

Amnesty, Amnesia, and Remembrance: Obligations Past and Present Duties to Future Generations

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Each time we buried our friends and comrades who had been killed by the apartheid regime we made a commitment—singularly and collectively as a political movement—to pick up their fallen spear, to avenge their death and to achieve victory over apartheid in the name of the fallen. Today Apartheid is vanquished yet the killers are free, they receive amnesty, are guaranteed their government employment (where applicable) and are accepted as partners in the creation of a new South Africa. Viewing this new reality, in which Mandela's government stumbles forward daily against the legacies of apartheid strewn in its path, I am forced to recognize that we have always been trapped in an irreconcilable conflict between our past promises and our moral duty to the future. While we fought against evil and promised peace and justice, the needs of peace and the future generation required a forward looking vision, one in which justice is resolved without endangering the future. What place then for truth and reconciliation?

While we might point to international legal norms and instruments which might deny amnesty for such crimes, others decry South Africa's Truth and Reconciliation Commission (TRC) as a "witch hunt." These voices either demand collective amnesia in the form of a general amnesty for the past or continue to assert that their policies were merely misguided. The abuses of human rights which, they now acknowledge did occur, they characterize as infrequent aberrations and even equate with the actions of those who fought against apartheid. Yet as the hearings of the TRC have traversed the South African landscape, from cities to remote rural communities, the broad patterns of abuse and horrifying detail of each individual case has revealed to all that these atrocities were never isolated incidents but rather formed the very basis of the system. Are we to forgive this crime against humanity—as apartheid was defined in the International Convention on the Suppression and Punishment of the Crime of Apartheid—without even a decent demonstration of remorse or apology from the leaders and perpetrators of that system?

While democracy has not resolved the vast inequalities created by apartheid, there is no doubt in my mind that the compromises of a negotiated transition, even accepting the political participation of the creators of apartheid in South Africa's first post-apartheid government, was a moral and political necessity in which the demands of the "past" and even of many of the "present"—such as the generation of youth who gave up their chance for education to make apartheid ungovernable—were in part sacrificed in order to establish a viable future for the younger and future generations.

It is in this context and in the face of an ongoing conflict between the voices of victims and the strategies of denial, avoidance and justification by the perpetrators that we must try to evaluate the process of truth and reconciliation in South Africa. On the one hand are the victims, like the Biko and Mxenge families who, demanding justice, have challenged the TRC in court and continue to reject the amnesty it promises to the murderers of their loved ones. On the other hand, there are the former apartheid leaders and functionaries who either continue to justify their actions as a "natural and necessary result of revolutionary conflict . . . justifiable under international law"¹ or express no remorse. Take, for example, police agent and later apartheid police spokesman Craig Kotze, who told the TRC's hearing on the role of the media under Apartheid that he had "no regrets" for his role as "as a soldier/policeman," in which he infiltrated newsrooms and planted false information as part of the state's covert disinformation campaign.

And in the face of this I reflect back on the not so distant past—on the singing, speeches, and searing emotions of so many funerals—and I wonder about our commitments to the past

and how they have been sustained in the complex interactions of South Africa's democratic transition. I recognize that peace and democracy was achieved—"a small miracle" to quote Nelson Mandela—with a promise of reconciliation and even a recognition of the dignity and rights of our nation's former oppressors. Yet, as I witness the continuing pain of the families of those who gave their lives and the many other victims bearing their souls before the TRC, I am returned to thoughts of those we left behind, thoughts that send my mind reeling and stumbling across so many memories:

Of little Katryn as a precocious toddler, a child of hope born in exile to my comrades Marius and Jeanette Schoon, a political prisoner released after 12 years and a trade union activist banned from social contact and political activity, who met illegally and married before fleeing to Botswana.

Of the cowardly parcel bomb that killed Katryn and her mother before she was old enough to go to school.

Of Vernon "Rogers" Nkadimeng, the smiling young man whose shattered body was laid in its casket before the same altar where he had been married only two months before the bomb—wired to the ignition of his vehicle—ended his activities as an underground trade union organizer.

Of Thami Mnye the exquisite graphic artist who was machine-gunned to death amidst his art works as the Apartheid regime's commandos sowed death among refugees, activists and Motswana bystanders, killing twelve in a night of horror which the South African media boastfully headlined, "The Guns of Gaborone."

Of the all-too-many, whose lives were destroyed or crippled by a system whose former leaders—political, social and economic—now wish to distinguish it from what they describe as the activities of "rogue elements" for whom they deny direct responsibility.

These memories and thoughts overwhelm me with the pain of survival and outrage against those who demand amnesia as an imperative for reconciliation. My sense of outrage is not focused on the horrors of torture and callous acts of killing that we have all been so aware of for so long, but rather on those more articulate perpetrators who would erase distinctions between oppressors and resisters and who still work so hard to suppress truth in order to elide history. I am also concerned about the focus on Christian forgiveness which has become such a marked feature of so many of the TRC's hearings, and of course I am troubled by my own ambivalent attitudes towards this process. I recognize that it is these tensions which motivate me to search for a position from which it will be possible to justify a forward looking vision without turning my back on my past commitments.

These concerns remind me of my attitudes towards Craig Williamson, the South African Police Major who was among the planners of the Botswana raid and who has publicly admitted, without remorse, to having sent the bomb that killed little Katryn and her mother, and who reluctantly applied for amnesty only after losing his motion to dismiss the civil law suit brought against him by Marius Schoon. I know I can never forgive him for the murders of Jeanette and Katryn, which can never be justified as a proportional response to Marius and Jeanette's resistance activities. Does this mean that I could not accept his receiving amnesty from the TRC? Not necessarily.

While I cannot accept the standard definition of amnesty as a "complete forgetfulness of the past,"² I do believe that pardons, based on a "full disclosure of all the relevant facts relating to acts associated with a political objective"³ as required by the Promotion of National Unity and Reconciliation Act in South Africa, are one essential part of achieving the reconciliation required to rebuild community in the aftermath of violence and gross violations of human rights. The justification for pardon cannot however rest merely upon the assertion of political necessity—that South Africa's democratic transition was the product of a political compromise which required amnesty in order to avoid a military backlash and as the basis for agreement. In fact, the apartheid regime first insisted on a blanket amnesty and attempted,

even in its final hours, to grant amnesty to some of its Ministers so as to avoid the need to account for their actions. It is this last element, the need to account, which for me, provides the essential link between our obligations to the past and the needs of the future.

It is only by requiring a full accounting of the events and circumstances surrounding these violations that it is possible to judge whether pardon may lead to acceptance and reconciliation, even if forgiveness is impossible. First, as in the case of Williamson, the statute requires a finding that the motives of perpetrators were political and not based on "personal malice, ill-will or spite." In the case of Katryn and Jeanette this will require a distinction between his decision to kill in order to curtail the family's political activities and the possible personal grudge that Williamson may have held as a result of the contribution Marius and Jeanette made in exposing him as an apartheid spy while he posed as an exiled anti-apartheid student activist and managed to become a senior official in the Geneva-based International University Exchange Fund. Second, it is only through a full accounting that it will be possible for the TRC to achieve its primary goal, which is to establish the truth about the gross violations of human rights which occurred. Third, it is only by establishing the truth of these events that it will be possible to ensure remembrance instead of amnesia, and thereby to work towards the goal of preventing "a repetition of such acts in future."

Remembrance then becomes both the justification for granting pardons to the perpetrators who have acted with a "political motive" and the basis for resolving the quandary posed by the need to reconcile our present and past commitments. By recording and elucidating the memory of those who suffered for their resistance to apartheid we are able to both fulfill our commitment to never forget their efforts and also to continue their mission by using them as an example to future generations of what should never be repeated. Thus it is neither amnesia nor forgiveness that is the basis of reconciliation but rather the recognition of past suffering as a lesson to the future and a symbol of what has been overcome.

Although I am able, in this way, to reconcile myself with the purpose and work of the TRC, my understanding of amnesty requires a clear rejection of the present attempts to shape the work of the TRC into an examination of human rights violations that refuses to make a moral distinction between the actions of those who fought apartheid and those who acted in its name. Instead of making a distinction between retributive justice and restorative justice as a way to justify amnesty over prosecutions, our understanding of truth and reconciliation should rather focus on the slow but steady process of accountability that the TRC is achieving. Not only have individual cases been resolved but the TRC has also refused to ignore the wider evils of the apartheid system, drawing heated criticism from even "liberal" white South Africans. Attempts to avoid the wider implications of apartheid policy has seen even Herman Giliomee, the noted Afrikaans political scientist and now President of the traditionally liberal Institute of Race Relations, argue that apartheid was not a crime against humanity, despite the revelations of the TRC hearings.

While the false arithmetic of moral equivalence is easily propagated, it is important that the TRC help reveal all gross violations of human rights, including those committed in the name of the liberation movements. However, the task of remembrance requires that there be accountability, not only of those who engaged in the countless acts of violation but also of those who enabled and sustained the system which provided the opportunities for such deeds. While the "justice" Archbishop Desmond Tutu promised in his eulogy at Griffith Mxenge's funeral in 1981 has not materialized to the satisfaction of the Mxenge family, the amnesty granted Mxenge's murderers may be sustained so long as the life and work of Griffith Mxenge is elevated in remembrance above the deeds of his killers and the continued denials of those who benefited from the system those killers upheld. It is only through direct public accountability and, hopefully, eventual remorse, that a collective memory can be created which will provide a fitting acknowledgment of those who suffered and will present a barrier against a repetition of the past.

Notes

- ¹ Dr. Niel Barnard, former head of the National Intelligence Service, before a special hearing of the Truth and Reconciliation Commission on the role of the former State Security Council (the highest decision-making body in the apartheid security apparatus which functioned as a subcommittee of the Cabinet) on December 4, 1997.
- ² See, Judgment of the Supreme Court of South Africa (Cape of Good Hope Provincial Division) on May 9, 1996 in *AZAPO v Truth and Reconciliation Commission* 1996 (4) SA 562 (C).
- ³ Section 3(1)b of the Promotion of National Unity and Reconciliation Act 34 of 1995.