



3 MORAL DILEMMAS FACED UNDER APARTHEID

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Engaging students with the very real moral dilemmas activists faced during apartheid brings them close to the personal questions that any one person living under apartheid had to face. In addition, the moral dilemmas presented here are an invitation to reflect on ways that people, collectively and individually, can work to dismantle injustice in their specific historic circumstances.

1. How do you resist violent oppression? When (if ever) is it useful to use violent techniques? When is it futile?

[\(Chapter 2, "Mandela on Trial"\)](#)

The Speech from the Dock: Speaking for himself and those on trial with him, Nelson Mandela responds to the government charge of their preparing for a guerilla war against the government.

Monday, April 20, 1964 . . . A seasoned lawyer and a gifted speaker, Mandela deliberately took the risk *not* to contest the charge, but to demonstrate why armed struggle had become an unfortunate necessity in South Africa.

At the outset, I want to say that the suggestion that the struggle in South Africa is under the influence of foreigners or communists is wholly incorrect. I have done whatever I did because of my experience in South Africa and my own proudly felt African background, and not because of what any outsider might have said . . .

Some of the things so far told to the court are true and some are untrue. I do not, however, deny that I planned sabotage. I did not plan it in a spirit of recklessness, nor because I have any love of violence. I planned it as a result of a calm and sober assessment of the political situation that had arisen after many years of tyranny, exploitation, and oppression of my people by the whites.

I admit immediately that I was one of the persons who helped to form Umkhonto we Sizwe¹. . . I, and the others who started the organisation, felt that without

¹ The armed wing of the African National Congress.

violence there would be no way open to the African people to succeed in their struggle against the principle of white supremacy. All lawful modes of expressing opposition to this principle had been closed by legislation, and we were placed in a position in which we had either to accept a permanent state of inferiority, or to defy the government. We chose to defy the law.

We first broke the law in a way which avoided any recourse to violence; when . . . the government resorted to a show of force to crush opposition to its policies, only then did we decide to answer violence with violence.

The African National Congress was formed in 1912 to defend the rights of the African people, which had been seriously curtailed. For 37 years - that is, until 1949 - it adhered strictly to a constitutional struggle. But white governments remained unmoved, and the rights of Africans became less instead of becoming greater. Even after 1949 [the formal beginning of apartheid], the ANC remained determined to avoid violence. At this time, however, the decision was taken to protest against apartheid by peaceful, but unlawful, demonstrations. More than 8,500 people went to jail [for defying unjust, discriminatory laws]. Yet there was not a single instance of violence.

I and nineteen colleagues were convicted for organising the campaign, but our sentences were suspended mainly because the judge found that discipline and non-violence had been stressed throughout.

During the Defiance Campaign, the Public Safety Act and the Criminal Law Amendment Act were passed. These provided harsher penalties for protests against [the] laws. Despite this, the protests continued and the ANC adhered to its policy of non-violence. . . .

In 1960 there was the shooting at Sharpeville, which resulted in the declaration of the ANC as an unlawful organisation. My colleagues and I, after careful consideration, decided that we would not obey this decree. The African people were not part of the government and did not make the laws by which they were governed. . . . For us to accept the banning was equivalent to accepting the silencing of the Africans for all time. The ANC refused to dissolve, but instead went underground.

In 1960 the government held a referendum which led to the establishment of the republic. Africans, who constituted approximately 70% of the population, were not entitled to vote, and were not even consulted. . . . Careful instructions were given to avoid any recourse to violence.

The government's answer was to introduce new and harsher laws, to mobilise its armed forces, and to send Saracens, armed vehicles, and soldiers into the townships . . . The government had decided to rule by force alone. . . . What were we, the leaders of our people, to do? We had no doubt that we had to continue the fight. Anything else would have been abject surrender. Our problem was not whether to fight, but was how to continue the fight. . . .

I, and some colleagues, came to the conclusion that as violence in this country was inevitable, [that] it would be unrealistic and wrong for African leaders to continue

preaching peace and non-violence at a time when the Government met our peaceful demands with force. This conclusion was not easily arrived at. It was only when all else had failed, when all channels of peaceful protest had been barred to us, that the decision was made to embark on violent forms of political struggle. I can only say that I felt morally obliged to do what I did.

Four forms of violence were possible. There is sabotage, there is guerrilla warfare, there is terrorism, and there is open revolution. We chose to adopt. . . Sabotage did not involve loss of life, and it offered the best hope for future race relations. Bitterness would be kept to a minimum and, if the policy bore fruit, democratic government could become a reality. . . We felt that planned destruction of power plants, and interference with rail and telephone communications, . . . would scare away capital from the country, thus compelling the voters of the country to reconsider their position . . .

The Manifesto of Umkhonto was issued on the day that operations commenced. The response to our actions and manifesto among the white population was characteristically violent. . . Experience convinced us that rebellion would offer the government limitless opportunities for the indiscriminate slaughter of our people. But it was precisely because the soil of South Africa is already drenched with the blood of innocent Africans we felt it our duty to make preparations to use force in order to defend ourselves against force. . . [Dani: I skipped the following sentence, in case you want to put it back in & avoid the ellipsis: If war were inevitable, we wanted the fight to be conducted on terms most favourable to our people.] The fight which held out prospects best for us and the least risk of life to both sides was guerrilla warfare. We decided, therefore, in our preparations for the future, to make provision for the possibility of guerrilla warfare.

Above all, we want equal political rights, because without them our disabilities will be permanent. I know this sounds revolutionary to the whites in this country, because the majority of voters will be Africans. This makes the white man fear democracy.

During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.²

Connection Questions

1. What non-violent actions does Nelson Mandela describe the ANC African National Congress] undertaking?
2. What were the government's responses to each of these non-violent actions?
3. Why did the ANC undertake violence?
4. What, according to Mandela, were the limitations of this tactic?
5. **Do you think that armed resistance is moral? Are there contexts where it is justified? Does the end (justice) justify all means (violence)? How can the means (violence) affect the end?**
6. The speech ends with Mandela's memorable words

² Nelson Mandela's statement from the dock at the opening of the defense case in the Rivonia Trial, April 20, 1964 African National Congress website, <http://www.anc.org.za/show.php?id=3430> (accessed December 19, 2012).

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7. Mandela chose each word carefully beforehand, reading his draft to his the other accused and their lawyer. If they were found guilty, they could be sentenced to death. After all, their action was treasonous. Why did he frankly and in fact proudly admit to doing what he was accused of?
8. What was the ideal for which Mandela was prepared to die? What are the things for which you think people should risk their lives?

2. After 21 years in prison, the government offered Nelson Mandela his freedom. Mandela rejected their offer. Should Mandela have accepted the government's offer?

(Chapter 3, "Mandela's Strategic Decision")

On 31 January 1985 the State President of South Africa, P. W. Botha, speaking in parliament, offered Mandela his freedom on condition that he 'unconditionally rejected violence as a political weapon'. Shortly thereafter, his daughter Zindzi read a from the jailed leader at a mass meeting in Jabulani Stadium, Soweto, on 10 February, 1985. Watch part of Zindzi's speech [here](#). This was the text of his response as read publicly by Zindzi:

I am a member of the African National Congress. I have always been a member of the African National Congress and I will remain a member of the African National Congress until the day I die. Oliver Tambo is much more than a brother to me. He is my greatest friend and comrade for nearly fifty years. If there is any one amongst you who cherishes my freedom, Oliver Tambo cherishes it more, and I know that he would give his life to see me free. There is no difference between his views and mine.

I am surprised at the conditions that the government wants to impose on me. I am not a violent man. My colleagues and I wrote in 1952 to Malan asking for a round table conference to find a solution to the problems of our country, but that was ignored. When Strijdom [STRAY-dum] was in power [1954-58], we made the same offer. Again it was ignored. When Verwoerd was in power [1958-66] we asked for a national convention for all the people in South Africa to decide on their future. This, too, was in vain.

It was only then, when all other forms of resistance were no longer open to us, that we turned to armed struggle. Let Botha show that he is different to Malan, Strijdom and Verwoerd. Let him renounce violence. Let him say that he will dismantle apartheid. Let him unban the people's organization, the African National Congress. Let him free all who have been imprisoned, banished or exiled for their opposition to apartheid. Let him guarantee free political activity so that people may decide who will govern them.

I cherish my own freedom dearly, but I care even more for your freedom. Too many have died since I went to prison. Too many have suffered for the love of freedom. I owe it to their widows, to their

orphans, to their mothers and to their fathers who have grieved and wept for them. Not only I have suffered during these long, lonely, wasted years. I am not less life-loving than you are. But I cannot sell my birthright, nor am I prepared to sell the birthright of the people to be free. I am in prison as the representative of the people and of your organisation, the African National Congress, which was banned.

What freedom am I being offered while the organisation of the people remains banned? What freedom am I being offered when I may be arrested on a pass offence?³ What freedom am I being offered to live my life as a family with my dear wife who remains in banishment in Brandfort? What freedom am I being offered when I must ask for permission to live in an urban area? What freedom am I being offered when I need a stamp in my pass to seek work? What freedom am I being offered when my very South African citizenship is not respected?

Only free men can negotiate. Prisoners cannot enter into contracts. . . . I cannot and will not give any undertaking at a time when I and you, the people, are not free. Your freedom and mine cannot be separated. I will return.

Connection Questions:

1. Is Nelson Mandela a man of violence? What does he mean when he said this? (Remember that in the Rivonia Trial, he admitted to planning “violent forms of political struggle” for freedom.) Is he is a non-violent man?
2. The government required only one promise from Mandela: that he renounced violence. Mandela in his response rejects that condition and states that the ban on the African National Congress must be lifted for him to leave prison. Why did he consider this ban particularly important?
3. What did Mandela mean in saying that his freedom and the people’s freedom cannot be divided?

3. After the democratic elections in 1994, what choices did South Africa have in seeking justice for the crimes against humanity that had taken place under apartheid?

(Chapter 4: “[Transition to Democracy](#)”)

As apartheid was ending, the question naturally arose of what to do about those who had committed gross violations of human rights: torture, assassinations, bombings, killings, etc. In 1995, the Truth and Reconciliation Commission was established to make public the truth about

³ All black South African men (and for periods, women) were required by law to carry a passbook which identify them, provided proof of employment, and listed, among other things, past offence. If a black South African was caught by the police at an all-white neighborhood without proof of employment, with his information out of order, or without a passbook he was arrested, fined, and often sent away for months.

these crimes and to allow the perpetrators of these crimes to apply for amnesty. The TRC frequently stated that the road to reconciliation led through everyone in the country knowing the truth of what had happened in their names. In speaking of the importance of truth-telling at the TRC, Archbishop Desmond Tutu rejected the idea of letting bygones be bygones. **“The past has a way of returning to you. It doesn’t go and lie down quietly.”**

The TRC was set up as a result of the historic compromise between the liberation movement and the apartheid government: the new South Africa had arisen through a negotiated settlement between the government and the ANC, not through the liberation movement “marching to Pretoria.”

South Africa’s new democratic leadership sought two not easily reconciled goals: the restoration of peace after decades of violence and justice for the victims of human rights violations. However, the new government could not ensure a peaceful transition to democracy without securing amnesty for members of the apartheid government and the security forces.

Albie Sachs, South African activist and lawyer, explained that the compromise was complicated, because both sides had much too much to lose:

Apparently the security forces had said to the leadership that they had been promised an amnesty by President De Klerk, and that they had loyally protected the negotiation process, they were fully prepared to safeguard the [first democratic] elections against a bombing campaign intended to destroy the whole transition process, and they would defend the new Government and the new constitutional order. But not, they added, if afterwards they faced jail for their actions in support of the previous [apartheid] government—that was asking too much. They were not threatening a coup, but simply to resign en masse if no amnesty was granted. [...]

If the elections were severely disrupted, the dream would be destroyed and racial violence would continue . . . At the same time, to grant them blanket amnesty because of their support for the constitutional process would have negated the principle of institutional and personal accountability.⁴

The TRC was set up to expose the truth about human rights violation and violence during apartheid. It offered perpetrators from both sides amnesty if they gave a full account of their crime, proved that their crimes were politically motivated and were proportional to the goal (i.e., randomly killing children in order to cause fear would have been unacceptable as were violations committed for personal gain or vengeance).

TRC rejected the approach of retributive justice—of trials and prison—in favor of what Archbishop Tutu called restorative justice. Archbishop Tutu, who chaired the TRC, believed that telling the truth has a transformative power—bigger than what punishment and retribution can bring about. As Tutu stated in the Forward to the *Truth and Reconciliation Commission of South Africa Report*:

Those who have cared about the future of our country have been worried that the amnesty provision might, amongst other things, encourage impunity because it seemed to sacrifice justice. We believe this view to be incorrect. The amnesty applicant has to admit responsibility for the act for which amnesty is being sought, thus dealing with the matter of impunity. Furthermore, apart from the most exceptional circumstances, the application is dealt with in a public hearing. The applicant must therefore make his admissions in the full

⁴ Albie Sachs, *The Strange Alchemy of Life and Law*, 70.

glare of publicity. Often this is the first time that an applicant's family and community learn that an apparently decent man was, for instance, a callous torturer or a member of a ruthless death squad that assassinated many opponents of the previous regime. There is, therefore, a price to be paid. Public disclosure results in public shaming, and sometimes a marriage may be a sad casualty as well. We have been concerned; too, that many consider only one aspect of justice. Certainly, amnesty cannot be viewed as justice if we think of justice only as retributive and punitive in nature. We believe, however, that there is another kind of justice -- a restorative justice which is concerned not so much with punishment as with correcting imbalances, restoring broken relationships -- with healing, harmony and reconciliation. Such justice focuses on the experience of victims; hence the importance of reparation.

Subsequently he expanded on these remarks, putting the point in the context of African traditional jurisprudence:

We contend that there is another kind of justice, restorative justice, which was characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment. In the spirit of "ubuntu," the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community that he has injured by his offense.

However, some South Africans, including many black South Africans, disagreed. As the scholar Christine Hart has observed:

Not everyone in South Africa is convinced, however, that the Truth and Reconciliation Commission adequately holds people accountable for their crimes. In May of 1996, the families of Steven Biko, Dr. and Mrs. Fabian Ribeiro, and Griffiths and Victoria Mxenge, all five killed by the security forces, challenged the legitimacy of the Truth Commission before the Constitutional Court. The families alleged that the granting of amnesty to perpetrators was unconstitutional because it contravened the constitutionally guaranteed rights of victims of crimes to seek criminal and civil redress in the courts. The applicants also alleged that the granting of amnesty for gross human rights violations was contrary to international law. The Constitutional Court decided in a unanimous judgment that the TRC was both constitutional and consistent with international legal norms.⁵

Altogether, the Commission amnestied almost 1200 individuals and denied amnesty to a small number.

Connection Questions:

1. What accountability did the TRC require of perpetrators of crimes against humanity
2. What were the obstacles in South Africa to reconciliation? And how can they be removed?
3. Can the truth in a public forum serve as a substitute for justice? Or is the pursuit of reconciliation a poorly disguised means for failing to realize a just resolution of past injuries? What do you think?

⁵ Christine Hart, "Learning from South Africa: the TRC, ICC and the Future of Accountability," *Journal of Public and International Affairs*, v. 12, spring 2001

4. Why did South Africa not follow the model of retributive justice such as used after WWII , when prominent Nazi military and political leaders were prosecuted for war crimes at Nuremberg?
5. What is your opinion of the choices the TRC made?
6. In US history, are there any appalling human rights crimes where a truth and reconciliation commission might play a useful role today? If so, what new understandings would you hope to come out of such a TRC?