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Reflections on the Question of When, if Ever, Violence Is Justified in Struggles for Political or Social Change

*Based on Remarks Delivered in Honor of Nelson Mandela,
1918–2013*

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Part of me is very much drawn to the pacifist's response: violence is never justified in struggles to transition from one regime to another; violence is bound to have a dehumanizing effect on those who perpetrate it and therefore a negative impact on any social or political arrangement that emerges.

However, I think that answer is ultimately not completely satisfying. We may have to face the reality that governments are sometimes so evil, so cruel, so unjust, and so destructive that people have a right to resist by force. My concern is that insistence on non-violence may sometimes reinforce injustice. In certain circumstances, force may be the last appeal to human dignity and the last resort to realizing human rights.

My answer, thus, is highly context-dependent based upon asking: Who is using the violence? What social or political change do they seek to achieve? How and why, and by whom, was the decision made to resort to violence? What was the precipitating event? What alternative strategies have been attempted or discarded? What is the nature of the violence? Who is being targeted? What are the peripheral effects of choosing violence?

In remembrance of Nelson Mandela, I will briefly consider the struggle for social and political change in apartheid South Africa and explore three justifications given by the African National Congress ("ANC") when it decided, in 1961, to establish an armed wing,¹ Umkhonto We Sizwe ("MK"), in its campaign to overthrow the apartheid government.

First, the cause itself was just. Apartheid was a crime against humanity.² It was an institutionalized regime of racial segregation and systematic oppres-

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1. NELSON MANDELA, *LONG WALK TO FREEDOM* 271–74 (1994) [hereinafter *LONG WALK TO FREEDOM*].

2. 1 *TRUTH & RECONCILIATION COMM'N OF S. AFR.*, REPORT 94–102 (1998), available at <http://www.justice.gov.za/Trc/report/finalreport/Volume%201.pdf>, archived at <http://perma.cc/B2S3-2UQ9>.

sion created and implemented to secure the white minority's hold on power of every sort—power over government and politics, as well as power over wealth in the form of land and resources—by denying the black population their most fundamental political and personal rights. Apartheid was then enforced by numerous other violations of international law: prolonged arbitrary detention; forced exile; forced relocation; revocation of nationality; restrictions on freedom of movement, speech, and assembly; extrajudicial killings; torture and cruel, inhuman, and degrading treatment; and labor exploitation, to name a few.³ The rule of law was absent in apartheid South Africa and there was no meaningful recourse to the courts to prevent or seek accountability for these abuses. Instead, the legal system perpetuated and facilitated the apartheid state.⁴

I find this justification fairly convincing. Rather than seeking to disrupt the rule of law, the ANC challenged its failure. It is not sufficient that the cause be just in order to resort to violence, but it is certainly necessary. If Nazi Germany is the paradigmatic example in which force is legitimate to overcome great evil,⁵ apartheid South Africa ranks a very close second.

Second, the turn to violence was a last resort. From its founding in 1912, the ANC had been staunchly non-violent in its tactics, but the Sharpeville massacre represented a turning point.⁶ As Desmond Tutu explained, “[Sharpeville] told us that even if we protested peacefully we would be picked off like vermin and that black life was of little consequence.”⁷ Through legislation, the National Party had already drastically curtailed the arena of legal political activity available to the ANC.⁸ Following Sharpeville, it banned the ANC⁹ and declared a state of emergency.¹⁰ The message was clear: non-violent mass mobilization would no longer be tolerated by the state. In this context, the decision to turn to violence seemed imperative and was given moral legitimacy on the grounds of necessary self-defense when other options had been exhausted:

type=pdf [hereinafter 1 TRC REPORT]; Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90.

3. 1 TRC REPORT, *supra* note 2, at 29–35; *see generally* 3 TRUTH & RECONCILIATION COMM’N OF S. AFR., REPORT (1998), available at <http://www.justice.gov.za/Trc/report/finalreport/Volume%203.pdf>, archived at <http://perma.cc/3DVZ-DTWC?type=pdf> (providing overview of gross human rights violations committed during apartheid, as reported to the TRC) [hereinafter 3 TRC REPORT].

4. *See generally* 1 TRC REPORT, *supra* note 2, at 448–97 (outlining apartheid-era legislation).

5. *See, e.g.*, MICHAEL WALZER, JUST AND UNJUST WARS 253–54, 259–60 (1977).

6. On March 21, 1960, without warning, South African police deliberately fired into a crowd of approximately five thousand unarmed people peacefully protesting against the pass laws, killing sixty-nine and injuring several hundred. 3 TRC REPORT, *supra* note 3, at 533–37.

7. Desmond Tutu, *Tutu: We Thank God for Madiba*, MAIL & GUARDIAN (Dec. 6, 2013), <http://mg.co.za/article/2013-12-06-00-tutu-we-thank-god-for-madiba>, archived at <http://perma.cc/ST5F-GGKH>.

8. *See* 1 TRC REPORT, *supra* note 2, at 448–97.

9. 2 TRUTH & RECONCILIATION COMM’N OF S. AFR., REPORT 9 (1998), available at <http://www.justice.gov.za/Trc/report/finalreport/Volume%202.pdf>, archived at <http://perma.cc/L4TZ-4GDS?type=pdf> [hereinafter 2 TRC REPORT].

10. *Id.*

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The choice is not ours; it has been made by the Nationalist government. . . . The time comes in the life of any nation when there remain only two choices: submit or fight. That time has now come to South Africa. We shall not submit and we have no choice but to hit back by all means within our power in defence of our people, our future and our freedom.¹¹

This argument was linked to the related justification that the ANC needed to give coherence to revolutionary violence and channel it toward liberation. The ANC was concerned that South Africa was drifting toward a civil war that would make the goal of racial harmony and equality even more difficult to achieve.¹² From this perspective, the creation of MK was an attempt to harness and direct violence that was spilling out, not at individual white South Africans, but rather at the apartheid state itself.

I find this justification less persuasive, in part because an analysis of the strategic gains and effectiveness of the violence potentially belies its necessity, at least in retrospect. There is a reasonable argument to be made that, at least at certain points, the armed struggle may have actually harmed the anti-apartheid movement, and not just in terms of a loss of moral authority. For example, the bombing campaign may have weakened simultaneous non-violent campaigns, as the entire opposition movement could be tarnished by reference to its most violent components, and the apartheid government associated the two to justify greater repression and use of more forceful responses.¹³ In addition, the turn to violence may have cost the ANC some support at home and abroad.¹⁴ In order to defeat apartheid and demonstrate its readiness to govern, the ANC needed to achieve maximum involvement and support from non-whites in South Africa, involve at least some of the white South African population in support of the non-white population, and bring significant international pressure to bear. Non-violence may have been a better strategy to achieve these objectives. Most problematically, the turn to armed struggle put little military pressure on the government, but may have diverted the movement's energies from other methods of resistance and organization at home—strikes, boycotts, civil disobedience, ungovernability—which were essential and, when linked with South Africa's political and economic isolation, ultimately led to apartheid's demise.¹⁵

11. *Manifesto of Umkhonto we Sizwe Leaflet Issued by the Command of Umkhonto we Sizwe, 16th December 1961*, AFR. NAT'L CONGRESS, available at <http://www.anc.org.za/centenary/main.php?id=77&p=4> (last visited Mar. 24, 2014), archived at <http://perma.cc/D5X2-G2RR>.

12. Nelson Mandela, Statement from the Dock at the Opening of the Defense Case in the Rivonia Trial at the Pretoria Supreme Court (Apr. 20, 1964), available at <http://www.anc.org.za/show.php?id=3430>, archived at <http://perma.cc/58SP-7D6X> [hereinafter Statement from the Dock].

13. See Stephen Zunes, *The Role of Non-Violent Action in the Downfall of Apartheid*, 37 J. MOD. AFR. STUD., 137, 139–40, 146–47 (1999).

14. *Id.* at 165–66.

15. *Id.* at 152–60.

Third, the nature and degree of the violence was measured and minimal. Mandela divided the MK's efforts into four categories of incremental intensity: sabotage, guerilla warfare, terrorism, and open revolution.¹⁶ He urged the exclusive use of sabotage because "sabotage did not involve loss of life, and it offered the best hope for future race relations."¹⁷ He added that if "[b]itterness would be kept to a minimum . . . democratic government could become a reality."¹⁸ The goal was not to seize power by force, but rather to convince the apartheid government to negotiate. In a deeply segregated society, it would have been easy to target white civilians, but instead the MK sought to minimize collateral damage. Given the ANC's need to appeal to all South Africans, as well as to the international community, a strategic decision was made to attempt to avoid arbitrary violence, cruelty, or terror. Rather, the MK would respect the Geneva Conventions and principles of international humanitarian law, such as proportionality and distinction.¹⁹ MK activities thus took the form of attacks on government and military installations.²⁰ From this perspective, the armed struggle was armed propaganda that provided physical evidence of a tangible potential threat to the regime and a boost to morale while reinforcing the sense that resistance would continue despite repression.

Ultimately, I find this justification problematic. Even if unintentionally, civilians were killed in acts of sabotage committed by the ANC.²¹ Detainees suffered horrific abuses in ANC camps in exile—beatings, torture, summary executions—and treatment of suspected informants and collaborators inside South Africa rivaled the gruesomeness of many abuses committed by the apartheid state.²² Although the apartheid government was responsible for more violence, and although the ANC was fighting a just war, its human rights violations cannot be justified simply as the lesser evil, or by

16. LONG WALK TO FREEDOM, *supra* note 1, at 282–83.

17. Statement from the Dock, *supra* note 12.

18. *Id.*

19. Oliver Tambo, Statement on Signing Declaration, on Behalf of the ANC and Umkhonto we Sizwe, Adhering to the Geneva Conventions of 1949 and Protocol 1 of 1977, at the Headquarters of the International Committee of the Red Cross, Geneva (Nov. 28, 1980), *available at* <http://www.nelson-mandela.org/omalley/cis/omalley/OMalleyWeb/03lv02424/04lv02730/05lv02918/06lv02979.htm>, *archived at* <http://perma.cc/RZD7-QUBR>.

20. LONG WALK TO FREEDOM, *supra* note 1, at 285–86, 506.

21. *Id.* at 518; Afr. Nat'l Congress, Statement to the Truth and Reconciliation Commission (Aug. 1996), *available at* <http://www.justice.gov.za/trc/hrvtrans/submit/ancruth.htm>, *archived at* <http://perma.cc/YJ9K-3VUK>; 2 TRC REPORT, *supra* note 9, at 325–35.

22. SKWEYIYA COMM'N, REPORT OF THE COMMISSION OF ENQUIRY INTO COMPLAINTS BY FORMER AFRICAN NATIONAL CONGRESS PRISONERS AND DETAINEES (1992), *available at* <http://www.anc.org.za/show.php?id=95>, *archived at* <http://perma.cc/87S9-825H>; AMNESTY INT'L, SOUTH AFRICA: TORTURE, ILL-TREATMENT AND EXECUTIONS IN AFRICAN NATIONAL CONGRESS CAMPS (1992), *available at* <http://www.amnesty.org/en/library/asset/AFR53/027/1992/en/ccd2a8fb-f93a-11dd-92e7-c59f81373cf2/afr530271992en.pdf>, *archived at* <http://perma.cc/M78V-DZWZ?type=pdf>; MOTSUENYANE COMM'N, REPORT OF THE COMMISSION OF ENQUIRY INTO CERTAIN ALLEGATIONS OF CRUELTY AND HUMAN RIGHTS ABUSE AGAINST AFRICAN NATIONAL CONGRESS PRISONERS AND DETAINEES BY AFRICAN NATIONAL CONGRESS MEMBERS (1993); 2 TRC REPORT, *supra* note 9, at 335–66.

the moral gap between those who strive to maintain oppression and those who fight on behalf of liberation.

So where does this leave us in attempting to answer the question posed? As with most moral dilemmas, we are left with an unsatisfying conclusion. Any means necessary may have been justified to end apartheid, but twenty years later, South Africa is still struggling with the legacy of that violence.²³ There is a sense in South Africa today that violence is the norm—if not acceptable, an all-too-common way of resolving social, political, economic, and interpersonal disputes.²⁴ South Africans across the political spectrum were substantially dehumanized and violated by apartheid. This reality has fundamental implications for the capacity of individuals to engage in acts of violence and brutality—particularly individuals who feel disempowered and lack other outlets for addressing grievances—as well as on the capacity of a society to tolerate such abuses.

Ultimately, it is not enough to answer the question posed. We must ask ourselves an equally important follow-up question: If violence is sometimes justified—or at least resorted to—in struggles for social and political change, how might the damage inflicted on the emerging society be minimized? Mandela's legacy of forgiveness and reconciliation offers the beginning of an answer.

23. See, e.g., Ryan Lenora Brown, *Briefing: How Violent is South Africa?*, CHRISTIAN SCI. MONITOR (Feb. 22, 2013), <http://www.csmonitor.com/World/Africa/2013/0222/Briefing-How-violent-is-South-Africa>, archived at <http://perma.cc/8G78-C439>; Angelo Fick, *South Africa: A History of Violence*, eNEWS CHANNEL AFRICA (Jan. 15, 2014), <http://www.enca.com/opinion/south-africa-history-violence>, archived at <http://perma.cc/HXN5-RDNH>; CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION, *WHY DOES SOUTH AFRICA HAVE SUCH HIGH RATES OF VIOLENT CRIME?* 3–7 (Apr. 7, 2009), available at http://www.csvr.org.za/docs/study/7.unique_about_SA.pdf, archived at <http://perma.cc/XQ4R-SMSQ>.

24. See, e.g., sources cited *supra* note 23; see also Lizette Lancaster, *Is South Africa an Inherently Violent Country?*, INST. FOR SECURITY STUDIES (Mar. 25, 2013), <http://www.issafrika.org/iss-today/is-south-africa-an-inherently-violent-country>, archived at <http://perma.cc/6YRG-7CBR>.

