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Class Lecture: The Truth and Reconciliation Commission (TRC)

Desmond Tutu

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Class 2 (1/30/03)

The TRC

Preamble

We have seen in the last lecture why it was not such a wild preposterous notion to expect South Africa to go up in the flames, overwhelmed by the most ghastly racial conflagration imaginable. There had been a history of deliberate, systematic injustice and oppression when the vast majority of a beautiful land had been shut out of all access to political power made to be outsiders in every sphere in the land of their birth denied a fair share of the good things so abundant in a richly blessed country. It would have been natural; the expected thing of those who had been downtrodden for so long should have been riddled with bitterness, eager to give as much as they had got from their oppressors. Not too many would have been surprised had they gone on the rampage giving vent to anger and resentment that had been dammed up for so many a long year.

Thus, the dire predictions were perfectly logical and understandable. The world was not prepared for what actually did unfold. Violence had seemed endemic, as if to prove that the dire predictions were about to be fulfilled. When the statistics were published of casualties in the past 24 hours and it was reported that five, six or seven had been killed many of us sighed with relief. We would then say “only 5 or 6 or 7 were killed”. Things had reached such a desperate pass; we were clearly as they say, “up a creek”.

And then the world watched with what approached awe as instead of the much feared catastrophe as those long lines of South Africans of all races, as they

snaked their way slowly to the polling booths. It was a magical day, April 27, 1994. It is a day that will forever be etched in the annals of our land and perhaps in the history of the world as the day when the world watched and saw a miracle unfolding before their very eyes. Even the most secular person found that only religious terms could describe adequately what they saw happening before perhaps unbelieving eyes. It is a miracle! It is a dream! When I was asked, how I felt after voting for the very first time in my life at 63 years of age, I was for once almost tongue tied and at a loss for words. I said "we are on cloud 9. It is like falling in love, things are the same and yet they are not the same. The sky is blue but it is a blue with a new intensity." I said what in other parts of the world was a thoroughly mundane, political event for us had become something deeply spiritual, a transfiguration happening. A black person entered the booth one person and emerged another, a transfigured person. He or she entered as someone who had had her dignity trodden underfoot, burdened by the yoke of oppression, then emerged a new, free person who would, who did, walk tall, head held high and shoulders squared, free unencumbered, the chains of oppression shattered for ever.

The white person entered burdened by the guilt of many centuries of enjoying privilege, bought through the price of exploiting and oppressing their compatriots of colour, burdened and ashamed to have belonged to this ruling, exploiting, oppressing class and emerged a transfigured, a new person, free, no longer having to apologize for being white, free from that burden of guilt and shame, walking tall, head held up high and shoulders straight. Nearly, all the

whites confessed to realizing that only now were they truly free. We had often said freedom is indivisible, white people won't be free until we blacks are free and they experienced it then. Now they were no longer having to skulk, hiding their true identity, since they belonged to the country that was an international pariah. No, now they could emblazon their nationality abroad, for they came from the New South Africa, free, democratic, nonracial, nonsexist, and helped to achieve this spectacular victory over injustice and oppression by the marvelous support of the international community.

It is a wonderful privilege on behalf of millions and millions of our compatriots to say thank you to all of you who helped us to become free and so nearly everyone who was anyone came to the inauguration of the one time political prisoner, the erstwhile terrorist as the first democratically elected president of South Africa Nelson Rolihlahla Mandela. It was quite something to see him being saluted by the heads of the police, the Army, Navy, Air Force, and prison services, most of whose members had considered him Public Enemy Number 1 and characteristically, he invited as one of the VIP's at the inauguration his white former prison warden.

We all had been given a huge dose of euphoria by it all. The remarkably peaceful, free, and fair elections declared so by an eminent team of foreign observers and the heart stopping presidential inauguration. We were the flavor of the month in the outside world but then the skeptics and cynics, the hardnosed realists had to have their day, spoiling our fun. Many had thought the election

would be marred by violence. When this did not happen, they kept shifting the deadline... "Give them 3 months etc..". And ultimately, "yes they have had a remarkable transition from repression to democracy. The blacks have not yet set about driving the whites into the sea, but just wait until a black led government is in power, then all hell will be let loose. We will see an orgy of revenge and retribution. These blacks for so long kept under by the whites will without doubt go on a bloodletting spree. They are going to demand their pound of flesh and give vent to their pent up fury and hatred. Watch out for the blood bath..."

And it did not happen. Instead, the world saw in amazement and I suppose admiration, the TRC process unfolding before their startled, incredulous gaze. They beheld perpetrators often of the most gruesome atrocities being given amnesty in exchange for the truth. Not being brought to book to face the utmost rigories of the law and even more deeply moving were the occasions when victims of some of those atrocities would embrace the perpetrators in extraordinary scenes of forgiveness and reconciliation. What was happening? What made such incredible occurrences fairly regular features of the TRC process blazoned on the front pages of most newspapers in South Africa and elsewhere and almost hogging prime time TV and the radio airwaves?

The viable options

After periods characterized by conflict and strife, communities have to deal with the consequences. What to do in the post conflict period with those who had been involved in violations of human rights and other criminal activity? There were usually two options available. There was what might be called the Nuremberg Trial option. Those suspected of violations and crime would be brought to face charges in a Court of law as had happened with the Nazis after WWII. This was an option not available to us in South Africa. The allies had defeated the Nazis comprehensively and could thus impose what has been referred to as victors' justice. In our case, neither the apartheid Government nor our liberation forces had inflicted a defeat on their adversaries. There was a military stalemate. Secondly and perhaps most importantly, it is highly unlikely that the South African security establishment that had buttressed the apartheid regime would have acquiesced in and cooperated with a process at the end of which they would then have to face the full force of the law as alleged violators of human rights. As it happens, the TRC process helped to reveal that arms caches had been stashed in different parts of our country and we were just whisker's breadth away from the bloodbath that so many had predicted would be our lot. It had indeed been touch and go. They would have almost certainly sabotaged the transitional process and made it a gory mess. Nuremberg had most of the court officers, the Judges and prosecutors, as non-Germans coming from outside the vanquished Germany. At the end of the trial, they would pack their bags and return to their

different native lands. That was not something that would have been available to us. Judges, prosecutors, accused and witnesses would be almost exclusively South Africans, compatriots who at the end of the trials would have to face up to the demanding job of learning to live together, having to deal with the trauma of the victims who might have felt let down by the judicial process and perpetrators and their families who might nurse grudges at having been picked on and turned into scape goats, a resentment that would fester and put at jeopardy the prospect of healing a wounded community. So the Nuremberg Option did not make it to first base.

The other and opposite option would have been a general amnesty such as had happened in Pinochet's Chile when the military handed over power to a civilian government. Before that happened the military granted themselves immunity from prosecution for any violations and offences that they might have committed during their tenure as a dictatorship so that even though their own Truth Commission might uncover such violations and crimes, there was no redress possible for the victims. General Amnesty sought to give credence to the dictum, let bygones be bygones. It was seeking really a general amnesia. Let us forget the past and not let it embarrass or shackle us. Let us concern ourselves with the present and the future. It sounded so plausible. Mercifully, we don't possess the power of a fiat. "Let there be" as God did in the creation stories. The past did not just go away, no, it has an extraordinary capacity to return and haunt us. General Pinochet experienced a bit of that when he was apprehended while getting medical

treatment in England because Spanish magistrates wanted him indicted for the killings of Spaniards during the period of his military dictatorship. His case was eventually decided by the British House of Lords, when he was permitted to return to Chile. I visited Dachau, a former Nazi Concentration camp close to Nuremberg where I had been part of a BBC panel discussion on the legacy of Nuremberg trial. At the entrance to the Concentration Camp Museum containing pictures of German scientists performing experiments with Jewish inmates on the extent of depth and altitude humans may tolerate and you see the distorted faces of people undergoing extreme anguish or pictures of Jews accompanying a fellow inmate to the gallows and being forced to play musical instruments and to dance. A truly macabre procession. Over the entrance were George Santayana's words "Those who forget the past are doomed to repeat it." No the past does not just disappear. General Amnesty also victimized the victims a second time round. It was really saying to them "What happened to you was of little consequence, really undermining their identity and their integrity as persons (Death to the Maiden) "To deny my experience is to deny a part of me, is to deny my memory" and we are what we remember. And so this was an option that those negotiating a new South Africa rejected.

What was finally chosen was a compromise, a principled compromise, amnesty for the exchange of truth, pardon in exchange for a full disclosure. Not everyone was pleased with this decision. Certain victims, quite high profile ones, such as the family of Steve Biko, the black consciousness movement founder who

was killed by the police while still in detention without trial took the TRC and the government to court because they argued that the expunging of criminal liability of perpetrators and the right of victims to sue for civil damages was a denial of the rights of the victims guaranteed in the new Constitution. The highest court in our land, the constitutional Court, ruled in favor of the TRC declaring that in the peculiar circumstances of our fragile transition to democracy, a case could be made for the peculiar provisions that occurred in the Interim Constitution, that for this singular moment, it could be justified to expunge the right of victims to sue for compensation though they might then be eligible for a smaller reparations packet.

The Deputy President of the Constitutional Court delivered an elegant judgment showing how it would help the healing process when victims would now know the truth of what previously they had only suspected. This aspect was due to the fact that the perpetrators had to come clean, to reveal all the facts, and make a full disclosure of the facts relating to the offence for which amnesty was being sought. Previously, they had almost always denied culpability and had been adept at concealing incriminating evidence. They were past masters at this with usually colluding courts so that it was quite impossible, apart from the most exceptional instances, to prove their guilt beyond reasonable doubt. Now in order to qualify for amnesty, they had to accuse themselves. An innocent person by definition did not need amnesty. Thus a fair amount of truth was revealed e.g. the HQ of the SACC Khotso House had been bombed as also the buildings housing the South

African Catholic Bishops' Conference and the leading Labor Union Federation. Most people had strong suspicions that this was the handiwork of the dirty tricks department of the security establishment.

At the time Khotso House was bombed, the Cabinet Minister of Law and Order went before with TV cameras and accused the ANC, which was still a banned organization as being responsible for this outrage and a white single mother political activist, Shirley Gunn was even detained by the police as being implicated. Through the TRC process, that same Cabinet Minister (the only one of the apartheid dispensation to do this) applied for amnesty and revealed in his application that it was the police, the guardians of law and order who had been responsible and that he had been instructed by the then State President P.W. Botha, to render Khotso House usable. Many opponents of apartheid had been abducted, killed and secretly buried so it was that there were many disappeared persons. Through the TRC Amnesty process, we got the kind of information which helped us to find many secret graves and to exhume the remains of loved ones. On one of these occasions when a grave was opened, the family members standing alongside, a young man said, "that's my brother" pointing to the skeleton, "I bought him those shoes." Families were able to give a decent burial to their loved ones and thereby experienced closure. A mother once came to the TRC. Her son had disappeared and she made a plaintive plea "can't you find even just a bone of my child so that I can bury him?" Sadly, in her case we were not able to help but it showed that where we could we were helping to carry out a crucial

therapeutic act. Many times we were devastated by the extent of evil that was exposed. How the police gave teenagers booby-trapped hand grenades, zero timed, so that they blew themselves up to smithereens when they pulled the pins or when they tortured and then blew up people and threw their bodies into crocodile infested rivers and then usually gave out that “terrorists”, as our freedom fighters were called had been killed in a shoot-out with the police. This was lapped up eagerly by the white community. We were appalled to discover that it was not people with long horns and tails, not demons, not monsters who were capable of such dastardly, diabolical acts. No, they were just ordinary men, they were ordinary fathers who loved their children. They were usually respectable members of their communities, regular at church and doing all the conventional things. This was the so called banality of evil. We could not gloat for what it was saying was that each of us has a capacity for evil. None could say with any certainty that had we been exposed to the same pressures and circumstances as those men that we too could to have turned out as they had. Thus we could only say with relief, “There, but for the grace of God, go I.”

Yes, we were devastated by this somber revelation about the human condition. Wonderfully, exhilaratingly it was but part of the truth about us. We were humbled and thrilled also as we witnessed the extraordinary magnanimity of victims who should have bayed for the blood of their tormenters being ready to forgive and to embrace them. We were exhilarated to know that we also had a wonderful capacity for good.

At our first public hearings we heard stories of how the police had killed 4 ANC activists gruesomely, the Cradock 4 named for the town they came from and then set their car alight and blew it up. They had also cut off the hand of one of them and preserved it using it to intimidate detainees with the prospect of the same thing happening to them if they did not cooperate. The police still harassed the widows of the victims and their children. One of them came to tell her story. When she finished, I asked her would she consider forgiving the people who had done this to her dad and were still harassing them. We met in the City Hall, packed to the rafters. She replied with a maturity beyond her teenage years as she said, “we are ready to forgive; we just want to know whom to forgive”. You could hear the proverbial pin drop in that Hall packed to capacity.

You might know too of Amy Biehl, Fulbright Scholar working at one of our universities. She was killed gruesomely in one of our black townships by youths who stoned and stabbed her to death. The leaders of that group were found guilty. Then they applied for amnesty. The parents of Amy, Peter and Linda Biehl attended the amnesty application hearing and supported the granting of amnesty to those who had killed their daughter. But even more extraordinarily, they set up the Amy Biehl Foundation which works in the township where their daughter was killed to help with programs to save the youth from poverty and violence and have projects to help with employment opportunities in the very place where their daughter met her horrible death. Yes, there is nobility here that leaves you breathless with wonder and fills you with exultation that we have this

capacity for so much good. We are fundamentally good. The bad person is in fact the aberration.

We handed over our 5-volume report to President Nelson Mandela in 1998; 5 years ago and our country became democratic and free in 1994, 9 years ago. We are still enjoying a remarkable degree of stability, when you think that race riots, vicious ones, have happened not in South Africa where it would have been understandable but in Britain; young children are escorted by heavily armed soldiers to attend school, not in South Africa where it would again have been understandable but in Northern Ireland. Perhaps we have done something right; about a month ago we had this story in newspapers and television.

Forgiveness is not cheap, not easy, but it does seem there is no future without forgiveness.