

The South African Truth Commission

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The South African Truth and Reconciliation Commission. *Truth and Reconciliation Commission of South Africa*. Report. 5 volumes. Cape Town: The Truth and Reconciliation Commission, 1998.

Jeffery, Anthea. *The Truth about the Truth Commission*. Spotlight Series no. 3/99. Johannesburg: South African Institute of Race Relations, 1999.

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Although the name Desmond Tutu may not be as familiar to the attentive public in the West as the name Nelson Mandela, the former (Anglican) archbishop lent the moral stature of his Nobel Peace Prize (awarded in 1984) to this collective political, moral and legal enterprise which, to a large extent, replicated some of the graciousness and magnanimity that President Mandela has shown to his erstwhile foes. Seen in a larger, comparative context, the Truth and Reconciliation Commission (TRC), chaired by Desmond Tutu, represents an effort to confront the past record of an authoritarian regime that is shifting into a democratic present and future, as is the case with some Latin American and Eastern European polities. This is never an easy task and entails trauma, anger, frustration and disappointment for the participants, many - if not most - of whom had been regime subjects rather than stakeholders in the previous regime. In the South African case, the operating costs of the commission were appreciable, although the Mandela government enjoyed the financial patronage of several friendly states that helped to defray some of the commission's expenses (Report, vol. 1, p. 20). Indeed, the TRC had a staff of about 400 persons (Shea, p. 64). There has been a continuous stream of publications about this commission, so that this review covers only a portion of the pertinent and available literature, which spans a range of disciplines from autobiography to comparative political science, jurisprudence and political philosophy, in addition to journalism.¹ At the nub of the TRC's inquiry is an analysis of the nature and human costs of the entrenched, wide-ranging and pervasive pattern of white minority domination known since 1948 by its Afrikaans name, apartheid. White domination, often part and parcel of colonial rule, is hardly unique, but it had no equal in South Africa whose ruling elite elevated it to both a way of life and an elaborate (if not specious) philosophical construct (called separate development by its principally Afrikaner designers). The United Nations, especially its General Assembly, has kept a watching brief on the implementation and human rights ramifications of the apartheid system, along with issuing continuing, acerbic evaluations, usually in the form of resolutions, which the Pretoria regime routinely ignored. But with the commission report there is an internally produced assessment of the regime, characterized by the TRC as "a criminal state." (Jeffery, pp. 13 and 114).

The five-volume study, as both Jeffery (p. 43) and Shea (p. 57) rightly stress, lacks an index, making it difficult for many scholars to use unless they construct their own index to fit their peculiar research needs, and its citations (in the footnotes) are not as complete

as they should be for those who wish to use the report as reference guide. Another shortcoming of the commission report, probably explained by escalating printing costs, is the lack of an appendix providing relevant portions (if not the full text) of the enabling statute, the Promotion of National Unity and Reconciliation Act no. 34 of 1995, under which the commission was established. Nor does the report provide a cogent synopsis of the parliamentary debate concerning the passage of this crucial act (which lasted some 300 hours, Shea, p. 12). There is, however, a TRC web site (www.truth.org.za) so that interested researchers can stay au fait with ongoing developments (Shea, p. 106, n. 11). For many, probably the most effective way of reading, absorbing and assessing the commission report is to begin with Dorothy C. Shea's succinct summary, which, sadly, is bereft of an index. A US Foreign Service Officer, who served in South Africa and subsequently headed the multilateral and humanitarian affairs section of the National Security Council, Shea is used to terse, crisp diplomatic reporting, and her prose is lucid and pithy. She also has a keen appreciation of what the commission's activities and report signify in a larger, comparative international context, such as that found in Samuel P. Huntington's *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).

The TRC report can be regarded in different lights: as a morality play, as a catalogue of sordid human rights abuses, as an interracial and interethnic discourse, as a quantitative and qualitative recounting of torture and atrocities, as a mea culpa for individual South Africans, as a damning indictment of white domination as practiced in a whole range of social institutions, as an exposé of police and defense force sub rosa activities and as the politics of silence, remonstrance, shame and complicity. At its most compelling, it is a genre of national autobiography (leaving aside the nettlesome methodological issue of reification), and it might serve as a model for other nations (Shea, p. 5 and 77) struggling with the comparable legacies and carrying equivalent human rights abuse baggage.

The TRC had to cope with some of the issues that faced Western European nations in 1945 regarding the culpability of their own citizens during the humiliating German occupation. Vichy and Quisling are probably the two obvious code words, although the process of reexamining the recent past was not restricted to France and Norway, respectively.² South Africa's case was a bit more opaque than the German-occupied nations for at least four reasons. First, the TRC's mandate covered a longer period (1960-94 [Report, vol. 1, p. 24]) than the span of World War II (1939-45). Second, the TRC decided to dispense with the system of lustration (Report, vol. 1, p. 3), which was applied in France under the title of indignite national.³ In the idiom of George Orwell, the TRC created no unpersons. Third, the TRC handed down no specific criminal sentences, especially capital punishment (which is proscribed in post-apartheid South Africa), as was true in France and Norway, for example.⁴ Rather, the TRC offered a series of findings or conclusions after sifting and considering the evidence before it (Report, vol. 5, pp. 196-258). One of its subsidiary bodies dealt with the political hot potato of amnesty for individuals (Report, vol. 5, pp. 108-124). Finally, as the TRC itself explained, the entire process was a negotiated one, a tradeoff reflecting the strengths of the several contestants for state power and legitimacy, and hence precluded using the Nuremberg model (of the International Military Tribunal) (Report, vol. 1, pp. 5 and 118).

Such was not the case after V-E day in 1945, where there was a transparent German surrender.

What is noteworthy about the TRC report is its consideration of organizational behavior during the mandate period (Report, vol. 4, pp. 18-219), asking essentially what the institutions did to accommodate, resist or circumvent the ubiquitous apartheid policies, thus approaching the fundamental query, namely, how did apartheid happen? This, in turn, entails the profoundly challenging issue of both individual and group moral responsibility in civil society, to say nothing of the complexities of assigning causal links in the transition from a relatively ad hoc, informal system of white minority rule prior to 1948 (when the National Party assumed power after a hard-fought election) to the all-pervasive, finely-tuned, and bureaucratic behemoth that followed in the wake of that election (and subsequent elections which consolidated Afrikaner nationalist hegemony). This leads to the demanding task of providing an exegesis of South African political engineering.

An intriguing aspect of the TRC's work was the holding of public hearings at which some citizens recounted the (often appalling) details of human rights abuse - often to themselves, but frequently to their deceased family members - according to their understanding of "the truth." What distressed some of the critics of the TRC, especially Jeffery (a human rights lawyer by professional training), was the lack of rigor and often untested standard of such "truth" (Jeffery, pp. 10-11 and 68-70). The commission was not intended to be yet another judicial entity, which had a different *modus operandi*, different examining procedures and protections for defendants; rather, it might be better thought of as a quasi-judicial body. The TRC, in effect, was an adjunct to the judicial system, and did not consistently and systematically operate according to all the accepted precepts of civil and criminal law (Jeffery, pp. 117-28). Through one of its committees, it was empowered to grant amnesty to individuals under certain conditions, which entailed full disclosure as well as a demonstrable political motive underlying the commission of the grievous act(s).

Although it did acknowledge that there were several layers of meaning to "the truth" (Report, vol. 1, pp. 110-14), the commission was able to explore the mindsets of the perpetrators of these human rights abuses, often through amnesty hearings. Members of the South African Police Force tended to be more cooperative and forthcoming than those of the South African Defense Force (SADF).⁵ The Defense Force was one of the recalcitrant organizations from the perspective of the TRC, which emphasized how much of the historical record was lost by the deliberate destruction of the military records (Report, vol. 1, pp. 222-24). Still, there are significant revelations about the extraterritorial (including covert) operations of the SADF, which often supplemented those of the police (Report, vol. 2, pp. 42-164).

Such unsavory activity, however, was not the monopoly of any one particular institution, and the TRC took note of the human rights abuses committed by the premier liberation group, the African Nationalist Congress (ANC), in its extraterritorial staging area and camp in Angola and called it to task for such treatment. Neither the Pan-Africanist

Congress (PAC) nor the Inkatha Freedom Party (a vehicle for Zulu particularism) - the major rivals of the ANC - escaped chastisement from the TRC. These matters bore on the question of how balanced or even-handed the TRC was in the apportionment of blame or responsibility for violating international human rights norms, a topic which both Shea (pp. 58 and 74-75) and Jeffery (pp. 11-12 and 103-106) consider to some extent. Jeffery observed (pp. 77, 101, 104-106, and 162-163) that the TRC had not delved deeply enough into the theory and practice of the ANC's "just war" or "people's war" doctrine underlying its multifaceted battle against the apartheid regime, and she was dismayed by the methodological and jurisprudential inconsistencies and inadequacies that surfaced in the amnesty hearings (pp. 49-67 and 76-78).

Obviously, the TRC had its flaws and its detractors (who ranged all over the ideological spectrum), and it had to develop a methodology and data base (see Report, vol. 1, pp. 135-73) that would support the work of the commissioners and presumably stand the test of time as well as be applicable throughout the various regions of the nations where it held hearings and where its writ ran (see Report, vol. 3, pp. 34-745). At the more philosophical level, it needed to address the more vexing question of whether there was a "moral equivalence" between the (liberation) forces arrayed against, and those (state-sponsored) forces in support of, the South African regime during the period it was investigating (Shea, pp. 38 and 74). Nevertheless, the creation of the TRC will rank as a monumental achievement, an exemplar of moral and political courage, and a landmark both in South African politics and in the wider arena of the study of political transitions from authoritarian to democratic regimes. Its report deserves to be carefully read and pondered.

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Endnotes

1. Some examples include Antje Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (New York: Times Books, Random House, 1999); Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Cape Town, South Africa: Oxford University Press Southern Africa, 2000); Wilmot James and Linda van de Vijver, eds., *After the TRC: Reflections on Truth and Reconciliation in South Africa* (Cape Town, South Africa: David Philip Publishers; Athens, OH: Ohio University Press, 2000); Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton, NJ: Princeton University Press, 2000); Lyn S. Graybill, "Pursuit of Truth and Reconciliation in South Africa," *Africa Today* 45, no. 1 (January-March 1998), pp. 103-34; James L. Gibson and Amanda Gouws, "Truth and Reconciliation: Attributions of Blame and the Struggle over Apartheid," *American Political Science Review* 93, no. 3 (September 1999), pp. 501-17; N. L. Combrink, "History and the Commission on Truth and Reconciliation: The Problem of Collective Guilt," *Journal for Contemporary History* (Bloemfontein) 23, no. 2 (December 1998), pp. 101-19; and Nicoli Nattrass, "The Truth

and Reconciliation Commission on Business and Apartheid: A Critical Examination,” *African Affairs* (London) 98, no. 392 (July 1999), pp. 373-91.

2. István Deak, Jan T. Gross and Tony Judt, eds., *The Politics of Retribution in Europe: World War II and Its Aftermath* (Princeton, NJ: Princeton University Press, 2000).

3. See Herbert R. Lottman, *The People’s Anger: Justice and Revenge in Post-Liberation France* (London: Hutchinson, 1986), pp. 41-42, 130, 134, 148, 164, 274 and 279-81.

4. *Ibid.*, p. 274; and Johannes Andenaes, “The Post-War Proceedings Against Enemy Collaborators,” in Johannes Andenaes, et al., *Norway and the Second World War*, 5th ed. (Oslo: Aschehoug, 1996), pp. 147-49.

5. See Rocky Williams, “The Role of the Truth and Reconciliation Commission in the Re-professionalisation of the South African Armed Forces,” *Strategic Review for Southern Africa* (Pretoria) 21, no. 2 (November 1999), pp. 40-72.