

## **Is Exchanging Justice for Truth an Embrace of Evil?**

Is a common understanding of human rights possible? Is a shared doctrine of human rights possible and desirable? Are all human rights universal?

I will first discuss two examples of strong and devastating criticism against the basic principles of the South African Truth and Reconciliation Commission. Both these criticisms suggest that some fatal flaws within the process itself hampered and are still hampering South Africans in cultivating a culture of human rights and building a fair and just society. Then I want to explore another way of interpreting these “fatal flaws” in order to show that a different kind of reading is possible which not only broadens the concept of human rights but also makes the building of a just society more probable.

The TRC was only a few months into its two-year workload when one of the strongest, most enduring and often quoted criticisms was leveled at the Commission. Prominent scholar Mahmood Mamdani, based at University of Cape Town during the time of the TRC, criticized the fact that the TRC decided to confine its gaze to the physical and repressive dimensions of apartheid rule such as severe ill treatment, abduction, torture and killing instead of addressing the structural violence of apartheid. This, Mamdani suggested, obscured the co-dependency of racialized power and racialized privilege. Instead of regarding victims as “political activists” and perpetrators as “state agents”, the TRC should have gone “beyond notions of individual harm and individual responsibility, and located agency within the workings of a system. The result would have been to explain apartheid as an evil system, not just to reduce it to evil operatives.”

Mamdani was particularly vocal about the forced removals of three and a half million people to create racially segregated residential areas as “South Africa’s gulag.” While some 25,000 people died between 1960 and 1994 in political violence, millions more were condemned to anguished lives of racially defined poverty. With the narrow focus of the TRC their dignity could never be restored while thousands of apartheid functionaries and millions of white beneficiaries were left unscathed, off the hook and with all their loot in tact. Instead of placing the complicity and culpability of beneficiaries centre stage, white South Africans by and large were able to claim a false innocence.

In an interview with me, Mamdani sharply criticized the way in which the commission was settling for truth in stead of trying to exact justice for the impoverished. “If truth has replaced justice in South Africa – has reconciliation then turned into an embrace of evil?” he asked.

The second criticism is more recent. In an article in the Helen Suzman Quarterly, it is said that having avoided a Nürnberg route in dealing with the crimes of the past, South Africa has entrenched a pervasive culture of impunity. Using the “template of forgiveness” many South African criminals were claiming right left and centre, the right to be forgiven. The writer of the article, Claudia Braude, says: Since amnesty cannot be granted for crimes against humanity, descriptions of apartheid mutated from being an internationally-recognized crime against humanity into a gross human rights violation.

She agrees with several scholars accusing Archbishop Desmond Tutu of cloaking the commission in a language of forgiveness which allows a political compromise, also called a pact between elites, to suddenly acquire a moral overlay. No wonder, the article continues, that the democratically chosen leaders of the new South Africa who in recent years participated in a corrupt arms deal, now demand amnesty. Using the language of amnesty, political context and forgiveness, South Africans are being asked to let off the hook the president (accused of raping a young woman), his financial advisor (accused of corrupt dealings in the arms deal) and the xenophobic attackers (accused of attacking and looting the business and houses of people from other African countries).

Mamdani and Braude are saying that those who benefited from a crime against humanity have walked off scot-free. Those who have killed, maimed and tortured got amnesty. Because the structural injustice black people suffered has not been rectified, the rights and freedoms in the constitution remain a chimera. We are therefore NOT equal before the law and will never enjoy equal benefit or protection. The TRC single-handedly destroyed the possibility of restoring human dignity which forms the foundation of freedom, justice and peace in the world. Therefore all South Africans have in a way been licensed to be as corrupt and criminal as they want, to make up for what they have been denied, or in protecting that which others want to take from them.

You will agree: This is devastating.

But allow me to look at the same issues framed by a different philosophy or worldview, namely that of being part of an interconnected community.

#### *Interconnectedness*

First things first. Is the concept of an "autonomous person" a European invention? It is important to realise that over the years, African philosophers have defined personhood in a specifically interconnected way. The self is not something private, hidden within our bodies, maintain both Gabriel Setiloane and Augustine Shutte. The self is outside the body, present and open to all. It is not a thing, but the sum total of all interacting forces. The human self is therefore not something that first exists on its own and then enters into relationship with its surroundings. It exists ONLY in relationship to its surroundings.

This kind of interconnectedness is not an isolated exceptional phenomenon, but part of a much broader, more general context found in a variety of forms, under a variety of names, manifesting in a variety of cultures across the African continent. In his famous essay on African philosophical thought, Kwame Gyekye says that communitarism is held by most of the scholarship involving cultures of Africa, as the most outstanding trademark as well as the most defining characteristic.

Ifeanyi Menkiti also maintains that 'as far as Africans are concerned, the reality of the communal world takes precedence over the reality of the individual life histories' and therefore comes to three conclusions: the community defines the individual; personhood

is not bestowed on somebody simply through birth, but is something to be acquired; personhood is something at which an individual could fail.

In other words: a person is fully dependent on others. In African philosophy this is at times described as interconnectedness towards fullness. Leopold Senghor underlined the Latin meaning of “conspiring” – breathing together. Our deepest moral obligation is to become fully human and that we can only do through entering more and more deeply into community with others. The goal of morality is the fullness of humanity.

### *Personhood*

Being interconnected makes it possible to acquire personhood. Personhood is not bestowed on someone simply through birth. You have to “build” yourself into a person. Personhood refers not to a state of being but to a state of becoming. No living self can be static. Stasis means social death. According to Tom Brown, who lived over forty years among the BaTswana, the moment that a person starts living in disregard of the community, according to the each-man-for-himself principle, then “the light of the mind is darkened and (his) character deteriorates, so that it may be said that the real manhood is dead, though the body still lives; when they realize that to all intents and purposes the human being is alienated from fellowship with his kith and kin.”

How does this view interact with the notion of human dignity? Here for you, in Germany, human dignity is *inviolable and* innate. It forms the foundation and basis from which people can access the protection of their human rights. African philosopher Kwame Gyekye says that the basis of a caring society could be ‘caring or compassion or generosity’ rather than justice.

### *Interconnectedness and the essence of the TRC*

Thousands and thousands of revenge killings were executed in Europe after the Second World War. Not a single direct revenge killing of victims took place during the TRC period – many murders of course, but they were generally linked to criminal activities. Why this absence of vengeance? Why did victims and perpetrators sit together in the same room talking about their experiences? I want to suggest that it was due to this sense of being part of and dependent on one another in order to build a personhood within a new democracy.

But we are a country split down the middle: White perpetrators use the brand new bill of human rights to protect those very rights that they previously denied their victims. Victims and the poor did not demand rights before the TRC, but hoped that by telling their collective story a country would be moved into changing everybody’s life.

How powerful this kind of interconnectedness is, was impressively formulated by a mother whose son was killed by an apartheid hit squad. Asked what she thought about reconciliation she answered as follows.

**This thing called reconciliation ...if I am understanding it correctly ... if it means this perpetrator, this man who has killed Christopher Piet, if it means he becomes human again, this man, so that I, so that all of us, get our humanity back ... then I agree, then I support it all.**

In simple terms she spelt out the full complex implications of being interconnected-towards-wholeness and the role of reconciliation in it.

Her words, firstly, mean that she understood that the killer of her child could, and did, kill because he had lost his humanity; he was no longer human. Secondly, she understood that to forgive him would open up the possibility for him to regain his humanity; to change profoundly. Thirdly, she understood also that the loss of her son affected her own humanity; she herself had now an affected humanity. Fourthly and most importantly, she understood that if indeed the perpetrator felt himself driven by her forgiveness to regain his humanity, then it would open up for her the possibility to become fully human again.

This remarkable formulation affirms how somebody, who would be regarded by many as not effectively literate, let alone schooled in African philosophy, intimately understood her interconnectedness and could formulate it succinctly. But this view had profound implications for the workings of the TRC.

After 18 Truth Commissions around the world the South African one has been hailed and credited for being the first to hold victim hearings in public, individualize amnesty and allow victims fighting on both sides of the conflict to testify at the same forum.

Most scholars ascribe that to motivated and innovative thinking. But all three can be traced directly back to a strong awareness of interconnectedness. Because people share each others pain, the audience has as much right to be in the presence of the testimony than the testifier, all of it is our story and therefore may be public; because people who are prepared to apply for amnesty are admitting wrong-doing, they could therefore begin to change in order to be eventually re-admitted to society; and because mothers who lost their loved ones, fighting for the 'right' or the 'wrong' side, suffer alike and can only try to heal when connected to one another.

What are the implications?

Mamdani's criticism means that exchanging truth for justice or "embracing the evil one" could be the beginning of a humanizing process in which compassion and change brings the ultimate form of justice - a restored and caring society.

In fact it is important to know that the whole notion of evil, according to African philosophers, is different. Something is considered to be evil not because of its intrinsic nature, but by virtue of who does what to whom. According to Setiloane, evil can be described as living in disregard of the community. It is when you begin to deny your interconnectedness, step out of the corporate in which you should be 'building' yourself that you are committing evil. So it is exactly by refusing to forgive, refusing to embrace whom is regarded as evil that one begins to deny an interconnectedness and is therefore busy with evil.

In terms of not addressing the structural devastation of apartheid: within a communitarian world view, one may assume that forgiving and embracing the perpetrator will demand of him to change into a fellow citizen that will begin to "build his personhood" through sharing and assisting his community. In terms of apartheid's beneficiaries, interconnectedness assumes that whites will feel themselves linked to the few identified perpetrators and that THAT will propel them into processes of change, restoring and reparation.

That no sharing or change has happened is more an indication of a dominating NON-interconnecting culture clashing with an indigenous interconnecting one, than a TRC template encouraging people to be comfortable with "evil".

It seems that those who do not bear interconnectedness in mind find the reasoning in and around the TRC confusing. In his essay on forgiveness Jacques Derrida describes Tutu as 'confused' and oscillating "between a non-penal and non-reparative logic of 'forgiveness' (he calls it 'restorative') and a judicial logic of amnesty." Through the interconnectedness-prism however, Tutu is not simply linking human rights and amnesty to religion, but is using the foundation of interconnectedness to allow people back into humanity through processes such as forgiveness and amnesty. In other words concepts such as amnesty and judicial logic are not added on or simply linked to forgiveness but is instead interpreted through interconnectedness which profoundly change the way these two terms are used by people like Archbishop Tutu.

Richard Wilson also suggests that the Commission had a 'dual consciousness' with practical justice and forgiveness on the one hand and a confused understanding of human rights on the other. Again, interconnectedness does not simply regard extracting privileges and benefits from the one group to give to the other, as justice or restoring human rights. Interconnectedness depends on everybody's moral awareness of a deep and potentially fatal connectedness which puts an imperative on beneficiaries to share and build, in order for them to regain their humanity. Interconnectedness lit up concepts like justice into restorative justice, amnesty into admitting wrong doing, forgiveness into re-admittance into the community of humanity and human rights into responsibilities towards a more humane society. You cannot have dignity or freedom if mine is affected.

This kind of interconnected responsibility shows up countries that are quick to put African leaders on trial for human rights abuses while they themselves and their policies sow hunger, corruption and destruction in Africa.

Is the template of forgiveness providing impunity to the corrupt? Yes, if amnesty is regarded in a strictly individual sense, it could be seen as a dishonest way to escape punishment. But if amnesty is regarded in an interconnected way, that it is an admittance of wrongdoing and stating of a willingness “to make up” for it in order to become part of the community again, then amnesty is NOT impunity, but profound change. It is therefore too simplistic a reading to regard all the amnesty-asking of the new dispensation as purely a desire for impunity. I am suggesting that much of the support for “criminals” in South Africa is embedded NOT in a desire for wrongs to go unpunished, but to be allowed, through negotiated *wiedergutmachen* back in the community of respectable citizens.

At the same time, the fact that many current political leaders regard amnesty indeed as the SAME impunity granted to the beneficiaries of apartheid, is a sign of how western notions of individual rights is dominating, overriding and corroding the indigenous notion that nobody can be without others.

#### Conclusion

The notion of justice was not left out of the equation of the TRC, as many have argued. Justice was interpreted through the world view of interconnectedness towards a fuller humanity. In fact, justice entered and became rejuvenated through a radical rethinking of the grammar of justice itself and through the process of human compassion and restoration that is understood to be as important as, and should become part of, the rule of law. This rethinking should be used not only during times of difficult transitions, but in European countries desperately trying to protect themselves from those whose interconnectedness had been destroyed through colonialism and things like collateral damage, who are now flocking to your shores to share the spoils.

This conference asks whether a common understanding of human rights is possible. I would say yes, but only when there is an awareness within the human rights discourse that people can think about human rights through a frame OTHER than that of the western individual.

*Antje Krog is a South African poet, writer and professor at the University of the Western Cape.*