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## *Experiments with Truth and Justice in South Africa: Stockenström, Gandhi and the TRC*

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*This article sets out to trace the intellectual and political antecedents of the Truth and Reconciliation Commission (TRC) in the longer perspective of South African history. It does so by taking a closer look at some of the longstanding if intermittent series of South African projects invoking notions of truth and justice, most recently exemplified by the TRC in the context of the new democratic and post-apartheid South Africa of the 1990s. It traces the history from Stockenström's stand for truth and justice on the frontier in the 1830s, through Gandhi's mobilisation of 'truth-force' as a resource for popular protest at the beginning of the twentieth century, to truth and justice in the theory and practice of the TRC. It argues that the TRC process was characterised by a major shift from a central concern with truth as acknowledgement and justice as recognition during the initial victims' hearings to the quasi-judicial aims and procedures of the amnesty hearings and the perpetrator findings of the TRC Report. It concludes that no direct line can be traced from Stockenström and Gandhi's truth experiments to the TRC process as a founding action of the 'new South Africa'. None of these experiments is deemed anything like an unqualified 'success', or even to have produced clear and unambiguous outcomes. In trying to speak of 'truth' and 'justice' in South African conditions, Stockenström, Gandhi, and the TRC successively became ensnared in a range of confusions, ambivalences and contradictions.*

### **Introduction: 'Truth' and 'Justice' in South African History**

The recent experience and outcome of a 'Truth Commission' proved once more that it is no straightforward matter to raise the banners of truth and justice in South Africa, where the very topic of truth and justice is an essentially contested rubric. If South Africa's history and politics have produced ample documentation of injustice and untruth – from its protracted history of conquest and colonisation to the racial policy and ideology of modern apartheid formally deemed a 'crime against humanity' by the United Nations – it has also been less than clear who in this context is in a position to speak and act for justice and truth, or with what effect. Thus, to take one pertinent example, the cause of the Boer Republics against imperial aggression at the time of the South African War was officially publicised under the title of *A Century of Wrong*.<sup>1</sup> Whatever the merits of this adumbration of the republican cause at the time and in its own terms, its inherent limitations and partisan take on justice and truth in a larger South African perspective are, at least in contemporary retrospect, blatantly obvious. Similarly the unreflective self-confidence characteristic of the discourse of truth and justice developed by the Cape liberal tradition in the nineteenth century has long since been punctured.<sup>2</sup> And so the title of Albie Sachs's book *Justice in South Africa* (1973)<sup>3</sup> can at best

1 F.W. Reitz and J. Smuts, *A Century of Wrong* (London, Review of Reviews, 1900).

2 See A. du Toit, *Truth and Justice in South Africa* (inaugural lecture, University of Cape Town, 1988).

3 A. Sachs, *Justice in South Africa* (Berkeley, University of California Press, 1973).

be ironic. *Injustice in South Africa* would no doubt have been a more accurate title (except that it would not convey Sachs's own commitment to justice as an ideal for South Africa). Unlike de Tocqueville's *Democracy in America*, Sachs's pioneering study did not so much provide a historical account and sociological analysis of key institutional and social practices; rather it offered a radical critique of the introduction and administration of colonial justice as serving the material interests of racial and class domination.

Yet, there is also a longstanding if intermittent series of South African projects invoking notions of truth and justice, most recently exemplified by the Truth and Reconciliation Commission (TRC) in the context of the new democratic and post-apartheid South Africa of the 1990s. The inherent complications and difficulties of these projects reflect the problematic and contested history of colonial and postcolonial state-formation and the belated emergence of key institutions of civil society. Who could speak and act for justice and truth in the context of the early nineteenth-century open frontier where both the coercive institutions of the state and the discipline of civil society were still conspicuous by their absence? Where did that, precisely in this context of frontier violence, leave the individual or official committed to the principles of justice and truth? What did it mean, at the beginning of the twentieth century and in the context of modern state formation, to mobilise popular protest in the name of truth and justice – when that modern state was also the primary agent of colonial/white minority rule precluding the emergence of any shared and viable civil society? And what were the achievements and limitations, at the end of the twentieth century, of the deliberate public project, once more in the name of truth and justice, to come to terms with the violent and oppressive past of apartheid? How did this relate, on the one hand, to the transition to a postcolonial and democratic state and, on the other hand, to the emergence and development of civil society? Who could, and did, speak for truth and justice in this context, and with what effect?

The title of this article is taken from that of the autobiography of Gandhi, *The Story of My Experiments With Truth* (1927).<sup>4</sup> In his autobiography, Gandhi's account of his various 'experiments' – with dietetics, with vegetarianism, with sexual self-control, with new forms of community<sup>5</sup> – is told as the story of his discovery of novel ways of living, and of specific moral insights, not through theoretical reflection but through practical engagement. Gandhi's 'experiments with truth' thus refer to a personal and open-ended engagement with truth at the level of social practice. His most notable discovery was the method of *Satyagraha*, the specifically Gandhian practice of non-violent resistance as a way of mobilising 'truth-force' against injustice and oppression. Subsequently the career of *Satyagraha*, from its South African origins through Gandhi's anti-imperial campaigns in India to Martin Luther King's Civil Rights movement in the United States, had a profound impact on contemporary notions of non-violent resistance, civil disobedience and political protest worldwide. In South Africa itself, the Gandhian tradition continued to inform resistance politics into the 1950s and the Defiance Campaign,<sup>6</sup> but as the political struggle against apartheid intensified after Sharpeville and with the turn to the armed struggle, less and less was heard of Gandhi or *Satyagraha*. Certainly in the context of the proliferating and escalating political violence of the mid-1980s, at the time when it was perhaps most needed, few South Africans would have been prepared to take the Gandhian notion of 'truth-force' seriously at all.

But when the time came – in the 1990s, following the negotiated settlement and democratic transition – to deal with the legacy of political conflict and violence as 'the past', then that happened through the TRC process. The idea and practice of 'truth', now focused on

4 M.K. Gandhi, *An Autobiography Or The Story of My Experiments With Truth* (Ahmedabad, Navijan Trust, 1927).

5 See B.K. Parekh, *Colonialism, Tradition and Reform: An Analysis of Gandhi's Political Discourse* (Newbury Park, California, Sage, 1989), pp. 89ff.

6 L. Kuper, *Passive Resistance in South Africa* (New Haven, Yale University Press, 1957).

the uncovering of political atrocities or gross human rights' violations, once more took centre stage in South Africa, this time in the form of the Truth and Reconciliation Commission. The relatively novel institution of a 'truth commission' was not a South African invention – on the contrary, the TRC was explicitly and closely based on Latin American and other truth commissions, especially that in Chile – but it quickly became recognised internationally as providing a model of how to bring the resources of truth and justice to bear in dealing with the political atrocities of the past. Once more an experiment with truth and justice in South Africa turned out to be of more than just local significance, and the South African TRC currently serves as a possible model for a range of other societies in Africa, Central America, South-East Asia and the Middle East.

In this article I offer some reflections on the topic of South African experiments with truth and justice. As the TRC-process itself begins to recede into the past, it may become possible to gain a better perspective on this much-contested project, and to differentiate between, on the one hand, its actual outcomes as distinct from the programmatic objectives propagated by its proponents, and on the other hand, the polemical objections and fears projected by its opponents and critics. I also begin to trace the intellectual and political antecedents of the TRC in the longer perspective of South African history. How does it compare, for instance, with the Gandhian project of mobilising 'truth-force', or *Satyagraha*? Is the common concern with 'truth' and 'justice' just a superficial and terminological resemblance, or are there significant correspondences and even underlying linkages? Moreover, Gandhi was not the first to articulate a discourse of truth and justice in the South African context. In the 1820s and 1830s, missionaries such as Dr John Philip, General Supervisor of the London Missionary Society, in alliance with the abolitionist and humanitarian movements based in London, developed a trenchant critique of colonial conquest, dispossession, slavery and forced labour practices in the name of justice and truth. Of particular interest was the emergence of an unlikely version of frontier liberalism in the person of Andries Stockenström, long-time *landdrost* (magistrate) of Graaff Reinet. In 1835, concurrent with the eruption of the epochal Sixth Frontier War and the beginnings of the Great Trek, Stockenström was recalled from his early retirement in Sweden to become the most prominent witness before the Select Committee on the Aborigines in London. The Aborigines Committee may well be said to have been a kind of Truth Commission of its time, uncovering the political atrocities committed against the aborigines in South Africa, Australia and other parts of the British Empire. His appearance before the Aborigines Committee proved both the making and the unmaking of Stockenström. To begin with, he was catapulted into a high-profile appointment as Lieutenant Governor with a mandate to implement Lord Glenelg's Treaty System on the Eastern Cape Frontier; in the longer run, however, the reports of his evidence before the Aborigines Committee set him on a collision course with key makers of frontier opinion which would ultimately quite undermine his effectiveness to fulfil this mandate. What should we make of Stockenström's insistence on truth and justice as the principled basis of frontier policy? What role did this play in his rise and fall as frontier politician? To what extent was the struggle over truth and justice on the Cape frontier a local conflict between an obstreperous individual and the settler cabal based in Grahamstown, or did it rather involve more extensive humanitarian and settler discourses and networks linking the imperial metropole and frontier opinion? In short, what was the significance of 'truth' and 'justice' in imperial policy and frontier politics, both in the contemporary historical context and in retrospect? In what follows I will first explore Stockenström's stand for truth and justice in the context of the Aborigines Committee, and how this then played itself out on the frontier itself after his return to South Africa. I will then compare this to Gandhi's experiments with truth in terms of the origins of the *Satyagraha* campaigns, paying special attention to similarities as well as relevant

differences. And, finally, I will consider the more recent TRC process, both in terms of its own objectives and outcomes and also in the light of these earlier precursors.

### **Stockenström: Truth and Justice on the Closing Frontier**

The beginnings of an imperial and colonial truth and justice discourse during the early decades of the nineteenth century need to be understood in their political and historical context. From the retrospective vantage point of the 'New South Africa' at the close of the twentieth century, this requires an awareness of profound historical differences but also the recognition of some surprising structural analogies. In many ways early nineteenth-century Cape colonial society, especially on the Eastern Frontier, still belonged to an entirely different world compared to modern South Africa. Not only was it a colony with no representative institutions, administered by colonial officials answering only to the Governor at the Cape and the Colonial Office in London, but it was a slave society in which slaves outnumbered the small settler population (still as little as 30,000 in 1800) dispersed over an extended territory. Significantly, the incorporation of the Xhosa and other African communities had not yet started: colonial society still consisted of officials, settlers, (former) slaves and the dispossessed Khoisan. This was the milieu in which Andries Stockenström grew up, following in the footsteps of his father to become Landdrost of the main frontier district of Graaff Reinet from 1815.

But this old colonial order was on the verge of major changes. The early nineteenth century brought more than a change from Dutch to British rule; the 'second British Empire' being forged in the aftermath of the American and French Revolutions involved a 'new colonialism' in which reformist imperial officials in alliance with an ascendant humanitarian network transformed the approach to colonial governance.<sup>7</sup> The first harbingers of the new humanitarian discourse in the colonial context were introduced by the missionary societies which began to operate within and beyond the colony from the end of the eighteenth century. Soon not only the mercantile order of the Dutch East India Company but also the conservative autocracy of Lord Charles Somerset had to make way for reform and progress. From the 1820s, basic structural conditions for colonial development were put in place: the construction of hard roads and passes through the coastal mountain ranges made more effective communication with, and transport to, the interior and the frontier possible; the introduction of circuit courts began to extend the administration of justice beyond Cape Town and its immediate environs; the number of towns with shops, banks and functioning congregations began to increase though the systematic introduction of schools and secondary education would only take place from the 1840s; the first regular newspapers began to be published; with the exporting of wine from the 1820s and wool from the 1840s the colonial economy began to be incorporated in the global free trade and international markets.

If the impact of these structural changes was gradual and incremental, then that of the new political order around 1830 was much more drastic. Ordinance 50 of 1828 decreed a charter of equal civil rights for all, including Khoisan and former slaves, and in 1834 the imperial authorities proclaimed the emancipation of the slaves. Significantly, these radical measures were effected by an alliance including local officials such as Stockenström, missionary protagonists such as Dr Philip, the Acting Governor Bourke, and the humanitarian network based on Exeter Hall in the metropolitan capital London. The impact on Cape colonial society

<sup>7</sup> A. Lester, *Imperial Networks: Creating Identities in Nineteenth-Century South Africa and Britain* (London, Routledge, 2001), pp. 23ff.; A.L. Stoler and F. Cooper, 'Between Metropole and Colony: Rethinking a Research Agenda', in F. Cooper and A.L. Stoler (eds), *Tensions of Empire: Colonial Culture in a Bourgeois World* (Berkeley, University of California Press, 1997), pp. 2ff.

was radical indeed. In two fell swoops the former slave society at the Cape acquired a new Constitution based on equality before the law, equal freedom of movement, and the principles of free wage labour. In the colonial context this amounted to a political transition comparable to that from the apartheid order and white minority rule with the introduction of the new Constitution and its Chapter of Fundamental Rights in the 'New South Africa' of the 1990s. Indeed, in a number of important ways the political transition of the 1830s was strikingly similar to that of the 1990s: in both cases the old political order was swept aside to make way for a new dispensation which had seemed hardly imaginable only a few years before. In both cases too, the political changes were effected primarily at a constitutional and legal level, leaving the socio-economic order largely intact; similarly, these changes involved significant intervention by, and interaction with, humanitarian or human rights-oriented external agencies and brought the insulated and isolated local society more in line with international humanitarian and human rights notions. There are, of course, also major differences between the transitions of the 1830s and the 1990s, above all in that the former was essentially imposed by the imperial power of Britain and did not involve a protracted internal political struggle resulting in a negotiated settlement and a democratic change of government. Still, the relevant point is that the political context in which Andries Stockenström operated on the Eastern Cape frontier and before the Aborigines Committee in London during the 1830s, and in which he expounded his notions of truth and justice as the key to the resolution of frontier conflicts, allows points of comparison with that in which the TRC process took place in the 1990s. My question concerns the meaning and function of 'truth and justice' in these two similar, yet also dissimilar, contexts.

As an Afrikaner official, Stockenström was no typical representative of the humanitarian discourse prevailing by the 1830s in British metropolitan circles and increasingly impacting on the local colonial context as well. In Britain 'the Saints' or Clapham Sect, now led by Thomas Fowell Buxton, acquired powerful allies in James Stephen as Permanent Under-Secretary at the Colonial Office and Lord Glenelg as Colonial Secretary, while also having close ties with key Cape humanitarians such as Dr John Philip, Director of the London Missionary Society, liberal editors Fairbairn and Pringle and humanitarian publicists including Saxe Bannister.<sup>8</sup> Along with reformist colonial officials, merchant interests and the mission-based new peasantries, these were the mainstays of the emergent Cape liberal tradition.<sup>9</sup> But significantly, the new humanitarian discourse was also taken up by individuals with strong ties to the Cape Dutch community. Elsewhere, I have documented and analysed the political thinking of Stockenström as illustrative of the emergence of a colonial rule-of-law discourse espoused by a few key Afrikaner officials during the early decades of the nineteenth century.<sup>10</sup> These Afrikaner officials like van Ryneveld, Truter and Stockenström found themselves on the cutting edge of colonial development and in the crossfire of political conflict: as colonial products their ties were with the settler and *trekboer* community, but as officials they were primary agents of the colonial state.

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8 Lester, *Imperial Networks*, pp. 23ff.; J.R. Oldfield, *Popular Politics and British Anti-Slavery: The Mobilisation of Public Opinion Against the Slave Trade, 1787–1807* (Manchester, Manchester University Press, 1995); E.M. Howse, *Saints in Politics: The 'Clapham Sect' and the Growth of Freedom* (London, Allen and Unwin, 1953); D. Turley, *The Culture of English Antislavery, 1780–1860* (London, Routledge, 1991).

9 S. Trapido, "'The Friends of the Natives': Merchants, Peasants and the Political and Ideological of Liberalism in the Cape", in S. Marks and A. Atmore (eds), *Economy and Society in Pre-industrial South Africa* (London, Longman, 1980), pp. 247–74; A. Bank, 'Liberals and Their Enemies: Racial Ideology at the Cape of Good Hope, 1820–1830' (unpublished PhD thesis, University of Cambridge, 1995); Lester, *Imperial Networks*, pp. 26ff; S. Trapido, 'From Paternalism to Liberalism: The Cape Colony, 1800–1834', *International History Review*, 12 (1990), pp. 76–104.

10 A. du Toit and H. Giliomee, Chapter 3, 'Law, Order and Equality', *Afrikaner Political Thought, 1780–1850: Documents and Analysis* (Berkeley and Cape Town, University of California Press and David Philip, 1983), pp. 78–126.

It is striking that Stockenström, caught up as he was in the midst of the violent and partisan conflicts which repeatedly brought frontier confrontations into open warfare, consistently proclaimed justice and truth as his public creed. Stockenström had had personal experience of political atrocities: his father, the elder Stockenström, was killed in a massacre by a Xhosa clan at the outset of the Fourth Frontier War in 1812. Even so, he had to take official responsibility for managing these frontier conflicts, and in his first appointment as Landdrost of Graaff Reinet, still in his early twenties, he had to establish some semblance of the rule of law in the face of the Slachtersnek rebellion of 1815. It was in this capacity and in the context of the closing frontier that he developed 'justice' as his public creed. Moreover, 'justice' had a different connotation in Stockenström's usage from its invocation by the colonists. When the colonists looked to the colonial government or the courts it was for support and protection in their conflicts with the Xhosa over land and cattle and to enforce the service of Khoisan labourers. When this was not forthcoming, the frontiersmen and *trekboers* claimed that 'there is no longer any justice for us in this land from our courts'.<sup>11</sup> Stockenström did not share this partisan conception of justice. Time and again he affirmed that justice, as the fundamental principle of the rule of law, had to be inclusive and impartial, transcending the partisan claims and conflicts of local political conflicts. Most notably, he articulated this in the dramatic confrontation, when Piet Retief and a deputation of Afrikaner frontiersmen approached Commissioner-General Stockenström on the eve of the Great Trek, in the hope that, as their kinsman and compatriot, he would appreciate their rightful grievances. In response, Stockenström simply re-iterated his official creed:

I have, from first to last, acted upon one consistent principle of courting neither the white nor the black party . . . I see no reason to deviate from what my conduct has hitherto been. Injustice to white – English or Dutch – to black – Kaffir, Hottentot or Bushman – I will still consider injustice and deal with accordingly.<sup>12</sup>

Significantly Stockenström linked justice, as such an impartial and universal principle, to what he called the 'cause of truth': 'I have the cause of truth to serve; I am to call "murder, murder" and "plunder, plunder", whatever be the colour of the perpetrator's skin.'<sup>13</sup> In the colonial context, and certainly on the frontier dominated by the aftermath of the war of 1834–35, there was an unbridgeable chasm between this official discourse of justice and truth and the political views motivating the *Trekker* leaders. Retief and others drew their own conclusions from Stockenström's reply and shortly afterwards departed on the Trek in a concerted attempt to withdraw themselves from the purview of the colonial state. Stockenström would find a much more amenable and responsive context when he articulated these same principles a few years later during the hearings of the Aborigines Committee in London in 1835–36.

If the notion of a 'truth commission' in its contemporary sense was, of course, still unheard of at the time, the Aborigines Committee in some ways functioned as a kind of proto-truth commission investigating accounts of colonial atrocities against the indigenous peoples in different parts of the British Empire, especially in South Africa. The Select Committee on Aborigines was convened in July 1835 as a parliamentary inquiry by the House of Commons under the chairmanship of Thomas Fowell Buxton, successor to William Wilberforce,

11 Letter from P.J. Swanepoel, Kouka, to Mr Mijntjes, resident magistrate of Beaufort West, 19 November 1838, reprinted in *Afrikaner Political Thought*, p. 111.

12 *The Autobiography of Sir Andries Stockenström, Volume II*, 'Correspondence During his European Sojourn, 1833–1835', edited by C.W. Hutton (Cape Town, J.C. Juta, 1887), pp. 8ff.; reprinted in *Afrikaner Political Thought*, pp. 112–13.

13 A. Stockenström, 'Reply to Spring Rice's queries, 5 November 1834', *Minutes of Evidence before the Select Committee on Aborigines* (London, House of Commons, Parliamentary Papers, 1835), p. 123; reprinted in *Afrikaner Political Thought*, pp. 168–9.

renowned leader of the humanitarian cause and abolitionist movement. It came in the wake of the greatest triumph of the humanitarian movement when the abolition of the slave trade in 1807 was followed by the emancipation of slaves throughout the British Empire in December 1834. 'The Saints' now joined forces with the missionary crusade centred at Exeter Hall where the great missionary societies each May held their annual meetings as public demonstrations of concern for the plight of the heathens in darkest Africa.<sup>14</sup> Effectively this constituted a nineteenth-century precursor of a human rights movement, mobilising public opinion as much around accounts of atrocities committed on the indigenous peoples in the colonies as through a concern with the evangelical objective of religious salvation. Buxton had dedicated himself to remain in parliament to protect the aborigines from 'the enormities ... practised upon these poor, ignorant, defenceless creatures'.<sup>15</sup> The Aborigines Committee's terms of reference were, in the first instance, 'to consider what measures ought to be adopted with regard to the Native Inhabitants of Countries where British Settlements are made, and to the Neighbouring Tribes, in order to secure to them the due observance of Justice and the protection of their Rights'.<sup>16</sup> From this it will be evident that its primary concern was with imperial policy: aborigines themselves had little or no voice in these proceedings. Indeed, not only did the Aborigines Committee meet in London, many thousands of miles away, but the British cabinet set an explicit condition that no expenses could be incurred by calling witnesses from the colonies, thus restricting colonial evidence to individuals who already happened to be visiting England.<sup>17</sup>

Even so, the hearings of the Aborigines Committee finally provided Dr John Philip, Superintendent of the London Missionary Society in South Africa, with a public opportunity and an authoritative forum where he could put 'the truth' on record regarding colonial dispossession and frontier violence against the indigenous peoples in and beyond the Cape Colony. Philip had already called for an official commission of inquiry in the 1820s; in lieu of this he published his own *Researches in South Africa* in two volumes in 1828, extensively documenting numerous cases of dispossession of the Khoisan and maltreatment of those forcibly incorporated as farm labourers, going back to the beginnings of the colonial settlement.<sup>18</sup> Working closely with Buxton, he did manage to bring two aboriginal witnesses before the Committee, in the persons of Dyani Tshatshu and Andries Stoffel, as prize converts to Christianity.

Of the other witnesses, none suited the purposes of the Committee better than Andries Stockenström: here was someone with an intimate and unrivalled knowledge of frontier affairs, based on decades of practical experience as Landdrost of Graaff Reinet and then as Commissioner-General of the Eastern Cape, who also professed a strong commitment to the humanitarian principles of justice and truth.<sup>19</sup> He was recalled five times to appear before the Committee, as well as making extensive written submissions in response to prepared questions. His evidence made a strong impression on Lord Glenelg, the Colonial Secretary, no doubt playing a role in preparing the ground for the latter's famous despatch of December 1835 which reversed Governor D'Urban's annexation of the Conquered Territories. This was

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14 Lester, *Imperial Networks*, pp. 23ff.; J.S. Galbraith, *Reluctant Empire: British Policy on the South African Frontier 1834–1854* (Berkeley, University of California Press, 1963), pp. 74–5.

15 Cited in N. Mostert, *Frontiers: The Epic of South Africa's Creation and the Tragedy of the Xhosa People* (London, Jonathan Cape, 1992), p. 739.

16 British Parliamentary Papers, House of Commons Papers of 1837 (hereafter referred to as BPP) 425, *Report from the Select Committee on Aborigines*, 26 June 1837 (Proceedings of the Committee).

17 *Hansard's Parliamentary Debates, Volume XXIX*, Third edn. series (speech by Sir George Grey, 14 July 1835), p. 553, cited by P. Kapp, 'Grondbesit en Geweld in Suid-Afrika: Die Rol van 'n Parlementêre Komitee, 1835–1837', *Suid-Afrikaanse Historiese Vereniging*, Pretoria, 6–8 Jule 1997, p. 6.

18 Dr J. Philip, *Researches in South Africa*, 2 volumes (London, Duncan, 1828).

19 See Mostert, *Frontiers*, p. 757; Galbraith, *Reluctant Empire*, p. 132.

followed by the appointment of Stockenström as Lieutenant-Governor responsible for implementing Glenelg's new Treaty System on the Eastern Cape frontier.

How did 'truth' and 'justice' function in Stockenström's evidence before the Aborigines Committee? What qualified him to give evidence as to 'the truth' about frontier conditions? What were the assumptions at work in his quest to establish this 'truth'? It will not be possible to provide a full and detailed analysis of all these questions, but we can make a start with exploring some of them by taking a closer look at his actual testimony. To begin with, we may note that Stockenström consistently presented his evidence to the Aborigines Committee, not as the private views of an individual based on personal experience and interests, but as the considered judgments of a responsible official formed in long service in the course of exercising his public duties: 'I had long served upon the frontier, and had, in my own mind, made up my opinion as to the best mode of regulating the affairs of the frontier, in order to afford protection to the colonists and to the Caffres, and other native tribes.'<sup>20</sup> As such an experienced official, he could claim to have direct knowledge of the actual 'facts of the case'; his testimony did not depend on hearsay or other indirect means.<sup>21</sup> He presented himself, first and last, as a government man, a public servant whose duties were owed to the general public, not to any particular individual, group or faction. Though very much aware of the limited perspectives and special interests of various other parties – whether those of what he saw as the decent and respectable but uneducated Boers, or those of the military and commercial lobby with what he deemed their vested interests in frontier conflict and expansion, or even those of the missionaries setting out to act as 'friends of the natives' in the humanitarian cause – it was vital to Stockenström that his own official role and perspective had to be impartial and objective.

I abstained, from first to last, from joining in any thing that could by any construction be called combination, collusion or faction . . . Temptation enough there was; it is known how high party spirit runs at the Cape . . . I was determined to connect myself with no party whatever, but as a public servant to adhere to my duty to the Government . . . [and to] my duty to the public, as I considered these two duties by no means incompatible, but on the contrary, look upon them as one and the same thing.<sup>22</sup>

This set him apart from the various partisan views on frontier affairs, not only from those of the colonists implicated in dispossession and violence, but also from those of the missionaries serving the humanitarian cause:

There were missionaries who sometimes, as I conceived, were in the habit of making representations which they had received from natives, which they conscientiously believed to be perfectly true, but which often were not well founded; and I myself, *in my capacity as magistrate*, often had to refute representations which had been made.<sup>23</sup>

It was thus his extensive experience in this official role as an impartial public servant committed to the general good which qualified him to speak for 'the truth'. In practice this meant that he was primarily concerned with the truth or falsity of claims pertaining to individual cases. Unlike the spokesmen for colonial opinion, he was not much concerned with the truth or falsity of generalised collective representations (whether of the 'colonists', the 'settlers', the 'Boers' or the 'Caffres'); indeed, he set out to deconstruct such stereotypes as morally misleading and politically dangerous.<sup>24</sup> Nor did he claim to be able to speak on

20 British Parliamentary Papers, House of Commons Papers of 1836 (hereafter referred to as BPP) 538, Hearings 14/8/1835, p. 43.

21 BPP 538, Hearings 14/8/1835, p. 47: 'Question: Do you know all these facts of the case of your own knowledge – Yes, decidedly.'

22 BPP 538, Hearings 28/8/1835, p. 149.

23 BPP 538, Hearings 21/8/1835, p. 95 (italics added).

24 See BPP 538, Hearings 19/8/1835, pp. 86, 91.

behalf of, or in the interests of, others who were unable to speak up for their own truth. This was a fundamental difference in approach to the paternalist assumptions of those missionaries who, in the humanitarian cause, could speak as trustees on behalf of the indigenous peoples.<sup>25</sup> Indeed, this led to some angry exchanges and confrontations, not least with Dr Philip.<sup>26</sup> However, on reflection, Stockenström was able to concede that, in the colonial circumstances, the missionaries did have a valid role in their partisan and paternalist espousal of the truth:

Upon calm reflection, I think we shall be disposed to look on missionaries as placed in a peculiar position, where they might feel themselves called upon to act more particularly as the guardians of the interests and the pleaders of the cause of the coloured classes . . . Now there can be no doubt that often that feeling has been exercised with very great advantage, not only for the natives themselves but for the general benefit of the country, by exciting a sensation, causing discussion, rendering us more circumspect and eliciting truth, which will always prevail at last.<sup>27</sup>

This last point, that in the process of contestation truth will always prevail, as justification for the missionaries' partisan approach in the humanitarian cause, is reminiscent of John Stuart Mill's faith that truth is best served by allowing unhindered freedom of speech in the marketplace of ideas. It will also be familiar as justification for the adversarial nature of the Anglo-Saxon criminal justice system.<sup>28</sup> But it did not really reflect Stockenström's own assumptions about the role and significance of 'truth'. These assumptions are nowhere spelled out explicitly in his writings or testimony but must have involved a fundamental belief that establishing the true facts of the case is indispensable to sound policy and administering justice. In that sense they were probably more closely allied to the justificatory principles of the investigative procedures characteristic of Continental European criminal justice systems.

It will be obvious that there was a close connection between this notion of truth and Stockenström's conception of 'justice'. In his view, justice involved a strong commitment to the rule of law, impartially protecting the rights of all, both within the colony and on the frontier: 'The grand point I have in view is, that protection should be granted to both the colonists and to the neighbouring tribes; justice to all.'<sup>29</sup> There can be little doubt that such protective justice involved a strong retributivist dimension. That was also the inherent justification for the *reprisal system* as mainstay of official and unofficial colonial frontier policy at the time: in retaliation for cross-frontier cattle thefts colonial commandos would venture into Xhosaland, not only to recapture property but also to punish the culprits. However, reprisal was not the same thing as justice; indeed, Stockenström did not tire in arguing that in frontier conditions the reprisal system generated injustices and inevitably lead to the innocent being 'punished' for the guilty. But this did not mean that he was not committed to justice as retribution: especially on the frontier, justice required that the actual

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25 T. W. Lacquer, 'Bodies, Details and the Humanitarian Narrative', in L. Hunt (ed.), *The New Cultural History* (Berkeley, University of California Press, 1989), p. 180; Lester, *Imperial Networks*, p. 30.

26 Stockenström had a complex and ambivalent relationship with Philip. To begin with Philip had laid serious charges against Stockenström's alleged abuses of the aborigines to the Commissioners of Enquiry (*Autobiography, Volume 1*, p. 210). During the 1820s he had some formative encounters with Philip (*Autobiography, Volume 1*, pp. 243ff.) and they later effectively joined forces in connection with the Aborigines Committee (Lester, *Imperial Networks*, p. 35). However, during his evidence in the libel case in 1838, Stockenström was at pains to dissociate himself from Philip, 'a Gentleman with whom I have had the misfortune of entertaining the most acrimonious differences, between whom and myself up to this moment there is nothing more than the most common acquaintance; but to the rancorous unjust persecution of whom, I shall ever scorn to lend myself' (*Literal transcription of the Defence of Sir Andries Stockenström, June 6th 1838*, manuscript in the African Studies Library, University of Cape Town).

27 BPP 538, Hearings 21/8/1835, p. 95.

28 J.S. Mill, *On Liberty* (London, John W. Parker, 1859); D. Luban, *Lawyers and Justice: An Ethical Study* (Princeton, Princeton University Press, 1988).

29 BPP 538, Hearings 21/8/1835, p. 97.

guilty parties should be punished.<sup>30</sup> It was on this point that he parted company with the humanitarian cause as espoused by the missionaries: the demands of ‘justice’, in his view, were not necessarily the same as that of ‘humanity’, especially if the latter implied pardoning the guilty: ‘Whilst the voice of humanity is justly raised in favour of the long and cruelly oppressed blacks, that of justice and prudence reminds us that the whites also have a claim to protection; that they also have lives, property and rights to lose.’<sup>31</sup> As against the colonial reliance on the reprisal system, Stockenström thus insisted on the rule of law not the rule of men: ‘Under no circumstances whatever [should] a man have it in his power to become as it were the avenger of his own wrong, and to be entitled to obtain from the natives what he may have lost, or believe he has lost, or says he has lost.’<sup>32</sup> In his view the reprisal system was a major cause of the recurrent frontier wars and lent itself to gross abuses and atrocities.<sup>33</sup> As a case in point, Stockenström cited that of Zeko, a Xhosa chief claimed to have been killed in self-defence by a commando under Erasmus, which on closer investigation turned out to have involved the cold-blooded shooting of unarmed men in the course of a ‘compensatory’ cattle raid.<sup>34</sup> On the other hand, as against the humanitarian pleas for leniency to the Xhosa for their attacks and raids on the colonists, he took an equally hard-line stand: ‘Very conscientious men have often criticised my system as too bloody; but I felt that I had also to protect the colonists against murderers and plunderers ... I never, in my whole life, encouraged crime by misapplied mercy to a gang of known robbers and murderers.’<sup>35</sup> As a matter of principle, justice thus demanded strict retribution; even-handed and impartial punishment of the guilty. While the innocent had to be protected by due process, there could be no pardon or leniency for guilty perpetrators. Yet such just punishment was not simply an end in itself; in the final analysis, it served the end of protection: ‘I want justice and security for all parties.’<sup>36</sup> Conversely, leniency did not only mean that the guilty went unpunished but that the consequences were at the expense of lack of protection of the innocent and the weak. Accordingly, Stockenström rejected the humanitarian argument of

turning the tables, as it has been called, and allowing those tribes to murder and plunder with impunity ... by preventing the colonists from protecting their lives and property against those outrages. Such a system could only end in the extermination of the weaker party, and a mistaken humanity would be found the height of cruelty at last.<sup>37</sup>

This synthesis of principled and pragmatic justice as a basis for frontier policy did not accord with the humanitarian approach of Dr Philip, but it appealed to the political instincts of Lord Glenelg, the Colonial Secretary, and by the time of his last appearance before the Aborigines Committee Stockenström had already been appointed as Lieutenant-Governor

30 See Stockenström, Memoir drawn up as Commissioner-General, 31 December 1833 submitted as documentation at the Hearings of 21/8/1835, BPP 538, pp. 100–101; BPP 538, Hearings 28/8/1835, p. 148.

31 *Ibid.*, p. 100. Stockenström’s impartial and retributivist conception of justice accounted for his most controversial action in the eyes of humanitarians such as Dr Philip and Saxe Bannister, his expulsion of Maqoma from the Kar River Valley in 1829 (see Lester, *Imperial Networks*, pp. 35–6).

32 BPP 538, Hearings 21/8/1835, p. 97.

33 See Stockenström, Memoir drawn up as Commissioner-General, 31 December 1833, submitted as documentation at the Hearings of 21/8/1835, p. 100: ‘Nothing can be more pernicious or more destructive to peace and civilisation than the system of taking the cattle of the natives as a compensation for what is stolen or said to be stolen from the colonists, without due inquiry and the most incontestable proofs, and shooting those natives upon suspicion, or even without suspicion, merely because stolen cattle are traced or said (by some interested party) to be traced to their kraals’; see BPP 538, 19/8/1835, pp. 83ff.

34 BPP 538, 19/8/1835, p. 85ff.

35 BPP 538, Hearings 19/8/1835, p. 91.

36 BPP 538, Hearings 21/8/1835, p. 98.

37 Stockenström, Memoir drawn up as Commissioner-General, 31 December 1833, submitted as documentation at the Hearings of 21/8/1835, BPP 538, p. 100.

with primary responsibility for bringing peace at last to the Eastern Cape frontier by implementing Glenelg's and his own treaty system.

In the event, Stockenström's vindication at the Aborigines Committee proved short-lived; so far from returning to his home base invested at long last with the power and authority to give effect to his considered frontier policies, he found himself beleaguered, sabotaged and handicapped on all sides to such an extent that his new policies had to be aborted even before they could get off the ground. In a little more than two years Stockenström was back in England, having had to resign his position as Lieutenant-Governor. Stockenström's many difficulties were due not least to his evidence before the Aborigines Committee: in more ways than one, his principled stand for justice and truth were turned against him in the domestic politics of the colony and provided his opponents with the means to obstruct his administration at every turn. For our purposes, this raises a pertinent question: what does this unfortunate outcome say about Stockenström's views on truth and justice? Should it be regarded as an extraneous matter, a contingent historical conjuncture of personalities, circumstances, misunderstandings, acts and omissions all conspiring against a desperately unlucky Stockenström? Or could there be some internal connection between Stockenström's experiment with truth and justice on the frontier and this ironic, not to say tragic, outcome? Certainly there was a direct connection in that the reports of Stockenström's evidence to the Aborigines Committee provided his opponents back home with the political ammunition they then proceeded to use against him both in open attacks and even more in covert campaigns of rumour and innuendo.

In general, Stockenström's testimony that the reprisal system combined with negligence and abuses were the major causes of the frontier wars was represented as a betrayal of the colonial cause and a flagrant attack on the integrity of the colonists. His references to particular cases of colonial atrocities, such as the shooting of the unarmed Xhosa chief, Zeko, were disputed as untrue and deliberate distortions libelling the character of the colonists and calculated to serve his own political agenda.<sup>38</sup> In effect, the protagonists of partisan truth were translating Stockenström's claims to report the facts of the case impartially and objectively, without fear or favour to anyone, into their own partisan terms. In a sense this was only to be expected. To the extent that his critics and opponents openly canvassed partisan loyalties as the measure of truth, they actually confirmed his own diagnosis of what was at stake. And in so far as he now represented the full power and authority of the imperial state on the frontier, he should have been well-positioned to see his opponents off. Certainly, as a government man, and in his own terms of the rule of law, his position was as strong as could be wished. However, his opponents succeeded in turning the tables on him by indicting him personally in terms of the very ideals of truth and justice he so prominently professed before the Aborigines Committee: he was accused of having been guilty himself 25 years earlier of shooting an unarmed Xhosa man in the course of a frontier campaign in supposed vengeance for his own father's death at the hands of the Xhosa in a notorious frontier massacre. In a scurrilous and underhand campaign, sworn affidavits were collected, rumours spread in high places, tendentious commentaries circulated in the press, and popular meetings organised, all to the effect that Stockenström, the principled representative of justice and truth, had himself been the perpetrator of a brutal atrocity. In his own words, it was nothing less than 'an attempt to prove me a principal actor in the cruelties which I had denounced'.<sup>39</sup>

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38 See G.E. Cory, *The Rise of South Africa, Volume 3* (London, Longmans Green, 1919), pp. 286ff.; Galbraith, *Reluctant Empire*, pp. 138ff.; *The Autobiography of Sir Andries Stockenström, Volume II*, Chapter XXII, pp. 65ff.

39 Stockenström, *Literal Transcription of the Defence*, p. 4.

Even and especially as Lieutenant-Governor, Stockenström found himself unable to refute these charges. As far as he was concerned, the allegations were absolutely baseless, a cynical and libellous campaign with transparently partisan motives.<sup>40</sup> But how could he, in accordance with truth and justice and the rule of law, establish this in the public domain? He could not sit in judgement on his own case. Others advised him to ignore the matter for the scurrilous campaign it clearly was. But this did not undo the political damage, and left him exposed with his personal protestations of innocence in partisan conflict pitted against those who sought to impugn his integrity. On Stockenström's understanding of the nature of truth and justice and the rule of law, only a public and impartial 'court of honor and truth'<sup>41</sup> could establish his innocence. Accordingly, he initiated a libel case against Major Duncan Campbell, a longtime military officer on the frontier, whom he had identified as a primary agent of the scurrilous campaign against him.

But to subject himself to the course of the law was to find that in practice this did not quite measure up to the impartial and objective ideals of due process and the rule of law to which he was committed. A libel case was not conducted by an investigative magistrate, impartially and objectively determining what the true facts were; instead it was designed as an adversarial process, with each side required to argue the law and present the facts to its own maximal advantage. Moreover, the actual judges were all too human, in this case including old personal enemies of Stockenström, who found a way of clearing him of the alleged atrocity but deciding the libel case in favour of the defendants. For the Lieutenant-Governor, and his policy of implementing the Treaty System on the Eastern Frontier, this was a political calamity. His opponents celebrated with public meetings where Stockenström was burnt in effigy. For Stockenström and his experiment in truth and justice, this was effectively the end of the road. The law itself had let him down, justice had not been done, and to that a government man, taking his stand first and last on the rule of law, had no further answer. Even when he took the libel case on appeal, this time with better success, and even when he was eventually rewarded by the imperial government in London with a baronetcy, the political damage could not be undone. Becoming Sir Andries Stockenström might salvage some personal honour in the public eye, but the main project – that of making truth and justice the basis of frontier policy and so bringing an end to the endemic violence and pervasive injustice – had failed comprehensively.

Was that ever a coherent and realistic project? Did colonial and frontier conditions, more especially the still rudimentary development of the criminal and civil justice system and the absence of a more broadly shared rule of law culture, allow any real possibility for Stockenström's experiment with truth and justice? Is it conceivable that in these conditions a more tactful and diplomatic approach on his part might have had a realistic prospect of at least some success? And if not, what are the implications of that for the significance of taking a stand for 'truth and justice' on the colonial frontier? These are counterfactual and speculative questions which cannot really be answered in any rigorous sense. But what we can note is that the conflicts between Stockenström and his particular colonial adversaries provided a test case for the limits of the prevailing humanitarian discourse in the colonial context of the time. In the next section, I consider and compare this with another and more influential experiment with truth and justice in the South African context, that of Gandhi's discovery of *Satyagraha* at the beginning of the twentieth century.

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40 From his testimony in the libel case it is clear that Stockenström saw the issues without irony in stark dichotomous terms: 'All the brutal insolence and vulgar scurrility with which I have been assailed, all the falsehoods and contortions which base minds can concoct are unable to make me swerve from that line of conduct to which I stand pledged and which my conscience approves' (*ibid.*).

41 *Ibid.*, p. 1; see p. 4.

## Gandhi and the Politics of Non-Violent Resistance

The historical and political context in which Gandhi first articulated the notion and pioneered the strategy of *Satyagraha* or non-violent resistance in South Africa from 1906, was radically different from that of Stockenström on the colonial and pre-modern frontier in the 1830s. By the opening decades of the twentieth century South Africa was in the throes of rapid capitalist development and modern state-formation. The discovery of diamonds at Kimberley around 1870 and then of gold on the Witwatersrand in the 1880s sparked the crucial take-off of primary industrialisation; this mining revolution took place in conjunction with a shift to intensive agriculture and commercial farming. Following the military defeat of the Boer Republics in the South African War of 1899–1902, the conditions existed for the formation of Union in 1910 as a modern centralised state under white minority rule. By the end of the nineteenth century, the internal frontiers had also finally closed, bringing to an end more than 100 years of frontier wars. With the defeat of the Bambatha rebellion of 1906 (which Gandhi witnessed at close hand as a medical auxiliary) the period of violent resistance to conquest on the part of the indigenous communities had come to an end. But if conquest and white supremacy were, for the time being, irreversible historical realities, resistance was continued by other and political means.<sup>42</sup> For the new black elites, largely mission educated, who found themselves among the first to be incorporated into the colonial economy and subjected to the colonial state, it was an empowering discovery that resistance could be pursued even after conquest, but now by (non-violent) *political* means.<sup>43</sup> Paradoxically, such political action had to be premised on claiming the rights due to *British subjects*, thus taking colonial and imperial incorporation as a point of departure for protest and opposition.

This was the context in which Gandhi, too, operated, although to him as an Indian the wider imperial context of British rule was equally or even more important. Significantly the protagonists of British rule made universalist claims: theirs was not merely a matter of military dominance, economic power or cultural imperialism; what the British Empire represented was the furthest advance of Civilisation and Progress itself. With his Indian background, Gandhi was to challenge British and Western claims to have a monopoly on ‘civilisation’;<sup>44</sup> even so, he related positively to its universalist aspirations. From the perspective of Gandhi, as for many amongst the new Black elites, the notion of being a *British subject* was quite different from that of being subjected to local colonial domination: it represented the aspiration and promise of equal civil rights under the law. Above all, this universalist commitment of British rule had been adumbrated in the Proclamation of 1858 (‘the Magna Charta of India’) which in principle proscribed discriminatory provisions based on race or religion: ‘It is our further will that . . . our subjects, of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which may be qualified

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42 See J. Cell, *The Highest Stage of White Supremacy* (Cambridge, Cambridge University Press, 1982), p. 264, for the distinction between (violent) *primary resistance* to conquest itself and (political) *secondary resistance* on the basis of incorporation.

43 For a telling instance of this discovery, see the report of the Xhosa newspaper *Imvu Zabantsundu* of the reception given by a ‘large representative and important gathering of Natives’ to a deputation reporting back after making representations on the pass laws to the colonial parliament in Cape Town in 1889: ‘Today they have found a capital plan of campaign against the whites – to fight them by means of the law. . . . If a similar thing had been done when the guns were taken, war would have been avoided. . . . They have taught us a great lesson of which we had previously been ignorant. Whenever we felt aggrieved at what Government did to us we hurled the assegai, the result being orphans, but today a victory had been won although there were no orphans.’ (T. Karis and G. Carter (eds), *From Protest to Challenge: A Documentary History of African Politics in South Africa, 1882–1964, Volume 1: Protest and Hope, 1882–1934*, S. Johns (ed.), (Stanford, Hoover Institution Press, 1972), p. 16.

44 Parekh, *Gandhi’s Political Philosophy*, Chapter 1: ‘Critique of Modern Civilisation’ (MacMillan, Basingstoke, 1989); *Colonialism, Tradition and Reform: An Analysis of Gandhi’s Political Discourse* (New Delhi, Sage, 1989), pp. 26ff.

for by their education, ability and integrity, duly to discharge.’<sup>45</sup> Of course, in the Boer Republic of the Transvaal and in colonial Natal, Gandhi had found himself subject to blatantly segregationist and white supremacist policies, an experience which left him with few illusions regarding the political realities of local colonial domination. But these had been defeated by the forces of the liberal British Empire in the South African War. Henceforth, as a ‘British Subject’, Gandhi’s political and constitutional frame of reference was premised on the principle of equal rights and the rejection of any racial distinction in law (or ‘class legislation’ as it was termed at the time).<sup>46</sup>

It was this principle which Gandhi invoked in organising the Transvaal Indian community in the original *Satyagraha* campaign of protest against the discriminatory provisions of the segregationist Black Act of 1906. He was especially outraged that this discriminatory measure was being imposed, not by the former white supremacist South African Republic, but under the authority of the British administration, assumed to embody the epitome of modern progress and civilisation, and moreover that it was directed against the (modernising) Indian merchant class. Taking his stand expressly on the supposed rights of British subjects and on the universal values of ‘civilisation’, Gandhi saw the discrimination inherent in this segregationist measure as amounting to a denial of the very possibility of equal citizenship: ‘It is designed to strike at the very root of our existence in South Africa. It is not the last step, but the very first step to hound us out of the country.’<sup>47</sup>

What, then, was the significance and function of Gandhian *Satyagraha*, or ‘truth-force’, in this context?<sup>48</sup> In the Gandhian literature this has often been mystified as a supposedly purely moral or even religious force, the *spiritual* power of ‘suffering love’. Gandhi did, of course, insist that the committed and principled non-violence of *Satyagraha* was quite different from the merely tactical non-violence of passive resistance, deemed a residual strategy of the weak and powerless<sup>49</sup>. As a political strategy, though, as Bhiku Parekh has shown in his analysis of Gandhi’s political thought, the practice of *Satyagraha* relied on a much more complex dynamic than simply his professed faith in the spiritual and non-coercive power of love and suffering: ‘Although often presented as a simple-minded moral method relying on the power of the soul, Gandhi’s *Satyagraha* involved an ingenious and complex tripartite blend of rational discussion, self-imposed suffering and political pressure.’<sup>50</sup> If the moral and spiritual force of self-imposed suffering and love was all-powerful, numbers would not have mattered. Yet, although Gandhi, by personal example and individual sacrifice such as his famous fasts, did more than anyone else to demonstrate the potential impact of a single individual acting on his own, this was not what *Satyagraha* as political and popular resistance was about. ‘Gandhi realised that [numbers did matter], for he could not exert any pressure on the government

45 Cited in J.H. Stone, ‘M. K. Gandhi: Some Experiments With Truth’, *Journal of Southern African Studies*, 16, 4 (1990), p. 727, n. 16.

46 The roots of the injunction against ‘class legislation’ and the hostility to partial or special laws may be traced back to seventeenth-century English common law in its invalidation of royal grants and monopolies and other special privileges and consequent insistence that legislation apply equally to all subjects. During the first part of the nineteenth century, American state courts developed a similar jurisprudence culminating in the Fourteenth Amendment and Equal Protection Clause. See M. L. Saunders, ‘Equal Protection, Class Legislation and Color Blindness’, *Michigan Law Review*, 96 (1997).

47 M.K. Gandhi, *Satyagraha in South Africa* (Ahmedabad, Navijan Trust, 1928), p. 101.

48 Perhaps the clearest interpretation of the meaning of this key Gandhian term is provided by Bhiku Parekh: ‘*Satya* means truth ... and *agraha* ... means insisting on something without becoming obstinate or uncompromising. When the two terms are combined there is a beautiful duality of meaning, implying both insistence *on* truth and *for* truth. ... Gandhi’s theory of satyagraha is at once both epistemological and political, a theory of both knowledge and action’ (*Gandhi’s Political Philosophy*, p. 143).

49 Gandhi, *Satyagraha in South Africa*, pp. 111–15.

50 Parekh, *Gandhi’s Political Philosophy*, p. 149.

without mass support.<sup>51</sup> *Satyagraha* was conceived, not as an individual moral stand, but as a mode of political action. It was, in fact, a strategy for popular resistance shrewdly premised on the commitment of the modernising state to universal moral principles and generalised political standards, and it was designed to transform these dialectically into resources for protest and resistance. In due course, more especially in the later manifestations of *Satyagraha* after his return to India, Gandhi

felt it necessary to redefine *Satyagraha* and to add to its armoury the novel and highly effective ‘weapons’ of social, economic and political boycott, civil disobedience, non-payment of taxes, non-violent raids, strikes and other forms of non-co-operation, none of which relied on suffering love alone and which were all deigned to ‘compel’ and ‘force’ the government to listen and negotiate.<sup>52</sup>

Still, the question remains: what was involved in Gandhi’s original discovery of *Satyagraha* or ‘truth-force’? What exactly did his South African experiment with truth entail?

Here we may best turn to Gandhi’s own autobiographical account in *Satyagraha in South Africa*, written over two decades later, of this major ‘discovery’. Significantly, Gandhi did *not* recount this as his own profound insight which he then imparted to his followers. His was not the position of a Leninist vanguard leadership in possession of sound theory or ‘scientific’ truth which could then give direction to popular action under the correct revolutionary conditions. On the contrary, Gandhi stressed that communal action *preceded* his epochal discovery and that he actually gained his insight by reflecting on the implications of spontaneous popular protest actions: ‘I must confess that even I myself had not then understood all the implications of the resolutions I had helped to frame; nor had I gauged all the possible conclusions to which they might lead.’<sup>53</sup> On Gandhi’s account the crucial development, during a protest meeting against the proposed Asiatic Law Amendment Ordinance in September 1906, was the proposal for a *collective pledge* to God that they would not submit to this discriminatory law and were prepared to suffer the penalties for such non-submission. In Gandhi’s words,

When [it] . . . came to the solemn declaration, I was at once startled and put on my guard. Only then did I fully realize my own responsibility and the responsibility of the community . . . I thought out the possible consequences of it in a moment. My perplexity gave way to enthusiasm. . . And although I had no intention of taking an oath or inviting others to do so when I went to the meeting, I warmly approved of [this] suggestion. But at the same time it seemed to me that the people should be told of all the consequences and should have explained to them clearly the meaning of the pledge.<sup>54</sup>

On his own account, it was this experience of participating in a communal pledge which led to Gandhi’s profound ‘discovery’ of the potential for ‘truth-force’ as a means to popular protest.

But what was so special about the communal pledge? As Gandhi himself observed, collective resolutions were nothing uncommon, and they tended to be honoured in the breach as much as the observance. The special element was that this pledge was to take the form of an oath to God. But, as Gandhi also noted, in principle there should be no difference between an oath in God’s name and any collective resolution taken to be absolutely binding. Oaths, whether secular or religious, committed one to a particular course of action on pain of violating one’s personal integrity. Collective pledges committed all those involved to collective action at the risk of their communal integrity. *If* such a collective pledge would be entirely voluntary, and *if* those involved would regard their solemn commitment as wholly binding no matter what

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51 *Ibid.*, p. 152.

52 *Ibid.*, pp. 152–3.

53 Gandhi, *Satyagraha in South Africa*, p. 102.

54 *Ibid.*, pp. 103–4.

the consequences or penalties might be, then this would unleash the power of committed and self-directed collective action. Accordingly, Gandhi made a special point about warning the meeting about the direst possible consequences of the proposed pledge:

We will only provoke ridicule in the beginning. . . . We may have to go to jail, where we may be insulted. We may have to go hungry and suffer extreme heat and cold. Hard labour may be imposed on us. We may be flogged by rude warders. We may be fined heavily and our property may be attached and held up to auction . . . . Opulent today we may be reduced to abject poverty tomorrow. We may be deported. Suffering from starvation and similar hardships in jail, some of us may fall ill and even die.<sup>55</sup>

If such a collective pledge were taken to be absolutely binding because of the principles of justice and truth involved, it would unleash a moral and political force trumping mere pragmatic or strategic considerations: 'So long as there is even a handful of men true to their pledge, there can only be one end to the struggle, and that is victory.'<sup>56</sup> This may be characterised as Gandhi's version of the contemporary realisation, shared by other members of the new political elites, of the emerging anti-colonial movements at the time, that popular struggle and resistance need not only take the form of violence, but could be even more effective as *political*, i.e. non-violent, action. In latter-day terminology, what the communal pledge of that popular protest meeting of the Transvaal Indian community in 1906 to the 'Black Act' had revealed to Gandhi was a novel means to effect collective *empowerment* or *conscientisation*.

Still, what did all this have to do with 'truth'? Surely the power unleashed by committed and self-directed communal action could be put to all kinds of uses, both good and bad? As far as this goes, there is no difference between the pledge of the *satyagrahi* and nationalist movements, vigilante actions or any kind of populist campaign. Here we touch on a fundamental ambivalence in Gandhi's *Satyagraha* campaigns, certainly in the South African context. On the one hand, his approach was explicitly based on general notions of civic rights, equality and justice. The collective pledge committing them to the *Satyagraha* campaign was directed precisely to claiming the equality of rights and treatment due to Indians, too, as 'British subjects' according to the state's own professed constitutional principles. The logic of this appeal implied that the same civic rights and equality should also be due to all other 'British subjects', not least to the majority of Africans. On the other hand, in the actual South African context of the time, Gandhi's *Satyagraha* campaigns were specifically limited to the minority Indian community, and it remains an enduring 'scandal' of the Gandhian literature that he did *not* extend his concerns with equal civil rights across the board to other racial, ethnic and class groupings as well. Instead, the *Satyagraha* campaigns were infused with an unmistakable proto-nationalist fervour in which particularist concerns with India's 'honour' vied with the universalistic values of justice and equality. It is not helpful to blame this on defects of Gandhi's own personality, or on his championing of the class interests of the Indian merchant elite.<sup>57</sup> A fuller analysis must take into account that the general civic culture implied by Gandhi's vision, and required for his polemical strategy, did not (yet) exist under the actual conditions of South African colonial society at that time. Certainly, there was hardly any question of effectively shared institutions of civil society which might have provided the basis for such a more general civic culture. As a matter of political strategy, however, Gandhi's version of political struggle and constitutional protest remained explicitly premised on the liberal principles of justice and equality supposedly involved in the very notion of being a 'British subject', thus enabling him to claim the moral high ground of justice

<sup>55</sup> *Ibid.*, p. 106.

<sup>56</sup> *Ibid.*

<sup>57</sup> See M. Swan, *Gandhi: The South African Experience* (Johannesburg, Ravan, 1985).

and truth. In the final analysis, he set out to claim that status of shared humanity and equal civic rights which the British Empire as a liberal and modern state professed to recognise in principle, if decidedly not yet in practice. In this respect, the *satyagrahis*' self-directed collective action was circumscribed by the basic principles of law and civilisation itself, on which it also based its ultimate appeal. Anticipating the defining paradox of civil disobedience, this transgression of the law was not criminal since it was motivated and justified in the name of a higher civil obedience to the law.

It should be clear that the Gandhian notion of *Satyagraha*, thus understood, shared some basic features of Stockenström's commitment to the rule of law and equal rights. But there is also a world of difference. Above all, while Stockenström, as a government man, could not conceive of any other agent than the state giving effect to justice and truth, Gandhi was concerned with the roots of popular action in resistance against the injustices perpetrated by the state and its local agents. The occasion and motivation for Gandhi's political engagement had been his direct and personal experience of official racist discrimination in South Africa, most famously in the formative incident when, as young man, he was excluded from the first class train compartment in Pietermaritzburg. His moral outrage at this insult to his human and civil dignity aroused an enduring sense of injustice: 'The iron entered his soul. From that hour he refused to accept injustice as a part of the natural or unnatural order in South Africa.'<sup>58</sup> As Barrington Moore has perceptively argued, a sense of injustice cannot simply be assumed as part of 'natural morality' – indeed, in practice, harsh and enduring suffering tends to acquire a perverse moral authority. Rather, moral outrage and a sense of injustice, on the part of an individual or a collectivity, are in fact historical discoveries when, in particular circumstances, an implicit social contract is violated.<sup>59</sup>

At one level, Gandhi's practice of *Satyagraha* amounted to a methodology for mobilising moral outrage and consolidating a historical sense of injustice, occasioned by the racist discrimination inherent in segregationist measures, as the basis of popular resistance. His 'discovery' was that, to address such injustices, it was not necessary to look to the power of the state only; popular action, too, was a basic source of power, indeed more fundamental than that of the oppressive state itself. In Parekh's summary:

His reflections on his South African experiences led him to several interrelated 'discoveries'. First, all power was ultimately derived from the victims. It was because they thought and behaved *as if* they were powerless that their masters acquired power over them. Second, all systems of oppression ultimately depended on and were maintained by the co-operation of their victims. Third, the oppressed were a party to and responsible for their oppression and never wholly innocent. Fourth, no system of oppression could come into being let alone last unless it was rooted in the minds and hearts of its victims.<sup>60</sup>

But popular action by itself, even harnessed under the discipline of *Satyagraha*, and certainly in the absence of anything like a general civic culture, could not establish justice; that was the task and responsibility of the state. Through *Satyagraha* or non-violent popular resistance the victims of oppression and injustice demonstrated their inherent power, but essentially this served as a countervailing force appealing to the state to administer proper justice in recognition of equal civic rights.

What, then, was the meaning of *justice* in the Gandhian perspective? Significantly, although resistance to *injustice* was central to Gandhi's project, *justice* as a positive objective did not at all feature prominently in his thought or discourse. Certainly justice as retribution

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58 B.R. Nanda, *Mahatma Gandhi: A Biography* (New York, Woodbury, 1965), p. 53.

59 B. Moore, *Injustice: The Social Bases of Obedience and Revolt*, pp. 23ff., 458ff. (London, MacMillan, 1978).

60 Parekh, *Gandhi's Political Philosophy*, p. 154.

was hardly compatible with Gandhian premises. Amongst others this followed from his fundamental critique of violence. As Parekh explains,

in Gandhi's view the use of violence denied the basic epistemological fact [that men perceived truth differently ... and that all knowledge was fallible and corrigible]. In order to be justified in taking the extreme step of harming or killing someone, one must assume that one is *absolutely* right, the opponent *totally* wrong and that violence would *definitely* achieve the desired result. The consequences of violence were irreversible in the sense that a life once terminated or damaged could never be revived or easily put together. And irreversible deeds required infallible knowledge to justify them, which was obviously beyond human reach. Violence was doubly flawed: it assumed infallibility and ruled out corrigibility.<sup>61</sup>

Though this critique of violence was primarily intended to rule out political violence in popular resistance, it evidently applies as well to the coercive and violent aspects of punishment as required by retributive justice. In Gandhi's view, justice required restoration of the equal rights and civic dignity of the oppressed, but it did not require punishment of the guilty.<sup>62</sup> More generally, it is clear that the Gandhian approach would have difficulty in accommodating the basic adversarial nature of the criminal justice system. Although *Satyagraha* itself involved a sophisticated dialectical methodology of resistance, it was premised on fundamental assumptions of a shared humanity. In the words of Parekh:

Even as every community required a widespread sense of justice to hold it together, it presupposed a deeper sense of shared humanity to give meaning and energy to its sense of justice ... The slow and painful task of cultivating and consolidating the sense of humanity and thereby laying the foundations of a truly moral community was an essential collective responsibility, which the *satyagrahi* took it on himself to discharge ... He overcame his opponent by refusing to see him as such and by appealing instead to his sense of decency and their common humanity.<sup>63</sup>

Should they manage to achieve this essentially restorative aim the proponents of *Satyagraha* could hardly then go on to insist on retribution and punishment for the adversary now reconciled in a shared civic humanity.

What, then, should happen to the state agents who had been responsible for degrading acts of discrimination and even for political atrocities against the oppressed? What would restorative justice require with regard to the perpetrators of past injustice and gross violations of human and civic rights? At this point, the limitations of the Gandhian approach begin to become evident: it is so exclusively focused on the perspective of resistance from below, so much concerned with the ways and means of harnessing the power of the victims and of the oppressed, that issues of state action and public policy hardly come into view. In a sense, certainly during his early period in South Africa, Gandhi did not look beyond the context of resistance itself, and did not address the fundamentally different questions which would confront a postcolonial state, also in relation to how it would deal with its past. As Parekh shows, some of these problems started to exercise Gandhi during his later Indian period, but even so his theory of the state remained slight and underdeveloped.<sup>64</sup> In short, Gandhi's notions of justice and truth did not yet address the special problems of *transitional justice*. These would, of course, become central to the TRC process in the closing years of the twentieth century.

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<sup>61</sup> *Ibid.*, p. 147.

<sup>62</sup> See *ibid.*, pp. 130ff.

<sup>63</sup> *Ibid.*, pp. 149–50.

<sup>64</sup> *Ibid.*, Chapter 5, 'Theory of the State'.

## The TRC's Inconclusive Experiments with Truth and Justice

No direct line can be traced between Gandhi's experiments with truth in South Africa during the opening decades of the twentieth century and the TRC process, a founding action of the 'new South Africa', in its closing years (although some have commented on possible analogies with, or influences on, such key figures as Mandela and Tutu).<sup>65</sup> Remarkably, though, the notion of 'truth' once more came to assume a central significance in post-1994 South African politics and public life with the TRC process. Of course, the political and historical context, and hence the object and significance of this new experiment with truth, was, once again, quite different. Stockenström had been concerned with the principles of frontier policy in the colonial context of pre-modern South Africa, and Gandhi introduced and developed new forms of non-violent popular resistance in the dual context of imperial rule and modern state-formation. For its part, the relevant contexts of the TRC process were those of democratic transition and of transitional justice. One indication of this difference is that, this time round, truth and justice were especially linked to the notion of 'reconciliation'. 'Dealing with the past', in particular with its divisive legacies of conflicts and political violence, was as much of a concern as the present or the future. 'Reconciliation' both looked backwards to the struggle to end apartheid and white minority rule, and also looked forwards to the founding and consolidation of a new democratic, inclusive and more open and just society. Truth and justice in the TRC process required full disclosure of the political atrocities of the past as a means to open the way for a more democratic future.

The dramatic transition of the 1990s marked a major watershed in South African history, ostensibly bringing to an end centuries of colonial and white minority rule. At the same time, and in comparative terms, the South African transition was by no means unique: in what has been termed the 'Third Wave' of democratisation, a range of other countries in Southern Europe, Latin America, Eastern Europe and different parts of Africa experienced similar transitions from authoritarian rule.<sup>66</sup> One major problem shared by these political transitions was that of *transitional justice*, i.e. how the new civilian and democratic regime should 'deal with the past', specifically with the political atrocities and gross human rights violations associated with the former regime, to ensure that these would never happen again ('Nunca Mas!'). It was in this context that the novel institution of a 'Truth Commission' arose. Previously the main options had been that of (retributive) 'Justice' (i.e. the killers and torturers should be prosecuted and punished, as in the Nuremberg Trial), 'Amnesty' (i.e. the perpetrators of political atrocities should be formally pardoned and indemnified to clean the slate), or 'Amnesia' (i.e. the violence and divisive conflicts of the past should be forgotten, if not forgiven, as in the case of Spain).<sup>67</sup> The option of a 'Truth' process provided a distinctive new alternative as a means towards transitional justice. On this approach, past political atrocities should indeed be deliberately and publicly addressed (and not forgotten or suppressed in public life); this could be done by providing the victims of these past atrocities with public fora to tell their stories, identifying the perpetrators they hold accountable; however, prosecution and

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65 See, for example, H. Adam and K. Moodley, *South Africa Without Apartheid: Dismantling Racial Domination* (Berkeley, University of California Press, 1986); for Mandela's own account of the influence of the Gandhian tradition, see *Long Walk to Freedom: The Autobiography of Nelson Mandela* (Randburg, Macdonald Purnell, 1994), pp. 107, 119, 146–7ff.

66 S. Huntington, *Third Wave: Democratization in the Late Twentieth Century* (Norman, University of Oklahoma Press, 1990).

67 For a succinct account of the alternative options, arguments and perspectives involved in the 'Torturer's Dilemma', see Huntington, *Third Wave*, Chapter 3; more generally, see N.J. Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, 3 volumes (Washington, U.S. Institute of Peace Press, 1995).

punishment of the perpetrators should not be conceived as the primary vehicle for dealing with the past (indeed the truth commission approach was compatible with the perpetrators being granted amnesties conditional on full disclosure, in effect an exchange of truth for indemnity). In so far as Truth Commissions thus provided an alternative to the criminal prosecution and punishment of the perpetrators of political atrocities on the model of the Nuremberg Trials they, like the option of amnesty, were understood by many as an alternative to (retributive) justice itself, leading to heated normative debates along the lines of 'Justice *versus* Truth'.<sup>68</sup> Indeed, it may be argued that truth commissions as a distinctive approach to transitional justice reflected a double choice for 'truth' rather than (retributive and social) 'justice'. Firstly, truth commissions typically gave priority to gross human rights violations rather than to systemic injustices, and thus diagnosed the primary moral need as that of having to deal with victims and perpetrators, rather than, for example, with beneficiaries and bystanders or collaborators. This implied a choice for the imperatives of individual justice and truth over those of social or distributive justice. Secondly, and within this narrower focus on gross human rights violations, truth commissions differed from tribunals in giving priority to hearings where the victims can tell their own stories, rather than to the procedures of criminal justice seeking the prosecution and punishment of perpetrators.

The South African TRC process thus did not so much amount to a revival of the Gandhian tradition; rather it was informed by, and indeed modelled on, the Latin American Truth Commissions functioning in similar contexts of transitional justice. More specifically, the immediate political context had been provided by the Interim Constitution, reflecting a negotiated settlement rather than any definite overthrow of the prior regime, as the transitional mechanism to a new democracy. This ruled out any prospect of criminal prosecutions on the Nuremberg model; instead it required an implicit and explicit pact on the need for amnesty. During the closing stages of the constitutional negotiations at Kempton Park in December 1993, a determined attempt was made by negotiators of the Nationalist Party government and representatives of the security forces to have a blanket political amnesty included in the constitutional agreement itself. This was strenuously resisted by the ANC delegation, in particular, and the outcome was the compromise contained in the remarkable 'Post-amble' to the Interim Constitution, i.e. the final clause on National Unity and Reconciliation. Its central theme, in the words of Lourens du Plessis, was this: '*for the sake of reconciliation we must forgive, but for the sake of reconstruction we dare not forget*'.<sup>69</sup> To this end the Interim Constitution determined that 'in order to advance ... reconciliation and reconstruction, *amnesty shall be granted* in respect of acts, omissions and offences associated with political objectives, committed in the course of conflicts of the past'.<sup>70</sup> But it also stipulated that the tribunals and procedures for providing such amnesty should be determined by Parliament, and in due course this led to the establishment of the Truth and Reconciliation Commission, including a conditional amnesty process. Significantly, the mandate of the TRC did not extend to the past injustices of apartheid in general, but focused specifically on the need to address gross human rights violations – 'the killing, attempted killing, abduction, severe ill-treatment or torture' arising from past political conflicts. This reflected a specific moral and political priority for truth and justice in relation to individual victims and perpetrators of political atrocities as against the broader imperatives of social and systemic justice. Implicitly the prioritisation of gross human rights violations could not

68 See, for example, R. Rotberg and D. Thompson (eds), *Truth v Justice* (Princeton, Princeton University Press, 2000); for the classic exchange on the case for prosecution and punish versus the arguments for amnesty and truth, see the articles by D. Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' and C. Nino, 'The Duty to Punish Past Abuses of Human Rights Put into Context: the Case of Argentina', both in Kritz, *Transitional Justice*, Volume 1, pp. 374–438.

69 In A. Boraine *et al.*, *Dealing with the Past* (Cape Town, IDASA, 1994), p. 109.

70 *Interim Constitution of the Republic of South Africa*, Pretoria, 1994.

but relegate the systemic, institutionalised and structural aspects of apartheid – including the pass laws, forced removals, Bantu education, etc. – to a contextual status. Truth and justice, as Mahmood Mamdani argued forcefully, were basically conceptualised in relation to the perpetrators and victims of specified political atrocities, a conceptualisation which tended to exclude the collaborators with, and beneficiaries from, the social injustice and systemic inequalities of apartheid from its purview.<sup>71</sup>

At the time, the TRC's necessary operating myths – articulated in terms of 'truth', 'reconciliation', 'healing', 'restorative justice', etc. – tended to be taken at face value by supporters and critics alike. But these did not always provide reliable guides to the TRC's actual practices of determining the truth as they evolved over time. In the sustained public debates along the 'Justice *versus* Truth' lines, the TRC's critics by and large continued to assume that the TRC itself, of course, represented the polarity of 'truth' rather than 'justice'. However, the Commission's actual practice and stated position were much more complex. In its eventual Report, the TRC explicitly distinguished four different senses of truth: (1) *factual or forensic truth*; (2) *personal or narrative truth*; (3) *social or dialogue truth* and (4) *healing or restorative truth*.<sup>72</sup> Of these, the first is most familiar, and it was also the sense on which hostile critics insisted when they highlighted specific factual errors, partisan interpretations, or serious omissions in the Commission's work.<sup>73</sup> The problem here is that since the determination of factual or forensic truth is necessarily central to the procedures of the court, and so is closely linked to the objectives of criminal justice, it is not so clear in what ways such truth is supposed to be related to 'reconciliation'. And, indeed, truth in this sense was by no means the sole or primary concern of the TRC process. Especially during its early stages the TRC process involved significant and creative initiatives relevant to the latter and less familiar senses of 'narrative', 'social' and 'restorative' truth. Thus the victims' hearings, as a systematic and sustained effort to provide a public context in which people could 'tell their own stories' within the ambit of a general project of 'dealing with the past', evidently related more to the notion of (2) *narrative truth*. Certainly such hearings were not designed to meet the evidentiary requirements of forensic and factual inquiry. Other initiatives, such as those in which victims and perpetrators were brought face to face in attempts at personal or communal reconciliation, could perhaps be related to (3) *social or dialogue truth* and (4) *healing or restorative truth*. But in the amnesty hearings it was once more the adversarial procedures and legal rules of evidence of the criminal justice system which held sway. And when it finally came to the TRC Report, it was the notion of *factual or forensic truth* which predominated in the Commission's overriding concern with the making of perpetrator findings. Ironically, it seems to have gone largely unnoticed that, in the end, the TRC itself thus chose for a version of 'justice' rather than 'truth'. More specifically, in making *perpetrator findings* the central objective of its five-volume Report, the Commission committed itself to a fundamentally different construction of truth than that which had informed earlier phases of the TRC process, in particular that of the victims' hearings. Ironically the Commission, which had been much castigated for supposedly neglecting the demands of justice (i.e. the need to prosecute and punish perpetrators) in favour of the quest for truth and reconciliation (through the victims' hearings and the amnesty process), in the end agreed with its critics and came down on the side of 'justice' rather than 'truth'. The quest for 'justice', though not in the full-blooded guise of criminal prosecution and

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71 M. Mamdani, "When does Reconciliation Turn into a Denial of Justice?" The Truth According to the TRC', in I. Amadiume and A. An-Ma'in (eds), *The Politics of Memory* (Pretoria, HSRC, 2000), pp. 176–83.

72 *TRC Report, Volume 1*, Chapter 5, 'Concepts and Principles', pp. 30–45.

73 See, for example, A. Jeffery, *The Truth About the Truth Commission* (Johannesburg, South African Institute of Race Relations, 1999).

punishment, but in the minimalist sense of ‘perpetrator findings’, thus proved central to the TRC Report’s determination of ‘truth’.

So what, then, were the outcomes of the TRC’s experiments with truth and justice? Now that the TRC process has run its course and it becomes possible to gain a better perspective on the tensions between its stated objectives and the actual outcomes, it also becomes clear that the constitutive moral conception of the TRC cannot readily be fixed in a single or unambiguous sense. Instead, we find that in practice the meaning and interpretation of ‘truth’, ‘justice’ and ‘reconciliation’ shifted over time as different sets of agents became involved at different stages of the overall process, implicitly locating these within different framing narratives. To the extent that this happened, the TRC’s initial notions of truth, justice and reconciliation were extended, complemented and contested in various ways by related and alternative conceptions.<sup>74</sup> We may distinguish at least four different stages in this development:

- During the preparatory and planning stages of the TRC, the *political* sense of reconciliation, i.e. of elite pacts rooted in the experience of negotiated settlements and implicitly understood in terms of a master narrative of future *nation-building*, was most pronounced.
- During the early stages of the Commission’s actual work, a pronounced *religious and therapeutic* sense of reconciliation through the disclosure of truth, i.e. of some transforming process of personal, social and spiritual renewal, became more salient. The appointment of Archbishop Tutu as Chairperson, along with a number of religious leaders and others from the counselling professions as Commissioners, led to the increasing prominence of a religious and therapeutic discourse and a pronounced symbolism of ‘healing’ and ‘reconciliation’.
- More generally, the victims’ hearings during the first year of the TRC provided a public space for a range of individuals to ‘*tell their own stories*’, rooted in diverse local and communal settings, and to have these officially acknowledged. At the same time, the sustained disclosure, through the TRC process itself, of so many atrocities tended to reinforce a countervailing popular narrative demanding (retributive) ‘justice’ and punishment.
- However, during its later stages, as the *quasi-judicial and adversarial procedures* of the amnesty hearings began to take centre stage, the TRC’s practice shifted from acknowledging truths as a means of reconciliation to the imperatives of observing the *procedural rights* of those implicated by the disclosures and allegations in the course of this process. At other hearings, too, lawyers and legal procedures played an increasingly prominent role.
- Finally, with the publication of the TRC Report itself in 1998,<sup>75</sup> it emerged that, in the Commission’s own view, the victims’ hearings had been only one phase and had increasingly been subordinated to the methodology of systematic data-processing and corroboration of statements as a basis for the objective of making *victim and perpetrator findings*.<sup>76</sup> Instead of

74 See also G. Simpson, ‘A Brief Evaluation of South Africa’s Truth and Reconciliation Commission: Some Lessons for Societies in Transition’ (Johannesburg, Centre for the Study of Violence and Reconciliation, 1998); D. Posel and G. Simpson, ‘The Power of Truth: South Africa’s Truth and Reconciliation Commission in Context’, in *Commissioning the Past: Understanding South Africa’s Truth and Reconciliation Commission* (Johannesburg, University of Witwatersrand Press, 2002), pp. 1–16.

75 Strictly the five volumes published in 1998 constituted only an Interim Report in view of the ongoing amnesty hearings which continued after the Commission itself ceased its operations when its mandated term expired. Three additional volumes were eventually submitted to the government in 2003 but these do not substantially effect the analysis of the TRC’s practice of perpetrator findings given below.

76 These underlying and invisible bureaucratic procedures were at the core of the TRC process but have hardly figured in public debate and discussion. They are only now being made the object of investigation by comparative anthropologists whose critical perspective will be invaluable in assessing the TRC’s practice of determining truth and justice. See R.A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge, Cambridge University Press, 2001), Chapter 2, ‘Technologies of Truth: The TRC’s Truth-Making Machine’, pp. 33–61; L. Buur, ‘Monumental Historical Memory: Managing Truth in the Everyday Work of the South African Truth and Reconciliation Commission’, in Posel and Simpson (eds), *Commissioning the Past*, pp. 66–95.

achieving closure to the TRC process, this served to bring the Commission into confrontation with the ANC as well.

The complex history of the TRC, including the different interpretations of ‘truth’, ‘justice’ and ‘reconciliation’ articulated and developed by the different sets of agents involved at the various stages outlined above, reflects its ambivalent position and role between state and civil society at this crucial moment of transition in South African history. It was vital to the whole enterprise of the TRC that it was instituted as an official commission by the state, not only in view of the specific powers and resources this granted, but in terms of its basic standing. Had the TRC been only a civil society initiative, operating under the auspices of the South African Council of Churches, for example, or of an international human rights coalition, its role and status both in relation to the state and to individual victims and perpetrators would have been quite different – even if it could somehow have obtained equivalent resources. A civil society-based Truth Commission would have been able to speak ‘truth’ *to* ‘power’, more especially directed to the former regime and the old apartheid state, but it would not have been mandated to speak ‘truth’ or ‘justice’ to the victims and perpetrators *on behalf of* the new democratic state. As a Parliamentary Commission, and founded in the provisions of the Interim Constitution, it was invested with a democratic and political legitimacy in speaking of ‘justice’ and ‘truth’ which no civil society initiative could ever achieve.

At the same time, the TRC was not part and parcel of the regular state apparatus. Not only was the TRC an independent commission but unlike, say, the Human Rights Commission, it was not founded as a permanent body: as a transitional institution, it had a limited mandate and its specific objectives had to be achieved within a fixed time span. For this transitional moment, the TRC was thus empowered to speak of ‘truth’ and ‘justice’ both *on behalf of* the new democratic state as well as *to* the state (both the prior regime and its new incumbents).

In practice the TRC’s delicate and unusual positioning in relation to both civil society and the state brought about a complex interplay between a range of different forces and actors. At some stages, it allowed a strong infusion of religious and therapeutic discourses from civil society-based institutions and movements, most notably represented by the charismatic figure of Archbishop Tutu, into the official practices and interventions of the Commission. At other stages, it involved the development of quasi-judicial procedures, especially in the Amnesty hearings, and of an increasingly bureaucratic production of corroborated findings with a view to the determination of ‘truth’ and ‘justice’ in the eventual TRC Report. The unresolved underlying issue was that of the TRC’s own position in relation to both state and civil society. Just what, at the end of the day, was its purpose and status when it could thus speak both *on behalf of* the new democratic state as well as *to* the state (old and new)? This general issue requires a closer analysis of specific aspects of the TRC process.

### *Truth as Acknowledgment*

A full assessment of the TRC’s experiment with justice and truth will have to go beyond its stated objectives and public discourse. It must also include an analysis of the underlying and operative conceptions at work in its actual practices as well as the assumptions and implications of its bureaucratic determinations of truth and justice. Elsewhere I have argued that the operative notions of truth and justice in the TRC process may best be interpreted, on the one hand, in terms of the notions of *truth as acknowledgement* and of *justice as recognition* most

closely associated with the prominence of the victims' hearings in the early years of the Commission's work,<sup>77</sup> and, on the other hand, in terms of the moral logic at work in the Commission's practice of *perpetrator findings*, relying on more conventional notions of factual and forensic truth and of retributive justice, in the TRC Report.<sup>78</sup> In the present context only a brief summary of the main points at issue can be provided.

First, then, we may consider the distinctive moral conceptions which informed especially the victims' hearings as one main phase of the TRC process. In contexts of transitional justice, the concern with *truth* is focused especially on disclosing the political atrocities of the prior regime and past conflicts. However, this is a complex matter: it is not only a question of establishing factual truths and so gaining increased *knowledge* of past atrocities, but even more a matter of finding appropriate ways to *acknowledge* these.<sup>79</sup> This distinction of knowledge and acknowledgment involves two different senses of truth – that of the *factual truths*, relevant to the forensic processes of gaining and confirming knowledge of particular events and circumstances, and that of *truth as acknowledgment*, the crucial issue for transitional justice. Both senses of truth are relevant to the practice of truth commissions, with the former serving the latter more especially in the context of victims' hearings:

- The need to know the 'truth' about the political atrocities of prior regimes may (in part) reflect a certain lack of relevant factual knowledge. Characteristically victims, or their relatives, insist that they need to *know* what had happened to their loved ones before they can forgive or engage in any process of reconciliation. More generally, truth commissions may add significantly to the sum of knowledge of past political atrocities; and if they do not manage to establish the whole truth in all its particulars, they can at least set definite limits to those who, for political reasons, would wish to deny the very occurrence of these atrocities.<sup>80</sup> But their functions should not only, or even primarily, be considered in these terms; truth commissions may have as much and more to do, not just with knowledge, but also with acknowledgment.
- Even under the prior regime, the truth of ongoing political atrocities or human rights violations such as torture are, in a sense, already known (certainly to the perpetrators and victims themselves; to some degree to their immediate relations, colleagues, and friends; and to a lesser extent in the wider community). Officially, though, the occurrence of these violations was often categorically denied. Yet unofficially some individuals and sections in the security forces were widely known as notorious torturers and killers. In such cases, the issue is not so much that of a lack of *knowledge* as of the refusal to *acknowledge* the existence of these political atrocities, and so to accept accountability for these. This is, in the first instance, a political issue. Precisely because, at one level, the reality of the atrocities and violations will be known only too well to those concerned, the effective refusal to acknowledge this in public amounts to a basic demonstration of political power. For the victims, this is a redoubling of the basic violation: the literal violation consists in the actual pain, suffering and trauma visited on them; the political violation consists in the refusal to acknowledge any of this publicly. Especially the latter amounts to a denial of the human and civic dignity of the victims. For the perpetrators, it likewise serves to define their power: not only are they in a position to do terrible things to others, including killing and torture, but they can do so with impunity.

77 A. du Toit, 'The Moral Foundations of the South African TRC: Truth as Acknowledgement and Justice as Recognition', in Rotberg and Thompson (eds), *Truth v Justice*, pp. 122–40.

78 A. du Toit, 'Perpetrator Findings as Artificial Even-handedness: The TRC's Contested Judgements of Moral and Political Accountability for Gross Human Rights Violations' (unpublished paper, Princeton, 1998).

79 T. Nagel, in *State Crimes: Punishment or Pardon: Proceedings of the Aspen Institute Conference, Wye Center, Maryland, 4–6 November 1988* (Aspen Institute, 1989). See L. Wechsler, *A Miracle, A Universe: Settling Accounts With Torturers* (New York, Pantheon Books, 1990), 'Foreword', p. 4.

80 M. Ignatieff, 'Articles of Faith', *Index on Censorship*, 25 (1996), pp. 111ff.

- For the successor regime, an insistence on processes of public *acknowledgement* of political atrocities and human rights violations may thus well constitute a special political priority, and in this regard truth commissions can play a vital role. For victims, the process serves to provide appropriate fora and procedures for the particularised restoration of their human and civic dignity. Strictly speaking, of course, the victims of political killings cannot be brought back to life, nor can the harm and trauma of torture and abuse be negated. What can be done, however, is publicly to restore the civic and human dignity of these victims, precisely by acknowledging the truth of what had been done to them. This was the function and purpose of the victims' hearings where people were enabled to tell their own stories and to have these publicly acknowledged in non-adversarial procedures. Even if these hearings added nothing to what had previously been known regarding the atrocities concerned, that by no means made them futile. On the contrary, in the course of such hearings, the status of the 'truth' regarding these events is changed from personal and suppressed memory to something that can be shared in public acknowledgement.

In the particular circumstances of transitional justice of post-apartheid South Africa, the conception of truth as acknowledgement embodied in the victims' hearings of the TRC thus represented a political choice for the priority of restoring the civic and human dignity of the victims of gross human rights violations. It should also be clear that this notion of truth as acknowledgement shares considerable affinities with the Gandhian concept of *Satyagraha*, although now not in a context of popular resistance but in the context of founding and consolidating an inclusive democracy. The empowerment, not just of the powerless generally, but specifically of those whose human dignity and civic rights had been grossly violated by the old apartheid state, is not to take place by mobilising the victims' own 'truth-power' against the (prior) regime; rather the TRC, mandated by the newly democratic state, set out to provide the framework enabling the restoration of civic and human dignity to victims while also seeking that perpetrators acknowledge some basic accountability for past atrocities. In this connection, it will be clear that the official status of the TRC, and its mandate to speak of 'truth' and 'justice' *on behalf of* the new democratic state, was crucial in effecting this role of *truth as acknowledgement*. No civil society-based initiative, even if it had been able to establish a complete and accurate factual record of past political atrocities and human rights violations, could have had the capacity for official acknowledgement of this kind.

### *Justice as Recognition*

Thus far we have been concerned primarily with the political functions and significance of the constitutive conception of truth as acknowledgement that informed the objectives and practice of the TRC, and of the victims' hearings in particular. What about the *moral* foundations of this process: how is the notion of truth as acknowledgement related to the concerns of transitional justice? Here we need to distinguish the specific sense of justice relevant in this context, that of *justice as recognition* involved in the restoration of the human and civic dignity of victims, from both that of *criminal and retributive justice* and that of *social and distributive justice*. In the case of prosecutions seeking criminal and retributive justice, the structure of the adversarial system amounts to a special focus on the perpetrator as the accused who is subject to punishment, but must be presumed innocent until proven guilty. 'Truth' in this context, as Martha Minow amongst others has shown,<sup>81</sup> is confined to what may be relevant to the criminal guilt or innocence of the perpetrator. What about the victim's

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81 M. Minow, *Between Vengeance and Forgiveness* (New York, Beacon Press, 1998); see also Simpson, 'A Brief Evaluation of South Africa's Truth and Reconciliation Commission', pp. 12ff.

truth, or the many other complex and multi-faceted aspects of the truth relevant to a particular case? So far as the practice of criminal justice is concerned, victims may indeed be presumed to have a basic interest in seeing retributive justice done to perpetrators, but otherwise they cannot expect any special consideration. The testimony of victims, too, is only admissible in accordance with strict rules of evidence and may be subject to potentially hostile cross-questioning. In practice, as the experience of victims in criminal trials for rape has shown, the process of obtaining criminal justice (for perpetrators) may well revisit on victims a further traumatic experience compounding the original violation.

Compared to the adversarial structure of the criminal justice system and its focus on the accused, truth commissions and especially victims' hearings represent an alternative way of linking truth and justice that prioritises the victim rather than the perpetrator. The relevant sense of justice, which is intimately connected with that of truth as acknowledgment, is that of *justice as recognition*,<sup>82</sup> i.e. the justice involved in the respect for other persons as equal sources of truth and bearers of rights. In practice, this requires a fundamentally different orientation to that of the criminal justice system in the form of victim-centred public hearings – non-adversarial and supportive fora structured in ways designed to enable the acknowledgement of victims 'telling their own stories' as sources of truth. The victims' testimonies often will not accord with the rules of evidence required in criminal proceedings, nor do the procedures of the victims' hearings necessarily measure up to the requirements of natural justice and the *audi alterem partem* [hear the other side] rule, especially when these testimonies implicate others. It is only in so far as the narrative truth of these stories fits the overall objectives of both justice as recognition and truth as acknowledgement, and thus serves to restore the victims' human and civic dignity and secure some measure of accountability from perpetrators, that it will accord with the moral conception informing truth commissions as a mechanism for transitional justice.

More generally, it should be clear that the moral and political framework of justice as recognition, as much as that of truth as acknowledgment, shares some strong affinities with the Gandhian strategy of invoking the shared humanity of victim and oppressor as the only possible basis for a just political order. Significantly this is no longer viewed only from the perspective of popular resistance to the state. Instead, the role of a Truth Commission is precisely that it represents the state, giving official sanction and status to the restoration of the victims' human and civic dignity through these proceedings. But what is the relation of these public hearings and affirmations to the criminal justice system and the courts? How does truth as acknowledgment relate to the evidentiary requirements of factual and forensic truth, and how does justice as recognition go together with retributive justice? This brings us to the basic and unresolved tensions in the TRC process as it moved from the earlier phase of the victims' hearings to the eventual publication of the TRC Report with its perpetrator findings.

### *Truth and Justice in the TRC's Practice of Perpetrator Findings*

If truth as acknowledgment and justice as recognition may be construed as the relevant concepts informing the TRC's initial practice of victims' hearings, what notions of truth and justice informed the TRC Report's eventual objective of 'perpetrator findings'? On closer analysis, it can be shown that the latter involved quite different senses of both truth and justice implying a contrasting understanding of the very function and status of a Truth Commission. As the TRC process shifted from the concerns of the victims' hearings to the quasi-legal procedures of the amnesty process, and as the investigative corroboration

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82 J. Allen, 'Balancing Justice and Social Unity: Political Theory and the Idea of a Truth and Reconciliation Commission', *University of Toronto Law Journal*, 49 (1999) pp. 315–53.

required for making perpetrator findings in the Report evolved into a bureaucratic production of truths, so the underlying and operative conceptions of truth and justice also changed.

In principle, truth and justice are, of course, complementary notions; in practice they may go together in different ways. The procedures typical of law in the determination of justice have different objectives and assumptions, and require a distinctive sense of forensic evidence and truth, on the one hand, compared to, on the other hand, the methods developed by historical or scientific inquiry in the quest for narrative or nomological truth. 'Truth commissions' straddle these discursive divides uncomfortably, reflecting their transitional and ambivalent position in relation to both law and research. Their mandates include both the quest for 'truth' and the burden of meting out some basic measure of 'justice' and accountability. Yet truth commissions are neither courts of law nor academic institutions of research; as official commissions of inquiry, they are committed to make *findings* but these are neither legal verdicts nor can they claim scientific status. It follows that truth commissions are contested and potentially dangerous creatures. At worst, the assumption that an official commission may authoritatively determine what will count as truth, and moreover do so in the name of justice, raises the Orwellian spectre of the Truth Commission as totalitarian instrument. Despite initial apprehensions in this regard, it must be said that the South African TRC, judging by the general tenor of its five-volume Report, managed to avoid this particular hazard. Indeed, despite the initial fears of some critics and commentators that the Commission might set itself up to impose an authoritarian 'master narrative' on the much contested terrain of recent South African history, a notable feature of the Report is that it is disarmingly frank and humble about its own limitations and shortcomings. Yet in other, less obvious but equally consequential ways, the TRC Report may, after all, have conflated truth and justice. This applies especially to the nature and import of some of its central findings, and in particular to the *perpetrator findings* which became a central objective of the Commission in its eventual Report.

As statutory bodies, commissions of inquiry, of course, hand down *findings* of different kinds, including findings of fact stating the outcomes of their formally mandated enquiries. Tribunals or courts of law make *judicial verdicts* as properly authorised determinations with legal standing based on rigorous procedures. Perpetrator findings aspire to the latter of these; as attributions of responsibility and accountability for gross violations of human rights, they are bound to have significant consequences for those concerned. At the very least, official perpetrator findings amount to a kind of public shaming or stigmatising, while they may also have adverse legal and social consequences. For these reasons it may be questioned whether truth commissions, as non-judicial bodies and not following legal procedures, are properly qualified to make such (quasi-legal) determinations. Strictly speaking, that is not their business but that of the courts or other legal tribunals. More generally, the underlying issue at stake here is that of the status and functions of the TRC as an investigative body, or a *commission of inquiry*, and not a legal body or tribunal. The Commission itself recognised that it was not a legal body authorised to make legally binding determinations: 'the Commission is not a court with the power to punish those identified; legal rights and obligations are not finally determined by the process'.<sup>83</sup> Elsewhere the Report acknowledged that the TRC should be conceived in terms of a commission of inquiry and not as a body authorised to make legal determinations. But it was precisely this distinction which became conflated in the Commission's overriding concern to make perpetrator findings. Significantly other major truth commissions, not only the Rettig Commission in Chile but also the

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83 *TRC Report, Volume 1*, p. 154.

Argentinian and Uruguyan Commissions, have deliberately refrained from making actual perpetrator findings so as to avoid confusion with the function of the courts.<sup>84</sup> In its Report, the South African TRC, however, deliberately chose not *merely to report* on gross violations of human rights, but also set out to make formal and explicit *findings* regarding the perpetrators identified as morally responsible and politically accountable.

Prior to the publication of the TRC Report, few if any outside observers realised to what extent the TRC process had come to be driven by the Commission's commitment to making perpetrator findings. But behind the public face of the victims' and other hearings, a complex investigative structure and bureaucracy geared to the systematic determination and corroboration of factual and forensic truths had been put in place. An elaborate Information Management System oversaw the accumulation and storing of relevant material in a massive database; it developed an elaborate methodology for the capturing, corroboration and analysis of statements in order to make different kinds of findings.<sup>85</sup> Technically seven major steps were involved: (1) statement taking, (2) registration, (3) data processing, (4) data capture, (5) corroboration, (6) regional pre-findings and (7) national findings.<sup>86</sup> More broadly, we may distinguish three main stages, that of *statement taking and data processing*, that of *corroboration* and that of *making findings*. In many ways this constituted a major shift in priorities and orientations during the final stages of the TRC process from that which had informed the Commission's work during the initial phase of the victims hearings, as well as a shift from the narrative sense of truth associated with truth as acknowledgment to that aimed at a different linkage of forensic truth and retributive justice. In short, as the Report itself noted, the Commission's efforts 'to be both therapeutic in its processes and rigorous in its findings' actually pulled it in different directions.<sup>87</sup> The TRC process, which had started out with the victims' hearings as an innovative attempt to devise a victim-centred alternative to the adversarial procedures and perpetrator-focused criminal justice system, ended with the Report in a misconceived and abortive attempt to make quasi-judicial determinations on the responsibility and accountability of perpetrators for gross violations of human rights.

What are the implications of the Commission's individual perpetrator findings of responsibility and/or accountability for gross human rights violations with respect to possible criminal prosecutions or civil actions? This is a question of the *legal standing*, if any, of the Commission's perpetrator findings. In other contexts the Commission generally refrained from making *legal* determinations, evidently recognising that this is the terrain of the courts.<sup>88</sup> In addition, a notable feature of the Commission's perpetrator findings themselves was that these very rarely included recommendations of referral to

84 In general, see Chapter 5, 'Naming the Guilty', in P. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York, Routledge, 2001); more specifically, see 'Americas Watch, "Truth and Partial Justice in Argentina: An Update"', in Neil Kritz (ed.), *Transitional Justice, Volume II: Country Studies* (1991), p. 328; C. Nino, *Radical Evil on Trial*, p. 80; Servicio Paz y Justicia, *Uruguay Nunca Mas: Human Rights Violations, 1972–1983* (1989), in *ibid.*, pp. 424, 429; D. Weisbrodt and P.W. Fraser, 'Book Review Report of the Chilean National Commission on Truth and Reconciliation', *Human Rights Quarterly*, 14 (1992), *ibid.*, p. 472; J. Zalaquett, 'Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations', *Hastings Law Journal*, 43 (1992).

85 Wilson, *The Politics of Truth and Reconciliation in South Africa*, pp. 38ff.

86 *TRC Report, Volume 1*, Chapter 6, 'Methodology and Process', p. 14.

87 *Ibid.*, pp. 25–9; see *Volume 5*, Chapter 1, 'Analysis of Gross Violations of Human Rights', pp. 58ff.

88 Incidental exceptions to this rule include the findings on generals Geldenhuys and Gleeson as legally responsible for the obstruction of justice in withholding information from the relevant authorities in the Ribeiro case (*ibid.*, *Volume 2*, Chapter 3, p. 267) as well as the findings (following the naming of individual operatives and responsible authorities) that 'the former state is vicariously responsible for criminal conduct' in that it secured the deaths of COSAS activists in Kagiso in 1982 through extra-judicial killing (*Volume 3*, Chapter 6, p. 198), but with no recommendation for prosecution. With reference to the KwaNdebele case from 1987, the Commission's finding includes a determination that the KwaNdebele police search 'was conducted illegally' (*Volume 3*, Chapter 6, p. 362).

the prosecuting authorities.<sup>89</sup> What then was the relation of such perpetrator findings by the Commission supposed to be to criminal prosecutions, or to legal verdicts on the same events? This remains far from clear: it was never clearly established whether the Commission's 'perpetrator findings' were supposed to function entirely independently in a different domain from that of legal determinations, or whether they in some way complemented or even replaced the verdicts of the courts or could be utilised in subsequent court proceedings. In short, with perpetrator findings of this kind, the Commission was venturing into the terrain of the courts, without sufficient clarity regarding the status and implications of its determinations in relation to the criminal justice system. In this respect, the TRC's complex and ambivalent transitional position in relation to both state and civil society resulted in confusion and confrontation. As a commission of inquiry, and not a judicial arm of the state, the TRC provided a major service by *reporting* on the gross human rights violations in our recent past, acknowledging the victims and naming the perpetrators. In the process, it brought into the open many uncomfortable truths which political leaders, including ANC leaders, would prefer to be forgotten. This will pose a major challenge to political organisations and to institutions of civil society, not to forget the courts, as to how to deal with the torturers and murderers revealed to be in their ranks. But when the Commission went further by taking it on itself to make quasi-judicial *perpetrator findings*, it entered uncharted and dangerous waters, effectively overstepping the boundaries of an investigative body, and venturing onto terrain better reserved for the courts. It is no accident that it was precisely at this point that the Commission found itself in open confrontation, not only with representatives of the old apartheid state but, even more consequentially, with the ANC and the representatives of the new democratic state.

## **In Conclusion?**

My accounts of these different South African experiments with truth and justice have traversed a great deal of ground and recorded major shifts in historical context. Stockenström's untimely attempts to impose the rudiments of the rule of law on the closing colonial frontier came unstuck when he found the actual institutions of colonial law incapable of protecting him against the scurrilous but effective popular campaigns of his colonial adversaries. Gandhi's epochal discovery of ways to mobilise 'truth-force' in the context of popular protest against the discriminatory practices of a purportedly liberal colonial state demonstrated how anti-colonial resistance could gain the moral high ground but also proved to be limited to resistance in this particular context. Finally the TRC, in the transition from the modern apartheid state to a more democratic and inclusive post-apartheid society, managed with some success to speak of 'truth' and 'justice' *on behalf of* the new democratic state, and to do so in relation to victims as well as perpetrators. But the TRC's attempts also to speak 'truth' and 'justice' *to* the old apartheid regime, as well as *to* the new democratic state, were less well-conceived, and the Report's 'perpetrator findings' ended in disarray and in confrontation with the ANC. None of these experiments can be deemed anything like an unqualified 'success', or even to have produced clear and unambiguous outcomes. In trying to speak of 'truth' and 'justice' in South African conditions, Stockenström, Gandhi and the TRC successively became ensnared in a range of confusions, ambivalences and contradictions. Yet these were not the same confusions, ambivalences and contradictions, with history simply 'repeating itself', whether as farce or as tragedy. In tracking these various experiments, we observed some major contextual developments, first in the formation of

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<sup>89</sup> The findings on the cases of Samuel Baloi and Zola Dubeni recommend referral of these cases 'to the prosecuting authorities for further investigation' (*Volume 2*, Chapter 5, p. 228), however, this is an exception.

the colonial state itself and then its transition to a postcolonial democracy, and secondly also in the emergence and growth of civil society. Compared to Stockenström on the closing pre-modern frontier, and compared to Gandhi confronting imperial rule by mobilising popular protest, the 'new' and democratic South Africa of the 1990s had come a long way. The emergence of resilient and independent institutions and movements in civil society, reaching across some of the ethnic and racial divides imposed and entrenched by colonial rule and the apartheid state, and the transition to a democratic post-apartheid regime made the TRC process both necessary and possible. Yet, as we have seen, it still proved difficult for the TRC to speak clearly and consistently of 'truth' and 'justice', even in the post-apartheid context of the new democratic South Africa.

Part of these difficulties, and a striking feature of each of these South African experiments with truth and justice, lay in a tendency to over-reach themselves. Given the social and political conditions at the time, Stockenström's frontier liberalism, as much as Gandhi's reliance on 'truth-force', attempted to achieve what was pragmatically not possible. Yet the attraction and fascination of their projects also lay in the ways in which, by attempting the politically impossible, they managed, to some extent, to extend the boundaries of what was politically possible. The TRC, as well, was characterised by an over-reaching of its actual capacities. While other truth commissions, particularly in Chile and Argentina, conceived themselves deliberately as self-limiting projects, the South African TRC was much more ambitious in its range of objectives, although its critics tended to insist that it should have been even more ambitious, taking on the whole of the apartheid past, not just a limited range of gross human rights violations. To a considerable extent, this accounts for both its substantial achievements and its specific failures.

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