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The practices of justice and understandings of truth
Truth and Reconciliation Commissions

Maja Petrovic questions the prevailing assumption that Truth and Reconciliation Commission are the best way of dealing with war crimes and human rights abuses. With a focus on global relations, Petrovic considers the tensions between local and global formulations of rights and truth telling and whether a presumed continuity of justice can be applied across international and local cases.

This essay examines how the concept of truth is deployed in the context of human rights discourses. As anthropologists have noted, contemporary attempts to account for abuses, wars and other crimes have given rise to an efflorescence of the language of "rights" and "truth" as framing terms in which post–conflict settlement is worked out, at local, national or supra–national levels (see Cowan *et al* 2001). The local reworking of conceivably global canons of justice serves as a signal instance of the increasing interpenetration of the general and specific in the contemporary world. This particular movement, in terms of justice and rights discourses, is complex and multidirectional. According to one commentator, globalized[1] political values and multiculturalism are increasingly taken up and vernacularized in particular social contexts, thus providing important leverage for local struggles (Sieder 2001: 204). For the relationship of local and global in human rights discourse should not be understood only in terms of the imposition of a set of supranational norms (of rights or justice). Indeed, many fundamental principles of international law were themselves first articulated precisely in the course of processes accounting for crimes in specific societies. Thus, for example, the struggle against political tyranny in many states, pushed international jurisprudence to develop definitions of what it means to qualify as a state, what the freedom of states to wage war is, to pollute the environment, to enter into treaties denying self–determination, and adopting policies of racial discrimination or other gross human rights' violations. (Asmal *et al* 1997: 177, Cochrane 1999:8).

In this process, one of the key mechanisms in the articulation of universal human rights policy applicable to a local level is the institution of Truth and Reconciliation commissions (TRCs). Many argue that over the past few decades, the accounting for past crimes within a discourse of truth through TRCs has become a core aspect of countries' processes of democratization and technological, economical and political modernity.[2] Thus, for example, only eight days after the death of King Hassan II on July 23, 1999, his son and heir Mohammed VI committed himself to the rule of law and human rights, promising individual and collective liberties, a multi–party system, economic liberalism and policies of regionalism and decentralization. Significantly, Mohammed VI ordered a CCDH (Conseil Consultatif des Droits de l'Homme)

to activate an independent Indemnity Commission, with a mandate to indemnify former victims of forcible disappearance and arbitrary detention as a "clear sign that Morocco is on the path of true democratization and national reconciliation".[3]

The idea that a formerly disempowered or oppressed society or country can achieve modernization and the recognition of the international community through the public acknowledgment of truth has been a feature of international relations discourses from the early 1980s. Since then, more than 25 commissions have been given a mandate to account for past abuses.[4]

These commissions, although they may apply principles of a putatively universal validity, can only be established through the consent of societies and communities allegedly traumatised by a particular historical abuse. Reading through the voluminous body of data presented by commission reports,[5]offers an occasion to reflect upon the interplay of national and transnational understandings of concepts of justice, morality, truth accountability and reconciliation. This essay acknowledges that many social scientists' accounts have explored tensions between local and global formulations of rights, thus enabling the observer to see the slippages between these grounds. However, with a focus on global relations, the aim of this paper is not to look at tensions, but more centrally to remark upon how even a presumed continuity of practices of justice and understandings of truth across international and local cases may be judged problematic.

As processes overseen by local people (though usually proceeding with international funds and support), TRCs represent a unique compromise between international war tribunals on the one hand and local attempts to deal with past atrocities, in which the exigencies of stability after reconciliation[6] are said to rule out either revenge or any appropriate meting−out of justice. In this, TRCs are by definition of a temporary character, designated to exist only for a transitional period from oppressive rule or conflict to peace and democracy. The mandate of TRCs is to allow victims and perpetrators to give evidence of human rights abuses in the context of an official forum.[7] The motto is that "only [through] assessing the injustices of the past and official acknowledgement of what happened, whether by criminal process or by truth commission, people will be able to inaugurate a more just future" (Asmal *et al* 1997). And indeed, reports by and responses to TRCs have shown that the public acknowledgment of "truth" has succeeded in creating an atmosphere in which the events of the past achieve a significant public profile. A key figure in the South African TRC process, Archbishop Desmond Tutu wrote that the TRC "enabled South Africans a necessary process of historical catharsis", and that "the constant wave of revelation, pain, and occasional apology that were experienced has fundamentally changed the way the country understands its history" (Tutu 1999:II). Adopting a discourse of human rights to define the political responsibility of the perpetrators of apartheid was said to have opened a healing process in which people can reconcile with the past, on the basis this time of recovered dignity and of the "moral reconstruction of society" (Krog 1998).[8] In addition to local healing processes possibly the greatest satisfaction for many formerly oppressed groups lay with the international indictment of the regimes that oppressed them as illegitimate and contrary to international law and international morality.

Without disputing the large social benefits of TRCs in many cases, it remains worthwhile to interrogate the coherence and operation of their leading terms – truth, accountability, reconciliation, memory and "international morality".

These principles seem so attractive and politically correct that it appears churlish to contest them. Yet their very abstractness itself represents a problem. Though it is not uncommon for people to make sense of the world through legal reasoning, and through narrating their history through memory, politics and various vernacular forms, the rhetoric of truth, however, propagated in these reports, appears to presuppose a single, satisfactory interpretation of the past to which all other histories and claims may be subordinated. Not only is this politics of accounting for truth questionable, but the provenance of an adequately general measure of "universal morality" is itself uncertain. While the invoking of various kinds of international authority, precedent and sanction may be expected as a constitutive feature of social struggle in many post−conflict situations, what seems more objectionable is the requirement statutorily imposed by some international political and economic bodies that countries establish a TRC of any sort as a precondition for international acceptance.[9]

In his essay on *Memory and Forgetting* (1999), Paul Ricoeur addressed the necessity of bringing together strategies of remembering, retelling and mourning as a "working through the past" carried out on behalf of humiliating memories. His argument is that memories have to be not only understandable, but also acceptable; their acceptability, indeed, guarantees memory and mourning as modes of reconciliation (Ricoeur 1999:9). Ricoeur suggests that in the struggle to accept our painful memories, the repetition of humiliating evocations in Freud's sense, or their restyling following Todorov, can attempt to extract their "exemplarity" rather than factuality. In this they gain a positive value – they become a future−oriented lesson for following generations.[10] Thus, while the traumatic character of past humiliations draws us back permanently towards the past, the exemplary dimension of the same events is governed by a hypothetical future tense, and towards regulated justice (Ricouer 1999:9). Ricoeur's arguments bear usefully on TRCs which both evidently are intended to heal the wrongs committed in a past period of abuse, but also risk fixing memories and constructing the past in a very specific, prescribed and incontestable way. It is even possible to say that TRCs serve as a mechanism for opportunistic codifications of "rights" and "truths" for both, local and global community. Sieder, for example, describes how the Guatemalan people themselves have in the past resisted TRC processes and site exhumations because the violence under investigation was so experientally centred within their communities. However, today, twenty years after the atrocities and the genocide committed against the Maya people, rights not even previously conceptualised are constituted in legal and international form (Sieder 2001). Guatemalan victimized identities are effectively being narrated or codified through the appropriated legal discourse of international human rights law ("victim" and "widow rights") and multiculturalism (Seider 2001:201−2). In this way, human rights are effectively produced but their operation is thus both creative and constricting, emancipatory and identity−making. In addition, the very concept of truth is especially problematic precisely in Guatemala and Belize, with anthropologists reporting groups (e.g. the Mopan Maya) that are documented to insist on speaking as closely as possible to the literal truth at all times (see Danziger 2001). The rhetoric and assumptions of the "rediscovery of truth" as demanded by international organisations seem, then, completely illogical, since if they were all the time speaking truthfully there is no truth to "discover". On the other hand, in an imagined situation, "global politics of truth" can create distortions and unexpected effects in the behaviour of groups such as the Berewan of Borneo (who might be advised to create a TRC because of their practice of head−hunting), whose speech is said not to offer any concept of truth similar to the Western, insofar as truth for them, is a

dialogic concept, consisting only as a succession of mutually constructing speech events (see Metcalf 2002).

Thus, it is possible to read rights to truths as actually productive of TRCs' ideas of truths and their associated identities. The truth as an object in TRCs' reports is not only essentialized but is treated as a culture. In constantly invoking truth as a criterion governing the moral reconstruction of society, it is proposed that truth – truth talk, truth thinking, truth practices – constitute a kind of international truth culture[11] that must be "enabled" on local levels. In this expectation, the almost to–be–expected dialectical tension between universal and local moral categories, seems to be purposefully neglected in reports on TRCs. Moreover, it appears that ethics and morality, highly philosophically charged terms[12], are pressed into the service of a hygienic "politically correct[ness]" – "through learned universalist terms and culturalist language" (Eriksen 2001:135). Constructed moral universalism is "imbued with an emancipatory aura"(Cowan *et al* 2001:1) but is bought at the price of having to participate in a hegemonic model of rights. Though romantically proposed, a global ethic in these reports features almost as a must for everybody who wants to be modern and is at the same time proud of their traditions. The move or the appeal to universalism is then better understood in such contexts as a strategy of legitimation for a certain narrative. Thus, there is scope to receive the narratives of national truth and reconciliation that emerge from commission processes as sectional or even exclusive. However much local commissions may claim to be working through rules of an absolutely abstract character, the features of their situation–the politics of various interests, social groups, political parties, institutions and other prior allegiances–have the effect of inflecting the course of justice in the direction of particular local imperatives.

My overriding aim in this essay has not been to lodge an objection to the institution of TRCs themselves, but to criticise the institutionalization of obligatory memory, reconciliation and forgiving.[13] To argue that "a society cannot reconcile itself on the grounds of a divided memory" is to call for an oppressively, even hegemonically structured moral universe, to which the alternative is not moral chaos but merely the ordinary processes of blame attribution and forgiveness.[14] Thus, imposed memories do not open the space of history but close it, building a transnational community of "victims" rather than a transnational realm of ethics and law. At their worst, the concepts of morality, truth and reconciliation worked through TRCs gloss over their energising and contradictory conditions of localism and globalism, relativism and universalism by foreclosing moral debate.

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Data on Argentinian and Chilean TRCs www.derechos.org/koaga/iii/1/cuya

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[1] It must be stressed that globalised political values are different than global values, since they stand for specific political values of global currency.

[2] See Hannerz 1996, Pries 1996, Rorty 1993, Cowan 2001, etc.

[3] Reported in *Middle East Report* 218, Spring 2001 by Susan Symovics "A Truth Commission for Morocco".

[4] TRC so far have been constituted in Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Germany, Guatemala, Haiti, Malawi, Morocco, Nepal, Nigeria, Panama, Peru, Phillipines, Serbia and Montenegro, Sierra Leone, South Africa, South Korea, Sri Lanka, Uganda, Uruguay and Zimbabwe. It is reported that recently, groups and individuals in Bosnia and Hercegovina, Cambodia, Colombia, Indonesia, Jamaica and Mexico have called for the establishment of truth commissions or similar bodies in their respective countries. (United States Institute of Peace, Truth Comissions Digital Collection http://www.usip.org/library/truth.html)

[5] The paper deals predominantly with the TRC data from South Africa, Argentina, Chile, Guatemala, Serbia and Montenegro and Morocco. Reports are based on statistics, anecdotal evidence, informed reasoning, official accounts, etc.

[6] The South African view on TRC was described, as "there is a need for understanding but not revenge, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation" (Cochrane *et al* 1999).

[7] The South African TRC was, for example, mandated to "facilitate, and where necessary initiate or coordinate, inquiries into the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; as well as into the accountability, political or otherwise, for any such violation, among other things" (Asmal and Asmal, 1997:14). In general TRC have 1) the investigative function of ascertaining the truth of human rights violations, 2) the therapeutic task of providing a platform for victims to tell their story, to be recognized officially and publicly for their suffering and 3) to provide financial or symbolic restitution to victims.

[8] Mr Dullah Omar, former Minister of Justice in South African Republic was quoted saying: "a commission is a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation."

(http://www.doj.gov.za/trc/trc)

9 Though TRC are usually not established by international powers, there is a huge pressure from international community on local communities and states to establish TRC, through the mechanism of "good governance checklist" that "advises which countries should reconciliate with its abusive histories". Thus, for example, in post–conflict Serbia, Guatemala, East Timor were allowed to join the international community economically (e.g. the World Bank), only after the agreement that these countries will prosecute their conflict, war criminals to international court rooms.

10 Gidden's (1991:27 in Greenhouse 1993) argues for an awareness of the image of a state's "colonising of the future" through the politics of late modernity, which, in his view, characteristically involves a pitched contest for control of the rhetorical meanings of the future. He underlines that the very fact that the rhetorical power of the future (in our case accountability of truth and past abuses for future generations) is an object of open competition, is a defining characteristic of the late modern age.

11 In defining "truth culture", I was inspired by Cowan's, Dembour's and Wilson's understanding of "rights culture" (2001).

12 Though these reports like to use quotations from worldknown philosophers, anthropologists, writers, scientists, it appears that their reflection upon ethics and morality is highly simplified. As philosopher Bernard Williams put it "moral interest form structure characterize social justice" (1981:3) but there is no discussion of what this "universal morality" really means. It is rather taken for granted, as a necessary positive political thinking. This, however, can form a space for arguments, since eliciting any moral premises or theory from its philosophical premises, turns out to be merely a version of utilitarianism (Maclean 1993). Usually it is held that "there cannot be any tidy or self–contained theory of what morality is, nor there can be ethical theory, in the sense of philosophical structure, which together with some degree of empirical fact, will yield a decision procedure for moral reasoning" (Williams 1981:X). Moreover, morality itself is problematical, not merely in content, but in its supposed experience as a dimension of practical thought or social evaluation at all (Williams 1981, Maclean 1993).

13 If forgiveness becomes imposed as a standard and condition of peace, then individuals who struggle with experiences of abuse become guilty when they are unable to forgive. This is especially problematic in Guatemala, South Africa, Chile, etc. where the church and its language of forgiveness is very active in the peace process.

14 The alternative to a hegemonic discourse of locally interpreted rights is a conception of acts of memory as involving a continual negotiation embedded in specific social and historical contexts (Cowan 2001). Binion (1995) has argued that human rights under this conception are not universal or "natural", but rather politically–contested entitlements that gain strength and legitimacy precisely because they are framed in a universalist language (quoted in Sieder 2001:204).