

REVIEW ARTICLE

Justice and Morality in South Africa

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James Cochrane, John de Gruchy and Stephen Martin, eds. 1999. *Facing the Truth: South African Faith Communities and the Truth and Reconciliation Commission*. Athens: Ohio University Press. 238pp. paper \$18.95.

Kenneth S. Broun. 2000. *Black Lawyers, White Courts: The Soul of South African Law*. Athens: Ohio University Press. 286pp. cloth \$45.00; paper \$19.95.

Almost a decade after apartheid began its death throes, South Africans are still considering the perversion of values and, at least implicitly, the consequences that survivors must pay almost daily at the turn of the millenium. Disparities in wealth, unequal ownership of land, and a rising tide of crime are the most visible and policy-related impacts of apartheid. The books under review, while touching upon some aspects of policy, address much more directly (and quirkily) the psychological and intellectual legacy of the South African past.

Facing the Truth confronts the role of "faith communities" during the apartheid era. The book's point of departure is the Truth and Reconciliation Commission's (TRC) hearings on this subject. The Introduction, written by the editors, a short historical and intellectual background to the issue and to the hearings, provides a rich summary of many of the themes to follow. Next comes the Research Institute on Christianity in South Africa's "Faith Communities and Apartheid." The Institute's report (largely written by one of the editors), which is the largest and most comprehensive contribution in the volume, is evidently intended to provoke reflection by the rest of the contributors. The report defines, describes, and attempts to evaluate the role of faith communities under apartheid. The report contends that faith communities should have been "prophetic" in denouncing apartheid and should have taken positive actions to resist apartheid. It evaluates the actions, omission, and reports of the various faith communities to the TRC very critically. The report itself is copiously documented with more than 300 footnotes and is written from a critical perspective that does not attempt to exonerate any faith community.

The rest of the contributions come from a variety of analytical perspectives, and most consider the roles of differing religious traditions. Most contributions assume the reader possesses a fairly thorough background in South Africa's constellation of religious traditions and organizations. But if one is not familiar with the Dutch Reformed Church, the Zion Christian Church, African Initiated Churches, the South African Council of Churches or the

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<http://www.africa.ufl.edu/asq/v4/v4i3a5.pdf>

Study Project on Christianity in Apartheid Society, one should not choose this volume-it does not waste time giving background on these organizations.

Most of the contributions struggle with a similar set of issues-how to understand or evaluate the role of specific faith traditions during the apartheid era; how to evaluate the submissions (or lack thereof) by various faith communities to the TRC; how to achieve reconciliation in a post-apartheid society. While many of the contributions are necessarily abstract, a few ably illustrate the relevance of this debate for individuals. Striking is Carl Niehaus' description of meeting his torturer in post-apartheid society. An evidently genuinely sorrowful policeman called Niehaus out of the blue and asked to meet him to ask for forgiveness. Niehaus realizes that the torturer was also a victim of apartheid, taken in by an evil ideology and indoctrinated by a church that seemed to accept such actions as moral since they were done in defense of "Christian civilization." Niehaus admits that he has not yet forgiven the man, although he is trying. This, among other things, leads Niehaus to wonder if religion has much to offer to the reconciliation process in South Africa.

Other interesting contributions include Tinyiko Sam Maluleke's critical evaluation of the TRC from the perspective of a black theologian. This might strike one as initially confusing, since the TRC is headed by Archbishop Desmond Tutu. Further, the absence of the majority of the victims from the process threatens to result in their silencing if the TRC production of its narrative report is effectively equated with reconciliation. According to Maluleke, the experiences of the majority of apartheid's victims will become devalued if this is allowed to occur.

Equally interesting is Robin M. Petersen's consideration of African Initiated Churches such as the Zion Christian Church (ZCC). During the anti-apartheid struggle, many people within the movement looked down on churches such as the ZCC because they refused to engage in political resistance or criticism of the government. The churches professed an apolitical stance but were seen as giving aid and comfort to the apartheid state by interacting with various government structures and leaders. Petersen explains that criticism of the ZCC's refusal to admit any guilt to the TRC comes from a fundamental misunderstanding of the ZCC's theological perspective. Petersen suggests that the ZCC's focus on creating self-reliant individuals who would "refuse to be hurt" was a profound act of resistance. What mainstream churches and activists saw as disengagement and neutrality toward government, the ZCC saw as an act of empowerment.

While this book draws no conclusions about the role of faith communities in apartheid or in the reconciliation process, it issues a call for reflection and dialogue. It successfully presents a variety of perspectives and benefit those who have an interest in the reconciliation process in South Africa; however, it will not be very accessible to those lacking a prior understanding of the South African faith communities.

In contrast, Kenneth Broun's *Black Lawyers, White Courts* is accessible to both those outside of the legal profession and those with only a passing familiarity with South African events. At times, those with some background in the history of South Africa may feel that Broun includes too much basic information throughout the excerpts. In the early chapters this sometimes disrupted the flow of the interviews, but by the second half of the book the

intrusions are more limited. Overall, the book reads very well although Broun could have more clearly delineated the format in his Preface.

This interesting volume is based on interviews with twenty-seven prominent non-white lawyers who practiced law under the apartheid regime. Many of them were significant actors in the anti-apartheid movement and several are government officials in the post-apartheid government. The arrangement of the book is very unorthodox: two chapters, Chapters 1 and 12, are complete interviews with two lawyers; chapters 2 through 11 are organized around themes (Bantu education; university; starting practice, etc.) and contain excerpts of interviews with the other 25 lawyers. Broun provides background information about the interviewees and weaves the various excerpts together by providing perspective on the experiences of the lawyers and making comparisons to other interviewees.

Broun's book provides a rich description of the indignities imposed by both petty and grand apartheid: separate tables for non-white counsel in the courtroom; the inability to officially share office space among barristers from different racial backgrounds; the lack of a "colored" break room forcing a non-white barrister to eat a packed lunch rather than enjoying tea with his colleagues; the difficulty of meeting clients or investigating cases when contacts needed to cross racial lines; the attempt of a white secretary to force an African female lawyer to stop using the "white" ladies room. There were the unofficial attitudinal barriers as well: clients, judges, and colleagues who did not think non-white lawyers could be as competent as white ones; the difficulty of becoming an apprentice in exclusively white firms; the psychological impact of being the only non-white in an otherwise all-white firm. Of course, there are also stories of how all of these lawyers overcame the everyday challenges faced by all non-white South Africans during apartheid: an inferior educational system; poverty (at least in most cases); lack of housing; arbitrary arrest and imprisonment.

While the structure of the book seems unconventional, one of its effects is to more emotionally involve the reader in the last few chapters, where one discovers the experiences of the interviewees in post-apartheid South Africa. Several have served in political or judicial positions, and others have established profitable practices, suggesting that the tribulations of the early years have been recompensed—at least almost. Broun uses this as a nice transition to the chapter on Dullah Ohmar, who became Minister of Justice and is in charge of the process of creating a non-racial system of justice for the new South Africa. Broun and several interviewees note that the apartheid system had fostered an unusual respect for law, allowing black lawyers to win important cases even when police or the government had not followed the letter of the law. This respect for law, along with the introduction of constitutionalism, suggests that there may be some basis for hope in the new South Africa. On the other hand, there are many judges and lawyers who benefited from (and continue to benefit from) the old system of apartheid. Additionally, there is the problem of equalizing access to justice. The new South African legal system must provide representation for what is still a mostly poor black majority.

Broun draws upon these experiences to offer a few observations. He notes, for example, that one characteristic most of these lawyers shared was coming from families where education was valued. Indeed, many of these lawyers had at least one parent who was a teacher. Further, most lawyers saw the legal profession as a way not simply of bettering their own lives, but the lives of all non-whites in South Africa. Broun notes that all the interviewees were people of

extraordinary intelligence, but it is clear from the interviews that they were also people of extraordinary courage.

Both of the books under review here offer us glimmers of hope for the new South Africa, yet both are sobering. Both contain astonishingly frank accounts of the injustice and immorality of the old system. Yet both books recognize that there are significant obstacles on the road ahead. How can faith communities who abdicated or misused their prophetic role under apartheid be seen as moral authorities after apartheid? How can a justice system that countenanced the unjust brutalization of the majority of the population be seen as an instrument of justice in a new millenium? Of course, control of these institutions is changing, even if slowly, and that will help. But the bigger question remains: can these societal institutions help contribute to the genuine reconciliation that South Africa needs to emerge from the shadow of apartheid? Niehaus, at the end of his contribution entitled "Reconciliation in South Africa: Is Religion Relevant?" suggests that perhaps the best that can be hoped for is individuals "struggling sympathetically" rather than any institution offering answers. It is also certainly true that law alone will not lead to reconciliation in South Africa. Any law, for example, that ratifies economic inequalities built up under apartheid is likely to be seen as unjust by the majority of the population. Any law that attempts to abruptly equalize wealth is likely to be seen as oppression of the minority. All such attempts (and there certainly must be attempts) can only succeed if they are understood by every sector of the population. Such understanding can only be the by-product of a genuine reconciliation which has yet to occur. Both of these books suggest that we might only be at the beginning of such a process of achieving justice in South Africa.