

Lessons in Truth and Reconciliation for Australia from Overseas

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Discussions of a potential truth commission in Australia have largely taken place in the state and territory or national context. However, given that there have been more than forty truth or truth plus reconciliation commissions (TRCs) to date across the world, Australia would be wise to learn from experiences overseas, especially from similar countries, notably the settler states of Canada and New Zealand. The South African TRC, although the most famous, is not a good precedent although it does point to what this paper argues is the most important lesson to be learnt – notably to clearly understand in advance the precise purpose of the Commission. This will involve satisfying numerous stakeholders, and be much more complex than finding one particular truth. Even if reconciliation is currently off the agenda and only the needs of First Nations peoples, as the innocent parties, are taken into account, there still can be a need for truth telling as a form of therapy: as a means of correcting the historical record, and/or as a prelude to treaty making.

KEY WORDS: Truth commissions, reconciliation, first nations, settlerstates, Makarrata, treaties

Introduction

There is currently much discussion in Australia about the need for truth commissions, or truth and reconciliation commissions, in the context of indigenous¹ claims to be heard. This article provides a discussion of potential lessons to be learnt from overseas commissions, especially those few which have been held in British-origin settler societies. Here it is argued that the first essential question to be determined in planning any commission is to identify the purpose behind the commission beyond aiming to find one or more truths and promoting reconciliation.

Definition of Truth and Reconciliation Commissions

According to the International Center for Transitional Justice (ICTJ),

Truth commissions are official nonjudicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations. By giving special attention to testimonies, they provide victims with recognition, often after prolonged periods of social stigmatization and scepticism (ICTJ 2013: 9).

The ICTJ argues that:

Truth commissions are most effective when integrated in a comprehensive transitional justice strategy that includes reparations policies, criminal prosecutions, and institutional reforms. By delivering clear findings and compelling

recommendations, commissions can enrich policy and create political and moral momentum for these initiatives (ICTJ 2013: 9).

Adding 'reconciliation' to a commission's title makes the aim of reconciliation explicit. For instance, the agreement between the Government of Sierra Leone and the Revolutionary United Front which ended the civil war between them provided that a:

Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation (Peace Agreement 1999 Article VI (2)).

As will be discussed below, some Australian indigenous groups do not prioritise reconciliation, and the Victorian Yoorrook Justice Commission does not have either 'truth' or 'reconciliation' in its title because of their desire to focus on attaining justice for indigenous peoples rather assuaging the consciences of the non-indigenous population. The Commission's website lists examples of truths which First Nations people may wish to present evidence about as 'experiences of racism, forced removal from home and land, massacres, forced labour, cultural loss, intergenerational trauma, economic disadvantage and stolen wealth' or 'acts of resistance and resilience' (Yoorrook Justice Commission 2022). There is no provision for people who are not members of

the First Nations to make submissions. The meaning and efficacy of truth and reconciliation are heavily dependent on the cultural and political context.

The Theory of Truth and Reconciliation Commissions

There is undoubtedly more affirmation than theory behind the promotion of truth and reconciliation commissions. There is also much more theory associated with the broader concept of transitional justice. For instance, there is the *International Journal of Transitional Justice*, the Routledge Transitional Justice Series includes 37 books (Simic 2021). The Australian Museum's website twice quotes James Baldwin's affirmation that: 'Not everything that is faced can be changed, but nothing can be changed until it is faced' (Sentance 2022a, 2022b). The website also quotes the statement of reflection painted on the wall of Hinze Hall in 2020: 'This was and always will be Aboriginal land' without any explanation of what this might mean (Sentance 2022b). Further, Louis Farrakhan, a leader not noted for his adherence to the truth, argued that: 'There can be no peace without justice. There can be no justice without truth. And there can be no truth unless someone rises up to tell you the truth' (Southern Poverty Law Center 2022). People who make statements to the effect that 'there can be no peace without truth' or 'without justice' generally are relying on faith rather than any kind of evidence.

There are a number of possible criticisms of Truth and Reconciliation Commissions (TRCs) only some of which are applicable to the Australian settler society context of negative peace, here defined as being where justice for the indigenous population is lacking but there is no civil war (Leask and Philpot 2012). One criticism is that TRCs can provide good, if partial, solutions to the difficult problems associated with securing reconciliation after bitter conflicts, but that a particular TRC, such as that in Sierra Leone could have been better handled. In 2004, Mendeloff, who is one of the rare critics of the very concept of the truth commission, asked supporters to 'curb the enthusiasm' but he has attracted few followers to agree with his negative views. As will be argued below, only Canadian and New Zealand settler-context precedents provide really helpful lessons for Australia. For example, the criticism that TRCs are just a weak substitute for trials (Brody 2001 in Brahm 2007) does not generally apply to Australia where most criminal acts occurred more than a generation ago, although some such as those related to deaths in custody and on the streets are more recent and even ongoing. Another argument is that TRCs can be harmful and potentially dangerous because they may encourage the creation of divergent versions of history, thus generating resentment amongst victims and insecurity amongst alleged perpetrators (Snyder and Vinjamuri 2003). In

Australia, judging by the very limited publicity accorded to the Victorian Yoorrook Commission (see below) the chief risk appears to be that their report will be ignored and consigned to the dusty shelves of law libraries.

Eric Brahm (2007) worked initially in Nevada, and when he subsequently came to Griffith University in Australia he participated in the establishment of its data collection of truth commissions (Dancy et al. 2010). He tried to work out a method for examining the success and impact of TRCs by looking at trends in democratic governance and human rights practices. He found that while no TRC would be likely to broadly adversely affect democracy in Australia, adverse reporting on practices contrary to human rights law might result in some changes – although the precedents thus far are not encouraging. More than three decades have passed since the publication of the Report of the Royal Commission into Aboriginal Deaths in Custody (1987), which could be regarded as an early truth commission. However, very few of its 339 recommendations have been implemented, partly because they require action by each of the States and Territories (Creativespirits 2022a).

Working in Canada back in 2008, Corntassel and Holder (2008) compared government apologies and truth commissions for their impact on indigenous self-determination in Australia, Canada, Guatemala and Peru, and found both instruments to fail. They argued for an equivalence between the two instruments because: 'Both are intended to transform intergroup relations by marking an end to a history of wrongdoing and providing the means for political and social relations to move beyond that history' (2008: 465). Whatever may have been the case in Canada, few in Australia would have expected the apologies to mark any end point, but rather a stage on a 'Journey without End' (Sanders 2002). The authors found that in each of the four cases:

the reconciliation mechanism differentiated the goal of reconciliation from an indigenous self-determination agenda. The resulting state-centred strategies ultimately failed to hold states fully accountable for past wrongs and, because of this, failed to transform inter-group relations (Corntassel and Holder 2008: 487).

From their perspective, TRCs can only succeed in contexts where they are accompanied by decolonisation and restitution. Whilst restitution could always be applicable, decolonisation does not directly apply to many post-civil war TRCs in Africa. In a classic text, Priscilla Hayner (2001: 319-11) examined 21 Truth Commissions and found that only three (Chile, El Salvador and South Africa) had measures that were

intended to advance reconciliation. Especially in Latin America, many were intended to find the truth about a previous despotic regime which had 'disappeared' and killed its enemies and thus did not aim at reconciling with the state authorised murderers.

There are undoubtedly cultures where speaking out about past atrocities may be neither wise nor helpful. Bangladesh, the former Yugoslavia and Eastern Congo stand as cases in point. In these cases, rape was used as an instrument of war, precisely because rape serves to destroy families. In such cultures, speaking out may serve no good purpose and result in damage to both the women raped and the children who had resulted from rape. In Australia's stolen generations many of the stolen children were the consequence of white men raping Aboriginal women. These unfortunate children, especially the girls, were often raped in their turn after being taken away from their mothers (Creativespirits 2022b).

The earliest truth commissions were held in Latin America where new regimes were inquiring into the egregious human rights breaches of the previous regimes. Attention then shifted to Africa where truth commissions were often held as part of peace settlements following brutal civil wars. The most recent trend has involved truth commissions in colonial settler states, notably Canada and Australia. The South African TRC stands out as having been held in a settler state but one where the disadvantaged group were the majority population, not a minority, and where the end of apartheid marked one form of radical transition – although not, it transpired, as radical as many in the majority had hoped. It can well be argued that there is not a great deal of point in examining post-civil war TRCs alongside TRCs in settler states where transitional justice is much more a question of examining developments over centuries rather than a few years.

For Australia, Sarah Maddison and Laura Shepherd (2014) have inquired into 'Peacebuilding and the postcolonial politics of transitional justice', although many Australians might query the use of the term 'peacebuilding' where First Nations for a century have conspicuously eschewed violence. These authors suggest a taxonomy of transitional justice divided into four categories depending on the thick or thin nature of the justice and the transition provided. A thick/thick transition would require the coverage of a long time period and socioeconomic redistribution in settler states to redress 'a continuity of marginalisation and oppression that dates from the original invasion and colonisation of their [indigenous] lands' (2014: 264). 'Settler societies must also negotiate the existence of self-determining indigenous groups within their midst' (Woolford 2014: 138).

Maddison and Shepherd (2014: 265) argue that the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 'can be understood as a form of truth commission with similar limitations to the South African' TRC. As will be discussed below, the Yoorrook Truth Commission in Victoria avoids the time period and topic restraints imposed on the National Inquiry, leaving it open for First Nations to claim 'that they are still suffering the effects of colonialism – a structure that is for them a current reality rather than a historical artifact' (Woolford 2014: 147).

Factors to be Taken into Account Before Designing a TRC

Drawing on overseas experience with over 40 TRCs or similar bodies (USIP 2022), factors which need to be taken into account before designing a TRC include:

1. What are the purposes and goals of the TRC?
2. Is the truth already widely known but not widely acknowledged or will many new facts probably emerge?
3. Are none, few or many of the perpetrators of the crimes and evil deeds to be covered still alive?
4. If some perpetrators are still alive, what is to happen to them? Are there to be provisions for amnesties? If so, under what conditions?
5. How many TRCs are there going to be? If each state and territory holds its own TRC is there still a need for a national TRC and how would that work with respect to state and territory TRCs?
6. Just how many survivors / victims can the TRC deal with?
7. How public will the proceedings be?
8. What will be the limits to the recommendations the TRC can make? Restitution? Return of lands? Sovereignty? (Moreton-Robinson 2021)

Before looking at possible answers to some of these questions below, it is worth providing a little background firstly to the South African Truth Commission which is the most widely known and often regarded as a model, and secondly to the Canadian Truth Commission which is the TRC held in the historical and political context most comparable to Australia, so that the examples which they provide can be better understood for the Australian context.

The South African TRC

Contrary to popular belief, the South African TRC of 1995-2002 was not the first TRC. The Comisión Nacional de Verdad y Reconciliación, often cited as the Rettig

Commission, had followed the Pinochet regime in Chile from 1990-1991. There had been even earlier truth commissions not aiming at reconciliation in other Latin American countries. The South African TRC was created to investigate gross human rights violations that were perpetuated during the period of the Apartheid regime from 1960 to 1994, including abductions, killings and torture. Its mandate covered violations both by the state and the liberation movements. There were nine male and eight female Commissioners with a staff of 300 to assist the three committees dealing with Human Rights Violations, Amnesty and Reparations and Rehabilitation. Although South Africa is a multi-faith country, its TRC was carried out in a largely Christian context and was chaired by Anglican Archbishop Desmond Tutu. Proceedings were televised. Opinions vary as to the success of the TRC depending upon the assumed goals set for it. The most basic goal for the TRC was to save the country from mass racist violence and to stop it sliding into the bloody turmoil of a civil war: in this it was a success. The most radical goal suggested for the TRC was to establish a basis for structural change to the South African economy and society so that Blacks would no longer be disadvantaged in nearly every aspect of their lives. This search for a utopian heaven clearly was not even a partial success.

The Canadian TRC

The Canadian TRC was established in June 2008 with the purpose of documenting the history and impact of the Canadian Indian residential schools system. It was not a general overview TRC as the South African TRC had been. It was established because it was required by the Indian Residential Schools Settlement Agreement (the largest class action settlement in Canadian history), not necessarily because the Canadian government thought that it was a good idea. About 70 per cent of the schools had been administered by the Catholic Church, using government funds. So, both successive governments and the Catholic Church could be seen to be on trial. The TRC had a \$60 million budget for five years of work, later extended to six years. It held hearings across Canada, listening to the testimony of 6,500 witnesses including many survivors and others impacted by the school system. Understandably few of the administrators, teachers and others who might be regarded as 'perpetrators' appeared and, given that there were no amnesty provisions, there were minimal incentives for them to participate. The Final Report was issued in two stages in 2015, including 94 recommendations or 'calls to action' plus the conclusion that the Indigenous School System amounted to 'cultural genocide'. One problem with the Canadian TRC was its emphasis upon survivors, as the following years when the finding of many unmarked graves of those children who had died at the schools all too painfully demonstrated. This first

TRC was followed by the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), which was appointed in 2016 and reported in 2019 under the title of Reclaiming Power and Place. As with the Residential Schools Report, the MMIWG made a finding of 'genocide' although there was not enough data to determine how many of the killings were by indigenous men. One of the 'Calls for Justice' recommendations was that non-indigenous Canadians should read the Report.

New Zealand's Approach to Truth and Reconciliation

As Australia's near neighbour with a similar colonial history (indeed, until 1841 New Zealand was part of the Colony of New South Wales) and political culture, New Zealand may indeed offer useful precedents for Australia. However, in this context it is vital to recognise that New Zealand differs from Australia in two very significant ways. Firstly, it has the 1841 Treaty of Waitangi signed in conflicting English and Maori versions which say different things, whereas Australia is unique among comparable colonial settler countries in never having had a treaty with its indigenous population. Secondly, the Maori people represent 17.4 per cent of the population of Aotearoa/New Zealand, and speak one language and share a common culture. In contrast, Aborigines and Torres Strait Islanders make up 3.2 per cent of the Australian population and before colonisation spoke between 250 and 363 separate languages. Given the number of surviving cultural groups, treaties with the Australian indigenous population may still come to number over a hundred and, given Australia's federal system, will probably be made with states and territories with a possible national treaty to follow. Richard Wong Maning (2021) has proposed tripartite treaties based on the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) between the Federal Government, the State or Territory and the First Nations. Maning provides a model for such treaties which follows UNDRIP in recognising First Nations peoples' inherent rights to self-determination and self-government.

In New Zealand, Maori calls for the better recognition of indigenous rights resulted in the establishment in 1975 of a permanent commission of inquiry known as the Waitangi Tribunal (Treaty of Waitangi Act 1975, s.4). The Tribunal is empowered to determine and interpret the principles of the Treaty and consider the legitimacy of contemporary Maori claims of transgressions by the Crown (s.6). In 1985 a legislative amendment empowered the Tribunal to examine historical claims, which was joyfully greeted by the Maori as most claims were rooted in pre-1975 historical issues (Orange 2004: 159-175). To date, for most claims the Waitangi Tribunal has found in favour of the Maori claimants. The Waitangi Tribunal is not a truth commission as such, but it is a

standing body which investigates the truth or historical validity of Maori land claims and also other matters including claims relating to political representation, the Maori language and even broadcasting frequencies. The Australian Native Title Act 1993 established the National Native Title Tribunal which, like the Waitangi Tribunal, can hear claims, including those involving privately owned property, but cannot make recommendations regarding such claims. Debates in Australia about possible truth commissions generally envisage time-limited bodies which will determine a single truth largely based on the oral testimonies of indigenous witnesses and have not considered how the findings of pre-existing commissions and inquiries will be incorporated into their final reports. As the Canadian experience demonstrates, a series of truth inquiries over time may be necessary.

Victoria's Yoorrook Justice Commission

According to the Victorian Government's website on 'Truth and Justice in Victoria', 'Victoria's truth and justice process will recognise and address historic and ongoing injustices and form a key part of the treaty process'. In June 2020, the First Peoples' Assembly of Victoria passed a resolution seeking commitment from the State to establish a truth and justice process, that cited 'a requirement for justice' rather than mentioning reconciliation. The response was that,

In working towards treaty, the Victorian Government is committed to acknowledging the truth of Victoria's history and laying the foundations for new, positive relationships between the State, Aboriginal Victorians and non-Aboriginal Victorians, which all Victorians can benefit from (Victorian Government 2022).

The Government went on to say that,

It is widely acknowledged among First Peoples in Australia that we cannot talk about our shared future until we acknowledge our shared past. Through decades of activism, First Peoples have fought for truth-telling, to recognise the impacts of colonisation and address historical and ongoing injustices. Truth commissions offer a formal and legitimate process for this to happen. Establishing a formal truth-telling process will assist reconciliation and healing for people harmed and their communities (Victorian Government 2022).

This last statement would appear to represent a wishful hope rather than a scientific prediction. In May 2021 the Yoorrook Justice Commission was established as a Royal Commission under Victorian law. Yoorrook is the Wemba

Wemba/ Wamba Wamba word for 'truth'. The Commission is intended to facilitate truth telling and healing; educate the wider Victorian community and develop recommendations for institutional and legal reform. It has seven objectives focusing on learning the causes of systematic injustice, developing a shared understanding and supporting a future treaty. Reparations or land rights are not specified topics. However, the Government agreed that the Commission 'may make recommendations about appropriate redress for systemic injustice that could be implemented through the treaty process.' Originally the Commission was to report by 2024 but this has been extended to 2025, which is before the next state election in November 2026. Victoria has learnt from the South Australian experience where in a political about turn 2018 Steven Marshall's Liberal government paused the treaty negotiations begun by the previous Labor Government. The Commission's Terms of Reference task it to inquire into and report on historical systematic injustices perpetrated by state and non-state entities against First Peoples since the start of colonisation, specifically those which impede First Nations achieving self-determination and equality.

In 2022 South Australia circulated a draft First Nations Voice Bill (South Australia Attorney General 2022) specifying that local First Nations people would be elected to a state wide Voice to Parliament as well as to regional Voices around the state. It is not clear whether the State government still intends to hold a TRC or whether that decision would be for the South Australian Voice to advise on.

What Does Reconciliation Mean?

Outside of specialist circles of religious followers and academics, 'reconciliation' is not a word in everyday usage. Patricia Hayner, a significant authority on TRCs, argues that reconciliation means: 'rebuilding relationships today that are not haunted by the conflicts and hatreds of yesterday' (2001: 161). She poses three questions to assess whether reconciliation is occurring: (1) How is the past dealt with in the public sphere? (2) What are the relationships between the former opponents? and (3) Is there one version of the past or many? (2001: 161-2). Disputably, Martha Minnow, who maintains an Instagram blog on reconciliation, argues that 'restoring dignity to victims would be part of the [reconciliation] process, but so would dealing respectfully with those who assisted or were in complicity with the violence' (Minnow 1998: 23). The Uluru Statement from the Heart calls for Voice, Truth, Treaty but it does not call for reconciliation (National Constitutional Convention 2017). Many indigenous people understandably see reconciliation as in the story of Lorinna and Joe. Joe takes Lorinna's bicycle for his paper round, after which they are not on speaking terms. After

a while Joe approaches Lorinna and says 'Let's make up'. Lorinna asks for her bicycle back. Joe says 'No, I still need it' and no reconciliation occurs (adapted from Rigby 2001: 142). Apart from continuing conflicts over the return of land, reconciliation is a problematic term because it implies that there was once a harmonious relationship which can be restored, which has not been the case in Canada, New Zealand or Australia. In the consultative meetings leading up to the Uluru Statement, participants 'were resolute in their rejection of "reconciliation" as an appropriate framework' (Davis 2022: 25).

Woolford takes a highly cynical view of reconciliation in the Canadian context, arguing that:

the investment the non-Aboriginal governments are making in treaty negotiations is not one directed at repairing past harms. Rather, it is an investment in a future of stable economic and political relations between Aboriginal and non-Aboriginal peoples – a future in which Aboriginal peoples can be expected to participate in a nondisruptive manner in the social totality. The goal of the non-Aboriginal governments is to dissuade First Nations from accenting historical injustices, and to instead have them accept the responsibilities attached to distribution of land, money and governance powers so that they manage their communities in a manner that makes their Aboriginality less uncertain for non-Aboriginal society (2004: 400).

He wrote this in the context of the contemporary negotiations concerning a treaty to deal with land claims in British Columbia, where the First Nations peoples had never ceded their territory to the colonial society. Woolford distinguishes between 'reparations as certainty-making' and 'reparations as justice-making'. The 'former refers to political negotiations designed to bring an expedient and practical harmony to a history of conflict and brutality, while the latter describes an ongoing reconciliatory process through which tolerance, trust and reconciliation are gradually developed' (2004: 430).

Woolford warns of the risk of 'affirmative repair' (adapted from Fraser 1997) that:

threatens to overdetermine the process of justice-making. In affirmative repair the reparative process is a subtle application of force so that a dominant group places assimilative pressures on a less powerful group. In the Canadian or Australian context this involves enrolling the First Nations group into the world of neo-liberal governance to such an extent that it is near impossible for the First Nation to assert its difference in any way contrary to the prevailing political and economic norms of global markets (Woolford 2014: 430).

First Nations are not allowed to maintain communal land holding, let alone the idea that the land owns the people rather than vice versa. Nor are they allowed to spend their time on ceremonials rather than job-seeking or form filling. Vetoing mining on their lands is simply not allowed. Woolford's 2004 paper should be carefully read by anyone who thinks that the problems of Australian First Nations can be solved by one or more treaties.

In Canada, the original three TRC commissioners resigned over disputes about the balance between 'truth' and 'reconciliation', with the Chair wishing to prioritise 'reconciliation' and the other two wishing to focus on 'truth' (Friesen et al. 2008). In Australia, as in Canada, there is the problem that First Nations who still live relatively traditional lives in defined geographical areas are in a very different position to those who live scattered across major cities with limited, if any, contact with their home communities. Even at the simple level of a reconciliation ceremony or the erection of a commemorative statue and plaque, this is much easier in the former case than in the latter. In Victoria, some members and descendants of the Stolen Generations fear that the Yoorrook Commission will exclude their interests when it comes to questions of reparations and any return of lands.

Do the Numbers Matter?

One area where questions are often avoided concerning TRCs is whether the cited numbers of deaths or those mistreated do indeed constitute the truth. As with the Holocaust, where many consider it unacceptable to query the six million figure commonly quoted for the number of Jews killed, except possibly to raise it above six million, in Australia it is considered poor form to query Aboriginal accounts of how many were killed at a particular massacre site even when reports vary widely. The Bringing Them Home Report (produced by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families in 1987) said that 'at least 100,000' children were removed from their parents. The Australian Museum's website cites Gamilaray author Michael O'Loughlin as repeating the National Inquiry's finding that 'between 1 in 10 and 1 in 3 indigenous children were removed from their families and communities'. The difference between 1 in 3 and 1 in 10 is clearly vast. It could be asked whether an Australian TRC should or could go over the numbers from previous inquiries. Why and to what extent should it matter whether 120 or 140 Aborigines were killed by five or six stockmen in a massacre in the 1890s?

What About the Perpetrators?

The amnesty provisions of the South African TRC remain highly controversial. Many TRCs, including the Victorian Yoorrook Commission have terms of reference which

remain silent about what will happen to those named as perpetrators. The Liberian TRC notoriously named Ellen Johnson-Sirleaf as someone who should be barred from political office for her support of Charles Taylor, the former president ultimately convicted of war crimes. Johnson-Sirleaf herself went on to win the Nobel Peace Prize and to become the President who brought peace to her country. Truth Commission reports tend to present the events investigated in black and white terms which avoid the grey complexities of real life, and to make findings of 'genocide' which appear to stretch the meaning of the term. The Commissions are seen as having been established to right long-standing wrongs and to allow structurally disadvantaged minorities to have a voice, and not necessarily to present a balanced picture of the bad and good things which happened in the past. Canadian TRC audiences booed witnesses who made favourable comments about their experiences of the residential school system. In Australia it would probably be expected that TRC reports would name categories of people not individuals. Lawyer and former Liberate Senator Amanda Stoker (2022: 100-101) opposes any Australian truth commission on the grounds that to hold one would imply that 'our history, to this point, is somehow dishonest' and that a body that would not test the veracity of evidence presented to it would be 'a recipe for the mangling of Indigenous and the settlers' history alike'.

How to Measure the Success of Australian TRCs

Eric Brahm (2007) has discussed methods of measuring the success of TRCs largely in the context of calm following violent national conflicts. In the Australian context it is possible to envisage a number of measures of success in a more peaceful context. As it appears that each state and territory is likely eventually to have its own TRC, there will be scope for a national league table. The first measure of success could simply be the proportions of the majority and the First Nations populations which (1) had heard of the TRC and (2) could name one or more of its recommendations. It is tempting to suggest that the more recommendations that a Commission feels it necessary to make, the less successful it is likely to be. The next measure could be related to the successful implementation of police reform and reductions in deaths in custody and domestic violence, since every TRC will need to recommend this. The same applies to a measure of trends in how many children have been taken from their parents. Less readily measurable will be the relationship between TRCs and ensuing treaties.

Concluding Comments

Lessons on the practical aspects of TRC design such as staffing, budgeting or the technicalities of translating and transcribing oral testimonies can be learnt from many TRCs across the world, from Argentina to Korea

and Timor Leste. However, any person or institution in Australia looking for lessons on how to design a TRC would be well advised to examine what has happened in the settler states of South Africa, Canada and New Zealand. These are all settler societies where current evils experienced by their First Nations populations have their roots back in the original colonisation and seizure of their lands. To date no TRC would appear to have dealt with the highly complex and controversial questions of indigenous self-determination and sovereignty.

In many cases, including in the Northern Territory, Queensland and Victoria, there is an expectation that truth commissions will lead on to treaties. The thinking would appear to be that it is logical that once a truth commission has established that indigenous lands were stolen and indigenous people were denied their rights, it will be possible to move on to a treaty in which lands and rights will be restored or recompense offered. Megan Davis, the Aboriginal Chair of the UN Expert Mechanism on the Rights of Indigenous Peoples, argues that truth telling is not a pre-requisite to achieving substantive rights (Davis 2022). The Uluru Statement calls for a Makarrata Commission to 'supervise a process of agreement and truth-telling'. Strong and bipartisan political support will be needed to secure the passage of sustainable treaties and thus the coming of treaties is far from being inevitable. Indeed, the current debate about the indigenous Voice and a referendum over Constitutional change shows just how difficult it is likely to be to secure agreement to rights-assuring treaties across the country. Australia is a democracy and the indigenous population makes up only three percent of the whole. According to the 2021 Census, there are some 882,000 First Nations people in Australia as against 1,371,000 people of Chinese descent and 721,000 people of Indian descent, most of whom would have very little understanding of indigenous issues. The original inhabitants of the country are going to need a great many allies across the general population if they are going to be able to attain meaningful self-determination within the lifetime of those now living. As to sovereignty, a TRC can report the self-evident fact that, pre-colonisation, the First Nations held sole authority over their individual territories across Australia. A TRC could also make recommendations or issue Canadian style 'calls to action' for treaty negotiations. What is not clear, because there is so little prior experience (because other settler states already have treaties), is whether the findings or recommendations of a TRC could serve to motivate the strong political support necessary to achieve successful treaty negotiations across Australia.

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End Note

1. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) recognises that Australia's First Peoples chose to name themselves in many different ways and that in speaking of specific groups or individualist is best to ask what name they would prefer. When speaking of the whole, AIATSIS recognises that First Nations is increasing preferred over Indigenous. This paper uses both terms recognising that the sources discussed differ in their choice of terminology. The Statement from the Heart refers to both Aboriginal and Torres Strait Islander tribes and to First Nations. Over time the term Truth and Reconciliation Commission often abbreviated as TRC has come to be used to represent both Truth and Reconciliation Commissions and Truth Commissions. This article uses both terms in order to reflect the specified mandates of the individual Commissions. For example, the Victorian Yoorrook Commission was legislated into being as a Truth and Justice Commission with no reference to reconciliation.

Author

Helen Ware has had a number of research, academic and bureaucratic careers. She was the Director of the Twelve Nation Study of the African Family and Director of Projects at the Australian Human Rights Commission. She covered the Pacific as an Assistant Director General of AusAID and served as Australian High Commissioner to Zambia, Malawi and the African Liberation Movements. She is currently the Inaugural Professor of Peace Studies at the University of New England.