

Assignment 3 Option c)

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South Africa's Truth and Reconciliation Commission:

Effective Transition or Blanket Amnesty?

In the year 1990, South Africa started its transition to a democratic state after 40 years of racial oppression. As part of this process, the crimes of the old regime needed to be acknowledged and legally dealt with—a process called *transitional justice*. Transitional justice is the legal reckoning with the transition from a criminal, authoritarian state to a democratic one (Langenohl, 2008). This process can yield a “clear identification of victims and perpetrators, the validity of which is emphasized by legal sanctions” (Langenohl, 2008, p. 166); it can make grappling with the criminal past easier. Transitional justice struggles with the fact that many authoritarian *macro-crimes*, as Langenohl calls them, are not committed by individuals, but supported or profited from by a large section of the population—prosecuting individuals for these crimes is very difficult. This issue makes transitional justice alone an insufficient tool for the creation of a democratic state (Langenohl, 2008, p. 168). A Truth and Reconciliation Commission (TRC) is one proposed answer to this “contradiction between the political imperative to integrate a society in transition—victims, perpetrators, bystanders, and profiteers—and the ethical, social, and juridical imperatives to do justice to victims and to indict perpetrators” (Langenohl, 2008, p. 168). A TRC would not prosecute offenders, but try to establish a common public record (or “truth”) of what happened, and hopefully help bring about reconciliation between the opposing parties (Langenohl, 2008, p. 168).

The most widely known TRC is the South African Truth and Reconciliation Commission, which, even though it was not the first, has influenced many successive TRCs (Langenohl, 2008; Vora & Vora, 2004). The South African TRC (hereinafter “the TRC”) was established to nonviolently address the legacy of *apartheid* in South Africa. Apartheid was a system of racial segregation and oppression based on white supremacy of the Afrikaners (descendants of Dutch settlers) and English South Africans (descendants of English settlers)

over the Black majority of the South African population and the Asian and “Coloured” (mixed-race) minorities (Vora & Vora, 2004, p. 304). Although racial inequality in South Africa goes back hundreds of years, apartheid was a special, institutionalized form of it introduced in 1948 by the Afrikaner Nationalist Party. It systematically oppressed Black South Africans by not allowing them to vote, banning them from certain jobs, evicting them from cities, and denying their right to vote, and more (Vora & Vora, 2004, p. 305). When apartheid ended in 1990, the oppressors and the oppressed negotiated an interim constitution that should enable free and open elections. The White elite only allowed this if they were to be granted amnesty for human rights abuses they committed during apartheid (Tutu, 2019; Vora & Vora, 2004). The resulting constitution included a clause granting said amnesty and this laid the groundwork for the creation of the TRC in 1995. This interim constitution represented a compromise between the demands of the political right and the security forces, who wanted complete amnesty for their abuses, and the liberation movements and activists, who wished for trials similar to those in Nuremberg in 1945. As chairman of the TRC, Nelson Mandela appointed Archbishop and Nobel laureate Desmond Tutu (Tutu, 2019) (he wrote the article cited here). The TRC’s explicit purpose was to uncover and document the human rights abuses committed under apartheid, give all ethnic minorities a place to speak and tell their stories, and to create a reparations policy for the government. Furthermore, it had the power to grant amnesty to perpetrators of human rights abuses if they publicly admitted their crimes and thus faced their victims (Tutu, 2019). Another goal of the TRC was, as the name suggests, to reconcile the divided South African nation and thus engage in nation building. It was believed that the past should not be forgotten, but that it needed to be publicized and addressed (Vora & Vora, 2004, p. 306). During public hearings across South Africa, the TRC recorded over 22,000 testimonies of gross violations of human rights. Those are “defined in the Act as torture, killings, disappearances and abductions, and severe ill treatment suffered at the hands of the apartheid state” (Tutu, 2019). People who were wronged by the liberation movements were also heard.

The complex issues the TRC was tasked with solving make it difficult to assess the TRC’s effectiveness. Tutu (2019) names the following shortcomings of the commission:

- top military and political leaders did not participate in the process and did not ask for amnesty;
- liberation movement fighters claimed that they fought a “just war” and thus had no need for amnesty;
- the economy of the apartheid regime was not scrutinized enough;
- the South African government was slow to implement the TRCs suggestions; and
- the prosecution of those who did not apply for amnesty was slow or nonexistent.

In Tutu's view, this failure to prosecute made victims distrust the process and let many people escape justice. Nonetheless, his overall assessment of the TRC is positive, but this should be seen critically as he was its chairman. Tutu (2019) sees the public participation in the process, the hearing of victims *and* perpetrators, and the use of amnesty as a compromise as the main achievements of the TRC. It started a process of reconciliation in South Africa and can, Tutu hopes, serve as a basis for TRCs in other countries.

To investigate the effects and perceptions of the TRC in South Africa, Gibson (2005) performed a representative national survey. The survey is categorized by the South African “races” because opinions are highly correlated with and divided by those categories. Concerning their opinion of the TRC in general, about 75% of Black South Africans and only 36% of White South Africans approve of the commission's work. The South African population as a whole judges that the TRC uncovered the truth well, and their work on compensating victims is most criticized (Gibson, 2005, p. 347). Granting amnesty to perpetrators is seen as unfair by a majority of South Africans; it is considered especially unfair to the people who died during apartheid's struggles. Gibson (2005, pp. 349–350) says that while people judge amnesty as being unfair, it may have been a “necessary evil” and it does not detract from peoples' view of the TRC. He furthermore found a “significant positive relationship [...] between support for amnesty and confidence in the South African legal system” (Gibson, 2005, pp. 350–351). South Africans assign blame pretty evenly to the groups and institutions involved in apartheid (Gibson, 2005, p. 352) and see it as a crime

against humanity (Gibson, 2005, p. 354). In spite of that, between 35% and 50% of the population think that the ideas of apartheid were good, and 24% to 39% think that the people defending apartheid were being just (Gibson, 2005, p. 354). Gibson (2005, p. 355) evaluates this positively because the TRC process made people “see the past in equivocal terms, not as a struggle between absolute good and infinite evil,” which can pave the way for reconciliation.

In evaluating the TRC, I would like to use the subtitle of this paper—“Effective Transition or Blanket Amnesty?”—as a guide. In my opinion, these two elements are most important when it comes to the South African TRC. The first one, effective transition, is the facilitation of a peaceful transition from apartheid to a democratic state. The second one, blanket amnesty, is a provocative statement about transitional justice and whether justice has been done or not. The TRC has, in my opinion, succeeded in bringing about a peaceful and effective transition from the authoritarian apartheid regime to a more democratic and inclusive state. As mentioned, before amnesty was written into the interim constitution, a peaceful transition of power was not guaranteed. The amnesty stipulation guaranteed this transition and also paved the way for the TRC to be established. The TRC then worked with the goal of reconciliation in mind, not prosecuting and condemning people, but giving them a chance to speak and even ask for forgiveness, which further facilitated a peaceful transition of power. Had they cracked down on the perpetrators, the transition may not have been peaceful.

Assessing if justice was done is more difficult. During transitions of power, the identification of victims and perpetrators is important, and the TRC did that through 22,000 victims' statements and public broadcasting of its hearings. These records also present a very large collection of experiences of during apartheid. These records can be used to shape the perception of the events and in turn shape how they are collectively remembered. But justice is more than just the documentation of abuses, it includes the sanctioning of actions. This is where the TRC fell short, but that is not just its fault. Not getting high-ranking government and military officials to participate in the TRC certainly lessened its effectiveness because the people who orchestrated apartheid were not part of the reconciliation process and did not take responsibility as part of the process. Additionally, not examining the economic dimension of apartheid in great detail ignores a vital part of the system. The TRC's use of amnesty is also

seen as unfair by the South African population (Gibson, 2005, p. 349). Criticizing these shortcomings, it is important to keep in mind that the TRC was not supposed to prosecute people, it was not a court or a trial. The word *justice* is not in its name, but reconciliation and truth are. Thus I think it is not quite fair to judge the TRC's failure to bring justice because that was never a core part of its objectives. What it should be judged on is its ability to bring out the truth and to facilitate reconciliation. The recording of 22,000 victim statements does not embody the whole truth, but it represents the experiences of ordinary people that, without the TRC, would most likely have stayed their personal experiences, never to be shared with a wider audience. The survey by Gibson suggests that the TRC was successful in establishing the main facts of apartheid as truth in all racial groups in South Africa. Concerning reconciliation, the TRC had a very difficult task ahead of it. South Africa was very divided and the wounds causing that division were very deep. Gibson's research suggests that in 2005, South Africa was still divided across racial lines, but that these divisions were not absolute and that a sizable portion of each racial group agrees with another racial groups, meaning they are not completely split along racial lines. This can be interpreted as a step toward reconciliation if it is assumed that these divisions were much stronger in the past. A further assumption is that the TRC contributed to this softening of divisions. Tutu (2019) and Gibson (2005) suggest that this is the case. This process is still underway which, I think, is characterized by the uncertain opinions that South Africans have towards the defenders and ideas of apartheid (Gibson, 2005, p. 354).

Finally and to conclude, I think that the TRC successfully facilitated a peaceful transition of power in South Africa. This is a very important achievement considering the volatile state South Africa was in after the end of apartheid. When it comes to doing justice, I do not think it brought a lot of justice to South Africa, but this should not be counted against the TRC too much as this was never its main goal. Despite the shortcomings that were discussed above, I think that, overall, the TRC was a success. It compiled a record of peoples' experiences, allowed victims and perpetrators alike to tell their stories, and granted amnesty to those who showed remorse and apologized. To answer the question "Effective Transition or Blanket Amnesty?," the TRC facilitated an effective transition, but not through blanket

amnesty (the TRC only granted 1,500 amnesty requests out of the 7,000 they received (Tutu, 2019)).

From a memory studies perspective, the TRC is an interesting attempt at creating a collective memory of apartheid. It attempted to take individual peoples' experiences and compile them into a large, shared history for all of South Africa. The focus on reconciliation and the open nature of the TRC softened the division represented in this history (compared to ruthless persecution potentially hardening those divisions). Thus, the collective memory generated by the TRC would consist of South African experiences and come "from within"—focusing on a shared history that South Africans experienced, overcame, and that they can use as foundations to build a better country.

References

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