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An Instrument in State-Building: Reconsidering the Role of South Africa's Truth and Reconciliation Commission

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Authors Note

“The discourse of history, hardly distinguished from policy, ends up by absorbing the concerns and objectives of the latter.” – Ranajit Guha, *The Prose of Counterinsurgency*. In *Culture/Power/History: A Reader in Contemporary Social Theory*, 1994, p.355

This piece on South Africa's truth and reconciliation commission would not exist without the extensive knowledge offered by Dr. Daniel Douek on the subject matter. His own book *Insurgency and Counterinsurgency in South Africa's Transition*, and the readings suggested during POLI 442, constituted the theoretical backbone of my analysis. I am equally grateful for the freedom to write on a topic of interest to me in the context of his class, as well as the opportunity to share it! I would also like to thank my editors Emily Rowe and Daniel Pines for the time they volunteered and their invaluable suggestions.

Abstract

Femicide, taking different forms including honour killing and infanticide, in South Asia has remained an important part of discourse around gender-based violence in the region. Much of the research done on femicide, like other forms of gender-based violence in South Asia, has been done by Western researchers. This paper argues that much of the Western work around femicide in South Asia adopts an Orientalist approach which often results in the ‘othering’ of the experiences and struggles of South Asian women. In order to discuss different aspects of their struggle and experiences, this paper focuses on two cases of femicide in South Asia and the corresponding responses from South Asian feminists. In discussing nuances related to the culture and women’s personal lives, the paper focuses on their advocacy and the consequent impact which often goes undiscussed when their suffering is ‘othered’ and deemed incomprehensible in mainstream discourses.

Introduction

In the wake of the devastating apartheid regime, South Africa’s 1995 Truth and Reconciliation Commission (TRC) remains one of the world’s largest experiments in the ability of ‘truth-telling’ to promote national reconciliation and justice. Despite its unorthodox measures, it is regarded as “the most ambitious and organised attempt to deal with crimes of a past regime” (Stanley 2001, 525). That said, South Africa’s TRC has also faced staunch domestic criticism from multiple ethnic groups (Vora 2004, 317). Some argue that the TRC has failed to provide a framework acknowledging the structural level of violence and inequality experienced by victims of apartheid. The effects of apartheid as an institutional form of racism, pervading the very fabric of South African society and politics for decades, could hardly be forgiven or forgotten by a government-sponsored truth commission — to claim the TRC wholly achieved justice and reconciliation would be naive at best.

Instead, its success should be considered in the context of a negotiated pact that necessitated heavy compromises between the incoming African National Congress (ANC) and apartheid-era National Party. The TRC’s amnesty-centric approach pushed the post-apartheid state in a moderate direction,

prioritising stability over transformative change in order to position South Africa as a bulwark of liberal democracy on the African continent. This made the TRC contingent to the past and present of the apartheid state, inevitably corrupting its objectives of truth, justice and reconciliation to the detriment of the ‘victims’ the TRC was intended to serve. As a result, left-wing activists see the TRC as a manifestation of the anti-apartheid movement’s radical roots being abandoned (Bunsee 2003). It will therefore be argued that the effectiveness of the TRC should not solely be measured in outcomes of truth, justice, or reconciliation, nor in terms of material benefit for the victims of apartheid, but a bridge towards a new state that the TRC itself was both constitutive and a resultant of.

There have been many investigations on the topic of the TRC’s successes, though this paper seeks to build on the constructivist role it played in re-defining the South African state. The specific issue of whether or not the TRC uncovered ‘truths’ or achieved ‘justice’ has been the subject of multiple investigations. As a legal and philosophical theorist at the University of Toronto, Professor Dyzenhaus underscores a tension in the very logic of truth commissions; that ‘truth’ and ‘reconciliation’ might

come at the expense of other requisites necessary to preserve a nation's unity amid democratic transition (Dyzenhaus 1999). Whereas some have been optimistic in this regard, Jonathan Allen argues in *The University of Toronto Law Journal* that achieving abstract goals such as truth and justice ought to be secondary to the promotion of national unity in the wider context of South African state-building (Allen 1999). James L. Gibson, Professor of African studies at Washington University, discusses the pre-theoretical difficulty of measuring the success of abstract concepts such as 'reconciliation' quantitatively, especially when its outcomes vary significantly based on factors such as race and ethnicity (Gibson 2006, 82). Multiple papers point to the TRC as a political tool, a symbol for a state eager to continue consolidating its power while also maintaining both domestic stability and its allies in the international system (Mamdani 2002, 33; Cole 2007, 168). In this sense, the dots remain disconnected between the colonial dynamics of South Africa in the 1990s, the explicit function of the TRC as a product of this dynamic, and the impact of its outcome on the characteristics of the post-apartheid state. The line must be drawn between a state that continues to perpetuate apartheid-era inequalities and the process in which it seeks to 'overcome' these inequalities (Bunsee 2003, 2202; Stanley 2001, 527).

By drawing on Pramesh Lalu's previous theoretical work, Professor Douek of McGill University subsequently highlights the unshakeable role of the 'colonial archive' in any narrative of 'truth-telling' — a colonial archive that the TRC embodies as an arm of the state (Douek 2020, 200; Lalu 2000, 68). Thus, the TRC itself can be considered an extension of the very colonial legacy it sought to ameliorate. This framework will illustrate that the concepts of truth, justice and reconciliation championed by the TRC cannot be considered in isolation from the political narrative of compromise in the wider project of post-apartheid democratic state-building. As a result, the TRC will be analysed

as the outcome of a knife's edge calculation between the altruistic yet destabilising values it embodies, and the context of the state from which it emerged.

Revealing the Truth: Risk or Reward?

South Africa's 'experiment' in truth-telling stands out as a pioneer in the realm of truth commissions, particularly considering the magnitude of the atrocities that occurred under the apartheid regime. Imagined as an alternative to war crime bodies like the post-World War II Nuremberg trials, truth commissions such as South Africa's are bodies "charged with the duty of uncovering the truth about certain historical events rather than prosecuting specific defendants" (Cole 2007, 171). It brought out over 21,000 victim statements and more than 7,000 amnesty applications by perpetrators who decided to come forward voluntarily (Stanley 2001, 527). The South African TRC also differed significantly from previous truth commissions, notably in its ability to grant conditional amnesty to human rights perpetrators, but also in being "the most public and publicized truth commission the world had seen, then or now" (Cole 2007, 172). Whereas straightforward criminal trials dissuaded perpetrators from coming forward, it was suggested that "perpetrators in the amnesty hearings, drawn by the 'carrot' of amnesty, came forward of their own volition to confess their crimes" (Cole 2007, 175). In this sense, punishment was secondary to the TRC's goal of both victim and perpetrator being able to "live as equal citizens of the society in question" by confronting harsh truths of the apartheid regime (Dyzenhaus 1999, 313). Following years of human rights violations, the TRC was tasked with creating a "new 'truth', one that was made and owned by the people, not for the people" (Stanley 2001, 528). It is important to note that this was not a policy of blanket amnesty; perpetrators were individually identified, and their cases were evaluated accordingly. If successful, these perpetrators would avoid criminal prosecution. It then followed that the victim would receive material reparations and, most importantly

for the commission, society would be confronted with these truths in the wider pursuit of ‘justice’ and reconciliation (Mamdani 2002, 33). This approach was largely successful in “bringing out in the open the brutalities of the apartheid era”; following the TRC, it was “no longer possible for the average South African to [...] deny the nature and extent of the gross human rights violations” that had taken place (Vora 2004, 317).

Atop the intrinsic value of uncovering truths, this approach is widely considered to have facilitated reconciliation among South Africa’s population. The idea that “a full inquiry into the past could facilitate rather than deepen already bitter divisions” went against prior patterns that emphasized a ‘covering-up’ of uncomfortable histories (Dyzenhaus 1999, 311). A truth commission could easily be considered a disproportionate risk to social unity in the context of democracy-building. Yet, South Africa’s TRC was firmly rooted in a belief that the “brutal truth of South Africa’s traumatic past had to be revealed and acknowledged, no matter how immensely painful the process” (Vora 2004, 306). This approach was supported by a hope that the TRC would “promote national healing and individual catharsis [...] thereby preventing the unsettled business of the past from poisoning social relations in the present” (Allen 1999, 316). Traditional criminal trials were deemed inadequate in not only promoting truth, but also lasting reconciliation, as they expose victims to ‘adversarial atmospheres’ responsible for uncertain outcomes (Allen 1999, 350). The TRC presupposed that confronting truths would help build reconciliation and social unity in the long term. Surveys of post-TRC sentiment seem to confirm that “the collective memory produced by the truth did indeed contribute to reconciliation” (Gibson 2006, 82). The TRC therefore provided an alternative to work towards a “political culture hostile towards the institutionalisation of cruelty, humiliation and injustice” (Allen 1999, 350). Although it is acknowledged that “few South Africans are likely to receive prompt and ample state

compensation,” the fact remains that “they can fully participate in the politics of memory [...] and in due course, reconciliation” (Moran 2009, 109).

Yet, despite the TRC’s achievements in these areas, the concepts of ‘truth’ remain complex and difficult to measure. Reconciliation is a huge demand, especially considering the extent of crimes committed by apartheid leaders that were widely accepted by the various white populations. Some argued that “the TRC opened old wounds without proper support for healing and with a high potential for generating anger and revenge” (Vora 2004, 317). The TRC’s 1998 report received mixed reviews across the political spectrum, having notably been “sharply critiqued by leaders of major parties to the constitutional pact — the National Party and the African National Congress” (Mamdani 2002, 34). More importantly, its success was evaluated differently by various domestic racial and ethnic populations, wherein white populations consisting of the English and Afrikaners were more fearful of the possibility for the truth to harm reconciliation. Should it be aimed at them, white populations were certainly fearful of the retaliation that could ensue from the TRC’s polemic revelations. On the other hand, racial and ethnic subgroups such as the Xhosa who inhabit South Africa’s Eastern peninsula were more convinced of the TRC’s positive effect on post-apartheid society (Vora 2004, 317). The ability to measure, or claim to have successfully, achieved reconciliation is therefore dependent idiosyncratic nature of South African race relations and the particularities of its apartheid regime.

Nevertheless, there are important lessons to be learned from the South African TRC. In confronting its past, interviewing victims and producing an expansive final report, South Africa seems to have made a “successful, relatively peaceful, and quite unexpected transition from the apartheid dictatorship to a reasonably democratic and stable regime” (Gibson 2006, 83). The TRC neither buried the evils of the previous regime, nor did it end in “a pursuit of justice so relentless it turns to revenge”

(Mamdani 2002, 33). Many truth commissions with varying philosophies have been employed with degrees of success; between 1974 and 1994 about fifteen truth commissions were established from Argentina, to Germany and the Philippines (Vora 2004, 303). Whereas some countries such as Chile provided blanket amnesty, others such as Sierra Leone encouraged performances of remorse over actual truth by pressuring “perpetrators to publicly apologize to the community” (Cole 2007, 174). Namibia’s cover-up of the Lubango prison massacre, where political hostages were allegedly tortured and executed without trial prior to its democratic transition, remains a “ticking time-bomb, one that might yet blow Namibia’s ‘democratic miracle’ out of the water” (Saul 2003, 334). Approaches such as Namibia’s highlight not only the fragility of burying truths in the context of democratic state-building, but also how the ‘covering-up’ of atrocities can be falsely justified in a narrative of reconciliation.

Reconciling Justice and Social Unity

Beyond the goals of truth and reconciliation, how does ‘justice’ fit into the equation? The issue of justice can be seen through different lenses, whether it be on an individual or national level, a redistributive or restorative framework, and so forth. The TRC was tasked with promoting justice in a country where the entire “army, police services and the whole of the civil service were committed to the maintenance and defence of an evil system by abhorrent means” (Vora 2004, 304). Given the context and severity of the apartheid system, three key questions arise: 1) what forms did ‘justice’ take; 2) can the TRC claim to have achieved such justice; and, most importantly to some, 3) for whose benefit was this framework chosen?

In a commission that claimed to acknowledge “crimes against humanity that involved a racial and ethnic cleansing of the bulk of its population” (Mamdani 2002, 34), how was the scope of ‘official’ victims limited to only 21,000 individuals? Upon closer inspection, it seems the TRC’s perspective

was indeed one that focused on major political actors, fractures and larger events — glossing over the magnitude that is ‘crimes against humanity’. Furthermore, even when a victim was acknowledged, many have argued that these hearings “were highly performative events in terms of their theatrical and dramatic emotional displays” (Cole 2007, 173).

This underlines one of the main drawbacks of the inherently ‘individualised’ nature of the TRC in terms of achieving material justice for its innumerable victims; the commission was reluctant to take steps beyond formal acknowledgements of victimhood. The TRC could only ever recommend certain steps be taken in their final report, meaning its ability to assure implementation was also limited. By design, a highly individualised TRC did not have to “challenge the structural inequalities which contextualised apartheid” (Stanley 2001, 527). Perpetrators of violence had “no obligation to make any substantive changes” and victims — even when acknowledged — seldom received any compensation (Stanley 2001, 527). The TRC therefore provided a “self-deceptive optimism” (Allen 1999, 350) insofar as entire communities remained materially destitute in the wake of apartheid. They were characterised by poverty, lack of housing, poor education, limited health services and unemployment. The Commission avoided any substantive recommendation of legal reform to dismantle the “institutional legacy of apartheid” (Mamdani 2002, 57). In this limited scope, whether justice was claimed to have been achieved on an individual level in the act of receiving reparations, or on a systemic level through the addressing of the continuing inequalities caused by apartheid, the result is the same: on neither of these levels was justice truly achieved.

This is not to dampen the TRC’s achievements, but more so to nuance any one commission’s ability to “dissolve years of conflict and power struggles on its own, overnight” (Stanley 2001, 543). As a government-sponsored project, the TRC was brought to life by a coalition that involved the main political proponent, and thus perpetrator of the

apartheid regime — the National Party — which had a dramatic effect on the scope and goals of the TRC’s design. This conflict of interest is elucidated explicitly in documents such as the 1992 ‘Steyn Report’. This report linked the murderous far-right ‘Third Force’ group with members of the Directorate of Covert Collection (DCC), a covert arm of the apartheid regime’s South African Defence Force (SADF) (Douek 2020, 220). The names of these members, assumed to be very senior figures, were only ever orally recounted to then-President F.W. De Klerk and ANC leader Nelson Mandela, and remained outside the scope of the TRC. Though F.W. De Klerk allegedly purged these officers, Douek argues that “these covert operations clearly persisted” (Douek 2020, 221), casting significant doubts onto the comprehensiveness of the TRC’s findings.

The exclusion of the Third Force intelligence from the TRC’s findings demonstrates how any ‘truths’ that emerge from a political institution will always be shaped and constrained by the political actors that form its structure. In other words, the establishment of a TRC under the auspices of an existing and dominant power will remain a tool by which that power continues “producing itself as sovereign” (Lalu 2000, 68). We see this also to some extent in the TRC’s brokered, moderate and amnesty-centric approach, as well as the lack of substantive change it recommended beyond limited individual reparations. These findings leads some to believe that the TRC was never intended to entirely disrupt the foundations of apartheid in South Africa. These are foundations that many still claim exist today, both materially and psychologically. It is argued that “the people who suffered the most under apartheid continue to suffer under the new ruling power” (Stanley 2001, 538). As one prominent scholar put it, “one cannot hope to retrieve a silenced subject by way of the colonial archive” (Lalu 2000, 68). In light of these facts, the TRC should not be considered to be a revolutionary tool in dismantling the deep material and psychological

roots of apartheid, but rather as a device which was used contextually in the construction of a moderate and democratic South African society.

A Symbol of Compromise

As a fundamentally political institution, the TRC’s legacy is as a symbol of compromise; of paving a moderate vision of post-apartheid South Africa in an era begging for deep structural change. What was missing in scope and radicalism from the TRC was intentional, making it not a failure but a tool, wherein “justice becomes the casualty of a political calculation” (Allen 1999, 316). The TRC was tasked with balancing justice and social unity, characterised by the demands of white apartheid leaders who vowed to only allow elections “if amnesty was granted” (Vora 2004, 302). This lays the foundations of a constitution that was born out of a lopsided relationship with oppressive factions, wherein giving amnesty to perpetrators was not a decision made by Black South Africans, but instead decided by political elites, and then repackaged as ‘reconciliation’. South Africans were forced to “transcend the divisions and strife of the past,” not by their own accord, but through a top-down and elite-driven compromise (Vora 2004, 302). As such, the TRC “slides from the role of legitimating constitutionalism to a creation of a new South African nationalism,” a nationalism that “takes the heat off governments and does not encourage significant judicial reform” (Allen 1999, 350). The outcome of the TRC has not been one that force substantive changes to the apartheid underbelly of contemporary South Africa.

The TRC can also be seen in the wider context of negotiations, wherein the ANC “always stood for settlement [...] its predominant position on the question of white settler occupation of the country was always one of accommodation and collaboration with it” (Bunsee 2003, 2202). From this view, the TRC would inevitably be constructed as a political compromise between two factions whose common concerns were the smooth democratic transition

of South Africa and respective accumulations of political clout. Both parties saw that full criminal prosecution “would be threatening to the new democracy” (Allen 1999, 316), and so this moderate path of amnesty was not born out of an altruistic conception of ‘restorative justice’ and forgiveness, but out of cold, calculated political necessity. It makes sense that there would be a desire to underpin social cohesiveness and individual responsibility “over institutional accountability for apartheid policies” (Stanley 2001, 536), as both sides saw an individualised TRC as the least disruptive to their platforms. That said, as an independent body, the TRC was still controversial and met with resentment by both the ANC and National Party; “the ANC did not like having the very small proportion of its own undertakings deemed unacceptable by the TRC” (Saul 2003, 351). However, it ultimately “remained by the very nature of its mandate a political body like many other truth commissions” (Vora 2004, 305), its power limited to the recommending of policies with little accountability regarding implementation. In the end, “it would be a great mistake to equate political stability with genuine reconciliation” (Vora 2004, 305), wherein the TRC represented the “quintessential element of this compromise” (Bensee 2003, 2202).

Seeing the TRC through the lens of compromise brings us to the question of the ANC’s objectives as the main negotiating party. Which direction did the post-apartheid government plan on taking the country, and how is this reflected in the narrative presented by the TRC? As negotiations went on, it became clear that “the ANC did not stand for a thoroughgoing anti-colonial revolution” (Bensee 2003, 2202). Consequently, the TRC was never revolutionary in nature. This came as no surprise; the ANC’s mandate was mostly moderate and non-racial, distancing itself from its communist and radical affiliations. Its armed struggle sought only “to bring the oppressors to the negotiating table to make the concessions they wanted” (Bensee 2003, 2202).

So, in the context of political moderation, compromise, and the absence of radicalism, narratives of ‘truth’ and ‘revelation’ led to the instrumentalization of the TRC as a political device. The TRC offered itself as a tool in establishing a superficial ‘blank slate,’ under which hid the effects of apartheid that continued to pervade South Africa. Indeed, the TRC itself, as a result of the 1990-1994 negotiations, ignored the way in which the National Party’s covert ‘Third Force’ shaped these negotiations, and how the “legacy of the war for South Africa in general continues to have an important influence on politics and society” (Ellis 1998, 261). Through the TRC’s design, both constitutional parties sought to “maintain an agenda that avoids a challenge of the status quo” (Stanley 2001, 536) — particularly the extent to which post-apartheid South Africa was, and continues to be, shaped by covert violence that underlies any sort of ‘negotiation’. Questions central to the transitional era, like Chris Hani’s assassination as a radical left-wing figure in the ANC, remain both highly salient and disturbingly unanswered today (Douek 2020, 225). Similarly to the TRC, the avoidance of a deep investigation into such a destabilizing act, whilst offering as little ‘truth’ as deemed sufficient to satisfy its electorate, serves the political purpose of maintaining the stability within post-apartheid South Africa.

However, avoiding a ‘challenge’ of the status quo went deeper than assuaging political desires; it meant maintaining the socio-economic order of apartheid. The TRC’s image of a nation that is ‘reborn’ — a nation that has overcome its strife and inequalities — is entirely mismatched with the socio-economic reality of many South Africans (Bensee 2003). Nevertheless this ‘blank slate’ narrative provided a rosy image for the nation and the international community in the context of state-building and democratic transition. South Africa was “bound by the terms of the undemocratically decided interim constitution,” with terms that included clauses “protecting private property in a way that

protects big capital and landowners” (Moran 2009, 110). If anything, it is argued that the legacy of the TRC is one that replicates and “consolidates what ‘whites’ have achieved through initial genocide and exploitation over 390 years of colonial rule” (Moran 2009, 111). The framework of ‘truth’, ‘justice’ and ‘reconciliation’ became an advantageous narrative for those who sought to preserve their apartheid-era economic power; the post-apartheid ANC coalition gave these patterns of exploitation “the sanction of a Black South African government” (Bensee 2003, 2202). This covered up a system in which the ANC was granted formal administrative power, but neither the social nor economic system had changed. The TRC appeared as one of many ‘concessions’ in a state where “the wealth of the country was retained in the hands of the white capitalist elite” (Moran 2009, 110). In this sense, the nature of the apartheid was not abolished, but simply repackaged through the TRC’s narrative of a progress; it “generated a fiction of unity and a shared understanding towards the past, envisaged as reconciliation” (Allen 1999, 349). Thus, on a fundamental level, the TRC can be seen as a successful device in altering history itself, creating a new narrative that further pushed the South African state in the desired direction of its existing powers, and against those who suffered most under apartheid.

The TRC’s mixed motives may cast a shadow on the innocent goals of truth, justice and reconciliation, but should the TRC’s origins in political compromise entirely detract from its successes in post-apartheid stability? For many, a ‘middle-ground’ path of compromise was necessary in transitioning from divided apartheid state to stable liberal democracy, making the TRC at the very least a success in that regard. Those who criticised the ANC’s negotiation with the oppressors, however virtuous in its ideological motives and deontological principles, would see the “heavens come crashing down” (Allen 1999, 316) in the name of a radical South Africa. Allen regards such an approach as a ‘cold comfort’, that “so strong an anti-consequentialism

is bound to wreak havoc in politics” (317). So while the ANC might have seemed to have failed its objective in abandoning its radical roots, its politics of compromise may very well have contributed to the stability of South Africa’s democracy. While some see this compromise as a missed opportunity for change, it is impossible to find contrafactual evidence that would suggest how things might have unfolded, had the ANC maintained its radical stance. A survey of English and Xhosa ethnic groups points towards this more pragmatic view of the TRC’s successes; these two groups “did not consider the short-term effects of the TRC in terms of bringing out the truth and reconciliation to be important for its overall success” (Vora 2004, 319). Instead, in the wider perspective of stability, compromise and state-building “they considered the long-term effect on society to be a major expectation and criterion for its overall success” (319). These surveys suggest that rather than being blind to the political functions and motivations of the TRC, South Africa’s population saw beyond the theatrics, and not only understood, but supported the objectives of social unity and democratic stability in the long run.

Conclusion

South Africa’s TRC paints a difficult, complex and multidimensional picture of compromise and thus — to some more than others — a mixed portrayal of achievement. Regardless of the TRC’s ability to uncover truths, achieve justice and promote reconciliation, it seems the criteria of its success hinges on the vision one has for post-apartheid South Africa. Some see the TRC’s values of forgiveness and reconciliation as “a particular kind of amnesia that imperialists like and favour” (Bensee 2003, 2203). They see the TRC as a symbol of compromise that was foisted upon those who suffered most from the apartheid regime; an effort to promote an ‘artificial unity’ in a system where victims of apartheid have continued to suffer in a socio-economic landscape that remains fundamentally unchanged. On the other hand, the TRC is also acknowledged by many

as a necessary, and ultimately successful, symbol and means towards political compromise in a nation that desperately needed unity in order to facilitate a democratic transition. In this latter case, ideological criticism must be measured against South Africa's remarkable achievements in stabilizing what had been one of the most divisive regimes in modern history. Ultimately, we will never know whether a more radical TRC could have better compensated victims and punished perpetrators. We will certainly never know if this could have been achieved without undermining the relative stability of South Africa's democracy. So, if we see the TRC as a puzzle piece in the eventual construction of a democratic and unified South Africa, then an analysis of success goes far beyond the aims of truth, justice and reconciliation.

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