Alternatives to Revenge
Building a Vocabulary of Reconciliation Through Political Pardon

Pumla Gobodo-Madikizela

South Africa’s Truth and Reconciliation Commission (TRC) has been acclaimed for bringing the awful facts of apartheid to light, for creating a context for those who suffered to tell their stories, and for managing this difficult process in an even-handed way that avoided acrimony. But over and above the TRC’s role in documenting the past, and even the opportunity it provided to those who had suffered for years in silence and struggled to put their stories on record, there is a more inward dimension of the commission’s work that has received relatively little coverage from either social scientists or the media. In offering an account of their deeds, some of the perpetrators were able to move beyond mere description and to reflect on the ethical component of their actions, to begin to feel sorry for what they had done. Not many of them in fact ever apologised, and not all the apologies seemed sincere. But the rendering of apologetic remarks, offered directly to families who had lost loved ones, laid the groundwork for the TRC hearings to engender something even more important than reams of testimony: it opened the door to the possibility of rendering political pardon morally defensible.

Amnesty, Justice, and the TRC
The TRC was founded by an Act of Parliament, the Promotion of National Unity and Reconciliation Act 34 of 1995, with a mandate to focus mainly on three issues. These were to establish as complete a picture as possible of past human rights violations committed by people on all sides of the political spectrum; to give victims of human rights abuses a chance to speak publicly about the abuses they had suffered in the past; and to grant amnesty to perpetrators of politically motivated human rights abuses on condition that they make full disclosure of their acts and omissions. These conditions distinguished the
South African amnesty process from others – such as those in Brazil and some South American countries – where outgoing military and civilian leaders used blanket amnesty to indemnify themselves and their foot soldiers.

A central dilemma facing many countries that are making a transition from an oppressive authoritarianism to democracy is what to do about the human rights abuses of the past regime. The issue becomes particularly wrenching where there are records of torture, murders, and other crimes against humanity. Should leaders of government and opposition groups be held responsible for crimes that they (usually) did not commit or did not always explicitly authorise? And if responsible, should they be prosecuted or granted immunity from prosecution in exchange for a confession? A crucial part of the negotiation process in South Africa concerned the question of amnesty and whether perpetrators of gross human rights violations from both sides of the political conflict would be granted political pardon. Some proposed that there should be no amnesty. Others, in particular former president F.W. de Klerk and his colleagues, who were eager to protect their men in the army and police, urged that there should be general amnesty without any declaration of the atrocities committed and without public hearings.

The idea of ‘blanket amnesty’ has been hotly contested in many countries going through democratic transition. Skaar argues that the option of blanket amnesty depends on the relative strength of the outgoing government’s demand for impunity and the public’s demand for truth and justice. In Chile, for example, it could be argued that the strength of Augusto Pinochet’s outgoing dictatorship enabled the military to demand blanket amnesty, which they hoped would prevent future prosecutions of its members. However, this amnesty law was ‘put to shame’ with the trial in 1995 of some former generals. Following the arrest and detention of Pinochet in Britain and the debate over whether he should stand trial for the murder of Spanish citizens during his regime, the tables turned dramatically against him with the withdrawal of the immunity he enjoyed as former head of state in Chile.

By comparison, the conditional amnesty granted to perpetrators in South Africa had less to do with power dynamics in the relationship between the former apartheid government and the ANC than with South Africa’s attempt to build social cohesion and to forego revenge in favour of restoring peace.

Mass Atrocity and the ‘Duty to Prosecute’

Perhaps the best discussion yet on the vexing question of amnesty comes from Martha Minow. She concludes that, following the example of the
Nuremberg trials and the international covenants that emerged as a result of that process, some researchers see the 'duty to prosecute' after mass atrocities as the only viable option. But, Minow observes, decisions on whether to follow the amnesty route (conditional or blanket amnesty), truth commissions, or prosecutions 'represent different considerations, some principled, some practical, that depart from the "duty to prosecute".'

Some consider the duty to prosecute to be the only option: justice must be done. The problem with this view is that it frames justice only in terms of criminal jurisprudence. This limit lies in the fact that by trying individuals who have committed crimes under the explicit or implicit orders of their governments, the law focuses strictly on the question of individual responsibility. All law focuses on individual responsibility, and cannot do otherwise because it is not possible to hold any "thing" else responsible. It is a person who must stand accused. But this is where the law fails with respect to apartheid's — and so many other — human rights violations. The prosecution of high-profile apartheid perpetrators such as Eugene de Kock, head of the Covert Operations Unit in the Security Police, paid little or no attention to the question of structural and systemic crimes — the surrounding ideology or political philosophy, the setting up of the covert operations headquarters at Vlakplaas, and the creation of an administrative-executive system that protected and directed Eugene de Kock to commit crimes for which he is now serving two life terms. That the state attorney intended to make de Kock's crimes not only purely individual criminal acts, but also apolitical acts was clear from the beginning of the trial. Throughout, the state claimed that the tribunal was not about politics but criminality, especially given that De Kock had committed a vast array of crimes, many of which violated universal prohibitions against murder and theft.

Yet there are other equally effective models for dealing with individuals who have committed state-sponsored crimes. Restorative justice is a particularly promising one.* For almost all victims who appeared before the TRC, the majority of whom were black, the very notion of justice was a misnomer. Victims of gross human rights abuses appealing to the law in apartheid South Africa had a different experience of the justice that many take for granted. For these victims, being given a voice for the first time gave them the sense of affirmation and validation that is so crucial for the healing of victims of trauma. Unlike a court of law, where victims are brought into the picture only in relation to the perpetrator's deed, the TRC put victims in the centre of the process, allowing them to tell their stories in the way that they chose before a listening audience, validating experiences that were denied by the apartheid state for many years. There is something transformative and
cathartic about the moment of public testimony. It is about making peace with the past – not forgetting the past – in the presence of an attentive, sympathetic audience. The process of restorative justice focuses on restoring some fragments of what was lost at the time of the violation. For victims, this is an opportunity to reclaim their dignity and respect; and for perpetrators, to rejoin the moral realm of humanity, if they dare to look into their conscience and feel remorse instead of simply fulfilling the legal requirement of full disclosure in exchange for amnesty.

The desire for a more restorative approach has been observed in some courtroom situations where offenders go beyond legal boundaries to seek emotional resolution of their relationship with their victims. There is growing awareness of the need for offenders to apologise for the sake of emotional peace of mind. Certain American states, such as Massachusetts, have passed laws to accommodate such needs on the part of both victims and offenders. These laws encourage and make it possible for defendants to apologise if they so desire. They also protect defendants from the possibility of further incriminating themselves by apologising. The problem with the legal context is that it renders apologies less spontaneous. In contrast, the TRC not only made acts of apology and forgiveness permissible, it was also conducive to these gestures.

When dealing with mass atrocity, punitive justice alone may not be enough. The legal course followed in international tribunals needs at the very least to be broadened to include a process that will affirm victims, give them some control over their narratives of trauma, and thus significantly contribute to their recovery process. Of course, this is not an argument against pursuing prosecution, only for expanding the model beyond prosecution. The idea of trials frames justice only in legal terms; it does not make room for the importance of the psychological healing that victims often experience when they are given full freedom to tell their stories in the presence of a supportive audience. In a world rife with state-sanctioned violence, debates aimed at promoting justice and reconciliation should consider a redefinition of justice. I think this is important in order to make the transition from vengeful citizens to caring citizens, particularly if victims and perpetrators are fellow citizens.

**Apology and Pardon**

Interest in the study of forgiveness and apology has increased in recent years. Scholars in the fields of law, politics, religion, medicine, and psychology have examined the concepts of pardon and apology in the context
of unprecedented public acts of contrition by prominent individuals such as the Pope apologising for the Holocaust and former President Bill Clinton apologising for America’s role in the Argentinean war. In the discussions on forgiveness and apology, a question that is often difficult to resolve concerns whether perpetrators mean their apologies and if they deserve forgiveness, and whether forgiveness is necessary for reconciliation in societies going through transitional justice.

A genuine apology seeks to acknowledge full responsibility for an act, and does not use self-serving language to justify the behaviour of the person asking forgiveness. It must communicate, convey, and perform as a ‘speech act’ expressing a desire to right the relationship damaged through the actions of the apologiser. The goal of a sincere apology is not to erase what was done. No amount of words can undo past wrongs. Nothing can ever reverse injustices committed against others. The apology does, however, clear or ‘settle’ the air; it opens the way for rebuilding broken human connections and may lead to forgiveness, which creates possibilities for the transformation of perpetrators. Acts that fall in the range of what has been termed ‘radical evil’ have been considered by some to be beyond apology and forgiveness. In the following section, I shall explore the validity of these claims and examine how a vocabulary of pardon and forgiveness can be created.

‘Radical Evil’ and Political Pardon

One of the most important texts on the study of evil is Hannah Arendt’s book, Eichmann in Jerusalem: A Study in the Banality of Evil. In this book, Arendt tries to reach deep conclusions about Nazi concentration camp commander Adolf Eichmann’s inner motivations on the basis only of written testimony and from listening to his oral testimony during his trial, without any direct interviews with him. The phrase ‘the banality of evil’ was coined by Arendt to characterise Eichmann’s state of mind, and has come to embody all that should be understood about the complexity of factors that lead human beings to commit unspeakable acts under totalitarian governments.

The notion of ‘evil’ as a concept that describes gross human rights abuses has been met with some criticism. Robert Lifton, for example, argues that simply labelling atrocities as evil helps us only to label something that we struggle with by removing it from the human realm – it does not help us to understand the psychological currents that contribute to this evil. Jean Améry’s criticism is directed more specifically at Arendt’s much-used phrase, ‘the banality of evil’. In his account of his experiences in Auschwitz, Améry objects to Arendt’s conclusions that are based on an investigation done ‘only
through the glass cage.\footnote{11}

In an earlier study, Arendt points out that 'radically evil' acts 'transcend the realm of human affairs' and are therefore neither punishable nor forgivable.\footnote{12} In the scale of horrible things that happen to people, there may be some for which the language of apology and forgiveness is inappropriate. Simply to say, however, that evil deeds are unpardonable does not capture the complexity of the social contexts within which gross human rights abuses are committed. For example, in South Africa, where the language of 'reconciliation' defined the way in which that society dealt with its traumatic past, laws of amnesty guided the process and some stories of forgiveness emerged. And in Rwanda, although 'the R word' (reconciliation) was taboo for a few years after the 1994 genocide of Tutsis, that country has now established a national reconciliation commission and a process of traditional courts, gacaca, that will open the door to the pardoning of some of those involved in the genocide. I think it is more instructive, therefore, to talk about the conditions that may or may not foster an attitude of pardon than to suggest that certain categories of acts are unpardonable. When perpetrators speak truthfully about the past and express regret, guilt, and remorse, what lies beyond what Nicholas Tavuchis has called 'the purview of apology' may be transformed from an unpardonable deed into one that can be pardoned.\footnote{13}

The TRC approach as a way of dealing with the past may not be appropriate in other situations. What the TRC process suggests, however, is that there are alternatives to revenge. An important goal of democratisation after totalitarian rule is to forge a vocabulary of peace and reconciliation in the aftermath of mass tragedy. A challenge of this phase of transition is how to create the conditions that will make old enemies regard one another, if not with neighbourly love and friendship, with respect as fellow human beings.

Remorse is probably the most crucial starting point for the justification of pardon and forgiveness for perpetrators, and can forge relationships between former enemies based on a common idiom of humanity. When perpetrators apologise and experience the pain of remorse, when they finally acknowledge that they can see what they previously could not or did not want to see, they are revalidating the victim's pain — in a sense, giving back to the victim his or her humanity. Remorse allows perpetrators to show a humane side that was suppressed when they committed their crimes. To dismiss perpetrators' remorse and continue to label them as evildoers and monsters shuts the door on the kind of dialogue that leads to an enduring peace. In contrast, daring to look the enemy in the eye and allowing oneself to read signs of pain and cues of contrition or regret, where one might almost have preferred to continue seeing only hatred, is the one possibility we have for steer-
ing individuals and societies toward replacing long-standing stalemates from a nation's past with genuine engagement.

There may be value in recognising and posting the limits of political pardon, if such exist. But South African President Thabo Mbeki found it more constructive to focus on the conditions that make pardon first conceivable, then ultimately possible. For example, in his May 2002 pardon of 33 prisoners who were serving prison terms for crimes they committed in the anti-apartheid struggle, Mbeki explained that the prisoners asked for pardon and that they were involved in the struggle against the evil system of apartheid. Clearly, this standard excludes perpetrators of apartheid evil. The challenge then is how to define morally reasonable grounds upon which to grant pardon to apartheid's foot soldiers. These conditions, I suggest, should include evidence of remorseful regret and a desire on the part of perpetrators to join efforts to transform a society emerging from conflict.

Of course, in order to set these conditions for pardon, it does indeed bear asking: When someone has committed the kind of radically evil acts that Hannah Arendt had in mind, what does it mean for the person to express regret? How do we judge the genuineness of that remorse? How do we know that the alleged signs of contrition are not simply a product of the perpetrator having been caught, or of social and political changes that have destroyed his power base and left him vulnerable? Specifically, how do we know that were a high-profile perpetrator of apartheid atrocities such as Eugene de Kock to step magically today into a time machine that takes him back to apartheid South Africa, he would not disembark from it and step right back into his garments of warfare, and once again attempt to destabilise the liberation movement? How can one tell when remorse is not simply 'witness stand' remorse that is suddenly forthcoming because, with no way out, the person wants and needs moral leniency?

One set of questions – the how-can-we-know questions – has to do with verifiability. A second set has to do with the moral possibility itself – the psychological possibility – of achieving authentic remorse in the wake of having performed the unmentionable. 'After such knowledge, what forgiveness?' T.S. Eliot asks in Gerontion. Both sets of questions are real and both are legitimate. Yet it remains equally legitimate that when perpetrators, even of the most serious kind, do in fact express regret or guilt or contrition, however it may be ascertained, they are quintessentially acting as human beings. They are begging to be readmitted into the world of moral humanity. In a society where the architects of evil walk free and a few foot soldiers carry the burden of that evil behind bars for life, philosophical and legal questions can and should give way and be subsumed to human questions – for, in the end,
we are a society of people and not of ideas, a fragile web of interdependent humans, not of stances.

The perpetrator cannot restore what he has irrevocably damaged, but his words of remorse can go beneath the scar tissue of the trauma he has caused, put its elements back into play, and thus help individuals and society to master the memory of it. But even pardoning perpetrators does not necessarily bring finality because it does not erase the past. Closure is not always possible, Martha Minow reminds us. Yet through pardon a provisional vocabulary of reconciliation, if not friendship, is created. To give this vocabulary greater permanence and lend it a multiplier effect through the larger society, it needs to be reinforced at the level of political leadership. In a nation recovering from sustained political conflict and internecine war, governmental and party members must do more among themselves than set aside the language of enmity in the corridors of power. They need to move beyond mere talk about ‘peace’ and ‘forging ahead’ in ‘our great nation’ and begin to demonstrate actual commitment to solving the hard problems of a community still learning to talk to itself, a community in which mistrust has become second nature.

Just as the truth commission’s records, and other accounts such as John Conroy’s Unspeakable Acts and Elie Wiesel’s Night, offer evidence that ordinary people, given the circumstances, are capable of far greater evil than we could have imagined, so are we capable of far greater virtue than one would have thought. Perpetrator remorse redefines evil deeds from the unpardonable and ‘unapologisable’ to acts that can be pardoned. Pardoning perpetrators allows them to re-enter the world of moral humanity. It opens the door to the possibility of transformation for victims and perpetrators, as well as society.

Perpetrators who express remorse should have our sympathy and they should be granted presidential pardon. At the same time, their willingness to exercise their ‘free’ will to choose against the deepest parts of their conscience should invite our condemnation. The end point of condemnation in this model is to move beyond condemnation and take both the perpetrator and society toward corrective restorative measures. In the retribution-based model of justice, condemnation is the end point.

Conclusion

South Africans faced the challenge of how to embrace the past without being swamped by a tide of vengeful thinking. The TRC was a strategy that not only broke the cycles of politically motivated violence but also taught us
important lessons about how the human spirit can prevail even as victims remember the cruelty visited upon them in the past. If memory is kept alive in order to kindle and cultivate old hatreds, memory is likely to culminate in vengeance and repeating cycles of violence. But if memory is kept alive in order to transcend hateful emotions, then remembering can be healing. Much more still needs to be done in South Africa. True social transformation, along with the healing of victims, will only come about if the issues of economic justice and the myriad problems that post-apartheid South Africa faces are addressed.

NOTE


2 Skaar 1999, 1123.


5 Minow 1998.


8 The notion of 'settlement' has legal connotations. There is growing discussion of the use of apology in the courtroom, and some US states such as Massachusetts have laws that encourage and make it possible for defendants to apologise if they need to, while protecting them from the possibility of further inculminating themselves. Lee Taft discusses the challenges inherent in the use of apology in the legal setting: *Taft*. Lee


