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A Humanist Defence and Critique of the South African Truth and Reconciliation Commission

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A HUMANIST DEFENCE AND CRITIQUE OF THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION

The South African Truth and Reconciliation Commission (TRC) was a landmark event for the development of nonviolent criminology and authentic peacemaking. It was an unprecedented endeavour in terms of substance and scale, and its importance for the world lies mainly in its communicative value as a hopeful symbol and harbinger of “a new beginning.” The very vision of a new way of dealing with past atrocities, a new type of truth and conciliation (as developed in the minds of its more genuine proponents) planted seeds of moral progress and a truly nonviolent society.

In this essay, I will assess the South African TRC from a radical humanist, peace-building perspective. Instead of the usual approach which judges the TRC according to its success or failure to achieve the objectives of “retributive justice,” I will look at the TRC's work from the perspective of humanistic ethics, of “restorative”—or, in fact, “transformative justice”—and its specific goals. In the course of this analysis, I will illustrate how relocating the ideological vantage point in this way leads to a creative new (and very marginalized) set of objectives and benchmarks. These are generally applicable not just to the work of the South African TRC, but to future truth and reconciliation initiatives as well.

In the first part of my analysis, I will establish the reasoning behind a humanist defence of the TRC, arguing for transformative justice on the basis of (personal and political)

practical ethics. In the second part of my argument, after I have set out this general framework for thinking about a progressive response to crime, I will offer a humanist, peacemaking critique of the TRC, where I will examine the TRC process primarily in terms of how it related to the task of establishing a new, nonviolent, democratic social order. This will specifically entail a look at some of its inconsistencies, as well as the overly narrow nature of its mission and approach.

As a final, prefatory note, I make no claim to comprehensiveness here. Instead, I merely aim to offer a stimulating introduction to a rarely heard, dissenting perspective.

1. Outlining The Humanist Lens

A humanist approach fundamentally entails treating humans and humanity as “the measure of all things” (Protagoras). This means people have to be treated as *ends* in themselves, by affirming the universal “right to life, liberty and the pursuit of happiness” (conceived in sociable terms). This postulate, in turn, takes account of the need to devise a novel kind of politics which would consistently affirm a certain unity (although not necessarily “identity”) of means and ends, and would thus reject the prevailing notion “that violence can be overcome by violence, evil by evil.”¹ On the basis of this belief that abuse (from whichever side it comes) is intolerable, and that it is ineffective in preventing crime and violence, as well as on the basis of a general belief in the possibility of redemption, human perfectibility and personal and social transformation, radical humanists advocate a humane criminal sanction system based on prevention, mediation, restitution, and rehabilitation. This approach is conceived not only as a reaction to individual wrong-doing, but also as a sustained challenge to structural violence and unprincipled policies of the social elites.

The prevalent concept of institutional punishment is in many ways similar to the (violent) crimes it is supposed to prevent, not necessarily in form, but often quite similar in purpose, and often far more premeditated and sadistically-motivated. Whereas the aim of “restorative” or “transformative” restitution and reparation is to bring back to the victim something of what he/she has lost (like dignity, sense of justice), while simultaneously reintegrating the perpetrator back into the moral community, the concept and practice of punishment, in addition to their supposed effect as a deterrent, define “justice” as the infliction of pain on the offender. Whether or not there is active hatred involved in the practice of punishment, i.e. the conscious, premeditated infliction of pain, is not a central issue. Indifference could also be understood as a form of “hatred” or aversion, and, even more so, hatred is a form of indifference (that is, the indifference to the moral violation of producing or condoning the suffering of the Other). Punishment is a condemnation of crime, but is inconsistent in its condemnation of violence and cruelty: it enthusiastically accepts the principle of inflicting pain and suffering. Punishment—particularly as it is currently employed—merely shifts the location of violence and suffering. Violent communicative behaviour is a common trait which institutional punishment shares with violent criminal offences—it is the very essence of punishment. Moreover, it is always premeditated and (at least partly) conscious of the harm that it inflicts. Indeed, it is at least partly (and usually largely) oriented precisely toward inflicting pain. In those

respects, punishment actually differs from many criminal offences, and, insofar as the overt or covert rationale of punishment is largely about inflicting pain, it differs from most criminal offences. It is both premeditated and sadistically-oriented. Additionally, by victimising the offender, it also often victimizes his or her family and friends, innocent “collaterals” in the pursuit of criminal “justice.”² This usually overlooked fact, as well as the very notion of deterrence (“setting someone as an example”) best reveal the centrality of objectification in conventional “criminal justice” approaches.

In their erroneous defence of the penal system, some scholars (like Nozick) present a classical utilitarian/consequentialist (deterrence-based) and communicative argument, apparently oblivious to the paradox of the communicative function of punishment (As anti-death penalty activists put it, the state “kills people in order to show that killing people is wrong.”) The dehumanising function and effects of prisons and other forms of violent punishment have strongly confirmed the irrationality of this retributive logic. The concept of deterrence fails us here. Firstly, not only have the current forms of more or less actively violent deterrence (which are highly objectifying, since they use the offender as a *means*) proven incapable of eradicating violence and inhumanity; they have perpetuated and extended the practice of violence, as well as contributing to the continuation of dehumanization/asocial character of many (or perhaps most) offenders.

The “boomerang effect of dehumanization” (to paraphrase Aimé Césaire) on the society which dehumanizes should be identified, as clearly exemplified by cruelly retributive societies such as the US or China, not really known for nonviolent and peaceable interpersonal relations (this point is accentuated when we compare them to less retributive and generally less violent societies such as Denmark, for instance). In this sense, speaking of the relationship between victims and perpetrators of the crimes of apartheid, Desmond Tutu rightly emphasised that “their humanity is caught up in our humanity, as ours is caught up in theirs.”³ “*Ubuntu* says I am human only because you are human. If I undermine your humanity, I dehumanize myself.”⁽⁴⁾ In this perspective of “the indivisibility of humanity,” the powerful call of compassion ensures that “the person cannot be thrown away like trash.”⁵

Nozick defends preposterous methods of “resocialization” (into a cruel and violent society): “When he undergoes punishment these correct values are not totally without effect in his life (...) because we hit him over the head with them.”⁶ He fails to notice the implications of writing that “there is a connection effected in those who punish; by so doing, they themselves link up with correct values.”⁷ Indeed, there is plenty of truth in the notion that by harming and abusing others (in socially condoned ways and under socially accepted circumstances) abusers “connect” with (and represent) the values of a violent society. “If we push for incarceration (...) we legitimize the degradation and destruction of human beings in prisons as a method of social control—and we increase reliance on the patriarchal state to determine who is wrong or guilty.”⁸ In sharp contrast to the belief that one can influence the offender into internalizing positive social values by crushing him, through objectification and the establishment of one’s dominance over him, there are other forms of influencing re-offence rates, including an abundance of methods of positive reinforcement for positive behavior, reintegrative moral shame and

reintegrative, non-objectifying sanctions and restitution, development of the offender's sense of morality and moral self-worth, development of meaning, social dealienation, alternative forms of prevention like humanistic education and humanising life experiences, access to health care and other social services etc. A recent meta-analysis shows that incarceration and punishment do not act as an effective deterrent after all, and that rehabilitation and restorative approaches work better in reducing criminal recidivism.⁹ Should it be very surprising that approaches which focus “on serving the human part of human beings rather than denying it”¹⁰ actually work better?

While forgiveness cannot change the factual past, it can transform the past’s bearing on the present and the future, thus nullifying “the predicament of irreversibility.”¹¹ This avoidance of irreversibility is the central reason why Walter Benjamin referred to the “weak Messianic power” of redemption (his and my notions of redemption differ, but the validity of the philosophical principle remains).¹² One important side product of intense cycles of violence is the creation of “subcultures of resentment,” in which personal experiences transcend personal relations or rational argumentation and shape destructive political futures. A strong example is how the merciless way in which domestic fascists, collaborators and their families were dealt with after the liberation of Yugoslavia created deep-seated bitterness which was instrumental in the development of the secessionist movement, and which ultimately sealed Yugoslavia’s fate.

2. The Taxonomy Of Forgiveness, And The Special Category Of Mercy

Morals and criticism are not so properly objects of understanding as of taste and sentiment.

David Hume¹³

If, on my return to America, I should employ myself on a history of the French Revolution, I had rather record a thousand errors on the side of mercy, than be obliged to tell one act of severe justice.

Thomas Paine¹⁴

Forgiveness is not (or at least not primarily) an “intellectual” process. Any approach which tries to “evict” emotions from its conceptualization is epistemologically artificial and impoverished. Furthermore, forgiveness is first and foremost a question of *practical* ethics, and—as a voluntary interpersonal process—it is primarily what the people involved make of it. Of course, it should remain possible to theorize it, and to speak normatively of “degrees of forgiveness”. This is precisely what I will do here. What exactly are these main degrees (or categories) of forgiveness I am talking about?

Firstly, there is the basic category of mercy, which (in this classification) connotes an unconditional respect for human rights, but does not encompass “forgiveness” in the intersubjective, mutualist sense. The maxim “hate the sin, but love the sinner” has sometimes been employed in this approach, as it implies universal compassion while including a clear requirement to oppose evil acts. Therefore, it doesn’t signify condonation, but the will to respond to the better instincts in human nature (both one’s

own and the offender's), to open the door for the offender's transformation and rehabilitation, or at least to consistently oppose dehumanization. Under this approach, love (i.e. "agape" or "ahimsa," respect for the offender's *sentience* and concomitant human rights) replaces hate, but it might not entirely eradicate resentment, nor is this necessarily desirable. As the distinguished American pacifist Igal Roodenko stated: "I have to love everyone—thank God I don't have to like everyone."¹⁵ This form of unconditional empathy and, accordingly, unconditional mercy, therefore implies the possibility (and, in cases of major abuses, the likelihood) of residual resentment, which probably tends to decrease in proportion to the degree of atonement by the offender. This approach also presupposes the willingness to grant the possibility of (at least some degree or form of) redemption. "However diabolical the act, it did not turn the perpetrator into a demon. We had to distinguish between the sinner and the sin, to hate and condemn the sin while being filled with compassion for the sinner."¹⁶ Even in extremely rare cases where there is no shared humanity properly understood (e.g. the "endemic" case of the so-called "criminally insane"), there is no possibility for interpersonal forgiveness (as a communicative, bilateral process), but one fundamental commonality (even beyond basic shared moral fallibility) still remains as a basis for mercy—shared basic sentience. This also brings us to the issue of "radical evil." It would be frivolous to insist on the process and act of forgiveness (in this intersubjective, mutually interactive sense of the term) in cases of radical evil where little potential for exculpation and genuine remorse—let alone fully meaningful restitution—could be said to exist, like in the case of organizers and direct administrators of genocide such as Eichmann. However, the separate category of mercy remains applicable. It is an essential broader communicative act that violence and abuse are wrong, whichever side they come from. Mercy is expressed through the refusal to stoop to the perpetrators' level, remaining above the practice and ideology of hatred, victimization and violence. It is fully committed to the idea that "two wrongs don't make a right." In such extreme cases, some form of humane confinement (the terroristic, objectifying nature of what we call prisons prevents me from using that term, in order to avoid Orwellian rhetoric) might even perhaps encourage the perpetrators of such terrible mass crimes to repent (in some way), and might therefore strengthen our common belief in the possibility of human progress. Needless to say, such attempts to creatively erode *status quo* notions and institutions currently remain beyond the pale in mainstream criminology and mainstream public ideology.

The second category encompasses various degrees of the *intersubjective, mutualist* communicative process of "forgiveness." Intersubjective forgiveness is contingent on some sort of *atonement*—penance. This includes in some cases (usually in some accordance with the gravity of the offense), a longer-term offender's personal process of reform and longer-lasting restitution. The social and interpersonal significance of atonement for past wrongs has to do with its potentially beneficial effect for the victim's "closure" and recovery, as well as the offender's (re-)socialization. These victim-offender processes are highly conducive to the possibility of genuine forgiveness and reconciliation. Obviously, the South African Truth and Reconciliation Commission (TRC) couldn't have facilitated the offenders' atonement in all cases. Yet, an intensive parallel project of education and (re-)socialization would have been necessary if more genuine reconciliation and peace-building was to be achieved. It is, however, important

to acknowledge that while mercy, “low-level” forgiveness and even certain forms of atonement/restitution were partly envisaged within the framework of the TRC, the temporal quality of long-term personal reform and restitution made the fullest form of reconciliation clearly unattainable within the context of the TRC.

As it is proposed here, the concept of mercy is unconditional (simply by virtue of the offender’s *sentience*), and should extend above and beyond individual sentiments in order to function as (constitutionally mandated) public policy. On the other hand, as already indicated, the active, mutual, intersubjective process of forgiveness has to remain a personal choice. Society and social institutions can recommend certain outcomes, but these outcomes cannot be mandated. Interpersonal forgiveness might even be morally “obligatory” in certain cases, but it cannot be coerced, if it is to remain credible, psychologically authentic and in a voluntary contractarian context. Still, mercy/compassion and nonviolence imply moderation and control of resentment.

Equally so, the expected factors in the process of asking for forgiveness (such as apology, personal experience and expression of regret, commitment on the offender’s side to change, etc.) cannot authentically develop as a result of coercion (even if it is only verbal). In terms of the requirement of remorse, there is a danger of forcing insincere proclamations. Community service and other concrete forms of restitution therefore seem more substantial and constructive. Obviously, this need not be an either-or choice. Moreover, since social interpretations of right and wrong usually aren’t absolute (or permanent), and since the issue of sentience of the wrongdoer transcends the significance of evil deeds committed by the guilty party, it is important to ensure a broader basis on which a peacemaking practice can be built, which is where the concepts of mercy and consistent nonviolence remain central.

A brief comment on the common accusation that the TRC tried to impose a “religious morality” might also be useful here. Public discourse, conception of society and life are still largely mediated and expressed through theological narratives and symbolism in many countries, South Africa included. This does not *a priori* determine the legitimacy of the fundamental message. To give a rather apparent example, liberation theology has contributed far more to the progressive development of secular social realms than otherwise status quo secularists, or of course those who, while skeptical about religious interference in political affairs, sided with the forces of reaction. Besides, even non-believers can and often have drawn from “theologically informed political imagination.”¹⁷ Certain motifs and expressions which are more common in widely disseminated theological accounts can be more politically effective than the often marginalized (and sometimes self-marginalizing, in the sense of rejecting appeals to emotions) progressive secular discourse. Restorative and transformative justice approaches employ common concepts like dignity, respect and mercy, which are a part of what Rawls called “public reason,” and are (or at least have the potential to be) intelligible to all citizens.¹⁸ As a matter of fact, many cultures with different religious traditions employed notions and processes of “restorative justice”—like the Maori’s of New Zealand, the Judeo-Christian tradition, African traditions like *ubuntu*, the Japanese etc. Many of these restorative/transformative concepts can also be identified among many

Jains, Buddhists, Hindus (particularly through the notion of *ahimsa*), and have been advocated by numerous atheists, agnostics and secularists just as well. To give an example, one of the most prominent advocates of transformative non-repressive justice is the famous African-American Marxist Angela Davis. After all, it was the leading early twentieth century American socialist and (Christian) secularist Eugene V. Debs who famously stated: “*while there is a lower class, I am in it, and while there is a criminal element I am of it, and while there is a soul in prison, I am not free.*”¹⁹

In his novel *Resurrection*, which incandescently attacks the prison system and the penal principle, Tolstoy describes a common abolitionist path of reasoning: “Am I out of *my* mind because I see things that other people don't see, or are *they* out of *their* minds, the ones who are doing what I am seeing?”²⁰ Those of us who are in the minority regarding the issue of the globally vastly dominant (and indeed very *domineering*) mainstream “criminal justice” system tend to feel much more unprotected from this “religion of retribution,” both in its theological and secular forms and origins. In Ignatieff’s words, “(t)he chief obstacle in the path of reconciliation is the desire for revenge. (...) Reconciliation is difficult precisely because it must compete with the powerful alternative morality of violence.”²¹ Emotional “reparation” or *closure* is socio-culturally mediated and produced; there is no single, “inherent” way to achieve closure, since there is no “unalterable,” vindictive human nature as we are often being led to believe (one need only compare practicing Quakers or Jains with the Taliban or US imperialists in order to observe the diversity of human “social nature”). Restorative/transformative justice challenges some of the basic, “self-explanatory” assumptions concerning morality and the functioning of society. It is a counter-hegemonic challenge to a fundamental aspect of contemporary social ideology, and to its powerful institutional manifestations.

3. The Positive Aspects Of The TRC Experience

...only a redeemed mankind receives the fullness of its past—which is to say, only for a redeemed mankind has its past become citable in all its moments.

Walter Benjamin ⁽²²⁾

In thinking about the TRC, it is important to understand the basic context in which it was formed, and in which it operated. It was largely a product of the fact that a decisive ANC (African National Congress) victory was impossible, since the defeated elites still wielded a lot of power, especially in terms of economic domination, social power (e.g. political strength, knowledge and technical expertise) and cultural influence. They controlled military, judicial and economic “corridors of power”, making successful criminal court proceedings unlikely. The National Party insisted on an amnesty agreement as a crucial basis for political settlement. There was also a danger that security forces might disrupt the 1994 elections. Furthermore, the ANC and other resistance fighters committed some horrible crimes as well, so the option of “punitive justice” (which could be called “the continuation of the civil war by other means”) was unattractive on all sides of the party-political spectrum. Not only would a conventional punitive response to human rights’ abuses have been of questionable moral value: there is sufficient reason to suspect it would have diminished the likelihood of political

stabilization and the cessation of armed hostilities, or the restoration of “minimal decency,” a bare minimum of agreement and stability.²³ “Without a minimal peace, no other values can exist.”²⁴ Furthermore, a conventional court approach would provide a weak starting point in terms of the potential for deeper social transformation. There is a need to avoid being corrupted by the use of violence, to break the cycle of violence. In more ways than one, a TRC-type process was required in the interest of peace.

More than other truth commissions in the past, the TRC was conceived in order to perform multiple tasks and carry multiple responsibilities (investigative, judicial, political, educational, even therapeutic, etc.). In terms of its “moral entrepreneurship,” it “promoted a more ambitious and expansive vision of justice” within the confines of a highly pragmatic political strategy.²⁵ This was a consequence of the TRC’s specific self-orientation more so than of the provisions given to it by parliament (which were mainly a result of political expediency). The locally intelligible concept of *ubuntu* (a communal understanding of justice, “humaneness”) played an important role in legitimizing the TRC’s agenda.

In contrast to the adversarial setting of criminal trials (e.g. aggressive cross-examinations etc.), the TRC conducted its proceedings through respectful listening to victims, rituals of acknowledgment, and the provision of (some) social and psychological support for victims. Ultimately, it gave agency and voice to victims much more than would be conceivable under the traditional trial system. Amnesty hearings have even been described as a “ritual of empowerment” for the victims.²⁶ A discussion on the expected therapeutic effect of sharing stories is beyond my ability here, but it seems safe to suggest that at least re-traumatization would have been more likely in the adversarial courtroom setting.²⁷ In the TRC process, both the perpetrators and the TRC officials tended to support victims’ stories. In fact, the requirement of full avowal as a precondition for amnesty reversed the motivation of offenders from concealment to truth telling. Trials after mass atrocities lead to only a small percentage of perpetrators charged, and an even smaller percentage of human rights’ violations processed. By reversing the motivation of offenders in favor of full avowal, the TRC managed to deliver verdicts on guilt relatively effectively. The requirement of full disclosure actually led to many more people being implicated in human rights’ abuses, leading to a fuller account of the crimes that were committed.²⁸ The TRC’s major achievement was to “reduce the number of lies that circulate unchallenged”.²⁹

However, the requirement of full disclosure in order to qualify for amnesty is not the only, or necessarily the best, way to achieve disclosure. In any case, if this approach is to remain fully transformative and humane, the options shouldn’t be amnesty and retributive institutional abuse, but perhaps amnesty and/or the requirement of non-abusive forms of accountability and restitution (like community service) on the part of the wrongdoer. In fact, as far as serious human rights’ abuses are concerned, the requirement of restitution should remain even in cases of full disclosure (with stricter forms of restitution requirements being made in those cases where it was determined that full disclosure had not occurred). The TRC’s *Final Report* made a similar criticism of its mandate, asserting that some form of restitution needed to be included.³⁰ Truth and reconciliation

commissions should optimally include relatively “nonviolent” sanctions such as lustration, as well as forms of material restitution such as community service, individual reparations etc., more than purely verbal forms of restitution (at least in cases of grave atrocities). Howard Zehr rightly pointed out that the amnesty provision “breaks the crucial link between violation and obligation.”³¹ A restorative/transformational approach might also include public trials for the worst offenders of human rights, as long as this more conventional procedural line did not preclude restorative practices (e.g. the victim’s agency in the course of the trial, possibility of actively participating in the construction of conciliation), and as long as relatively nonviolent, humane sanctions for those convicted were applied. Again, it is necessary to differentiate between mercy/moral decency backed by laws forbidding abuse in all its forms, and the interpersonal process of forgiveness. There are also different levels of forgiveness and reconciliation. Minimal political conciliation implies basic acceptance of the other and cessation of open hostilities (therefore it might occur without political forgiveness, and it is not necessarily between individuals), while a higher level of reconciliation implies a higher level of affirmation. In the TRC process, it appears that no one who was (rightly or falsely) accused ended up being “legally crushed,” whereas the traditional judicial system considers even false convictions a more-or-less unfortunate sacrifice (“collateral damage”) in the preservation of the system of criminal “justice.” Uniquely for truth commissions, an opportunity was given to perpetrators to explain their viewpoints and motives for committing the crime. This “dialogical” element wasn’t marginal, as it provided important insights into the basis of the conflict, in addition to its importance in avoiding reverse victimization, which increased chances that the offender would not resist resocialization and reintegration. Beyond establishing a factual account of human rights violations, the TRC was conceived in order to also establish certain post-apartheid social truths. This was the basis for the hope that it would no longer be possible for people to “indulge in their separate dynasties of denial.”³² The TRC’s pursuit of truth might have at least created some necessary conditions for reconciliation. Truth commissions can help facilitate conciliatory developments although they alone cannot attain them.

4. Major Limitations Of The TRC

In order to build more authentic truth and reconciliation commissions in the future, it is also important to acknowledge the largely inauthentic, instrumentalist political foundations of the TRC project.

The political elites were invested in a presentation of the TRC as a model of restorative justice (largely conceived as a convenient “forgive and forget” affair which would essentially ensure perpetrators’ impunity) but only applied it to the case of the final conflict over apartheid, thus revealing that the project—at least as it was initially conceived by the elites—was a hypocritical manifestation of political expediency and shallow political instrumentalism. Furthermore, by restricting amnesty (or any other “restorative” approaches) only to cases of full disclosure and to narrowly-defined “political” crimes, the Promotion of National Unity and Reconciliation Act (which brought about the TRC) confirmed the narrowly political, inconsistent nature of the elite’s support for “restorative” approaches. In fact, a restorative justice approach would

especially make moral sense in contemporary South Africa, in the context of escalating levels of violence and the ongoing criminalization of black township youth (under conditions of disenfranchisement, poverty and oppression), its perpetuation mainly along racial and economic lines.

The somewhat sycophantic approach to the TRC's supposed "democratism" also needs to be challenged. Although its form was discussed through prolonged public debate and was subsequently established by the national parliament, as opposed to prior truth commissions in other countries, which were formed by executive decrees, the TRC was essentially the product of an agreement between political elites, rather than a genuine result of participatory democratic public deliberation. However, it is unfortunately very unlikely that a grassroots-driven process would have entailed much interest in a nonviolent approach to dealing with past violence.

The TRC process suffered from some other limitations also common to traditional trials—particularly the confines of positivist law, a legalistic paradigm/straitjacket which obstructs other avenues for conflict transformation and resolution, and which individualizes guilt and individualizes victims (despite the political responsibility of all those who didn't resist apartheid, and the victimization of entire communities). In the process, the TRC individualized both the guilt and the victims of apartheid, failing to highlight and address the structural nature of apartheid, and the structural nature of the required solutions. The TRC, therefore, clearly failed to fully underline the systematic multiplicity of oppression under apartheid, or to underline the understanding of apartheid as a racist, oligarchic and plutocratic system based on broad political, economic and social support for exploitative and racist policies and social structures. "The consequence was to narrow the TRC perspective to a *political* reconciliation between state agents and political activists, individual members of a fractured political elite, rather than the "national unity and reconciliation" mandated by the legislation that set it up."³³ Of course, primary blame still rests on the shoulders of lawmakers (the political elites) who largely defined the operational limits of the TRC's mandate. From this perspective, it is important to note that while the "criminal justice" format (i.e. concentration on individual perpetrators and punishment) might not have been politically feasible in the South African context, the imperatives of post-conflict stabilization cannot so easily serve as a viable justification for the failure to conduct TRC style "prosecutions" of major apartheid era decision-makers. In TRC's defense to some of these criticisms, one can point to its *Final Report*, in which the TRC appeared critical of some parts of its mandate (like the absence of restitution). The Report also stressed that reconciliation is a long-term goal that couldn't be achieved solely through the TRC, and openly called for reparations and economic redistribution, stating that "wide-ranging structural and institutional transformation" is needed.⁽³⁴⁾ Additionally, the TRC held hearings on the role and responsibility of certain professions and major institutions during apartheid. And yet, there were serious practical constraints on the extent to which the collectivization of guilt and moral responsibility *could* have been pursued. Fully autonomous new morality cannot be secured on the wobbly foundations of inconclusive, fragile hegemony. Social change is often a complex balancing act.

It is important to repeat that civilized, non-cruel legal sanctions/restitution remain reasonable for serious criminal offences in a truly civilized, nonviolent society. Yet, despite the need to devise (non-abusive) methods of holding human rights abusers accountable, no real accountability for the main perpetrators of apartheid crimes has been established, nor a full acknowledgment of apartheid's crimes and victims, especially considering the fact that "(r)oughly half of all violations recorded by the Commission are said to have occurred during the period of transition from apartheid (...) only 15% of the violations are said to have been committed in the heyday of apartheid."³⁵ The absurdity of this approach was illustrated by the fact that most instances of human rights violations that the Commission's Final Report recorded were cases of "black-on-black" violence (primarily between the African National Congress and the Inkatha Freedom Party) committed in the course of the liberation struggle. Mamdani's critique of the TRC's limited focus on civil law and the failure to give attention to customary law and customary authority in its work seems very pertinent. "(T)he Commission interpreted its otherwise broad mandate so narrowly (...) it focused wholly on the removal of constitutional limits to the exercise of state power, and not at all on the creation of a judicial structure that racialized and ethnicized the population into fundamentally *unequal* population groups."³⁶ The Commission's impoverished approach, especially its "tendency to dehistoricize and decontextualize social processes, and to individualize their outcomes,"³⁷ so lacking in communal and structural focus, couldn't adequately address deeper socio-economic structures based on inequality, exploitation and oppression. Both the ANC and the TRC operated with a narrow notion of democracy, which failed to acknowledge the desirability of certain elements of conflict in democratic politics, the conflict which is intrinsic to the pursuit of progressive over regressive or conservative interests. There is certainly an inevitable tension between the "preferential option for the oppressed" and the goal of social reconciliation with its principle of the universality of human rights. Ultimately, however, the task of establishing a democratic new hegemony necessitates both political wisdom and a morally "prefigurative" dimension of the struggle, the erection of new, higher moral standards – and new material realities – conducive to the establishment of a new kind of society. The TRC's conciliatory mission should have been dialectically integrated within a broader framework for structural social change and the expansion of participatory democratic public deliberation and socio-economic empowerment.

The quest for authentic social reconciliation required the collapse of racial and class boundaries. The failure to establish a truly just society and an egalitarian, nonviolent economy led to the perpetuation of social and economic apartheid within a new neoliberal context.

5. Abolition Democracy

The TRC was "the most expensive truth commission in history."³⁸ Still, it dealt with a large number of atrocities in a far more efficient and quick way than traditional criminal trials ever could.³⁹ That said, the TRC could not provide the necessary social and mental health services for victims to deal with trauma. Neither did it address or replace the need for broad, democratic, human rights-oriented political (re)education. Its recommendations

to provide substantial reparations for the victims of apartheid never materialized. The double burden of racial and class oppression continues to exist. Deprivation and violence are mutually connected and self-perpetuating.

The importance of transformative justice in the creation of a truly democratic society remains mostly unknown. Firstly, in the process of locating individual responsibility, mainstream (status quo) penal approaches perpetuate fear, distrust, and an antagonistic backdrop to the pursuit of truth. Truth commissions and other transformative methods, on the other hand, are uniquely placed to move beyond trying to acquire just basic, factual truths (which are certainly necessary), toward also searching for a deeper understanding of violent human actions, oppressive social structures, ideologies etc. These are the kinds of social truths which traditional courts cannot fully grasp, and which the TRC only began to tentatively explore.

Furthermore, as previously elaborated, “criminal justice” depersonalizes both the victim and the perpetrator. It powerfully contributes to the extension of control, coercion and ideological indoctrination, authoritarian government and/or corporate encroachment, erosion of human rights and civil liberties, the reduction of resources for social services, health care, education etc.⁴⁰ Repressive social structures obstruct the fulfillment of human needs and “incarcerate” the potential for individual and social development.

Some radical approaches, such as the one employed by Angela Davis, nicely represent the anti-repressive, transformative justice perspective that rejects a system in which “democratic rights and liberties are defined in relation to what is denied to people in prison. (...) the physical and mental agonies produced on a daily basis in prisons (...) all over the world. This is a flawed conception of democracy.”⁴¹ Numerous humanistic socialists share her desire to “urge people to think more deeply about the very powerful and profound extent to which such practices inform the kind of democracy we inhabit today.”⁴² Imprisonment, and the prison-industrial complex in particular, as a suspension of basic civil and human rights, is a form of institutional totalitarianism within supposedly “democratic” societies. It is a form of structural—institutional and ideological—violence, a material and normative challenge to the institute of democratic citizenship. The vision of democratic citizenship proposed by democratic humanistic socialists is characterized by an egalitarian, humanist rejection of *all* forms of oppression. It implies the embracement of a universal new norm of human dignity and freedom from abuse as an inalienable right.

The counter-hegemonic quality of peacemaking justice reveals the semantic incoherence of the term “restorative” justice. Peacemaking, or “deep,” substantive, transformative justice is about positive social change and invention. The alternative to violence—which the TRC failed to adequately chart and project— would have to commence seriously with a radically new, radically substantive frame of thought. “In thinking specifically about the abolition of prisons using the approach of abolition democracy, we would propose the creation of an array of social institutions that would begin to solve the social problems that set people on the track to prison, thereby helping to render the prison obsolete.”⁴³ This innovation, material and cultural, presupposes an immense new social edifice. Yet

the TRC didn't manage to strongly advance the cultural or ideological aspects of this struggle, the formative tasks of education and (re-)socialization, and the related "educational" infrastructure to put these developments into motion. Let alone could it transform the rest of the institutional, political and economic framework.

The mission of humanistic transformative justice is to change the balance of forces in society in a way conducive to the development of a wider civic culture of peace and nonviolence, a new order based on new, non-abusive social institutions.

6. TRC's Promethean Spark

Eye for an eye makes the whole world blind

Mahatma Gandhi

South Africa failed to seriously move toward positive peace, toward an expansive understanding of human rights and democratic freedoms. Nonetheless, for all its serious limitations and inconsistencies, the TRC managed to offer a working, comparatively successful alternative to the dogmas of previous efforts to deal with violent past. It offered a potent counterpoint to apartheid politics, established discursive dominance of certain factual, as well as progressive social truths, advanced both the popularity and our experience of transformative justice, and affirmed the inviolability of certain basic human rights. In this sense, the South African Truth and Reconciliation Commission is a window into a future freed from the nightmare of violent objectification.

Notes

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2. See for instance Mar Mauer and Meda Chesney-Lind (eds.), *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, The New Press, New York, 2003.
3. Desmond Tutu, *Where Is Now Thy God?*, Trinity Institute, New York, January 8, 1989, in Michael Battle, *Reconciliation: The Ubuntu Theology of Desmond Tutu*, Pilgrim Press, Cleveland, 1997, p.95.
4. Desmond Tutu, in Mark Gevisser, *The Ultimate Test of Faith*, Mail & Guardian, April 12, 1996, in Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?*, Lynne Rienner Publishers, Boulder, United States, p.33.
5. John Mfuniselwa Bhengu, *Ubuntu: The Essence of Democracy*, Novalis Press, Cape Town, 1996, p.5.
6. Robert Nozick, *Philosophical Explanations*, Clarendon Press, Oxford, 1981, p.375.
7. *Ibid.*, p.379.
8. Gail Sullivan, *A Funny Thing Happened on the Way to the Revolution*, Aegis, quoted by Fay Honey Knopp, *Community Solutions to Sexual Violence: Feminist/Abolitionist Perspectives*, in Harold E. Pepinsky and Richard Quinney (eds.), *op.cit.*, p.187.

9. James Bontha, Rebecca Jesseman, Tanya Rugge and Robert Cormier, *Restorative Justice and Recidivism: Promises Made, Promises Kept?*, pp.108-120, in Denis Sullivan and Larry Tift (eds.), *Handbook of Restorative Justice*, Routledge, London and New York, 2008.
10. Lila Rucker, *Peacemaking in Prisons: A Process*, in Harold E. Pepinsky and Richard Quinney (eds.), *op.cit.*, p.172.
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12. Walter Benjamin, *Illuminations*, Fortuna Press, London, 1992, p. 254.
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14. Thomas Paine, *Collected Writings, Shall Louis XVI. Have Respite?, Speech in the Convention*, January 19, 1793, The Library of America, 1995, p.389.
15. David McReynolds, *A Philosophy of Nonviolence*, The A.J. Muste Memorial Institute, New York, 1997, p. 30.
16. Desmond Tutu, *No Future Without Forgiveness*, Image, New York, 2004, p.84.
17. Elizabeth Kiss, *Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice*, p.87.
18. John Rawls, *Political Liberalism*, New York, 1993, pp. 213-254, in Elizabeth Kiss, *ibid.*, p. 86.
19. Eugene Debs, *Statement to the Court Upon Being Convicted of Violating the Sedition Act*, 1919, published online at:
<http://www.marxists.org/archive/debs/works/1918/court.htm>.
20. Leo Tolstoy, *Resurrection*, Penguin Books, London, 2009, p. 471.
21. Michael Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience*, Metropolitan Books, New York, 1998, p.188.
22. Walter Benjamin, *Illuminations*, Fortuna Press, London, 1992, p. 246.
23. See Rajeev Bhargava, *Restoring Decency to Barbaric Societies*, in Robert I. Rothberg and Dennis Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*, Princeton University Press, Princeton and Oxford, 2000.
24. Lyn S. Graybill, *op.cit.*, p.163.
25. Elizabeth Kiss, *Moral Ambition Within and Beyond Political Constraints: Reflections on Restorative Justice*, in Robert I. Rothberg and Dennis Thompson (eds.), *ibid.*, p. 69.
26. Graybill, *op.cit.*, p.85.
27. See for instance Pumla Gobodo-Madikizela, *Remorse, Forgiveness, and Rehumanisation: Stories from South Africa*, *Journal of Humanistic Psychology*, Vol. 42, No.1, Winter 2002, p. 11; Tom Winslow, *Reconciliation: The Road to Healing?*, Track Two, Vol. 6, No. 3&4, December 1997.
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29. Michael Ignatieff, *op.cit.*, p.173.
30. TRC, *Final Report*, I, chapter 5, paragraph 100.
31. Howard Zehr, *Restorative Justice: When Justice and Healing Go Together*, Track Two. 6(3&4), 1996, published online at http://ccrweb.ccr.uct.ac.za/two/6_34/p20_restorative.html.

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33. Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)*, Diacritics, Fall-Winter, 2002, p.34.
34. TRC, *Final Report*, 1, chapter 5, paragraph 26, 52.
35. Mahmood Mamdani, *op.cit.*, p.35.
36. *Ibid.*, p. 51.
37. *Ibid.*, p. 58.
38. Lyn S. Graybill, *Truth and Reconciliation in South Africa: Miracle or Model?*, Lynne Rienner Publishers, Boulder, United States, p.8.
39. *Ibid.*, p.68.
40. See for instance the July/August 2008 special issue of *Boston Review* dealing with the US prison system.
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43. *Ibid.*, p.96.