

Enacting Truth and Reconciliation in South Africa

A historical perspective on the TRC

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Cold war and apartheid

9 November 1989 I went to bed late at night, because I kept on watching CNN for so long. I almost could not believe my eyes. I was watching live the Berlin wall being crossed from east to west and the wall being broken down. Berlin, the former capital of Nazi Germany had become a divided city between East and West, after the military defeat of Germany in 1945 and the judging of its leaders as war criminals at the Nuremberg trials. The divided city of Berlin was the postwar symbol par excellence of a divided Europe. The Cold War with its ideological discourses and its military alliances had been the geopolitical frame work in which I was born in Belgium and grew up in Flanders, and it looked as if it was going to stay there for the foreseeable future. The unexpectedly fast implosion of the communist regimes in Central and Eastern Europe and the end of the Cold War made 1989 into an extraordinary year.

This end of the Cold War immediately triggered global reverberations. A few months later, on 11 February 1990 we also watched live on television Nelson Mandela being released unconditionally from prison walking hand in hand with his then wife Winnie Mandela-Madikizela who passed away last week. The ban on his party, the African National Congress, and other parties was lifted. The South African apartheid government could only continue as long as the Cold War existed. The fighting parties concluded that they needed a negotiated settlement once it became clear that the Cold War was over.

The end of the Iron Curtain opened new possibilities for Europe. The then European Economic Community with 12 members state developed from an economic project into a political one, the European Union, now with 27 member states after the Brexit. After suffering the devastating consequences of millions killed in two wars in the heart of Europe, and after more than 40 years of ideological, political and military stalemate during the Cold War, European peoples and nations were finally ready to start to come to terms with this violent past and move forward on a path of reconciliation.

The way in which South Africa was able to make the transition from a racist political order towards a democratic non-racist constitution in the 1990s took many by surprise. The contested political regime was finally overcome, not through a victory on the battlefield, but through a process of dialogue that led to a new constitution, the first democratic elections in April 1994, and an initiative for national reconciliation.

In more recent years the European Union as a construction of reconciliation has been under strain to solve a number of common challenges. The perception is that the EU is going from crisis to crisis: a Euro crisis centring on Greece, a migration crisis finding a common answer to the influx of refugees, a military crisis in dealing at the

Eastern borders with Russia, a legitimacy crisis because of a democratic deficit, a security crisis over jihadist terrorism, and last but not least, the withdrawal of the United Kingdom in the Brexit. At the heart is the doubt about a common European identity.

But also in South Africa, the reconciliation process has become contested in recent years. A growing number of the so-called born-free generation have become disillusioned with the reconciliation narrative in the face of continuing slow progress towards equal chances for everybody. Too many feel that the colour of their skin still hinders their progress in society. They reject the Mandela narrative of reconciliation and the Tutu narratives of the rainbow nation and of forgiveness. They first want justice. Lovelyn Nwadeyi, alumna at Stellenbosch University formulated this disillusionment with the reconciliation narratives at the Stellenbosch University Convocation of 26 January 2016.

The reality is that a system that was racist, patriarchal and unconscionable in its capitalism on Tuesday, 26 April 1994 did not magically change on Thursday, 28 April 1994. And this is why we are still having the same conversations. ...

While I deeply respect and honour the legacy of Nelson Mandela, one of the greatest mistakes I believe he and his comrades made was to tell their people to “forgive before an apology was offered”. In South Africa, contrary to other normal peace processes, “forgiveness was given before the crime was acknowledged by the perpetrators.” The TRC was supposed to deal with our issues of forgiveness and reconciliation, but the evidence of the last few months is to the contrary and people are not interested in having their anger policed or curated.

The problem, I think, in South Africa is that we are not all 100% convinced that our past was unjust. Unlike the Germans, who are genuinely sorry (...); as a country, Germany is so embarrassed by its history that Nazism and public glorifications of Adolf Hitler are criminalised. There is no in-between that some aspects of Nazi Germany were good or some parts of it were bad. Germans have outright written that part of their history off as unequivocally bad. In South Africa, there is no consensus that approximately 400 years of colonialism and 52 years of apartheid amounted to an affirmative action for white people at its best.¹

The Europe Union and post-apartheid democratic South Africa have both developed distinguishable reconciliation projects. Both are in crisis and both are looking for a second breath. Nwadeyi interestingly seeks inspiration in the way Germany dealt with its past.

Since the end of the Cold War, Europe has been challenged in a climate of growing globalisation with diversity of peoples with a plurality of cultures and religious traditions living together. In recent years, NWO, the Dutch organisation for science organised an initiative to find out together with all societal stakeholders what are the main questions research should focus on. 140 questions were selected. One of these 140 most urgent questions is: How can social cohesion be advanced in a cultural and religious diverse society? It illustrates that there is a broad societal and scientific awareness that in the Netherlands, and in Europe in general, we struggle to deal with diversity of people. And for this reason, the way South Africans have tried to and continue to try deal with this issue is a source of inspiration for us here in Europe. Today we want to focus on the way South Africans have dealt with the legacy of

¹ See <http://www.litnet.co.za/courage-compassion-and-complexity-reflections-on-the-new-matieland-and-south-africa/>, consulted 30 March 2016. Also <https://www.youtube.com/watch?v=JqaZVH7cUJo&sns=em>, between 13.15 and 14.30.

apartheid in the years of transition towards a democratic system. Louis van de Riet and I will focus on the South African initiative for national reconciliation at the end of the apartheid era.

The South African Truth and Reconciliation Commission has become the bench mark for Truth Commissions in the context of transitional justice.² And through the focus on reconciliation within the TRC, the concept of reconciliation was launched for a global career.³ ‘Reconciliation’ has traditionally been part of religious and more specifically theological discourse, but in recent decades it has been incorporated into the language of psychology, sociology, law, philosophy and political science and has been embraced by politicians in societies in transition. Reconciliation in the public domain has come to express the intention to strengthen social cohesion and peace within society. At the same time, we observe a reconciliation fatigue or at least a fatigue of reconciliation discourse, that has grown out of the years of disillusionment, as was illustrated by Lovelyn Nwadeyi’s speech.

We will provide some info on the historical background of the TRC. We will answer the question what the role of religion was, we will provide an analysis of the truth and truth telling within the TRC, we will explore the different meanings of reconciliation within the TRC and will finally return to the question of what we can learn from the TRC.

Historical background of the TRC

So, how was this innovative idea of a truth and reconciliation commission conceived and when was it instituted in the context of finding a non-violent end to a looming civil war? In December 1993 the Multi-Party Negotiating Process that started in April that year had almost reached agreement on an interim constitution that would replace the old constitution that had been the basis for the apartheid legal system. But an amnesty provision was still lacking. The issue was temporarily ‘solved’ by giving it a place in the post-amble to the interim constitution and by framing it in the context of

² Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, New York/Milton Park: Routledge, 2011², 27-32 mentions South Africa as the first under ‘The Five Strongest Truth Commissions’. Patricia B. Hayner, ..., attributes this quality to the empowering Act that provided ‘the most complex and sophisticated mandate for any truth commission to date’ and to the available budget. “The commission’s empowering Act provided the most complex and sophisticated mandate for any truth commission to date, with carefully balanced powers and an extensive investigatory reach. Written in precise legal language and running to over twenty single-spaced pages, the Act gave the commission the power to grant individualized amnesty, search premises and seize evidence, subpoena witnesses, and run a sophisticated witness-protection program. With a staff of three hundred, a budget of about \$18 million each year for its first two and a half years, and four large offices around the country, the commission dwarfed previous truth commissions in its size and reach.” (27-8) See also P. Hayner, ‘Same species, different animal: how South Africa compares to truth commissions worldwide’, in Ch. Villa-Vicencio and W. Verwoerd, *Looking back, Reaching Forward*, Cape Town: University of Cape Town Press, 2000, 32-41, in which she also mentions the public character of the process, the institutional hearings, and the focus on reconciliation. Paul Gready, ..., has pointed to ‘the place of apartheid in the international political imagination, high profile commissioners (such as Archbishop Desmond Tutu, the TRC’s chairperson), public victim and amnesty hearings, innovative institutional arrangements, widespread media coverage and excellent access to materials on the worldwide web.’ P. Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond*, Milton Park/ New York: Routledge, 2011, 4. The TRC website is now housed on the website of the Department of Justice and Constitutional Development: www.doj.gov.za/trc.

³ F. Du Toit, ‘A double-edged sword’, in E Conradie (ed.), *Reconciliation as a guiding vision for South Africa?*, 2013, 48.

reconciliation on the road to national unity.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this constitution lays the secure foundation for the people of South Africa to transcend the division and the strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is need for understanding not for violence, a need for reparation but not retaliation, a need for *ubuntu* but not for victimisation.

On this basis, an amnesty provision could be announced:

In order to advance such reconciliation and reconstruction, amnesty shall be granted in all respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this constitution shall adopt a law determining a firm cut-off date ..., and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.⁴

What did this amnesty in the context of political reconciliation entail? Part of those related to the old regime understood it as ‘forgive and forget’ and wanted to ‘close the books on the past’. Some victims of gross violations of human rights opposed the content of the post-amble because they were not prepared to give immunity to prosecution for their persecutors. Others were convinced that in order to prevent that amnesty would only bring amnesia, a mechanism was necessary that would help the nation to face its violent past in order to be able to move on to the future. But the post-amble did not provide the tools for such procedure.

Kadar Asmal, in his inaugural lecture as Professor of Human Rights Law at the University of the Western Cape in mid-1992, had already explained why and how the past was to be opened in the context of a negotiated deal, saying:

We must take the past seriously as it holds the key to the future. The issues of structural violence, of unjust and inequitable economic social arrangements, of balanced development in the future cannot be properly dealt with unless there is a conscious understanding of the past.⁵

Asmal was convinced that the memory work to be done in the context of a negotiated transition did not need a Nuremberg-style trial. It would lack the capacity to ‘deal with the humiliation, brutality, deprivation, and degradation of the past’. Instead it required a truth commission.⁶

After the adoption of the interim constitution, the NGO Justice in Transition convened

⁴ For the full text and the interpretation of the post-amble to the interim constitution, see E. Doxtader, *With faith in the works of words: The Beginning of Reconciliation in South Africa, 1985-1995*, Claremont: David Philips Publishers, 2009, 211-7.

⁵ The quote is in TRC Report, Vol. 1, 49.

⁶ For the analysis of the inaugural lecture of K. Asmal, see E. Doxtader, *With faith in the works of words*, 229-32.

an international conference in February 1994 to reflect further on dealing with the past in the context of a negotiated transition. This NGO was headed by Alex Boraine, a former Methodist minister who had gone in politics. It became clear that amnesty without history and truth-telling would not yield the fruit of reconciliation.⁷

The same Alex Boraine proposed to Dullah Omar, the first Minister of Justice in the government of Mandela, to give the to be established Commission the name 'Truth and Reconciliation Commission' instead of 'Truth Commission'. He argued that the name 'truth commission' had Orwellian overtones, and that the combination of truth and reconciliation would put truth in the perspective of reconciliation.⁸ Being aware that reconciliation is as ambiguous as truth, Boraine organised a second conference in July 1994. Among the participants were Dullah Omar, Richard Goldstone (Justice of the South African Constitutional Court), Albie Sachs (a legal scholar), and Frank Chikane (former secretary-general of the South African Council of Churches), all influential South Africans whose ideas were formative for the TRC. Together with a representative from the Chilean National Commission on Truth and Reconciliation, they came to the conclusion that reconciliation depended on truth and the reconstruction of the cultural, political and moral order.⁹

After the elections of 27 and 28 April 1994 and the inauguration of Nelson Mandela as president, the new Parliament passed the Promotion of National Unity and Reconciliation Act (n° 34 of 1995) in mid-1995.¹⁰ It was the result of the input from civil society, from the conferences by the NGO *Justice in Transition*, and of hundreds of hours of hearings in Parliament.¹¹ It established the Truth and Reconciliation Commission of South Africa. The Act spells out the mandate of the commission with four specific tasks, (1) establishing a picture of the gross violations of human rights in the period between 1 March 1960 and 10 May 1994 through investigations and hearings,¹² (2) facilitating the granting of amnesty to those who made full disclosure of all the relevant facts to acts associated with political objectives, (3) establishing and making known the fate or whereabouts of victims, restoring dignity by giving victims the opportunity to relate their own accounts, and recommending reparations, and (4) compiling a comprehensive report with findings and recommendations.

In December 1995, the 17 members strong commission with Archbishop Desmond Tutu as chair, was inaugurated. It started its first hearings and investigations in April 1996. Before that time it had to organize itself, hire staff, establish the national and regional offices, and develop its methodology and process.¹³ It had to interpret the

⁷ E. Doxtader, *With faith in the works of words*, 228-38.

⁸ A. Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*, Oxford/New York: Oxford University Press, 2000, 37-8.

⁹ Shore, *Religion and Conflict Resolution*, 116-7.

¹⁰ The full text of the TRC's founding Act, see E. Doxtader and P-J. Salazar, *Truth & Reconciliation in South Africa: The Fundamental Documents*, Claremont: New Africa Books, 2007, 13-27.

¹¹ For an analysis of the evolution of the reconciliation discourse in this period, see E. Doxtader, *With faith in the works of words*, 242-82.

¹² March 1960 was the date of the Sharpsville massacre, 10 May 1994 the date of the inauguration of Nelson Mandela as president.

¹³ TRC Report, Vol. 1, 44-7 and 135-173.

mandate and it defined its terminology for victims or survivors and for perpetrators, it further explained its understanding of who were victims of gross violations of human rights. Narrowly interpreting the founding Act, the TRC Commission defined gross violations of human rights as ‘bodily integrity rights’, that is killing, abduction/‘disappearance’, torture or severe ill treatment.¹⁴ It was in acting and performing as Commission that they tried to understand better their role in the promotion of national unity and reconciliation; the different meanings of truth, the relationship between truth and reconciliation, and between amnesty, truth, and justice; and the principle of *ubuntu* as promoting restorative justice.¹⁵ And they had to cope with legal challenges.¹⁶

Three committees structured the TRC: Human Rights Violations Committee, the Amnesty Committee and Reparation and Rehabilitation Committee. The first one is best known because of its public hearings. The Commission took testimony from over 21,000 victims and witnesses. 2,000 were selected to appear in public hearings. It also organised special hearings about the role played during apartheid by various sectors of society, such as the media, judiciary, the health sector, faith communities, etc. The intense media coverage fitted the agenda of the TRC to contribute to national reconciliation. Most newspapers reported everyday on the hearings. The daily report on the activities of the TRC tended to dominate the radio and television news. Each day, four hours of hearings were broadcast live over national radio, and the Sunday evening *Truth Commission Special Report* became the most popular news show.¹⁷

Most innovative and at the same time, most contested was the power of the commission to grant individual amnesty for politically motivated gross violations of human rights.¹⁸ The request for an amnesty mechanism had been the trigger to work towards a truth commission in the context of comprehensive national reconciliation the years before. The amnesty could only be granted in case of a full disclosure of all relevant facts. Remorse, an apology or a request for forgiveness were not required. After the acquittal of former minister of defence Magnus Malan, the fear of prosecution and condemnation among many former perpetrators, especially political

¹⁴ TRC Report, Vol. 1, 48-102.

¹⁵ TRC Report, Vol. 1, 103-34.

¹⁶ TRC Report, Vol. 1, 174-200. Volume 1 of the Report also gives an overview of some of the legal challenges the Commission faced. The Constitutional Court dismissed the claim of unconstitutionality of the Act by three prominent victims’ families.¹⁶ In another case, the court ordered the Commission to provide reasonable notice to those expected to be accused of wrong doing in a public hearing. The Commission also charged former president P.W. Botha after he refused to comply with a subpoena to appear before the TRC. Through legal action, the former president F.W. de Klerk temporarily successfully blocked his naming in the Report. The ANC unsuccessfully attempted to block the publication of the entire report because it was dissatisfied with its conclusions about the past actions of the ANC. The Inkatha Freedom Party and M. Buthelezi delayed the release of the volume 6 on amnesty. The Commission used its subpoena, search and seizure power only a few times but renounced from using its strong power against key individuals or institutions, such as the minister of home affairs, Inkatha Freedom Party president M. Buthelezi, the SA Defence Force and the ANC. Human rights organizations frequently criticized the commission for giving more weight to national reconciliation than to finding the truth.

¹⁷ P.B. Hayner, *Unspeakable Truths*, 28.

¹⁸ P.B. Hayner, *Unspeakable Truths*, 29-31. The TRC delivered most of its work between 1996 and 1998, but the processing of the individual amnesty applications took more than two years extra.

apartheid leaders and senior officers of the army, resided. Many of them decided not to apply for amnesty and as a consequence, their secrets were not brought into light. Of the 7,115 applications for amnesty 4,500 were rejected, due to lack of political motivations. Ultimately, 1,167 persons were granted amnesty, and another 145 were granted partial amnesty.

And finally there was the Reparation and Rehabilitation Committee. The recommendations by the Reparation and Rehabilitation Committee were only executed partially due to a lack of political commitment. The government refrained from committing itself to the implementation of the many of the Commission's recommendations. The ANC could not accept that the TRC handled the gross violations of human right committed in the context of the liberation struggle in the same manner as the gross violations of human rights committed by the previous apartheid government.

The role of religion in the TRC

I remember that for a long time I was confused about the identity of the TRC. This has to do with the way it was presented in most popular media. Almost always with Archbishop Tutu presiding and impressing with his spiritual and pastoral leadership. The Canadian researcher Megan Shore wrote her PhD on the role that Christianity played in the TRC, as a case study of how religions can contribute to conflict resolution.¹⁹

The TRC with its political mandate and objectives was not intended to be a religious process, but 'was led by Commissioners who conducted hearings with a definite Christian form and tone.'²⁰ From the 17 commissioners one-third came from faith communities, one-third from health, and one-third from the legal background. Four commissioners were ordained ministers and represented Christian organisations, among them the chairperson of the commission, Archbishop Desmond Tutu, and one commissioner, Ms Yasmin Sooka, was a Hindu, human rights lawyer and South African leader of the multi-faith World Conference on Religion and Peace.²¹ Charles Villa-Vicencio, a theology professor and head of the department of religious studies at the University of Cape Town was appointed director of research, and as such directly involved in the writing process of the Report of the TRC. Among the 300 staff members hired by the TRC, a significant number were prominent Christians.²² The South African Council of Churches, its member churches and other Christian organisations actively supported the TRC by creating awareness of its mandate, by offering logistical support, by providing statement takers, and by offering counselling.

¹⁹ M. Shore, *Religion and Conflict Resolution: Christianity and South Africa's Truth and Reconciliation Commission*, Farnham/Burlington: Ashgate, 2009.

²⁰ M. Shore, *Religion and Conflict Resolution*, 61.

²¹ Dr. Alex Borrairie, the vice-chairperson of the TRC, was an ordained minister of the Methodist Church and former president of the Methodist Conference. Reverend Bongani Finca was an Eastern Cape Church leader, and dr. Khoza Mgojo as the former president of the Methodist Church and president of the South African Council of Churches

²² Such as theology professor Piet Meiring of the University of Pretoria, and Archdeacon Mcibisi Xundu.

But there is more. This is what we read in the official report:

All the hearings were to have a ceremonial aspect: the chairperson's opening remarks were often preceded by prayer, by the lighting of a memorial candle, by hymns or songs. When Archbishop Tutu presided, he wore his purple robes, lending his own special presence to the occasion. This religious aspect of the hearings was sometimes criticised, especially for its mainly Christian focus. It became clear, however, that this was not inappropriate in a country where a considerable majority of the population is Christian. In later hearings, when Archbishop Tutu himself was not present, other religious leaders were often asked to pray. Often, too, local community groups would introduce songs and ceremony.²³

With this quote from the TRC Report, the Commission confirmed the religious aspect of especially the Human Right Violations Committee meetings, an element that had already been observed by journalists and visitors.²⁴ The prayers, the hymns, the candles, and the purple robe of the Archbishop were elements brought in on purpose, in order to create a ceremonial, religious atmosphere.²⁵ And the practise is defended against critics with the argument that it fits the considerable majority Christian population.²⁶

Especially the chairperson Archbishop Desmond Tutu embodied this religious culture.²⁷ Some within the TRC contested the religious atmosphere during the hearings. The Dutch Reformed theology professor and member of the TRC, Piet Meiring has described this as the '*Baruti* vs lawyers' debate within the TRC. Some of the lawyers felt uncomfortable with the religious elements brought into the proceedings by the *baruti* that is the pastors among the commissioners and committee members. They wanted the process to be judicial. Meiring recalls how at some point Tutu agreed to a secular tone but felt so uncomfortable that he opened and closed again with prayers. Tutu later wrote:

Very few people objected to the heavy spiritual, and indeed Christian, emphasis of the Commission. When I was challenged on it by journalists, I told them I was a religious leader and had been chosen as who I was. I could not pretend I was someone else. I operated as who I was and that was accepted by the Commission. It meant that theological and religious insights and perspectives would inform much of

²³ TRC Report, Vol. 5, 3, § 10.

²⁴ Already at the first public hearing of the HRVC on 16 April 1996 in the East London City Hall, Antjie Krog had observed the opening by hymn, prayers and candle lighting and has understood it as 'consecration of space', *Country of My Skull*, Johannesburg: Random House, 1998, 26.

²⁵ Archbishop Tutu recalls how he asked his fellow commissioners whether 'I should preside over the proceedings in my purple Archbishop's cassock, part of my public *persona*', *No Future Without Forgiveness*, London: Rider, 1999, 72.

²⁶ According to the 1996 census, 87 per cent of the population identified with the Christian tradition. See Shore, *Religion and Conflict Resolution*, 60.

²⁷ P. Hayner, 'Same species, different animal: how South Africa compares to truth commissions worldwide', in Ch. Villa-Vicencio and W. Verwoerd, *Looking back, Reaching Forward*, Cape Town: University of Cape Town Press, 2000, 41 observes that the religious overtone of the truth commission of South Africa makes it different from truth commission in the rest of the world. 'Archbishop Desmond Tutu's personal perspective, priorities, personality and moral authority created an emphasis on reconciliation heavily influenced by Christian values, ... Perhaps the ramifications of this approach, and the positive as well as limiting influence of this religious tone, have not yet been fully appreciated.'

what we did and how we did it.²⁸

He defends the religious input by referring to the religious, mainly Christian, character of the South African population, to the involvement of faith communities with the conception of the TRC, to the spiritual wells offered by religions in terms of facilitating the process of remembrance, truth finding and moving in the direction of reconciliation, and to the involvement of the faith communities in the institutional hearing.²⁹ He also reminds of the contribution Christian theology made to the TRC in terms of making a distinction between a perpetrator as a sinner, who is called to repent, and a monster, and in terms of recognition of the moral universe, in which good and evil matter.³⁰ It leads him as Christian to the conclusion that there is ‘no future without forgiveness’.³¹

Others, belonging to minority communities especially to Islam or Judaism, expressed dismay over the Christian emphasis of the TRC.³² For some of them it was a question of insufficient representation of their faith community, or of being not at ease with the Christian rituals, but the main point of disagreement was on the understanding of forgiveness and reconciliation. Former Director-General in the Office of the State President, Jakes Gerwel, warned not to misrepresent the TRC as search for the holy grail of spiritual reconciliation, but instead to appreciate it first and foremost as secular pact, a political agreement, that confirms the latent national unity that has been present since the Union of South Africa in 1910.³³

But maybe, the Muslim scholar Ebrahim Moosa captured best the role of religion in the TRC when he described the TRC as a performance.³⁴

More importantly, it played a cathartic role for most of the time in the life of the newborn nation. In this respect it must be viewed as an ‘event’ that prefigures other momentous events. Any event of this magnitude is actually a performance. A

²⁸ D. Tutu, *No Future without Forgiveness*, 72-3.

²⁹ P. Meiring, ‘The *Baruti* Versus the Lawyers: The Role of Religion in the ‘TRC Process’, in C. Villa-Vicencio and W. Verwoerd (eds), *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: Cape Town University Press, 2000, 123-31.

³⁰ D. Tutu, *No Future without Forgiveness*, 73-7.

³¹ D. Tutu, *No Future without Forgiveness*, 206-30.

³² For references, see Shore, *Religion and Conflict Resolution*, 70-2.

³³ J. Gerwel, ‘National reconciliation: holy grail or secular pact?’, in C. Villa-Vicencio and W. Verwoerd (eds), *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: Cape Town University Press, 2000, 277-86, See especially p. 281: **The achievement in South Africa of a constitutional state of this nature and that particular process, is the single most telling statement of national reconciliation. It is of note that the Union of South Africa, which defined the territorial and juridical arena within and over which the modern struggle around the politics of racial domination and subjugation was conducted, came out of a series of highly destructive wars of colonial dispossession and imperial conflict. Modern-day South Africans averted a widely predicted civil war and racial conflagration and produced one of the most acclaimed democratic and diversity accommodating constitutions in the world.**

³⁴ E. Moosa, ‘Truth and reconciliation as performance: spectres of Eucharist redemption’, in C. Villa-Vicencio and W. Verwoerd (eds), *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: Cape Town University Press, 2000, 113-22.

performance is when the actors have already configured the purpose of the play and there is hope that other participants and viewers will also understand its message. World history, especially sacred history, has a long record of narratives of performance: the genesis story, Abraham's sacrifice of this son and the crucifixion of Jesus. It is as performance that the TRC event has greater value as symbol, myth and spectacle.³⁵

Moosa compares it to the way redemption is embodied in the Eucharist.³⁶

Truth telling and truth finding

In order to weigh better the strengths and weaknesses of the Truth and Reconciliation Commission of South Africa and to evaluate its outcome, one has to bring it back to what it really is: a truth commission. As an act of public description through reports and public hearings, a truth commission is an instrument designed in an era of transitional justice to address the legacies of a troubled past. And alongside a truth commission is an instrument of constituency building in order to open a new common future.

The TRC itself has distinguished between four forms of truth: forensic/factual, personal/narrative, social, and healing/restorative truth.³⁷ Paul Gready, professor of applied human rights, prefers to define truth in the context of truth commissions as a 'genre'. 'The truth established by official commissions is forged in the coming together of three tributary genres: the state inquiry, the human rights report and the official history.'³⁸ As such the narrow focus on the gross violations of human rights diminished the full inquiry into the apartheid past. '[I]t highlights apartheid's

³⁵ E. Moosa, 'Truth and reconciliation as performance: spectres of Eucharist redemption', 114.

³⁶ E. Moosa, 'Truth and reconciliation as performance: spectres of Eucharist redemption', 119: 'The performance of the TRC event resonates a redemption of the sins of apartheid. The suffering and oppression experienced by the disenfranchised was dramatised or performed twice in the lives of many people. The first was at the instance of the injury itself – whether it is that of the victims or the trauma of their dependants. The second dramatization was in the theatre of the TRC event itself, where these sins were replayed to the benefit of a variety of hosts: Commissioners, the media, observers, the aggrieved, the archivists, the psychologists and the politicians, to mention but a few. In what way did the TRC turn the suffering of the heroes of liberation into a gift of sacrifice for the new South Africa? ... In some way, this sacrifice can be justified as a necessity. Without this sacrifice, as well as considering the impossibility of justice that prefigured it, the discourse of reconciliation may not have been possible. At the same time one must bear in mind that total and absolute reconciliation cannot be realised. For this reason reconciliation was the most viable solution in a context that was riddled with incompleteness, incoherence and the coexistence of opposites.'

³⁷ TRC Report, Vol. 1, 110-4.

³⁸ P. Gready, *The Era of Transitional Justice*, 27. The challenge for truth commissions is to streamline the divergent methods and objectives of the three genres in such a way that a more or less coherent truth finding is the result. Gready is of the opinion that in the case of the TRC such a hybrid and synthetic truth was not reached. 'Rather, genre status and the kinds of truth prioritised changed over time and through different sections of the organisation and report. An initial focus, at least within sections of the TRC, on narrative and history was overtaken midstream by quantitative methodology and a focus on making findings. This was an act of colonisation by human rights, narrowly construed. But it was also an internal coup within human rights, elevating to power a particular set of civil-political rights and quantitative research methodologies.'

symptoms (torture, killings) rather than its structural violence and enduring legacies (racism, inequality, violent crime). It also frames narrow understanding of accountability and responsibility.³⁹ Gready observes that the TRC compensated its lack of historical analysis with a unifying ‘moral narrative about wrongdoing across the political spectrum, rooted in the over-riding evil of the apartheid system.’ Or, in the words of social anthropologist Richard Wilson (2001:93), ‘[m]orality ventured where analysis feared to tread’.⁴⁰

Megan Shore, as Gready, observes that the TRC did not start with a working definition of truth or truth-telling. Only in the TRC Report, the Commission was able to identify four types of truth that had been operational in the process. The Human Right Violations Committee became the forum for expressing especially one of those four types of truths, that is personal and narrative truth. This space and this truth could easily harbour Christian understanding of truth-telling. The liturgical aspects of the hearings, e.g. Archbishop Tutu calling on the Holy Spirit to assist with truth finding, supported or even encouraged victims to tell their story in a way that was quite natural to them, that is in a religious frame, containing Christian language and biblical references. And this in turn opened the way for a Christian understanding of reconciliation and for becoming part of South Africa’s collective memory. ‘In practice, the HRVC hearings became a quasi-religious forum, which created a space for a Christian narrative.’⁴¹ In the Amnesty Committee, on the contrary, another type of truth-telling was prevalent, that is factual or forensic truth. And as a consequence the tone was legal, without emotions expressed or religious discourse used. Shore concludes that two contrasting version of the truth were generated by the quasi-religious HRVC hearings and by the quasi-legal AC hearings. It reveals the limits of bringing in Christian discourse in the TRC as a political process. ‘The two most obvious limitations were (1) Christian discourse became primarily a victim’s discourse; and (2) the awarding of reparations to victims based on religious testimonies is difficult to translate into the supposed recompense of financial reparations.’⁴²

Reconciliation

Erik Doxtader, a professor of rhetorical analysis, researched the reconciliation discourse in South Africa in the decade preceding the TRC, between the onset of the state of emergency in 1985 to Nelson Mandela’s signing of the *Promotion of National Unity and Reconciliation Act* in mid-1995.⁴³ Doxtader observes that it were churches

³⁹ P. Gready, *The Era of Transitional Justice*, 39. The report is ‘characterised by description, fragmentation, repetition and multiple messages’, as illustrated by the failure to integrate testimonies and statistical analysis; the absence of linkage between time periods, regional profiles, categories of abuse, part of individuals stories; and the treatment of sector hearings and related structural issues in a separate volume. They are indications of the lack of historical analysis, and of an interpretive framework for the past. Confirming previous analyses of R. Wilson (2001) and Posel (2002).

⁴⁰ P. Gready, *The Era of Transitional Justice*, 50.

⁴¹ Shore, *Religion and Conflict Resolution*, 90.

⁴² Shore, *Religion and Conflict Resolution*, 100.

⁴³ E. Doxtader, *With faith in the works of words: The Beginning of Reconciliation in South Africa, 1985-1995*, Claremont: David Philips Publishers, 2009, ix.

and theologians who the first to develop a reconciliation discourse in the years before 1985. While the Afrikaner churches theologically justified apartheid policies and had postponed reconciliation of the races towards the eschaton,⁴⁴ the main English speaking churches rejected apartheid policies as unjust, and called for reconciliation in the face of the growing of the violence. It was in this context that a group of black theologians published in 1985 the *Kairos* Document. They rejected the ‘state theology’ of the Afrikaner churches and the ‘church theology’ of the main more liberal English speaking churches, and instead proposed a ‘prophetic theology’ that challenged to action.⁴⁵ ‘No reconciliation is possible in South Africa without justice, without the total dismantling of apartheid. ... [N]obody can be forgiven and reconciled with God unless she or he repents of their sins. ... Reconciliation, forgiveness and negotiations will become our Christian duty in South Africa only when the apartheid regime shows signs of genuine repentance.’⁴⁶

Reconciliation was a central concept of the TRC, first and foremost expressing the will of the apartheid government and the ANC to work together to realize a new national unity, overcoming the divided past based on race identities. When it comes to reconciliation in the TRC, John de Gruchy is often quoted: ‘the word is so overloaded with ambiguity in some contexts and so emptied of significant meaning in others, that we may well wonder whether it remains a useful term in universal discourse.’⁴⁷ The uncertainty about the term is reflected in the Report of the TRC itself:

The experiences of the Commission illustrated the particular difficulty of understanding the meaning of unity and reconciliation at a national level. They also highlighted the potentially dangerous confusion between a religious, indeed Christian, understanding of reconciliation, more typically applied to interpersonal relationships, and the more limited, political notion of reconciliation applicable to a democratic society.⁴⁸

Megan Shore traces the origins of this ‘dangerous uncertainty’ to the prehistory of the TRC. As we have seen, the post-amble of the Interim Constitution expressed the need for ‘reconciliation between the peoples of South Africa’, but this was immediately linked to amnesty for perpetrators, without even mentioning victims. The Promotion of National Unity and Reconciliation Act did not define reconciliation as it did with other key terms in chapter one. In the Volume 1 of the Report, as part of the chapter on ‘Concepts and Principles’, the Commission distinguished between five levels of reconciliation: coming to terms with a painful past, reconciliation between victims

⁴⁴ E. Doxtader, *With faith in the works of words*, . With *Ras, Volk en Nasie en Volkereverhoudinge in lig van die Skrif* (1974), the *Nederduitsch Gereformeerde Kerk* provided a theological justification of ‘separate development’, rejecting the idea of being a select race, but instead interpreting the lesson of Babel in Genesis 11. Against the human hubris to unite, humanity should accept its diversity of language and the principle of differentiation, leading to different nations. Since differentiation was understood to be the leading principle for this creational era under sin, unity as reconciled diversity of peoples was a prospect postponed until the eschaton.

⁴⁵ *The Kairos Document - Challenge to the Church: A Theological Comment on the Political Crisis in South Africa*, Braamfontein: Skotaville Publishers, 1986².

⁴⁶ *The Kairos Document*, 10-11.

⁴⁷ J. de Gruchy, *Reconciliation: Restoring Justice*, Minneapolis: Fortress Press, 2002, 25.

⁴⁸ *TRC Report*, Vol. 1, 108, § 19.

and perpetrators, reconciliation at a community level, promoting national unity and reconciliation, and reconciliation and redistribution.⁴⁹ It confirms the uncertainty about the definition of reconciliation within the TRC.

Shore reports how various researchers have interpreted this ambiguity of the reconciliation in the TRC in various ways. The social researchers Hugo van der Merwe en Brandon Hamber detected five ideologies that inspired reconciliation with the TRC: the non-racial ideology of reconciliation propagated by the ANC, the intercommunal understanding ideology propagated by the National Party, the human rights approach to reconciliation propagated by NGOs, the reconciliation as community building, and finally the religious ideology of reconciliation in terms of forgiveness. According to these two researchers, the initially strong religious ideology with focus on forgiveness and truth-telling was countered by NGOs and political parties as being too lenient to perpetrators.⁵⁰ Richard Wilson observed three competing narratives of reconciliation with the TRC: a legal-procedural one favoured by the TRC lawyers and judges, the mandarin-intellectual narrative propagated by individuals in the Human Rights Violations Committee and the research unit, and the most popular narrative, the religious-redemptive one, in terms of confession, forgiveness and redemption, refraining from vengeance, advocated by Archbishop Tutu and members of the Reparation and Rehabilitation Commission, aiming for individual and national reconciliation.⁵¹

This overview of interpretations of the concept of ‘reconciliation’ at the TRC by commissioners, by social scientists, and by theologians confirm that a permanent tension existed between various understanding of reconciliation at the TRC. According to Shore, the main fault line was between a political interpretation focusing on national reconciliation, and a moral/religious approach that focused on individual and interpersonal reconciliation. This is confirmed in Volume 1 of the TRC Report: ‘...the potentially dangerous confusion between a religious, indeed Christian, understanding of reconciliation, more typically applied to interpersonal relationships, and the more limited, political notion of reconciliation applicable to a democratic society.’⁵² The reference to ‘potential dangerous confusion’ expresses the sentiment of modern-liberal society, which distinguishes between public – private according to the line political – religious, but does not mirror the traditional South African understandings of politics and religion.⁵³ That religion, especially Christianity could be so influential in the TRC, and prove to be a rich example of religious conflict

⁴⁹ *TRC Report*, Vol. 1, 106-10. See also Vol. 5, 350-435. A long final chapter of volume 5 is dedicated to Reconciliation. It is less analysis and more illustration through excerpts from the hearings how reconciliation worked out. It gives examples of the victims’ and perpetrators’ restoration of human dignity, examples of forgiveness, examples of apologies and acknowledgements, examples of reconciliation between victims/survivors and perpetrators, examples of reconciliation without forgiveness, examples of restitution and reparation, examples of the way forward for national reconciliation, and examples of truth and reconciliation in institutional sectors. From this summary it becomes clear that the five levels of reconciliation distinguished in volume one have not become an ordering structure for the chapter on reconciliation in book 5.

⁵⁰ Shore, *Religion and Conflict Resolution*, 126-7.

⁵¹ Shore, *Religion and Conflict Resolution*, 127-8.

⁵² *TRC Report*, Vol. 1, 108, § 19.

⁵³ Shore, *Religion and Conflict Resolution*, 130,

resolution, is directly related to the fact that by and large, the TRC was 'able to maintain the late-modern tension between liberal political convictions and religious worldviews.'⁵⁴ In the aftermath of the TRC, many Christian theologians have emphasized that national reconciliation will only happen on condition of more social justice.⁵⁵

Concluding remarks

There is no time for a comparison with the European context. Instead I close with a few concluding remarks.

One. The title of John de Gruchy's 2002 volume about the TRC says it all *Reconciliation: Restoring Justice*. The TRC used the African concept of *Ubuntu* to explain its understanding of justice in terms of restorative justice.⁵⁶ When we look to the current South Africa twenty years after the start of the TRC, one observes a democratic and mostly peaceful political culture, but social justice is still lacking. Behind an unsettling and very problematic social and criminal violence culture, looms the reality of a continuing poverty and massive, inequality. Inequality, poverty and violence are now the most enduring legacies of apartheid.

Two. It is in South Africa and globally acknowledged that the TRC was an amazing formidable event that performed highly mediatized reconciliation and at that time helped South Africans to start the healing of the wounds of decennia of apartheid violence. But after more than 20 years the positive effects start to fade out. Hayner concludes her discussion of the TRC with the remark that 'coming to terms with decades of abuses would take much longer than a few years and much more than speaking the truth.'⁵⁷

⁵⁴ Shore, *Religion and Conflict Resolution*, 173-4.

⁵⁵ See e.g. J. De Gruchy, *Reconciliation Restoring Justice*, Minneapolis: Fortress Press, 2002; A. Boesak and , *Radical Reconciliation*, 2012.

⁵⁶ TRC Report, Vol. 1, 125-31.

⁵⁷ P.B. Hayner, *Unspeakable Truths*, 32.