
Review

The impossible machine: A genealogy of South Africa's Truth and Reconciliation Commission

Adam Sitze

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In *The Impossible Machine*, Adam Sitze uses Foucauldian genealogy to analyze South Africa's Truth and Reconciliation Commission (TRC) as the outcome of a long history of colonial theories and practices. More specifically, he identifies 'indemnity' as developed by A.V. Dicey, along with 'tragedy' and 'inquiry' as articulated through colonial commissions of inquiry as constitutive of the TRC, critiquing the understanding of the TRC provided by scholars of transitional justice who analyze it only in comparison to similar kinds of commissions. Sitze argues, convincingly, that the TRC is better understood genealogically as a product of British colonial history (including its jurisprudence and commissions of inquiry) and South Africa's apartheid history. To see the TRC through these lenses raises difficult questions, however, both about its validity and value.

The first half of the book (Chapters 1–4) is an examination of the principle of indemnity in British jurisprudence in relation to amnesty, sovereignty and crisis. In essence, Sitze argues that the TRC's grant of amnesty for gross human rights violations committed by apartheid regime perpetrators emerges directly out of the long-standing English juridical tradition of *indemnification* – indemnity laws designed to absolve state and police crimes in British colonies. The tradition is rooted in particular in the jurisprudence of Dicey, the 'leading theorist of South Africa's dreaded system of parliamentary sovereignty' (p. 4). Indemnification is thus nothing new, contrary to the claims made by the TRC itself and scholars who studied it out of its colonial context. Indeed Dicey views indemnity as the cornerstone of parliamentary 'sovereignty' within British imperial rule. Indemnity, as construed by Dicey was 'legalized illegality', practiced almost exclusively in British colonies to maintain order.

In the twentieth century South Africa, the British jurisprudential notion of indemnity was adopted but changed in character because it no longer retrospectively absolved police of crimes committed against the colonized (provided they were done

in good faith and the public interest); astonishingly, it now *prospectively* legalized the illegality *before* the event. Thus not only did indemnity become the normal state of affairs in apartheid South Africa, forming the foundation of a racist sovereignty, it became the legal basis for ‘state criminality and human rights abuses that rendered the invention of an institution like the TRC necessary’. Thus, under apartheid ‘indemnity reversed itself: instead of legalizing illegality, it illegalized legality itself, reconciling the rule of law with precisely the sort of arbitrary exercises of violence that the rule of law was designed to restrain and oppose’ (p. 9).

Indemnity is thus of critical importance to Sitze because it is both the ‘most concrete and direct precedent’ of the legislation that established the TRC, and it *guided* the practices of ‘amnesty’ within the TRC’s Amnesty Committee, which ‘reiterated’ the two ‘key elements’ of indemnity jurisprudence: political objective and full disclosure with ‘little substantive modification’. Sitze’s reading changes the terms on which we must judge the TRC. The question is not ‘whether the exchange of justice for truth’ was effective in building a post-conflict South Africa in a manner that may provide a model to other countries; rather, it is whether the TRC and its granting of amnesty constitutes an ‘indemnity to end all indemnities’. In other words, does the TRC’s amnesty render indemnity inoperable – or has it allowed indemnity to survive into post-apartheid South Africa? Sitze suggests, with caveats, that it is the latter, which helps account for a ‘renewal of authoritarianism’ in post-apartheid South Africa.

The second part of the book examines ‘commissions’ in British colonial history, in relation to riots and insurrections by colonized populations and the central idea of *Ubuntu* in the TRC’s mandate and workings. In Chapters 5 and 6, Sitze questions the claim that no prior commission used first-person testimony, arguing there were numerous Commissions of Inquiry in British colonies ‘tasked with gathering information about acts of violence committed by state officials’. Indeed, he concludes, they ‘were not the exception but the rule’ (p. 132). Sitze uses the Jamaica Royal Commission’s (JRC) 1866 inquiry into the British suppression of the Morant Bay Rebellion with its 60 hearings that heard the testimony of the 700 people involved as documented in a final report of over 1000 pages. Sitze’s account of the JRC will be of particular interest to political theorists given John Stuart Mill’s attempts to use its findings to help prosecute Governor Edward Eyre for his actions.

Sitze shows that this Commission report, like many others written by colonial administrators after similar incidences, is mired in a discourse of tragedy that he defines in the following terms: ‘Tragedy here emerges as a discourse of power; it becomes a poetics of government, a mode, at once graceful and profoundly euphemistic, by which institutions vested with considerable administrative and discretionary power might “humanize” themselves by “regretting” or “lamenting”’ the fact that they could not act (p. 148). Tragedy, along with the claim to rigorous evenhandedness, contributed to making the prosecution of Governor Eyre impossible (p. 146). The JRC is thus, for Sitze, the paradigmatic example of commission as



biopolitical device to enable the recalibration of administrative policies for the state to optimally promote the population's welfare and wealth while escaping responsibility via a 'tragic narrative'. It represents violent actions as regrettable and lamentable but necessary and inevitable – something for which everybody and yet nobody is to blame.

Sitze then examines a dozen or so commissions in South Africa held in response to riots or disturbances in the twentieth century, which for Sitze 'comprise a loose yet coherent unity' of 'Tumult Commissions' (p. 160). Like the JRC, witness testimonies were gathered to serve a bio-political maintenance of equilibrium. By employing a discourse of tragedy, each of these commissions sought to render 'balanced' and evenhanded reports, giving 'South Africa's apologists abroad grounds to argue for the bona fide good intentions of the apartheid government as a whole, while also condemning the "unforgivable" racism of particular individuals' (p. 181). Tumult Commissions came to be seen increasingly as a whitewash aimed to 'conceal more than they revealed ... little more than an empty ritual, a legal husk that continued to repeat colonial truths under postcolonial conditions' (p. 187).

In the final chapters, Sitze turns to the usage of the South African concept of *ubuntu* in the 1996 Constitution and the TRC, contrasting it with Cicero's maxim of *salus populi suprema lex esto* (the health of the people should be the supreme law). He argues that any 'pure' African meaning of *ubuntu* (recognizing the humanity of the other, the maxim 'a person is a person through other persons') has been modified in its common usage; and the '*ubuntu* Constitution' did not eliminate the 'conventions' inherited from Cicero and Dicey (p. 239) but rather continues to have the air of colonialism. 'Because "legal continuity" was one of the structuring principles of South Africa's negotiated settlement, it should not come as a surprise that remnants of *salus populi* reasoning would survive in the *ubuntu* jurisprudence of the post-apartheid state, or that, depending upon the way that *ubuntu* is translated ... it can and indeed does retain the traces of its predecessor' (p. 225).

In general, Sitze's argument that we should look to European colonial jurisprudence and South Africa's own history to better understand the TRC is convincing. His attention to colonial antecedents of the TRC is a constructive corrective to the work of those in the transitional justice field who celebrate the TRC without always fully acknowledging this history. The scope of his research into South African and British colonial history is broad and impressive and the book will be of particular interest to political theorists, particularly those engaged in postcolonial and Foucauldian analysis, since he raises questions about the emancipatory potential in such commissions. His critique of the discourse of 'tragedy' within colonial commissions is particularly compelling because it can lead states to absolve their own agents of profound human rights abuses. As Canadians who have watched the work of Canada's TRC into Residential Schools for indigenous children over the last 6 years (which uses the testimony of school survivors across Canada as the basis upon which to develop a report and recommendations to government), Sitze's

analysis of the colonial underpinnings to the very structures of the commission itself is particularly profound. To be shown how difficult it is to create a practice of justice which does not replicate the very colonial relations of power it seeks to transcend should give pause to countries like Canada who look to the TRC as a model. His analysis of ‘tragedy’ used by commissions of inquiry to render the past unaccountable is particularly critical. And while Sitze’s book is focused on the question of ‘truth’ and its colonial underpinnings, in the case of the TRC in Canada, lessons might be learnt from Sitze’s analysis as to whether ‘reconciliation’ may be developed in a way that does not replicate colonial relations.

The biggest concern we would raise with this book is that Sitze caricatures the TJ literature on truth commissions to an unnecessary degree, depicting it in terms that are overly consensual and too narrow, thus over-simplifying a diverse and evolving literature so as to facilitate its sweeping refutation. In particular, on multiple occasions, he refers to ‘consensus’ or ‘broad consensus’ (pp. 4, 23, 29, 189, 251) among transitional justice scholars, an assessment that is not borne out by a reading of the literature itself. There are several instances where Sitze builds straw man arguments against a broad and increasingly sophisticated field by attacking the claims of early works within the literature but ignoring more recent literature that challenges the very same claims.

He also dismisses transitional justice literature’s primary concepts – forgiveness, restorative justice and healing – and depicts the scholars who use them as doing so in unproblematic ways (pp. 121–122). But again TJ scholars have actually been quite self-critical on their own use of these terms. These polemical tendencies are both puzzling and unfortunate given the power of his alternative analysis, for the very scholars who would most benefit from reading Sitze’s book may have difficulty getting past an unnecessarily narrow and hostile reading of their own diverse body of literature. Notwithstanding this dimension of Sitze’s analysis, we would encourage political theorists, scholars of transitional justice and individuals engaged in these commissions in their own countries to read this book as it provides an original, ground breaking and extraordinarily powerful critique of the colonial dimensions of the South African Truth and Reconciliation that provides important new insights into the potentially impossible nature of such machines.

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