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Retribution and Reconciliation

David A. Crocker

In his recent book, *No Future Without Forgiveness*, Archbishop Desmond Tutu evaluates the successes and failures of the South African Truth and Reconciliation Commission (TRC). The chair of the TRC, Tutu defends the Commission's granting of amnesty to wrongdoers who revealed the truth about their pasts, and he lauds those victims who forgave their abusers. While recognizing that a country must reckon with its past evils rather than adopt "national amnesia," Tutu nevertheless rejects what he calls the "Nuremberg trial paradigm." He believes that victims should not press charges against those who violated their rights, and the state should not make the accused "run the gauntlet of the normal judicial process" and impose punishment on those found guilty.

Tutu offers practical and moral arguments against applying the Nuremberg precedent to South Africa. On the practical side, he expresses the familiar view that if trials were the only means of reckoning with past wrongs, then proponents of apartheid would have thwarted efforts to negotiate a transition to democratic rule. The South African court system, moreover, biased as it was toward apartheid, would hardly have reached just verdicts and sentences. Tutu points out that trials are inordinately expensive, time-consuming, and labor intensive—diverting valuable resources from such tasks as poverty alleviation and educational reform. In the words of legal theorist Martha Minow, prosecution is "slow, partial, and narrow." Rejecting punishment, Tutu favors the TRC's approach in which rights violators publicly confess the truth while their victims respond with forgiveness. Powerful practical reasons may explain the decision to

spare oppressors from trials and criminal sanctions. But, as I shall show, no *moral* argument—at least neither of the two that Tutu provides—justifies rejection of the Nuremberg paradigm.

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