problems for society. This form of conflict, predominantly based on criminal as opposed to political violence, has earned Johannesburg the label of the 'most dangerous city in the world'. Simpson (1997: 2) has argued, however, that the political violence of the past and the criminal violence of the present are 'two sides of the same coin'; current criminal violence cannot be historically decontextualised from the past struggles against apartheid. As such, the roots of violent criminality cannot be disassociated from either the dehumanisation of groups in the apartheid era, or from 'the impact which politically-motivated amnesties may have on the credibility' of the South African criminal justice system (*ibid.*).

Current violent crime has been readily attributed to disaffected black youths. In particular, the young cadres of the MK army, who devoted their lives to apartheid's resistance and who faced harrowing acts of torture, sexual assault and beating in police attempts to extract confessions, have already been blamed as the principal problem. These youngsters, 'born in the eye of the storm' (Final Report 1998: 4(9) 12), were highly trained in weaponry and explosives yet they have no other skills; their childhood opportunities of education and training were traded for armed struggle. As the Final Report states, 'there was no preparation for the consequences of such actions' (*ibid.*). Today, a large number of former combatants are involved in criminal activity. Crime is said to provide a substitute for armed struggle on the levels of economy and identity, with these activities providing both status and money (Simpson 2000).

In response, the state's control agencies, operating with a lack of responsibility for past brutality, have maintained their authoritarian stance. Crime control officers continue their activities with little regard

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for the culture of rights (Newsnight 19.4.2000). The lack of accountability for 'gross violations of human rights' has contributed to a climate of impunity for officers in the fight against crime. Further, with the officers who maintained apartheid by force not subject to any real investigation, the lack of institutional credibility is consolidated. The continued impunity and lack of justice makes it increasingly difficult for people, already mistrustful of state personnel, to cooperate in building a new society based on the rule of law (Simpson 1998). The maintenance of silence for 'perpetrators', and ensuing negation of criminal justice for 'victims' and 'survivors', may be perceived by the government as a useful tool for the maintenance of economic and political stability in the short term, yet it already poses distinct problems for civil society in the future.

Displacing responsibility

While those who suffered continue to wait for the South African government to make a 'meaningful' impact on their lives, the perpetrators and beneficiaries of apartheid continue as before. Those directly implicated in violations are not currently threatened with prosecution for their activities, nor do they face lustration (the policy of removing or demoting violators from positions of power) as most continue to work in their positions of power. The beneficiaries of apartheid have also retained their own specific status. Arguing that they were not directly involved in the maintenance of discriminatory state policies (Simpson 1998), many do not see themselves implicated in unequal socio-economic distribution.

With a desire to underpin social cohesiveness (Stanley 2000), the TRC emphasised individual responsibility of violations over institutional/structural accountability for apartheid policies (Nattrass 1999). This has had two principal effects. First, this emphasis has allowed groups, such as the National Party, to claim that the violations undertaken in their name were solely aberrations, the work of individual deviants rather than political policy. This claim offers an 'escape route' for those who devised apartheid policies, as such a response ignores the reality that apartheid was legally woven into South Africa's social fabric (Barchiesi 1999).

Second, the focus on individual responsibility for violent acts has meant that 'ordinary' South Africans do not see themselves as bearing responsibility for apartheid policy. They have failed to recognise the

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'little perpetrator in us all'. A Report undertaken by the CSVR, in May 1996, confirmed this view (Simpson 1998: 4), highlighting that:

> Only fourteen percent of white South Africans surveyed by our Centre felt that those who had supported the National Party in the past were responsible – at least to some degree – for the repression of black communities. Instead, they saw only those who were directly involved as being blameworthy and attributed no responsibility to the beneficiaries of apartheid.

The TRC, in an attempt to attribute responsibility to beneficiaries, established a number of Special Hearings on the role of the media, judiciary and business in the maintenance of apartheid, yet these were widely disregarded by the relevant agencies. This lack of blame accepted by those who supported discriminatory policies led the Final Report (1998: 1(5) 103) to stress that,

> What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all essential parts of the many-layered spiral of responsibility which makes large-scale systematic human rights violations possible in modern states.

For, if individuals do not accept their own part in the repression of the majority population, 'the bridge between a deeply divided past of untold suffering and injustice' and a future 'founded upon the recognition of human rights, democracy, peaceful co-existence and development opportunities for all' can never be crossed (Final Report 1998: 1(5) 110).

PROMOTING SOCIETAL CHANGE

The TRC was established as a central tenet to the reconstruction of South African society, from a 'deeply divided past' to a more peaceful future (*ibid.*). Aside from the collection of truth, the Commission viewed reparations and mechanisms defined by social justice as the principal means of building a new democratic society. While reparations promised a 'substantial impact' on victims' lives, progressive policies based on social justice could bring a sense of fairness and equality to a society based on socio-economic discrimination.

These hopeful visions have been overturned by a lack of political will. Reparational assistance, recognised as an international right to victims of state crime, has been sidelined by the government. Linking with the old beneficiaries of apartheid, the new ruling elite has

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restricted opportunities for societal transformation. While there has been a slow attempt to introduce some basic development in communities, this represents a slight challenge to the fundamental nature of apartheid. The lived experiences of those who bore the brunt of state brutality has not altered and with groups, such as women and young people, feeling excluded from developmental issues, prospects for future stability and equality in South Africa are bleak.

Providing reparations

The Reparation and Rehabilitation Committee sought to provide grounding for a future based on social justice while counterbalancing the Commission's displacement of criminal justice. The proposed reparations were established as a 'substitute for the concrete reality of legal claims' (UN 1985: 11) and were to be sufficient 'to make a meaningful and substantial impact on (victims') lives' (Final Report 1998: 5(5) 11). Together with this individualistic remit, it has been argued that reparations impact at a societal level by preventing further abuse (van Boven 1995: 126), providing closure (Hamber & Wilson 1998) and promoting healing and reconciliation (Final Report 1998: 5(5) 2). As such, Martin-Boro (1995: 571) identifies that

> those who clamor for social reparation are not asking for vengeance. Nor are they blindly adding difficulties to a historical process that is already by no means easy. On the contrary, they are promoting the personal and social viability of a new society, truly democratic.

To fulfil these transformative ends, the Commission established five key components to the proposed reparation and rehabilitation policy: urgent interim reparation, individual reparation grants, symbolic reparation/legal and administrative measures,[2] community rehabilitation programmes[3] and institutional reform.[4] Hence, reparations are aimed at individual 'victims', their relatives/dependants and society. This all-encompassing framework was carefully chosen as, clearly, although many individuals suffered directly from 'gross violations of human rights', the wider violence of apartheid has affected the whole society.

Despite its promise, this attempt at reparation has not been as successful as 'victims', Commissioners and some governmental officials had hoped. In particular, the Committee for Reparation and Rehabilitation has come under sharp criticism for long delay in making urgent interim reparation, however tokenistic, to 'victims' (Hamber &

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Kibble 1999). These small payments were established for those who have 'urgent medical, emotional, educational, material and/or symbolic needs' (Final Report 1998: 5(5) 56). The first payments were made in July 1998, two years after the Commission was established and these urgent payments continue to be paid out.

With regard to the individual reparation grants, the situation is more problematic. The Final Report establishes (1998: 5(5) 67) that these grants will acknowledge 'victim' suffering, subsidise their daily living costs and enable them to access services and facilities. The 18,000 individuals deemed to be 'victims' by the Commission should receive an annual payment over six years of between R21,700 (£2,170) and R23,023 (£2,303). The cost over this period is estimated to be over R3 billion (CSVR 2000),[5] and the government has already claimed that there are inadequate funds to cover payment costs.

This reticence to settle reparations has led some (Ash 1997; Sooka 2000) to comment that the Commission is flawed in its focus, significantly as 'perpetrators' were granted immediate freedom with amnesty, while 'victims' continue to wait to be financially acknowledged. With still no significant debate in parliament, some commentators have indicated that the government would rather leave the issue of reparations completely (CSVR 2000). Worryingly, survivors with feelings of 'double victimisation' (*ibid.*) now indicate that they may go to court to set aside the granting of amnesty on the basis that reparation has not been dealt with. This propagates a fear that those who suffered will use international legal mechanisms to seek redress; thereby seeking solutions in those places that the Commission tried to avoid (Sooka 2000).

Striving for social justice

With little governmental concern to fulfil its promise of reparational assistance for those directly victimised, broader societal transformation that challenges the inequalities becomes a distant possibility. As discussed above, the beneficiaries of apartheid have readily disconnected individual experiences of human rights violations from their own acceptance and encouragement of apartheid. As a group, they have not acknowledged the links between violations and institutional practices or structural conditions. Given this stance, they have not pushed for change in the powerful worlds they occupy. Such lack of action has been unchallenged by the new ruling elite. This new 'petty bourgeoisie' have also compromised opportunities for societal trans-

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formation, making little attempt to radically alter forms of official policy-making (Bond 2000).

Tellingly, those who experienced the day-to-day brutality of apartheid do not disregard the connections between personal experience and political policies so lightly. The pass laws, curfews, forced removals, low wages, poor living conditions and limited education have long-term effects. As a result of the TRC's limited remit to examine individual violations, these lasting forms of discrimination and inequality were not readily emphasised in Commission hearings, but were neutralised in the collection of truth. One woman, Nozizwe Madlala, noted (HRV Hearing, Durban, 25.10.1996) that women in particular bore the brunt of these struggles and in response stated:

> … history reflects the roles that men have played, women are often forgotten … If history is to be fulfilled, women's contribution to the struggle acknowledged, the democracy we are building must not leave them aside on the margins.

This understanding of apartheid, illustrating that women's rights were violated as a matter of course, was not deeply examined by the Commission. This has raised questions about the gendered truthfulness of the apartheid history told through the Report (Goldblatt & Meintjes 1997). Further, with women's stories being negated and normalised, the patriarchal state that has sustained inequality, powerlessness and the escalating 'continuum of violence' against women will not be broken. In developmental terms, decisions for societal transformation cannot ignore the gendered experience of conflict and violence.

The omission of truths from the Commission proceedings will have an impact far beyond the TRC's remit. Indeed, the links between truth and improvements in social conditions are salient as 'truth, for truth's sake is a pretty pointless exercise … unless it is coupled with some form of social transformation' (Hamber 1998: 98); to prevent further repression and discrimination there has to be a form of social justice.

This connection between truth and social justice was consolidated by the Minister of Justice in South Africa in response to the decision that 'victims' could not seek judicial redress. He stated (Omar 1996: xii):

> We have a nation of victims and if we are unable to provide complete justice on an individual basis … it is possible for us through this process and the way we reconstruct our society, to ensure that there is … collective justice for the people of our country. If we achieve that, if we bring about social justice … then those who today feel aggrieved in that individual justice has not been done will at least be able to say that our society has achieved what the victims fought for.

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Yet, with no real change in social conditions and no clear attempt to address perceptions of injustice and exclusion amongst certain groups, the TRC has lost its impact. The Centre for Conflict Resolution in Rondebosch has argued that there should be an impetus for a process to deal with the basic need for subsistence (Bauman 1997). If there is to be any opportunity for resolution of past and current conflict, socio-economic conditions require reconstruction to provide some form of social justice (Kinghorn 1991).

This reconstruction has commenced to a point with an attempt to strengthen the infrastructure of all communities. Development, as basic as providing electricity, digging wells and housing individuals, has been undertaken with some success as the ANC have erected 750,000 new homes for the poor and provided 3 million homes with electricity and running water (McGreal 1999). Nonetheless, John Pilger (1998) has exemplified the particular truth that apartheid has not died rather 'it continues by other means' and this is the overall conflictual issue. Black communities remain characterised by poverty, poor housing, limited educational facilities, substandard health services and unemployment. The people who suffered the most under apartheid continue to suffer under the new ruling powers.

To look towards reconciliation or peaceful coexistence, action has to involve the whole of society (Wildschut 1997). With a sustained lack of effort from the beneficiaries of apartheid, who retain the dominant socio-economic power to implement change, there is little scope for social justice. Snubbing the commitment to a more equitable future, the old and new beneficiaries of apartheid have abandoned opportunities to 'minimise as much as possible the wrongs that are being done in the present' (Crocker 1999: 14).

Prospects for Reconciliation

From its inception, many 'perpetrators' and beneficiaries of apartheid branded the Commission as a 'propaganda body' and a 'witch-hunt' (Simpson 1998); problematically, then, this main attempt to promote reconciliation did not have the support of all groups. Moreover, although some Afrikaners did show shock and horror at the level of violence unearthed by the Commission in the beginning, they 'gradually became inured and presently increasingly defensive and embittered about the TRC process' (Weschler 1998: 278). With a lack of commitment to truth-telling and a denial of responsibility for apartheid, this group has not demonstrated a reconciliatory attitude.

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The Commission, operating in this fractured world, has sought at every occasion to emphasise the need for societal harmony and, to its credit, there have been some examples of reconciliation on individual levels. A clear reconciliatory attitude has been demonstrated at a number of hearings where victims and perpetrators have embraced each other following difficult and emotional evidence. Neville Clarence, who was blinded in an Air Force bombing in Pretoria, shook hands with the man, Aboobaker Ismail, who had planned the attack (Final Report 1998: 5(1) 63–65). Ismail, later stated (Amnesty hearing, Pretoria, 29.09.1999),

> Despite the fact that he (Neville) is totally blind, he says he has accepted that he was a casualty of war, he understood he stood on the other side. Since then I believe we are becoming closer to each other, he has been to my home, had a meal together and not so long ago, we were looking at the possibility … of actually planting a tree of reconciliation.

Clearly, reconciliation has to be faced by individuals on a local level, yet in reality this has rarely happened. Many 'perpetrators' have failed to demonstrate any remorse for their actions. The Commission did not request them to demonstrate feelings of shame to gain amnesty and, in numerous submissions, perpetrators have reiterated their belief that apartheid should be maintained.

Alex Boraine (1998: 4), the vice-chair of the TRC, has commented that for reconciliation, there has to be 'a possibility of wounds being cleansed and closed and the victims being restored'. This idea of 'healing a nation' to promote reconciliation has been a prominent feature of Commission statements. Language that has focused on healing, restoration of personal relationships and reconciliation has been a central tenet of TRC-speak (Allen 1999). However, Grahame Hayes (1998: 2) identifies that there 'are very few, if any, structures and processes to *mediate* the complexities of healing and reconciliation'. While the Commission may infuse its feedback to society with positive notions of the future these ideas may be obscured by practices within civil and political society. The political reticence to finance reparations for those designated to be 'victims' is a clear example of this.

The Final Report (1998) has also recommended a number of optional measures that might promote reconciliation. Tellingly, in an article on fifteen other truth commissions, Priscilla Hayner (1996: 28) laments that 'proposed recommendations … are often not implemented'. Given the lack of political will to implement significant structural change in South Africa, hopes for the implementation of recommendations are limited. Despite the Commission's attempts to

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promote reconciliatory practice, by emphasising accountability for violations, allocating responsibility for apartheid and detailing options for change, these have all been neutralised in practice. Judicial and political policies have outweighed any Commission challenges to the 'perpetrators', beneficiaries or structural conditions of apartheid.

Simultaneously, 'victims' and survivors have seen little change to their daily treatment and social standing. Promises of reparations have been dashed and the state has demonstrated little impetus to transform the social, economic, judicial and political landscape. With such disregard, it seems unreasonable that anybody should demand this group to be reconciled; why should they?[6]

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The TRC has been woven into the political, economic and social structures that have independently begun to formulate new 'post-apartheid' truths and representations. From this viewpoint, group identities and status have not moved on, those who hold power have neatly managed their representations. Accounts related to the Commission may have brought cases of individual reconciliation and questioned traditional stereotypes, but collectively, nothing much has changed.

For many, this opportunity to present the different layers of truth will have to suffice. While the Commission has provided a springboard for future action by ensuring that South Africa's past cannot be denied, its limitations need to be made clear. Despite its detail, the TRC Report is not *the* definitive history of South Africa. Further, even though the Report is nearly one million words long and demonstrates a wealth of human experience and historical accountability, it cannot dissolve years of conflict and power struggles on its own, overnight. It cannot command reconciliation.

Operating alongside dismissals of responsibility for apartheid, and a displacement of the historical roots of conflict, the potential of the Commission to build a 'reconciliatory bridge' is brought into question. In hindsight, the TRC, grafted onto the structural context of apartheid, stood little chance of making substantive change. The negation of criminal and social justice that characterised apartheid has been upheld by the new ruling powers. Placed alongside continued inequality and discrimination, truth appears of little value.

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NOTES

1. It was underpinned by the Promotion of National Unity and Reconciliation Act, No. 34 of 1995. South Africa has had two other truth-type commissions, the Skewiyaya Commission of Inquiry and the Motsuenyane Commission. Both dealt with reports that the ANC tortured individuals suspected of being government agents (Amnesty 1992). These two Commissions proved to augment a degree of trust between the ANC and members of the public (Wilson 1995) and set the ground for a national Commission that would cover abuses on all sides in South Africa.

2. Such as a national day of remembrance and reconciliation, erection of memorials and monuments and the development of museums. Legal and administrative measures include assisting individuals to obtain death certificates, expedite outstanding legal matters and expunge criminal records.

3. Aimed at promoting the healing and recovery of individuals and communities that have been affected by human rights violations.

4. Including legal, administrative and institutional measures designed to prevent the recurrence of human rights abuses.

5. Although a large sum, it has been recently judged as a small political gesture when placed against the budget of R30 billion for arms.

6. A point also made by Bill Rolston (1999) in relation to Northern Ireland.

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