

Uncertain borders: The TRC and the (un)making of public myths¹

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The response by historically minded scholars mainly within South Africa to the work and report of the Truth and Reconciliation Commission was deeply critical. This is perhaps unsurprising, given the nature of the TRC's mandate and its work. Its engagement with issues of truth, its focus on the past, its concern with issues of identity and political conflict, and the representation thereof, to name but a few, are all issues of research and contestation within the academy itself. Further, that much of the work of the TRC not only happened within a public space but was widely and continuously publicised, especially in the first three years of its operation, encouraged debate and discussion. In many respects, it was precisely the public nature of the enterprise that often painfully revealed the TRC's many shortcomings and failures.

Academic criticisms of the TRC emerged almost as soon as its work began. For example, in July 1996, a mere three months after the first public hearings of the TRC, a conference was held at the University of the Western Cape to discuss *The Future of the Past*. The TRC threaded several papers. In one, it was said that [TRC Chairperson Archbishop Desmond] Tutu (read the TRC) 'opened the gateway for a new history of reconciliation'²; in another 'the process of "writing" South Africa's official history – state history – is taking place by selecting elements of the past which create no controversy, which create a good start, for a new nation where race and economic inequality are a serious problem, and where the balance of social forces is still extremely fragile'³; yet another asserted that '[p]remised on the desire to reconcile and unite the nation, the TRC has embarked upon the project of constructing a common national memory'.⁴

1 The original version of this paper was presented at the *Transactions of Public Culture* workshop held in Cape Town in January 2003. The authors worked in a formal capacity for the TRC from 1996 to early 2001 when the TRC officially closed, and continued to be involved in the production of the final two volumes of the *TRC Report*. Written at the end of this lengthy engagement, the paper was intended as an intervention. It retains something of its original somewhat polemical, tone.

2 G. Minkley, C. Rassool and L. Witz, 'Thresholds, gateways and spectacles: Journeying through South African hidden pasts and histories in the last decade of the Twentieth Century', paper presented to *The Future of the Past* conference, University of the Western Cape, July 1996, 5.

3 D. Nina, 'Panel-beating for the smashed nation?: The TRC, nation-building and the construction of a privileged history', paper presented to *The Future of the Past* conference, University of the Western Cape, July 1996 (abstract).

4 P. Lulu and B. Harris, 'Journeys from the horizons of history: Text, trial and tales in the construction of narratives of pain', paper presented to *The Future of the Past* conference, University of the Western Cape, July 1996, 1.

Cutting across diverse theoretical frameworks, challenging old agendas and proposing new questions and fields of enquiry⁵, these papers were nonetheless united in their depictions of the TRC. Indeed, in the next few years, the criticisms outlined above, initially publicly aired at a conference largely animated by a critique of the metanarratives of left historical discourse in South Africa (most notably that of social history), were repeated and elaborated by a range of scholars including - somewhat ironically – social historians themselves.

In 1999 in the wake of the publication of the first five volumes of the *TRC Report*, the Wits History Workshop, the pre-eminent gathering of social historians, deliberated on the *TRC Report* and more generally on the work of the commission.⁶ While historians at the UWC conference had interrogated the ways in which the TRC obscured the constructedness of an actively crafted truth, thus continuing to disable an understanding that power is always implicated in productions and representations of the past, the social historians asserted variously that the TRC had failed as a historical project and that it had done little to understand apartheid and ‘social causation’ at national and local levels. Although there were different emphases and there had been an accretion of detail, the broad strokes laid down in the 1996 conference remained remarkably consistent. Indeed, it would not be an exaggeration to say that they had become orthodoxy, and naturalised as self-evident. The object-lesson of this orthodoxy had also become increasingly clear - namely, the perils of nationalism of which the TRC, in many respects, was seen to be an important handmaiden.

Again this is perhaps unsurprising, given the close association of the discipline of history to nationalism, both as complicit agent and as critic. What does seem more surprising is that the critique of the TRC offered by both social historians as well as those working in a framework that is highly critical of social history shares a common characterisation. It is this characterisation with which we are chiefly concerned. Although there is much value in the body of work that has been generated by our colleagues and other historically minded scholars, much of which has challenged us in productive ways, we nonetheless take issue with this common depiction of the TRC that reduces it to a single nationalist voice. In this paper we argue that this representation is built on predetermined conceptions and a selective reading of the institution, its practice and politics.

At one level, to engage with these debates seems somewhat out of date. After all, there is a veritable industry on the TRC and a considerable literature on it exists and indeed continues to be written. While much of the new material also views the TRC critically, it provides different points of entry and a far more diverse reading of the institution and its hearings. Yet, even here, the reconciliation project most often remains the dominant frame. Moreover, most of this literature emanates from

5 While the Minkley et al paper denoted the newly developing field of public history in South Africa, and a focus on questions of representation, Lalu and Harris proposed an engagement with the concerns of the Subaltern Studies Group. These papers are richly suggestive of the directions these scholars would explore and develop in subsequent years. Concerned as it is only with the characterisation of the TRC, this article fails to capture these new directions. No written version of the paper by Daniel Nina could be located and the quote is taken from the abstract of his paper circulated at the conference.

6 A number of the papers presented at this conference were later published in a collection, D. Posel and G. Simpson, eds., *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* (Johannesburg: Witwatersrand University Press, 2002).

disciplines outside of history - most notably linguistics, literature and psychology. Within the discipline of history, the old orthodoxy holds sway.

The TRC as the ‘founding myth of the new nation’⁷

Most critiques of the TRC centre around perceptions of its nation-building project. Three interlocking aspects of the analyses presented at *The Future of the Past* conference came to grid academic representations of this project. In the first place, the TRC was seen to be principally concerned with reconciliation. Secondly, in order to effect such reconciliation, the trajectory apparently adopted by the TRC was one that silenced economic inequalities by penning a characterisation of violence that ignored the everyday violence of apartheid. Thirdly, nation-building was seen to require an official consensual history, and the TRC as providing an appropriately palatable one.

Nation-building and reconciliation certainly framed the context of the TRC as its enabling legislation (the Promotion of National Unity and Reconciliation Act) and its name suggest. Yet this framing itself was derived from a prolonged and disputed genesis and represented one of the first skirmishes between the ANC and its government of national unity partners, the National and Inkatha Freedom Parties. In an attempt to mitigate a concession won by the National Party in the closing days of negotiations that a new government would be bound to grant some form of amnesty, an earlier suggestion by the ANC that a post-apartheid government should institute a truth commission process was revived.⁸ By placing victim voices centre stage in a truth commission process, a price for amnesty could be exacted.

The TRC’s enabling legislation took some two years to be passed – until then the longest ever debated piece of legislation in the South African parliament. Initially mooted purely as a truth commission, the notions of reconciliation and national unity were added, largely to address the perceptions of non-liberation movement sectors who foresaw a witch-hunt, notwithstanding the commitment to examine abuses on all sides of the political divide. It is easy to see such a compromise as merely the inevitable result of the reconciliatory thrust of the Mandela presidency and his government of national unity – or as Colin Bundy does, as inevitably arising from the compromises wrought during the processes of negotiation itself.⁹ Yet, this representation of the post-apartheid government is itself problematic, removing contestation in favour of a pre-ordained unfolding of a nationalist core, and ignoring a more transformative strand of social justice and restitution strongly evident in the first post-apartheid government.

7 M. Mamdani, cited in P. Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2000), 74.

8 This proposal was made in 1993 in response to findings by the ANC appointed Motsuenyane Commission that torture and abuse had indeed occurred in its detention camps in Angola. At the time the ANC suggested that such a truth commission would examine abuses on all sides of the political conflict, thus committing itself to a commission that would include human rights abuse by both state and liberation movement forces – the first time a liberation movement willingly initiated a process that would subject its own practices to scrutiny. Undoubtedly, in making this suggestion, the ANC was of the view that any abuses committed by liberation movements would be dwarfed by those committed by the apartheid state and would thus be exonerated. Although the TRC did find that the ANC showed remarkable restraint and that the state was the primary perpetrator of human rights abuse, it did not exonerate the ANC (or other liberation movements).

9 C. Bundy, ‘The beast of the past: History and the TRC’ in W. James and L. van der Vijver, eds., *After the TRC: Reflections on Truth and Reconciliation in South Africa* (Cape Town: David Philip, 2000), 10-12.

Nor was support for a truth commission confined to ANC or government circles: key individuals and sectors of civil society supported and vigorously engaged in the public process that debated and indeed shaped key aspects of the legislation.¹⁰ Yet curiously, among the many individuals and organisations who made submissions, there was barely an academic voice outside of the legal fraternity to be found, nor were there submissions that proposed a broader mandate for the truth commission, either in terms of the mandate period or the violations that would be covered.¹¹

Thus, that the TRC was mooted as a key component of the new nation-building project is not contested, but we do challenge the depiction of the TRC as a direct agent of the ruling party, not just complicit, but actively fabricating a moral order that legitimated and authorised the post-apartheid state and what is regarded as a singular nationalist trajectory. Perhaps there were some individuals, some moments or instances where such a representation holds water. However, it effectively reduces the TRC to a narrow nationalism and fixes it as a static and unitary entity, a one-dimensional institution, frozen into a single discourse. This freezing silences the multiple voices that are manifest in the words and work of the TRC as well as the various trajectories and transitions in more than six years of its operation, and subsequent after-life. That the trajectory a truth commission follows, and its outcome thereafter, are predicated upon ongoing engagements both within and between various actors, including government and civil society, is occluded. In this view, power and possibility simply lie in the hands of individual commissioners headed by a charismatic cleric, rather than being represented as more diffuse and indeterminate. A closer study of the texts, contexts and activities of the TRC, its practices of research and investigation, and its public and private interactions with victims and perpetrators, we contend, suggests a more complex and disputed characterisation.

Perceptions of the primacy of reconciliation

As indicated, a common assumption of scholars writing on the TRC has been that reconciliation was the primary driving force in its approach and work. Indeed, at times the imperative of reconciliation is represented as such a vital and over-riding concern, that the TRC is seen to have imposed it on unwilling victims. It is worth citing some of these representations:

Tutu, ‘ritual performer’, the man who ‘minted our political discourse’, from the ‘rainbow nation’ to the ‘new South Africa’ now opened the gateway for a new history of reconciliation...

10 Most notable of these achievements was the successful lobby by civil society structures that amnesty hearings should take place in public.

11 Records of the Justice portfolio committee.

Dependent on the implicit visual presence of Archbishop, law-court and ‘crying room’, the TRC hearings are framed into a ‘texture of memory’ that is a shared space of otherwise hidden pasts. These constellations of image and past tell history as a ‘tale’, witnessed as having a beginning, middle and end. It is a narrative with a moral message, a ‘picture of great courage and pride, sacrifice, strength and community’, leading progressively to ‘our history and our nation’. ... Finally, we are offered a closed, completed apartheid past filled with the visual knowledge of ‘abductions and death, of torture and disappearances, of hardship and the maiming of innocents’. *There are no alternative possibilities, no doubts, but rather the underlying transition to the truth of reconciliation.*¹² [Our emphasis]

Overseen by the charismatic figure of Archbishop Tutu ... the public hearings became a vehicle for the sort of healing and redemption that ... would help cement the new nation morally. *The reconciliation that may be effected by truth-telling was regarded as more important than the details of the stories being told.*¹³ [Our emphasis]

These constructed images were built very early in the TRC’s life, largely, we suspect, from media images of the TRC’s public hearings rather than on a closer study of the texts and other activities of the TRC, its practices of research and investigation, and its public and private interactions with victims and perpetrators. They seem to be based on highly selective strategies of reading, and many wrongly assume a common conception of what reconciliation meant within the TRC and how it was ‘practised’. Yet, this cardinal representation of the TRC remains intact, a decade after the TRC victim hearings ended and the first five volumes of its *Report* were published, as the following demonstrates:

The very weakness of the post-Cold War liberal order was often manifested in much of the advocacy and theorising of the truth commission form, which prioritised catharsis and forgiveness over punishment and tended to gloss over the de jure or de facto amnesties that often came with it. This is perhaps clearest in the case of the much-lauded South African TRC, *which set up a number of mechanisms that pressured victims to abandon a desire for vengeance for the sake of national reconciliation.*¹⁴ [Our emphasis]

12 G. Minkley et al, ‘Thresholds, gateways and spectacles,’ 5- 7.

13 D. Posel and G. Simpson, ‘Introduction: The Power of Truth – South Africa’s Truth and Reconciliation Commission in Context’ in D. Posel and G. Simpson, eds., *Commissioning the Past*, 9.

14 G. Grandin and T.M. Klubock ‘Editors’ introduction’, *Radical History Review*, 97, Winter 2007 (Special Issue on Truth Commissions), 1.

Reconciliation in the TRC's Public Hearings¹⁵

Anthropologist Richard Wilson states that for the first six months of victim hearings, 'Commissioners had been asking each victim appearing at an HRV hearing whether or not they forgave the perpetrator'.¹⁶ This blanket assertion did not accord with our recall of these hearings and thus we conducted a reading of the first four victim hearings, which were critical in imaging the public space of the hearings. In the first hearing held in East London, twenty-two of the thirty cases heard there do not mention reconciliation, forgiveness or anything in that vein at all. In the other eight, it is sometimes the victims and sometimes the Commissioner who makes a comment in this regard. In certain instances the TRC asked how the victim would feel if the perpetrator applied for amnesty. A similar pattern emerged in the first hearings held in Cape Town, Johannesburg and Mmabatho, where at most a handful of victims were asked if they forgave the perpetrator.¹⁷

This is not to say that reconciliation does not feature in these and other hearings. It does, but as we show below, in rather varied ways. In welcoming victims and the public, Archbishop Tutu would frequently refer to the important business of reconciliation and there is certainly constant affirmation of those who do express forgiveness, who are regularly commended by him for being 'incredible people'. In other words, reconciliation is one of the discourses to be heard at the hearings but is arguably not necessarily the dominant one. In some cases, discussion is initiated by victims; in others Commissioners (especially particular Commissioners) directly put questions on reconciliation, but often in a fairly open ended way. In some instances victims refuse the notion of forgiveness and reconciliation to the obvious unease of some Commissioners, but equally their anger is sometimes allowed and openly legitimated and acknowledged.

At the George victim hearings, Geoffrey Yalolo (on his own volition) raised the issue of 'reconciliation'.

15 In the following pages we refer to various kinds of hearings. By victim hearings we mean the hearings of the Human Rights Violation Committee (HRVC). However, the HRVC was also responsible for a number of other hearings, broadly concerned with establishing accountability and motives/ perspectives - the political party, armed forces and security policy hearings as well as the 'sector hearings' at which members of the legal profession, religion, business, health and media made submissions and were questioned about their role in creating a climate in which human rights abuse occurred. Although perpetrators certainly appeared in the 'accountability' and 'sector' hearings, the main perpetrator hearings were those held by the Amnesty Committee to process all applications for amnesty that involved a gross human rights violation. The Amnesty Committee, headed by a judge and consisting of judges, advocates and other legal personnel, existed entirely separately from the rest of the Commission in order to ensure an independent and impartial process. The third committee within the TRC, the Reparations and Rehabilitation Committee also held a handful of hearings to focus on issues of reparation, but most of their work occurred outside of the public spotlight - as indeed did much of the work of the HRV and Amnesty Committees.

16 Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimising the Post Apartheid State* (Cambridge: Cambridge University Press, 2001), 174.

17 Our impression is further born out by Kay McCormick, Mary Bock and Anne Verbist-Serokonyane, who looked at 246 testimonies from eight different hearings in all four TRC regions. See 'Interactive narration at the Human Rights Violations hearings of South Africa's Truth and Reconciliation Commission' (Forthcoming). See also Audrey R. Chapman, 'The TRC's Approach to Promoting Reconciliation in the Human Rights Violations Hearings' and 'Perspectives on the Role of Forgiveness in the Human Rights Violations Hearings' in Audrey R. Chapman and Hugo van der Merwe, eds., *Truth and Reconciliation in South Africa: Did the TRC Deliver?* (Philadelphia: University of Pennsylvania Press, 2008). Both these chapters, based on close reading and quantitative analysis of a sample of hearings, similarly find little evidence to support the notion that TRC commissioners routinely raised reconciliation or forgiveness with deponents or explicitly pressured them to do so. At the same time Chapman does raise significant concerns - e.g., that commissioners tended to regard reconciliation and forgiveness as being interpersonal rather than societal - and goes some way towards attempting to disaggregate these concepts and how they were understood by different parties within the TRC arena.

MR YALOLO: Even now it's very difficult to be in [peace] with the one who assaulted you and yet you are still having pains from the assault he did to you. Unless you can get help that maybe can settle things down, but if there are still pains, it's very difficult to be in peace with that person.

MARY BURTON (Commissioner): Thank you Mr Yalolo, we do recognise that it is very hard to be reconciled when people have not showed any repentance for the things that they have done. And we hope that maybe not quickly because these things don't happen quickly, it will work in people's hearts to come forward and to show signs of remorse and to apologise so that we can move forward and people can be reconciled with one another. We are not asking you to hide your pain and your anger, it's good that you are able to show it and to say those things.¹⁸

Similarly, at Johannesburg victim hearings, Sepati Mlangeni, the wife of human rights lawyer, Bheki Mlangeni, killed by a bomb placed in a walkman, raised her concerns regarding amnesty and forgiveness:

MS MLANGENI: ... Other issues that I'm getting from the newspapers is that Eugene de Kock is going to ask amnesty from you. I, I, I contest this. Eugene, when he did what he did, he knew. He knew that someone would die. Today, I'm a widow, I'm an outcast in our society. Because I'm a widow, in our society, our community, you are associated with all sorts of things when you are a widow... So that when this person comes to you to ask for amnesty how do you forgive such a person? If I can find an answer to this question, how do you go about forgiving this person who is a cruel murderer who killed a defenceless person... I would like the commission to assist me there.

YASMIN SOOKA (Commissioner): Thank you Sepati. I want to say to you that it is true that people apply for amnesty but that you are not obliged to forgive them and if you want to oppose the amnesty application when it is made then you have the right to do so. But we will certainly try on your behalf to find out the things that you asking us to find out: why the parcel came to Bheki and how Eugene could do this. I thank you for coming to us and for telling us your story and I thank you for the courage with which you sit here and tell it as well.¹⁹

18 Testimony of Geoffrey Yalolo, Human Rights Violation Hearing, George, June 19, 1996 available on <http://www.doj.gov.za/trc/hrvtrans/george/ct00553.htm>, accessed on 19 October 2008.

19 Unfortunately, the transcript on the TRC website for this testimony is incomplete. This version is transcribed from the film, *La Commission de la Verite*.

Nor was reconciliation conceived in a single, Christian frame. Even Wilson, who is highly critical of the ‘meta-narratives’ that he sees as framing the TRC, concedes that several variant understandings of reconciliation competed within the TRC, one of which he termed ‘the religious redemptive narrative’.²⁰ These approaches, he suggests, attained hegemony in different sites of the TRC. In clarifying the concepts and principles underlying its work, the TRC itself eschews the Christian notion of reconciliation:

The experiences of the Commission highlighted the potentially dangerous confusion between a religious, indeed Christian, understanding of reconciliation and the more limited, political notion of reconciliation applicable to a democratic society. Many people ... were concerned about the imposition of a notion of reconciliation – associated with contrition, confession, forgiveness and restitution – on a diverse and divided society attempting to consolidate a fragile democracy.²¹

Ultimately the *Report* anchors reconciliation in a more secular and civic domain.²² This does not mean that there were not Commissioners and Committee members whose own Christian identity extensively shaped their interactions with victims at public hearings. Commissioners such as Dr Khozo Mgojo would persistently draw Biblical analogies to victims’ accounts.

DR MGOJO: Mama, this is a very painful and tough story. Myself as a Christian who reads the Bible and who believes in Christianity, it reminds me of the words that I read which were uttered by a 33-year-old man, his name was Jesus, at the time that he was being tortured just before he got killed. Jesus prophesied. He looked at the woman and he looked at the children and when he saw a certain woman he said the woman should not cry for him but they should cry for themselves as well as their children.²³

This was not only a one-way process. Victims and perpetrators themselves very frequently adopt religious language in their testimony to the Commission. The hearings certainly gave space to the religious-redemptive approach to reconciliation, but this is not the only voice to be heard from the TRC and its Commissioners and staff at the hearings. This type of metonymic representation of Archbishop Tutu or those who pursued the reconciliation or theological issues as the ‘voice’ of the TRC is to silence other voices that speak in the TRC. It is act of silencing to cast all Commissioners in the same mindset. Commissioners did not

20 R. Wilson, *The Politics of Truth and Reconciliation*, 104-110.

21 *TRC Report*, Volume 1, (Cape Town: Juta, 1998), 108.

22 *TRC Report*, Vol 1, 106-110.

23 Dr Mgojo, at the Human Rights Violation Hearing, Empangeni, KwaZulu Natal, November 5, 1996, available on <http://www.doj.gov.za/trc/hrvtrans/george/ct00553.htm>, accessed on 19 October 2008.

share a unanimous view on either reconciliation or theological approaches, and this was the site of some tension.²⁴ There were others in the TRC who were sceptical, or even hostile, to the reconciliation project.

The amnesty process, which was largely inimical to any focus on reconciliation in the hearings, is largely overlooked by those trying to fix the primacy of reconciliation in the TRC's discourse. Yet this constituted ultimately the most voluminous site of work of the TRC.

Although neither remorse nor forgiveness were required in order for amnesty to be granted, in the early amnesty hearings²⁵ one evidence leader in particular frequently made a point of asking both perpetrators and their victims (or relatives) whether they felt reconciled or were prepared to forgive. This, however, by no means became general practice. In many instances, perpetrators themselves would express remorse or regret, and in some cases victim families would respond to this in their testimony or comment on the fact that an applicant had not expressed remorse. Some applicants entered a rote apology to victims or their families at the end of their cross-examination, on what was clearly the advice of their legal representatives, but again this was not standard practice. For example, the legal representative of the majority of security force applicants specifically regarded this as a personal choice²⁶. Some applicants explicitly resisted expressions of remorse, and instead justified why their actions had been legitimate. However, whether amnesty applicants expressed regret or not, or whether victims granted forgiveness or not, their statements in this regard generally passed unremarked upon by the Amnesty Committee as neither were relevant in determining whether amnesty should be granted.

In rare instances, victims or perpetrators asked to meet or sought discussion on questions of forgiveness. In these circumstances, they were often silenced and told to hold off until proceedings were over as that was not the business of the hearing. As a result, such meetings between victims and perpetrators mainly took place in the back corners of the hall as the TRC staff packed up the chairs. A handful were recorded by film-makers or journalists, such as the powerful encounter between the mothers of slain activists in Cape Town, the so-called 'Guguletu 7', and the black security policeman involved in the incident. His co-applicant, a white security policeman, was not part of this meeting. Similarly, some journalists sat in on the daily meetings that happened after the formal amnesty session between amnesty applicants from a vigilante group, and members of the local community who had been directly affected by their reign of terror. These encounters, however, were not recorded in any way by the TRC, or accorded any official recognition.

24 See for example, Alex Boraine's mixed feelings about the role of religion in the TRC in *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission* (Oxford: Oxford University Press, 2001), 79, 81-2, 101, 265-8. See also Piet Meiring's description of efforts by the Johannesburg Commissioners to downplay the religious aspects of opening and closing hearings in P. Meiring, 'The *Baruti* and the lawyers: The role of religion in the TRC process' in Villa-Vicencio and Verwoerd, eds., *Looking Back, Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, (Cape Town: University of Cape Town Press, 2000), 123 – 124.

25 For a description of the amnesty hearings, see footnote 4. Note that the victims of a perpetrator (or their relatives) were entitled to be present at amnesty hearings. They were also entitled to legal representation and could testify.

26 Personal communication with Jan Wagener who represented the majority of security force applicants.

Strange behaviour for an organisation apparently committed to ramming reconciliation down everyone's throats.

The public hearings are often taken by researchers to be the only 'voice' of the TRC and thus the sole site of evaluation, although some include the *Report*. However, the TRC 'spoke' in many different ways and sites. For most victims, their interaction with the TRC was through a statement taker and filling in a statement form.²⁷ The statement form exhibits no concern with the subject of reconciliation (or indeed, theology) whatsoever. The statement-giver is asked if they would like to meet the perpetrator(s). The question is not framed in a reconciliatory framework and leaves the 'agenda' of such a meeting entirely open for a host of possibilities. Indeed, many victims responded to this question positively, with their goal being that of demanding acknowledgement from the perpetrator.

If the TRC was an organisation oriented around reconciliation, it would surely be expected that its structures, activities and budgets would be allocated towards the goal of reconciliation. This is not the case: resources, human or otherwise, were geared towards truth seeking and the question of responsibility for gross human rights violations. Indeed, while the hearings may have been the domain of the Archbishop, a closer examination of the imperatives that drove its day to day work would demonstrate that it was law rather than theology which dominated. Six of the twelve commissioners were legal practitioners, one of whom oversaw the Investigation Unit and another two the Human Rights Violation (HRV) Committee; a lawyer was appointed to manage the Investigation Unit; while the entire Amnesty Committee consisted of judges and lawyers. For the most part, both the HRV Committee and the Investigation Unit were driven by an agenda of accountability rather than reconciliation.

Further, reconciliation features hardly at all in the five-volume *Report*. The chapter on reconciliation (eighty-five out of 2739 pages, namely three percent) is the only substantial place in the *Report*, aside from the Archbishop's introduction (where the subject of reconciliation is contained within a rather surprisingly limited six paragraphs and God is mentioned only in his closing conclusion). Volumes Two and Three, which delve into an account of violations, ignore this issue entirely and are written in a stark form not designed to pour balm on wounded souls. This can hardly be termed a constitutive element of the *Report*. Aside from some comments in the 'Foreword' to the final two volumes (Volumes Six and Seven) of the *Report*, published in 2003, there is no focus on the issue of reconciliation. If reconciliation was such a key framing ideology of the TRC, why is it so prominently absent in its *Report*?

Images of the TRC as a benign body pursuing reconciliation ignore the fraught environment of legal constraints and current and past power relations that shaped its trajectory in a more subtle manner. A critical analysis is not helped by

27 Only approximately ten percent of those who made statements to the TRC testified at public hearings.

a simplistic approach built upon mere shards of language and image extracted in the main from the media. In short, the 'reconciliation' imperative of the TRC is decentred by a more substantive consideration of the various practices adopted and constantly reworked by the TRC in a highly contested environment. The pressures upon the TRC were various: old belongings, current affiliations, legal menaces, future prospects, compromises and conditions. These simply do not permit studies detached from practice to pass muster. They produce a representation emptied of power relations.

Characterisation of political violence

What is at stake in many of these representations is not only the focus on reconciliation but the kind of reconciliation implied by the TRC's mandate. Perhaps the most compelling criticism of the TRC has been the way in which its mandate penned a characterisation of political violence that excluded the structural violence of apartheid. The mandate painted a narrow definition of gross human rights violations, confining its gaze to the physical and repressive dimensions of apartheid rule that occurred in direct political repression and conflict, rather than the structural and everyday violence of apartheid. Whereas tens of thousands were affected by direct repression, millions endured the machinations of apartheid from the cradle to the grave through the system of racial classification, the pass laws and its associated systems of migrant labour, the creation of far flung artificial ethnic homelands, and the loss of land and citizenship.

Consequently, it is argued that the TRC's depiction of the violence of the past was a shrunken and attenuated one, focused on a tiny minority of those who suffered direct physical violations. This truncation mistakenly suggests that the borders of violence ended at the perimeter of the individual body rather than entire communities. As succinctly expressed by Mahmood Mamdani, this circumscription of the mandate had the effect of not only leaving thousands of apartheid functionaries unscathed, but allowing the majority of those who benefited from apartheid – mainly the broad white population – entirely off the hook. Instead of placing the complicity and culpability of beneficiaries centre stage, white South Africans by and large were able to claim a false innocence. The reconciliation project of the TRC, in this view, was effectively reduced to reconciliation between former [male] political enemies, state agents and political activists, rather than a reconciliation that addressed and challenged the major cleavages in South African society – namely the racial and economic divide.²⁸ Thus, as Colin Bundy suggests, 'we may run the risk of defining a new order as one in which police may no longer enjoy impunity to torture opponents of the government, but fail to specify that ordinary citizens should not be poor and illiterate and powerless, or pushed around by state officials and employers'.²⁹

28 See for example, M. Mamdani, 'A diminished truth,' *Siyaya*, 3, Spring, 1998, 38-40.

29 C. Bundy, 'The beast of the past', 20.

Further, the narrowness of the mandate placed restrictions on the TRC's capacity to engage with race and racism, de-centering them as a critical interrogational framework, along with several other key constitutive elements of the parameters of apartheid, including class, gender and ethnicity. Gender activists, for example, have pointed out that the failure to include a broader range of structural violations also had a gendered dimension and that the TRC's iconic victim of torture, beating or killing was also a male victim, with profound gender implications for the nation-building project.³⁰

Indeed, closer attention to the workings of the TRC, its internal discussions and debates, would demonstrate that the TRC itself grappled with this over a lengthy period, determining in the end that it was but one of a number institutions and initiatives designed to tackle the apartheid legacy and that the abuses associated with the routine implementation of apartheid were 'out of mandate'.³¹ Although wholly inadequately, it attempted to recognise this limitation through its debate on whether apartheid was a crime against humanity, via its *Report* and through public sectoral hearings that attempted to inscribe a wider landscape of direct and indirect responsibility for violence. These included hearings on the faith, media, legal and business sectors where key figures and representatives presented submissions and were questioned by commissioners. Prominently absent from these hearings were the individual testimonies of those who suffered as a consequence of the practice and policies of these powerful sectors and institutions. Thus, for example, representatives of business and trade unions made submissions to the business hearings, but there were no direct testimonies from workers, the unemployed or the rural poor.

At the same time, the critique of the narrowness of the TRC's mandate, although one which we have largely been in agreement with, creates an unfortunate binary of apartheid violence (ordinary/ everyday) and political violence (extraordinary), ignoring the ways in which the everyday violence of apartheid was inscribed in each act of torture and killing. The testimonies of victims appearing at TRC hearings, notwithstanding the erasure of race from its mandate, are narratives rich in the ways in which political and apartheid violence are represented as continuous rather than as discrete. Indeed, even Belinda Bozzoli, who reads the TRC as overly concerned with reconciliation as well as trying to construe individual victim accounts as part of a national narrative of resistance to apartheid, describes testimonies at the Alexandra hearings as follows:

30 For an examination of gender and the TRC see inter alia B. Goldblatt and S. Meintjies, 'Gender and the Truth and Reconciliation Commission: A submission to the Truth and Reconciliation Commission' available on www.doj.gov.za/trc/submit/gender.htm; F. Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto, 2003); *Truth and Reconciliation Commission of South Africa Report*, Vol 4, (Cape Town: Juta, 1998), 282-316. At the same time, the experience of this male victim was more often than not relayed to the nation by a female family member: it was of some concern to gender activists and the TRC that, while mostly women made statements and gave testimony to the TRC, they largely spoke about the violations suffered by their men-folk, even in circumstances where they too had been victims of abuse. Aside from Belinda Bozzoli, few have examined the implications of the ways in which female agency rescripted narratives of violence. See B.Bozzoli, 'Public ritual and : The Truth Commission in Alexandra Township, South Africa 1996.' *African Studies* 57(2): 167-198. Also see M. Fullard and N.Rousseau, 'Identities, truth-telling and power: South Africa and Guatemala', forthcoming.

31 As numerous people have pointed out, the TRC was largely modeled on the earlier Latin American truth commissions, most especially of Argentina and Chile. Although its mandate was considerably more extensive than either of these, it duplicated their concern with individual rather than social violations. At the same time, it should be noted that some human rights scholars have argued that within international human rights law, violations such as forced removals could and should have been seen as forms of 'ethnic cleansing' – and thus a legitimate domain for truth commissions.

While ‘human rights abuses’ were defined by the commission as mainly being concerned with the kinds of deeply personal tragedies... there was room in this hearing for broader issues to be raised. And although they were not the centre-pieces of any story, social and cultural matters were clearly part of the generalised experience of apartheid, and part of the discourses within which such experiences were retold. In fact, so powerful were these aspects that they often ‘burst through’ an individual’s story even when they were not specially being asked for by the commissioners. The gross unfairness of apartheid; the ways in which blacks and whites were regarded as enemies at worst, alienated from one another at best; the presence of, and appalling behavior of hated officialdom; ignorance; poverty; the uncared-for children and youth; poor education....One witness spoke bitterly of how she had noted that when white students protested they were mildly treated; but when black students protested they were arrested and shot at. Witnesses felt excluded from knowledge of the workings of courts, police stations, mortuaries and other institutions with which they, in their moments of suffering had to interact.³²

Criticisms of the TRC’s characterisation of violence go beyond its narrow definitions of violence but also to its supposed creation of mutually exclusive and unproblematised binary oppositions: state/liberation movement, white/black and perpetrator/victim. Yet these critiques themselves make a number of assumptions about the character and outcomes of political violence in the period examined by the TRC. Their criticism assumes a fundamental dualism between state and liberation movement, between black and white. For example, according to Brent Harris: ‘[While] the TRC “uncovered” a multiplicity of positions as well as a multiplicity of political conflicts of the recent past, it tended to reduce these to two positions: one that resisted apartheid and another that defended apartheid.’ An explanatory footnote makes clear that these two categories refer mainly to black victims and white perpetrators.³³ Similar assumptions underlie Mamdani’s critique where he states that ‘the TRC’s version of truth was established through narrow lenses, crafted to reflect the experience of a tiny minority: on the one hand, perpetrators, being state agents, and, on the other, victims, being political activists’.³⁴

This conjures an image of organised political activists, the so-called beneficiaries of the new post-apartheid regime. Yet of the 25 000 people who are estimated to have died in political conflict inside South Africa between 1960 and 1994 (the TRC’s mandate period), only a small number were organised political activists

32 B. Bozzoli, ‘Public ritual and private transition’, 184.

33 B. Harris, ‘The archive, public history and the essential truth: The TRC reading the past’ in C. Hamilton, V. Harris, J. Taylor, M. Pickover, G. Reid and R. Saleh, eds., *Refiguring the Archive* (Cape Town: David Philip Publishers, 2002), 168.

34 M. Mamdani, ‘Diminished truth’, *Siyaya*, 38.

(an even smaller fraction armed combatants) or state security force members. This was especially so in the 1990s when the TRC reports that 'more gross violations were carried out by members of South African society acting in what they considered to be the pursuit of a political aim than by members of political organisations acting on the express orders of their superiors'.³⁵ Nearly three quarters of those killed died in the final four years of apartheid rule from 1990-1994 as a result of inter-civilian clashes, covertly encouraged by the state.

The assumption that reconciliation involves only the white state as perpetrator and black citizen as victim is therefore built on a very closed and selective depiction of violence. It excludes and silences the vast majority of victims who made statements to the TRC, the majority of whom were ordinary civilians caught up in escalating violence. In these depictions, the IFP, for example, as both victim and perpetrator is obliterated and their experience is silenced. For the bulk of TRC victims, reconciliation would involve their neighbour, the village on the hill opposite, the local warlord.

A further binary said to underlie the TRC's understanding of South Africa's political conflict is that of victim and perpetrator. As expressed by Posel and Simpson, the TRC's "truth" would be told in terms of simple moral binaries of "victim" and "perpetrator", associated with unambiguous judgments of right and wrong. There was no place here to explore moral ambiguities born of the politics of complicity or collaboration under apartheid'.³⁶

The TRC became sharply aware of this issue quite soon after it began receiving statements and conducting hearings. From statement-takers to commissioners, the TRC recognised that the borders between victim and perpetrator were uncertain and far from clear cut. As its *Report* points out,

the categories [of victims and perpetrators] are not, however, mutually exclusive. Thus, for example, a person who may, in one situation, be a victim of severe ill-treatment by the police may, in another, become a perpetrator of a gross violation of human rights through his or her killing of a political opponent. This position was applied to a large majority of violations which took place as a result of what might loosely be termed civilian conflict.³⁷

Nevertheless, the structuring of the *TRC Report* largely around perpetrator groupings perhaps obscures this, in the sense that the perpetrators and the victims 'exist' in different modes in different places in the *Report* in unconnected ways and seals them without correspondence. An artificial separation results, driven largely

35 *TRC Report*, Vol 3, 4–5.

36 D. Posel and G. Simpson, 'Introduction', *Commissioning the Past*, 10.

37 *TRC Report*, Vol 1, 72.

by the legal requirement specified in the Act, discussed earlier, to allocate responsibility for gross human rights violations. Even so, there are significant moments in the *Report*, particularly in the sections dealing with the 1990s, where the blurring of victim and perpetrator identities is far more evident. The phenomenon of Self Defence Units (SDUs), where local ANC-aligned youth formed armed ‘protection’ groups which at times engaged in fratricidal conflicts with opposing political organisations, are an explicit representation of the complexity of fixing a victim or perpetrator label onto an individual or grouping. Many SDU members had suffered close or personal losses in the conflict and had themselves engaged in brutal attacks.

SDU commander in Thokoza, Victor Wanda ‘Muchacho’ Mabaso, applied for amnesty for the abduction and killing of a suspected IFP member, Bheki Khanyile, in September 1993. Khanyile was taken to a field outside a nearby school where Mabaso and others took turns shooting him with an AK47. Mabaso’s own parents had previously been killed in conflicts with the IFP.

CHAIRPERSON: One last aspect I want to cover with you. It is perhaps a sensitive issue, but I need to know what your attitude would be. When you killed... , how did you feel yourself?

MR MABASO: As I’ve already explained ..., I did not have the heart. I felt nothing....[A]t that time I did not have a problem. If it was possible I would kill even ten people because I did not have a heart at that time. I was hurt because of my parents that were killed. I did not have a heart. I was going to do whatever so as to protect myself.³⁸

Indeed, critics have barely engaged with the TRC’s amnesty hearings, where the blurring of borders between victim and perpetrator was often explicitly apparent, and where the agency of collaborators was most evident. These grey areas are, perhaps, best represented by the *askaris*, former liberation movement guerillas who ‘turned’ and served the security forces. The *askaris* often practiced great brutality and acts of betrayal after enduring severe torture upon themselves and enduring ongoing threats to their lives by both their new masters and their old. The TRC’s work brought the *askari* to prominent public notice.

MK operative Christopher Mosiane, abducted by the Eastern Transvaal Security Police from Swaziland in April 1984 and ‘turned’ to become an *askari*, told the Amnesty Committee that he was given the choice ‘to co-operate or simply disappear’. He described himself thus: ‘Let me put it this way. I was a soldier before I was abducted. At that time I was a soldier of conscience and ... I was turned into an *askari*. I still remained a soldier, against my conscience’.³⁹

38 Testimony at Amnesty Hearing, Johannesburg, February 2, 1999, available on http://www.doj.gov.za/trc/amn-trans/1999/99020118_jhb_990202jh.htm, accessed on 19 October 2008.

39 Testimony at Amnesty hearing, Pretoria, July 21, 1999, available on http://www.doj.gov.za/trc/amntrans/1999/99071923_pre_990721pt.htm, accessed on 19 October 2008.

The state strategy of ‘contra-mobilisation’ (a central tenet of counter-insurgency theory and strategy) that was widely implemented in South Africa from the mid 1980s, is one in which the categories of victim and perpetrator are thrown into disarray.⁴⁰ As a strategy, contra-mobilisation sought to find and encourage or build sectors of the ‘oppressed’ to oppose the liberation movements. Through this strategy, segments of the ‘oppressed’ came to violently oppose each other and entire communities were engulfed in a spiral of violence. The Inkatha Freedom Party (IFP) is probably the example par excellence of the strategy of contra-mobilisation. The IFP, an organisation that successfully mobilised some of the most impoverished sector of the ‘oppressed’ – rural black communities and migrant hostel dwellers - was found by the TRC to have committed the greatest number of killings, indeed exceeding those of the state.⁴¹ While the TRC certainly emphasised the links between the IFP and state security forces, arguably it did not present the IFP as simply an ‘agent of the state’ as is common in public and some academic representations.

At the same time, it is true that the victim hearings tended to seal victims in a frame of passive ‘innocence’ rather than active agency. A notion of unengaged victimhood came to prevail in the HRV hearings that seemingly did not permit active engagement in struggle. Witnesses tended to obscure any aspect of the violation that may have offset their ‘blamelessness’ in any respect. Thus, victims were almost always shot while ‘going to the shop’ or ‘walking past a demonstration’, and almost never shot while throwing stones, attacking a collaborator, looting a shop, or any of the minor or major acts of protest during the 80 507 unrest-related incidents recorded by police in the period from September 1, 1984 to April 14, 1992.⁴² This became something of a wry joke amongst some TRC researchers – that the police preferred to shoot the shoppers rather than the demonstrators. Research and investigation would often indicate a scenario where the victim was far more directly involved.

A former staff member from the Peru TRC recognised the phenomenon, referring to it as being ‘struck by lightning’,⁴³ where the violation hit the victim as a bolt from the blue, disconnected from context or unrelated to any political activity the victim may have been involved in. These silences came to prevail right from the first victim hearings. An ANC struggle veteran from the 1960s to the 1980s who testified about enduring severe torture, harassment and many periods of detention, brought Archbishop Desmond Tutu to tears in a much publicised scene. The victim, however, did not talk about his role as leader of the Amabutho youth militants associated with the United Democratic Front, who enforced the consumer boycotts and served as the shock troops in the fratricidal conflicts between the UDF and AZAPO (Azanian People’s Organisation) and later the Ama-Afrika movement. Similarly a man blinded by police bullets was later found to have chaired a par-

40 See the discussion on contramobilisation in *TRC Report*, Volume 2, 297 – 312.

41 *TRC Report*, Volume 3, 9 and Volume 5, 232.

42 Major-General HD Stadler, *The Other Side of the Story: A True Perspective*, (Pretoria: Contact Publishers, 1997),179.

43 Conversations with former Peruvian truth commission staff member, Eduardo Gonzalez.

ticularly brutal ‘peoples court’, and was implicated in several criminally motivated murders and assaults, including the burning to death of two elderly people in their shack. These were not mentioned in his testimony.

This is not to suggest that a perpetrator lurks within each victim. But it does pertinently challenge the notion that the power to determine victims’ self-representations resided purely with the TRC. Instead, these self-representations put forward by victims and witnesses were not mere mirror reflections of what the TRC wanted to hear. Victims themselves were part of drawing this boundary and circumscribing their role as mere recipients of violations rather than active in any aspect. In some cases even the most militant and ‘hardened’ operatives chose self-representations that were about vulnerability and suffering rather than an account of their active agency in struggle. There were other sides to self-representation. In some instances witnesses or victims chose to describe themselves as comrades in a youth organisation when they were not, or elevate themselves to activist or even, perhaps, guerilla status. These self-representations could shift and change even within the boundaries of the TRC. For example, families of ANC members killed in a security force raid in Botswana in June 1985 described their sons as guerillas in the ANC’s armed wing Umkhonto we Sizwe (MK) at the victim hearing, but denied these military links to MK at a later amnesty hearing at which Security Police sought amnesty for their role in identifying targets for the raid.⁴⁴

In short, the power of representation was not that of the TRC alone. From the piercing wail by Nomonde Calata at the first victim hearing in East London to the obfuscatory antics of legal representatives in the later amnesty hearings, participants in these hearings – victims, perpetrators, audience, lawyers and media – were as much part of shaping the landscape of the hearings as commissioners and officials of the TRC.⁴⁵ As Bock, McCormick and Raffray argue, ‘[The] narratives of the HRV Hearings were jointly constructed, growing out of the interaction between commissioners and testifiers’.⁴⁶

Consensual history and egalitarian violence

Here we explore the notion that the TRC sought to construct ‘a single, national account – an overview, which could serve as the basis for a shared history, a common, collective understanding’.⁴⁷ There are two aspects here with which we take issue: the assertion that the TRC sought to produce History and the extent to which such a history would provide a consensual account.

44 See testimony of Emma Mtsweni at the Human Rights Violation hearing, Leandra, June 3, 1997 available on <http://www.doj.gov.za/trc/hrvtrans/leandra/mtsweni.htm> and the cross-examination of Busisiwe Mokoena on November 21, 2000, available on <http://www.doj.gov.za/trc/amntrans/2000/2001121j.htm>, both accessed on 19 October 2008.

45 For further discussion on the shaping of the hearing spaces, see M Bock, K McCormick and C Raffray, ‘Fractured Truths: Multiple Discourses in South Africa’s Truth and Reconciliation Commission’, paper presented at the Centre for African Studies, University of Cape Town, August 2000, 19; Kay McCormick et al, ‘Interactive narration’: A. Verdoolaege, ‘The Human Rights Violations hearing of the South African Truth and Reconciliation Commission: A bridge between Individual narratives of suffering and a contextualising master-story of reconciliation’, paper presented to a workshop on *Comparative Perspectives on Truth*, University of the Witwatersrand, August 2002; and L Payne, ‘Confessional performances: perpetrators’ testimonies to the South African Truth and Reconciliation Commission’, paper presented at the Centre for African Studies seminar, University of Cape Town, May 22, 2002.

46 M. Bock et al ‘Fractured truths’, 19.

47 C. Bundy, ‘The beast of the past’, 14.

One of the assumptions fostered by academics assessing the work of the TRC, and most particularly by historians, is that the TRC's central task was historical recovery and that its *Report* should have been an historical account. The legislative brief contained in the TRC Act⁴⁸ to provide 'as complete a picture as possible' in a comprehensive report has been interpreted as an injunction to write history. Thus, for example, Colin Bundy asserts that '[it] goes without saying that the TRC was charged with writing an official history.... Ultimately... although the TRC wrestled with its brief, it failed to get a proper grip on it... the result is a report that presents a structurally fragmented historical account'.⁴⁹

A range of other scholars echo the view that the TRC's *Report* provides a weak historical analysis and fails to provide a coherent and integrated history of South Africa's past. Richard Wilson suggests that the *TRC Report* lacks 'any overarching and unified historical narrative, [providing] only a moralising narrative predicated upon a notion of "evil"'.⁵⁰ Deborah Posel argues that 'with little explanatory and analytical power, the report reads less as a history, more as a moral narrative about the fact of wrongdoing across the political spectrum, spawned by the overriding evil of the apartheid system',⁵¹ and that the *Report* lacks 'an attempt to integrate and synthesise ... into a unified analysis. Instead, severing "motive" from "cause" and disconnecting both from the narration of individual cases, the report deprives itself of one of the essential tools of historical analysis'.⁵² More recently, Noor Niegtagodien, argued that

The TRC was hamstrung by its mandate so that it had to focus on particular forms of offences. As a history project it didn't critically engage the underlying processes that contributed to apartheid and to change. It worked within the easy binaries of good and evil; victim and perpetrator, which foreclosed on any real inquiry into historical processes, including the complexities of causality and effect. Individuals and organisations, even narratives, were pigeonholed as either good or bad. It lacked the kind of complexity proper history can and does provide.⁵³

Reading some of these responses to the TRC and its *Report*, one could be forgiven for believing that there was an expectation that the TRC would produce a materialist, social history of South Africa.

A closer reading of the TRC Act and its staffing would show that a far more limited, less scholarly excavation of the past was intended by the legislators. The notion that the primary task of the TRC was a historical one reduces its project to an intellectual enterprise, a profound misapprehension of its undertaking and in-

48 Promotion of National Unity and Reconciliation Act, (Act No 34 of 1995).

49 C. Bundy, 'The beast of the past', 13.

50 R. Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001), 34

51 D. Posel 'The *TRC Report*: What kind of history? What kind of truth?' in D. Posel and G. Simpson, eds., *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, (Johannesburg: Witwatersrand University Press, 2002), 148.

52 D. Posel, 'The *TRC Report*', 160.

53 Cited in C. Saunders and C. Kros, 'Conversations with historians,' *South African Historical Journal*, 51, 2004, 1-2.

stitutional character. Indeed, it is worth pointing out that the genealogy of the TRC Report is not South African historiography.⁵⁴ Its lineage is instead the Argentine truth commission's 1984 report *Nunca Mas*, the 1993 Rettig Report of the Chilean truth commission and the El Salvador truth commission's 1993 report, *From Madness to Hope*.⁵⁵ The texts and trajectories of these prior truth commissions and other international transitional justice initiatives had strong weight in shaping the itinerary of the TRC and the index of its report. This international context is often ignored by local academics who scrutinise the TRC solely as an instrument of the new state.

These prior truth commission reports are marked by significant differences in size, scope, language, and orientation, reflecting the fact that no international consensus exists on their methodology and content. Many reports include similar features, sections and methodologies.⁵⁶ The subsequent Guatemalan commission's report, *Memoria del Silencio*, is the only to have included an extensive historical section. All of these reports battle with institutional, political and legal constraints; the dimensions of time, space and voice; and how to give both chronological and regional concerns adequate attention. Some move more decisively into the terrain of contextual analysis, others remain firmly within an empirical narrative. Some are effusively descriptive, others more circumspect and restrained. Indeed an argument that had some influence on the TRC was that the report of a truth commission should position itself outside of the field of historiographical and political debate, so as to avoid being pegged as merely another voice, associated with long-standing contests.⁵⁷

A great deal of criticism, we suspect, stems from the disregard of the TRC's imperative of establishing responsibility for gross human rights violations. Not only was the task explicitly stated in the Act⁵⁸ (yet persistently ignored by academics), but it was also one of the most common pleas from victims: 'Who was responsible?' As Andre du Toit notes, the imperative of making findings and locat-

54 Indeed an attempt to get a group of historians to work on a chapter providing a historical overview for Volume One of the TRC Report ultimately foundered. Attempts to draw scholars into various chapters of TRC report-writing were largely unsuccessful as pressures of time, pace and 'mindset' were rarely synchronous.

55 *Nunca Mas: Report of CONADEP, National Commission on the Disappearance of Persons* (London: Faber and Faber in association with Index on Censorship, 1986); *Report of the Chilean National Commission on Truth and Reconciliation* (Notre Dame: University of Notre Dame Press, 1993); *From Madness to Hope: The 12-Year War in El Salvador: Report of the Commission on the Truth for El Salvador*, UN Doc. S/25500, Annex, 1993; reprinted in United Nations, *The United Nations and El Salvador: 1990 – 1995* (New York: United Nations, 1995), 290 – 414.

56 Some of these common areas include, for example, an outline of the formation, structures and policies of the key perpetrator groupings, commentary on the judicial system, and varying quantities of individual cases.

57 This view was put forward by several participants in a discussion on truth commissions at the Harvard Law School. See H. Steiner (ed), *Truth Commissions: A Comparative Assessment* (Cambridge, Mass: World Peace Foundation, 1997), 15-17. At the same time, Brent Harris has argued that it is precisely through the attempt to position itself outside of or above conflict that the TRC constructs its authority. See B Harris, 'The archive, public history and the essential truth.'

58 See Sections 4 (a) 'Functions of the Commission', Act No 34 of 1995: Promotion of National Unity and Reconciliation Act, 1995: "...the Commission shall (a) facilitate, and where necessary initiate or coordinate, inquiries into - (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) 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; (iii) the identity of all persons, authorities, institutions and organisations involved in such violations; (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation. ..." (our emphasis).

ing responsibility is perhaps the most dominant frame of the *Report*⁵⁹ – and, we would add, its work over several years, particularly by the Investigation Unit and the Research Department. This concern with responsibility propelled a great deal of the focus on ‘victims’ and ‘perpetrators’, and was accentuated by the refusal of key parties and institutions to accept direct or indirect accountability. As the TRC moved from its public hearings to its findings and *Report*, it became far more dominant than any concern with reconciliation or constructing historical narratives. Indeed the accountability lens forced a different reckoning and often drove against concerns with reconciliation. Yet Posel, for instance, conflates these findings of responsibility and accountability with moral judgments, rather than locating these findings within the discourse of international human rights and most specifically, concerns to end impunity.

This is not to suggest that the *TRC Report* did not provide an opportunity for a different engagement with the past, and that it could have interpreted its mandate’s injunction to present ‘as complete a picture as possible’ or identifying the ‘antecedents’ to gross violations of human rights’ more powerfully. Indeed, to some degree, this thinking was reflected within the TRC in the early days of its existence and even in initial discussions on the *Report*. Yet the institutional character of the TRC, the political party submissions, the ‘accountability hearings’⁶⁰ and evidence emerging from HRV and amnesty hearings, research and investigation, centred the *Report* around different concerns.⁶¹

Of course, for those who work within a framework that is interested in the multiple ways and sites in which history is represented, patently the TRC did engage in ‘the production of history’. Yet, while truth commissions offer a rare and direct public engagement with the past by a range of different actors, public historians have by and large tended to overlook the multiple and competing images of pastness, in favour of a representation of the TRC that is singular and inert. Where there has been some recognition of diverse narratives, these are reduced to a victim voice and a single TRC discourse that absorbs and digests difference in favour of a master narrative of reconciliation and/or resistance. This we contend has had the effect of writing off non-academic representations rather than expanding the domain of public scholarship.

An exception to this is the work of American historian David Thelen, who argues that both historians and the TRC foreclosed and blunted the power of testimonies at the public hearings by attempting to ‘impose narrative order and larger contexts’ either in order to explore larger historical narratives or to explain human rights abuses. Instead Thelen is interested in the ways people make use of the past, and how specifically testifying at a public hearing provided a moment of re-

59 See A. du Toit, ‘The product and the process: On the impact of the *TRC Report*’, paper presented at the Wits History Workshop, *The TRC: Commissioning the Past*, June 1999, University of the Witwatersrand, 2.

60 These would include the recall of political parties around specific questions arising from their submissions and the evidence emerging from the political party hearings, as well as the subsequent armed forces and security policy hearings.

61 For example, while Volume 2 was conceptualised as being organised around perpetration according to affiliation (Security Forces, Liberation Movement, Homeland, etc), Volume 3 was seen as the ‘victim volume’ organised by region. However, at a later stage, it was decided that Volume 3 should adopt the same framework as not only did it provide more detailed evidence of the main findings made in Volume 2, but it enabled the TRC to demonstrate systematic patterns of abuse and thus planning and authorisation. These imperatives were accentuated in the highly contested environment in which findings were made.

enactment that enabled testifiers and via them, the broader public, to explore ‘(the) horizons of possibility and constraint from which they made – or deferred – choices about what to say or do’.⁶²

However, in general, both public and social historians agree that the TRC tried to construct a consensual view of the past that would allow the nation to ‘close the door on the past’. Thus, in Posel’s words, ‘the idea of reconciliation was also explicitly tied to the project of nation-building, “imagining” a new form of national community based on a “collective memory”, a “shared” history’.⁶³ In order to effect this ‘shared history’, a complex acrobatic act needed to be performed. On the one hand, the violence of apartheid must be represented as unconscionable; resistance against it noble. On the other hand, the nation would be induced to recognise that in the struggle to end apartheid, all sides had committed human rights abuses, but through the contrition of perpetrators and the willingness of victims to be reconciled, a new moral order would be constructed.

Indeed, this view was mirrored in some statements by TRC officials. In October 1997, TRC Commissioner Richard Lyster caused something of a public controversy when he suggested that one of the tasks of the TRC was to establish a ‘publicly sanctioned history that could be taught in schools’. This was important so that ‘the nation is not left with a number of contradictory versions of our history which “serve narrow and regional nationalism, factional interests and legitimise the ideologies of those who wish to wage civil war”’.⁶⁴ Around the same time, TRC Research Director Charles Villa-Vicencio suggested ‘the need is to write a report that provides the basis for a new communal and inclusive memory. The notion of contributing to the emergence of an inclusive heritage on which the nation can draw in its pursuit of a human rights culture is a crucial part of the work of the Commission...’. At the same time he cautioned that creating such a memory ‘decidedly does not include the imposition of a “master narrative”’. Indeed, there is a case to be made for what has been called a story of an ‘unreconciled past’. There is a need to recognise the depth of past differences as an incentive to rise above them’.⁶⁵

Again, these are not the only voices of the TRC. The same article which quoted Lyster noted that his view had been ‘unequivocally repudiated’ by Commissioner Mary Burton who argued that

there can never be one truth, and certainly not a single truth, as defined and decreed by the majority. While the Commission is able to make statements about numerous individual acts – who were the perpetrators and who the victims – writing an actual history is a task that will test the Commission to its limit. And, even if it produced something substantial, it could not be a definitive version. The great contribution

62 David Thelen, ‘How the Truth and Reconciliation Commission Challenges the Ways We Use History’, *South African Historical Journal*, 47, 2002, 162-190, 164.

63 D. Posel, ‘The TRC Report: “What kind of history? What kind of truth?”’ in Posel and Simpson, *Commissioning the Past*, 149.

64 Hermann Giliomee, ‘“Officially sanctioned” is perverse’ *Cape Times*, October 9, 1997.

65 Charles Villa-Vicencio, ‘When the free shall set the truth’, *Cape Times*, October 16, 1997.

of the Commission may lie in the wealth of documentary material it will make available to future historians.⁶⁶

In the end, the *Report* made little attempt to provide such an official or consensual history, considerably reducing its ambitions to the much quoted view of Michael Ignatieff that '[a]ll that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse'.⁶⁷ Indeed, as we have argued above, the non-narrative framing of the *Report* has been criticised precisely for its refusal to present a unified and integrated view of the TRC's thirty year mandate period.

It can, of course, be argued that Archbishop Tutu construes a kind of 'egalitarian violence' ('our country is soaked in the blood of her children of all races and of all political persuasions'⁶⁸) in his opening paragraph in his 'Foreword' that precisely attempts to create a consensual and inclusive view based on a universality of suffering. However, the rest of the *Report*, especially the findings chapter where the TRC decisively held the former state to be overwhelmingly accountable, is at decided odds with these lines.⁶⁹

The notion of a consensual history linked to the nation-building project assumes a commonality between the TRC and the ANC dominated government. Yet neither in its hearings, its internal workings nor in its *Report* did the TRC uncritically espouse the views of the ANC or government. Contrary to expectations in official circles that the views of political parties would be aired first, the TRC determined that the first of the public hearings would be victim hearings. By making the first public voice a victim voice, the TRC sought to place violations, rather than party narratives centre-stage. Beyond this, the TRC and the ANC shared something of a fractious relationship, disagreeing on key issues, not least the ANC's initial position that its members would not be required to apply for amnesty as they had fought for a just cause. Further, the expectations that the TRC would present a view that glorified and sanitised the struggle against apartheid did not come to fruition. This disruption is most evident in the ANC's response to the TRC's proposed findings. The critical eye cast by the TRC over various dimensions of the liberation struggle was bitterly opposed by the ANC, who declared that the TRC was 'criminalising' the liberation struggle: 'The net effect of these [TRC] findings is to delegitimise or criminalise a significant part of the struggle of our people for liberation and to subtract from the commitment made in our Constitution to honour those who suffered for justice and freedom in our land'.⁷⁰

66 Cited in H. Giliomee, *Cape Times*, October 9, 1997.

67 M. Ignatieff, 'Articles of faith' in *Index on Censorship*, 25(5) (1996), 113.

68 The full quote of the opening paragraph of the *TRC Report* reads: 'All South Africans know that our recent history is littered with some horrendous occurrences - the Sharpville and Langa killings, the Soweto uprising, the Church Street bombing, Magoo's Bar, the Amanzimtoti Wimpy Bar bombing, the St James' Church killings, Boipatong and Sebokeng. We also knew about the deaths in detention of people such as Steve Biko, Neil Aggett, and others; necklacings, and the so-called "black on black" violence on the East Rand and in KwaZulu Natal which arose from the rivalries between IFP and first the UDF and later the ANC. Our country is soaked in the blood of her children of all races and of all political persuasions', *Truth and Reconciliation Commission of South Africa Report*, Vol 1, (Cape Town: Juta, 1998), 1.

69 See *TRC Report*, Vol 5, 196 - 258.

70 Deputy President Thabo Mbeki, Joint Sitting of the Houses of Parliament, 25 February 1999, National Response to *TRC Report*.

The TRC's efforts to attach a strict human rights framework onto a past liberation struggle inevitably transgressed heroic conceptions of that struggle. A human rights' discourse, was, after all, a relatively late import to the struggle against apartheid in South Africa. The notions of justice and morality that informed the liberation struggle drew upon multiple threads, and only more recently connected with the approach of international human rights. Far more potent infusions were those of African nationalism, of anti-colonial struggle, imbued with a socialist rhetoric. In this network of articulations that made up the 'broad church' of the ANC, the transformation of social and economic power relations marched alongside the imperative of formal political democratisation. It was only the 1990s era of political transition and negotiations in South Africa, coinciding with the collapse of the Eastern bloc, that saw the rise to prominence of the language of human rights in the blueprints for the 'new South Africa'.

That the TRC had disrupted the kind of heroic history anticipated by the ANC is surely evident from the court action instituted by the ANC on the very eve of the handover of the *TRC Report*.⁷¹ Nor was the ANC alone in rejecting the TRC's findings: almost every party against whom the TRC made critical findings of responsibility resorted to or threatened legal action. Yet these legal skirmishes remain invisible in critiques of the TRC: they are ignored by critics determined to 'fix' a consensual history upon the TRC.

A conclusion from the margins

The question must be asked: who is fixing whom? This article has sought to point to various ways (and there are others not covered here) that certain critiques of the TRC themselves fix the TRC in stasis. Against this we have argued that there are multiple voices and representations emanating from the TRC. There is a noticeable disjuncture between the voices of Archbishop Tutu or other theological figures in the TRC and the body of the organisation as constituted and represented in the totality of its work. This work took place over a period of more than five years.

Moreover, these critiques were installed at the very outset of the TRC process and, despite significant shifts within the TRC as well as in its relationship with the government of the day, remained constant throughout the period of its operation and beyond. Consequently, while the TRC may have been conceived as a nation-building exercise, the actual trajectory it followed was far more disputed and its academic dismissal inside South Africa was paralleled by a process of political marginalisation. The TRC, it seems, was largely discarded by the state. This peripheral status poses the question as to whether the TRC, far from legitimating the new state, represents from the state's perspective a failed project of nation-building.

71 On 29 October 1998, the ANC launched a late night although unsuccessful bid to interdict the TRC from handing over Volumes 1 to 5 of the Report to President Mandela on 30 October 1998. For fuller detail, see *TRC Report*, Volume 6, 55 – 58.

In part, however – and here the critics are right - this marginalisation points to the manner in which the TRC’s human rights focus on torture, killings and abductions to the exclusion of the wider landscape of apartheid violence condemned it to national oblivion, while the dominant legacy of that violence – the nexus of race and economic exploitation - took centre stage as the key site of debate on transformation from 1999 onwards. At the same time, it was precisely the human rights’ lens, its focus on individual victims and perpetrators, and the question of accountability, which destabilised rather than confirmed the repression/ resistance narrative that has framed dominant representations of the South African past. Indeed, human rights ironically provided a different lens through which to interrogate violence, and, in so doing, enabled a critical distance. In the aftermath of the TRC, key commissioners, including Archbishop Tutu, have repeatedly found themselves at loggerheads with the ruling party over a number of issues such as HIV AIDS, Zimbabwe and the reparations law case being conducted on behalf of victims and victim organisations against multinational companies who provided support to the apartheid government. More broadly, as Posel herself has more recently suggested, the TRC has left a more radical imprint in providing a mode of testifying, disclosure and ‘speaking out’ that is widely visible in public life.⁷²

Yet these developments have seemingly not shaken the notion of the TRC as creating the foundational myth of the new nation, whose trajectory is seen as unremittingly nationalist. While we contend that such an analysis of South Africa’s transition is not helped by an account that silences the disruptions and contestations that have accompanied that transition, there is another point to be made and this relates to historians and the production of history.

The Future of the Past conference to which we referred at the outset aimed to chart new directions for South African history. In the intervening years these new directions have considerably energised debates both within the academy and, more broadly, in a variety of public institutions. Yet while the new modes of history writing offer great power, the engagement with the TRC raises troubling questions. If in the end, their engagement and that of the social historians offers the same depiction and conclusion, then what has been enabled? How is it that despite the critique of the academy’s ownership of ‘the craft of history’ by public historians, the weight of their judgment is so similar? And how is that the shape and content of a key object of enquiry, namely nationalism, remains so unchanged?

It is probable that every truth commission receives the most comprehensive and systematic criticism from its home intellectuals, and this is certainly the case in South Africa. This is as it should be. Yet it seems that this ‘first wave’ of critical review by historians barely skimmed the surface of the TRC. Nevertheless, the verdicts were pronounced, and the TRC has since become unfashionable as an object of historical enquiry in South Africa.

Aside from disabling the kind of consensual history that the ruling party apparently had in mind, there are numerous other instances where the TRC unsettled

72 D. Posel, ‘The TRC’s unfinished business: Healing’ in C. Villa-Vicencio and F. du Toit, eds., *Truth and Reconciliation in South Africa, 10 Years On* (Cape Town: Institute for Justice and Reconciliation/David Philip, 2006), 86 and 87. That this was an unintended consequence, as Posel notes, does not seem to make the point less valid.

public and political mythologies. These range from the specific to the more general (representations of the ANC's armed struggle or the nature of violence in the 1990s). Indeed, the 'reading' of its work provided by the 'first wave' of criticism barely touches the ways in which the TRC, at every turn, disrupted longstanding accounts of the nature of its recent violent past. This article has indirectly pointed to these disruptions. The TRC offers multiple opportunities to re-examine and re-cast representations of violence. This type of deeper engagement – a 'second wave' - is long overdue.