
GLOBAL CRISIS IN MEMORY

How 'Transitional Justice' Colonized South Africa's TRC

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Commentators have wrongly assumed that the operations and outcomes of South Africa's Truth and Reconciliation Commission (TRC) reflected the intentions of the African National Congress (ANC) government that instigated it. In line with its agenda of substantive social history, the ANC intended to establish a new Gramscian 'common sense' of anti-colonialism and self-determination to drive anti-apartheid transformation. As part of its additional aim for an institutional intervention, the ANC sought to renovate the inherited technology of the colonial commission of inquiry itself. As the paper shows, these aims were overturned through the superimposition of 'transitional justice' within the workings of the TRC and the TRC's 'Final Report'. The continuing implications of this abduction are addressed in closing.

'The people must be taught to cry, "Stop thief!"'
Frantz Fanon

But where I argued with [former South African President Thabo] Mbeki was when he determined that he was going to show that black Africans could govern. I thought: great, I have no doubt that they can. There's no question in my mind that they are good people. But there is a lack of skills and a lack of exposure at local level, at provincial level, and at national level [...] I said: 'Some white people think you guys are useless – if it's black it's not going to work – but a lot of us don't believe that. We believe that, like anyone else, if you are given the chance to do something, you can do it. But we're a big country, there are a lot of white people in this country who had enormous privileges, and some of us would like to re-pay that [...] and I'm talking about *expertise*. I'm talking about engineers and scientists.' (qtd. in Mengel 12–13)

Alex Boraine, Deputy Chairperson of the South African Truth and Reconciliation Commission, interviewed in 2009

Contending genealogies: reconciliation versus transition

In 'talking about' expertise in general, Boraine was implicitly referencing his self-created status as an instant-expert in a new science called 'transitional justice' (TJ). Within South Africa's Truth and Reconciliation Commission (TRC) during the 1990s, this 'expertise' drove out the politics of anti-colonialism and self-determination that the African National Congress (ANC) had in mind when it set up the TRC as a process for radical reconciliation and anti-apartheid reconstruction.

The story of the TRC as a process intended to be radical, before it was colonized by global cosmopolitan 'expertise', aligns the TRC and its ongoing aftermath with the recent coming undone of all sorts of claims of 'expertise' since 2008. These forms of expertise had seemed to prevail until recent challenges posed by a morbid and contradictory array of 'populisms'. Alongside the many obnoxious and reactionary aspects of these so-called populisms, there are also certain healthier strands that are undoing, for example, the vanities that used to wall off Northern wisdom from Southern immaturity,¹ Northern order from Southern disorder, black incompetence from white pseudo-expertise. As Karen Salt has highlighted in the case of the contemporary reception of the unfinished Haitian Revolution, variants of Boraine's logic are always traceable wherever black sovereignty asserts itself: the idea never ceased to be expressed that a black nation 'needed a (white) paternalistic guide to help steer it away from its *unnatural* and *uncivilised* tendencies' (Salt 71; emphasis original).

As a notable post-1989 example of a centuries-old globalist paternalism as expertise, the TRC played a 'standard-setting' role as a model or lesson in establishing TJ as a worldwide post-conflict paradigm (Rotberg 4), even while the actual definition of TJ has remained amorphous.² Whatever else it meant, or came to mean, the one ascertainable effect of South Africa's TJ discourse was to oust the ANC's historical agendas of anti-colonialism and self-determination as the TRC's governing epistemes. Within such global chronologies, South Africa's TRC served as a global catalyst for a 'bubble' of TJ 'expertise' that, along with other such bubbles worldwide (from Alan Greenspan's monetarism in economics to the scandal-hit Nobel Prize Foundation in literature), have burst since 2008, and especially since 2016.

Rather than the bubble commodity of TJ, the very title of the South African parliament's 'Promotion of National Unity and Reconciliation Act' 34 of 1995 ('TRC Act'), which established the TRC, foregrounded the political concept of reconciliation in setting the terms of order for anti-apartheid national unity through socio-political reconstruction.³ Nowhere does the legislation reference 'transitional justice'. This amorphous concept was interpellated by globalist interpretation and translation introduced into the TRC operations by Boraine and others, as described in this article.

Indeed, the TRC Act emphatically looked beyond the 'transitional' 1993 Constitution (Constitution of South Africa Act 200 of 1993) under which the 1994 election and a newly

¹ Eusebius McKaiser, today a Research Fellow at the Helen Suzman Foundation, opined long ago that South African politics had yet to attain the 'political maturation' of Tony Blair's New Labour (McKaiser qtd. in Roberts, *Fit to Govern* 28) and posited in 2019 that local South African leaders should emulate 'a democracy such as the United Kingdom' where mature leaders exist (contra Boris Johnson) who resign 'immediately' (contra Theresa May) following electoral setbacks (McKaiser, "DA in want of Leadership and an Identity").

² 'Interestingly, none of the existing accounts of the emergence of transitional justice explore the appearance of the term. Thus, for Ruti Teitel, the Nuremberg Tribunal is an important moment in the first "phase" of transitional justice, even though none of the actors involved would have described it as such.' (Arthur) Lost, moreover, in the liberal and neoliberal conception of "transition" that dominated TRC discourse was the far longer Marxist genealogy of the same term (Guillhot).

³ 'The Truth and Reconciliation Commission should be a final cathartic dam-burst, unleashing tides of reconstruction' (Asmal et al. 208). 'Reconstruction' referred to the Reconstruction and Development Programme, which informed the ANC's 1994 election manifesto.

elected government led by Nelson Mandela replaced the 'transitional executive council' that had been established by Act 151 of 1993. Under these 1993 transitional measures, the first democratic elections were then held in 1994. A 'final' constitution was then drafted by both houses of parliament sitting as a constituent assembly and this final constitution was adopted in 1996, early in the work-cycle of the TRC, which sat for the first time in December 1995. As this important chronology reveals, the TRC was intended to convene a new common sense, to propel a finalized anti-apartheid constitutional order that was to emerge during, but not be contained by, the 1993–96 transitional moment in which the TRC was born.

Within this important and often overlooked 1993 to 1996 constitutional and historical sequence, the opening trope of the 1995 TRC Act, passed by the democratic parliament during the interregnum between the 1993 transitional and the 1996 final constitutions, pointed entirely beyond transition. The very first paragraph of the preamble to the TRC Act explicitly positioned the TRC as 'a historic bridge' for this *post-transitional* future. But instead, through the paternalism, 'expertise' and mistranslation of Boraine and his cohort, the TRC and its associated discourses remained within an endless loop inscribed by the very 'transitional' expert mode of justice it was to have gestured beyond.

This endless loop of TJ was nothing less than the uncanny fulfilment of the haunting words of Gavin Relly (Harry Oppenheimer's successor as Chairperson of Anglo American), after he had been asked in the mid-1980s whether he did not feel there needed to be a final democratic outcome, beyond the various neo-apartheid stalemates of those days, which seemed only to provoke further anti-apartheid resistance and repressive states of emergency. Relly replied:

I used to think, rather simplistically, when I was much younger that, really, why do we go on with this bloody thing? Why don't we have one man one vote and be done with it? I now no longer think like that at all. I don't believe in final solutions. *One can go on in a state of permanent transition.* (Qtd. in Lelyveld 324; italics added)

Corporate apartheid voices such as Relly's at Anglo American, and the Urban Foundation think tank funded by that company, explicitly gamed out a scenario of 'Protracted Transition', celebrated in 2016 under the headline 'the Chart that Says it all 30 Years Later' (Sunter). In common with experiences elsewhere, although it was designed as a radical founding monument of South Africa's new anti-apartheid common sense of democracy and self-determination, the TRC was de-radicalized in the cradle.

The ANC's anti-colonialism, and its pursuit of anti-apartheid reconstruction, date back to its very founding as a protest against the expropriatory Land Acts of the early twentieth century, which sought to confine black land ownership to 13 per cent of the country. The ANC adopted its first Bill of Rights in May 1923 and premised its subsequent decades of activism upon these, which were expanded in 1943, anticipating by five years the 1948 Universal Declaration of Human Rights (Asmal et al. 111–12). By contrast, the much shorter genealogy of 'transitional justice' as a form of instant-wisdom has been linked to a post-Cold War triumphalism, specifically the 1992 Charter 77 Foundation Conference that took place in Salzburg under the banner 'Justice in Times of Transition'. This then became the name of a global philanthropic nongovernmental organization in 1993, and promptly inspired Boraine's South African offshoot, established in 1994 (Arthur 329).

It is critical, therefore, to recall that Boraine was himself a long-time operator within apartheid business's twinned caucuses of business-linked party politics inside the whites-only parliament, and depoliticized corporate social responsibility outside of it: prior to his roles as TRC deputy chair and as a global purveyor of TJ, Boraine had been a colleague of Relly and Sunter as an employee of Anglo American, and then afterwards a parliamentary partisan (1974–86)

for South Africa's affluent Progressive Party. This party had itself been founded with funding from Rely's predecessor, the mining house tycoon Harry Oppenheimer, in 1959. Before that, Oppenheimer had himself sat as an elected representative in the whites-only parliament from 1948 to 1957, continuing a corporate abduction of white southern African politics by business that stretched back to Cecil Rhodes, who (as often overlooked) was literally the British Governor of the Cape Colony, and not only a titan of so-called private or corporate wrongdoing in what came to be called Rhodesia, to the north. Rhodes was also the direct corporate predecessor (through De Beers) of the subsequent Oppenheimer and Anglo American dynasties. Today, Nicholas Oppenheimer sits on the board of the Rhodes Trust at Oxford, a collateral target of the recent 'Rhodes Must Fall' movement.

South African liberals were arguably anti-apartheid (or against aspects of it), but could never be equally anti-colonial, not least because they were themselves the historical architects and beneficiaries of the colonialism that preceded and that then incorporated apartheid.

Unlike Alan Paton's Liberal Party, with which it shared a rhetorical 'liberal' position, moreover, the Rhodes-Oppenheimer-Suzman-Boraine tradition of liberal paternalism never ran on a political platform that embraced an ordinary or unqualified form of universal adult franchise.⁴ Consider Frederik van Zyl Slabbert, Boraine's close parliamentary collaborator who succeeded Helen Suzman as leader of the parliamentary liberal party and then was Boraine's co-founder in the Soros-founded Institute for a Democratic Alternative in South Africa (IDASA, founded 1986), which preceded Justice in Transition (founded 1994). Slabbert wrote in his memoir, *The Last White Parliament*: 'I am not a conventional political liberal. I do not believe that majority rule in decision-taking is a precondition for good democratic government [...] Political liberals of the pure variety look down their noses at us for being soft on majority rule' (74–5; underlining added). The language and practice of TJ, within its paternalistic and 'impure' political vision, revealed the liberal idea as merely a set of failed pretensions.

ANC anti-colonialism and illiberal pretensions were organic historical rivals that had always represented starkly different conceptions of what it meant, during apartheid-colonialism, to be authentically or sufficiently 'anti-apartheid'.⁵ The position of Helen Suzman, whose historical reputation is generally mis-filed in globalist archives as 'liberal', was in fact to advance 'normal civil liberties' which did not, as Suzman explicitly insisted, entail support for 'one man one vote' (qtd. in Roberts, *No Cold Kitchen* 163). The 'liberal' anti-apartheid opposition, to which Boraine himself belonged until 1986 when he left parliament, never accepted – in any of the successive political manifestos under which it contested successive whites-only elections – that seemingly self-evident liberal democratic platitude: one person one vote, unqualified by property or education restrictions, within a unitary state. This same platitude was always regarded by the ANC as the indispensable touchstone for any genuine self-determination, as for any conception of anti-apartheid worthy of the name.

Overlooking the foregoing historical and political context, far too many otherwise shrewd commentators casually equate the performance of the Boraine-dominated TRC with the intentions of the ANC, conflating radical reconciliation with TJ.⁶ This paper therefore

⁴ I have previously given close attention to the variegated history of a seemingly unitary South African 'liberalism', for instance in Roberts, *No Cold Kitchen* 155–70 and *passim*: "Mutant Liberalism, Franchise Radicalism, Reluctant Activism."

⁵ See further, Ronald Suresh Roberts, 'Dismembering Reconciliation', Thabo Mbeki Foundation, Johannesburg 9 July 2018: <https://www.mbeki.org/2018/07/09/the-new-sociology-of-public-discourse-iv-dismembering-reconciliation/>.

⁶ Having embarked upon a discussion of Asmal et al., Mahmood Mamdani, for example, segued, via mention of two Soros-funded IDASA conferences, to assert a 'consensus upon the dirty war model of Latin American human rights abuses on both sides' (Mamdani, "The Truth According to the TRC" 179), as though this consensus included Asmal et al. But in fact Asmal et al. explicitly *rejected* this 'dirty war' model! See also, Asmal's Chorley Lecture,

re-emphasizes the intense contestation that in fact occurred between the ANC and the TRC as a chapter of the longstanding contest between South African 'liberalism' on the one hand and the liberation movement on the other. The rest of the article proceeds as follows:

1. First, it outlines the ANC's conception of radical 'reconciliation', which it intended the TRC to advance.
2. Next, the paper critically reconsiders Professor Adam Sitze's powerful account of the colonial genealogy of the truth commission as a commission of inquiry, his suggestion of how the TRC might have decolonized that institutional form itself, as advocated by Asmal et al., and improves his account of why that decolonization effort failed.
3. In closing, it reflects upon the contemporary consequences of the TRC's multiple failures under paternalistic abduction and erasure, specifically the resurgence of and proliferation of colonial-style commissions of inquiry, such as the 'State Capture Commission'.

The meaning of radical reconciliation

That the TRC became, as Claire Moon notes in *Narrating Political Reconciliation*, 'the *locus classicus* of reconciliation politics to which innumerable subsequent instances of reconciliation politics have referred' makes sense, given the ANC's political and legislative intentions. That the TRC also somehow 'marked the beginning of an international transitional justice industry' (as Moon further notes) is far more surprising, involving a fundamental displacement and mistranslation of the central concept of 'reconciliation', under corporate-liberal abduction as 'transitional justice' expertise.

A distinctively anti-apartheid concept of reconciliation was clearly legible during the 1980s within the liberation movement. The landmark 1985 Kairos Document of liberation theologians distinguished 'true reconciliation', premised upon justice, from what it called 'counterfeit reconciliation', which allowed injustice and oppression to continue (Moon 32–3). In 'Reconciliation and Remembrance', Benita Parry, in a secular materialist rather than any theological mode, likewise envisaged reconciliation as 'the battle to disclose the dead victim's moral claims' (Parry). So too did Asmal et al. in the most prominent ANC-aligned political articulation of the intended operation of the TRC in elaborating reconciliation, a book consecrated in every Bordieusian sense: it contains the only foreword Nelson Mandela ever published under his official letterhead as president; Mandela's deputy as president of South Africa, Thabo Mbeki, spoke at the launch; the book's paratext includes blurbs from the mandarins of the world and local republics of letters (Seamus Heaney, Nadine Gordimer, Njabulo Ndebele), from the major global human rights jurisconsults (John Dugard and Richard Falk), and from a former assistant secretary-general of the United Nations. Constructed as a conscious project for international agenda-setting by a newly enfranchised polity, the book legitimately anticipated that it would set salient terms for political reconciliation debates, as explicated in its chapter headlined 'Achieving Genuine Reconciliation':

Reconciliation requires an acknowledgement of wrongs committed and a re-evaluation by their perpetrators of the morality which lay behind them. Only then can reconciliation trigger real catharsis, a word which, in its original Greek meaning, contains the ideas of purification and spiritual renewal. Reconciliation, accurately conceived, must bring about a rupture with the skewed ethics (*sic*) of apartheid, and so upset

with its objection to TJ's 'tendency [...] to extrapolate from conflicts elsewhere – notably the "dirty wars" of Latin America – and to assume that, since there were abuses on all sides in those conflicts, there must be a similar equivalence also in South Africa' (Asmal, "Truth, Reconciliation and Justice" 23).

any possibility of smooth sailing on a previously immoral course. (Asmal et al. 47–8) (the interpellation ['sic'] is in our original text, signalling the pseudo-ethicality of any implied apartheid 'ethics')

Asmal et al. explicitly reject the idea that 'reconciliation means a painless forgetting' or 'the manufacture of a cheap and easy *bonhomie* [...] escapist flight from facts, or an arrival at a jerry-built consensus through the avoidance of debate and accountability' (46–53). Instead, Asmal et al. position reconciliation as an argumentative form of anti-apartheid political vindication, historical rectification and political reconstruction. No mere ungrounded rhetorical project, this work is fundamentally premised upon Asmal's decades-long placement of the anti-apartheid agenda within international law alongside anti-colonial struggles for self-determination under international law, including the right to rebellion, which was excluded from the 1948 Universal Declaration of Human Rights but which the ANC exercised in its own turn to armed struggle in 1961 (See Asmal et al., 120–5; 168–206; and *passim*), and for which it gained acceptance over the decades. And yet this entire agenda of political reconciliation as social transformation was evacuated from the interceding TJ paradigm that came to dominate the TRC.

How did this come about?

The overtaking of anti-colonialism by transitional justice

A legendary moment in the corporate-liberal anecdotage of TJ is the lunch in New York that George Soros shared with Boraine and Slabbert in 1986, the year after Slabbert resigned from parliament. This lunch led to the funding and founding of IDASA, which promptly delivered a most notable initiative: the organization of a 1987 conference between a white mainstream corporate business delegation and the ANC in Dakar, Senegal. There the anti-colonial politics of radical reconciliation met the strategists of permanent transition.

In his memoir, Boraine (14) helpfully details the story of the path from Soros's New York lunch table, via the 1992 TJ Foundation on the global stage (mentioned above), towards Boraine's local echo of that TJ Foundation, which he established in 1994. Boraine writes: 'it was also in 1992 that others, *quite independently of the decision taken by the ANC and the strong lead given by Asmal*, began to think for the first time how to deal with South Africa's past.' (Emphasis added). Hence, an unmistakably rival conception and its liberal-to-globalist constituency were explicitly – and 'quite independently' – announced. The 'independence' so casually mentioned here was an independence from the sovereign democratic accountability of the newly enfranchised advocates of radical reconciliation.

Boraine then tells of travelling, under Soros money, to Eastern Europe (Germany, the former Czechoslovakia and Hungary) where 'for the first time we began to be aware that there was a new problem in the field of human rights, which had emerged as a consequence of the transition to democracy' (14). Later in 1992, Boraine revisited the same countries as well as Poland and Ukraine, under the auspices of the Soros-funded Open Society Institute in New York and became immersed in debates over 'what course of action, if any, should be followed in coming to terms with the past in various parts of Eastern and Central Europe'. New York human rights mandarin, Aryeh Neier, now became and remained, Boraine confessed, 'my mentor in transitional justice' (15–16).

This concordance between Soros–Neier and Boraine–Slabbert came three years after a little-known, and symptomatically ill-fated, encounter between Soros himself and an ANC-aligned anti-colonial grouping convened by the writer Nadine Gordimer in early 1983, eight years before she won the Nobel Prize for Literature and thirteen years before her own blurb supplied Bordieusian consecration for the Asmal et al. text. At Gordimer's house in

Johannesburg, Soros met with a group that included the black South African writers Es'kia Mphahlele, Mthobi Mutloatse and others. They were, however, promptly marginalized with Soros's feedback to Gordimer. Anticipating the paternalism expressed by Boraine against Mbeki in the 2009 interview that supplies my epigraph, Soros pronounced himself

[in] philosophical disagreement with the sentiments expressed by most, but not all, of the people at the meeting. There was a tendency to see everything in terms of black and white. I am opposed to this attitude both among blacks and whites. I can understand why blacks should feel that way, and I can sympathise, but I cannot support what I consider to be wrong. There are many other things in the world than colour; if the oppressors succeed in convincing the oppressed that colour is the only thing that matters then they have succeeded in imposing their view of the world. (George Soros to Nadine Gordimer, qtd. in Roberts, *No Cold Kitchen* 493)

To this already invidious summary of the politico-cultural positioning of the black writers, Soros added, with more self-assurance than competence, that he 'did not find any signs of outstanding artistic achievement [...] the thinking I encountered is reactive to apartheid rather than creative.' Then, three years later, came the lunch in New York, the consummated white male bromance with Boraine and Slabbert.

'Stop Thief!' was duly cried, during the abduction of radical reconciliation

Clearly, then, the relationship between the ANC's anti-colonial politics of 'truth and reconciliation' and the TRC's expertise of 'transitional justice' was born contentious. As the TRC hesitated to convene a hearing into the complicity of business with apartheid, the present author wrote an article (Roberts, "Call Big Business to Account") that was symptomatic of the pressures that drove Boraine, rather half-heartedly, to convene relevant hearings, where he (the former Anglo American public affairs employee!) led the questioning, while Tutu simply absented himself. This would, of course, not pass muster within the conflict of interest norms of a village tribunal.

The direct result was the evasion of any proper reckoning for the corporate corruption and structural dimensions of apartheid. As Boraine's memoir appeared in 2000, my review essay explicitly named this abduction (Roberts, *Review of A. Boraine*). Meanwhile, in his Chorley Lecture that same year at the London School of Economics, Kader Asmal critiqued the displacement of anti-colonial truth and reconciliation by what he disparaged as a 'conceptually simplistic' global discourse of TJ. Asmal explicitly contextualized this displacement as one aspect of a many-sided contest over the developing meanings of globalization and of human rights, 'from which we dare not shrink' (Asmal, "Truth, Reconciliation and Justice" 23).

Asmal, moreover, explicitly linked the broad-daylight abduction of the TRC to the impending and similar abduction of the International Criminal Court, the establishment and parameters of which were at the time vigorously under discussion in the self-same globalist circles. Asmal emphasized the need for open debate over 'competing visions of an international criminal court, and of the work that such a court might do', questions that should not become a realm of 'arbitrary fiat':

If we lose sight of such issues – of the way in which global institutions impact on the way the world decides which injustices shall be censored or punished, and which not – then we will find our national processes of transition held hostage to global norms not of our own making. This point can be illustrated even with reference to our own, ostensibly domestic, truth commission process. (Asmal, "Truth, Reconciliation and Justice" 23)

By terming the TRC '*ostensibly* domestic',⁷ Asmal was already and deliberately marking the TRC's abduction by liberal-globalist influences that had already disintermediated the very government of which he was himself a part and the very TRC of which he was the acknowledged local organic intellectual visionary, and which that government had set up.

Meanwhile, Boraine's memoir contains a remarkable series of *ad hominem* assessments of his fellow commissioners, as he deployed bureaucratic 'sharp elbows' in executing the abduction: Commissioner Fazel Randerá 'was a very committed member of the ANC and sometimes battled to put party loyalty to one side', while Mapule Ramashala 'had spent more than twenty-five years in the United States and dressed like an American and spoke with a pronounced American accent. I found it difficult to accept her as a South African [...] she perhaps resented having no executive position.' Hlengiwe Mkhize was 'overly sensitive' and was 'often confused and insecure in her reports to the Commission'; she also, Boraine assures us, 'took refuge in playing the race card' (80–1). Boraine's own comments suffice to indicate the all-out cultural, political and ideological warfare that was clearly underway inside the TRC.

Archbishop Desmond Tutu, as Boraine's titular head, could have decisively intervened in this multifaceted internal ideological and bureaucratic affray, to secure the anti-colonial and self-determination agendas, but the archbishop did not. Instead, he validated Boraine, a point that he reconfirmed during the tribute he gave at Boraine's recent funeral: Boraine 'was more than a right-hand man; I could not have managed the commission without him' (Tutu, qtd. by *Cape Times*). The easily forgotten ambiguity of Tutu's own epistemic positioning here becomes critical to recall. As in his 1984 Nobel Prize Lecture, Tutu always opposed 'all forms of violence' even while conceding that the 'primary violence' of apartheid was that of the regime. This led critics such as Régis Debray to critique the 'mediatic morality' that 'looks approvingly upon Archbishop Desmond Tutu whilst shunning, in the name of human rights, Oliver Tambo and the armed struggle of the African National Congress' (Debray, qtd. in Bongie 41).

Tutu's positioning was in turn undoubtedly of strategic value to the ANC itself during the apartheid years, as is evident in the rhetoric of frustrated right-wingers such as R. W. Johnson who lamented that Tutu was 'buttressed by the support of [...] powerful and respectable overseas patrons' and thus able to deploy 'externally guaranteed immunity' from strong action by the regime (Johnson, *LRB* 3 July 1986, qtd. by Roberts, "A Sacred Cow"). But in the transitional moment, and within these internal politics of the TRC, it is easy to see how Tutu's old untouchable status, organic not to South African democracy but to global liberal cosmopolitan circuits of cultural prestige, might have been turned into a liability. This was starkly evident, for instance in the clash between the archbishop (*vox dei*) and the elected president (*vox populi*) during 2004, when Tutu faulted the ANC party membership and electorate as 'voting cattle', prompting the present author to raise the Foucauldian question: 'If Tutu cannot seriously be seen as a walk-on-water mascot of a politically neutral public virtue, what are the constraints that produce Tutu's place in South African discourse?' I granted that 'the very question seems impertinent, like letting sunshine in on magic' (Roberts, "A Sacred Cow").

Radicalizing the Colonial Commission of Inquiry

Apart from displacing radical reconciliation with permanent transition, the TRC under paternalist abduction also failed to radicalize the inherited bureaucratic form of the colonial commission of inquiry itself. The TRC's substantive erasure of the anti-colonial archive was enabled by a machinery that itself erased its own colonial origins. This is Adam Sitze's

⁷ I drafted that lecture and crafted that phrase, and so testify from direct knowledge as to its intention.

important argument in *The Impossible Machine: A Genealogy of South Africa's TRC*, a text that in 2013 executed an epistemic jail-break, out of the benumbing TJ discourse around which entire learned journals, knowledge industries and empires of consultancy had been constructed. After the TRC, it remains the case, as before, that '[t]here has been no Commission of Inquiry into the use and abuse of Commissions of Inquiry in colonial and apartheid South Africa' (Sitze ch. 5).

As Sitze demonstrates, commissions such as the TRC have historically been designed always 'expertly' to quell, rather than morally or politically to redress, let alone to vindicate, what tended to be framed as native 'unrest' rather than colonial injustice.⁸ Sitze highlights, for instance, previously invisible parallels between the late twentieth-century South African TRC and the late nineteenth-century Jamaican Royal Commission (JRC), which in 1865 investigated Governor Edward John Eyre's brutal suppression of the Morant Bay Rebellion, holding sixty public hearings and interviewing 700 witnesses, whose testimony was extensive, even while treated as non-binding on matters of fact and values alike. After the twentieth-century TRC, as after the nineteenth-century JRC, the technology of the commission of enquiry remained, as it was before, *a way of managing natives, not of organizing or enabling native agency*.

In both the nineteenth-century JRC and the twentieth-century TRC, Sitze finds constrained practices of *accusation* remaining safely within establishment bounds (for example, forbidding suggestions of racial discrimination); or of *exoneration*, where exotic difficulties out in the colonies, it was said, could not be met with metropolitan standards of conduct; or, finally, mere *mourning*: toothless regret, with no one to blame. Sitze complains that, despite superficial variations, the twentieth-century TRC fundamentally replicated these nineteenth-century modes.

But, Sitze claims, it could have been otherwise. And it is here that Sitze offers a detailed chapter-long re-reading of the epistemic intervention staged by the ANC in the text of Asmal et al. Sitze locates Asmal et al. as the site of the strongest argument that the TRC 'did in fact break with the epistemic field it inherited from the [colonial commissions]'. Where prior commissions operated through the aforementioned strategies of accusation, exculpation or impotent mourning, Sitze reads Asmal et al. as an attempt to bring into play a *fourth* epistemic mode: *catharsis*, inaugurating a new common sense that validated a subaltern normative baseline, rejected apartheid claims of legal and administrative 'necessity' and legality, and deployed a commission, for the first time, not to restore a former order, but to revolutionize epistemes in favour of a new one.

What Sitze goes so far as to term the 'genius' of Asmal et al.'s approach is not only the innovation of the fourth mode of catharsis as a performance for a commission of inquiry, but the manner in which this new mode 'reiterated the innermost poetics' (199) of its colonial predecessor under new conditions, in order to make the tragic signify the reverse of what it signified for the colonial commission: *emancipation rather than lamentable necessity*. In other words, Asmal et al. sought to abduct the form of the colonial commission through a new inward episteme of radical reconciliation.

⁸ Sitze references the following non-exhaustive list of pre-1900 Royal Commissions of Inquiry, whose mandate was to investigate the causes of anticolonial riots and rebellions and the justification of their violent suppression: British Imperial: Commission of Inquiry on tumults in Ireland (secret, 1798); Australia (1834); Ceylon (1848); Mauritius (1848); Jamaica (1866). Pre-1900 RCLs in South Africa: 1823–35 Commission of Inquiry into the Condition and Treatment of Natives in southern Africa; 1852 lieutenant Governor of Natal commission appointed for 'future government of the native tribes'; 1878 following British Annexation of Transvaal to answer the great question of 'what sort of government should be established in south Africa'; 1883 Cape Colonial commission upon Native Laws and Customs (leading to the Transkeian Territories Penal Code); 20th Century Commissions of Inquiry Reports: British Imperial: Trinidad (1903, 1937); Ireland (1914); Palestine (1921); Zanzibar (1936); Barbados (1937); Rhodesia (1940); Mauritius (1943); Uganda (1945, 1960); Gold Coast (1948); Eastern Nigeria (1949); South Sudan (1955); Sierra Leone (1956); Kanpur (1961); India (1967).

In order to achieve this, the Asmal et al. TRC model placed a set of subaltern-led epistemes at the very heart of the concept of radical reconciliation. Asmal et al. wrote:

Many privileged South Africans, reconciling themselves to these long lost realities, are now entering a whole new ethical universe, discarding a previous moral illiteracy, and learning a new vocabulary of right and wrong. For them, as for Colonel Aureliano Buendia in Gabriel Garcia Marquez's *One Hundred Years of Solitude*, the world is so recent that many things lack names, and in order to indicate them it is necessary to point. (50)

Asmal et al. invoked as epigraph the revered figure of Afrikaner nationalism, General J. B. M. Hertzog, where he conceded 'I have always said I don't know what this conciliation means' – a concession that was all the more telling for its context in Anglo-Afrikaner intra-white internecine strife. Given the multilayered complexity of the South African past, only the racial subaltern, Asmal et al. came to say, could teach genuine or radical reconciliation. Radical reconciliation was positioned here as a form of precisely that 'existential rebalancing' where Asmal et al. quoted the epigraph from Yeats, with which Nadine Gordimer inaugurated her very first novel, *The Lying Days* (1953), with the wisdom that Boraine overlooked: 'Through all the lying days of my youth/I swayed my leaves and flowers in the sun/Now may I wither into the truth.' The idea was a TRC that would coax whites from denial of historical atrocities and ongoing legacies: 'This coaxing cannot be an act of vengeance, but must rather be one of sympathy; perhaps it cannot avoid, though, being patronising. But we must try to avoid this last vice too' (Asmal et al. 211). The TRC was in this sense an infrastructure for cognitive justice, built out of wisdom, familiar from Steve Biko, in which blacks need occasion to speak up and whites need to learn to listen. Boraine flunked from the outset and, enabled by Tutu, took the TRC along with him. And where Asmal et al. sought to avoid patronising whites even as subaltern voice began to have its day, Boraine – in a signal irony – foreclosed that subaltern voice itself, through his preemptive condescension and the prevalence, in his own mind, of his own expertise.

Where Sitze slips

Whereas anti-colonial critics have too often conflated the TRC's ultimate performance with the ANC's very different sovereign intentions for it,⁹ Sitze helpfully registers and directly confronts the starkly different conceptions propounded by the ANC and Asmal et al., on

⁹ An especially determined recent effort of this conflation is (Mamdani, "Beyond Nuremberg") where Boraine and Asmal et al. are invidiously run together as part of a single tendency in footnote 22, then Sitze is praised for a brilliant critique of that tendency in footnote 23 before, finally, Sitze's accurate and clearly labelled direct quotation from Asmal et al. is misattributed by Mamdani to Sitze himself(!), rather than to Asmal et al., whose critique Sitze is accurately quoting. The language at issue is Asmal et al.'s 1997 Afterword (itself taking issue with other of Mamdani's mischaracterizations), where we complained: 'the South African Defence Force chose to coordinate its contributions to the Truth and Reconciliation Commission by way of a centralized "Nodal Point", a single point, suggesting a clenched sphincter, through which all information is meant to pass.' Sitze approvingly quotes and explicates this language (including its deliberate Freudian subtext) from Asmal et al., but when Mamdani quotes the same language, equally approvingly, he misattributes it directly to Sitze (see Mamdani's footnote 25), because since 1996 he has been unable to credit the radical reconciliation that stood at the heart of the pre-Polokwane ANC's TRC conception. With this misattribution, however, Mamdani's reluctance steps from poor interpretation to straightforwardly weak scholarship. This weakness in turn authorises Mamdani's false dichotomy ("Beyond Nuremberg") between "Codesa" and "TRC" models of the transition, whereas in fact the Asmal-ANC model is precisely the CODESA model, CODESA being the multi-party pre-democracy negotiations that the ANC hegemonised. Mamdani crowns this erasure of Asmal et al. with his claim (63 and footnote 4) to introduce a novel concept of "survivor's justice" for TRC discourse when in fact both the concept and specifically the word were entrenched even in the very title of Asmal's 1992 Inaugural Lecture, "Victims, Survivors and Citizens – Human Rights, Reparations and Reconciliation."

the one hand, and by the TRC and the colonial commissions on the other. What Sitze in turn fails to register, though, is the historical adventure that involved a real-time contest between these rival conceptions, during the unfolding work of the TRC itself: which conception would win out? Because he does not historicize the performance of the TRC as internally contested between these conceptions, Sitze cannot then cry 'thief' during the abduction, nor see how Asmal et al. and the ANC consistently did so. This limits his analysis as the TRC takes its historical place in the future archive of past experiments in black sovereignty – an archive that stretches back to the fraught and partial sovereign practices of revolutionary Haiti (Salt).

Thus, in explaining how the Gramscian 'genius' of the Asmal et al. conception descended into the colonial and TJ modes of the TRC performance under abduction, Sitze simply blames what he terms 'the limited mandate' (200) of the TRC, as though the problem was the simple fact of the statute as drafted by the sovereign ANC, rather than the hostile interpretation superimposed by Boraine's TJ template, as the TRC legislation underwent Boraine's abduction, translation, misinterpretation. Sitze overlooks the conspicuous engagement Asmal et al. staged, in real time, over these very questions of the interpretation of the statutory mandate that had in fact been conferred upon the TRC by the ANC-led parliament. In our argument, published while the TRC was already ten months into its work, Asmal et al. insisted that the TRC could not 'avoid historical evaluation and historical judgment' because to do so would be 'to abandon whole swathes of its explicit statutory mandate' which 'would amount to dereliction of duties; not only legal duties, but moral and political ones, too' (Asmal et al. 14–16, 25–6).

At odds with his otherwise strong attentiveness to the materiality and the contested genealogy of the commission as juridical instrument, Sitze ends up ironically inattentive to the materiality and micro-historicity of our own text and also of the TRC itself as an unfolding process – one that was internally and externally contested in its very unfolding: Sitze reads the final artefact of the TRC report as a unitary and unproblematic product of an undivided TRC authorship, rather than for its internally fraught and contested reality.

Instead of seeing that real political and interpretative battles were joined and lost *during the performance* of the TRC, Sitze constructed a simplified *bildungsroman*, itself based upon a chronological error, in which Asmal et al. are said to grow from 'utopian desire' for 'historical catharsis' as expressed in the first edition of the book, through to dystopian disillusionment, which, Sitze supposes, is our hard-won wisdom expressed in an afterword to the second edition of the same book. Through a small but consequential chronological error in this fancy and fancied narrative, Sitze mis-dates the original publication of our text as 1995 (See Sitze's pages 197 and 207), which furnishes him with the imagined two-year learning period during which we as authors could arrive punctually at the moment of disillusionment that he wants to read into our 1997 Afterword. But as the book was in fact first published in October 1996, its original text already critiqued the ongoing ten months of the performance of the Boraine-led TRC, during which the major interpretative abductions were already entirely clear.

Contrary, moreover, to Sitze's suggestion of any singular utopian narrative that might, in principle if not in fact, have run its course towards disillusionment between first and second editions, our original text in its first edition already favoured what we explicitly named as a plural narrative 'currency of *heterotopias*', alluding to Foucault and explicitly invoking Edward Said's 'unstoppable predilection for alternatives'. We emphasized that 'our state-sponsored Commission has no monopoly on processes of historical rectification [...] It must judge. But also it will be judged' (214). And in our own text we were, indeed, among the first to judge it, in hoping to correct its abduction, before it completed its path.

Conclusion: contemporary revival of colonial commissions

What Sitze could not possibly see yet, writing in 2013, was how frantically the model of the colonial commission, having evaded the radicalization that Asmal et al. had in mind for it, would afterwards go viral to consume all aspects of democratic anti-apartheid governance, in the aftermath of a corrupt era (2008–ongoing). Since Sitze published, there has been a positively viral outbreak of colonial-style commissions, alongside a crisis of corruption that has overtaken South African governance, breeding the need for further commissions.

The first of these was the Marikana Commission set up to investigate the single largest loss of life at the hands of police since the apartheid era. At Marikana in 2012, thirty-four mineworkers were gunned down during a labour dispute; the commission reported in 2015. Attended by all the familiar language of every colonial commission, predictably spelling out the 'tragedy' and the lamentable coping-decisions supposedly forced upon – and mishandled by – various authorities, the Marikana case attracted particular attention because of the explicit involvement of ANC leader (and now South Africa's President) Cyril Ramaphosa, who was a board member of the Lonmin mining company that was the employer and beneficiary of police power in the fatal dispute. Ramaphosa personally communicated with the ministers of Police and of Minerals and Energy Resources to escalate the management of the dispute as criminality, including a call for 'concomitant action' (423) to be taken against the criminally characterized activities of the strikers.

At the commission, Ramaphosa then faced the classic accusation of causal responsibility from the 'counsel for the injured and arrested persons', Advocate Dali Mpofu, who asserted that Ramaphosa's intervention 'triggered a series of events which determined the timing of the massacre'. When the commission reported, in 2015, it reached the finding, depressingly familiar to any student of the rhetoric of the old colonial commissions of inquiry, that these were alas very difficult circumstances and that 'it cannot be said that Mr. Ramaphosa was the "cause of the massacre"' (437). In particular, he 'had no reason to believe that the SAPS would launch the precipitate, ill planned and poorly commanded operations, which caused the deaths of 34 strikers' (437).

The resurgence of the colonial commission is a morbid symptom of permanent transition in an endless loop of irresponsibility, which the TRC as a commission of a special kind was designed to break, but did not, because it was itself colonized by TJ, which continues to operate through colonial-style commissions. In an important footnote (n. 72) to his 1999 Chorley Lecture, Asmal had explicitly doubted the supposed 'transcendent' function of TJ as advertised by Ruti Teitel. He had specifically queried the viability of TJ's distinction between supposedly de-politicized justice in 'normal' times and places, compared to more political justice in 'transitional' ones, where (as Teitel phrased it) 'the transitional rule of law comprises distinctive values particular to [transitional] periods'. Asmal's worry over the inherent slippage between transitional and normal justice as politics is now borne out by the conflation of transitional and everyday justice in 2020 South Africa, complete with the re-importation of the South African-trained prosecutor, Shamila Batohi, from the International Criminal Court at the Hague, to try to restore 'normal' functionality to the country's politically plagued National Prosecuting Authority. Teitel has since indeed conceded that 'resisting the normalisation of transitional justice is difficult' (92).

Nobody has as yet linked the phrase at the heart of the Marikana inquiry ('concomitant action') back to the language of 'concomitant causes' contained in the 1949 report of the commission of inquiry into the Durban riots, but someone should. It is stark evidence of the new normalization not only of TJ but more so of the colonial justice that was thought to have preceded it, but which has now returned. Coming one year after the 1948 election that brought the National Party to power, the 1949 report exculpated the transitional liberal-apartheid governors of the day in the following language:

Public disorders break out, run their courses like fevers and come to an end either by being overcome or by destroying their host, the State. Owing to negligence on the part of the authorities, a foreseeable and preventable disturbance may occur; because of further neglect an outbreak of insignificant proportions may degenerate into riots with consequences of national importance. Again, partisans in the disturbances may be aided and abetted by the authorities or by other instigators and a small flame may thus be fanned into a serious conflagration. For lack of a better word we call such causative factors 'concomitant causes'. (6)

Here was the prominent rebirth in the Marikana Commission, and from the mouth of the current ANC president, of the apartheid-era technique and doctrine of 'concomitant causes', which is the bureaucratic abandonment of every ethic or pretence of sovereign democratic moral and political responsibility. That the Durban riots constituted an anti-Indian pogrom by Zulu communities only underlines its timeliness, given recent attacks by South African blacks upon foreign shopkeepers. Moreover, the Marikana Commission presaged a similar abandonment of democratic anti-apartheid governmentality in every significant sphere of what was once called democratic governance. Judicial and expert commissions now afflict the self-knowledge of the entire state as a whole (the so-called State Capture Commission), as well as the following non-exhaustive list of sectors:

- South African Revenue Service
- National Prosecution Authority
- Public Investment Corporation
- Department of Home Affairs naturalization processes
- collapse of a bank called VBS
- South African Broadcasting Corporation
- Eskom, the electricity provider.

Why is this commission-ridden state of things a problem? Because commissions, with their colonial genealogy, are supposed to signal the anomaly rather than the normal science of governance. The commission is the technology through which colonialism and imperialism gain and impose the ways and means of knowledge for a government of instrumental reason. Hence, new infestations of commissions are 'morbid symptoms' of the *regress of democratic governance* back to its colonial predecessor, *the expert commission of inquiry*. And the inaugural loss, we can now see, was prefigured in the abduction of the TRC, intended to rupture the colonial genealogy of the commission itself and set loose a new political common sense that would render future commissions unnecessary. This happy outcome was subverted by the by the colonial mother of New York philanthropy which abducted the TRC in the name of counter-democratic expertise.

Dedication: For Professor Kader Asmal (1934–2011), in whose wake this works.

References

- Arthur, Paige, "How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice." *Human Rights Quarterly*, vol. 31, 2009, pp. 321–67. DOI: <https://doi.org/10.1353/hrq.0.0069>
- Asmal, Kader. "Truth, Reconciliation and Justice: The South African Experience in Perspective (1999 Chorley Lecture)." *The Modern Law Review*, vol. 63, no. 1, 2000, pp. 1–24. DOI: <https://doi.org/10.1111/1468-2230.00248>
- Asmal, Kader. "Victims, Survivors and Citizens – Human Rights, Reparations and Reconciliation (1992 Inaugural Lecture)." *South African Journal of Human Rights*, vol. 8 no. 4, 1992, pp. 491–511. DOI: <https://doi.org/10.1080/02587203.1992.11827877>

- Asmal, Kader, et al. *Reconciliation Through Truth: A Reckoning of Apartheid's Criminal Governance*. Philip, 1997.
- Bongie, Chris. *Friends and Enemies: The Scribal Politics of Post/Colonial Literature*. Liverpool University Press, 2008. DOI: <https://doi.org/10.5949/UPO9781846315299>
- Boraine, Alex. *A Country Unmasked*. Oxford University Press, 2000.
- Cape Times*. "Tutu Pays Tribute to Alex Boraine." 6 December 2018.
- Guilhot, Nicolas. "The Transition to the Human World of Democracy' Notes for a History of the Concept of Transition, from Early Marxism to 1989." *European Journal of Social Theory*, vol 5, no. 2, 2002, pp. 219–243. DOI: <https://doi.org/10.1177/13684310222225423>
- Lelyveld, Joseph. *Move Your Shadow: South Africa, Black and White*. Penguin, 1986.
- Mamdani, Mahmood. "Beyond Nuremberg: The Historical Significance of the Post-apartheid Transition in South Africa." *Politics and Society*, vol. 43, no. 1, 2015, pp. 61–88. DOI: <https://doi.org/10.1177/0032329214554387>
- Mamdani, Mahmood. "Reconciliation Without Justice." *Southern African Review of Books*, vol. 46, November/December 1996.
- Mamdani, Mahmood. "The Truth According to the TRC." *The Politics of Memory: Truth, Healing and Social Justice*, edited by Ifi Amadiume and Abdullahi An-Na'im. Zed Books, 2000, pp. 176–183.
- McKaiser, Eusebius. "DA in want of leadership and an identity." *Mail & Guardian*, 21 June 2019.
- McKaiser, Eusebius. "Opinion." *Business Day*, 10 March 2006.
- Mengel, Ewald. "Trauma Memory and Narrative in South Africa: Interviews." *Matatu: Journal for African Culture & Society*, edited by Ewald Mengel et al. Editions Rodopi, 2010. DOI: <https://doi.org/10.1163/9789042031036>
- Moon, Claire. *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission*. Lexington Books, 2008.
- Parry, Benita. "Reconciliation and Remembrance." *Die Suid Afrikaan*, February 1996, p. 12.
- Roberts, Ronald Suresh. "A Sacred Cow Astray from the Grimy Herd of Voting Cattle." *Business Day (Johannesburg)* 20 January 2005.
- Roberts, Ronald Suresh. "Call Big Business to Account". *Mail & Guardian (Johannesburg)* 4 July 1997.
- Roberts, Ronald Suresh. *Fit to Govern: The Native Intelligence of Thabo Mbeki*. STE, 2007.
- Roberts, Ronald Suresh. *No Cold Kitchen: A Biography of Nadine Gordimer*. STE, 2005.
- Roberts, Ronald Suresh. "Review of A. Boraine, 'A Country Unmasked.'" *Johannesburg Sunday Independent*, 22 October 2000, p. 18.
- Rotberg, Robert. "Truth Commissions and the Provision of Truth, Justice, and Reconciliation." *Truth v Justice*, edited by R. Rotberg and D. Thompson. Princeton University Press, 2000. DOI: <https://doi.org/10.1515/9781400832033-002>
- Salt, Karen. *The Unfinished Revolution: Haiti, Black Sovereignty and Power in the Nineteenth-Century Atlantic World*. Liverpool University Press, 2019. DOI: <https://doi.org/10.2307/j.ctvt6rjmr>
- Sitze, Adam. *The Impossible Machine: A Genealogy of South Africa's Truth and Reconciliation Commission*. University of Michigan Press, 2013. DOI: <https://doi.org/10.3998/mpub.243251>
- Sunter, Clem. "The Chart That Says It All 30 Years Later." *News 24*, 8 August 2016: <https://www.news24.com/Columnists/ClemSunter/the-chart-that-says-it-all-30-years-later-20160808> accessed 29 April 2020.
- Teitel, Ruti G., "Transitional Justice Genealogy" *Harvard Human Rights Journal*, vol. 16, 2003, pp. 69–94.


Tutu, Desmond. *Nobel Lecture*. 11 December 1984: <https://www.nobelprize.org/prizes/peace/1984/tutu/lecture/>.

Van Zyl Slabbert, Frederick. *The Last White Parliament*. Hans Strydom Publishers, 1985.

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