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South Africa's morality tale for our time

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Truth and Reconciliation Commission of South Africa Report: Five Volumes, Basingstoke and Oxford, Macmillan, 1999

On 29 October 1998 Archbishop Desmond Tutu presented the final report of the Truth and Reconciliation Commission to President Nelson Mandela. This massive report has now been published by Macmillan in a handsome, extensively illustrated five-volume set. The fine quality of the production would seem appropriate to what has been hailed as a document of lasting importance for South Africa. Indeed, it is evident that many foreign commentators see it as important not just for South Africa but for the whole world. That has been reflected in the interest shown in the TRC by commentators, such as Timothy Garton Ash and Michael Ignatieff, who have not previously written about South Africa. The report was the culmination of nearly three years of work by the TRC. President Mandela announced the names of the 17 commissioners (designating Desmond Tutu as chairperson and Alex Boraine as deputy chairperson) in November 1995. It began to function in December that year, while the first public hearings were held on 15 April 1996. However, while the report has been the most significant product of the TRC's endeavours, it is not the end of its work. In particular, the Committee on Amnesty will continue to function until it has reached decisions on all the outstanding applications for amnesty received by the deadline of 30 September 1997. When it has completed this task a further volume of the final report will be published.

The establishment of the TRC was an indirect result of the political settlement achieved among South Africa's political parties at the end of 1993. In particular, the epilogue of the interim constitution agreed upon by the parties provided that in order to advance reconciliation and reconstruction, 'amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past'.[1] The epilogue went on to mandate the parliament to be elected at the end of April 1994 to establish how this provision should be put into effect. The issue proved highly contentious. The mechanism of the TRC was favoured by the leaders of the African National Congress (ANC), partly because of their conviction that the ANC would not be damaged in the process since it had conducted its limited 'armed struggle' against apartheid in accordance with international norms and partly because they recognised how damaging the process was likely to be to the National Party, which

[1] Quoted from epilogue of the Interim Constitution (Constitution of the Republic of South Africa Act 200 of 1993) (extracted from http://www.truth.org.za/legal/interim.htm).

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had emerged from the 1994 elections as the ANC's main rival. Both the National Party and the Inkatha Freedom Party (IFP) expressed serious reservations about the creation of the TRC when the legislation to set it up was introduced in parliament. They were even more hostile towards it in practice.

That the TRC should have proved so controversial is not surprising. The interpretation of violent events plays a central role in the contest for legitimacy among political forces in societies in transition. Even in untroubled times the truth about violent events may be hard to establish. The heart of Akutagawa's famous short story, *Rashomon*, which tells the tale of a violent encounter between a bandit and a nobleman in medieval Japan from a number of viewpoints, is the unreliability of human witnesses and their tendency to embellish and distort their testimony in their own interests. In his story even the accounts of the ghosts of the dead are misleading. However, there is a crucial distinction between the contention that the operation of human self-interest presents formidable and sometimes insuperable obstacles to the establishment of the truth and the proposition that there is no truth singular, only the relative truths of different perspectives or different observers.

On this issue, the TRC report faces both ways. On the one hand, its findings are intended to represent an authoritative official judgment of the conflicts of the past, even though the report readily acknowledges large gaps in the record and the limits that time and lack of resources placed on the TRC's quest for the truth. On the other hand, the report embraces a relativist position in relation to the testimony of victims. Thus, the failure of the TRC to subject the testimony of victims who gave evidence to the commission to the tests that they would normally be subjected to in legal proceedings is defended on the basis of the validity of the truth of their experience, from their point of view. The approach taken by the TRC to this issue is questioned by Wynand Malan in his minority position (buried in the chapter on reconciliation in the final volume of the report):

> Even though the report offers a good exposition of different concepts of truth, especially of factual truth and narrative truth and then of social or interactive truth, the distinction is not sustained. In arriving at findings, all is accepted as evidence, as an ingredient of factual truth.[2]

Malan was the only Commissioner to put forward a minority position and that somewhat diffidently. He had been a National Party MP up to January 1987 when he resigned in protest at the government's security measures and its failure to move more rapidly away from apartheid. Among his concerns was the acceptance of statements by applicants for amnesty who had a convenient tendency to implicate deceased persons in wrongdoing. Malan also argued that motivations other than racism, such as anti-communism and nationalism, were underplayed by the TRC in its interpretation of the conflicts of the past and that the sheer scale of the report prevented the Commissioners from effectively vetting the work of the researchers who wrote the drafts for the final report.

More attention might have been paid to Malan's concerns when the report was published, had not circumstances conspired to enhance the TRC's reputation for even-handedness. As a result of a court judgment, the TRC had been obliged to give individuals whom it intended to name in its final report as responsible for human

[2] *Truth and Reconciliation Commission Report of South Africa: Volume 5* (Basingstoke and Oxford: Macmillan, 1999), p. 442.

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rights violations advance notification of its findings. The former President, F.W. de Klerk, was one of those the TRC intended to name. It was an eventuality for which De Klerk was fully prepared. In response to its findings De Klerk presented the TRC with a massive quantity of documentation in refutation of accusations made against him in the hearings. There was no possibility that his response could be evaluated in the short time available before publication. With great regret, the TRC decided to excise the paragraphs referring to De Klerk's culpability from the final report. The alternative was to delay the publication of the report. The TRC's decision infuriated ANC leaders, who then mounted a legal challenge to the publication of the report in relation to unfavourable findings made in respect of the ANC. The ANC's conflict with the TRC was a cause of division between Nelson Mandela and his successor, Thabo Mbeki, with Mandela readier than Mbeki to accept that in order to be seen to be credible, the TRC would have to apply the same standards to ANC conduct as it did to the actions of the old regime. In the event, the ANC's legal challenge failed and in fact served simply to highlight the criticisms made in the report of the ANC.

The report criticizes poorly planned and unplanned operations of *Umkhonto we Sizwe* (MK) which resulted in civilian casualties, MK's landmine campaign in rural areas of the Transvaal between 1985 and 1987, extra-judicial killing of suspected informers, and widespread violations by ANC-aligned groups. On the issue of violations by supporters outside of the formal control of the ANC as an organization, the report concludes:

> the ANC is morally and politically accountable for creating a climate in which such supporters believed their actions to be legitimate and carried out within the broad parameters of a 'people's war' as enunciated and actively promoted by the ANC.[3]

However, the criticisms of the ANC have not wholly mollified critics of the TRC within South Africa. This is because of the context in which it places its criticisms, which is stated in the report as follows:

> In reviewing the activities of the African National Congress (ANC) and the Pan Africanist Congress (PAC) the Commission endorsed the position in international law that the policy of apartheid was a crime against humanity and that both the ANC and the PAC were internationally recognised liberation movements conducting legitimate struggles against the former South African government and its policy of apartheid.[4]

The report draws a distinction between a just war and just means. The basis of its criticisms of the ANC was that in the course of its political activities and armed struggle the ANC and its organs including the National Executive Committee and its armed wing, MK, had committed gross violations of human rights in terms of international conventions.

But given the importance that the ANC paid to international norms during the course of the violent phase of its opposition to the government prior to the era of negotiations, not surprisingly the TRC has far harsher criticisms to make of other parties in the conflict. What tended slightly to mute the impact of these criticisms was that the basis for its findings in respect of other parties had already been given very wide coverage by the media in its reporting of the public hearings on gross human rights violations. Further, in many ways, the most striking aspect of the

[3] Ibid., *Volume 2*, p. 347.
[4] Ibid., *Volume 2*, p. 325.

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report is not how much it was able to uncover about the past but how little. This is particularly the case in respect of the transition i.e. the period between 1990 and 1994. A chapter of the report is devoted to political violence in the era of negotiations and transition. It opens as follows:

> The Commission had considerable success in uncovering violations that took place before 1990. This was not true of the 1990s period. Information before the Commission shows that the nature and pattern of political conflict in this later period changed considerably, particularly in its apparent anonymity. A comparatively smaller number of amnesty applications were received for this period. The investigation and research units of the Commission were also faced with some difficulty in dealing with the events of the more recent past.
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> Two factors dominated the period 1990–94. The first was the process of negotiations aimed at democratic constitutional dispensation. The second was the dramatic escalation in levels of violence in the country, with a consequent increase in the number of gross violations of human rights.[5]

One part of the explanation of the TRC's difficulties in getting at the truth is to be found in another substantial chapter of its report, which is devoted to the subject of the destruction of documents. As the report puts it,

> The story of apartheid is, amongst other things, the story of the systematic elimination of thousands of voices that should have been part of the nation's memory … The tragedy is that the former government deliberately and systematically destroyed a huge body of state records and documentation in an attempt to remove incriminating evidence and thereby sanitise the history of oppressive rule.[6]

Prior to 1990 many sensitive government documents were destroyed as a matter of routine. The disposal of 'state sensitive' material from the 1990–94 period was a matter of policy determined at the highest level with a Cabinet decision to that effect approved on 2 June 1993 and communicated to all government departments in July of that year. Perhaps significantly, this policy and its quiet and efficient implementation coincided with the setting of a date for the country's first fully democratic elections in the multi-party negotiations, an important moment in the negotiations since it put a time-limit to the process of reaching agreement on an interim constitution. Statements to the Committee on Human Rights formed an important part of the information that the TRC was able to draw on for its report. By the deadline of 15 December 1997 the TRC had received over 20,000 statements. Another source of information was the 7,124 applications for amnesty received by the Committee on Amnesty.

However, the weakness of the report's coverage of events during the 1990s cannot entirely be explained by a lack of documentary evidence for the period. It is evident that the violent power struggle that took place during the era of negotiations fits uncomfortably within the moral tale of the fall of apartheid that the TRC wishes to tell. It is also clear that despite Chief Buthelezi's protestations that the TRC was intent on the persecution of the IFP, the discrediting of the old regime was a much higher priority for the TRC than exposure of the IFP's role in the violence of the transition. What is worse, some of the most important of the TRC's findings during this period have been made on the basis of what can charitably be described as

[5] Ibid., *Volume 2*, p. 583.
[6] Ibid., *Volume 1*, p. 201.

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sloppy research. A case in point is the Boipatong massacre in June 1992. This massacre played a vital role in discrediting the De Klerk government at a crucial moment in the South African transition. In fact, it is fair to characterize it as a turning point in the transition which helped to ensure the ANC's subsequent victory. The TRC report draws word for word on a contemporary June 1992 account of these events implicating the police in the atrocity, but which was not borne out by subsequent investigations. These were simply ignored in findings that treated what were highly contentious allegations when they were first made, as proven facts.[7]

Two major components of the report deserve highlighting. A number of special investigations were carried out by the TRC and are described in Volume 2 of the report. These included investigations into the death of President Machel (on 19 October 1986); the crash of South African Airways jumbo jet, the Helderberg (on 28 October 1987); Project Coast (preparations being made for chemical and biological warfare); secret state funding of such special projects; the activities of Mandela United Football Club under Winnie Madikizela-Mandela between 1987 and 1989; and exhumations of disappeared persons who were secretly buried. It has long been suspected that the plane crash in which President Samora Machel of Mozambique died was not an accident, but caused by the decoy beacon. However, the Commission was unable to confirm this theory and concluded that the matter needed further investigation. Similarly in the case of the Helderberg, suspected of carrying dangerous substances in a sanctions-busting operation, the TRC was unable to arrive at a firm conclusion, except that previous enquiries into the tragedy had been inadequate.

The material on the development of chemical and biological warfare is particularly disturbing. It underlines the threat that rogue or isolated regimes might pose in future in this area to the international community as against the more widely touted danger of the use of these weapons by terrorists. Items listed by a researcher for the front company being used by the South African Defence Force for the manufacture of toxins included anthrax in cigarettes, botulism in milk, and paraquat in whisky. It is also one of the few places in the report where international connections of the apartheid state are touched on. However, while it makes reference to links between South African agents and contacts in Croatia, Taiwan, Israel, West Germany, Belgium, the United States and Britain, few details are provided. The report acknowledges the government's concern that an investigation of the issue 'could jeopardise international relations with countries which may have assisted the programme but with whom South Africa continues to have diplomatic relations'.[8] The enquiry into the funding of secret projects against opponents of apartheid begs the question why the projects themselves were not subjected to closer scrutiny. One such project was Project Echoes, the aim of which was to discredit the ANC by manufacturing close connections between the ANC and the Provisional Irish Republican Army. This example suggests that a reason may have been the sensitive issue of links to other countries. The special investigation into the Mandela United Football Club arrived at damning conclusions about Winnie Madikizela-Mandela's culpability in relation to a number of deaths as a result of her followers' activities.

[7] See Rian Malan, 'Boipatong: A Question of Spin', *Frontiers of Freedom*, 20: 2 (Johannesburg, 1999), pp. 26–35.

[8] *Truth and Reconciliation Commission Report of South Africa: Volume 2*, p. 514.

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The report on exhumations gives a moving account of the TRC's role in locating burial sites of opponents of the government who disappeared during the 1980s.

An important dimension of the TRC's mandate was to enquire into the wider context in which gross human rights violations took place. To this end, the Commission held a number of special hearings for business, the churches, the judiciary, the legal and medical professions, and the media. These proved controversial. They were strongly criticized by opposition political parties as subjecting the white community to collective guilt. At the same time, they failed to satisfy radical critics of the TRC such as Mahmood Mamdani. He argued that the emphasis by the TRC on the role of perpetrators of gross human rights violations in the functioning of apartheid enabled a much larger category of people, the beneficiaries of apartheid, to escape responsibility for the operation of the system. It also put undue focus in his view on the victims of apartheid terror numbering about 20,000 as opposed to the millions of victims of apartheid policies such as forced removals.[9]

The evidence the TRC drew from the hearings and its findings are described in Volume 4 of the report. One of its main findings is that 'most businesses benefited from operating in a racially structured context'.[10] The report is just as critical of the legal and medical professions and of the media, while it concludes in respect of the churches that 'Christianity, as the dominant religion in South Africa, promoted the ideology of apartheid in a range of different ways'[11], which it then goes on to describe. What the findings amount to is a highly contestable set of generalizations, a common feature of which is the underplaying of the significance of white liberal opposition to apartheid. The superficiality of the report's analysis of domestic political forces under white rule forms the other side of the coin of its failure to probe apartheid's international connections.

Nevertheless, the generally favourable reaction to the TRC outside South Africa is not difficult to explain. The notion that those responsible for gross human rights violations during conflicts should be made accountable in one way or another for their crimes has gained immensely in influence in recent years, reflected in the establishment of the international tribunals on the former Yugoslavia and Rwanda, the treaty to set up an international criminal court, the Pinochet case and the indictment of Milosevic as a war criminal. In the current climate of opinion, with its emphasis on giving priority to the voices of victims, there was bound to be enthusiasm for a process based on the proposition that South Africa should seek to come to terms with its past through providing a platform for those who had been on the receiving end of the state's political repression. That the process itself inevitably fuelled anger against those who were associated politically with the old regime was not a matter of concern to international opinion, especially given the fact that the role of external forces in support of that regime was not included in the indictment.

The more critical view of the TRC inside South Africa needs to be seen in the context of low economic growth, which has been one of a number of factors that have contributed to racial polarization. In particular, it is reasonable to argue that the TRC has been a lightning conductor for bad feelings about other matters. But it

[9] Merle Lipton, *Evaluating South Africa's Truth and Reconciliation Commission: Report on the Conference at the University of Sussex, 18–19 September 1998* (Brighton: Research Centre for Southern African Studies, University of Sussex, 1998), p. 4.
[10] *Truth and Reconciliation Report of South Africa: Volume 4*, p. 58.
[11] Ibid., *Volume 4*, p. 91.

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does remain the case that the original reason why the parties agreed to the principle of amnesty in the interim constitution has tended to be lost sight of as a result of the way in which the TRC has functioned. This was encapsulated in the need to avoid the end result of 'justice with ashes'.[12] This recognised that justice should not be pursued in such a way that it encouraged the losers to fight on to the bitter end. The aim was to protect society from violence carried out by perpetrators simply with the motive of escaping from retribution for past actions and not for any larger political purpose. To put it another way, the promise of amnesty was intended to provide all groups with an exit from conflict. It was also designed to provide all the political parties with a measure of reassurance about their position, regardless of the outcome of the 1994 elections. In practice, however, the TRC process has not been conducive to the granting of amnesty. By December 1998, the Committee on Amnesty had made decisions on 5,111 applications (72 per cent of the total received). Amnesty was granted in full in only 216 cases (4 per cent of those dealt with).[13]

At the same time, the fears of the drafters of the interim constitution that the denial of amnesty would lead to political instability have proved unfounded. The scale of the ANC's victory in the country's first truly democratic elections in 1994 removed any risk that enquiry into the conflicts of the past would jeopardize the country's political settlement. Furthermore, the TRC hearings and its report were undoubtedly a factor in the ANC's increasing its share of the vote and in the collapse of the National Party's vote in the country's 1999 elections. In this respect the TRC achieved the political purpose of its creators, leaving aside De Klerk's successful manoeuvre to safeguard his reputation. This underlines a point that is often glossed over. Neither truth commissions nor international tribunals exist in a political vacuum. It is therefore not surprising that they have a propensity to serve up some version of victors' justice, notwithstanding claims that are made for their healing properties. In their tendency to interpret conflicts as battles between Good and Evil, they are also in tune with the spirit of the age, resonating in particular with post-Cold War Western liberal triumphalism. It is thus unlikely that detailed criticism of the content of the volumes of the TRC report will have much impact on its status as a major document for our time.

[12] Kader Asmal, Louise Asmal and Ronald Suresh Roberts, *Reconciliation through Truth* (Cape Town and Johannesburg: David Philip Publishers, 1996), p. 18.
[13] Figures given at the TRC's web site, http://www.truth.org.za/amnesty.htm.

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