

PopTech 2009: American Imperatives

Paul van Zyl

Hello, my name is Paul van Zyl. I am South African and a decade ago I had the great privilege of serving as Executive Secretary of South Africa's Truth and Reconciliation Commission. I am delighted to be participating in a conference entitled "Re-imagining America" because my formative years were spent helping my own country re-imagine itself. Perhaps my experience may help America as it stands at its own very consequential crossroads.

It took four years from Nelson Mandela's release from prison to the holding of South Africa's first democratic election. During that time, implacable enemies had come to trust each other enough to draft a new constitution, and to contemplate a post-Apartheid government in which they shared seats in a new cabinet.

One of the most controversial parts of South Africa's transition was an agreement to grant amnesty to those who committed human rights crimes during the conflicts of the past. Nelson Mandela concluded that the security forces would not allow a successful transition to democracy without an assurance that they would not be prosecuted for past crimes.

Deal making is often necessary to ensure an end to conflict. But it contains its own risks from the perspective of building a durable peace. If ordinary people feel that their interests have been neglected then a peace deal drawn up by elites will begin to unravel. This is particularly true when it comes to human rights crimes. Amnesties are seldom popular with torture victims or the relatives of the disappeared.

It was in this context that several of us worked to establish South Africa's Truth and Reconciliation Commission. While we strongly supported the transition to democratic rule we were determined to ensure that it did not occur at the expense of victims. If an amnesty was the price South Africa had to pay for peace – and perpetrators would literally be able to get away with murder – then the new South Africa would have to make a comparable investment in addressing the needs of victims.

South Africa's truth commission contained a number of unique innovations. First, it required perpetrators to confess their crimes in public and subject themselves to cross-examination by victims and their lawyers. Only if they made a full and truthful disclosure of their crimes, would they be granted amnesty. While this enabled perpetrators to escape imprisonment, it did result in a measure of public shaming and stigmatization. More importantly, it allowed victims to discover the truth about the fate and whereabouts of their loved ones. The commission also allowed victims to testify in public and to have their suffering officially acknowledged by a commission appointed by Nelson Mandela and headed by Archbishop Desmond Tutu.

It was this public testimony by victims and perpetrators – almost non-stop for three solid years – that started the process of South Africa re-imagining itself. The revelations dominated the headlines of major newspapers and were the top stories in the nightly news. The truth commission

work was impossible to ignore. In order to give you a more intimate sense of our work, I would like to tell you about one of one of the 24,000 victims who trusted us with their stories and show you a brief clip another person's testimony.

A woman called Joyce Mtimkulu came to testify before the TRC in a hall much like this, except there weren't roughly 500 people sitting in the hall – there were 5,000. Joyce came to tell the story of her son Siphiwo. Siphiwo was a youth activist. He was a charismatic and articulate young man who was organizing against the effects of Apartheid in South African schools. For that reason, his work attracted the attention of the Security Police, who arrested and detailed him without trial under the emergency legislation operative at the time. He was denied access to lawyers and doctors. Siphiwo went into detention robust and articulate, and came out in a wheelchair, unable to walk, unable to talk, and missing most of his hair. Upon his release, Siphiwo immediately went into the hospital and was subjected to a battery of tests. It was discovered that he had been poisoned by the police while in detention with thallium – a tasteless, colorless, odorless drug. He was put on a treatment regime and his health began to improve. One morning when Joyce went to see him in the hospital, he was no longer in his bed.

Joyce came before the TRC to tell the agony of a mother whose child has disappeared. She described nursing him and watching him grow from a toddler to a boy to a teenager. She told us how enormously proud she was of her son and his bravery in taking on the Apartheid state. She told us of her great fear that it would cause him harm. She told us that every time the phone rang, every time there was a knock on the door, every time she heard footsteps in the corridor, she thought it was Siphiwo coming back. But she knew in her heart of hearts that her child was dead. Then she reached down beneath her and pulled up what looked like black wool, but was in fact a ball of Siphiwo's hair that she had gathered while he was convalescing. She held it up before us in the TRC and to Archbishop Tutu, but by extension to all of South Africa because this was being televised. She said, "This is all I have left of my son. You need to tell me what happened to my son."

The killers of Siphiwo Mtimkulu applied for amnesty. They revealed that they had conspired to have him killed to avoid the lawsuit his lawyers had brought against the authorities. They abducted him from his bed, shot him in the back of his head, put him on a pyre, burned his body to ashes, and threw the ashes into a river. We were not able to bring back Siphiwo, but we were able to go back to that place in the river and give him a decent burial, with Joyce able to finally say goodbye to her son.

Now I want to show you a brief clip of one of the proceedings from the TRC of Ernst Malgas, who is telling you about torture.

Michael Ignatieff once quipped that "truth commissions never uncover the truth; they only narrow the range of permissible lies". After Joyce Mtimkulu and scores like her told us their stories, no-one could deny that South Africa's security forces abducted and killed their opponents. After Ernst Malgas and hundreds like him testified, no-one could deny that the security forces tortured detainees in the most barbaric and inhuman fashion.

Most white political leaders tried to run a mile from these harrowing stories. FW De Klerk, South Africa's last Apartheid leader, tried to describe these crimes as aberrations. These were the acts of "bad apples" and certainly not the result of policy adopted by political leaders.

But, the mountains of evidence gathered from both victims and perpetrators revealed that De Klerk's account was an impermissible lie. Security force leaders, eager to prove that they were acting under orders – not private frolics or acts of pure sadism – provided us with evidence proving their crimes formed part of a counter-revolutionary strategy. The brutality revealed to us victims was too widespread and systematic to be the result of anything other than policy.

It was through this process of testimony and revelation that our country began to move from knowledge to acknowledgement. It is one thing to know that crimes occurred; it's quite different to acknowledge that they were wrongful and to promise to never allow them to happen again. The truth commission also changed the way many whites imagined South Africa. For them, Apartheid was a justifiable social experiment that was abandoned only when the costs came to outweigh the benefits. White South Africans benefitted enormously from Apartheid and turned a blind-eye to the humiliation, physical violence and economic exploitation at its core. A hit squad leader captured it perfectly when he said, "Whites wanted to eat roast lamb every night, but they never wanted to see the blood and guts. We were responsible for the blood and guts."

The work of the truth commission helped to demolish the wall of denial that whites had built between prosperity and the crimes committed in their name and with their political support. It is very difficult to hear thousands of victims like Joyce Mtimkulu tell their stories and NOT conclude that Apartheid was a profoundly evil and immoral system. And it is impossible to believe FW De Klerk's "bad apple" fabrication after hundreds of security force members revealed that they tortured and killed based on policies approved by political leaders.

Which brings me to America, and to the national debate regarding how this country should respond to torture and other forms of abuse carried out in the name of the global War on Terror. Let me say immediately that I come at this debate not as a meddling outsider with a vaguely colonial accent. I have two sons who were born in Brooklyn and who carry American passports. The crimes committed under the Bush administration were done in their names and I fundamentally believe that how this legacy of abuse is dealt with will affect their future.

Since my work at the TRC, I have worked to prevent and redress torture in dozens of countries. There is something medieval and primitive about torture. It is also shameful, immoral and criminal. For these reasons, most political leaders who support and condone torture have developed systems and coded instructions to encourage its practice, while taking great care to retain the ability to plausibly deny that they ever authorized it. Based on my experience, I have come to believe that you never have to actually issue written instructions to make torture happen. All you have to do is create the following conditions to allow it to flourish:

- First, deny detainees their *habeus corpus* rights – don't let doctors, lawyers or anyone else have access to them.

- Second, dehumanize the detainees – portray them as dangerous fanatics who pose an existential threat to your country. Dehumanization is easier if those in detention are from a different ethnic or religious group.
- Third, place interrogators and those who have access to the detainees under enormous pressure to get information and get it fast.
- Fourth, ensure that no-one is held accountable for acts of torture and mistreatment. If the pressure for accountability is too great, then scapegoat a few bad apples but always maintain their crimes are aberrations not the result of authorization or policy.

These conditions have, and continue to apply, in dozens of dictatorships and repressive regimes. Not surprisingly, torture is rampant in these countries. They also described the conditions in Iraq, Afghanistan, and Guantanamo Bay. But what makes *these* cases so remarkable is that US officials at the very highest levels went beyond creating the conditions for torture to flourish. Astoundingly, White House and Pentagon officials issued written instructions to authorize torture by stripping prisoners of legal protections and defining torture out of existence.

The former Vice-President has actually publicly admitted to authorizing waterboarding and other euphemistically termed “enhanced interrogation techniques”. What distinguishes Dick Cheney’s position on torture from leaders like PW Botha in South Africa, Augusto Pinochet in Chile or Alberto Fujimori in Peru was that those leaders always publicly denied and repudiated torture – despite the fact that it was well known that their regimes were responsible for these crimes. Cheney, in contrast, has sought to justify torture as not only legal but also as moral and perfectly justifiable. Let me put that more starkly – Dick Cheney has defended torture in ways that would make dictators blush.

And far more troublingly, Cheney has argued that waterboarding and similar acts are necessary and justifiable tools in combating terrorism and those who oppose them are placing America in great danger. I understand that the origin of this lies in 9/11 and in an understandable impulse to protect America in response to that day of barbarism. But imagine if every country that experienced similar atrocities – or was engaged in a battle against what it considered to be an existential threat – crossed this fundamental threshold of civilized behavior. All the advances across the globe that we have made in human rights since World War Two would be quickly jettisoned in the name of a perpetual war against terror.

That is why it was important that President Obama issued a ban on torture as one of his first acts of office. This was an important first step in restoring America’s image of itself and its standing in the world. But I fear that this ban is not based on unwavering political support, either in the Congress or from some sections of the American people. It is not hard to imagine how a further terrorist attack would quickly lead to a restoration of the old policy.

That is why I think there has to be a truth commission in America. America cannot re-imagine itself unless it undertakes a proper reckoning with this dark chapter in its recent past. A few prosecutions of low- or mid-level operatives will not produce the transformation this country requires. A new America must confront this dark chapter openly and publicly. It must give

victims a chance to testify and allow the American people to hear a firsthand, unvarnished account of the crimes committed in their name. It is only then that America will be able to say to itself in unambiguous terms: “We are not a nation that tortures its enemies. We regard torture as immoral and criminal. We will never justify or condone torture and we will punish those who commit these criminal acts.”

I fear a more accurate reading of the national mood, or least the minds of political leaders and opinion-makers sounds something like this: “We are a nation that used to torture. We don’t do it anymore. We won’t undertake a national investigation or prosecute those who authorized these crimes for fear it may be too divisive. We may prosecute some low-level torturers who engaged in particularly egregious acts. We can’t say for sure that we wouldn’t torture again in order to prevent or investigate terrorist acts.”

It is this national ambivalence about torture that worries me most. I fear that our instinctual opposition to torture has been eroded by the specter of a ticking nuclear bomb in a major US city. So let me suggest several reasons why this nightmare scenario should not be allowed to muddy the water:

1. First, torture is an extremely unreliable method of extracting information. Don’t take my word for it, ask the FBI. Almost all experienced interrogators will tell you that you get much more accurate actionable intelligence from lawful interrogations than from torture. Colin Powell can tell you the dangers of relying on information extracted via torture. He repeated a falsehood extracted by torture to the UN Security Council as a justification for invading Iraq.
2. Second, evidence extracted by torture can’t be used in civilized legal systems as a basis for obtaining convictions. One of the terrible dilemmas that the Obama administration is facing in deciding how to close Guantanamo is how to prosecute people who could be guilty of serious crimes but the only way to prove it is through evidence obtained by torture.
3. Third, torture offers bad people and fanatics a propaganda opportunity. There is nothing that shifts attention away from a criminal’s own conduct than the fact that they’ve been tortured.
4. Fourth, if you start torturing because you suspect a person may have information that can stop a major terrorist attack, then why stop there? What about a person who you suspect has raped and may rape again? Why not murder suspects? Surely no one could object to torture if it stops another killing? Why not suspected pedophiles? Why not arsonists? Once you start justifying torture either morally or legally it will start to infect your law enforcement community and your criminal justice system. The number of innocent people who are tortured will skyrocket and the country’s legal and moral foundations will begin to crumble.
5. Finally, torturing a person until they confess to a crime they may or may not have committed is a lazy form of crime-fighting. It is a poor substitute for the hard slog involved in police investigations or sophisticated intelligence operations. In Colombia, Northern Ireland, Peru and Indonesia terrorist groups have been dismantled and defeated

when police officers and intelligence analysts infiltrate their movements, intercept their communications, follow their money and monitor their operatives.

For all these reasons, I fundamentally believe that in a rational discussion about torture – when all the fear-mongering and politicking is stripped away – the policy arguments against this medieval practice will prevail. But far more importantly, I believe that when decent people hear and see human beings offering accounts of torture, then the policy arguments will recede into the background and the moral imperative of opposing torture will carry the day.

In conclusion, Karl Jaspers, a famous German philosopher, wrote a seminal essay entitled “The Question of German Guilt”. In that essay he coined the term “metaphysical guilt” and defined it as the guilt we should feel when we fail to prevent the persecution of others. The Danes had metaphysical guilt and as result saved more Jews from the Holocaust than any other European nation. This abstract concept, when put into practice, can mean the difference between life and death, and between torture and the rule of law. I also like to think of it as a form of enlightened self-interest. America needs a process of publicly repudiating torture, not just because it is wrong, but because once you’ve opened the Pandora’s box of state-sanctioned brutality, the violence and the degradation that follow are seldom confined to your enemies alone.

Thank you.