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Mapping the Rights Apparatus

Bill Maurer*

Critical studies of human rights have hit an impasse. On the one hand, the relativist critique of rights is caught in the horns of the dilemmas that have trapped relativism more generally. When relativists declare that rights are not part of a particular cultural world, or that rights can do harm by commodifying relations or things that were once integral to people’s lifeways, relativists re-institute cultures as the kind of definable, objectifiable entities that their critique of rights as objectifying “culture” sought to challenge. When relativists seek to discover “local” or “indigenous” conceptions of rights, or to find a least common denominator shared by all the world’s cultures that will ground a new conception of rights (such as the *lex talionis*, or the eye-for-an-eye conception of justice), they undermine their own claims of cultural incommensurability.

On the other hand, the universalist conception of rights has got caught in the dilemmas besetting all universalisms. When universalists proclaim the applicability of rights to all humans, they institute the human as having a particular form, stripping people of all particulars and rendering the human as “bare life,” thereby participating in the regime of rights that Hannah Arendt famously compared to the charters of societies for the protection of humans to animals. Humans in the universalist conception of human rights appear to be no more than a mere body, and particular

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types of humans—one thinks immediately of the figure of the child—get elevated to the status of archetypal victims of human rights abuses. Supposedly divested of the trappings of culture and experience that would make their rights claims always suspect because always already-interested, such figures of bare human existence operate in political discourse only as the raw material from which biopower makes its knowledges and its raison d'etre.

The global reach of human rights discourses today, and the status human rights have assumed as an unquestioned good, have led anthropologists of law to reevaluate the relativism/universalism debate. Jane Collier argues that in spite of her appreciation of cultural difference and incommensurability, she is “not alarmed by the spread of human rights discourses around the world” because human rights is “a language of argument.”¹⁴ Human rights contain contradictions and inconsistencies, not to mention their uneven enforcement, and so Collier turns her critical and ethnographic attention to the “languages of argument” that constitute “human rights” rather than assuming there is any unified coherence to them. Furthermore, Collier observes that the tension between enforcing universal rights and respecting cultural difference is internal to liberal legal orders. Rational people must possess their own distinctive “traditions” in order to make a claim to self-determination and to resist the yoke of others’ laws. Self-government demands distinctive selves to be governed. Elizabeth Povinelli points to the way liberal legal orders demand otherness—but not too much otherness—as grist for the liberal mill of transcending difference. “Be other,” liberal law exhorts, “so that we do not ossify.”⁵ Liberalism’s others provide it with the difference that warrants law’s power as transcendent arbitrator and mediator.

Richard A. Wilson’s book on the workings of the South African Truth and Reconciliation Commission (TRC) presents a remarkably novel, and necessary, intervention in this conversation. It is a book of signal importance for anyone interested in the critical appraisal of rights discourses and the anthropology and sociology of law in general. But it is also important for studies of bureaucratic knowledge and administrative technique, and even the field of science and technology studies. Seeking to trace the “social life of rights,”⁶ Wilson provides a rich and compelling story of the relationship between human rights discourses and the techniques that social-scientific and legal positivisms share for the

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production of truth. Locating his study within the debate over states' transitions from authoritarianism, Wilson shows us how rights are never quite what they seem. In this case, rights became a means of nation-building. In the process of empowering a notion of national healing through “truth-telling,” the TRC, Wilson argues, closed down the possibility of securing the criminal or civil prosecutions of the perpetrators of apartheid’s worst crimes and banal injustices. It did so not simply because of the ideological proclivities of elites, the negotiations among powerful interest groups and parties, the successful deployment of an essentialized notion of “African culture,” and so on, though it did in part because of all these things. What Wilson documents is how the TRC unwittingly shut down retributive justice in favor of restorative justice via a set of administrative and social-scientific techniques for gathering data and assessing truths that dovetailed with the legal positivism of rights discourse and presented the kinds of truths necessary for stitching together a national project.

Indeed, what comes across most clearly in Wilson’s book is the extent to which a certain “procedural liberalism,” heralded as essential to the establishment of the rule of law in transitioning states or fledgling democracies, is itself called forth through a specific bureaucratic and knowledge-generating apparatus. While one story here is the way the TRC was involved in the production of “official histories” for a newly imagined nation and the “manufacture [of] legitimacy for key state institutions,” especially those maligned through their tight association with the apartheid regime, the other, more compelling tale has to do with the technology for creating and managing the truths of the apartheid era. Some of the implications of the latter story make Wilson nervous. There are very interesting moments in the text where it becomes apparent that Wilson has had to choose whether to go down a path that would take him far from the practices and politics of the TRC, restorative versus retributive justice, nation-building after authoritarianism, and the specifics of the South African context. That path would lead to a far-reaching critique, not only of rights discourses and practices, but of the very modes of inquiry that would attempt to assess, modify or challenge them. Indeed, this book about a truth and reconciliation commission provides insight into the commission of truth. I am interested in what Wilson can tell us about this commission, in the sense in which one commits an error, or a sin, or commissions a work of art.

Wilson documents the “legal fetishism” of rights talk in societies undergoing transition, and the way the TRC’s legalistic encoding

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7. Id. at xvi.
8. Id. at 28.
dissipated political questions and left to one side structural issues in the South African state in order to build a foundation for the new, post-apartheid nation. He cautions that law, human rights and reconciliation cannot be separated from "nation-building, legitimization and the centralization of state power."9 And despite their being touted as a route toward re-legitimizing the state, truth and reconciliation commissions' actual record is quite mixed. Indeed, Wilson argues that "reconciliation was the Trojan horse used to smuggle an unpleasant aspect of the past (that is, impunity) into the present political order, to transform political compromises into transcendental moral principles."10 He is critical of Desmond Tutu's invocation of supposed principles of "African jurisprudence" under the heading of the term ubuntu, which include restorative justice, respect for human dignity, social solidarity, community, and so forth—the obvious alternatives to retributive justice, individualism, retaliation or vengeance. Wilson cites the amnesty granted to the killers of Amy Biehl as a "public relations coup" managed through the language of ubuntu,11 and ethnographically documents that vengeance and retribution had more of a place in oppositional discourses outside Johannesburg where Wilson conducted ethnographic fieldwork.

In the book's two most "ethnographic" chapters, Wilson explores two communities in which legal authority, reconciliation, and the relationship between local and national governments played out very differently. In Sharpeville, a "revenge ethic"12 took over as militarized youth and a lack of local-level institutions fueled disputes culminating in violence. In Boipatong, local courts with a high level of community legitimacy have channeled vengeful passions into retributive justice involving public beatings.13 The beatings are deemed proportionate to the crime; they can be severe, yet the guilty parties submit to them for fear of the white-dominated police station where they may face torture. There is no bail (in violation of human rights standards), yet suspending the rights of the accused protects them from the kind of vigilante justice they would face in Sharpeville. Together with the way state human rights discourses have appropriated elements of Christian redemption and forgiveness, the contrast between Sharpeville and Boipatong helps Wilson paint a picture of a plural and discontinuous sociolegal field. Wilson concludes that the situation calls for a re-evaluation of legal pluralism and an acknowledgment of the way the "social processes described [in the book] work in different directions simultaneously, both reinforcing and

9. Id. at 29.
10. Id. at 97.
11. Id. at 92.
12. Id. at 163.
13. Id. at 205.
obstructing the introduction of human rights values into a context of semi-autonomous legal and moral fields.”

But it is the chapters on the “truth-making machine” of the TRC that I find most compelling. Wilson rightly sees the denunciatory modality of critique as one of the main failings of the TRC. The TRC, Wilson shows, in eschewing a unifying theoretical framework for its findings, relied instead on a notion of decontextualized, ahistorical “evil” to explain away the horrors of the past. Denouncement took the place of systematic analysis and understanding, while restorative justice removed the possibility of retribution. Yet it is the truth-making apparatus of the TRC itself that foreordained this outcome. Wilson provides fascinating and important material on the co-emergence of human rights information management systems and human rights regimes around the world. The TRC’s Information Management System, dubbed Infocomm, was charged with collecting, documenting and collating the various kinds of data that would make up the “truth” of the TRC’s final Report.

Wilson shows how the bureaucratic structure of the TRC, the legal positivism of rights, and the quantitative statistical methods of social science worked to create different “parcels of truth” in four distinct modes: factual or forensic truth, personal or narrative truth, social truth, and healing and restorative truth. These four modes of truth were actually named and defined as such in the TRC Report. The Report gave no recommendations about the analysis or interpretation of these truths. This had two main effects. First, most of the truths collected fell under forensic or narrative paradigms, since these were the most amenable to the standard social-scientific methodologies of counting things and conducting interviews. Second, forensic truth emerged as the only one of the four modes of truth to carry any epistemological weight, for a number of reasons. It was deemed the only truth capable of providing a real history of the apartheid era, since the other modes of truth were “there for emotional ‘catharsis’ and nation-building.” But it also dominated the others for purely technical reasons. Statement-takers who collected case narratives could only conduct their work at a slow pace, given the nature of the enterprise, and thus became the bottleneck in the information management system. To remedy the slowing flow of information, Infocomm instituted a standard checklist modeled on the forms a paralegal might use in gathering the facts of a case. Infocomm modified the checklist over time, so that by the time of the TRC’s final Report there had

14. Id. at 222.
15. Id. at 33.
16. Id. at 34, 55.
17. Id. at 36-37.
18. Id. at 37.
been five different versions of the form. Each successive version—termed a "protocol"—sought to eliminate room for "mistakes" and increase the acquisition of "cold facts." The database drove the model: the statistical modality of truth production "selectively classified] social reality and in turn shape[d] how that reality [was] analyzed." It decontextualized, flattened, and ultimately erased "experiential truths."

One might expect the final product of this process of truth-making to be a grand narrative organized through statistical summary charts and the stability and security of knowledge that statistical procedures warrant, but this was not the case. Instead, despite the epistemological priority of the forensic mode of truth, each of the kinds of truth found their place in the TRC’s final Report. The result, however, was a disconnected text, a non-narrative (or even anti-narrative) account that offered "no authoritative perspective on the past. . . . Instead, the various sections—statistical analysis of patterns of abuse, chunks of testimony from hearings, and short background research pieces—lie side by side, unconnected." Wilson criticizes the Report for decontextualizing and fragmenting cases and narratives, and decrives its lack of integration. The lack of an authoritative narrative leaves only the modality of denunciation, as any systematic analysis of social conditions, crime and politics was "bypassed in favor of the moral category of 'evil' which resolves the problem of meaning: Why did people commit gross human rights violations? Because of the evil system of apartheid. End of story."

Wilson’s call for context goes together with his backpedaling on the question of those statistical methodologies. "My point is not that forensic and positivist forms of documentation do not have their place," he writes. Rather, he calls for a "wider vision of writing history" instead of "narrow legalism and an unreflective quantitative sociology." Here, however, Wilson might have instead asked what the truth-making machine of the TRC says about the truth-making machines of sociolegal, anthropological, or other forms of critical inquiry. To the disconnected text of the Report, Wilson counterposes "context" and "wider visions" of what historiography might be. Yet I cannot help but wonder whether the disconnect, the lack of resolution felt upon reading the Report, itself problematizes the very notion of contexts and wider views (which always, by definition, demand a widening of the lens to even greater contexts and even broader views). Might the perspectival aesthetic Wilson seeks itself

19. Id. at 44.
20. Id. at 47.
21. Id.
22. Id. at 52.
23. Id. at 54.
24. Id. at 57.
25. Id. at 58.
dissipate into the forms of legal and sociological positivism he hesitantly criticizes? Might it not also lead us back down the tracks of the relativism/universalism debate, revealing the bankruptcy of this very paradigm? Wilson himself suggests another strategy, to one side of what we might call the perspectival modality of truth: a strategy that inquires into truth’s technique—its commission, as it were.

This book is so important because it represents a novel approach to the critique of rights. It focuses on the techniques and procedures that procure rights and their forms of knowledge. It links social-scientific knowledge formation with the creation of rights by looking at techniques of “truth” in truth and reconciliation commissions. This puts into question the analytical enterprise itself. Although Wilson doesn’t quite jump into that abyss, his book suggests how one might do so with both analytical force and style.