THE POLITICS OF TRUTH
AND RECONCILIATION IN
SOUTH AFRICA

Legitimizing the Post-Apartheid State

The South African Truth and Reconciliation Commission (TRC) was set up to deal with the human rights violations of apartheid during the years 1960–1994. However, as Wilson shows, the TRC’s restorative justice approach to healing the nation did not always serve the needs of communities at a local level. Based on extended anthropological fieldwork, this book illustrates the impact of the TRC in urban African communities in the Johannesburg area. While a religious constituency largely embraced the Commission’s religious-redemptive language of reconciliation, Wilson argues that the TRC had little effect on popular ideas of justice as retribution. This provocative study deepens our understanding of post-apartheid South Africa and the use of human rights discourse. It ends on a call for more cautious and realistic expectations about what human rights institutions can achieve in democratizing countries.

RICHARD A. WILSON is a Senior Lecturer in Social Anthropology at the University of Sussex. He has written numerous articles on political violence and human rights and is editor of the journal Anthropological Theory. He is also the author of Maya Resurgence in Guatemala (1995), and editor of Human Rights, Culture and Context (1997) and Culture and Rights (Cambridge University Press, 2001).
The broad area of law and society has become a remarkably rich and dynamic field of study. At the same time, the social sciences have increasingly engaged with questions of law. In this process, the borders between legal scholarship and the social, political and cultural sciences have been transcended, and the result is a time of fundamental rethinking both within and about law. In this vital period, Cambridge Studies in Law and Society provides a significant new book series with an international focus and a concern with the global transformation of the legal arena. The series aims to publish the best scholarly work on legal discourse and practice in social context, combining theoretical insights and empirical research.

Already published:
Anthony Woodiwiss Globalisation, Human Rights and Labour Law in Pacific Asia 0 521 62144 5 hardback 0 521 62883 0 paperback
Mariana Valverde Diseases of the Will: Alcoholism and the Dilemmas of Freedom 0 521 62300 6 hardback 0 521 64469 0 paperback
Alan Hunt Governing Morals: A Social History of Moral Regulation 0 521 64071 7 hardback 0 521 64689 8 paperback
Ronen Shamir The Colonies of Law: Colonialism, Zionism and Law in Early Mandate Palestine 0 521 63183 1 hardback
John Torpey The Invention of the Passport: Surveillance, Citizenship and the State 0 521 63249 8 hardback 0 521 63493 8 paperback
William Walters Unemployment and Government: Genealogies of the Social 0 521 64333 3 hardback
Christopher Arup The New World Trade Organization Agreements: Globalizing Law Through Services and Intellectual Property 0 521 77355 5 hardback
Heinz Klug Constituting Democracy: Law, Globalism and South Africa’s Political Reconstruction 0 521 78113 2 hardback 0 521 78643 6 paperback
Yash Ghai (ed.) Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States 0 521 78112 4 hardback 0 521 78642 8 paperback
Eric Feldman The Ritual of Rights in Japan: Law, Society, and Health Policy 0 521 77040 8 hardback 0 521 77964 2 paperback
Peter Fitzpatrick Modernism and the Grounds of Law 0 521 80222 9 hardback 0 521 00253 2 paperback
To Thomas, born in the middle of it all.
THE POLITICS OF TRUTH
AND RECONCILIATION IN
SOUTH AFRICA

Legitimizing the Post-Apartheid
State

Richard A. Wilson
University of Sussex
CONTENTS

List of Acronyms and Glossary x

Maps
- Map 1 Pre-1994 South Africa: The homelands xii
- Map 2 Post-1994 South Africa: Provinces of the Republic xiii
- Map 3 Johannesburg and the Vaal Region xiv

Preface and Acknowledgements xv

1 Human Rights and Nation-Building 1
- The Civic State versus Ethno-Nationalism 1
- Legal Ideology and Nation-States 3
- Human Rights in the Negotiations 5
- Human Rights, Ubuntu and the African Community 9
- Truth, Reconciliation and Nation-Building 13
- Manufacturing Legitimacy 17
- Truth Commissions as Liminal Institutions 19
- The Structure of the TRC 21
- Truth Commissions and Impunity 27

PART I Human Rights and Truth 33

2 Technologies of Truth: The TRC’s Truth-Making Machine 33
- The Limitations of the Mandate 34
- Rainbow Truths 36
- The Rise and Rise of Infocomm 38
- Truth in Crisis 41
- Taking on the Statement-Takers 42
- The New Protocol 44
- The Database Driving the Model 46
- Experiences of Truth-Telling 48
- The Banality of ‘Evil’ 51
- A Moral Response to Apartheid Violence 55
- The Human Right to a Human Story 57
CONTENTS

3 The Politics of Truth and Human Rights 62
   Was there a Third Force? 63
   Was there a Third Force? ‘Well, No, Yes, Sort of, Maybe’ 66
   Theorizing the Third Force 73
   Human Rights Violations and Common Crimes 79
   Race Crimes and Political Motives 84

PART II Reconciliation, Retribution and Revenge

4 Reconciliation Through Truth? 97
   Defining Reconciliation 98
   The Legal-Procedural Narrative 104
   The Mandarin-Intellectual Narrative 106
   The Religious-Redemptive Narrative 109
   Thick and Thin Reconciliation 121

5 Reconciliation in Society: Religious Values and Procedural Pragmatism 123
   Legal Pluralism and Human Rights in South Africa 123
   Adductive Affinities 130
   Reconciliation through Amnesty? 140
   Procedural Pragmatism 142
   Behind the Scenes in Kagiso 147
   Reconciliation for Whom? 153

6 Vengeance, Revenge and Retribution 156
   Revenge in Modern Legal Thought 158
   National Debates on Vengeance 164
   Intimations of Vengeance during TRC Hearings 173
   Relational Discontinuities 174
   A History of Violence in Sharpeville since 1990 176
   Reconciliation in Ruins: The Death of Dennis Moerane 181
   Gunshots at Night 185

7 Reconciliation with a Vengeance 188
   A Short History of Legal Pluralism in South Africa 188
   Local Courts and the State: Ambivalent Relations 201
   Patriarchy and Procedure of the Boipatong Court 202
   Township Court Procedure 204
   Tribal Law? 206
   Reconciliation versus the Right to Punish 208
CONTENTS

Punishment and Suffering: Comparing Informal and Official State Courts 210
Unintended Consequences of Popular Justice 211
Justice and the TRC 213
A Coda to Boipatong: Human Rights, Local Justice and Gender 215
Legal Pluralism Revisited 218

8 Conclusions: Human Rights, Reconciliation and Retribution 223

Notes 231
Bibliography 246
Index 263
ACRONYMS AND GLOSSARY

AC  Amnesty Committee of the TRC
ANC  African National Congress
ANCYL  ANC Youth League
AWB  Afrikaner Weerstandsbeweging (Afrikaner Resistance Movement)
AZAPO  Azanian People’s Organization
BRAC  Boipatong Residents Against Crime
CODESA  Convention for a Democratic South Africa
COSATU  Congress of South African Trade Unions
CPF  Community Policing Forum
DP  Democratic Party
GNU  Government of National Unity
HRVC  Human Rights Violations Committee of the TRC
HRV Hearings  Human Rights Violations hearings of the TRC
ICC  International Criminal Court
IFP  Inkatha Freedom Party
Imbizo  Meeting or court (Zulu)
Infocomm  Information Management System of the TRC
ISCOR  Iron and Steel Corporation (Vaal)
IU  Investigative Unit of the TRC
Kgotla  Meeting or court (Sesotho); plural lekgotla
Khulumani  ‘Speak out’ Survivor’s support group
MDM  Mass Democratic Movement
MK  Umkhonto we Sizwe (ANC armed wing)
MP  Member of Parliament
NCPS  National Crime Prevention Strategy
NGO  Non-governmental organization
NP  National Party
NSMS  National Security Management System
NPA  National Peace Accord
NUMSA  National Union of Mineworkers of South Africa
NURA  National Unity and Reconciliation Act (1995)
PAC  Pan Africanist Congress
PAGAD  People Against Gangsterism and Drugs
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>RRC</td>
<td>Reparation and Rehabilitation Committee of the TRC</td>
</tr>
<tr>
<td>SAIRR</td>
<td>South African Institute of Race Relations</td>
</tr>
<tr>
<td>SABC</td>
<td>South African Broadcasting Company</td>
</tr>
<tr>
<td>SACC</td>
<td>South African Council of Churches</td>
</tr>
<tr>
<td>SACP</td>
<td>South African Communist Party</td>
</tr>
<tr>
<td>SADF</td>
<td>South African Defense Force (apartheid)</td>
</tr>
<tr>
<td>SANCO</td>
<td>South African National Civics Organization</td>
</tr>
<tr>
<td>SANDF</td>
<td>South African National Defense Force</td>
</tr>
<tr>
<td>SAP</td>
<td>South African Police (apartheid)</td>
</tr>
<tr>
<td>SAPS</td>
<td>South African Police Service (post-apartheid)</td>
</tr>
<tr>
<td>SDU</td>
<td>Special Defence Unit (ANC)</td>
</tr>
<tr>
<td>SPU</td>
<td>Special Protection Unit (IFP)</td>
</tr>
<tr>
<td>SSC</td>
<td>State Security Council</td>
</tr>
<tr>
<td>STRATCOM</td>
<td>Strategic Communications</td>
</tr>
<tr>
<td>TRC</td>
<td>Truth and Reconciliation Commission</td>
</tr>
<tr>
<td>Ubuntu</td>
<td>Humanity, personhood, mutuality</td>
</tr>
<tr>
<td>UDF</td>
<td>United Democratic Front</td>
</tr>
<tr>
<td>ZCC</td>
<td>Zionist Christian Church</td>
</tr>
</tbody>
</table>
Map 1  Pre-1994 South Africa: The homelands
Map 2  Post-1994 South Africa: Provinces of the Republic
Map 3  Johannesburg and the Vaal Region
In democratizing countries of Latin America from the mid-1980s and Eastern Europe from 1989, the language of human rights emerged as a universal panacea to authoritarianism. Human rights were demanded by ordinary citizens massed in the squares of Leipzig or on the streets of Bisho, and they became symptomatic of the kind of ‘procedural’ liberalism established in post-authoritarian states. Human rights based legislation became a central component in the transformation of repressive institutions and in the establishing of the rule of law after the distortions of authoritarian legality. Each society had to face the question of how to deal with the gross human rights violations of the past, and new institutions and commissions were set up to reaffirm human dignity and to ensure that violations would not occur again. Increasingly, human rights talk was detached from its strictly legal foundations and became a generalized moral and political discourse to speak about power relations between individuals, social groups and states. This broad extension of human rights talk was exacerbated as democratizing regimes with crumbling economies and fractured social orders grasped for unifying metaphors, and human rights talk seemed to provide an ideological adhesive through terms such as ‘truth’ and ‘reconciliation’.

By the 1990s, it was time to take stock and to evaluate critically the role of human rights ideas and institutions in democratic transitions. It became possible to move on from simply extolling human rights to examining what happened when human rights institutions were established in complicated contexts of political compromise, where neither opposing side in a civil war had won an outright military victory, where key perpetrators of the era of repression (from Vice-President F W de Klerk in South Africa to Senator Augusto Pinochet in Chile) still occupied positions of political power and where the former bureaucracies of death (especially the criminal justice system and security forces) were still staffed by personnel from the authoritarian era.

In the literature on democratization, liberal visions of ‘democratic consolidation’ often adopted a model-building and technicist tone. ‘Transitology’ attempts to isolate the variables that reinforce or undermine democratic consolidation and build universal mechanistic models
that treat democratization as if it were a matter of correctly arranging pieces of a puzzle. Transition theory in mainstream political science often accepted a minimalist liberal understanding of democracy as indicated by constitutions enshrining individual civil rights, political party competition and periodic elections.

The establishing of a bare functioning minimum is not to be lightly dismissed, as it was an important objective of the struggles of opposition and dissident movements. Yet this book emphasizes a more sociological standpoint which places justice in transition in the context of nation-building and a hegemonic project of state formation. A focus upon how the rule of law is established and maintained must be complemented by an analysis of the concrete ideological and administrative difficulties which new regimes found themselves in. This requires a greater awareness of how new regimes used human rights to re-imagine the nation by constructing new official histories, and how they sought to manufacture legitimacy for key state institutions such as the criminal justice system.

Human rights discourses and institutions in South Africa such as the Truth and Reconciliation Commission, Human Rights Commission and the Commission for Gender Equality are central to creating a new moral and cultural leadership, that is to say, a new hegemony. This new hegemony is initially asserted in relation to accountability of past state crimes and whether to punish and/or pardon previous human rights violations. The study of transitional truth and justice has been too dominated by philosophical discussions abstracted from specific contexts, and we should instead examine how the politics of punishment and the writing of a new official memory are central to state strategies to create a new hegemony in the area of justice and construct the present moment as post-authoritarian when it includes many elements of the past.

In South Africa, human rights talk became ever more compromised as it was dragooned by an emergent bureaucratic elite into the service of nation-building. Ostensibly, the language of rights represented a departure from old ethno-nationalist models of nationalism with their romantic images of blood and land. Post-authoritarian nation-building, in contrast, appealed to civic nationalism as the new basis for moral integration and a redefined conception of nation. Yet this process of nation-building also had its normative injunctions and included elements of moral coercion. The constitution and subsequent legislation deprived victims of their right to justice and retributive justice was defined as ‘un-African’ by some, such as former Archbishop Desmond Tutu. Human rights became the language of restorative justice and forgiveness of human rights offenders in South Africa, whereas at the same time in international contexts, human rights were developing in just the
opposite (punitive) direction with the creation of an International Criminal Court and the prosecutions brought by the UN war crimes tribunal for the former Yugoslavia and Rwanda.

There were some unintended consequences of the reliance upon human rights talk for nation-building and state centralization. Due to amnesty laws and a lack of prosecutions of human rights offenders, the high expectations expressed in human rights talk by both politicians and citizens were left unfulfilled, as transitional institutions seemed to protect perpetrators more than they fulfilled victims’ hopes for justice and reparation. Human rights came not to represent ideal and inviolable principles (such as justice for victims and punishment for offenders), but instead expressed the problematical nature of the elite-pacted political settlement. The new promises of the constitutional order outstretched the capacity of the legal system, as human rights were enshrined in the Constitution that were unrealizable by the majority of impoverished black citizens. Given the yawning gap between human rights ideals and the grim realities of criminal justice delivery, the conditions were ripe for a crisis of legitimacy. Rather than resolving the crisis of legal institutions, human rights talk came to symbolically epitomize the legitimation crisis of post-authoritarian justice. Finally, the place of human rights talk in a project of legal unification and centralization brought them into conflict with local justice institutions and popular legal consciousness in a legally plural setting.

These reflections on human rights institutions in democratization processes urge us to look beyond the formal, legalistic and normative dimensions of human rights, where they will always be a ‘good thing’. A sociology or ethnography of rights will look instead at how rights are transformed, deformed, appropriated and resisted by state and societal actors when inserted into a particular historical and political context. This shifts our attention away from the transcendent moral philosophy of rights to a rigorous examination of the history and social life of rights.

This book results from a twelve-month ethnographic study (over a four-year period) inside and outside of one of the main human rights institutions in transitional South Africa – the Truth and Reconciliation Commission (TRC). During this time I was a lecturer and visiting associate in the anthropology department at the University of the Witwatersrand in Johannesburg. My research started in 1995, before the TRC began functioning, and continued into 1996–7, while it was in full swing; it ended in late 1998 after the main regional offices had been closed. I attended three weeks of Human Rights Violations hearings in
Klerksdorp, Tembisa and Kagiso and three weeks of amnesty hearings for Northern Province security policemen in Johannesburg. I interviewed nearly half of all the TRC Commissioners, the TRC executive secretary, and many staff workers, such as lawyers, researchers and investigators. I would also include as ‘research’ the conference evaluating the TRC which I co-organized with Merle Lipton at the University of Sussex in September 1998, which included a TRC Commissioner, members of the Research Unit and Investigative Unit and a former judge of the Constitutional Court of South Africa.

Much of my research, however, took place outside the TRC process and concentrated on the impact of the TRC on the African townships of the Vaal region to the south of Johannesburg. In the Vaal, I carried out in-depth interviews with over 50 victims of political violence, many of them members of the Khulumani Support Group, as well as local religious personnel, local court officials, political leaders, legal activists and policemen. In the beginning, my contacts were mainly aligned to the African National Congress, but as time went on I actively sought out leaders and ordinary members of minority parties such as the Pan Africanist Congress and the Inkatha Freedom Party. I also tried to glean views from those who were not aligned with any political tradition at all. As for ‘perpetrators’, it is worth pointing out that some of my ‘victim’ informants were also implicated in acts of public violence during the apartheid era. Only a few were willing to speak openly about their involvement in such acts, but I did interview three Inkatha Freedom Party members who had been convicted in the courts for their participation in the 1992 Boipatong massacre, as well as a policeman representing amnesty applications from within the Vaal police force, and an Amnesty Committee investigator of the TRC for the Vaal region. Finally, my interviews in the Vaal were complemented by several weeks’ archival work in the William Cullen Library, which holds many useful historical records of human rights monitors such as Peace Action and the Independent Board of Inquiry which worked in the Vaal in the late 1980s and early 1990s.

Truth commissions are now standard post-conflict structures set up in over seventeen countries in the last 20 years to investigate unresolved cases arising from past human rights violations. As one strand of the globalization of human rights, they have taken on a transnational validity as one of the main mechanisms for announcing a new democratic order. Truth commissions have fascinated international audiences and led to a voluminous literature acclaiming their promises of truth and restoration, mostly from law, political science and moral philosophy. The South African truth commission, as the largest and most ambitious in scope, is perhaps the zenith of this trajectory, and has attracted
the most attention and discussion so far. The literature evaluating the achievements of truth commissions has mostly been positive and laudatory, claiming these commissions heal the nation by providing therapy for a traumatized national psyche. They break a regime of official denial of atrocities by ending the public silence on violence and violations. They expose the excesses of the previous political order and so discredit it, aiding in democratic consolidation. In Latin America, where disappearances were more widespread, they revealed the fate of the disappeared and led to exhumations of clandestine mass graves.

This book concentrates on the two main functions of the South African Truth and Reconciliation Commission: truth-telling about the apartheid past and the reconciliation of ‘the nation’. The TRC Report published in 1998 on the gross human rights violations of a 34-year period provided a valuable starting point for discussions about moral responsibility during that era. However, the TRC’s account of the past was constrained by its excessive legalism and positivist methodology, which obstructed the writing of a coherent socio-political history of apartheid.

The TRC worked with many different understandings of reconciliation, but one came to dominate in the dozens of televised Human Rights Violations hearings held around the country. The religious-redemptive vision of reconciliation stressed public confession by victims, and it created meaning for suffering through a narrative of sacrifice for liberation. Finally, it encouraged the forsaking of revenge. Chapters 5 to 8 examine the consequences of the TRC’s version of reconciliation for individual victims who appeared at hearings and others outside the TRC process in the African townships of Johannesburg. In many of these urban townships, political strife was ongoing during the period of fieldwork (1995–8), and it was possible to see the effect of the TRC on these conflicts.

At this point the book begins to shift its focus away from the TRC towards the surrounding social context, in order to evaluate the impact of human rights using ethnographic methods. This approach follows in the tradition of legal anthropology, documenting the moralities, discourses and everyday practices of ordinary citizens when they engage in rights processes and institutions. The TRC’s language of ‘reconciliation’ elicited a variety of local responses and most could be placed in three categories: additive affinities, where local values and human rights overlap and reinforce one another; pragmatic proceduralism, where survivors participate in human rights procedures to pursue their own agendas and without necessarily taking on human rights values; and relational discontinuities, where local actors are resistant to a restorative vision of human rights and assert a more retributive model of justice.
The variety of responses among the main ANC-supporting township constituency of the TRC demonstrates how human rights institutions are caught in a web of centralizing and pluralizing strategies simultaneously. Human rights talk is a contested discourse which draws popular legal consciousness closer to that of the state, while at the same time encountering resistance from localized organizations and moralities which assert the autonomous right to define and enforce justice. One of the main results of my ethnographic inquiries was the centrality of emotions of vengeance in popular legal consciousness and practices of revenge in local justice institutions. Despite the existence of many rarified national institutions dedicated to protecting human rights (not only the TRC, but also the Gender Commission, the Constitutional Court and the Human Rights Commission), enclaves of revenge controlled by militarized youth and punitive elders continued to shape the character of justice in the townships of South Africa. Because it was guided by a religious-redemptive notion of reconciliation, the TRC was never able to engage with, much less transform, these emotions and structures.

Understanding why the TRC struggled to accomplish its stated mission of ‘reconciling the nation’ requires a historical explanation which locates the TRC in a history of legal pluralism in South Africa in the twentieth century. The work of the TRC was shaped by the history of state attempts to consolidate the administration of justice and attempts by Africans to preserve control over local institutions of justice and social order. The racialized and dual legal system consolidated in the twentieth century led to a fracturing of justice and moralities which endured after the first multi-racial elections in 1994. The persistence of legal pluralism is closely linked to the historical failure to create a South African nation, reminding us of the concrete links between nation-building and state-building.

Instead of succumbing to state attempts at centralization, urban African residents continued to use local justice institutions to create social order in conditions of urbanization, industrialization and mass migration from rural areas. In the new South Africa, human rights talk was inserted into a context of a massive crime wave, profound social and economic inequality and disillusionment with ineffective criminal justice institutions. Human rights thus emerge as part of a pragmatic policy of state-building and centralization of justice in a milieu where state legality is still often perceived by township residents to be external and alien to the ‘community’.

An ethnography of human rights evaluates new institutions of the nation-state ‘from below’ and compels us to understand them from a position of institutional fragmentation and legal pluralism. In concrete
terms, it draws our attention to how human rights institutions and discourses in the ‘new South Africa’ have often failed to connect with local moralities and justice institutions and thereby transform them. As we come to realize that the new ‘culture of human rights’ is very thin indeed, we may need to temper celebrations of another seeming triumph for the model of liberal human rights. In a comparative perspective, the new human rights institutions of post-apartheid South Africa are impressive for their ability to shape the public debate on truth and reconciliation. It remains to be seen whether they have altered, over the long term, concrete social practices and discourses of violent conflict, justice and punishment.

ACKNOWLEDGEMENTS

This research was funded by two grants from the Economic and Social Research Council (UK) and an academic exchange funded by the British Council. It would not have been possible without the advice and assistance of many people in South Africa, including André du Toit, Patrick Kelly, Piers Pigou, Fiona Ross and Gerald O’Sullivan. Thanks are due to those at the University of the Witwatersrand between 1995 and 1999; Belinda Bozzoli, Carolyn Hamilton, Deborah James, Justine Lucas, Sakkie Niehaus, Joanne Pannell, Patrick Pearson, Robert Thornton, and Linda Waldman. In particular, Elsa van Huyssteen was a tolerant listener and constructive critic. At the Center for the Study of Violence and Reconciliation, I thank Brandon Hamber and Hugo van der Merwe. From the Khulumani Victims Support Group, I am grateful for the valuable help of Maggie Friedman and the late Sylvia Dhlomo-Jele. In the Vaal, my warm appreciation goes to Magouwsi Motau, ‘Oupa’ Tsobisi and especially to Duma Khumalo, my main Vaal contact, drinking partner and merciless adversary on the chess board. During writing, I benefited from conversations with Jocelyn Alexander, Patrick Ball, Andy Carl, Jane Cowan, Marie-Bénédicte Dembour, David Dyzenhaus, Thomas Hylland Eriksen, Ralph Grillo, Stewart Lansley, Merle Lipton, Shula Marks and Neil Stammers. Saul Dubow provided experienced advice on the literature and incisive commentary on parts of the text. None of these people are responsible for any errors of fact or interpretation in the book, and some will undoubtedly disagree with aspects of the argument. At Cambridge University Press, my thanks are to Martin Chanock, Sharon Mullins and Paul Watt, also to Jean Cooney. Finally, Helene Kvale read many chapters and conditioned my long absences, but most importantly encouraged me to pursue this whole new venture.