

**Melanie Judgen, Dee Smythe (eds.):
Unsettling Apologies: Critical
Writings on Apology from South
Africa (Law, Society, Policy Series),
Bristol: Bristol University Press, 2022,
312 pp.**

Reviewed by
Mechthild Nagel, Cortland

The book title of this remarkable, truly unsettling anthology reflects a general dis-ease about settler colonialism in South Africa in general and the legacy and merits of the Truth and Reconciliation Commission (TRC) in particular. Judge and Smythe invited mostly legal scholars of international reputation and activists, all of them educated in South Africa where many still live and are dedicated to social justice work. Using multiple frames and lenses of writing, the vignettes and legal analyses feature a diverse mix of voices: an African National Congress (ANC) freedom fighter turned law professor, a poet, a fictionalized narrative about intimate partner violence from the perspective of a child. The anthology's overall frame presents a reckoning with the crimes against humanity, the apartheid state, and the truly unfinished business of the Truth and Reconciliation Committee thus oscillating between hope and despair about the meaning of apologies in this post-colonial nation-state.

Some of the unique features include personal vignettes at the end of each chapter, specifically, what moves and motivates the writer(s) to engage with their point of

entry on apologies, including white colonial genealogy. The anthology covers many contemporary debates involving South African society's sectors, beginning with policing of sexual offences, hate speech regulation, corporate culpability, medical brutality, and what freehold landowners are owed.

TRC commissioner Yasmin Sooka, an international human rights lawyer, is the most critical of all contributors by lamenting that the TRC was not able to put apartheid on trial and candidly calls the TRC's focus on forgiveness and reconciliation "offensive" (p. 47). Other contributors criticize that only low-level actors such as Eugene de Kock were punished for offenses such as murder and torture. Yet, apartheid engineers and heads of states such as Pieter Willem Botha and Frederik Willem de Klerk did not even apologize and received blanket amnesty. In 1966, the UN General Assembly declared apartheid already a crime against humanity, which was affirmed in the final TRC report chaired by Sooka. Yet, the TRC failed to "prosecute" any apartheid officials for such crime, even though amnesty was supposed to be granted on condition of telling the truth. In fact, Sooka's team at the TRC turned over 300 names to the state for prosecution (p. 296). It is telling that only during the completion of the book prosecutions of a few police officers have commenced for crimes against humanity – a first in South Africa's legal history.¹

As the editors note, we are in an era of apologies, and this is increasingly true after the publication of the book. Calls for reparations is an Indigenous demand the word over, culminating in the recent papal apology for a 1493 papal bull that justi-

fied the extermination of infidels and encouraged imperial land grabbing to benefit Christian nations. Pope Francis's apology reflects those of emboldened white power elites who reframe themselves as victims, including de Klerk and Leon Wessels. And if they apologize, they never mention state institutions. The Catholic Church, which set colonialism into ideological motion as "doctrine of discovery", retroactively condoning Columbus' murderous acts, is a case in point: Pope Francis repudiated, not renounced, the papal bull of 1493. It means that it has never been church doctrine in the first place. So, there is nothing to apologize about, after all, even for past papal transgressions.²

This is why I find the cover artwork by South African William Kentridge titled "Black Box/Chambre Noire" compelling. It is a still from his 2005 chilling video working with a Freudian "Trauerarbeit" frame, as he narrates Germany's colonial atrocities, the first genocide of the twentieth century. Helpfully, Sooka's chapter highlights problematic apologies by heads of colonial nation-states, specifically, Germany's acknowledging the victims but remained silent on reparations and land returns in its negotiated agreement with the Namibian government. No descendants of Ovaherero and Nama were involved (pp. 31–32). Oddly, Sooka exudes optimism about presidential apologies because they end "cultures of denial" (p. 35). Would de Klerk's video from his deathbed count as ending denial about the criminality of apartheid? One must reflect critically about their impetus, audience, and legal ramifications.

Another contributor, Christie van der Westhuizen, picks up the question of cul-

pability showcasing three white South Africans Eugene de Kock, Leon Wessels, and Antje Krog. Even though she intends to foreground beneficiaries of apartheid who were not a focus of the TRC, in the end, she picks two male perpetrators of apartheid state criminality, whereby de Kock is mentioned for personal reasons – his remorse is cast in doubt because he sued van der Westhuizen and tried to get her book *White Power* (2007) banned for character assassination. Eugene de Kock nicknamed as "Prime Evil", received excessive punishment despite speaking the truth and unearthed the culpability of his superiors who were reticent about coming forward. Two decades later, several victims' families reconciled with him, which allowed him to plead successfully for early parole, shaving off more than 200 years of his original sentence.

All authors wrestle with the meaning of an authentic apology and most highlight Nick Smith's extensive 12-step process towards a "categorical apology"³ or Joram Tarusarira's transformative apology coupled with "reintegrative shame"⁴ based on Braithwaite.⁵ Most examples showcase the difficulty of demanding apologies, illustrated in the cases of Winnie Madikizela-Mandela, regarding her role in the Mandela United Football Club and Clive Derby-Lewis, responsible for the murder of Chris Hani, giving us a shameless apology and a defiant refusal of remorse (p. 283).

Many contributors recognize that the TRC gave short shrift to structural violence and instead individualized criminal acts, thus following the norms of criminal law, even though it was set up to do something extraordinary as a transitional justice apparatus. Yet, several authors ac-

knowledge that the TRC's scope was based on a negotiated settlement with de Klerk's party, and Heinz Klug attributes the TRC successful proceedings to an avoidance of a civil war, to a robust formal democratic apparatus and to adherence to the constitution; such resilience of constitutionalism is not apparent in many post-colonial nation-states (p. 302).

The book is helpful for all those who study apologies, reparations, and reconciliations. There is a tendency in most chapters to condone the retributive arm of penal administration. Arguably, it is a missed opportunity to query the meaning of the "rule of law", which also has colonial legacies, and prisons were never an African invention. On the other hand, Sindiso Mnisi Weeks make clear that Ubuntu has been instrumentalized as harmony ideology (p. 67), which may have led to more impunity by the state and its actors, shown in recent state capture corruption cases and egregious state violence. All case studies offered give a nuanced perspective that apology narratives do not amount to a "zero-sum reading [...] as either all or nothing" (p. 11). Furthermore, this book will provide a valuable compass for policy-makers, legal scholars, and activists elsewhere in the post-colony in order to grapple with questions concerning the meaning of apologies, forgiveness, and substantive fair reparations.

Notes

- 1 G. Kemp/W. Nortje, Prosecuting the Crime against Humanity of Apartheid: The Historic First Indictment in South Africa and the Application of Customary International Law, in: *Journal of International Criminal Justice* 21 (2023) 2, pp. 405–430, <https://doi.org/10.1093/jicj/mqad023>.

- 2 Holy Sea Press Office, Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the "Doctrine of Discovery", 30 March 2023, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html>.
- 3 N. Smith, *I Was Wrong: The Meanings of Apologies*, Cambridge 2008.
- 4 J. Tarusarira, The Anatomy of Apology and Forgiveness. Towards Transformative Apology and Forgiveness, in: *International Journal of Transitional Justice* 24 (2019), pp. 206–224.
- 5 J. Braithwaite, *Crime, Shame and Reintegration*, Cambridge 1989.

Faeeza Ballim: *Apartheid's Leviathan: Electricity and the Power of Technological Ambivalence*, Athens: Ohio University Press, 2023, 167 pp.

Reviewed by
Ulf Engel, Leipzig

At a time when South African state-owned enterprises (SOEs) are still at the centre of a process of "state capture" – that is to say, the looting of state assets by factions of the ruling African National Congress (ANC) and their national and international cronies – this monograph is a timely account of the local history of the state's relation to two key SOEs: the Electricity Supply Commission of South Africa (Eskom, established in 1923) and the Iron and Steel Corporation (Iscor, 1928–2005). The book takes a case study approach, focusing on Eskom's 4,800-megawatt Medupi power station in the small town of Lephalale