
Redress and reconciliation in South African education: the case for a rights-based approach

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Abstract

The Bantu Education Act has been described by Archbishop Desmond Tutu as “the most evil of all pieces of apartheid legislation”. Following a recent call for a Truth and Reconciliation Commission (TRC) for education in South Africa, numerous questions arise not only about the possibility but also about the plausibility, content and aims of such a commissioned investigation. This paper examines the epistemological, ethical and political ramifications of this approach. It argues that, given a certain ambiguity in the meaning of the term and given certain problems in the TRC process, the possibility and plausibility of such redress depend to some extent on a suitable ‘running partner’ for the idea and the process of reconciliation. After discussing and dismissing several such ‘partner’ ideas and principles, like *ubuntu* or *botho*, communalism and the common good, this paper examines and defends a rights-based approach that establishes rights as the backbone of redress and reconciliation as its heart.

Introduction

The Bantu Education Act has been described by Archbishop Desmond Tutu as “the most evil of all pieces of apartheid legislation”. The deliberately inferior education for black South Africans was designed and introduced by Hendrik Verwoerd. Its essence is contained in the following words by the architect of apartheid education:

The school must equip the Bantu to meet the demands which the economic life will impose on him. . . What is the use of teaching a Bantu child mathematics when it cannot use it in practice? . . . Education must train and teach people in accordance with their opportunities in life. . . (*Illustrated history of South Africa*, 1988; quoted in Tutu, 1999, p.21; see also Tutu, 1999, pp.12, 13)

It is clear that Verwoerd’s view, apart from being prejudiced and patronising, betrays a questionable grasp of causality and responsibility. Far from justifying (in the sense of rendering inevitable) not only differential but unequal education, the lack of opportunity referred to here should have been

the prime target of everyone with a sincere interest in and commitment to education. For present purposes, it is also interesting to note that equality of opportunity seems to precede redress in education. Although it is conceivable that one might educate people for the creation of opportunities, that is, where these are as yet nonexistent, the precedence referred to above denotes historical priority, in the case of South Africa.

In the wake of the Truth and Reconciliation Commission (TRC) that was set up after the first democratic election in South Africa, in order to bring to light and address the injustices and crimes committed under apartheid, there has now been a call for a TRC for education specifically. In an address at a University of South Africa special graduation ceremony, Charles Villa-Vicencio noted the TRC's failure to hold an institutional hearing on education:

The Bantu Education Act . . . ought to have been exposed for all to see. A major contribution of the TRC was to turn knowledge – that which so many people already knew – into public acknowledgement, allowing the nation to acknowledge evil for what it is. Asked to name the most significant achievements of the TRC in a national survey, the vast majority of South Africans, black and white, cited the disclosure of the truth about the past (Villa-Vicencio, 2003, p.15).

Numerous questions arise not only about the content and aims but also about the possibility and plausibility of such a commissioned investigation. What are the epistemological, ethical and political ramifications of this approach? Insofar as its chief concern resides with redressing the inequities of the past, accessing the possibilities of the future and developing a coherent programme of action for the present, could a truth and reconciliation process for education be seen to constitute an adequate framework for these requirements? Or would it require a suitable 'running partner'? If so, what would such a partnership look like?

A Truth and Reconciliation Commission for education

Before addressing the first few of the questions referred to above, this section endeavours to clarify some of the central concepts employed here. In his book on the TRC, Tutu quotes Judge Albie Sachs who refers to

different orders of truth which did not necessarily mutually exclude one another. There was what could be termed forensic factual truth – verifiable and documentable – and there was “social truth, the truth of experience established through interaction, discussion and debate” (Sachs, quoted in Tutu, 1999, p.33).

I submit that the ‘truth of experience’ is part of ‘forensic factual truth’. I suggest further that what is ‘established through interaction, discussion and debate’ is not necessarily ‘truth’ in any meaningful sense, but *consensus*. After all, what is so established by a majority, even by means of unanimity, may be false. For the TRC to have any kind of point or meaning at all, the truth that is sought and established cannot be dependent on interaction, discussion and debate. Not even *recognition* of the truth may be so dependent, since individuals may attain it in isolation. One of the basic purposes of the TRC has been to establish what actually and why something happened – the facts, reality or actual states of affairs. Truth is essentially objective, universal, transcultural, not relative to personal perception or interpersonal/ social consensus.

The precise meaning of ‘reconciliation’ may be a little more slippery. Forgiveness (this is Tutu’s preferred understanding), acceptance and balance are some of the ideas most frequently associated with this notion. To reconcile may also mean to settle a quarrel, to harmonise, to make compatible. However, there is also a less positive use or connotation of ‘reconciliation’, namely a sense (usually reflexive, passive) of acquiescence or submission to something disagreeable. I suggest that achieving such resignation cannot be an aim of the TRC. It would be incompatible with redress. It is arguably this very ambiguity in the notion of reconciliation that renders it necessary to forge a link with a strong partner concept, in order to safeguard the effectiveness of the process.

Both Tutu and Alex Boraine have acknowledged that the original Commission has been marred slightly by partial or ‘pseudo’ confessions, by half-hearted pleas for forgiveness and blatant lack of regret (Tutu, 1999; Terreblanche, 2004). However, the mere fact that it was welcomed by the overwhelming majority of victims, while it was generally rejected by the perpetrators, speaks well for this controversial experiment (*cf* Grill, 2003). The former could speak of their suffering and humiliation in public. Articulation and registration of the truth produced a cathartic, healing effect: no one would any longer be able to deny or disavow the crimes of apartheid. Bartholomäus Grill refers to the ‘unbelievable’ readiness for reconciliation among the overwhelming number of victims (Grill, 2003):

One would despair at this continent, . . . were it not for this incredible force of forgiveness . . . The South African Truth Commission managed to expose the crimes of apartheid and to establish a universal model for reconciliation. Nowhere else are the wounds as deep as in Africa, nowhere else do they heal as quickly. According to the historian Ali Mazrui, Africans have a “short memory of hate” (Grill, 2003, pp.360, 361; my translation).

Nevertheless, it should be clear that reconciliation is not sufficient for restoring “the human and civil dignity of victims” (Tutu, 1999, p.57). According to Tutu, one of the TRC’s “major weaknesses is that perpetrators have been granted amnesty as soon as their applications have been successful, whereas in the case of the victims, the Commission could only make recommendations” (Tutu, 1999, pp.57, 58) regarding reparation – which is the beginning of a long, convoluted process that is not as ‘victim-friendly’ as it is meant to be. This, too, indicates the need for a framework to twin reconciliation in an ethically, politically and legally efficacious manner.

Content

Apart from the mandatory exposure of the Bantu Education Act ‘for all to see’, Villa-Vicencio recommends that “[s]chools and tertiary institutions ought to [be] invited, subpoenaed if necessary, to give account of discriminatory and racist behaviour, sometimes in reluctant obedience to the law, often with willing consent” (Villa-Vicencio, 2003, p.15).

When asked whether there is anything he would have liked to do differently at the TRC, Boraine answered,

Yes, in East Timor – where people asked for amnesty on a similar basis as here – they now have to do community service . . . Perpetrators spend their weekends rebuilding schools they burned down, for instance. And I think this was a big lack in our approach (Terreblanche, 2004, p.5).

Loyiso Nongxa has provided further substance to what a truth and reconciliation process would encompass and entail for education. Regarding higher education in particular, what might such a process look like? His University of the Witwatersrand Academic Freedom Lecture in May 2004 provides some clues, and it may be useful to quote him at some length. He proposes examining

the outcomes of at least 4 decades of the ‘open universities’ conception of academic freedom. [For example,] [w]ho was admitted? Did the admissions policies overtly and covertly (consciously or subconsciously) employed have a ‘race’ or ‘gender’ dimension? Did the institutions practice legacy admissions, giving advantage or preference in the admissions process to applicants whose parents or family members had a previous connection with the institution (either as students or employees)? (Nongxa, 2004, p.9; amendments and corrections mine).

Nongxa professes to be

keen to reconcile the public image of ‘open universities’ and the anger [and] resentment of some of the people who have studied or worked at these institutions (Nongxa, 2004, p.10; amendments and corrections mine).

He considers it instructive to ‘examine academic/social life at “open universities”’ from the point of view of black students (‘What were their experiences? Why are most of them resentful of their *alma mater* and, in some cases, their former lecturers?’), black workers (whose ‘rights and privileges were not the same as those of their white counterparts. How sensitive were institutional authorities and/or [their] immediate supervisor[s] with regard to implementing or applying the race policies of [the apartheid government?]’), ‘ordinary’ academics (‘Did they have to make adjustments to the way they taught?’), as well as white students:

Residential segregation and separate schooling meant that for most of the students . . . [their university experience] was the first opportunity to share the same classroom with students from a different racial background. Was this an intellectually and socially rewarding experience? Was there any inter-racial interaction outside the classroom? (Nongxa, 2004, p.10; amendments and corrections mine).

Interestingly, Nongxa claims that this “is a transformation project (that) . . . is not meant to be, although it may be interpreted as, a TRC-type process on higher education” (Nongxa, 2004, p.10). This disavowal is also puzzling. After all, the project described here contains useful suggestions and guiding questions for what is arguably a promising strategy in terms of educational transformation. (For a more explicit engagement with various challenges of transformation in education, see Horsthemke, 2004a, pp.573-580 and Horsthemke, 2004b, pp.67-70.)

Aims

The single central motivation for a TRC for education appears to be redress. Referring to the South African government’s critical reflection on the accomplishments of the past ten years, especially with regard to institutional transformation, Felicity Coughlan writes: “Redressing the inequities of the past, while realizing the possibilities of a global future – these were the ‘twin challenges’ confronted by every institution in a democratic South Africa” (Coughlan, 2004, p.2). The Department of Education White Paper 3, *A programme for the transformation of higher education* (1997), states that “South Africa’s transition from apartheid and minority rule to democracy

requires that all existing practices, institutions and values are viewed anew and rethought in terms of their fitness for the new era” (Department of Education, 1997). It is generally acknowledged that redress also requires special interventions in order to address the inherited imbalances in education, interventions like the injection of new capital into upgrading the education system (National Council of Provinces, 2003).

Whether or not it will amount to actual transformation, the possibility and plausibility of such redress depend to some extent on a suitable ‘running partner’ for the idea and the process of reconciliation. Given that reconciliation is not without ambiguity and given certain weaknesses in the Truth and Reconciliation process, there is no guarantee that the changes envisaged will actually be anything more than ephemeral or cosmetic, that they will be not only substantial but lasting. In what follows, several possible ‘partner’ ideas and principles, like *ubuntu* (or *botho*), communalism and the common good, as well as a rights-based approach, will be examined. I have expressed serious reservations about some of these in two articles I co-authored with Penny Enslin (Enslin and Horsthemke, 2004; Horsthemke and Enslin, 2005). To avoid repetition, I will focus here on accounts that make explicit links between the ideas in question and reconciliation.

Ubuntu or botho

What made the TRC unique was the decision to grant “amnesty to individuals in exchange for a full disclosure relating to the crime for which amnesty was being sought” (Tutu, 1999, p.34). Tutu points out that this

way of conditional amnesty was consistent with a central feature of the African *Weltanschauung* (or world-view) – what we know as *ubuntu* in the Nguni group of languages, or *botho* in the Sotho languages. What is it that constrained so many to choose to forgive rather than to demand retribution, to be so magnanimous rather than wreaking vengeance? *Ubuntu* . . . speaks of the very essence of being human . . . We say, “a person is a person through other people”. It is not “I think therefore I am”. It says rather: “I am human because I belong”. I participate, I share. A person with *ubuntu* is open and available to others, affirming of others, does not feel threatened that others are able and good; for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are . . . Forgiveness

gives people resilience, enabling them to survive and emerge still human despite all efforts to dehumanise them (Tutu, 1999, pp.34, 35).¹

Ubuntu means, says Tutu, that

in a real sense even the supporters of apartheid were victims of the vicious system which they implemented and which they supported so enthusiastically. Our humanity was intertwined. The humanity of the perpetrator of apartheid's atrocities was caught up and bound up with that of his victim whether he liked it or not. In the process of dehumanising another, in inflicting untold harm and suffering, the perpetrator was inexorably being dehumanised as well (Tutu, 1999, p.35).

Tutu's exposition illustrates the attractiveness of twinning the ideas of *ubuntu/botho* and reconciliation, as well as their compatibility. Lesiba Teffo and Elza Venter, similarly, suggest that the philosophy of *ubuntu* or *botho* "is transcultural and, if embraced, would enable South Africans to succeed in their quest for reconciliation and nation building" (Venter, 2004, p.159; Teffo, 1998, p.5). In a closely related development, the closing paragraphs of the interim Constitution of 1993 expresses the constitution-makers' ethical vision of human beings and the social order which is to guide policy and legislation "in education as in all other sectors":

The pursuit of national unity, the well-being of all South Africans and peace require reconciliation between the people of South Africa and the reconstruction of society . . . [The divisions and strife of the past] can now be addressed on the basis that there is need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation (Department of Education, 1995, chapter 3/3-4).

Reference to *ubuntu* is excluded from the new Constitution, Act No.108 from 1996. Mogobe Ramose questions the wisdom of this exclusion on political and philosophical grounds and argues that as a result the Constitution, inconsistent as it now is with the "basic political, legal and ethical exigencies of *ubuntu*", is both impoverished and flawed (Ramosé, 2004, p.155). I would suggest that, on the contrary, the decision to excise reference to *ubuntu* constitutes a wise move, for reasons given in what follows. As far as twinning this notion with the idea of reconciliation is concerned, the problem is not only that *ubuntu* fails to address or take care of the weaknesses pointed out in connection with reconciliation; it has its own, potentially damaging flaws.

¹ A detailed and captivating analysis of the concept of 'muntu'/'person' and of the significance of 'ntu' in African philosophical thought is provided in Jahn, 1986.

What is *prima facie* disturbing about claims like *ubuntu* being “the invisible force uniting Africans worldwide” (Makgoba, 1996, p.23) is the implicit superiority over other ethical and political considerations commonly attached to *ubuntu*. If a claim like Makgoba’s has an evaluative purchase, it is dangerously close to racial or cultural hegemonism. If it is an empirical, descriptive claim, it is contradicted by the actual (pre-colonial) traditions, customs and practices (female genital excision, virginity testing, polygamy) of many Africans. It may be pointed out, of course, that *ubuntu* is a regulative principle and that it furnishes a basis for the critique of extant states of affairs, like inhumane behaviour on the African continent. On this view, it would be a weak argument against the *principle* to refer to the staggering incidence of genocide, torture, despotism, corruption, sexism, xenophobia and generally cruel practices. On the contrary, one depends on *ubuntu* in order to highlight the inhumanity of such practices. But *does ubuntu* constitute a ‘regulative’ principle? Venter writes, “The philosophy of *ubuntu* helps with good human relationships and to increase human value, trust and dignity” (Venter, 2004, p.151), but does not indicate how exactly this is supposedly achieved. What happens if two or more of the values associated with *ubuntu*, like generosity, hospitality, friendliness, care or compassion, are in conflict? It would appear that *ubuntu* may on occasion tell us what kinds of persons we should *be* but that it provides insufficient guidance as to what we should *do*, especially in cases of conflict. In other words, one might doubt the value and efficiency of *ubuntu* as a practical action – and policy – guide. According to Tutu, the link between the TRC and *ubuntu* is made explicit in “a postscript that became the constitutional underpinning for the Truth and Reconciliation Commission: . . . there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation” (Tutu, 1999, p.45). Yet, how would an appeal to *ubuntu* respond to demands around educational redress, reparation and – indeed – transformation? It would appear that appeals to *ubuntu* often not only fail to resolve conflicts and problems but frequently even exacerbate these, by ‘tackling’ them in terms of verbal legislation.

A further reservation concerns the purported uniqueness of *ubuntu*. After approvingly quoting Dlomo, that “the greatest strength of *ubuntu* is that it is indigenous, a purely African philosophy of life” (Venter, 2004, p.152; *cf* Viljoen, 1998, p.10), Venter claims that “the philosophy of *ubuntu* is encapsulated in most philosophies of life, although it is articulated and actualised in different ways” (Venter, 2004, p.159). Well, is it “indigenous, a purely African philosophy”, or does it have a “universal sense”, where “we are

bound together by our caring humanity” (Tutu, 1999, p.213)? Certainly the idea of dependence of self on others has adherents outside of and beyond Africa. The question is whether the assertion made in *ubuntu*, ‘I am because we are’, is correct. It appears to make at least as much, if not more, sense to say that ‘we are because I am’. Rastafarians’ use of the expression ‘I and I’ for ‘we’ constitutes an interesting twist in this regard.

Venter embraces C.T. Viljoen’s view that the philosophy of *ubuntu* is “currently actively revitalised as an obvious and potent means to rescue people from their loss of identity” (Viljoen, 1998, p.10; Venter, 2004, p.152). She also claims that it “espouses a fundamental respect in the rights of others, as well as deep allegiance to the collective identity” (Venter, 2004, p.154). For her ideas to be coherent, she must mean that *ubuntu* rescues people from the loss of *collective* identity. Moreover, it can only be reconciled with respect for the rights of others if these rights are collective or communal rights, or at least have a collectivist or communalist basis. This would mean that individual rights (*if* they exist at all) can be violated, abrogated or otherwise denied, as long as this benefits the collective, community or social group. I will argue below that ‘taking rights seriously’, as I think we should do, will take us in a direction diametrically opposed to the view just discussed.

Venter claims, “The central ethical *idea* in traditional African thought . . . is ‘ubuntu’ and the concept of ‘communalism’” (Venter, 2004, p.153; emphasis mine). Although it has been asserted by some that “[i]nterdependence, *communalism*, sensitivity towards others and caring for others are all aspects of *ubuntu*” (Venter, 2004, p.151; Le Roux, 2000, p.43), others have cautioned against too close an association between *ubuntu* and *communalism* (Ramose, 2004). Despite some overlap, and given its etymological and conceptual distinctness, the idea of communalism will receive independent attention in what follows.

Communalism

“Harmony, friendliness, community are great goods”, Tutu enthuses:

Social harmony is for us the *summum bonum* – the greatest good. Anything that subverts or undermines this sought-after good is to be avoided like the plague. Anger, resentment, lust for revenge, even success through aggressive competitiveness, are corrosive to this good (Tutu, 1999, p.35).

After noting, with Teffo, “African societies placed a high value on human worth, but it was a humanism that found expression in a communal context

rather than the individualism that often characterises the West” (Venter, 2004, p.151; Teffo, 1998, p.3), Venter asserts that “[i]n *African culture* the community always comes first” (Venter, 2004, p.151; italics mine). Teffo states, similarly, that according to

the African conception of man [. . . , a]n African person is an integral part of society and thus, as an individual, can only exist corporately . . . [and] is inseparable from the community . . . However, it should be emphasised that individuality is not negated in the African conception of humankind. *What is discouraged is the view that the individual should take precedence over the community* (Teffo, 1996, p.103; italics mine).

Apart from committing what might be called the fallacy of the collective singular, implying that there is a single, homogeneous ‘African culture’ and ‘African conception of humankind’, this view hardly squares with Teffo’s later, Kantian assertion,

You and I are members of one and the same race, namely, the human race. The essence of man lies in the recognition of man as man, before financial, political, and social factors are taken into consideration. *Man is an end in himself and not a means* (Teffo, 1998, p.4; italics mine).

The frequently expressed view, that “[t]he most important difference in the conception of human beings between Eurocentric and Afrocentric philosophical models is that the African viewpoint espouses harmony and collectivity, whilst the Eurocentric point of view emphasizes a more individualistic orientation towards life” (Venter, 2004, p.152) is a misconception. It is clearly contradicted by the ‘occidental’ (as opposed to ‘Eurocentric’) communitarian tradition. In addition, an individualistic orientation need not be ‘selfish’ or ‘egoistic’ (this is a further, common misconception!), but is perfectly compatible with compassion and empathy, a concern with other individuals *as* individuals. In fact, it is what arguably makes compassion and empathy possible in the first place.

It is true, as Grill observes, that

Africans grow up in the community, in groups of village children, reach maturity within their cohort of peers, share the stages of initiation and have learnt as adults to act communally. For the environment is harsh, resources are scarce . . . Scarcity gives birth to *ubuntu*, solidarity and joint action . . . , a fundamental commandment of African ethics which ranks communalism above selfishness and cooperation above competition (Grill, 2003, pp.361, 362; my translation).

Nonetheless, Grill cautions against idealising this social system:

For example, the assertion that Africans have a happier childhood is a myth. Certainly the infant who is carried on his mother's back experiences a sense of well-being and comfort. Yet, the tenderness and security of the mother-child dyad ends suddenly, as soon as the child learns to walk. The toddler is plunged from his nest into the community and begins to move with it. No one pays special attention to him anymore, and the maternal blanket is now occupied by a younger sibling. At mealtimes he frequently misses out and when a famine breaks out, he is among the first victims claimed (Grill, 2003, p.362; my translation).

A disconcerting feature of elevating the community above the individual in the discussion of social bonds and relationships is contained in the view that “one acts in accordance with the notion that duty to one's social group is *more important than individual rights and privileges*” (Venter, 2004, p.151; emphasis mine). This kind of view permits gross violation of human rights, insofar as the individual may be sacrificed for the community, social group or common good.

The common good

Frequently (and perhaps mistakenly) associated with *ubuntu* and communalism, the idea of ‘the common good’ is considered by many to be a key element in African philosophy, especially philosophy of education. Thus, the Department of Education White Paper 3 encourages “the development of a reflective capacity and a willingness to review and renew prevailing ideas, policies and practices based on a commitment to the common good” (Department of Education, 1997). Yet, it also contains a statement of policy on (higher) education that focuses on the individual student, her/his aspirations, the intellectual task that (s)he must be exposed to, the quality of the ‘cultured’ student, and on society and its needs. On the same subject, Barney Pityana argues, after praising the dedication expressed in the preamble to the South African Constitution to “improve the quality of life of all citizens and free the potential of each person” (Pityana, 2004, p.1; *cf* Republic of South Africa, 1996, Preamble),

the university must remain a provider of the public good, enabling society to realise the common good. In order to do so, higher education is beneficiary of the contract between the state and the people and contracts with the state to provide quality education for the common good. In order to do so effectively, the state guarantees a measure of autonomy and academic freedom and yet effective accountability (Pityana, 2004, p.1).

I want to argue that there is an underlying tension, in the White Paper and elsewhere, in the putative equal commitment to *both* the common good *and* the individual (person, learner, student, or academic). This exemplifies the classic conflict between consequentialist/teleological and deontological considerations. In such cases – of which there are many – one (set of) consideration(s) has to give way to the other, and any plausible philosophy of education has to indicate its core commitment in this regard. I submit, furthermore, that any philosophy that has as its *core* commitment the common good is contentious: logically, since it fails to acknowledge those whose individual goods make up the so-called ‘common good’ (in fact, it fails to account for any such super-organism with an aggregate of goods); morally, because it fails to take seriously not only the individual and her aspirations but also the differences between individuals; epistemologically, because there are only individual cognisers or ‘knowers’, who differ significantly with regard to levels of understanding, in their cognitive and intellectual maturity and regarding their experiential contexts (Horsthemke and Enslin, 2005).

Rights

Enslin, in an article exploring the educational implications of the TRC, argues that “the narratives of suffering, courage and forgiveness, along with the record of human rights violations and the allocation of responsibility for them, constitute a profound moral agenda that invites all citizens to participate in developing a culture of human rights” (Enslin, 2000, pp.86-87). One of the steps recommended in the TRC report “is that if reconciliation is to have a chance of succeeding, a human rights culture will have to be developed, and ought to be included in the formal education curriculum” (Enslin, 2000, p.87). Although neither Enslin nor the report provide details as to how development of a human rights culture is to be so included, there have been a wealth of suggestions in recent years how this might be achieved (see, for example, Le Mottee, 2003). Presumably beyond the brief of Enslin’s article is also the question, What *justifies* ‘developing a culture of human rights’? In the present paper I hope to indicate what an answer to this question may look like.

The focus on the individual person and her rights that characterises documents like the South African Constitution and the Department of Education’s White Papers (Republic of South Africa, 1996; Department of Education, 1995; Department of Education, 1997) is clearly at odds with the ideas and trends discussed above, communalism and the common good, as well as – perhaps more controversially (see Ramose, 2002) – *ubuntu/botho*. The question is

whether the focus on rights is justified. In the present case, the defence of a rights-based approach encompasses two aspects, ethical and political. Ethically, rights are argued to be superior to competing moral considerations. Politically, considerable skepticism about this notion and ongoing, gross violations of human rights notwithstanding, rights are argued to constitute an effective action- and policy-guide. After defending the soundness of this concept as a basic framework for transformation, I wish to suggest here that rights constitute a plausible 'running partner' for reconciliation.

The Truth and Reconciliation Commission Handbook contains several useful references to rights, some of which are also pertinent with regard to the call for a TRC for education:

The TRC has made a vital contribution to the building of a new South Africa. It helped South Africans establish the truth about our country's past, about the motives for gross violations of human rights and the circumstances in which they occurred (Government Communications, 2003, p.2).

After noting that "South Africans decided that we would not have any war crimes tribunals or take the road to revenge and retribution" (p.3), the authors inform that "[n]o general amnesty will be granted" and that "[g]overnment believes that such an approach will contradict the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past, but also in the creation of a new ethos within our society" (p.5). "It is critical", they aver,

that we should continue to establish the truth about networks that operated against our people. Some of these networks still pose a real or latent danger against our democracy even today. This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts (p.6).

To establish the parameters of the Commission's work, the Act required to back the TRC for education would presumably have to define the phrase 'gross violations of human rights'. There is an obvious need for grounds to distinguish between, say, instances of corporal punishment and instances where the quality of life of the victim has been seriously impaired. Responding to President Thabo Mbeki's report of the Truth and Reconciliation Commission on 15 April 2003, Gauteng Premier Mbhazima Shilowa spoke of the need to make victims feel "that reconciliation and justice has not been at their expense". He said that justice demanded that the concerns of victims should take center stage in the process of reconciliation (National Council of Provinces, 2003, p.13).

I want to argue now that the basis for such a process must be a victim- or, as I prefer to call it, recipient-centred conception of rights. Intuitively, the strength of a right-based conception is that it reflects the fact that there is something about individuals that renders it not only inexpedient but *prima facie* impermissible to victimise them. In a case where I would have to harm one individual in order to prevent five relevantly similar harms to others, or ten, or fifty, it seems, again intuitively, that there is something about my potential victim that makes it wrong for me to go ahead. If such considerations did not arise with regard to the one, they could not arise with regard to the five, or ten, or fifty others.

Samuel Scheffler admits that the intuitive appeal of rights in a situation such as the one considered here is not in question. He contends, however, that this intuitive appeal does not constitute a rationale or guarantee that there is one (Scheffler, 1982, p.83). On reflection, according to Scheffler,

it is presumably true of the five other[s] that each of them is also a separate [individual] with just one life to lead, who would receive no compensating benefit for being harmed. So why should we be forbidden to inflict one uncompensated harm in order to prevent even more such harms? (Scheffler, 1988a, p.10).

Scheffler considers this prohibition to be paradoxical and to constitute

a general puzzle about *victim-based* explanations of [rights]. Any appeal to the victim's possession of some morally significant property seems unable to explain why we may not victimise one person who has that property in order to prevent the victimisation of an even larger number of persons, each of whom has the very same property. Such appeals simply make all violations of the constraints look equally objectionable, and thus seem to count in favour of allowing, rather than prohibiting, the minimisation of total overall violations. They therefore seem to provide no support for [rights], whose function is precisely to forbid minimisation (Scheffler, 1988a, p.10; he uses the term 'agent-relative constraints' to characterise rights).

One must surely agree with Scheffler about what seems to be undeniable, that – if certain violations are morally objectionable – it is better that no such violations should occur than that any should. According to Scheffler's strict deontologist adversary, however, the allegation of paradoxicality is likely to persuade only those who are ready to accept or who have already accepted, the moral preferability of a smaller number of violations. He would reject what Scheffler takes to be a general and well-grounded principle of practical reason, namely "maximising rationality" (Scheffler, 1988b, p.252). He would deny, therefore, the very grounds for the allegation of paradoxicality. Moreover, he

would reject the permissibility of an agent's violating a certain moral rule once in order to prevent that same rule from being violated several times. He would contend that the description by Scheffler of the conflict between the two rival conceptions contains, explicitly or implicitly, the illicit, unargued assumption that *numbers count*. More seriously, it seems to contain a definition of practical rationality characterised by a bias in favour of theories that give pride of place to a 'maximising policy', considering Scheffler's suggestion that any moral perspective that identifies what is objectionable has reason to be a maximising perspective. This, Scheffler's adversary would argue, explains the charge of irrationality that is repeatedly advanced against strict deontological conceptions, or any moral perspective that refuses to accept that 'maximising rationality' is a general and well-grounded principle of practical reason (*cf* Scheffler 1982, pp.82, 120/1; Scheffler, 1988a, pp.9, 10; Scheffler, 1988b, pp.244, 258/9). According to a rights-theorist, for example, a maximising policy would be of normative significance only in situations where the prevention of harm, or the promotion of good, itself involves no actions designed to harm innocent, unthreatening *and* presently unthreatened individuals. This last point is significant in that it points not only to what is wrong with violations of rights but also to the special protection owed to those who are innocent, unthreatening *and* presently unthreatened. This kind of victim- or, rather, recipient-centred approach to rights explains why it is unjustifiable to sacrifice one individual who is innocent and significantly unthreatened by harm in order to save the lives of five innocent individuals who *are* so threatened.

Respect for an individual's rights implies that there is something that can be taken into consideration, namely the individual's point of view, a perspective from which the world is experienced in some way or other. Taking rights seriously means taking the individual seriously, both the agent (and her integrity) and (especially) the recipient. In fact, it is the latter that goes some way towards accounting for the nature of rights.

A question still to be answered, however, concerns the political effectiveness of (appeals to) rights – say, with regard to redress in South African education. Thomas Gebauer points out that it is not just public preoccupation with human rights that has increased: violations of human rights, too, have increased. According to some powers, security can only be guaranteed through restriction of civil rights (Gebauer, 2004). For the majority of the world's population, globalisation has not brought them more security under the law, but rather the opposite: a kind of re-feudalisation of their social context. They are less and less able to appeal to the institutions of a democratically legitimated statehood,

whilst the enforcement of their human rights is increasingly dependent on the philanthropic commitment and goodwill of international aid organizations. So it seems, says Gebauer, that human rights can only hope to have any chance in future if their development and their protection are renewed “from the bottom up”, as it were (Gebauer, 2004, p.12). There are in fact many signs that the international public has taken up the challenge. Intellectuals who are critical of globalisation, teachers’ and writers’ unions, internationally networked NGOs, churches and a large number of regional and local self-help projects have moved to fill the institutional gap left by globalisation and are now insisting on a political and material foundation for human rights. This “new global movement” (Gebauer, 2004, p.12) has a dual responsibility at this time. On the one hand, it must increasingly take human rights as the baseline for its own activities on behalf of new ways of living and communicating and, in so doing, fight actively for the reconstruction of social welfare and the scope for democracy and participation, in education as elsewhere. On the other hand, it must be vigilant in ensuring that the public debate on human rights does not serve to conceal particularist power interests but actually demonstrates that it is about efforts to achieve a society in which, as Karl Marx (perhaps surprisingly) put it, “the free development of each individual is the precondition for the free development of all” (quoted in Gebauer, 2004, p.12).

Rights have an executive power or force notably lacking in notions like *ubuntu* and reconciliation. Moreover, while the intuitive appeal of rights might be questioned by those who favour communalism or concern with the common good, I would argue that, to this day, the demand for the realisation of human rights is still the motor and measure of development and progress. The answer to the question, ‘Are rights sufficient for redress in SA education?’ would presumably be affirmative, but it arguably depicts an unlovely, morally/ethically impoverished scenario. Rights-based redress without reconciliation and reconciliation without emphasis on rights are both conceivable, but equally incomplete. My defence of a rights-based approach in the present paper sees rights as the backbone of redress and transformation, and reconciliation as its heart.

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