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Truth in politics : rhetorical approaches to democratic deliberation in Africa and beyond

Salazar, P.J.; Osha, S.; Binsbergen, W.M.J. van

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TRUTH IN POLITICS
Rhetorical Approaches to Democratic Deliberation in Africa and beyond
(Ph.-J. Salazar, S. Osha, W. van Binsbergen, Eds.)

The purpose of this volume is to try and acclimatize "rhetoric" ("the faculty of observing in any given case the available means of persuasion" – Aristotle) to the South African scene and the African scene at large, and to reflect on truth in politics. Why? Because politics in a democracy is a contest of words about competing truths. No government ought ever to believe that they have "the truth". They are merely the sum total of what Aristotle presents as some sort of "picnic": at the democratic table we all bring our own food to make the party successful, by the very variety of condiments and diversity of foodstuffs. To be democratic citizens involves the formidable task of learning to accept that each of us, however passionate we are about "what we believe", and hold to be "true", may and will be *untrue* for another citizen. We therefore have to argue, to deliberate, to enter, each of us at our own level, into a contest of words and beliefs. Democracy is about competing "truths". This is why "rhetoric" – the study of public deliberation and the training in public debate and argumentation – is part of democracy in development.

Taking their lead from the work of South Africa's 1994-1998 Truth and Reconciliation Commission, these contributions by intercontinental scholars in rhetoric, other branches of philosophy, African Studies, theology, intercultural communication and law, try to bring home the notion that rhetoric can be a powerful agent for democracy, an effective tool for citizen's empowerment, a site for liberating thought. They also explore the possibilities and limitations of African applications of rhetoric, in a general context of globalized intercultural knowledge production, historic African rhetorical and constitutional practices, and the African experience under colonial and postcolonial conditions.

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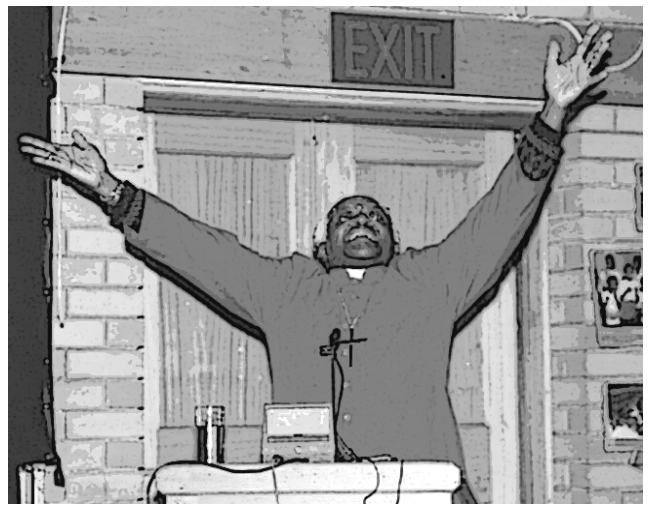

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Éditeur
Wim van Binsbergen (Université Érasme Rotterdam / Centre d'Études Africaines, Leiden, Pays-Bas)
Équipe éditorial
Sanya Osha (Université d'Ibadan, Nigeria)
Kirsten Seifikar (Université Érasme Rotterdam)
Wim van Binsbergen
Conseil éditorial
Paulin Hountondji (Université de Cotonou, Bénin)
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EDITORIAL

1. Quest*: Continuity and innovation*

Quest: An African Journal of Philosophy/ Revue Africaine de Philosophie was founded in 1987 at the Department of Philosophy, University of Zambia, by Roni M. Khul Bwalya and Pieter Boele van Hensbroek. The journal soon established itself as a major context for philosophical and general intellectual exchange in Africa, and became the scene of several major debates. After Bwalya's untimely death and Boele van Hensbroek's return to the Netherlands, the latter kept the journal alive and made it grow, largely owing to the generous support from a network of African colleagues serving as contributors, members of the editorial board, and referees. Volume XV (2001) was the last to appear under the responsibility of Boele van Hensbroek, and, as he announced there, the responsibility of Editor was then passed on to Wim van Binsbergen. This former University of Zambia lecturer now combines the chair of Intercultural Philosophy at the Erasmus University of Rotterdam with an appointment as Senior Researcher at the African Studies Centre, Leiden, the Netherlands. With contributions on the *Black Athena* debate, the philosophy of interculturality, and *ubuntu* philosophy in Southern Africa, the new Editor presented his credentials to the *Quest* readership in earlier issues.

It is a sign of confidence, and a reason to rejoice, that all members of the earlier Editorial Board agreed to continue to serve the journal as members of the new Advisory Editorial Board, while for the day-to-day running of the journal an enthusiastic new Editorial Team was formed, consisting of Sanya Osha (Ibadan, Nigeria) and Kirsten Seifikar (Rotterdam, the Netherlands), besides Wim van Binsbergen.

Inevitably, the editorial transition caused a slight delay in the appearance of *Quest*. This will be redressed in the course of the year 2004, at the beginning of which the present volume XVI is published, while volume XVII is lined up for publication within a few months. While volume XVI happens to be entirely anglophone, volume XVII will return to the usual *Quest* bilingual format, and comprise contributions in French as well as in English.

In order to enhance the world-wide availability of *Quest*, and facilitate the contacts with the readership for such matters as taking out subscriptions and ordering back copies, and also more in general to keep up with the

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times, the first task of the new Editor has been to arrange for *Quest* to go online, in a fully bi-lingual (English and French) format. As a visit to *Quest*'s Internet domain (http://www.quest-journal.net) will bear out, this task has now largely been completed successfully, although the French sections still need to be upgraded to native-speaker level. Henceforth, emphasis will be on online publishing of the journal. As a result of initial experiments with passwords and paid subscriptions for the online version, we found that free world-wide availability of *Quest* online would best serve Africa's needs of intellectual circulation, and would also reduce the journal's burden of financial administration.

However, we do realize that Internet is not yet a viable and affordable option throughout Africa, where even the PDF format that is standard for online publications may cause difficulties (Adobe Acrobat – the software for reading PDF – not being available on most cybercafé computers). While provisions are made for unformatted .txt files, and .html Internet files, to be available in addition to the PDF format in the online version, *Quest* will continue to be available also in a printed form, for those (including individual contributors, and libraries) preferring a permanent record, and for those without Internet access or Internet skills. Inevitably, readers will have to pay for the printed version of the present, and subsequent, volumes of *Quest*, as well as for the postage. Subscriptions to the printed version of *Quest* are available on an annual basis; for details see the cover of the present volume, or the *Quest* website (http://www.quest-journal.net). Subscribers to earlier volumes of *Quest* who wish to renew their subscription or who have queries about the delivery of issues they have already paid for, will also find electronic forms for these specific purposes on the *Quest* website; alternatively, they may contact the *Quest* editorship by e-mail (editor@quest-journal.net), or by ordinary letter, to be addressed to:

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As this postal address indicates, another recent development for *Quest* is that the journal has been most fortunate to secure, temporarily, the hospitality of the famous African Studies Centre in the Netherlands, one of the few remaining institutes in the world dedicated to the full-time research and documentation of Africa. This move will make for continuity and consolidation until such time when the journal's extensive mental and social

base in Africa can be firmly and securely complemented with an actual institutional base in that continent.

With the present volume, which combines issues i and ii of Volume XVI (2002), *Quest: An African Journal of Philosophy/ Revue Africaine de Philosophie*, is firmly on its feet again, ready to take the precious heritage of its first fifteen years to further fruition. At this point, I wish to thank a number of people. In the first place all those who, in previous years, have favoured *Quest* with their time, efforts, and contributions. In particular I wish to honour my long-standing friend and colleague Pieter Boele van Hensbroek, an honorary African if ever there was one, and the great, modest, efficient, precise and passionate force behind *Quest* as an impressive intellectual achievement. Further I wish to extend thanks to all those who have helped realize the transition to the new *Quest*, as members of the Editorial Team and the Advisory Editorial Board (Paulin Hountondji, as one of the latter's members, is going out of his way to add his immense prestige and thinking power to the launching of *Quest* in its present, new format); as referees, editors and contributors to the present volume – and as funding agencies behind these contributors; as webmaster; and as members of the Leiden African Studies Centre, whose enthusiasm for *Quest* has meant a lot in this transitional period.

Let this volume be an invitation to all African colleagues, and to all Africanist[1] colleagues in general, to support *Quest* with your contributions and subscriptions, and to serve the journal as referee. Only with your full participation can *Quest: An African Journal of Philosophy/Revue Africaine de Philosophie* be, and remain, an impressive testimony of the intellectual and moral force of Africa.

2. About the present volume

With the present volume, *Quest* continues to address political and moral issues in contemporary Africa, a philosophical concern which has been a red

[1] Internationally, the term "Africanist" (once mainly referring to a branch of linguistics) is used to denote the academic study of (sub-Saharan) Africa in general, as pursued by Africans as well as people from other continents. It is in this disciplinary sense that the term is used here and in the Postscript to this volume. In this sense all authors addressing African (including South African) issues in the present collection, are Africanists. However, in the recent, South African context, deservedly dominated by the African National Congress (ANC) which brought the country to democratic majority rule, the term is often employed to designate opposition parties with a predominantly Black constituency and a political agenda focussing on the African continent, such as the Pan Africanist Congress (PAC).

thread throughout previous volumes of this journal. Once more (cf. *Quest* XV, 2001) these issues are investigated with special reference to South Africa, by contributors who are mainly specialists on the Southern African subcontinent and who therefore had little reason to provide the kind of local background that to the rest of our readership would have been helpful. Therefore, risking to state the obvious, let us give some of that background here.[2]

In the first half of the twentieth century CE, the Union of South Africa (1910-1961, succeeded by the Republic of South Africa) combined

a. racism (with such expressions as spatial segregation, blatant economic exploitation, and gross constitutional inequality) as a general feature of the European colonial hegemonic presence in Africa, with
b. by far the most developed industrial and urban infrastructure in Africa.

In subsequent decades, most African countries were decolonized at least in formal constitutional terms, and in the process they transformed their caste-like racism into more fluid class inequalities that only partially coincide still with somatic differences. In South Africa, however, settler entrenchment led to the capture (1948) of the South African state by the Afrikaner, White, Afrikaans (a creolized form of Dutch) speaking ethnic minority. The enactment of the notorious system of *apartheid* (1950) brought the formalization of racism to a scale scarcely precedented in world history – while the South African economy continued to grow and to absorb increasing portions of the Black, so-called Coloured, Indian and Chinese population segments into its working class and middle class. The increasingly general, heroic liberation struggle led by the African National Congress (ANC), and supported by intercontinental pressure, brought the installation of democratic majority rule in 1994. Liberated from its decades of international and intercontinental isolation and boycott, South Africa's return to constitutional respectability resulted in one of the most significant processes affecting the African continent as a whole in the twentieth century: South Africa's massive resources of infrastructure, education, know-how, constitutional and judicial procedures, science and technology, could finally be added to those of the African continent as a whole – but the same was true for South Africa's traumatic experience of state oppression and of the

[2] For the same reason (of not making our readers captive to the self-evidences of our authors), technical rhetorical vocabulary, and local or regional biographical, historical, political and otherwise descriptive details, have been occasionally clarified in footnotes marked "(Eds.)".

annihilation of historic identity during and before the *apartheid* era, which parallelled, albeit (by and large) in intensified form, the historic experiences of African populations throughout the continent in the first half of the twentieth century. From 1990 onwards, representatives of South African economic enterprise, academic expertise and statesmanship have travelled all over the African continent in order to finally establish contact, to make their resources available, to learn what it is to be African on a continental scale (and what it is to be cosmopolitan on a global scale), and to expand into markets and spheres of social and intellectual exchange previously closed to them for so long.

In this process, the idea of the African Renaissance, first formulated in the late 1940s by the Senegalese physicist and cultural philosopher Cheikh Anta Diop,[3] was revived and adopted, as an expression of faith in Africa's future in the first place, but also as another articulation of South Africans' views of their country's new, exalted mission vis-à-vis Africa as a whole, and even world-wide. However, it was generally and deeply realized that, before South Africa could convincingly play such a leading role, before even it could hope to function as a viable nation domestically, the nation-wide recent trauma of *apartheid* had to be faced, and South African society had to be reconstructed, not only along lines of constitutional equality and socio-political empowerment, but also through confession, forgiveness, and mutual re-acceptance between the constituent somatic and ethnic sections of the population. Towards this internal process of reconstruction, Southern African academic thinkers elaborated the concept of *ubuntu*. In the Nguni languages (Zulu, Ndebele, Xhosa, Swati) covering part of the Southern African subcontinent, *ubuntu* literally means "human-ness, humanity". The concept came to be philosophically worked into a strategy of thought enabling one to recognize the humanity in the Other: in village situations defined by time-honoured tradition where the concept originated; in general; and even in modern contexts where the vicissitudes of social organization and historic experience had led to the construction of that Other as an enemy. With regard to the latter kind of situations, *ubuntu* was argued to prompt restoring that Other's humanity by extending to him, once more, the very humanity that had been denied, desecrated or squandered by himself in the first place, in the context of *apartheid*. The overall claim, on the part of the academic authors or interpreters of *ubuntu* philosophy, is that this

[3] Cf. Diop 1948. For an extensive bibliography of the African Renaissance concept, cf. Boele van Hensbroek 2001, i.e. *Quest: An African Journal of Philosophy*, XV (also at: http://www.quest-journal.net).

concept taps very ancient, very constant, and still viable resources of (Southern) African culture and social organization. While deemed an essential tool for the reconstruction of South Africa today, the concept of *ubuntu* is also suggested to be one of Africa's great gifts to the world at large, comparable to (perhaps even inseparable from) the global African heritage in the fields of music, dance, the plastic arts, religion, etc.

At the initiative and under the editorship of Pieter Boele van Hensbroek, the previous volume of *Quest* (XV, 2001) was devoted to a detailed examination of the concepts of African Renaissance and *ubuntu* as expressions of philosophy in Africa. The present volume, *Truth in Politics: Rhetorical Approaches to Democratic Deliberation in Africa and Beyond* (*Quest* XVI, 2002) is largely built, not around the locally emerged philosophical concepts towards South Africa's current reconstruction (*i.e.*, African Renaissance and *ubuntu*), but around that country's 1995-1998 Truth and Reconciliation Commission (TRC), as the crucial institutional process through which South Africans have sought to publicly and collectively come to terms with the experiences of *apartheid*, in their quest to build a domestically viable and internationally respectable post-*apartheid* society. In sessions that were held all over the country, thousands of survivors and victims, as well as perpetrators of *apartheid* atrocities, and fighters against *apartheid*, were heard, the victims to tell their tale, the perpetrators to gain amnesty in exchange for full disclosure of their deeds. Unique in its format, scope, and vision, the TRC has already given rise to an enormous primary and secondary literature, a fair selection of which is cited in the present volume.

However, this collection's ambition goes beyond the descriptive details of the TRC, and this makes for both its philosophical relevance, and its comparative relevance for Africa as a whole. The editors and contributors primarily seek to answer the question:

- why could the TRC play such a major role in the reconstruction of post-*apartheid* South Africa, and what precisely were the communicative, political and legal mechanisms and strategies enabling it to play that role?

This leads on to further questions, notably

- what are the ethical/moral, and the epistemological, boundary conditions under which the TRC could play such a role?
- what does it say, in general, and at the most abstract and fundamental

philosophical level, about the nature of the state, democracy, citizenship, reconciliation, memory, politics, and "the political" as an institutional field, that the TRC can be argued to have deployed such mechanisms and strategies as are highlighted under the contributors' and editors' scrutiny – particularly in the contributions by Salazar, Cassin, Villa-Vincencio, Doxtader, Lollini, Gitay, Nethersole, Samarbakhsh-Liberge, Rossouw and Garver?

- what is the comparative evidence, from elsewhere in Africa (Nigeria, Congo-Brazzaville – discussed in this volume by the philosophers Osha and Kouvouama, respectively) and beyond (including the United Kingdom under Margaret Thatcher – in the analysis by Calder from the University of Zambia; archives in France today (Cassin); the outgoing Roman Republic under Cicero as one of its two consuls in 64 BCE – as discussed by the Nigerian classicist Ige; and the city state of Athens immediately after its defeat in the Peloponnesian Wars in 403 BCE – by Cassin once more), concerning mechanisms and strategies that are similar to those of the TRC and that can be argued to have been at work, or to have been sorely missing, in these concrete political settings; and what are the philosophical yields of such comparison?

These are momentous questions indeed. To try and answer them, the editors and most of the contributors deploy the time-honoured main-stream Western philosophical tradition of *rhetoric* (in the technical sense of the public, sustained articulation of truths – not in the vulgar sense of the florid articulation of untruths):

> The purpose of this volume is to try and acclimatize "rhetoric" to the philosophical scene in South Africa, and more in general in Africa as a whole, and to contribute a scholarly reflection on the emergence of public deliberation in the South African democracy by providing analyses from the standpoint of rhetoric. (Salazar, Foreword)

Not the least of this volume's qualities derive from the fact that, complementary to rhetorical analysis, other, related forms of the *socio-political production of truths* have entered into the collection's scope. This includes Hajjar's painstaking and passionate, yet expertly legal-scientific examination of state torture; this study highlights how the utterly perverted search for usable truths under conditions of torture has yet elicited a human-rights thinking that directly addresses, and profoundly modifies, the philosophical categories of "human", "person", and "the state". Similarly valuable is the examination (highly illuminating both from a conceptual and from an empirical interactional/ communicative point of view) of the forms and modalities of discursive public plurality, as operative in communication

and deliberation in intercultural settings (the contribution by Collier & Hicks).

This rich and excellent collection is an asset to our journal, and we are grateful to the contributors, and to Philippe-Joseph Salazar and Sanya Osha, for making the original conference papers available so that they could be worked into the present special issue. Let the resulting collection now speak for itself.

At the end of this volume, a Postscript will situate this collection within the general line of philosophical discussions that has characterized *Quest: An African Journal of Philosophy / Revue Africaine de Philosophie* over the years. This Postscript thus offers, effectively, a manifesto for *Quest* in coming years, as well as a vindication of the present collection's enphasis on Aristotelian rhetoric, and on the South African Truth and Reconciliation Commission, in the light of more general philosophical and African issues.

WvB

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FOREWORD AND ACKNOWLEDGMENTS

DEMOCRATIC RHETORIC

Philippe-Joseph Salazar

> Men are so simple, and so subject to present necessities, that he who seeks to deceive will always find someone who will allow himself to be deceived. Machiavelli (1948: xviii).

In the history and philosophy of rhetoric, which overlaps with political theory or simply "philosophy", the question of truth applied to the sphere of public deliberation, the "polis", the social contract – whatever term is used –, is not new. Politics, rhetoric and truth have been linked ever since democracy took shape. Hannah Arendt, reflecting upon the luminous Greek legacy under the long shadow cast by Nazi devastation, forcefully made the point that the Ancient Greek belief in argued speech – "logos", what I would call "deliberate deliberation" – is fundamental to any definition of humankind as political. To share in social life necessitates, at any level and in various grades of expertise, to be able to articulate thoughts into words, and to impart these words a "logical" strain, so as to make an impression upon those we address; sometimes we manage to "persuade" them, sometimes we fail at doing so but, even then, we leave a trace of our speech ("logos") in them . Rhetoric lies, in Arendt's vision, at the core of being citizens (Arendt 1993). The "logic" invoked is however not that of logicians: citizens are not philosophers, they do not search for universally proven Truth. In fact – and this is a fundamental "political fact" –, they *should* not. They utter their beliefs, expecting their fellow citizens to do the same, and to listen to each other's expression of opinions which each speakers may hold to be true. But, and this is the other side of Arendt's argument on democracy, truths expressed by citizens must somehow represent the diversity of the citizenry. This argument is profoundly Aristotelian: a democracy is made of diverse individuals. That insight applies *a fortiori* to "multicultural" societies like South Africa. In a democracy, in Ancient Greece no less than in South Africa today, truth is transient, fragmented, often community-based, it belongs indeed to the domain of prejudice, opinion, belief, perception (Aristotle, *Politics*, VII, 13). This is why argument and deliberation – "rhetoric" – allow citizens, and their

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representatives, to articulate such diversity. The anti-democratic peril of ideology consists, conversely, in the attempt to try and impose one single truth onto the citizenry – as in the *apartheid* regime, that latter-day offspring of fascism.

However, democratic citizens bear an incredible burden, if they are to accept that to be part of the Sovereign entails just that: a Sovereign's duty. The difficulty of being a democratic citizen resides indeed in learning to accept that each of us, however passionate we are about "what we believe", and hold to be "true", may and will be untrue for another citizen who, like us, shares in the Sovereign.

Politics in a democracy is a contest of words about competing truths. No government ought ever to believe that they have "the truth". They are merely the sum total of what Aristotle describes as some sort of picnic: at the democratic table we all bring our own food to make the party successful, in spite of the variety of condiments and the diversity of foodstuffs. As the philosopher of rhetoric Barbara Cassin, furthering this argument, points out, "harmony" in a democracy is the sum total of disagreements – to agree on ends (to live in a democracy) while disagreeing on means, and constantly, thanks to debate and deliberation and argument – from talk shows to parliaments –, to enrich such diversity (Cassin 1995: II, 3). Aristotle called this multifarious process of competing truths, "friendship", *politikē philia*, "political love" (Aristotle, *Nic. Ethics*, IX, 6). Incidentally, there is a parallel here with the French Revolution's use of the word *citoyen* ("citizen"). As a form of address this word replaced the old regime's address nomenclature that fixed each "subject's" position in social intercourse (inferior/superior); *citoyen* was a way to affirm such "political love" in a democracy – then aptly termed "republic", i.e. "that which belongs to all". A similar intent lay behind the use of "comrade" by the Socialist International – a "comrade" being someone with whom (to follow the original Latin meaning of that word) you share a room and a bed, in brief someone with whom you share your life – your political life. By implication, the accusation often levelled at politicians, to the effect that they resort to "rhetoric", evinces a strange situation: those who proffer it,

1. fail to recognize their own failure to be as persuasive as those they attack and,
2. – and this is far more dangerous for democracy – , fail to realize that "rhetoric" is part and parcel of public debate – unless they believe that there is fixed "truth" about living together in a democracy.

Significantly, religious zealots, who are the living remnants of pre-democratic societies, often find themselves caught in a "deliberative conflict", an argumentative tension between their faith-based belief (held as "the Truth") and their citizen-based opinions. They stand astride two domains of truth, one which is unarguable, the other which is essentially argument-based. For that reason they aptly illustrate a familiar kind of attack on the seemingly erratic nature of political contest in a democracy: more forcefully than others, they try and force onto the public sphere of deliberation, opinions that are not presented as negotiable, and that turn out to be resilient to deliberation.

Politicians are indeed often branded as charlatans or people without ethics. This argument is not new either. It found its expression in the Ancient Greek debate between the Sophists and Plato. Arendt summarizes the debate: one can accuse the Sophists (those who can, *ad libitum*, argue for this or against that, and those who teach others how to perform such feats, not unlike today's so-called "spin doctors" who spin words into beliefs and weave, or, so say their less skilled detractors, a web of deceit) of not respecting "truth". But one does so at the peril of retrenching from public deliberation and civil life the very nature of democracy, notably our common ability to change our opinions and to argue for them either way. A basic tenet of democracy is that "virtue" (the ability to exercise common sense) is equally divided between all of us. This is the reason why we do elect representatives that are not "experts" but, just like us, able to think for themselves. In that light we do not and should not expect government to have better judgment than ordinary citizens. They are just that: ordinary people, who talk, exchange ideas, change their minds – they belong to "rhetoric". A good citizen must then be a Sophist, who can "truly" believe in policy X before election time, then vote for Y even if Y has a track record that does not support policy X. It happens all the time. But why? Because a democracy is not a theocracy. The ability to exchange viewpoints with others, and with oneself, is the very stuff of democracy A citizen need not believe in truth, but merely in the value of "this" truth, correlated with the belief in deliberation, rhetoric, argument – which relativizes all truths and, as Arendt puts it, make you see the world (the political world) through someone else's words. Democracy is the art of conversation.

The debate on truth in politics, and on the value of "rhetoric" (public deliberation) is therefore nothing new. But no solace is to be found in the fact that the issue of truth in politics is still a matter of serious contention, further obfuscated by the decay of rationalism in philosophy and the humane sciences at large, where postmodern scepticism or relativism looms large. It

indicates that the theoretical stage set at the birth of democracy, in Athens two and a half millennia ago, has hardly moved its props. The same actors, the same plot, the same décor are still with us. However, Ancient theory and practice of democracy, or the Enlightenment's elaboration on what we nowadays call "democracy" – as in Jean-Jacques Rousseau's *Social Contract* – dealt frontally with the question of "truth" in politics; by contrast, we in our time have learned not to face up to this question. We are even afraid of it. Unless, as in the South African case, the resilience of ideology and the harnessing of oppressive power to the eradication of the rule of law and of natural law – the touchstone of modern democracy – forced citizens and intellectuals as citizens to engage with "truth".

The purpose of this volume is to try and acclimatize "rhetoric" to the philosophical scene in South Africa, and more in general in Africa as a whole, and to contribute a scholarly reflection on the emergence of public deliberation in the South African democracy by providing analyses from the standpoint of rhetoric.

The South African Truth and Reconciliation Commission (TRC) offered a particularly good start. It was a massive exercise in deliberation, a telling of "truth", an exposé on a people's diverse visions on events and history. Elsewhere, I have proposed a rhetorical reading of the TRC as a phenomenon of public deliberation. My view of the matter may be summarized as follows. On the one hand, there was the Platonic drift of the Commissioners – they wanted to unveil "the truth" of *apartheid*; their stance was itself rooted in religious or ideological beliefs impervious to the Arendt model. On the other hand, the People, in their submissions, held high the civic duty of "telling stories", of exemplifying multivocality, thus turning out to be excellent Sophists (Salazar 2002). The people offered testimonies, they opened up a stunning treasury of words, narrations, opinions onto "who did what for what reason". They acted as true Aristotelians.

This takes us to the subject matter of the present collection. Four papers (Part One) tackle, from four different angles, the re-telling of private truths about a public regimen of affairs in front of a public commission. In Part Two, public deliberation and the fashioning of truth are approached from a variety of perspectives, examples and situations of "rhetorical democracy" outside South Africa. This leads on to public deliberation as the latter plays itself out in political issues, such as the African Renaissance. Part Three attempts to offer examples of how rhetoric may be brought to bear upon politics in order to understand how dialogue between different levels of agency creates democratic negotiation and, in the process, shapes policy.

The volume closes on a philosophical analysis of the "ethical" dimension inherent to public deliberation as well as to the contest of beliefs; and on an examination of the volume's contents in the light of long-standing concerns of African philosophy, and of *Quest: An African Journal of Philosophy / Revue Africaine de Philosophie*.

The editors and the contributing authors harbour the hope that this volume can further impress on informed readers two leading thoughts that have informed the intellectual exchanges leading to the present volume:

1. rhetoric has a place in the construction of South Africa's incipient democracy, and
2. in a radical manner – to recall Hannah Arendt's expression – , to consider politics in the perspective of Truth it is to step out of politics.

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INTRODUCTORY ESSAY

THE POLITICS OF MEMORY

HOW TO TREAT HATE

Barbara Cassin

ABSTRACT. This essay examines three heterogeneous models in the management of the relation between the past and the future which have decisive implications for the political present. These three different models refer to the Athenian civil war of 403 B.C., the Truth and Reconciliation Commission (TRC) of South Africa and the French management of classified archives such as during the Second World War. It is the author's view that these models shed light on certain relations between politics, discursive practices and deliberation.

For Nicole Loraux

In his *Life of Solon* (21) Plutarch notes: "And it is political to remove from hate its eternity". The treatment of hate, which goes with civil war, is one of the most acute current problems in deliberative politics. Why is it that deliberating and shedding light on events and past actions may lead a political community, in its very attempt at a reconstruction, to implode?

The management of the relation between past and future, which is decisive for a political present, has followed historically some very different models. I would like to compare three radically heterogeneous models: Two procedures of exception:

1. in Athens, after the civil war, the decree of 403 BCE – it is as far as we know the first procedure of amnesty) and,
2. in today's South Africa, the Truth and Reconciliation Commission (TRC), following the collapse of *apartheid*, and finally
3. a third, "normal" procedure, that of the French management of sensitive archives (like those of World War II)[1].

I believe these three models help shed light on certain relations between politics, discursive practice and deliberation, and enable us gain insights into the ways in which truth and deliberative politics are linked.

[1] For Athens I draw on a remarkable article by Nicole Loraux (1988). For South Africa, on Philippe-Joseph Salazar's books (1998 and 2002). For the use of archives I derived much from: Association des archivistes français 1997.

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Example 1. Athens – amnesty – amnesia

There is, at least in some languages,[2] an immediate connection between "amnesty" and "amnesia". It has nothing to do with chance, as it is an etymological doublet. But a *decree of amnesia* is quite different from a *decree of amnesty*. The former goes against everything which we today regard as the duty of memory within the sphere of public deliberation.

The scene is in Athens at the end of the fifth century BCE. The Peloponnesian War between Athens and Sparta ends on Athens' defeat. The city must demolish the Long Walls between the Acropolis and Piraeus. Democracy is rendered powerless. The Thirty seize power. They are not "oligarchs", but well and truly tyrants. (Fifteen hundred Athenians, that is a considerable proportion of the citizens, perish.) The Thirty are Spartophiles, they are collaborators, and the enemy occupies the Acropolis. Civil war breaks out, bloody and brief (one year). It is from Piraeus that democratic re-conquest starts. As soon as the democrats, led by Thrasybulus, regain power in 403 BCE, they promulgate a decree of amnesty.

Stasis *and discursive troubles*

In order for the facts to make sense it is necessary to explain how Greek and the Greeks represent *stasis*, or "civil war", and the content of the amnesty decree invented to put an end to such *stasis*.

Stasis clearly is one of those Greek word names that have almost the inner contradictory complexity Freud taught us to associate with products of the subconscious. It means an act which correspond with the root *estēn* ("to hold straight, to be standing up"), signifying at once "the fact of standing up", hence site, position, stability, firmness (*stasimos* is said of all that which is calm and well planted, just like *stasimon* in a tragedy denotes the text fragment which the choir sings without moving about), *and* "the fact of getting up", hence uprising, rebellion (*stasiōdēs* means "seditious"). In political terminology the word *stasis* came to signify, at the public level, the "state" (Polybus, 16,34,11) – and at the individual level, the "position" of a person in society (Polybus, 10,33,6). *Stasis* refers therefore to state, estate, government, establishment, standing; sometimes the "party", sometimes the "faction" (Herodotus, 1, 59), and, more generally, the "civil war" itself

[2] Notably, Western Indo-European languages that have inherited the Ancient Greek intellectual vocabulary. (Eds.)

(Thucydides, *History*, 3, 68-86). As if the state found itself necessarily linked to insurrection, as to its shadow or its condition of possibility.

As for civil war, *stasis* is described as an "illness". Thucydides sets the tone with an analysis of the *stasis* of Corcyra (3, 69-86), employing the same words in which he described the pest of Athens (2, 47-54). The "illness" (*nosēma*) produces "disorder", "illegality" (*anomia*; 2, 53); and in the civil war this anomie would go to changing the normal use of language: "We changed the usual meaning of the words with relation to the acts in the justifications that we gave of it" (3, 82).

When Philippe-Joseph Salazar evokes the South African *apartheid* legislation, the Population Registration Act 30 of 1950, he rightly pitches his analysis at the level of language itself:

> One could admire the linguistic feats of the Lycurgus[3] of Southern Africa (Salazar 1998: 27).

The South African Act is well and truly that of a "nomothete" which transforms the meaning of words:

> In the name of his Very Excellent Majesty the King, the Senate and the Parliament of the Union of South Africa, it is promulgated that: (...) A "person of colour" designates a person which is neither white nor native. (...) A "native" designates a person which is in fact or commonly considered to be from one of the aboriginal races or tribes of Africa. (...) A "white person" designates a person which is evidently such or commonly accepted as a white person, with the exclusion of any person, even in appearance being evidently white, commonly accepted as a person of colour.

Thus the founding law of *apartheid* shows, among others, *stasis* as discursive anomie. Inversely, consider how the new president of Algeria appeals to "civil harmony":

> We must (...) *reinvent semantics*, find the words which are not injuring neither for the one nor for the other. Civil harmony is neither national reconciliation, nor eradication. It is simply to ask the Algerians: Do you have a spare country? No, therefore admit that you are different. Accept it (*Le Monde* 1999).

Greek *stasis* is a public illness which, in its terminal phase can be translated as "language trouble", akin to what the French call *la langue de bois,* a totalitarian speech artefact. In the new South Africa language was taken in charge very scrupulously at this level by the TRC which acknowledged a recourse to everyday words, to the story-telling, as an integral part of a "process of national healing".

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[3] Lycurgus was the legendary law-giver of Sparta in Ancient Greece, dated to the ninth or eighth century BCE. (Eds.)

"And I would not recall..."

Aristotle gives the full text of the amnesty decree in the *Constitution of Athens* (39).[4] The decree begins with a regulation of emigration, proper to assuring civil peace. Those who had remained in Athens and collaborated with the Thirty could, if they wished to, move to Eleusis (a nearby community well within the Athenian state boundaries) and keep their citizenship rights, their full and entire freedom and "the pleasure of their goods" on the only condition that they enlist within ten days and leave Athens within twenty days. However, the last paragraph of the decree is concerned with a radical regulation of memory:

> The past events, it is not permitted to anyone to recall them 'against' anyone.

The verb used, *mnēsikakein*, glues together "memory" (*mnēmē*) and "evils" (*kaka*). It is a linguistic construct made of the genitive case of the thing and the dative case of the person: when one recalls the evils, one always recalls them "against", one reproaches somebody for them, one meets out reprisals for them.[5] However, the decree does not aim at forbidding reprisals but to censure them from being recalled. A proof of this is provided by Plutarch when he cites, as two *exempla* of the same attitude conducive to "forging the character (*ēthopoiein*) and the wisdom (*sōphronizein*)" of those of today, the decree of 403 BCE and the fine imposed on the tragic poet Phrynicos in 493 BCE for having represented on stage the sack of Miletus. The theatre broke out in tears and Phrynicos paid a thousand drachmas for "anamnesia of the national evils" (*anamnēsanta oikia kaka*) – i.e. for "recalling home evils".

The decree's modalities of application were in themselves drastic enough. Archinos, says Aristotle, *kalōs politheuesthai*, "practiced well and true politics", or "magnificent citizenship" (*Constitution*, 40). The elements of this practice include a ruse, a summary execution, and lots of realism. The ruse concerns extension of the deadline for enlisting ("Many dreamt of emigrating, but postponed their registration until the last day"). Archinos, having noticed how numerous they were, wanted to keep them from leaving,

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[4] See also Isocrates, *Against Callimachus*, 25; and Andocides, *Mysteries*, 90, 31. The decree (*hai suntēkai*, "the conventions") is sometimes designated (Aristotle) as *hai dialuseis*, "the decollation, the solution, the outcome", as if the *stasis* was particularly a blurring of boundaries, sometimes (Isocrates, Andocides) by *hai diallagai*, "the exchanges, the circulation" (which we translate as "the reconciliation"), as if it was about re-establishing a circuit.

[5] See Plato, *Letters 7*, 336 e-337 a:

> a city in *stasis* does not know the end of its evils (*kaka*) but when its conquerors ceases to *mnēsikakein* by expulsions or by cutting throats.

and cut short the originally extended period during which people could still register. Many people were then forced to stay, in spite of themselves, until they were reassured". The exemplary execution: One of those who came back began to recall the past (*mnēsikakein*). Archinos dragged him in front of the Council and persuaded them to put him to death without a hearing.

> It is now that we must show that we want to maintain democracy and respect the oaths; to let him go is to encourage the others to act like him, to execute him is an example for all. It is that which took place. Afterwards, no one ever again recalled the past (*emnēsikakēsen*) (ibid.).

Finally the decree is reinforced by an oath taken in the first person. Andocides[6] cites the text of this oath

> "which you all took after the reconciliation": "And *I would not recall* the evils against any of the citizens (*kai ou mnēsikakēsō tōn politōn oudeni*)".

Moreover, this oath is constantly renewed, because it is this oath, falling within the obligations of his task, that each Athenian judge must take regularly before taking seat.

Amnesty is there to construct a community and its institutions on the basis of shared amnesia. Is deliberation an aporia?

Wearing evil out politically

Aristotle's judgment on this historical decree is revealing. The Athenians, he says,

> thus wore out (*khrēsasthai*) the preceding evils in private and in public (*kai idiai kai koinēi*) in the most beautiful and the most political way; not only, in effect, did they erase the accusations bearing on the past, but they also took charge in common (*koinōs*) of the loans (*ta khrēmata*) made to the Lacedemonians by the Thirty, although the two parties (Athens and Piraeus) would repay the debt separately. In effect they reached the conclusion that it was in this manner that they would initiate consensus (*tēs homonoias*).

Thus, amnesty worked as an "eraser" – names were erased, memory was erased –, which is the main consequence of the prescription of amnesia. But I would like to dwell on two other words as well.

The first refers to the method used by the Athenians: they "wear out", *khrēsasthai*, the key word of relativism, which evokes the substantive coming from the same root, *ta khrēmata* (that of which we wear out the riches) – in this particular case the "loans". Whatever the translation may be, the wording underscores what Protagoras says in his well-known phrase:

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[6] *De Mysteries*, 90-91.

"Man is the measure [touchstone] of all things [*pantōn khrēmatōn*]".[7] The Athenians use evil to make beautiful politics out of it and this transformation or transmutation (as the adverbial adjective signifies in "the most beautiful way"), is lifted from the artistry of metallurgy to a major work of art: aesthetic politics.

The second term defines the aim: to initiate "consensus", "concord", *homonoia*, literally the sameness (*homo*-) of minds and sensitivities (-*noia*). This takes place through a convergence of the private (*idiai*) and the public (*koinēi*), as the public, the common good, prevails, in the decision to enact financial solidarity and to treat loans taken by adversary parties as an integral part of the public debt.

Isocrates confirms the intelligence and political beauty of this use of evil in a passage in *Against Callimachus* (46). Literally he says:

> Since, converging towards the same, we have mutually given each other the marks of confidence, we politicize [*politeuometha*, we "citizenize", to make up a neologism] with so much beauty and so much community that it is as if no evil ever struck us. Before, everyone judged us to be the most foolish and the most unhappy, at present it well seems that we are the happiest and wisest of the Greeks.

Which leads us to the following question: What is a political act? And what is political speech?

What is a political act? And what is political speech?

What do we learn from this first, Athenian example?

We can define political action as a seesaw point which "utilizes" (khrēsthai) an old state to pass towards a new state. Here, the old state is the stasis, the civil war, and the new state is the homonoia, consensus. To produce the transformation one has to see the "opportunity", the "occasion", the "right moment" (or kairos), at the moment of krisis, by an act of distinction and judgment, which marks the crisis, the critical moment, like in medicine, when the decision between fatal outcome and healing is produced. This krisis is in the event the decree of amnesty, a dated text which, like it is stipulated with regard to the TRC, proposes "a firm cut-off date", a before and an after (Report). A political act par excellence is the one which manages, literally, to devastate the devastation, and to make the evil irreversibly become a greater good. We could propose several versions of

[7] The imagery derives from metallurgy: by scratching a coin over a suitable touchstone, the specific trace left would indicate the quality of the gold or silver alloy of the coin. (Eds.)

this. The "onto-theological" version is represented by the poetical lines constantly cited by Heidegger:

> *Wo aber die Gefahr ist wächst das Rettende auch* ("There where the danger is, that which saves also grows").[8]

But I much prefer the nicely punning graffiti I read on the walls of Desmond Tutu's house in Cape Town:

> *How to turn human wrongs into human rights.*

Such a political act which devastates the devastation, is in one way or another an act of speaking. Not only is the decree written and promulgated, but it has the effect of stopping the characteristic words of the *stasis* (the "re-semantization" of Bouteflika in Algeria) *and* to give them back their performative power: "I would not recall the evils". This reassurance of speech on its semantic and pragmatic bases produces a common language; and it is that itself which permits the passage from the "I" to the "we", the constitution of a "with", of an "together", of a *con-sensus*.

What is then the exact place of the truth in such a context? The reply is to be searched, once again, on the side of the *khrēsthai*, of use and utility. Let us return to Protagoras and to the apology which Socrates proposes for him, explaining, as if he was Protagoras himself, the phrase on the man-measure in Plato's *Theaetetus* (166-167):

> See how I define the wise man: all that which appears to one of us and which is evil, inverts the meaning of it (*metaballōn*), in such a way that it now appears and is good... It is from a given disposition to a disposition of greater value that the inversion must be made; but the doctor produces this inversion by his remedies, the sophist by his discourse. From a false opinion, in fact, we have never let a person pass to a true opinion (...). The opinions are better (*beltiō*) than the others, in nothing truer (*alēthestera*) (...). Those of the orators which are wise good make that it is the useful things (*khrēsta*) in the cities, in stead of the pernicious ones, which to him seem just and beautiful.[9]

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[8] From Hölderlin, *Vaterländische Gesänge*, Patmos (Eds.)

[9] Reflecting Professor Cassin's expert familiarity with the original Ancient Greek, but filtered through the modern French in which this paper was originally written, and through the subsequent translation into English, her rendering of Aristotle's text here differs considerably from the published English standard translations, e.g. Jowett's, a sample of which we include here (Eds.):

> And I am far from saying that wisdom and the wise man have no existence; but I say that the wise man is he who makes the evils which appear and are to a man, into goods which are and appear to him. And I would beg you not to my words in the letter, but to take the meaning of them as I will explain them. Remember what has been already said, – that to the sick man his food appears to be and is bitter, and to the man in health the opposite of bitter. Now I cannot conceive that one of these men can be or ought to be made wiser than the other: nor can you assert that the sick man because he has one

This manifestation of relativism which collapses the one into the other, the sphere of being and that of appearance ("appearance-and-being"), refuses to accept that truth could be the supreme moment (Nietzsche 1952: 109). Simultaneously it questions the oneness and unity of good (something like the Idea of the Good, which could provide a Platonic guarantee to the oneness and unity of truth) to the profit of the "best". Yet "the best" is no longer a comparative but a relative comparative – a best is "best for" someone, man or city, in such a circumstance and not in another.

In my opinion there exist two grand philosophical gestures, and two only, to articulate truth with public deliberative politics. The position just mentioned I call "the autonomy of the political". It denies that truth and good are identical or, by implication, that they are mutual inferences.[10] The second option, quite popular among philosophers, could be called "the *heteronomy* of the political". Here ontology determines politics. Being and truth are the key criteria to assign value. This paradigmatic position is Plato's with his philosopher-king, for whom *theōria*, the contemplation of ideas and dialectical science, is the only condition for good government. This option, *strictu sensu* metaphysical, runs from Plato to Heidegger. In this regard Heidegger's perception of the Greeks and of their "grandeur", including political grandeur, is revealing. When Heidegger in his *Parmenides* uses the word "*polis",* he lets resound at once the Ancient Greek verb *pelein*, which signifies *einai*, "being". He then infers that the *polis* in itself is but the pole of the *pelein* and, consequently, that "it is only because the Greeks are an absolutely non-political people" that they were able to found politics, and did in fact do so (Heidegger 1982: 142). In other words, the essence of "the political" has nothing to do with politics, and the Greeks invented "the political" to the extent that they had first invented the idea of Being.

The second option may be called the "autonomy of the political". It runs along another lineage in the philosophical tradition, beginning with the Sophists. At that initial and radical stage, the Sophists held that the orders of

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> impression is foolish, and the healthy man because he has another is wise; but the one state requires to be changed into the other, the worse into the better. As in education, a change of state has to be effected, and the sophist accomplishes by words the change which the physician works by the aid of drugs. Not that any one ever made another think truly, who previously thought falsely. For no one can think what is not, or think anything different from that which he feels; and this is always true. But as the inferior habit of mind has thoughts of kindred nature, so I conceive that a good mind causes men to have good thoughts; and these which the inexperienced call true, I maintain to be only better, and not truer than others.

[10] See, for more details, Cassin 1995: 237-271.

being and truth do not command the order of action, but are commanded by it, more precisely created by it. The Sophists proposed something like "the heteronomy of ontology", a logology. With the Sophists, in effect and in action (in particular, discursive action), "rhetoric" indeed produces Being, produces reality and, notably, produces *this* reality, now and here – a reality that was until now unheard of, paralyzed by discourse and continuously performed – which is the *polis* and its consensual deliberation. If Aristotle carefully distinguished between ontology and logology in order to keep open a place for a science of being as being, at the same time he proposed, in utilizing the Sophists against Plato, a practical hierarchy:

> The political is the supreme architectonic science (…) The end is not knowledge but action. (*Nicom. Ethics* I, 1, 1094a 25-30).

Among contemporary philosophers, Hannah Arendt, in opposing Heidegger, explicitly sides with the Sophistic-Aristotelian tradition when she stipulates that

> to consider the political in the perspective of the truth means to set foot outside the domain of the political (Arendt 1972: 13);

or when she refuses, for herself, to let her work be subsumed under the term "political philosophy":

> The difference, you see, belongs to the thing itself. The expression "political philosophy", which I avoid, is already extraordinarily charged by the tradition (...). He [the philosopher] does not maintain himself in a neutral way facing the political: since Plato this is no longer possible (Arendt 1964: 20).

Example 2. The South African TRC and full public disclosure

How do these few remarks on the Greek tradition regarding public deliberation, and truth, allow us to better apprehend, even if partially, the rationale behind that original arrangement for deliberation called the Truth and Reconciliation Commission (TRC), in modern South Africa?

At a first glance the contrast with the Athenian decree of amnesty is stark. Whereas in Athens one must "not remember" nor "recall", in South Africa the imperative is one of "full disclosure". Only that which forms the object of such a move is capable of receiving "amnesty". We are then confronted with two opposite politics of deliberative memory:

1. the failure to make a claim within the statutory time-limit or anamnesia, the silence or the story, the closure of the past in the present, with an

outdated past (in German *Vergangenheit*), or
2. the construction of the future by means of a living and active past faced with the present (a *Gewesen* faced with a *Gegenwart*).

But let me attempt to reconcile both models.

The very order of the words, "Truth and Reconciliation", is by itself already a strong indication of a possible synthesis of opposing models. The finality is in effect not the truth, but the reconciliation. We do not search truth – disclosure, *alētheia* – for truth, but with a view to reconciliation – *homonoia*, *koinon*. The "true" here has no other definition and, in any case, no other objectifiable status, than that of the "best for". This "for", in its turn, is explicitly a "for us", *koinōnia* or *we-ness*. The TRC is the political act which, like the Athenian decree of 403 BCE, makes a cut ("*a firm cut-off date*"), and charges itself with using evil, to transform the misfortunes, mistakes and suffering, to make *something good* out of them, notably a past on which to construct the "we" of a "rainbow nation".

This transition from a less good to a better state is analogous to the treatment of an illness: *What is therefore envisaged is reconciliation through a process of national healing*. It thus comes close to the discourse as remedy – it is there, said Protagoras, that we remember the *pharmakon* of the Sophist. At the same time[11] it shows discourse as performance in all the senses of the term, from the pragmatic to the theatrical. It is more specifically in the theatrical sense that one must interpret the spectacular character of this commission, sitting *urbi et orbi* from city to city, for one and all, with a televised re-broadcast every Sunday evening. It is more specifically in the pragmatic sense that one must understand the repeated and nearly "incantatory" exigency to "*tell* the truth", "*tell* their story". Just as the discourses, deliberations, epideictic and judicial speeches performed in the Ancient Greek city – this "most talkative of all" worlds (to use a phrase of Burkhardt) – the act of story-telling performs the as yet unheard history of the South African community; and this community constitutes itself through this process, with "history-history" being unraveled from the "story histories".

Truth is a debt due to narrative

I would like to reflect for a moment on a further question: in this

[11] The idea that discourse is essentially performative (the Sophistical *epideixis*) is related to its *pharmakon* status, "poison-remedy", by contrast with the *organon* status of "instrument" of Platonic-Aristotelian orthodoxy (see "Du pharmakon" in Cassin 2000).

perspective, what could be the meaning of the injunction *to speak the truth*?

> Who says that which is (*legei ta eonta*) always recounts a story, and in this story the particular facts lose their contingency and acquire a meaning that is humanly comprehensible (Arendt 1972: 333).

Arendt is very close, in a certain way, to tying Africa and Greece. She does not deal here with philosophical truth, that of the *epistēmē*, the dialectics or science of being, but rather with the truth of narrative. Again at work is the *mimēsis* which allows us to bring Aristotle's *Poetics* and Karen Blixen's *Out of Africa* together. Think of the famous Aristotelian motto: "Poetry is more philosophical than history", meaning that poetry better facilitates the transition from the singular to the plural, and its verification through the success of the *katharsis*. It is attune to what the novelist says: "Me, I am a storyteller and nothing but a storyteller", and, "All travails can be borne if we transform them into story, if we tell a story on them". Under the novelist's pen, the term "reconciliation" comes naturally to whisk away, to suppress and overcome, a statement about truth:

> To the extent where the one who tells the truth is also a story-teller, he accomplishes that "reconciliation with reality" which Hegel, the philosopher of history par excellence, understands as the ultimate goal of all philosophical thought and which, assuredly, has been the secret engine of all historiography which transcends pure erudition (Arendt 1972: 334).

Truth is certainly, for Arendt, of the order of good faith, in line with Kantian judgment:

> The political function of the story-teller is teaching to accept things as they are. From this acceptance, which we can also call good faith, the faculty of judgment springs (*ibid*).

This benevolence and this way of collapsing reconciliation into acceptance, that is resignation, yet do not appear to be the only possible connotations, nor the most appropriate. A decisively more Sophistic, and less Judeo-Christian approach, would be to accept the violence of having fiction constitute such narrative; or, to resort to a Lacanian orthography, to talk of the "fix(at)ion" of fiction – the decided, desired and accepted fabrication of the past and of a common history. This is also what Gorgias says, in his own way:

> He that deludes [*hō aptaēsas*, from *apatē*, a Greek word, more Lacanian than Freudian in association, which we might render by the sequence "deception, illusion, cheating, ruse, artifice, pastime, pleasure] is more just that he who does not delude, and he who he is deluded is more just than he who is not deluded" (B23 D.K.).

Fiction is in this sense the trope by which the best (citizens) among us, in the sense of the "most useful" ones, make us take something to be true; or what is more, it is the point where that "pretty politicizing" (Bentham 1997)

makes an impact on the truth.

The civil war of Athens lasted nine months. *Apartheid* lasted some forty years. It is without doubt apt to also measure the two treatments of memory with this yardstick of extension over time. In the former case, the issue is not how to bring the past to light, everything is immediately known by everyone, it is *forgetting* that must be constructed. In the latter case, on the contrary, the past is a hole or a series of distortions which cannot be shared. *Full disclosure* and *to tell the story* are the instruments of the common construction of the past, to such an extent that "not having to answer to", "not having to expect retaliation", is a prerequisite for accounts to be finally settled and for the report to be finalized (*logon didonai*, for Athenian magistrates; *accountability*, for the TRC).

Here are two opposite prescriptions, posited centuries from each other, but on the base of a common horizon of speech, of deliberation – of *parole publique* – and leading up to the same kind of finality by virtue of the autonomy of the political. The political proximity of these two extreme treatments of memory appears even more clearly when we confront them with a third figure, the ordinary French rules concerning Archives, and how these rules intersect with public deliberation.

Example 3. The closed period in French memory-archives

The memory-archive that conserves traces, that classifies and that is there for being consulted is the normal and general memory of historical events, regulated by laws which display considerable similarities at least in Europe and the United States.

The regulatory structure of archiving follows a simple pattern: A closed period is imposed during which the archives may not be consulted. Let us call it, in contrast to historical time, "closed period" (when time has gone latent). The duration of this closed period depends on the nature of the archives, themselves dependent on classification, and there is always room for infringement. In this connection, regulation is not a mere administrative act, it is a political act and as such subject to change. Changes generally happen under the pressure of crises (like in the case of sensitive archives in the United States, the Pentagon Archives and those of the Vietnam War). There is a trend toward reducing the closed period and making archives public sooner than before. (Clinton ordered declassification after 10 years).

The recent changes in French archival regulation are worth looking into. Before 1979 a 50-year rule applied. Documents concerning the war period of

1939-1940 have been open for consultation by the public since 1990. A 1979 decree (executive order), still in force, "liberalized" the rule down to 30 years. But simultaneously it instituted "special delays" in regard to documents listed in another executive order of December 1979.[12] *De facto*, the orders have the effect of increasing to 60 years or sometimes 100 years everything that concerns the Second World War and is deemed "exceptional", in particular judicial records (these documents can only be consulted from 2000 or 2010). The norm may be 30 years, but for medical files the closed period is 150 years (counting from the date of birth), for personal files 120 years (counting from the date of birth), down to 100 years for notary records, registry files, records of census and intelligence; also 100 years (counting from the date of the last document, that is from the date of closure of a given file) for all justice files, including *pardons*; finally 60 years for everything concerning private life, the security of the state and national defence. The 1979 executive orders were supplemented, but not repealed, by a 1998 decree under the Jospin administration. The decree concerns procedures of declassification. It establishes that preference must be given to short "closure" above long "closure"; in a way, it makes the exception (access granted within a closed period) the rule. As a result researchers' access has significantly improved. The *status quo* (1979) nevertheless remains in force:

a. Clauses of secrecy or restrictive dispositions *ad actum* remain (interest of the state, private life, industrial and commercial secrets of businesses);
b. Partial lifting of restrictions is given on personal request or *ad personam* (as a result, a researcher can gain access to a specific document for statistical purposes, but a member of the public who wants to know "who did what in my village" will be refused access to the same document);
c. The application procedure is rather complex (the request must be made jointly to the Archives of France and to the specific administration concerned). Today 90% of all requests are granted. The remaining 10% relates to unilateral archiving (the archives of the defence and foreign affairs ministries, the contested archives of the Paris police prefecture), practices of obstruction (slowness, default of

[12] Loi du 79-18 of 1979/1/3 and Décret d'application of 3/12/1979. I thank Mr Jean Pouëssel from the French National Archives, who facilitated access to documents and explained to me the regulations and their perverse effects.

> inventory), inquiries concerning living persons and, in particular, persons at once "amnestied and living" (*amnistiées et vivantes*).

In the latter case the documents are *never* communicated.[13] This concerns all the postbellum "purification" files which are not accessible until the next generation so that children cannot have access to information about their amnestied parents. In a general sense this remains the status quo of the programmed closed period. This delay of access amounts to suppression which keeps the "hot" information in limbo. The past never arrives directly in the present: it is a differed, disinfected dead past. Deliberation is stifled. To put it crudely: a past so regulated is a past for historians and statisticians, never a past for the citizen.

This is why the Athenian imperative of "I would not remember" and the South African *full disclosure* – the silence and the story – fall on the same side of a divide, that of a memory politically alive, while the memory-archive is staring at the two of them from the other side, that of the written treatment, that seeks to "dis-interest", to de-politicize memory. In other words, the Athenian *stasis* is in the past tense, a past definitively closed yet achieved in its present; South Africa's *apartheid* is in the future perfect (anterior) tense, inasmuch as its future is constructed at present in the past; World War II is in the perfect tense, programmed in order never to be anything but a *has been*. The time of the public, of the citizen, is the same as the community's time (I keep silent before "us", I tell before "us"), the time of the historian is one with a dichotomized they/us, "they", the specialists, the decision-makers, those who have access to the files, versus "we", the generation kept in ignorance and denial, by forbidding the forgetting and the recollection for the benefit of commemoration only.

With reference to the Pentagon archives and the MacNamara Report, Arendt emphasizes the double danger of such a policy of specialists. On the one hand, in her view, the public or its elected representatives are denied the possibility of knowing what they should know in order to make an informed decision: the "we" is disabled. On the other hand, those in charge, who have access, continue to reside in their ignorance (Arendt 1972: 7-51). Without "us" and with none of "them" being informed (because their knowledge or ignorance escapes control), a politics based on non-facts is put in place, performed into a historical narrative by singular rather than public agents. As Arendt cruelly emphasizes, France, thanks to De Gaulle, is part of the

[13] There is the case a legal journalist, amnestied and alive, who wins all his court cases on the basis of this regulatory clause.

Second World War victors while, thanks to Adenauer, National-Socialist barbarism has only affected a small part of the German population. In this world of specialists, let us think of Braumann's film on the archives of the court case of "Eichmann, a specialist".[14]

Conclusion: pardoning, repenting, and the public "we"

In conclusion, let us consider a couple of points regarding reconciliation and the relationship between reconciliation and pardoning, which would allow us to come back to the question of the autonomy of the political in relation to what deliberation may be. At the beginning of a Memorandum on the Report of the TRC we read:

> It is based on the principle that a reconciliation depends on forgiveness and that forgiveness can only take place if gross violations of human rights are fully disclosed. What is therefore envisaged is reconciliation through a process of national healing. The promotion of National Unity and Reconciliation Bill, 1995, seeks to find a balance between the process of national healing and forgiveness, as well as the granting of amnesty as required by the interim Constitution.

Reconciliation and pardoning, *forgiveness*, are presented as closely allied through *full disclosure*. An equilibrium is to be found between national health and pardoning on the one hand, and amnesty on the other. However, when we look at the Committee of Amnesty's three conditions with which an amnesty application must comply before it can at all be considered, the term of "pardoning" does not appear. The necessary and sufficient conditions are that:

1. the deed is associated with a political motive;
2. the deed took place between 1 March 1960 and the cut-off date;
3. *full disclosure* has been made.

But full disclosure itself apparently does not require pardoning or repenting. In fact: "Full disclosure (...) demands an inquiry into the state of mind of the person responsible for the act". One of the most controversial issues faced

[14] These are home truths to West European readers of a mature vintage, but need spelling out for readers from other continents and other age cohorts. Charles de Gaulle, later President of France, owed his popularity to his command of French formal military forces in exile, confronting the forces of Nazi (National Socialist) Germany during World War II. After that war, Germany regained its international respectability under Adenauer as head of state. Eichmann was a high-ranking Nazi officer in charge of industrialized mass murder especially of Jews; he was tried and executed in Jeruzalem, Israel, in 1961. (Eds.)

by the TRC had to do with this question of pardoning: faced with his victims or the families, must or must not the perpetrator ask for pardon? Can anyone tell a perpetrator to ask for pardon?

As far as I am concerned I would like to plead for the practical wisdom and the political beauty of not making repenting and pardoning compulsory. Here we find the autonomy of the political again, without any reference to ontology, but with reference to religion and ethics, enacting the difference between Plato and Aristotle. Think of it: there is only one *Republic* by Plato, but there are two clearly distinct works of Aristotle, *The Nicomachean Ethics* and the *Politics*. In my opinion, reconciliation – effectively the production of a "we" – is not a ethical affair but a political affair. A clear distinction must be made between the recognition of a fact – *full disclosure* – and contrition. The recognition of a fact is in itself a sign of belonging to a political community, while repenting and pardoning forms part of an entirely different sphere, ethical or religious. This is where Protagoras' myth comes in handy, as told by Plato in *Protagoras*.

The myth tells how the human species, badly equipped on the day of its birth by Epimetheus the Improvident, was going to disappear from the face of the earth when Prometheus gave it the *enteknos sōphia sun puri* ("artistic – technological – wisdom and fire"); how humans, now equipped to produce and manufacture, proceeded to kill each other as they lacked "*political* wisdom"; how Zeus then gave the human species a "supplement": *aidōs* ("scruple" or "respect" – the feeling of what one must do towards one self and under the gaze of the other) and *dikē* ("justice" – the public norm of conduct); how Hermes asked whether *aidōs* and *dikē* should be shared among all humans or given to experts, like medicine or the art of making shoes. As a reply, Zeus ordered that "to all and that all share them" and added: "that those who do not share them be put to death as an illness of the city" (*Protagoras*, 320c-322d). A paradox indeed: If everyone has it, what exceptions could there still be? Protagoras, in the ensuing speech explains and interprets his myth (*Protagoras*, 323b-c):

> It is about justice and, more generally, about political virtue, if a man whom we know to be unjust publicly comes to state the truth on his own account, that which we previously judged to be common sense (to tell the truth) we know judge to be mad, and we affirm that everyone has to confirm being just, whether they are or not, or even more that *the one who does not infringe justice is a fool* – in the idea that there is necessarily nobody who does not in a certain way (*pōs*) have justice in common without which he does not count among the number of men.[15]

[15] Again, in Jowett's standard English translation (Eds.):

The key to Protagoras' paradox here ("everyone has justice, and those who do no have it must be killed") is the following: *Everyone is just, even those who are not*. They must pretend to be just and that is all they need to be just "in a certain way". In affirming that they are just, they recognize justice as constitutive of the human community and by so doing justice itself is integrated in the city – in a way, it is the praise of virtue by vice that universalizes virtue.

The background of the myth and of the whole dialogue between Protagoras and Socrates is the question of knowing "whether virtue can be taught". Protagoras maintains that everyone is naturally virtuous *and* that virtue is taught according to the exact model of the mother-tongue. Everyone has it, and *yet* we do not stop teaching it, from the nanny to the teacher. This is why Athenian democracy is properly founded as it gives everyone *isēgoria*, equality of speech, freedom for everyone to speak in front of the assembly. Everyone speaks, everyone is just, everyone is a citizen. Public deliberation, *parole publique* at its best. But the fact is that some are better at it than others – for Protagoras they are the Sophists or politicians, and one had better place oneself under their tutoring, at least temporarily. Protagoras' analysis goes beyond being applicable to the TRC's practice and to the TRC as a model for deliberation within reconciliatory politics. It shows two things. Firstly, that repenting, the apology or the request of pardon, is that much less necessary since "the one who does not infringe justice is a fool". The perpetrator who speaks in front of the TRC could well argue that his past acts, even if barbaric, show justice, that consistency is still interpretable *ad majorem communitatis gloriam*[16] as an indication that s/he did never cease to act as a member of the community, thus attempting to further the transition from a worse to a better state. Secondly, what counts in *full disclosure* is not that one declares one's *injustice*, it is that one *declares* one's injustice.

This is the condition for membership of a deliberative community. Shared language is the minimum requirement for a "we" to appear. Such sharing even implies that one consents to practices such as the TRC itself,

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> ....but when honesty is in question, or some other political virtue, even if they know that he is dishonest, yet, if the man comes publicly forward and tells the truth about his dishonesty, then, what in the other case was held by them to be good sense, they now deem to be madness. They say that all men ought to profess honesty whether they are honest or not, and that a man is out of his mind who says anything else. Their notion is, that a man must have some degree of honesty; and that if he has none at all he ought not to be in the world.

[16] "To enhance the glory of the community" (Eds.)

that one forms part of a new given. From this point of view it is fundamental that instances such as the TRC are not given the format of a tribunal and that one does not have to submit oneself to its verdict. It is this transcendental turn, according to which speech suffices to constrain to a "we", which is comforted by the effective creation, a fixing through story-telling, of a shared past.

To return to my opening quotation from Plutarch: Speech, *la parole*, is indeed a beautiful political means to remove from hate its eternity.

(Translated from the French by Johann Rossouw, revised by Wim van Binsbergen).

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Part One: Around the Truth and Reconciliation Commission: Rhetoric and Public Good

CHAPTER 1

LEARNING TO LIVE TOGETHER WITH BAD MEMORIES

Charles Villa-Vicencio

ABSTRACT. The author seeks to explore to what extent it is possible for victims and survivors *to "get on with life" in the shift from a systematically abusive society to what Rajeev Bhargava has so aptly called "a minimally decent society". The author does so, mindful that "moving on" does not take place for victims or survivors in a space free from the presence of perpetrators who harbour their own bad memories. Sometimes victims are also perpetrators and frequently perpetrators are themselves victims of one kind or another. Bad memories, of one kind or another, reside close to consciousness and are indeed at the centre of self-consciousness of many South Africans.*

I have deliberately avoided words like *reconciliation*, *forgiveness* and *healing* in the title of my paper. I do so precisely because of the importance I attach to them – and resort to them later. My concern is that they often imply unrealistic expectations. They are complex terms, weighed down by generations of usage and accretions of the ages. They often limit our ability to grapple adequately with the possibilities of realistic individual and/or national transition from a society marked by the systematic abuse of human rights to an existence shaped by at least the formal affirmation of human rights. Differently stated, in what follows I seek to explore to what extent it is possible for *victims and survivors* to "get on with life" in the shift from a systematically abusive society to what Rajeev Bhargava has so aptly called "a minimally decent society".[1] I do so mindful that "moving on" does not take place for victims or survivors in a space free from the presence of perpetrators who harbour their own bad memories. Sometimes victims are also perpetrators and frequently perpetrators are themselves victims of one

[1] In Villa-Vicencio & Verwoerd 2000.

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kind or another. Bad memories, of one kind or another, reside close to consciousness and are indeed at the centre of self-consciousness of many South Africans.

To this end I comment on:

- The ambivalent nature of memory.
- The reality of needing to live with bad memories.
- The importance of learning to live together with past enemies.

Memory as pain and promise

Winston Churchill, with the horrors of World War II still dominating human consciousness, drawing on the words of William Gladstone, expounded the virtue of "a blessed act of oblivion."[2] The problem, suggests Timothy Garton Ash, is that "often it is the victims who are cursed by memory, while perpetrators are blessed by forgetting."[3] The brooding presence of bad memories for victims and survivors is such that it insists on the need to know what happened, who is responsible and why it happened. "Crimes", writes Michael Ignatieff, "can never safely be fixed in the historical past; they remain locked in the eternal present…."[4] Even those perpetrators, by-standers and passive participants in the gross violations of human rights in South Africa's past, who protest the loudest in demanding that *apartheid* is over and that we now need to get on with the future, are to a greater or lesser extent protesting against the past *that will not go away*. It is this reality that gave rise to the Truth and Reconciliation Commission in the first place.

Justice Richard Goldstone put it this way:

> The decision to opt for a Truth and Reconciliation Commission was an important compromise. If the ANC had insisted on Nuremberg-style trials for the leaders of the former *apartheid* government, there would have been no peaceful transition to democracy, and if the former government had insisted on a blanket amnesty then, similarly, the negotiations would have broken down. A bloody revolution sooner rather than later would have been inevitable. The Truth and Reconciliation Commission is a bridge from the old to the new.[5]

Over 22,000 victims and survivors made voluntary statements to the Commission and 7,500 applied for amnesty, indicating a willingness to

[2] In Ash 1997a: 201.
[3] Ash 1997b: 22.
[4] Ignatieff 1998: 14.
[5] Goldstone 1997.

make full disclosure about the past. Not all these nearly 30,000 persons who chose to remember or indicated a willingness to make full disclosure about the past did so to the satisfaction of the Commission. Some statements given to the Human Rights Violations Committee and some amnesty applications were rejected as being false. The outcome has, however, been an exercise in which the nation has been confronted with its past in a manner that few other countries have voluntarily chosen to do. Stephen Ellis, writing in *Critique Internationale*, states that the Report of the Commission

> represents probably the most far-reaching attempt by an official body to come to terms with the human rights abuses committed by a previous government anywhere in the world since the Nuremberg trials of the late 1940s.[6]

Others have trashed the Report and still others have pointed to its academic limitations.[7] Suffice it to say – for all the failures of the Commission it is largely as a result of its work that few, if any, South Africans can ever again either deny what happened, or say "we did not know" – the two standard responses to the Nazi Holocaust among those who identify, directly or indirectly, with the perpetrators.

In reflecting on this process all the words that I chose to avoid in the title of my paper, are back with us: truth, reconciliation, forgiveness, healing and many others. I seek to capture the essence of the debate that surrounds these powerful and provocative words by raising several questions:

- Why not amnesia?
- But, how reliable is memory?
- Can another person's story ever be adequately told?

Why not amnesia?

Is it merely because some cannot forget? Can a systematic exercise in remembering the past serve any good? Is there not something to be said for oblivion? Does not time heal? Hear the words of German Federal President Roman Herzog on the occasion of the Deutscher Bundestag in 1996:

> The pictures of the piles of corpses, of murdered children, women and children, women and men, of starved bodies, are so penetrating that they remain distinctly engraved, not just in the minds of survivors and liberators, but in those who will read and view accounts of [the Holocaust] today. (…) Why then do we have to will to keep this memory alive? Would it not

[6] Ellis 1999.
[7] See Jeffery 1999, and Colin Bundy's academic critique (1999).

> be an evident desire to let the wounds heal into scars and to lay the dead to rest? (…) History fades quickly if it is not part of one's own experience. [But] memory is living future. We do not want to conserve the horror. We want to draw lessons that future generations can use as guidance. (…) In the light of sober description the worst barbarous act shrinks into an anonymous event. If we wish for the erasure of this memory we ourselves will be the first victims of self-deception. (Presse etc. 23.01.96. Translated and quoted in Kayser 1997/98.)

In essence, we are told that we remember in order not to repeat past atrocities. Terrence McCaughey, President of the former Irish Anti-*Apartheid* Movement, tells of his student days at Tübingen University in Germany in the late 1950s. There was a week-long film series on German politics from the Weimer Republic to the rise and fall of Adolf Hitler. Academic life almost came to a standstill. He tells of his Old Testament lecturer, Professor Karl Elliger, addressing his class on the morning after the final presentation: "You young people no doubt think we were all stupid not to have seen what was happening", he said. "We have no excuses. But learn this, evil never comes from the same direction, wearing the same face. I hope you will be wiser and more discerning than our generation when the threat of evil next comes around. You need to be vigilant." The professor turned to his notes and lectured his students on the Book of Joshua.[8]

We remember in the *hope* that we will not repeat past atrocities. But primarily we remember because we cannot, while the past remains unresolved, lay its ghost to rest. Pertinent in this respect are the words of Rebecca Hanse, a relative of Fezile Hanse who, together with Andile Majol and Patrick Madikane was shot dead by riot police on 17 June 1985 in Bongolethu, a black township on the outskirts of Oudtshoorn:

> We must preserve the bones of our children until they can rest in peace. We cannot forget. We must keep our children alive. They were not ready to die. There is much for them still to do. We are not ready to let them go.[9]

Maybe a time will come when their bones *will* rest in peace. In time, hopefully, the past will no longer be with us in as excruciating way as it is at present.

Why do we remember? Ultimately the nation is called to remember for the sake of those who suffer. It is a manner of restoring the dignity of victims and survivors by ensuring that their suffering does not pass unnoticed. It is to say to victims and survivors, "your suffering is part of our healing as a nation. We remember you."

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[8] In Dublin, 10 March, 1999.

[9] In conversation at the grave of the Bongolethu Three, June 1996. See also TRC Report, Volume 3, pp. 437-439.

But, how reliable is memory?

Memory is at best a tricky thing. Memory is fraught with trauma and often incomprehension. Pam Reynolds reminds us that it is "raw memory" which emerges in testimony.[10] It gives expression to the inability of language to articulate what needs to be said. Memory is incomplete. Its very incompleteness is what cries out to be heard. There is also the testimony of silence. There is body language. There is fear, anger and confusion. There is a struggle between telling what happened and explaining it away. Mxolisi (Ace) Mgxashe struggles with the very question of truth. "Inyani iyababa", he observes, in Xhosa; this means, "truth is bitter".

> It is so bitter [that] sometimes we find ourselves quarrelling over whether it should be told at all. Even when there has been some consensus that the truth should be told (…) we invariably disagree on the extent to which it must be told.[11]

Sometimes we involuntarily hide the truth as much from ourselves as others. Antjie Krog prefers not to even use the word "truth". "I prefer the word lie", she says. "The moment the lie raises its head, I smell blood. Because it is there (…) where truth is closest."[12] Truth rarely leaps forth to introduce itself unmolested by lies, confusion, forgetfulness and evasion. It needs to be dug out!

What then is the relationship between truth and fiction? Testifying at a Cape Town hearing of the TRC into the killing of the Guguletu Seven in April 1996, Cynthia Ngewu, the mother of Christopher Piet, one of those killed, wrestled with what had in fact happened. "Now nobody knows the real-real story" she noted.[13] The ambiguity of memory is real. It is reality that is frequently exploited by those who seek to discredit those who have suffered and struggle to find words to articulate their deepest experience of what happened. Thus Anthea Jeffery attacks the Commission because (according to her) insufficient attention was given to the importance of factual or objective truth, by recognizing the importance of what the Commission called *personal or narrative* (*dialogue*) *truth*, as well as *social truth* and *healing or restorative truth*. The Commission deliberately chose to wrestle with these notions of truth in relation to *factual or forensic truth*.[14] The Commission was not a court of law and (for good reason) it did not

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[10] Reynolds 1997.
[11] *Argus*, 14 June 1996.
[12] Krog 1998: 36.
[13] Human Rights Violations' Committee Hearing, Cape Town, 22 April 1996.
[14] Jeffery 1999.

subject victim and survivor testimony to cross-examination. It did, however, through its corroboration assess such testimony on the basis of a balance of probability. Graeme Simpson is correct

> most of the legal and jurisprudential dilemmas presented by the TRC process are actually rooted in its own almost bi-polar roles as both a "fact-finding" and a "quasi-judicial" enterprise, on the one hand, and as a psychologically sensitive mechanism for story telling and healing, on the other.[15]

The Commission resolved at its inception to provide maximum space for victims and survivors to speak. At the same time (prodded and forced by legal action initiated by perpetrators), the Commission committed itself to due process of law that gave alleged perpetrators an opportunity to offer rebuttal. The outcome was a set of findings that, given the restraints as identified by Simpson above, sought to "present as complete a picture as possible" of gross violations of human rights committed during the period stipulated by the mandate (31 March 1960 to 10 May 1994). There remains, of course, a huge amount of incomplete transitionary work yet to be undertaken – both by the courts with regard to "fact finding" and by government and civil society at the level of facilitating more story-telling and the promotion of healing.

Albert Camus has called truth "as mysterious as it is inaccessible" and yet, he insisted, worth "being fought for eternally".[16] Its discovery involves a long and slow process. It often involves debate as well as conflict around stories that contradict one another. This is part of the process of national reconciliation. The words of Donald Shriver are compelling in this regard:

> One does not argue long with people whom one deems of no real importance. Democracy is at its best when people of clashing points of view argue far into the night, because they know that the next day they are going to encounter each other as residents of the [same] neighbourhood.[17]

The difficulties of creating democracy out of a culture of gross violations of human rights are immense. It can be facilitated through what the Chileans call *reconvivencia* – a process of getting used to living with each other again. Above all, it involves being exposed to the worst fears of one's adversaries. It requires getting to know one another, gaining a new insight into *what* happened as well as an empathetic understanding of how a particular event is viewed by one's adversaries.

The genre of memory must be allowed to flow where it will, giving

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[15] Simpson 1999.
[16] Cited in Cherry 2000.
[17] Shrive 1995: 230.

expression to bitterness and anger as well as life and hope. It is, at the same time, important to recognize that the "politics of memory" can be abused by politicians to fuel the fires of hatred – as seen in the case of the Anglo-Boer war, in Northern Ireland and the situation in the former Yugoslavia. It is important to include stories that embrace and affirm restoration in the nation's repertoire of story-telling. Memory as *justice* and not least as *healing* is, at the same time, often about victims working *through* their anger and hatred, as a means of rising above their suffering – of getting on with life with dignity. And yet, as the title of this paper suggests, it is also necessary to live with bad memories.

Can another person's story ever be adequately told?

Getting to know one another and building relationships between former enemies involves many things. Important among these is welding together a story that unites rather than one that divides. This involves the difficult process of moving beyond testimony, which, I have suggested, is frequently fraught with trauma, incompleteness and sometimes incomprehension.

This is perhaps where poetry, music and myth can contribute more to healing than any attempt to explain in some rigid forensic way "who did what to whom". Antjie Krog's celebrated novel on the work of the Commission, *Country of My Skull*,[18] weaves fragments from different testimonies and interviews into a semi-fictional historical account of events. The Commission felt compelled to do both more and less than what she accomplished. It was, above all, obliged to be more comprehensive and thus compelled to reduce or translate the richness of raw memory, or what has been called first generation testimony, into historical narrative.

To tell the story of another is never an adequate substitute for primary testimony. The TRC Report simply gives expression to the stuff out of which reports are made. It is, by definition, a poor substitute for the drama of testimony that was acted out before the country over a two-year period. It is this primary testimony to which the written Report points and by which the success or the failure of the Commission must be judged. Questions raised from the relative luxury of academia concerning the work of the Commission and the Report of the Commission are important – they enable us all to take the debate further. They should never, however, be allowed to distract from the importance of what victims and survivors told a nation

[18] Krog 1998.

struggling to make its way from the horrors of *apartheid* to the beginnings of a minimally decent society. It is difficult to conceive how any historical text can ever capture the pain of testimony of the heart.

Possibilities of living with bad memories

Is it ever possible, for those who truly suffer, to put the past behind them? Njabulo Ndebele suggests that:

> The verbalisation of pain and suffering through an official medium recognized as a result of change that was fought for (…) complicates relationships that were based on internalized assumptions. Their articulation raises the social temperature that [needs] at the same time (…) to be lowered (…). It should translate into visible measures for improving the lives of the victims of the past, who even while they are still in a state of severe disadvantage, *ought not to experience themselves any more as victims*.[19]

Important words, to which I shall return. They need to be amplified and heard. My question concerns the extent to which the goal to which they point is ever fully realized. To what extent is the burden of the past ever laid to rest? Adjacent to Ndebele's words, I offer those of Holocaust victim Primo Levi:

> This is the awful privilege of our generation and of my people, no one better than us has ever been able to grasp the incurable nature of the offence, that spreads like a contagion. It is foolish to think that human justice can eradicate it. It is an inexhaustible fount of evil; it breaks the body and the spirit of the submerged, it perpetuates itself as hatred among survivors, and swarms around in a thousand ways, against the very will of all, as thirst for revenge, as a moral capitulation, as denial, as weariness, as renunciation.[20]

Clearly some show a greater resilience than others, manifest in their ability to rise above the anguish of past suffering. Testimony that witnesses both to a willingness or desire to "get on with life", as well as a reluctance or inability to do so, is there to be heard and analysed. I would rather offer the comment of a young woman named Kalu; it highlights the internalized emotions inherent to the transition from the old to the new: [21]

> What really makes me angry about the TRC and Tutu is that they are putting pressure on me to forgive (…). I don't know if I will ever be able to forgive. I carry this ball of anger within me and I don't know where to begin dealing with it. The oppression was bad, but what is much worse, what makes me even angrier, is that they are trying to dictate my forgiveness.

Her words capture the pathos involved in the long and fragile journey

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[19] Ndebele 1999. Italics added.
[20] Levi 1976: 426. Italics added.
[21] See Verwoerd 1998. See also my "Getting on With life" (Villa-Vicencio 2000).

towards reconciliation. No one has the right to prevail on Kalu to forgive. The question is whether victims and survivors can be assisted *to get on with the rest of their lives* in the sense of not allowing anger or self-pity to be the all-consuming dimension of their existence. When my colleague, Wilhelm Verwoerd, reflected on Kalu's response, he referred to Ashley Forbes' response to his torture at the hands of the notorious torturer, Jeffrey Benzien. Although critical of the decision to grant Benzien amnesty, arguing that he failed to make full disclosure, he observed:

> I forgive him and feel sorry for him. And now that the TRC has showed what happened, I can get on with the rest of my life.

Not every victim and survivor deals with his or her past in this way. It is important, however, for *their own sake*, that victims and survivors are assisted (to the extent that it possible) to indeed get on with life. This does *not* mean forgetting the ghastly deeds of the past. This is usually not possible and probably not helpful. There is indeed a place for righteous anger, which can be a source of self-worth and dignity. To get on with life does *not* mean necessarily becoming friends with the person responsible for one's suffering. Very few accomplish this. It *does* mean dealing with the "ball of anger" that prevents one from getting on with life. And yet the graph of the journey forward is rarely a progressively even one. Such progress that is made in *getting on with life* tends to take place in concentric circles. Progress can be made. Time and circumstances of different kinds do assist the healing process. But there is also *deep memory* that reminds us that the past is never quite past. Bernard Langer, reflecting on the suicide of Primo Levi, forty years after the latter's release from Auschwitz, speaks of the "painful and uneasy stress between trauma and recovery".[22] Levi's prolific writing at no time fails to portray the presence of melancholy. Langer argues that:

> Levi, as a suicide, demolishes the idea that he had mastered his past, come to term with the atrocity of Auschwitz, and rejoined the human community healed and whole. Life went on for him, of course, though it is probably a mistake to think of his writings as a form of therapy, a catharsis that freed him from what he called the memory of the offence. It is clear from everything he wrote that survival did not mean a restored connection with what had gone before. The legacy of permanent disruption may be difficult to accept, but it lingers in his suicide like an abiding parasite.[23]

Levi's testimony is that of one who seeks to wash his conscience and memory clean. Refusing to reduce the immensity of his particular ordeal to "a capacity for evil buried in human nature somewhere", he is angry at

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[22] Langer 1998: xv.
[23] *Ibid*.

society's apparent indifference to the question as to what makes killers resort to the depths of humanity they do. And yet he insisted, "to a greater or lesser degree all were responsible". The "greater majority of Germans", he writes,

> " … accepted [the persecution of the Jews] in the beginning out of mental laziness, myopic calculations, stupidity and national pride…."[24]

Wrestling with memories of suffering and questions concerning the nature of evil, he killed himself. The concentric circles of others in the quest to get on with life are less decisive. Joe Seremane is angry with the Commission for failing to probe deeply enough into death of his brother Timothy Tebogo Sermane in the ANC Quatro Camp in 1981. . "You owe us a lot", he told the Commission. "Not monetary compensation, but our bones buried in shallow graves in Angola and heaven knows where else." He quotes words from Langston Hughes's *Minstrel Man*:[25]

> Because my mouth
> Is wide with laughter
> And my throat deep with song,
> Do you not think
> I suffer, after I have held
> My pain so long?

Whatever the truth of the various allegations (by Seremane and the counter charges by the ANC) the pathos of his words should not be missed. The question is: what can society do to help those who suffer to move on? In Ndebele's words, the question is how to promote

> visible measures for improving the lives of the victims of the past, who even while they are still in a state of severe disadvantage ought not to experience themselves any more as victims.

Learning to live together

The question really is, where do we go from here? The point is well made by Jose Zalaquett, who, having served on the Chilean National Truth and Reconciliation Commission, thinks back on what it has accomplished. "Leaders", he suggests,[26] "should never forget that the lack of political pressure to put these issues on the agenda does not mean they are not boiling underground, waiting to erupt." South Africa has bought itself time and

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[24] *Ibid*, pp. 23-42.
[25] *Ibid*.
[26] Borraine et al. 1994: 15.

space through the TRC and other transitional mechanisms to deal with those issues that brought it to the brink of collapse in 1990. The issues still need to be dealt with. The nation must, at the same time, move on. It is time to move on – to get on with life. The question is *how*?

How can South Africans assist one another to do so? Story-telling needs to continue. We barely know one another in this country. The healing of memories has only just started. Economic disparity needs to be redressed. The needs of the poor are not likely to be addressed merely because of a set of socio-economic clauses in the constitution. It will take political organization, public pressure and (probably) a measure of militancy by the poor themselves. For this to happen, democratic debate and the freedom of speech are needed.

And yet, as mentioned earlier in this paper, perpetrators, passive participants in gross violations of human rights and bystanders who, simply, allowed the atrocities to occur, harbour memories in their own way. Sometimes they are nostalgic memories of grandeur. Often they are bad memories of deeds done. It was the task of the Commission not only to restore the dignity of victims and survivors, but also to facilitate the reintegration of perpetrators into society as useful participants and productive members of a new social order. The task is a huge one. It always was beyond the capacity of any Commission. I have not addressed this matter in this paper. Simply, again, I draw attention to perpetrator memory in closing, as a reminder that the healing of the memories of victims and survivors does not take place in a protected user-friendly environment. Such healing often struggles to happen in a contested terrain where, in fact, the entire panoply of South Africa's past is struggling to deal with the emerging new reality of human existence.

How to heal a nation? What constitutes the material essence of living together? All this can probably be reduced to the seminal (but often tedious) debate around the question: *Who is an African*? It has to do with belonging and taking responsibility. Robert Sobukwe, the late PAC leader, thought that the only criterion for being an African was whether a person regarded Africa as his or her home. The Freedom Charter says Africa belongs to all who live within it. To make Africa home means to care about its problems – poverty, underdevelopment and alienation. It is in the self-interest of "yesterday's colonizers" to take on this responsibility. Whites and people of other ethnic origins who choose to do so need, in turn, in their present vulnerability to be reassured that their vigorous participation in the African family is welcomed rather than tolerated. Both the born Africans and the Africans by choice are needed to build South Africa's future.

Questions abound: What does it mean for a nation to be reconciled? Can a nation confess? What does national forgiveness involve? Jakes Gerwel suggests that an individualistic understanding of reconciliation limits our understanding of what reconciliation may mean at the national level. By clinging to an individualistic understanding, he suggests that we risk "pathologizing a remarkably reconciled nation by demanding a perpetual quest for the Holy Grail of reconciliation."[27] Recognizing that while many *individual* victims and perpetrators of gross human-rights violations are not reconciled, a lot of progress has indeed been made at a *national* level. There is yet a distance to travel. Some people refuse to make the journey, entrenching themselves in their own closed memory. At least we are not killing one another to the extent that we were in the 1980s and early 1990s. As was recently observed by Peter-John Pearson, a Roman Catholic working in Bonteheuvel:

> The level of coexistence that we have attained in South Africa is not something to be taken for granted. It is a huge improvement on what we had prior to 1994.
>
> And yet, mere coexistence robs me of the possibility of sharing in something new. It is tempting to settle for coexistence, and in so doing to accept the inequalities and indignities that continue to characterize South Africa. Our dream was for something new. It is a dream worth keeping alive. [28]

Unless the South African experiment in healing reaches victims and survivors of the *apartheid* years, and beyond that heals the hardened hearts of both direct perpetrators of gross violations of human rights as well as the benefactors of *apartheid*, the healing process that is taking place is likely to be incomplete. This would be a huge tragedy for a nation that has done so incredibly well in seeking to heal itself in so many other ways.

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[27] Gerwel 2000.

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CHAPTER 2

WORKS OF FAITH, FAITH OF WORKS

A REFLECTION ON THE TRUTH AND JUSTIFICATION OF FORGIVENESS

Erik Doxtader

ABSTRACT. This essay is a reflection on how South Africa's Truth and Reconciliation Commission (TRC) has articulated and defended the proposition that reconciliation affords victims of human rights abuses the opportunity to forgive their tormentors. While certainly not the only proposed benefit of reconciliation, the author believes that the controversy surrounding the TRC's call for forgiveness sheds light on the "problem of persuasion" that appears when institutional and quasi-institutional bodies attempt to generate public support for reconciliation.

Truth and Reconciliation. In the motion and instant of transition, this phrase issues a challenge to our understanding, politics, and faith. The meanings of its constituent terms are ambiguous, their relationship contested. How should we read the "and" that sits between "Truth and Reconciliation?" At times, these concepts and practices appear coupled; truth motivates reconciliation while reconciliation lends form to truth-seeking, helping to gather what Antjie Krog rightly sees as the dizzying and sometimes paralytic array of truth theory – correspondence, coherence, deflationary, pragmatic, redundancy, semantic, double, logical, subjective, and so on (Krog 1998: 461). On the other side of the coin, however, these goods of transition may stand in opposition. It is possible that reconciliation overwhelms and exceeds conventional notions of truth, leading us with a vision of testimony in which, citing Derrida, "truth is promised beyond all proof, all perception, all intuitive demonstration" (Derrida 1996: 63). More troublesome, reconciliation has been criticized as an institutional ploy, a theo-poetic remnant of colonization that, according to Wole Soyinka, allows for the "remission of sin in the immediate context of the unfinished business of [such] criminality" (Soyinka 1999: 75). In this light, the sin of reconciliation is its omission of truth.

What is the truth of reconciliation? What justifies our faith in the idea that reconciliation can energize the work of politics? Central to the ongoing controversy over the form and outcome of the South African transition, these questions ask after the relationship between reconciliation and communication. In part, South Africa's reconciliation process is composed of argumentation that calls on citizens to employ particular modes and attitudes

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of communication. As Wilmot James suggested in 1995, reconciliation has entailed a "campaign of persuasion" (James 1995: 83). Citizens want to know why it is in their individual and collective interest to move from the idea to the experience to the practice of reconciliation. Certainly, such explanations are not easy to construct. The very occasion of reconciliation, historical animosity and deep disagreement over the nature of justice and equality, marks a moment when the grounds of collective agreement cannot be presupposed. Accordingly, a compelling defence of reconciliation requires advocates to recognize and bridge an enormous range of needs and opinions. Competing visions of post-*apartheid* democracy must be examined and somehow related. The contested theology of reconciliation must be translated into a secular language of nation-building. The dream of reconciliation must be explained such that it does not appear as a sacrifice that exacerbates the reality of *apartheid* injustice.

The potential for reconciliation has much to do with the means and limits of persuasion. In this essay, I want to consider how South Africa's Truth and Reconciliation Commission (TRC) has articulated and defended the proposition that reconciliation affords victims of human-rights abuses the opportunity to forgive their tormentors. While certainly not the only proposed benefit of reconciliation, I believe that the controversy surrounding the TRC's call for forgiveness sheds light on the "problem of persuasion" that appears when institutional and quasi-institutional bodies attempt to generate public support for reconciliation. Precisely, when individuals perceive that "God has gone missing" or at those moments when the expectation of repentance is left unfulfilled by an oppressor, the claimed (theological) value of forgiveness can appear either hollow or contingent on the (political) problem of how to actualize justice in the wake of oppression and atrocity. If so, it may be necessary for advocates of reconciliation to supplement their case for forgiveness. To this end, it may be useful to define forgiveness as a mode of discovery and invention, a speech-act in which victims of violence are able to re-present their historical identity in a manner that cultivates both the potential (*dunamis*) and the *ēthos* of collective (inter)action. Intended to promote dialogue between theological and political-theoretical views of forgiveness, and motivated by a fear that the South African reconciliation process is concluding prematurely, this redefinition of forgiveness may clarify why reconciliation is a process more than an act, its truth a commitment to the ongoing invention of those (communicative) goods that sustain political life.

The legacy of a negotiated revolution, an ambiguous post-amble, and legislation that plotted only the jurisdiction and technique of reconciliation,

the TRC spent considerable time explaining the nature and potential value of its work. One of the striking features of this campaign was the Commission's claim that real reconciliation is neither cheap nor easy. At the first gathering of the Commission, for instance, Desmond Tutu argued that the "work of our Commission is helping our land and people to achieve genuine, real and not cheap and spurious reconciliation." The Commission's Vice-chairman, Alex Borraine, echoed this position when he noted, "It must be stressed as strongly as possible that reconciliation comes at a price. It is never cheap, it's always costly and it is always painful" (Borraine 1998: 4). Later, in his introduction to the TRC's *Final Report*, Tutu rendered the argument in more precise terms:

> True reconciliation is not easy; it is not cheap. We have been amazed at some almost breath-taking examples of reconciliation that have happened through the Commission (…). On the whole we have been exhilarated by the magnanimity of those who should by rights be consumed by bitterness and a lust for revenge; who instead have time after time shown an astonishing magnanimity and willingness to forgive. It is not easy to forgive, but we have seen it happen. (TRC Final Report, Vol. 1; para. 71)

By description and enthymeme,[1] true reconciliation entails sacrifice. Frequently, the Commission argued that much of the cost of reconciliation would be borne by *apartheid*'s victims. In its call for testimony detailing the nature and extent of human-rights violations, the TRC asked citizens to step forward, document their experience, and reveal their suffering. This show of vulnerability – re-living past trauma on a public stage but with uncertain audience – led one member of the Human Rights Committee to note that the hearings were at times brutal and sometimes seemed bizarre and heartless (Gobodo-Madikizela 1996: 1).

In his explanations of the reconciliation process, Tutu maintained that while testimony might open old wounds and foster alienation, it could also pave the way to forgiveness (Tutu 1997: 1). Specifically, the Archbishop argued that the naming of offences and spoken narratives of suffering could motivate expressions of forgiveness that would both blunt the desire for

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[1] *Enthymeme* is defined as (1) The informal method of reasoning typical of rhetorical discourse. The enthymeme is sometimes defined as a "truncated syllogism" since either the major or minor premise found in that more formal method of reasoning is left implied. The enthymeme typically occurs as a conclusion coupled with a reason. E.g. "We cannot trust this man, for he has perjured himself in the past" In this enthymeme, the major premise of the complete syllogism is missing: a. Those who perjure themselves cannot be trusted. (Major premise – omitted); b. This man has perjured himself in the past. (Minor premise – stated); c. This man is not to be trusted. (Conclusion –- stated). (2) A figure of speech which bases a conclusion on the truth of its contrary, e.g. "If to be foolish is evil, then it is virtuous to be wise".
(Cf. http://humanities.byu.edu/rhetoric/Figures/E/enthymeme.htm).(Eds.)

revenge and encourage repentance from perpetrators. A step further, Tutu repeatedly used the testimony of Beth Savage to support his contention that forgiveness was beneficial even when it did not lead perpetrators to confess or apologize for their crimes (TRC Final Report, V: 39). Invoking a sort of post-lapsarian[2] logic, balanced carefully with the claim that *apartheid* was an objective evil, Tutu argued that "The victims of injustice and oppression must be ready to forgive. That is a gospel imperative" (Tutu 1994: 223). More directly, he noted in the Symposium following Simon Wiesenthal's challenging work *The Sunflower* that,

> [F]orgiveness is not facile or cheap. It is a costly business that makes those who are willing to forgive even more extraordinary. It is clear that if we look to retributive justice, then we could just as well close up shop. Forgiveness is not some nebulous thing. It is practical politics. Without forgiveness, there is no future (Tutu 1998: 267-8).

Reconciliation is costly as it asks citizens to forgive offences that may well be unforgivable. At a theological level, the sacrifice is a gift, a conditioning cause or result of divine justification. In mainstream Christian doctrine, this position follows from the Pauline view that reconciliation is a "restoration of men to fellowship with God", and a human effort to "restore community and communication between enemies" (Kistner 1995: 80; Wells 1997: 3). Occasioned by violence, discovered at the "limits of life", reconciliation is an act, not a process (Taylor 1960: 84). It occurs as God's grace is received through (justified by) an "ethical" faith that facilitates the transcendence of conflict (*ibid.*: 65). Through the sacrifice of Christ and its remembrance, the gracious gift of reconciliation engenders human fellowship and restores humanity's covenant with God (*ibid.*: 48-59, 100). Both public and personal, this sea change depends heavily on the "undeserved love" of forgiveness (Smit 1996: 105; O'Neill 1999: 21). The ability to forgive transgressions allows both the remission of sin and the creation of "right relations." Moreover, as Robert Schreiter has argued, forgiveness is a "cause" of repentance:

> We discover and experience God's forgiveness of our trespasses, and this prompts us to repentance. In the reconciliation process, then, because the victim has been brought by God's reconciling grace to forgive the tormentor, the tormentor is prompted to repent of evildoing and to engage in rebuilding his or her own humanity. (Schreiter 1998: 45).

Not uncontested, this view holds that human forgiveness begins as the oppressed give voice to their experience of suffering. The force of this lament, according to both William O'Neill and Robert Shriver, yields

[2] A concept in Christian theology, referring to the doctrine of the Fall of Man and the subsequent expulsion from Paradise. (Eds.)

"memory suffused with moral judgment" and occasions contrition from oppressors. Far from forgetting, forgiveness is a confrontation modelled on God's outpouring love (Wells 1997: 5-6). A centrepiece of his *ubuntu* theology, Desmond Tutu has relied heavily on this kenotic[3] view to explain the value of reconciliation. An expression of human interdependence, forgiveness mirrors God's self-sacrificing love. Thus, as we recognize our dependence on God and neighbour, forgiveness appears as a productive vulnerability. The abandonment of sovereign identity allows humans to redress oppression through a (paradoxical) relation of difference (Battle 1997: 127). Forgiveness overcomes sin as it strives toward mutuality. The breaking down of the middle wall of partition" energizes the development of an "alternative society" (Battle 1997: 115).

Perhaps directed less at Tutu's position than at so-called *third-way theology*, many South African theologians have criticized the idea that forgiveness is a means of mediating conflict. Written at a time when reconciliation was a dream within the nightmare, the 1985 *Kairos Document* issued a trenchant critique of state theology and its "mainstream-church" counterpart. Concerned that it had undermined opposition to *apartheid*, the authors of this short tract redefined reconciliation, in part by distinguishing the attitude of forgiveness from its actuality.[4] The willingness to forgive "one another at all times even seventy times seven times", they claimed, is productive only when it is *preceded* by the "genuine repentance of the *apartheid* regime" (Kairos 1986: 34). In distinction to Schreiter's interpretation, the *Kairos Document* held that forgiveness was appropriate only when it followed contrition.

The *Kairos Document* is a reminder that the justification of forgiveness is risky when it justifies complacency in the face of oppression. Today, the signs of the times offer a similar warning: in the crucible of politics, realism may trump faith to the point where calls for forgiveness go unheard. Between the theological and the secular, citizens want to know what the

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[3] The concept of "kenotic" usually refers to the minority position in Christian theology that holds that Christ, in becoming man, surrendered part of the divine characteristics attributed to him as member of what is conceived to be the Holy Trinity. In the present text passage, however, the term rather refers to the idea of Christ's becoming man, *tout court*. (Eds.)

[4] The *Kairos Document* noted,

> it would be totally un-Christian to plead for reconciliation and peace before the present injustices have been removed. Any such plea plays into the hands of the oppressor by trying to persuade those of us who are oppressed to accept our oppression and to become reconciled to the intolerable crimes that committed against us. This is not Christian reconciliation, it is sin (Kairos 1986: 10).

"practical politics" of forgiveness will do for them in practice. In post-*apartheid* South Africa, this case has not been easy to make. For one, the inspiration to forgive may be undercut by its very object – history. As Denise Ackerman points out in her discussion of narrative truth-telling, the experience embodied in testimony may or may not be recognized. Expressions of forgiveness may be overshadowed by conflicts over how to interpret the truth of a victim's story. If so, the intention of forgiveness is subverted by its expression. What it means to forgive is at odds with its meaning. At a structural level, the church's defence of forgiveness is haunted by its historical support of *apartheid*. Combined with the perverse consequences of *apartheid* theology, this legacy has led some critics to question whether it is appropriate for the state to sponsor a process of "corporate forgiveness". Closely related, debates over the form of post-*apartheid* justice have problematized the value of forgiveness. Theological defences of forgiveness, like those proffered by Schreiter and Wells, tend to assume a reciprocity that has yet to appear. The architects have not apologized. Contrition and repentance have been in short supply at most amnesty hearings. This shortfall has bolstered the perception that calls for forgiveness contributed to a dispensation in which, according to Ingrid Woolard, there is "black rule and white power." Thus unable to see its transformative power, Anthony Balcomb and Hein Marais both suggest that forgiveness has come at the expense of social justice and material redistribution. Moreover, they echo Soyinka's claim that the theological grounds of forgiveness include a doctrine of systemic sin that clouds the difference between the objective evil of *apartheid*'s oppression and its legitimate resistance.

The political features of transition have cast doubt on the warrants that back the call to forgive. A potential legitimation deficit for the TRC, this problem has led some to turn to Hannah Arendt's brief explanation of why forgiving is a basic (ontological) truth of politics. Surprisingly, however, many of these appeals have not related Arendt's account of forgiveness to the context in which it arises: speech and action. Creatures of plurality, action and speech sustain human appearance. They enact and embody initiative, allowing individuals to disclose an identity and enter into social relations. Thus, Arendt claims, speech and action are directed to the complex middle of human life. Beyond technical means or prescribed ends, each is a *process* that both reveals what stands between us and constitutes the substance of our relationships. However, this creative power is not without risk. Speech and action are boundless, unpredictable and anonymous. As such,

> [H]e who acts never quite knows what he is doing, that he always becomes ‘‘guilty’’ of consequences he never intended or even foresaw, that no matter how disastrous and unexpected the consequences of his deed he can never undo it, that process he starts is never consummated unequivocally in one single deed or event, and that its very meaning never discloses itself to the actor but only to the backward glance of the historian who himself does not act (Arendt 1958: 233).

We are doers and sufferers both and simultaneously.

The power of creativity, the initiative of beginning, comes at the cost of self-sufficiency. This lack is the motive and necessity of forgiveness, “the only reaction that acts in an unexpected way and thus retains, though being a reaction, something of the original character of action” (Arendt 1958: 241). A mutual release that alleviates the risk of hypocrisy and checks the will to violence, Arendt claims that the performance of forgiveness is a deeply personal enactment of love.

> For love, although it is one of the rarest occurrences in human lives, indeed possesses an unequalled power of self-revelation and an unequalled clarity of vision for the disclosure of *who*, precisely because it is unconcerned to the point of total unworldliness with what the loved person may be, with his qualities and shortcomings no less than with his achievements, failings, and transgressions. Love, by reason of its passion destroys the in-between which relates us to and separates us from others. (Arendt 1958: 242)

Significant ambiguity attends this view, the closure of that (relational) middle that sets humans into opposition and relation. On one side, forgiveness is a gift that may or may not be returned. Its desire, however, if composed as a call for the self to construct its lack *through* the other, may lend itself to a self-denigration where the possibility is ignored that love flourishes only as individuals cultivate and protect one another’s solitude. On the other side, Arendt’s notion of forgiveness is addressed to speech and action but appears to proceed outside of both. Or, as Jay Bernstein has put the matter,

> the universality of the mutual recognitions forming the community of conscience leaves blank the question of determining the objectivity of the actions of those agents (Bernstein 1996: 36).

What is the relational content of forgiveness? Can it proceed through the medium of speech?

Addressing these questions directly, Bernstein contends that,

> The act of forgiveness is an act of recognition through which, by releasing the transgressor from her deed I release myself from being hurt. Forgiveness must express my particularity as well as renounce it (Bernstein 1996: 62).

It is precisely this dialectic which is of interest to us. Forgiveness is rooted first in a specific sort of remembrance, a recollection of an offence that

allows an individual/sufferer to re-present their experience and identity. Coherent but alone, this self is the hard heart of the sufficient/sovereign subject. Its sacrifice or renunciation, however, converts the alienation of melancholy into a process of mourning in which the past is remembered and overcome simultaneously. Thus, recalling the terms of the *Kairos Document,* the *attitude* of forgiveness is a moment of historical potential. In the best case (notably: forgiving that leads to expressions of contrition or remorse) this attitude reveals a shared non-identity that can be used to build norms of morality and justice. In the event that repentance is not forthcoming, however, the sacrifice of forgiveness is still productive to the degree that it excises the *force* of a transgression from the relational space of sociality, politics and history-making.

Cast as a performative act of recognition, and perhaps separated a bit from Bernstein's debt to Hegel, the logic of forgiveness shows an important rhetorical character, a tropological movement between the discovery of identity and the appearance of opposition that funds the invention of human identification. Evident in Jesus' last words, "Father, forgive them for they know not what they do", this movement has several dimensions.

1. First, the call to forgive allows individuals to narrate a reply to the question, What has been done? In the face of trauma, this expression of experience enacts a process of "name giving" and constitutes a (re)discovery of identity.
2. Second, loosely analogous to consciousness-raising, this identity shows an oppositional form. Implicitly or explicitly, it announces a contradiction: the doings of an oppressor defy justification to the degree that they replace the relational quality of action with instrumental violence. In turn, concerned perhaps less with guilt than hypocrisy – the disparity between being and appearing – this contradiction marks a false appropriation of the Word, the heretical assumption that the power of speech and action is ours alone. Or as Walter Benjamin (1996) put the matter, forgiveness (retrospectively) delineates that moment when human action has supplanted the (relational) faith of language with the violence of law.
3. Third, however, the oppositional stance of forgiveness shows a commitment to the vulnerability of identification. The appeal to the Father, the Word of God, concedes that justice is borne of relations which humans cannot fully control. The assumption of identity is equally an assumption of lack. Thus, the character of forgiveness is precisely that, a sort of character or *ethos* in which the creation of shared meaning

> and identification rests on the willingness to concede one's dependence on the other. This gesture can be read as both actual and potential. Lacking a corresponding expression of remorse, forgiveness is productive to the degree that it replaces the desire for revenge, a will to negation that lends standing to the very oppression it condemns, with a commitment to invent history. Performed in language, forgiveness is the act of faith needed to undertake the work of history. Alternatively, when forgiveness does motivate confession, it marks a common opposition, a condition of shared non-identity that can serve as a basis for dialogue.

If, as Kenneth Burke suggests, words about words are more than a bit like words about God, the distinctions that I am drawing are small but perhaps not insignificant. In the TRC's effort to explain and defend reconciliation, the Commission has sometimes defined forgiveness as an act of communication more than a communicative process that takes shape over time. If it was/is a campaign of persuasion, this approach may have sold the reconciliation process a bit short. Faced with a set of publics that have good reasons to doubt the theological case for forgiveness, there may be some persuasive benefit to the idea that forgiveness is an attitude, an *ethos* of collective life.[5] Both inside and outside language, perhaps across the political and the theological, it is an expression of faith in which the power of creativity is situated in a heartfelt commitment to mutuality that less fiats over difference than draws from it to reveal the necessity of human interaction. Far from closing the middle of human relations, forgiveness performs the middle voice and confronts us with the challenge of cultivating rather than declaring our politics.

To make an end, I want to tie these reflections to the overarching question that has called us together: the perplexing relationship between truth and politics. Viewed admittedly from a distance, the star of reconciliation seems to be fading. Perhaps, prematurely. With Thabo Mbeki's election as President of the Republic of South Africa in 1999, the stress of the transition now seems to rest on the reconstruction of society – the counterpart of reconciliation in South Africa's interim constitution's

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[5] This is not an empirical claim nor does it presuppose an intentionalist view of persuasion. To the contrary, my suggestion is simply that traditional definitions of forgiveness may generate controversy to the degree that they do not take into account that the reconciliation contains both a theological and political dimension. While this controversy may be productive, it may also undermine the ability of quasi-institutional bodies like the TRC to explain the civic benefits of reconciliation. In this sense, the proposal here must be further developed to show that forgiveness can function as a modality of political representation.

post-amble – and overcoming the legacy of *apartheid* economics. However, if civil society is to play a role in this work, if economic interest is to be derived from experience rather than sheer institutional (or International Monetary Fund) mandate, the communicative processes that compose reconciliation may have a role to play. The much-heralded antipathy between political economy and reconciliation is cemented when the latter is stripped of its inventional power, its ability to discern the potential for collective action from the midst of historical opposition and violence. In some small regard, as a bit more than a choice and a bit less than a duty, the process of forgiveness may have a role to play here. At the very least, it is problem that will return to the commons as the Amnesty Commission concludes its business and announces its recommendations. How shall we speak of forgiveness then?

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CHAPTER 3

RECONSTRUCTING THE PAST BETWEEN TRIALS AND HISTORY

THE TRC EXPERIENCE AS A "REMEMBRANCE SPACE"

Andrea Lollini

*ABSTRACT. What enables democracy to develop and what allows the consolidation of new democratic institutions after a political transition, is the search for "truth" and not the defence of only one "truth". The search for truth about the past must be considered to be a dynamic process that is the result of collective participation. To attain this goal, a society needs to establish a particular space in which to execute the fundamental public and collective process of dealing with the past. After examining aspects of the European reactions to World War II (handling of the French Resistance, war criminals, and of Holocaust deniers) in this light, the author concentrates on the South African TRC, concluding that it represents probably one of the most interesting remembrance spaces (*lieu de la mémoire) *of our time.*

In July 1997 the French newspaper *Libération* published the proceedings of a unusual debate. Some historians and journalists held a round table with two famous members of the French Resistance during World War II, Mr and Mrs Aubrac.[1] The debate focused on delicate topics concerning the recollection of certain controversial episodes of the French Resistance history. What was discussed was the suspicion of treason and "collaboration" of some Resistance combatants. In general, the participants at the round table analysed the role that the Resistance should have in the French collective memory and especially, whether the history and the remembrance of the Resistance should be considered something untouchable, monolithic and "holy" as a part of French Republican cultural heritage. The discussion also stressed the need to write a critical history of the Resistance in its relationship with the construction of national identity.

A few months later, in the autumn of 1997, the criminal trial of the former official of the Vichy regime,[2] Maurice Papon, started in Bordeaux. He was charged with complicity in crimes against humanity arising from his role in the Jewish deportation during World War II.[3]

Interestingly, these two events took place at the same time. Obviously they are not the same thing: one is simply a debate involving some

[1] See *Libération* 9 Juillet 1997, also at: http: //www.liberation.fr.
[2] About the Vichy regime (that collaborated with the German aggressors in France during World War II), see Rousso 1990, 1994.
[3] See Conan 1998; Gandini 1999.

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specialists, while the other is an actual tribunal.

The round table held by the newspaper *Libération* was about the Resistance, while the latter was a the prosecution of a member of a regime allied with the Nazis. However, it is important to note that fifty years after the end of World War II a "remembrance malaise" is still perceptible. This "remembrance malaise" relates not only to the memory of the events of World War II, but also to the recollection of the political transition after the end of the war. In other words, what is still strongly debated is not only the responsibility for crimes committed during the war, but also the events that represented the "genesis" (or origins) of the French Republican order. What is bitterly debated is the "founding myth", in the anthropological sense, upon which the Republican system is based.

In this situation there are some elements that could be compared with South African political transition after the dismantling of *apartheid*. There is the question of justice, there is the need for "truth" about the past and the need for firm condemnation of the previous regime. But there is also the need to talk about national liberation movements and the role that they played in the struggle. In fact this is not so different from what South Africa has experienced recently through the experience of the Truth and Reconciliation Commission (TRC).

What is completely different is that the French debate mentioned earlier took place fifty years after the event. South Africa is facing these questions during its political transition and these questions are characterizing the transition itself.

Throughout Europe and particularly in France, Germany, Austria and Italy, after the Barbie, Touvier, Papon and Priebke' criminal trials, and after the criminal proceedings against the Holocaust deniers, in the words of the French historian Henry Rousso, a veritable trend toward the "legal reading of history" has developed.[4]

Those criminal trials were characterized by a vast historical background in which individual criminal responsibilities were absorbed by the complexity of the historical dynamics.[5] For these reasons there is a risk that the contamination between juridical level and historic context may cause distortion in the application of the rules of evidence. The result could be a lack of legitimacy or a dysfunction of the procedural tools.

Some scholars have defined those trials as something like a "second

[4] See Rousso 1998: 86.

[5] For a complete panorama about the criminal trials, in Europe after World War II, and in particular the trials in France, Belgium, Netherlands and Germany, see the bibliography in footnote 60 in Huyse 1999.

purge" after the end of World War II. This phenomenon showed a firm tendency to consider the discourse about the past, and to remember it from a legal perspective. This overlapping between trials and historiography was also evident during the criminal trials of the Holocaust deniers, in which some Courts have decided those cases by transforming historical interpretations into "forensic truth".[6]

It is important to stress that a lot of European domestic criminal codes have introduced the offence of "Holocaust denial" in reaction to publications that seek to write a "different" history of the Jewish genocide. "*The assassins of memory*", according to the historians Pierre Vidal Naquet[7] and Yosef Haym Yerushalmi,[8] are persons or organizations that deny the Holocaust or cast doubt on its essential aspects: the number of Jewish victims, and the existence of concentration camps and gas chambers. Such denial is unfortunately widespread not only in continental Europe but also in the United Kingdom and the USA.[9] Another example of this complex situation is the recent debate about the role that the Catholic Church and Pope Pius XII played in the Jewish Genocide. This discussion has emerged after the publication of John Cornwell's controversial book *Hitler's Pope,* which explores the role the Vatican played in endorsing Hitler's regime[10].

Indeed, these examples imply that, fifty years after the end of the war, political transition in Europe is not yet fully concluded. The debate about the attribution of responsibility for crimes is still open, and it often surfaces in a very dangerous way as in the case of the Holocaust deniers. The European Union and individual countries in Europe have reacted to this deeply worrying situation by implementing a juridical strategy based on criminal trials. Forensic truth has been selected as being more authoritative than historical truth. Juridical tools are deemed more useful than historical analysis, which aims to defend the remembrance of past events.

Many historians have strongly criticized this way of transposing historical debates into tribunals. They have also strongly criticized the possibility of performing a thorough and rigorous historical analysis through the technical rigidity of the juridical tools of criminal procedures, such as the rules of evidence and cross examinations.

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[6] For the relationship between the concept of "historic truth" and "forensic truth", see Baruch *et al.* 1998; Le Crom & Martin 1998; Ferrajoli 1989: 18-69.
[7] See Vidal-Naquet 1985.
[8] See Yerushalmi 1982, 1998: 7-21.
[9] For a complete analysis of the criminal punishment of the crime of Holocaust denial see Fronza 1999.
[10] See Cornwell 1999.

The "*winner-loser*" approach is still used. In other words, today, trials and the authority of the judgement are one of the ways to give authority to the interpretation of past events. From this perspective, there is a continuity between the Nuremberg trials, the trials in domestic courts after the end of the war, the Barbie, Touvier, Papon and Priebke' prosecutions and the Holocaust deniers' trials.

What is important to note is that this ambiguous relationship between history and law is evident also in the trials of International Criminal Tribunals for former Yugoslavia and for Rwanda. For example, the first part of the Akayesu judgement, one of the first judgements for genocide, is dedicated to a large reconstruction of the historic background of the Rwandan genocide. The same type of historic re-construction is present into the Tadic judgement and into the Milosevic Indictment of the International Criminal Tribunal of former Yugoslavia.

In this context, two opposing forces are forging the collective memory structure of past dramatic experiences during and after the war:

1. On the one hand, the increase in historical studies and historical research about the war, about the political transition after the end of the war, and about the responsibility for crimes committed during the war.
2. On the other hand, the accumulation of trials and judgements on the same cases which are subject of the historical studies.

I would characterise the first force as "the hypertrophy of historiography", and the second one as "the hypertrophy of judgements". These ways of dealing with the past are progressively monopolizing the discourse about the past.

However, what is important to underline is that these two ways of dealing with the past do not help to maintain a distance with the dramatic past of the war and with the history of totalitarian regimes. They do not represent something that can lead, for example, to the writing of a critical history of the French Resistance during World War II; neither are they conducive to wider acceptance of the fact that common people played an important role in genocide, as demonstrated for Germany for the same period in D.J. Goldhagen's book *Hitler's willing executioners*[11]. In other words, neither the strictly historical approach nor the juridical approach help to lift the burden of the winner–loser approach from the discourse about the remembrance of the war's dramatic past; neither are they conducive to

[11] See Goldhagen 1997.

healing the wounds that are still open.

In Europe, for example, political clichés are much in circulation, and stereotypes about the past seem to be defended a-critically. The modern political system is based on conventionalised versions of history. "Fascism–anti-fascism", "communism–anti-communism", "fascism–communism", – these are the oppositions that even today are very often used in domestic political debates.

These considerations can be of use for a reflection on the South African case.

For European observers, South Africa's political transition and the TRC system are something that goes beyond the European approach of dealing with past crimes and abuses.

I do not wish to discuss the problem of how "transitional justice" can be dispensed after a previous authoritarian regime. I do not wish to emphasize the potentially beneficial effects of prosecution of the perpetrators, or the opposite idea of the importance of dealing with the past crimes through reconciliatory strategies like the TRC system.

What I would like to stress here is that the instrumental utilization of juridical tools and criminal trials in order to cope with mass crimes leaves a very unique mark on the perception of the past, and of how the past should be remembered. The widespread utilization of criminal trials for the purpose of carrying out political transition after the war has deeply characterized what we consider to be a "truth".

Frequently the concept of " forensic truth" is automatically considered to be concurrent with the concept of "historical truth". For example, trials (like the Touvier, Barbie, Papon, and Priebke' trials) have been celebrated as a way of reaffirming the solidity of the collective memory of the war. This is like saying that an "authoritative truth" is needed. This kind of truth has to be confirmed by other judgements when the cohesion surrounding this concept start to be criticized.

In South Africa the "Conference for a Democratic Future", the political transition which has been largely negotiated and in particular the procedures and the objectives of the Truth and Reconciliation Commission, make up an experience that goes beyond the strictly juridical or historical approach[12]. The South African debate on remembrance of the past started within a

[12] For a general bibliography about the relationship between criminal trials and political transition see Linz & Stepan 1978; O'Donnell et al. 1986; Huntington 1991. For an analyse of the role of the trials during the political transitions see Kirchheimer 1961; Hannover 1966; Demandt 1990.

perspective of reconstruction. The process of dealing with the past has been developed with the aim of creating a new community. The process of nation-building, in which the TRC has played a fundamental role, seems to be a veritable case of *res publicam constituere*, "constructing the common good". For these reasons, the South African process of confronting the past had been necessarily to be collective and public.

What is more difficult to achieve is to construct a collective memory background that in the future will prevent the possibility of developing shameful responses such as the Holocaust denials. In this sense it is of the greatest importance that the *Promotion of National Unity and Reconciliation Act* ruled out the possibility of blanket amnesty. Instead, the Commission grants amnesty only on the basis of a strictly personal "full disclosure of facts". Only in this way does it become manifest that there were *people* behind the *apartheid* system. Paradoxically the utilization of criminal trials for mass crimes has made it possible to determine the responsibilities of only a few commanders.

Neither at the transnational level nor at the domestic level were criminal proceedings able to deal with personal guilt. The individual criminal acts were absorbed by the collective context of mass crimes committed by regimes, by military organizations and by criminal states. As we have seen in the European case, such ambiguity is at the basis of the need to continue to prosecute; this was the challenge, for example, of the Touvier and Papon trials.

The TRC findings and the final *Report* could be considered as a "starting point" for the development of the collective memory of the *apartheid* regime. By contrast, juridical decisions, largely utilized in Europe, represent the "final point". The judgement is something that cannot be discussed, something that crystallizes the events into the concept of "forensic truth". The judgement represents the negation of dialogue. In other words, trials simply reproduce the conflict, and they are absolutely not a collective thing. In trials, the judges are compelled to arrive at the sentence on the basis of esoteric judicial procedures, and in terms of a technical judicial language that is incomprehensible to the people at large.

This is the paradox of judgement as a conceptual category. Obviously it is used as a basis in juridical matters but also in historical analysis. Judgement makes it possible to choose rigorously between two opposite possibilities. In other words, it creates two radically alternatives "truths".

The TRC system, in particularly in the South African form with the refusal of the blanket amnesty by imposing a personal full disclosure of facts, has probably introduced a different way of dealing with the past. The

panorama drawn by the TRC hearings showed that "different controversial realities" have co-existed. Beyond the shameful background of the *apartheid* system, other crimes have been committed, and in recent period involved a lot of different "histories" have been experienced. Clearly, a firm position must be taken in the face of crimes. Indeed, from the perspective of the future, what is important to note during a political transition of this calibre are two complementary dangers: the danger of creating "myths", and the danger of the "sanctification" of only one "truth".

The TRC has played a new role in the attempt to escape the Manichean[13] interpretation of the past, in particular by acknowledging the centrality of "victim's words" in the process of dealing with the past.

In conclusion, what enables democracy to develop and what allows the consolidation of new democratic institutions after a political transition, is the search for "truth" and not the defence of only one "truth". The search for truth about the past must be considered to be a dynamic process that is the result of collective participation. To attain this goal, a society needs to establish a particular space in which to execute the fundamental public and collective process of dealing with the past. In this sense, the TRC represents probably one of the most interesting remembrance spaces (*lieu de la mémoire)* of our time.

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[13] *Manichaean*: referring to a scheme of thought associated with the name of the religious innovator Mani (Persia/Iran, 3rd century CE), and positing a radical division of the world into good and bad; in fact the scheme has much older antecedents, e.g. in Zarathustrian thought. (Eds.)

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CHAPTER 4

RHETORIC AND TRUTH: THE SOUTH AFRICAN SCENE

Yehoshua Gitay

ABSTRACT. The author uses two biblical descriptions of the destruction of the Temple (587 BCE) to elucidate the contrast between factual and poetic descriptions of disaster. Turning then to the testimonies heard at the Truth and Reconciliation Commission he claims that these are, in fact, acts of identification: between the feelings, attitude, suffering of the victims and the audience, the commission members, the media. Obviously this sort of identification cannot be false, it must manifest the truth. But truth, facts, reality, are not communicative, and hence not as persuasive as self-evidence. The testimonies heard at the Truth and Reconciliation sessions produce a rhetorical discourse that invites a rhetorical analysis mainly for the sake of studying the process of establishing the "story" of the nation's collective memory through the various testimonies.

For over a hundred generations, since 587 BCE, on the ninth day of the Hebrew month of Ab, which is the traditional date for the fall of Jerusalem and the destruction of the Temple of Solomon by the Babylonians, Jews all over the world gather together and read the Biblical reflection on that national catastrophe.

Interestingly enough, this historical disaster is presented through two different literary media in the Hebrew Bible: a prosaic, historiographical account (2 Kings 25; Jeremiah 52), on the one hand, and a poetical account, the Scroll of Lamentations, on the other. Lamentations is a poetic proclamation of five poems referring to the destruction of the Temple.

The poetic account of Lamentations, rather than the historical "factual" presentation, is the text read at the synagogues on the traditional memorial day of the fall of Jerusalem. The question is why? The historical account narrates the events in minute detail, intending to present an accurate and coherent description of the fall; why was it not chosen as the narrative that perpetuates the event in the course of the national reading on the memorial day?

For the sake of demonstration I shall read a few sentences from the prosaic narrative, and then I shall read verses from Lamentations, seeking to draw conclusions regarding the poetics of prose versus poetry, and the impact on the audience.

> Zedekiah rebelled against the King of Babylon. And in the ninth year of his reign, in the tenth month, on the tenth day of the month, King Nebuchanezzar of Babylon came with all his army against Jerusalem and laid siege to it (…) on the ninth day of the fourth month, the famine became so severe in the city that there was no food for the people of the land … (2 Kings 25: 1-26)

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Now let me read the following verses from Lamentations:

> Even the jackals offer the breast and nurse their young (…) the tongue of the infant sticks to the roof of its mouth for thirst / the children beg for food but no one gives them anything. Those who feasted on delicacies perish in the streets (…) now their visage is blacker than soot. They are not recognized in the streets; their skin has shrivelled on their bones: It has become as dry as wood. Happier were those pierced by the sword than those pierced by hunger (…) The hands of compassionate women have boiled their own children. (Lamentations 4: 2-10)

The singularity of the famine of the historical narrative has been transformed through the poetry of Lamentations into a universal feeling, shared by every human reader/listener who is shocked by the most awful expression of the starvation: a mother cooks and eats her baby. That is to say, the medium of poetry reaches for a different goal than the medium of the historical account. The historical medium seeks to narrate *what* happened while poetry re-tells *how* we feel regarding the event. The "what" is just a means of giving the information in a coherent way. The "how" is the happening itself.

The point is that in order to communicate, we need to seek a response. Thus, it is not enough to know *what* we ought to say, claims Aristotle in his *Rhetoric* (1403b), we must also say it as we *ought*. Aristotle explains as follows:

> We ought in fairness to fight our case with no help beyond the bare facts: nothing, therefore, should matter except the proof of those facts. Still (...), other things affect the result considerably … the way in which a thing is said does affect its intelligibility (1404a).[1]

However, Aristotle stresses: "Nobody uses fine language when teaching geometry" (1404a). Indeed, Aristotle points to the crux of the matter: there is a distinction between two sorts of discourse: "geometry", and the other. This distinction has been elaborated further by Perelman (1982), in terms of the juxtaposition of scientific and non-scientific discourse. This is the distinction between dialectical argumentation and analytical argumentation. The analytical format is the scientific one, it is provable, while the non-scientific format utilizes quasi-logical arguments, which are not precise scientifically and actually are not provable. Speeches which seek to affect their listeners through stirring emotions utilize the dialectical approach since, at the end of the day, the goal is not so much to present the bare facts, e.g., the reference

[1] Clearly, W. Rhys Roberts's English translation of *Rhetorica* was used and quoted literally here, as in: Aristotle, 2001 (1941), *The Basic Works of Aristotle* ed. R.M. McKeon (New York: Modern Library, first edition Random House, 1941, pp. 1317-1451). This translation is highly respected, and for good reasons, but differs considerably from the more literal one presented in: Aristotle, 1991, *Aristotle on rhetoric: A theory of civic discourse*, Kennedy, G.A., ed., New York/ Oxford: Oxford University Press. (Eds.)

to the famine in Kings, but rather to evoke emotions that stimulate the readers to respond; a case in point is the vivid description of the famine in Lamentations.

This explains why the deliberative genre, that is, political speeches, differ in their literary/stylistic design from legalistic speech. Legalistic speech seeks to reveal the bare facts, while deliberative speech intends to affect, to raise sympathy, to communicate not only via the facts, each one in itself, but through the discourse as a whole, as a moving discourse.

Now, let us turn our attention to the South African scene, mainly to the testimonies presented in the Truth and Reconciliation Commission hearings. I want to share with you a quote taken from the hearing CT/00222, which took place at the University of the Western Cape on 5 August 1996. This is the testimony of a Maureen Cupido, a mother whose son, Clive, was shot and killed by the police in 1985. We read the mother saying:

> Well, I was sitting, and me and my husband was sitting waiting for Clive to come home (...). Clive came home early (...) and then he told me this march is going to have a lot of trouble. Little knowing that he is going to be killed (...) and we, we wait for Clive to come home (...). I heard the shots (...). And then I asked God if it is my child, take him away, I don't want him to be paralyzed. And just after the shots, this chaps, this children running to our house and all they said, Mrs Cupido is Clive here I haven't got such brilliant children, but his whole aim was that he, he wanted to go and work, he was frustrated, he wanted to make his ten finished and then he told me, mommy you cannot afford to send me to varsity, but I'll go and work and I'll do part-time, I'll do part-time varsity, so I am going to work to help you, you see. That was his aim, he just wanted to finish up his standard ten. And I mean – I feel that the truth must come out, people should know that it wasn't my son that kept the policeman (...) so the truth must come out, it must come out (...) .

This is not the legalistic text format of merely presenting the bare facts and letting the judges judge. We see through the hearing the worried mother speaking under the frightful circumstances, expressing her feelings. She does not limit her testimony – and is not asked by the committee – to the legalistic facts of the case. Rather she elaborates about her son's wishes to study half time in order to work and help her.

Nevertheless, the mother insists: "The truth must come out". For the sake of this truth the witness is pouring out her feelings, her fears and her son's wishes. She points out how poor they were. And the committee accepts the presentation of the mother's feelings, fears and compassion, recording it as an official document. The committee's concern is, therefore, not only what happened, but to shed light on the conditions of the family as well as the mother's fears in her own personal language. The trauma is revealed. That is to say, the word "truth" in this respect is much more than the "bare facts" of the shooting itself. It revolves around the tragedy of the family, of the son

killed, and the mother's thoughts and fears. In this regard the following remark of Antjie Krog (1998: 15-16) is illuminating:

> One morning, when I was still a lecturer at a training college for black teachers, a young comrade arrived. He refused to enter my class. He called Afrikaans a colonial language. "What is English then?" I asked. "English was born in the centre of Africa", he said with great conviction, "it was brought here by Umkhonto we Sizwe"[2]. That was his truth. And I, as his teacher, had to deal with this truth that was shaping his life, his viewpoints, his actions.

"His" truth versus the historical "facts".

Will the commission be sensitive also to the "truth" of, say, the young student? Indeed, if its interest in truth is linked not only to amnesty and compensation, then it will have chosen not truth, but *justice.* If the commission regards truth as the widest possible compilation of peoples perceptions, stories, myths and experiences, it will have chosen to restore memory and foster a new humanity, and perhaps that is "justice" in its deepest sense.

"Truth", explains the *Webster Dictionary*, is "the quality of being in accordance with facts or reality; a fact, a reality that which conforms to fact or reality". On the other hand, justice is not just truth. Justice is associated, according to Webster with "retribution, merited reward or punishment".

Indeed, Maureen Cupido seeks the "truth": "I feel that the truth must come out (…) so the truth must come out, it must come out", she repeatedly emphasized (TRC etc.: 50). But actually she appeals to justice. The truth is too narrow for her. The way to seek the truth is through the reconstruction of the bare facts. While rhetoric is the means for seeking justice rather than truth. Rhetoric intends to shape, to stir emotions, to establish the collective memory. The "story" is the "myth that binds different people in a common belief, in a shared past and thus is a factor in the shaping of personal identities within the process of nation building."(Peri 1999: 108). Mrs Cupido tells her story.

In conclusion, the Scroll of Lamentations, and Mrs Cupido's testimony share a common aim. That is, to capture the audience's feelings through "identification", which is, according to Kenneth Burke, the fundamental role of persuasion. Burke writes as follows:

> As for the relation between "identification" and "persuasion", we might well keep in mind that a speaker persuades an audience by the use of stylistic identifications; his act of persuasion may be for the purpose of causing the audience to identify itself with the speaker's interests; and the speaker draws on identification of interests to establish rapport between himself and his audience. So there is no chance of our keeping apart the meanings of persuasion, identification and communication (Burke, 1969: 46).

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[2] The military wing of South Africa's liberation movement. (Eds.)

Burke continues: "You persuade a man only in so far as you can talk his language by speech, gesture, tonality, order, image, attitude, idea, identifying your ways with his" (Burke 1969: 55).

The point is that the testimonies heard at the Truth and Reconciliation Commission are, in fact, acts of identification. The testimonies are not heard as a court case that seeks to determine the truth. Rather, the testimonies seek identification. That is, identification between the feelings, attitude, suffering of the victims and the audience, the commission members, the media. Obviously this sort of identification cannot be false, it must manifest the truth. But truth, facts, reality, are not communicative, and hence not as persuasive as self-evidence. The bottom line of Burke's "identification" as the premise for effective communication, and hence persuasion, is the realization that the facts themselves do not communicate. And persuasion is a product of communication. This is why Perelman made the distinction between analytical reasoning and dialectical (Perelman 1982). Rhetoric is dialectical, which depends on the notion of identification between the addresser and the addressees. The testimonies heard at the Truth and Reconciliation sessions produce a rhetorical discourse that invites a rhetorical analysis mainly for the sake of studying the process of establishing the "story" of the nation's collective memory through the various testimonies.

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Part Two: Political Power and Rhetorical Democracy

CHAPTER 5

THE CONSEQUENCES OF SAYING "NO NO NO"

THE POLITICAL DEMISE OF MRS THATCHER

Charles Calder[1]

ABSTRACT. The author seeks to inquire into the notion of rhetoric which impelled Mrs Thatcher to report to the House of Commons on Tuesday 30th October 1990 with the devastating candour that she employed. He first sketches in the circumstances which gave rise to the iteration "no, no, no" and then asks: can this justly be interpreted as an "impulsive answer"? Was the Prime Minister merely indulging in some tic of temperamental obstinacy? It seems unlikely. The author instead suggest that there is an ancestry behind that epizeuxis*, which he briefly identifies.*

Proem

Given the nature of our inquiry in the present collective volume on Truth and Politics in Africa, it would not properly be within the scope of these proceedings to attempt to deal comprehensively with the theme of Mrs Thatcher's[2] oratorical style – nor, indeed, to offer an analysis of any single speech (though in another setting the Bruges Speech (1988) would be a prime candidate for such examination). However, my first sentence will constitute sufficient indulgence in the scheme known as *paralipsis* or *occupatio*.[3] What I intend to do is to inquire into the notion of rhetoric which impelled Mrs Thatcher to report to the House of Commons on Tuesday 30th October 1990 with the devastating candour that she employed. I shall first sketch in the circumstances which gave rise to the iteration "no, no, no" and

[1] Support by Institut francais d'Afrique du Sud and the French Embassy in Lusaka. is gratefully acknowledged.

[2] Mrs Thatcher was raised to the peerage as Lady Thatcher (of Kesteven) in 1992. Sir Geoffrey Howe was ennobled as Lord Howe of Aberavon. I observe these distinctions in the paper.

[3] As a figure of rhetoric, "paralipsis" is defined as: "Stating and drawing attention to something in the very act of pretending to pass it over. A kind of irony"; cf. G. Burton, Silva rhetoricae/The forest of rhetorics, at http://rhetoric.byu.edu/. "Occupatio" is simply the Latin equivalent of "paralipsis". (Eds.)

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then ask: can this justly be interpreted (in the reductive language of Sir Geoffrey Howe) as an "impulsive answer"? Was the Prime Minister merely indulging in some tic of temperamental obstinacy?[4] It seems unlikely. I would suggest that there is an ancestry behind that *epizeuxis*.[5] In considering this matter I have been materially helped by reading Lady Thatcher's book *Downing Street Years*; Lord Howe's account *Conflict of Loyalty* has been almost equally illuminating.

30th October 1990

In 1956 there appeared a vividly-composed account, under the title *A Night to Remember*, of the last hours of R.M.S. *Titanic*. For many observers of British politics, and for anyone possessing a more than casual interest in the fortunes of the Conservative Party, November 1990 must rank as a month to remember. On 1st November Sir Geoffrey Howe, Lord President of the Council and *quondam* Foreign Secretary, resigned from the Government; on 13th November he delivered his resignation speech; on 28th November the Prime Minister tendered her resignation to Her Majesty the Queen.

The deterioration in the relationship between Howe and the Prime Minister has been chronicled by both parties from their own points of view.[6] No doubt many rubs and irritations intruded over the period of Howe's tenure of the Foreign Secretaryship and in the single year during which he served, nominally, as Deputy to Mrs Thatcher. But if any single occurrence can be said to have precipitated the Howe resignation, fatally damaging to the Prime Minister, it was a public oratorical act of Mrs Thatcher's – her iteration of the monosyllable "no". Mrs Thatcher's downfall was materially assisted by *epizeuxis*. During Prime Minister's Questions on 30th October she declared:

> M. Delors [the then President of the European Community (EC) Commission] wants the European Parliament to be the Community's House of Representatives, the Commission to be its Executive, and the Council of Ministers to be its Senate. No, no, no.[7]

Lady Thatcher makes some observations on this occasion, which are of

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[4] Thatcher 1993: 863.

[5] As a figure of rhetoric, "epizeuxis" is defined as: "Repetition of words with no others between, for vehemence or emphasis"; cf. Burton, ibid. (Eds.)

[6] Lady Thatcher pays generous tribute to Howe's achievements as Chancellor of the Exchequer (1979-1983) in her memoirs. Her first choice for the Foreign Secretaryship in 1983 was Cecil Parkinson; sadly, personal circumstances ruled this out.

[7] Thatcher 1993.

interest in the light of her oratorical practice. She had to stand up in the House and report on the Rome Council that had taken place on the 27th and 28th October. It was an occasion, the Prime Minister felt, for plain speaking. But this brought with it dangers to her personal position, given the fevered condition of her party. Nevertheless, Mrs Thatcher may have decided that, however perilous the situation, matters were not going to be amended by obfuscation. And indeed her memoirs deal with this very point.

> The Prime Minister and colleagues had asserted frequently that "a single currency [was] not the policy of the Government". But two qualifications were customarily attached. First, there was the possibility that the Government's proposals for a parallel common currency could evolve towards a single currency. Second, Ministers had adopted the habit of maintaining that "We will not have a single currency imposed upon us". Inevitably, there were differing interpretations of precisely what that delphic[8] expression meant. Such hypothetical qualifications could be used by someone like Geoffrey to keep open the possibility that we would at some point end up with a single currency. That was not our intention, and I felt there was a basic dishonesty in this interpretation. It was the removal of this camouflage which (…) probably provided the reason for Geoffrey's resignation.[9]

The imagery used in that final sentence is thoroughly characteristic of the author. Indeed, the quest for definition constitutes something of a *Hauptthema* in *The Downing Street Years*.

The quest for definition

Readers of Cicero's *Topica* will recall his account of the 16 intrinsic topics of invention in IX-XXIII. A topic (from Greek *topikos*, the adjective associated with the noun *topos*, "place"; hence the Latin, *locus*) is

> the region of an argument, and an argument [is] a course of reasoning which firmly establishes a matter about which there is some doubt.[10]

The intrinsic topics include definition, conjugates,[11] genus, species, similarity, difference, contraries, adjuncts. Definition is clearly one of the

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[8] "Delphic" refers to the usually ambiguous nature of oracular statements such as were delivered at Delphi, Ancient Greece; the ambiguity here lies either in the refusal of *imposition* (leaving open the possibility of *being persuaded to comply*); or in the conflation of national and European perspective: the United Kingdom was already enjoying, since time immemorial, a single currency, the pound sterling, when the statement in question was made. (Eds.)

[9] Thatcher 1993.

[10] Cicero, *Topica*, I.8.

[11] Ibid., III.12. "Conjugate" is the term applied to arguments based on words of the same family. Words of the same family are those which are formed from one root but have different grammatical forms" (*sapiens, sapienter, sapientia*).

most potentially productive *loci*:

> Sometimes a definition is applied to the whole subject which is under consideration; this definition unfolds what is wrapped up, as it were, in the subject which is being examined.[12]

One kind of definition applies to material objects, the other to abstractions. Definition allows us to maintain "a clear pattern and understanding" of these intangibles. In terms of its operation, definition works sometimes by enumeration (*partitio*) and sometimes by analysis (*divisio*), which involves the breaking-down of *genus* into species.

Beyond doubt, Mrs Thatcher devoted a great deal of her oratorical endeavours to the development of lines of argumentation evolving from this topic; in the context of EC matters, one could mention the Bruges Speech as a classical instance of an oration depending largely on the *locus* of definition. But the effort to extract-– and build upon – definition is a persistent ingredient. Some of the most striking observations in her memoirs derive from what she identified as the reluctance of some of her EC counterparts to produce (or apparently to contemplate producing) definition of the cardinal terms of quotidian political discourse. There is a continuing strand of protest against the approach whereby

> a combination of high-flown statements of principle and various procedural devices prevented substantive discussion of what was at stake until it was too late.[13]

Of particular concern was the capacity of treaties and communiqués to generate "nebulous phrases" which later were to re-appear endowed with a federal significance which at the time of promulgation was entirely disclaimed. Accordingly, at the Dublin Council of April 1990, Mrs Thatcher undertook the task of definition, subjecting the crucial phrase "political union" to analysis. But this was done in a manner which relied heavily on a *bravura* use of the trope of *ironia*:[14]

> I said that the way to dispel fears was to make clear what we did not mean when we were talking about political union. We did not mean that there would be a loss of national identity. Nor did we mean giving up separate heads of state, either the monarchies to which six of us were devoted or the presidencies which the other six member states favoured. We did not intend to suppress national parliaments; the European Parliament must have no role at the expense of national parliaments. We did not intend to change countries' electoral systems. We would not be altering the role of the Council of Ministers. Political union must not mean any greater centralization of powers in Europe at the expense of national governments and parliaments. There must be no weakening of the role of NATO [North Atlantic Treaty

[12] Ibid., II.9.
[13] Thatcher 1993: 761.
[14] As a figure of rhetoric, "ironia" is defined as: "speaking in such a way as to imply the contrary of what one says, often for the purpose of derision, mockery, or jest"; cf. Burton, ibid. (Eds.)

> Organization] and no attempt to turn foreign policy co-operation into a restriction of the rights of states to conduct their own foreign policy. (Thatcher 1993: 761-2.)

This represents an "unfolding" with a vengeance. For if political union were to be set in train, the consequences would be precisely those detailed, remorselessly, by the speaker. Lady Thatcher's comment on her performance is that "to deliver a ten-minute speech with one's tongue in one's cheek is as much a physical as a rhetorical achievement".[15]

The genus deliberativum

At this point it would hardly be surprising if some of my auditors were to interject: "yes, this is all very well; but if oratory is in question, you are picturing not a successful but a patently unsuccessful orator". For if it is true, as Cicero expresses it in *De Optimo Genere Oratorum*, that "the supreme orator… is the one whose speech instructs, delights and moves the minds of his audience"[16], then the performances on the EC stage would testify not to supremacy but to extreme fallibility, since these occasions indicate a practitioner who was unconvincing as an instructor, ill-equipped to provide delight, and unable to move her auditors. But before endorsing such a verdict, we should perhaps reflect upon the nature and demands of the *genus deliberativum*. What is the substance treated in this branch of oratory? What are the responsibilities placed upon its exponents?

The deliberative speech is so-called because it is addressed to an audience sitting in deliberation upon a question. What is to be done? Do we follow course x or y? The "end" of the deliberative speech is advantage (*deliberandi finis utilitas*); of the judicial speech, justice; of the encomiastic speech which metes out excessive praise, the "end" is honour (*Topica,* XC1). The adolescent Cicero maintained that both advantage and honour were to be regarded as ends of deliberative speaking: so the orator is appealing to both *utilitas* and *honestas,* whereas the encomiastic speaker is appealing to *honestas* alone.[17] In a later passage from *De Inventione* Cicero writes "honour and advantage are the qualities of things to be sought, and baseness and disadvantage, of things to be avoided".[18]

The pseudo-Ciceronian *Rhetorica ad Herennium* resolves the question by setting up *utilitas* as the end, and attributing to it the two aspects of

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[15] Thatcher 1993: 762.
[16] *De Optimo genere Oratorum*.
[17] *De Inventione*.
[18] Ibid., II.lii.158.

security and honour.[19]

The bias in *De Inventione* is towards judicial rhetoric (*genus iudiciale*); so Cicero's thoughts on *genus deliberativum* are welcome. As always, his observations repay attention. For example, he notes (II.lvi) that

> in the state there are some things that, so to speak, pertain to the body politic, such as fields, harbours, money, a fleet, sailors, soldiers and allies – the means by which states preserve their safety and liberty – and other things contribute something grander and less necessary, such as the great size and surpassing beauty of a city (…) and a multitude of friendships and alliances. These things not only make states safe and secure, but also important and powerful.

The cardinal terms are security (*incolumitas*) and power (*potentia*): Security is a reasoned and unbroken maintenance of safety. Power is the possession of resources sufficient for preserving oneself and weakening another.[20] *Ad Herennium* observes (II.3) that "to consider security is to provide some plan (…) for ensuring the avoidance of a present or imminent danger". The deliberative speaker who addresses himself seriously to the task in hand is guided by three considerations – this at least is the *De Inventione* teaching grounded in the notion that *honestas* and *utilitas* are both ends to be served:

> The greatest necessity is that of doing what is honourable; next to that is the necessity of security and third and last the necessity of convenience.[21]

So there is a descending scale: *honestas – incolumitas – commoditas* (the last term makes us think of Shakespeare's "commodity, the bias of the world").[22] There is frequently a requirement to weigh the competing claims, for although *honestas* is superior to *incolumitas*, there will be occasions when the demands of the latter cannot be set aside.

Now, the textbooks all assume that two (or more) identifiable courses of action are being debated. Is it better to let Carthage stand or fall *(Kartago* [sic] *tollenda an relinquenda videatur*?) Should war or peace be pursued? But this is not the situation we encounter in these Thatcherite discussions; it would seem (if we adopt the testimony of Lady Thatcher in *Downing Street Years*) that "the question" was not put or indeed identified. Lady Thatcher protests at one point that there had been no "open, principled public debate (…) either nationally or in European fora" (Thatcher 1993: 767).

If we were to delve deeper in an effort to discover the roots of this strange non-dialogue we could perhaps suggest that both Mrs Thatcher and her interlocutors were working with differing interpretations of *necessity*. A

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[19] *Rhetorica ad Herennium*, III.ii.3.
[20] *De Inventione*, II.lvi.169.
[21] Ibid., II.lvii.174.
[22] *King John*, II (Eds.)

passage from *De Inventione* (II. lvi-lvii) distinguishes between simple necessity (e.g. as expressed in the axiom "men must die") and the necessity which is asserted under a qualification or condition:

> When (…) we use the word necessary meaning thereby that an act is necessary if we wish to avoid or gain something, then we must consider to what extent that qualification is advantageous or honourable.

The connection between necessity/advantage/honour was clearly recognized, or assumed, by those EC heads of government; but the interpretation of the terms making up the nexus varied widely. It was not, perhaps, unreasonable for the British Prime Minister to seek to introduce greater rigour into the discussions and to urge that the ultimate destination should be identified before a timetable for arrival was constructed.

Conclusion

It is my contention that Mrs Thatcher's "No, no, no" is of a piece with her practice as a deliberative speaker. Sir Geoffrey Howe's attempt at caricature testifies principally to mandarin outrage – to the dismay of the *haute politique* class on hearing an uncoded and "undiplomatic" utterance. But in fact, Mrs Thatcher's *epizeuxis* was entirely in accord with Government policy as expressed in the Bruges Speech. It was, moreover, entirely in accord with her "Roman" approach to the *genus deliberativum* as an instrument for definition and delineation. In Mrs Thatcher's view, it was essential – for the purpose of conducting any worthwhile deliberation – that the *causa* be plainly set forth. Her distaste for camouflage is apparent throughout *The Downing Street Years*. Perhaps the reproachful criticisms of Sir Geoffrey express the alarm of one who dreads the removal of the saving fig-leaf, revealing nudity.

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CHAPTER 6

ETHICS AND REVISIONISM IN NIGERIAN GOVERNANCE

Sanya Osha

ABSTRACT. Prolonged militarism within the Nigerian context damaged not only civic orders and institutions but public and private moralities. The political class was co-opted by the military rulers and then thoroughly compromised thereby destroying collective moral sense. As a result, the discourse of truth and reconciliation within the Nigerian milieu is doubly compounded with so many competing interests, moralities and histories jostling inside the public space.

Introduction

Nigeria is important for so many reasons. It is the most populous nation in the African continent. Further, apart from being blessed with several mineral resources such as petroleum and iron ore, it is also blessed with a dynamic and resourceful people. Thus a combination of these natural and material endowments ought to have paved the way towards substantial economic and socio-political development. Unfortunately, this has not occurred. Indeed, Nigeria's problems are myriad and multi-layered, a lot of them often induced by poor decision-making and lack-luster management at the higher political levels.

Perhaps it is necessary to recount some of these problems. Of course an exhaustive account at this stage may end up being diversionary; nonetheless, governmental corruption would rate as a major impediment. From this emanate several other daunting obstacles to nation-building. Nigeria now ranks as one of the world's twenty poorest nations. Adult life expectancy is only fifty-three years. Adult illiteracy stands at forty-three per cent while an estimated two-thirds of Nigerians live below the poverty line. With this brief sketch, other problems could be left to the imagination, in such fields as health, urban insecurity, unemployment etc.

Yet the potential of Nigeria as a nation cannot be underestimated. It has all the potential to assume political, moral, economic and diplomatic leadership in global affairs. Having said this, Nigeria is one of the best examples of how a nation should *not* be run. Its disastrous history of protracted military rule has virtually destroyed all facets of its national existence. And militarism is a scourge that mere cosmetic reforms cannot eradicate. Latin American nations such as Mexico have demonstrated more than sufficiently that militarism as a form of politics often transcends its

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immediate spatio-temporal context. In other words, insidious modes of governance often carry within themselves the mechanisms of their perpetuation. E. Wamba-dia-Wamba illustrates this point with regard to the situation in the Democratic Republic of Congo in the following manner:

> Mobutism must be understood as a body of political dictates on the post-colonial state (this as a historical form of politics) if we hope to clearly bring out what needs to be avoided or destroyed in the transformation of our society and the construction of a new state (Wamba-dia-Wamba 1998: 45).

Similarly, it has been noted that

> civilians internalize dictatorial military culture of immediate effect, while in their service. In this way, they reproduce the culture of militarism even under civil rule (Momoh & Adejumobi 1999: 36).

President Olusegun Obasanjo, Nigeria's current elected ruler, highlighted this ominous tendency within the first few weeks of his tenure, thereby eliciting charges that he was out to run an imperial presidency. The point was that instead of abiding by clear-cut constitutional procedures regarding law-making, and in dealings with elected members of the Houses of Assembly, he found it more than convenient to disregard them. And it is this tendency that all true democrats ought to discourage and eventually quell. Thus militarism as an institution of rulership often goes beyond itself in weakening vital formations of civil society. And as we have seen, civil society having had its basis and functions eroded by the dynamics of militarism, in turn mirrors and promotes the values, structures and characteristics of the latter. By extension, this should not be a period of complacency, the transition to democratic rule cannot be a superficial development. Rather, it should be a period of heightening and strengthening political vigilance among the various sectors of civil society.

At this juncture, some of the vital questions that form the major thrusts of this discussion ought to be raised. First of all, it is pertinent to note some of the trajectories and ravages of prolonged militarism within the Nigerian political context and to assess how these verities decide the ethical barometer, and indeed both the historical and political evolution of the nation as a whole. Given this somewhat broad *problematique*, the earlier observation that militarism develops innate instruments of prolongation (that not only contain seeds of its future birth and growth but also the structures for the erosion of civil society generally) becomes even more striking.

The stakes of truth, reconciliation and restitution

The discourse of truth and reconciliation has assumed topical and global

importance and, of course, the Truth and Reconciliation Commission in South Africa has an immense bearing on this development. But in spite of the moral magnitude of this powerful socio-political process, the stakes of truth and reconciliation are not always so easy to negotiate. A number of recent events in contemporary global history attest to this fact. In this instance, the War Crime Tribunal in The Hague set up for investigating the injustices in former Yugoslavia and also the one established in Arusha in relation to Rwanda readily come to mind.

It has been noted by Michael Ignatieff that:

> Justice in itself is not a problematic objective, but whether the attainment of justice always contributes to reconciliation is anything but evident. Truth, too, is a good thing; but as the African proverb reminds us, "truth is not always good to say" (Ignatieff 1996: 10).

The establishment of a *truth commission* in any society usually depends on the configuration of political forces in that society. A major problem that faces societies intending to reconcile their population with horrendous socio-political histories is the temptation to separate truth from justice. In this regard,

> seeking truth is not an end in itself for victims; they need to feel that in some way or other the wrong done to them has been partially righted. At the same time, the pursuit of truth does not necessarily mean show trials or endless vengeance (Rolston 1996: 36).

Archbishop Desmond Tutu frames the problem in a somewhat different fashion:

> Experience world-wide shows that if you do not deal with a dark past such as ours, effectively look the beast in the eye, that beast is not going to lie down quietly; it is going, as sure as anything, to come back and haunt you horrendously (Tutu 1996: 39).

Tutu further points out that

> in the matter of amnesty, no moral distinction is going to be made between acts perpetrated by liberation movements and acts perpetrated by the *apartheid* dispensation (Tutu 1996: 43).

And then lending his voice to the debate, F.W. de Klerk says

> reconciliation… cannot be achieved unless there is also repentance on all sides… No single side in the conflict of the past has a monopoly of virtue or should bear responsibility for all the abuses that occurred. Nor can any side claim sole credit for the transformation belongs to us all (Tutu 1996: 57).

As a final word on the functions and problems of truth commissions, Michael Ignatieff's views are particularly instructive:

> The truth commissions closed many individual dossiers in the painful histories of their nation's past. At this molecular, individual level, they did a power of good. But they were also charged with the production of public truth and the remaking of public discourse. They

> were to generate a moral narrative – explaining the genesis of evil regimes and apportioning moral responsibility for their deeds (Ignatieff 1996: 112).

Undoubtedly, the discourse on truth and reconciliation is bound to remain topical and would also retain its prime place on the scale of national and global priorities. Only recently, Wole Soyinka in a lecture appropriately entitled "Engaging the Past: Lessons from South Africa" revisited the issue; his propositions, when not thought-provoking, were decidedly provocative. An example of such is the view that we ought to

> globalise certain categories of crimes – that is, recognize that there are certain crimes which transcend the initial borders of their commission. It seems so simplistic as to be almost banal but nations have been plagued by a tendency to live by a false criminal dichotomy – one that enabled it, for so long to collaborate in the tracking down of bank robbers, murderers, condemned men and women, rapists, drug traffickers etc., but never, hardly ever for those identitical crimes when they are committed in political circumstances, or at a mass scale (Soyinka 1999: 26).

Linking up with the current Nigerian political context, Soyinka warns:

> Those who are strutting around today, secure in the cloak of immunity, are ready yet again to act true to type if the circumstances change yet again, and their services are required in the course of perfidy, of large-scale robbery and a sadistic domination of Nigeria society (Soyinka 1999: 25).

His simple conclusion is that all culprits currently operating in the Nigerian political sphere should be brought to book. It is another question entirely if the presently arrayed political forces would allow for such a juridical endeavour, or whether the required political will could be mustered for that objective. To be sure, several atrocities had been perpetrated by the Ibrahim Babangida and Sani Abacha juntas. Furthermore, there is strong evidence to claim that the administration of General Abdusalami Abubakar (which concluded a transition-to-democracy programme) carried out large-scale financial fraud such that can jeopardize the current political dispensation. Soyinka and his ilk are advocating comprehensive probes into these various atrocities in order to initiate what he deems to be a much-needed national moral rejuvenation. Others would much rather see that we forget the past and get on which the future. For Soyinka, "the past will always return to haunt us, unless we first take steps to exorcise its ghosts" (Soyinka 1999: 25). However, our recent political history is such that entire sectors of the populace have been compromized and have had their moral fabrics badly damaged. General Ibrahim Babangida initiated and perfected the strategy of undermining the political class in order to prolong his dubious legitimacy, on the one hand, and weakening civil society, on the other. Sani Abacha was even more brutal in this respect.

It is perhaps better to present a more systematic catalogue of atrocities of the Babangida and Abacha regimes so as to discern what bearing it has on the prevailing discourse on truth and reconciliation.

Under the boots of Babangida and Abacha

The regimes of Generals Ibrahim Babangida and Sani Abacha were as yet the most devastating in Nigeria's tortuous political history. Both dictators never intended to hand over political power to civilians, yet both embarked on agonizing transition programmes that cost the Nigerian nation several billions of naira.[1] Momoh and Adejumobi are categorical in stating that:

> the philosophy of the transition programme was (…) centred on economic deregulation to allow for capital accumulations and on the political scene, to permit authoritarianism, in order to allow for control of the entire populace, both military and civil. The transition programme, i.e. the PTP [Political Transition Programme], was therefore designed to fail. It is a malleable paradox that Babangida, the architect of this nebulous philosophy, was unwilling to accept responsibility for this and shifted the blame of his failure to the politicians (Momoh & Adejumobi 1999: 56).

The duplicity of General Babangida is further underscored by the fact that he enlisted a core of gifted scholars to provide ideological justification for his deceitful programmes. Several gargantuan bureaucracies were created not only for the purpose of deceiving the Nigerian populace together with the international community, but also as avenues for massive economic corruption. Some of these bodies include the Political Bureau, the National Electoral Commission (NEC), the Directorate for Social Mobilization (MAMSER, i.e. Mass Mobilization for Self-Reliance), the Centre for Democratic Studies (CDS) and the Code of Conduct Bureau.

In the end, all these bloated bureaucracies turned out to be largely ineffectual watering-holes for political favourites. After the fall of the regime, they were all dissolved. Misappropriation of public funds more or less became institutionalized by the Babangida administration. The country is still reeling from its seemingly unstoppable ravages. More than anything else, what signified Babangida's intention not to handle over power was his creation of two government-funded political parties. He had claimed he wanted create a new breed of politicians uncorrupted by the destructive divisiveness of earlier politicians. In this respect, it has been noted that;

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[1] *Naira*: the Nigerian currency; when this volume went to the press (January 2004), NGN 1,000 was equivalent to EUR €5.69 or US$ 7.17. (Eds.)

> with the gradual withdrawal of state funding for the two political parties and given the enormous financial outlay required both to run the parties and prepare candidates for elections, the parties quickly relapsed into the stranglehold of the money-bags (Momoh & Adejumobi 1999: 136).

Furthermore, Babangida revealed that he knew those who would succeed him and those who would not. As such his transition programme was strictly monitored and teleguided. Babangida nebulous programme ended with the annulment of the June 12, 1993 presidential election which created such a profound political impasse for Nigeria and which also raised immeasurably the stakes of truth and reconciliation in the public arena. The unfortunate annulment is truly a watershed in Nigeria's political history because it resulted in a rigorous examination of the institutions of civil society, national values and priorities, conceptions of morality and accountability, the demands and obligations of leadership and citizenship and of course the military as an institution. For the sustained development of civil society, this examination must be carried out incessantly. And then, because civil society itself became enfeebled and corrupt in Nigeria, Babangida was able to pervert and subvert accepted norms and standards. For instance,

> "Law" for Babangida (...) does not mean respect for the rule of law or due process. It simply means the ability of the state to enforce obedience, obeisance, induce recognition and silence opposition, put people into quietism without recourse to questioning the correctness, justness or otherwise of the action of the state (Momoh & Adejumobi 1999: 118).

But in spite of the progressive weakening of civil society, the pauperization and immiseration of the general populace coupled with the repressive tactics of political exclusion practiced by the regime in its bid to perspetuate itself in power, that regime collapsed under the weight of its intrigues. Babangida's self-seeking agenda played itself out soon after the annulment of the June 12 presidential election after which the chimerical Interim National Government (ING) was installed. This questionable political arrangement was in turn toppled by General Sani Abacha whose regime bore to all intents and purposes similar traits with the Babangida junta (Osha 1998). Wole Soyinka also noted the striking similarities between the two regimes in terms of methods of co-optation, entrenchment and repression. Nonetheless, differences can be said to exist at the level of political repression. It can be argued that the Abacha junta was decidedly more tyrannical and more disrespectful of civil liberties. The Babangida junta made a show of honouring human rights even though the contrary was the case. The Abacha junta never bothered with such false courtesies. This was manifest in the manner in which state repression became more pronounced and systematic. Consequently, such gross human-rights abuses were

committed that as a nation, we Nigerians have no choice but to address them, in order to resume the challenge of development and socio-political reconstruction, as well as the quest for freedom to which all democratic societies aspire.

Presently, Nigerian society as a whole faces a debilitating dilemma: do we just forget the past and proceed with the challenge of the future or do we revisit the state-engineered violations of our recent past so as not only to commit the same mistakes again but also to evolve an ethics of politics to safeguard ourselves from wanton abuses? To be sure, this dilemma is reflected in various regional, ethnic, religious and ideological ramifications, in which several collective identities are revealed. On this question, it is not easy to arrive at a clear-cut consensus. This is the case, in part, because prolonged militarism severely enfeebled civil society, and also destroyed basic but meaningful ethical orientations. In the process, not only values and institutions have been affected, but also, and even more distressingly, people have been implicated and compromized.

When General Sani Abacha assumed political power in November 1993, Nigeria's socio-political situation worsened considerably. In November 10, 1995 a shocking event jolted the international community. Ken Saro-Wiwa, author, environmentalist, minority-rights activist and leader of the Movement for the Survival of the Ogoni People (MOSOP), was subjected to judicial hanging along with eight co-activists. The international repercussions were quite tremendous. Nigeria, as a result, became a pariah nation. After this gross violation of human rights and of due process, the cycle of repression continued unabated. Even before the judicial murders of Saro-Wiwa and the other eight Ogoni activists, Nigeria's current president, Olusegun Obasanjo, along with his former deputy, the late Major General Shehu Musa Yar'Adua, had been brought before a secret military tribunal over charges connected with a phantom coup plot. Four journalists were also implicated by the unfounded allegations: Kunle Ajibade, Chris Anyanwu, Ben Charles Obi and George Mbah. Beko Ransome-Kuti, a prominent human-rights activists was also charged, and sentenced to a jail term accordingly. Musa Yar'Adua was to die in prison custody under mysterious circumstances. Also killed were Alfred Rewane, an industrialist and prominent a pro-democracy activist; and Kudirat Abiola, wife of Moshood Abiola, the presumed winner of the June 12 presidential election.

After the death of General Sani Abacha on June 8, 1998 a lot of unsavoury revelations came to light. It came to be known that the late dictator supported several assassination squads such as the K-Squad, Strike Force and the Special Squad. Furthermore, his numerous security operatives

began to confess to numerous state-sponsored crimes. In particular noteworthy are the confessions of Major Hamza Al-Mustapha (the Chief Security Officer to Sani Abacha) and Colonel Frank Omenka (former head of the Directorate of Military Intelligence, DMI). Given these tarnished antecedents, it became apparent that some collective analysis of the events of our recent past was required. Gross human-rights abuses had been committed in the name of the state but, as yet, there is still no definite national policy as to strategies for investigation and redress. Quite a number of short-sighted politicians and unaffiliated opportunists had benefited financially from Abacha's self-succession adventure, to the detriment of the larger society. This crop has continued to present problems for current democratic dispensation.

Thus the meaning of *reconciliation* has assumed very fluid dimensions in this context. Is it meant to be synonymous with "forgive and forget", or meant to be a working through the horrendous events of our recent political history? These are the two main ideological proclivities of the debate in somewhat crude terms. It would appear as if the former discursive orientation is gaining the upper hand for reasons of sheer political expediency. The puritanical viewpoint such as is exemplified in Soyinka's stance enjoys the support of staunch pro-democracy activists but wans in the realm of practical politics. The reason being that the regimes of Ibrahim Babangida and Sani Abacha were relentless in undermining the moral basis of the political class, and even, to a large extent, civil society as a whole. And yet the same compromized political class is needed in the evolution of a democratic political culture. For purists, the rhetoric of truth and reconciliation in its ideal sense ought to be pursued with utmost vigour for genuine national rejuvenation. This continual conflict between ideals and practical realities was evident during the formation of the political parties in which some staunch pro-democracy activists were classified as being rigid, while those in the opposite camp were considered unrepentant opportunists. It is within this state of affairs that Nigeria embarked upon its current democratic adventure.

Obasanjo, history and its discontents

President Olusegun Obasanjo's eventual political rehabilitation must be one of the more surprising events of contemporary political history. He had been incarcerated by the Abacha regime for allegations relating to a phantom coup plot, and had been suffering from ill-health. After General Abacha's

death, General Abdulsalami Abubakar released him from jail and he was promptly convinced to launch a well-funded presidential campaign under the auspices of the Peoples' Democratic Party (PDP). It came to pass that he won. But the conflictual political constellations mentioned in the preceeding section were also at play during his eventual assumption of political power. General Babangida in an obvious bid to redeem his shattered political image is said to have persuaded Obasanjo to run for office. He was also said to have funded Obasanjo's presidential bid to the tune of 50 million U.S.$ (Maja-Pearse 1999: 46). It should also be recalled that convincing evidence exists implicating Babangida in the misappropriation of 12.4 billion U.S.$ resulting from the Gulf War oil windfall (Maja-Pearse 1999: 46). In the same vein, Babangida was responsible for the annulment of the June 12 presidential election. So for many, it was curious to have such a character acting out powerfully behind-the-scenes roles. Even Obasanjo has been castigated for his role during the annulment of the 1993 election. It has been proven that he had encouraged the establishment of the Interim National Government (ING) headed by Ernest Shonekan.

The point is, at what juncture can we claim to have a puritanical moment in our political development? It is hard to tell, and even purists would be hard put to answer this all-important question. An index of the complexity of this dilemma is the widely-touted allegation to the effect that Moshood Abiola was the main sponsor of Babangida's coup in 1985, being motivated by differences between him (Abiola) and the Buhari/Idiagbon regime (Maja-Pearse 1999: 19). To be sure, it is not easy to find an appropriate or suitable point of departure.

General Babangida has committed unforgivable transgressions against the Nigerian nation as a whole yet he has managed to influence the birth of the current democratic dispensation. Despite President Obasanjo's antecedents as a military dictator and as a supporter of governmental arbritariness, he is now at the helm of affairs. And so at what point do we commence our much-needed national self-examination? Furthermore, even the regime of General Abdulsalami Abubakar is being alleged to have carried out large scale financial fraud in spite of its relatively successful transition-to-civil-rule programme. Perhaps Olu Falae, a prominent politician, captures the ramifications of the scenario most appropriately, when he noted,

> what I think they may do is take off the uniform, drop the gun, put an *agbada*,[2] grab *naira*

[2] Adire African Textiles, at: http://www.adire.clara.net/agbadainfo.htm:

> "Agbada is the Yoruba name for a type of flowing wide sleeved robe, usually decorated

> and use *naira* as the gun to rule us (quoted in Maja-Pearse 1999: 1).

This perplexing dilemma illustrates what may happen when nations and societies put off the prerequisite rituals of criticism for too long.

The question then is at what point do we begin? It is unlikely that President Obasanjo would have a ready answer to this question. Another way of framing the vexatious issue of the national question is that it concerns

> the question of how every Nigerian can be made a citizen (in the real not the nominal sense) of his country and related to this, the problem of how to create an appropriate socio-political framework for the conciliation of interests among them (Oladipo 1999: 26).

Still on the issue of posing questions, Jacques Derrida avers:

> Something that I learned from the great figures in the history of philosophy, from Husserl in particular, is the necessity of posing transcendental questions in order not to be held within the fragility of an incompetent empiricist discourse, and thus it is in order to avoid empiricism, positivism and pychologism that it is endlessly necessary to renew transcendental questioning (Derrida 1996: 81).

Within the Nigerian ethical and political context this endless questioning has been left unattended for too long.

Conclusion

Judging from the foregoing, no approach to the Nigerian national question can be deemed the most appropriate or the most desirable. Civil society has become severely weakened and efforts must be made to rebuild and strengthen its various and numerious institutions; the media, the labour unions, the academic community, the non-military professions etc. This is because

> prolonged military rule has (…) attenuated the democratic and constitutional principles and channels of conflict resolution, which encourage political exchanges and bargains rather that suppression of conflicts (Osaghae 1998a: 12, cf. 1998b).

We may even begin by addressing the question of minority rights and strategies of devolution and power sharing in our ongoing democratic quest. But the questioning must commence and for the steady growth of civil society it must not ever be suspended again. For sure, the appropriate approach cannot entail the victimization of individuals for the purpose of

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> with embroidery, which is worn throughout much of Nigeria by important men, such as kings and chiefs, and on ceremonial occasions like weddings and funerals." (Eds.)

settling cheap political scores. It must look beyond the immediate context and strive to be transcendental in order not to be narrow, self-seeking and short-sighted.

Other strategies for developing a viable democratic culture together with strengthening civil society within the Nigerian political terrain, ought to include a conscious programme of de-militarization of the public sphere. The public sphere as it is presently constituted, is not even an appendage of the military: it is in fact a continuation of militarism in disguise. Once this is acknowledged, then the necessary vigilance for the reconstitution of the public sphere can be cultivated. In essence, de-militarization must entail a definite programme of social and political transformation. It must be thorough, precise and relentless.

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CHAPTER 7

SELF-FASHIONING IN POLITICAL TURMOIL

POWER, TRUTH, AND RHETORIC IN CICERO

Johnson Segun Ige

ABSTRACT. The central argument of this paper is that power within the context of Ciceronian rhetoric is misrepresentative and that the regime of power is not always truly represented in its deployment by the subject. For Foucault, power is possessed by the social individual. More specifically, Foucault's position sits very well with Cicero's rhetorical practice in affirming that power is everywhere and that through a nexus of relationships, hegemony is gradually produced.

Throughout history, managing political crises is one prime requirement in politics that has accounted for the success or failure of most of the acclaimed public figures. Political opposition helps in ascertaining the political stature of political figures, because the situation provides a basis for comparison, and in the present context, makes possible a critical evaluation of the oratorical hegemony. Oratorical hegemony is simply the ascendancy and functioning of a political institution through the performance of rhetoric.

The main thrust of the argument in this paper is that power, in Ciceronian rhetoric, is misrepresentative, and that the regime of power is not always truly represented in its deployment by the subject (*i.e.* the orator). For Cicero to fit into the framework of the prevailing oratorical hegemony of the first century BCE, in publishing the speeches, he simply adopts a style of writing that is consistent with the position of power in which he is located. For the modern philosopher, Michel Foucault, the basic assumptions of both liberalism and Marxism in respect to power are:

1. power is possessed by a social individual,
2. power is characterized in the law, the economy, the state, and
3. power is primarily repressive.

However, Foucault maintains a mild stand on the possession and deployment of power. He recommends that power should be exercized rather than possessed; decentralized rather than exercized from top down, and productive rather than repressive.[1] Foucault's position fits in very well with

[1] Foucault 1980: 98.

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Cicero's rhetorical practice, in identifying that power is everywhere, and that, through a nexus of relationships, hegemony. All the dichotomies imaginable within the Foucaultian framework are accommodated in Ciceronian rhetoric, that is, it functions not seeking to be oppressive, but to achieve an oratorical end. Power in rhetoric is fluid, dynamic, and serves as a tool for constructing, legitimizing and entrenching the hegemony of the orator in a speech event. Furthermore, due to the psychological nature of the performance of rhetoric, and the deployment of power in rhetoric, there is a universal embrace and manipulation of all means and agents of power to generate some kind of movement (Latin: *movere*) in the perlocutionary phase of the delivery. This is what Mackendrick (emulating an expression attributed to the seventeenth-century CE French king Louis XIV) would call a *l'état-c'est-moi* approach.

Truth and probability have been age-old conceptual antagonists in rhetoric situations. Foucault's generic idea of production of truth as a means of domination, i.e.,

> men [*sic*] govern themselves (...) through the production of truth

is rather problematic in its rhetorical application. Indeed, rhetoric serves as a means of governing others, but it is advisable for the orator to avoid pleading with truth as the essence of his speech. The orator's dilemma is his negotiation between truth and probability. Quintilian, an ancient professor of rhetoric, encourages the orator to operate within the bounds of probability rather than truth.[2] Kennedy, a modern classical rhetorician, has observed that probability appeared to the ancients a safer rhetorical technique to use than a witness, because witnesses can be corrupted too easily. For him, neither the plaintiff nor the defendant could cheaply buy probabilities. Aristotle advises that an orator should advance probability rather than evidence (*empeiria*) since the latter is considered as un-artistic (*a-tekhnos*). In other words, though a speaker must seek every possible means of enhancing the tenacity of argumentation in court, either probability (*to eikos*) and/or truth (*alētheia*), his main tool of persuasion must be the spoken word (*logos*). Conclusively, the major characteristic of any rhetorical delivery is the conflict between truth and probability. However, for Cicero, the problem seems quite manageable. The goal of the orator should be to achieve vivid description (*evidentia*) by his choice of words. For him, orators should strive at creating, *avant la lettre*, cinematic effects by reducing events, objects, people, architecture, or the world at large, to verbal (rhetorical) expressions,

[2] Quintilian, *Inst. Orat*. 2. 17. 30-40.

which in the end create "visual" impressions through the "eye of the mind". For Cicero the sensory faculty that is responsible for decoding messages in the listener receives clear messages in the form of striking images. These imaginable pictures will generate responses from the audience. It seems to be as a result of this that Cicero constructs power relations which are based on true representation but on the basis of imaginative speaking (*illustris*) and vividness (*dilucidatio*). Cicero's outstanding deliveries at strategic moments in his life won him public acclaim. Linking this manner of speaking with what has been said above regarding truth, it remains for me to say that rhetoric, and more specifically, Ciceronian oratory, does not fall within the ambit of modern ethical philosophy, nor that which has been informed by Judeo-Christian ethics – Cicero lived before the founding and spread of Christianity. For me, Ciceronian oratory is a-moral since he actually says in his *De Inventione*, "the prudence of the audience has always been the regulator for the eloquence of the orator." In other words, Cicero counts on the audience to exercize their power of knowledge to serve as a barometer for the eloquence of the orator. More succinctly put, truth is what the audience accepts as true.

A common paradigm locates power in the state, and thereby says that power is judicial and repressive. According to this paradigm, the state, and not the offended, must punish any injury inflicted on a citizen. The question that arises is *quis custodes custodiet*? ("who will guard the guards?") When the life and/or the reputation of a notable oratorical holder of power is at stake, power is no longer located in the state or the law, but in the "mouth" of him who holds both the law and the state together. This caricature represents the method employed by Cicero in dealing with the Catilinarian conspiracy of 64 BCE.[3]

Cicero and Catiline

Cicero had witnessed considerable turbulence in Roman politics before 63

[3] Bell (1997) rightly says that an oratorical text is a partial record of a complex dynamic between actor and audience, neither of whom had the power to take action independently of the other. Each needs the other, simply to have dignity. What seems to be missing in Bell is that he takes for granted that Ciceronian oratory subordinates other institutions in a speech situation. Performance is aimed at dominance. The dominant role the orator plays, and the audience/actor conspiracy that the orator aims at do not give room for much legislative action on the part of the audience. Ultimately, the audience's role is that it should "sheepishly" concur with whatever proposal the orator has made.

BCE, when he was consul. The events of the preceding years had indicated some likelihood of conflict resulting between Cicero and some members of the senate in 63 BCE. Cicero had had remarkable advancements before 63 BCE (as a *novus homo*, a newcomer to Roman politics), and in this year, he became a consul. He was already on good terms with some top-notch Roman politicians of the equestrian class. His powers of oratory had won him the favour and following among the nobles and Roman people, respectively. However, in spite of all these apparent glories, Cicero's election of 63 BCE is faced with illegal contestation from Catiline.[4]

Catiline was an active politician, a member of senate, a patrician, intelligent, and by Cicero's description,[5] an admirable personality, but at the same time a debauchee. He also desired the consulship, the ultimate magistracy in the Roman republic, which traditionally is always filled by two incumbents at the same time. Before 63 BCE Catiline had held both military and political appointments, but had failed to win the consulship, mainly because he was involved in unsavoury allegations and court cases. Catiline contested the consulship of 63, to be defeated by Cicero. This final defeat enraged him and he resorted to unconstitutional means to fight Cicero. Catiline planned an elaborate conspiracy against Cicero, with a view to torpedoing the latter's period of office. Acting in the best interest of the state and in his capacity as consul, Cicero put up severe opposition to Catiline, which initially resulted in the latter's hasty retreat and eventually, his demise. On 8 November, 63 BCE, Cicero attacked Catiline in the senate and he presented the first speech against Catiline, the first of a series of four.[6] This set of speeches does not contain the exact words that Cicero used, but constitutes a rhetorical monument indicating what he more or less said and how he would have said it.

Cicero's self-definition

The speeches were to be presented in the senate and general assembly (*contio*). In view of the strategic risk this entailed for Cicero's stance as the consul prosecutor in the Catilinarian proceedings, Cicero's personality needed proper definition in order to impress the members of the senate as well as the entire Roman populace, and in order for Catiline himself to

[4] Smith 1966: 107.
[5] *Att*. 1.2; *Sull*. 81 *Caelio*. 12ff.
[6] Smith (1966) gives a full account of the Catilinarian conspiracy. Also see Mitchell 1979: 219ff.

recognize by which authority Cicero speaks. Self-definition is of the essence,[7] for Cicero is speaking primarily for himself, but presents himself as if speaking primarily on behalf of the state. Self-definition consists in what and who one is (Benhabib 1992: 104), and in this case, what I propose to call "self-definition of oratorical masculine individual hegemony"[8] involves the categorical stating of all relevant ramifications of power that have been invested in him as the custodian of the Roman republic. This move helps the orator to assert his authority, against the allegedly aggressive and lecherous Catiline and his followers.

In the *exordium* of the first Catilinarian, Cicero depicts himself as the authoritarian severe disciplinarian, social commentator and judge (1ff). Cicero's exclamatory rhetorical questions in the opening censure Catiline's indecent outrages, and how the latter has long abused the patience of the senate, despite the fact that, all his misdemeanours are known to the whole republic (1). The senate also shares considerably in the blame for condoning Catiline's harassment of the whole republic. The senate's blame emanates from its insouciance in dealing with Catiline's outrages (2). In Cicero's opinion, since precedence has been set, execution would be the most appropriate recompense for Catiline's hooliganism. The precedent cited by Cicero, that is the execution of Tiberius Gracchus for undermining the constitution of the state, is a technical comparison intended to institute a charge of treasonable felony against Catiline. Moreover Cicero asserts his position as the consul, and declares the intolerance of his consulship to activities that might destabilize the public peace. His position as the consul is the most important in this opening. Although, Cicero reckons, it is possible that the senate condones his criminal acts, the two consuls have no good disposition towards agents of crime. Cicero's considerations for the state, the senate and the position of the consuls enhance a justifiable ground from where he might successfully plead.

> We have, Catiline, a decree of the senate against you, a decree of authority and power. It is not the deliberations and decisions of this body that the Republic lacks. It is we, I say openly, we, the consuls, who are lacking.[9]

This passage states the three functional institutions of power in the Roman republic, namely the state, the senate and the consuls. The senate reserves

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[7] Jameson 1988: 33.

[8] These concepts are further developed in my doctoral thesis, on which the present argument is based.

[9] I have used the Loeb translation throughout in this paper, except otherwise stated: translation by Louis E. Lord.

the power to act, but has not acted, the public could act, although have not, while the consuls who should, and are prepared to, act lack the practical authority to do so. The implication of this statement of Cicero is that both the public and the senate have been passive about the Catilinarian conspiracy. Cicero's ironic reference to the lack of power by the consuls, after the senate has granted the *senatus consultum ultimum* with which to act, is certainly an act of braggadocio.[10] Cicero is simply vaunting his hegemonic and superior position, in this context, against Catiline. The use of *we* (*nos*) and its repetition for the sake of emphasis shows the attitude of excitement, severity, aggression and brutality with which Cicero is handling the proceedings. *We* (*nos*) is used to state categorically from which vantage point he is prosecuting, and also to establish his hegemony.

Cicero's first-person plural comes in different shades, and the meaning is given by the context in which it is used. First, is the philosophical *we* which is mostly used at the end of an argument and as a manipulative tool to craftily foster the audience's agreement with the orator. The other *we* is the loose and rhetorical form. This is used as the royal we that lends authority to the voice of the speaker. This is what Mackendrick terms as the *l'état-c'est-moi* syndrome. This third *we* is neither philosophical nor rhetorical. Cicero is simply exploiting the *authority* that he possesses as consul, and making an hegemonic claim for him to be able to act in his official capacity. The extra weapon that Cicero possesses in this situation is the consular authority, otherwise, he and Catiline may be taken to constitute two equal hegemonies. This consular authority can be seen as global, because it is representative of all other institutions of power. Cicero's use of name-calling as well identifies and isolates the culprit and craftily wins the support of the members of senate for himself.

For this self-definition to have a profound effect on the hearer, Cicero constructs himself as omniscient consul (6ff; 24). The consular power includes the control of information in the state, which includes policing of recalcitrant elements. Cicero, in his capacity as the consul, has some couriers, who work for him as informants. Cicero, before this period in question, had had a long-standing history of the use of informants in his legal practice, and he himself is a proven detective.[11] Cicero's conscious policy of being well-informed about socio-political developments helped him to keep an "eye-of-God" perspective on Rome. In the present context,

[10] Mitchell (1979: 205ff) gives a history of the *senatus consultum ultimum* and how Cicero was affected by it.
[11] *In Verrem* is a classic example of Cicero's ability as a detective.

despite all the factors that could have concealed Catiline's plot, Cicero asserts that they are well known to the senate, as well as the public. Cicero claims that he has surrounded Catiline with men who would keep surveillance of all Catiline's activities (6).

> For what is there, Catiline, for you to wait for longer, if neither night with its darkness can hide your criminal assemblies nor a private house with its walls confine the voices of your conspiracy, if they are patent, if all burst in view? Abandon now those foul plans of yours, be persuaded by me, forget murder and arson. You are encompassed on all sides; all your plans are clearer to us than the light of day.

Cicero's personification of "night with its darkness" (*nox tenebris*) and "private house with its walls" (*privata domus parietibus*) give a vivid imagination of how strong Cicero's intelligence was. The consul's control of intelligence and information is suggestive of the strength of his private security service in the name of keeping surveillance over Catiline's nefarious activities. Cicero's goal in this situation is to intimidate Catiline, and to make him feel exposed, since the walls of protection for the Catilinarians seem to have been removed. This passage also compares Catiline's activities with darkness, and uses the paradox that all his plans are clearer than the light of day (*Teneris undique, luce sunt clariora nobis tua consilia omnia*: 6). The effectiveness of Cicero's intelligence is given a brilliant portrait when Cicero cites an instance when his guards have forestalled Catiline's assault on the state by the latter's attempt to murder some Roman influential citizens. The adulation of this success does not go to the guards, but to Cicero by whose carefulness and diligence (*mea diligentia*) the intelligence operation was carried out successfully. The use of *mea diligentia* portrays an attitude of dogged detective moves after Catiline's plans, purposes and activities. Ironically, Cicero's so-called diligence in obtaining information regarding this Catilinarian conspiracy was enhanced by a disgruntled noblewoman Fulvia, whose lover had been one of Catiline's henchmen. The lover could not meet up financially in lavish spending over her, and startled by the unjust means through which he hoped to acquire wealth, she apprised Cicero, throughout the year, of the Catilinarian moves to stage a major revolution.[12] As far as Cicero is concerned, nothing can happen in the state without the knowledge of him the consul: "You do nothing, you attempt nothing, you think of nothing which I do not hear and see and understand plainly".

Cicero's *nos* in the passage above has metamorphosed into first person singular (*ego...videam...sentiam*) in this passage. In 24, Cicero also uses the

[12] The full gender implication of this passage are discussed in the last chapter of my thesis.

word *sciam* ("I shall know" – remarkably, in the first-person singular, here) to reiterate to Catiline the amount of information he has about the latter's evil plans. The purpose behind the use of the first-person plural is to gain some authority as he commences his speech, while the first person singular gives a more personal touch to his testimony. This passage also juxtaposes Catiline and Cicero as the pursued and the pursuer respectively. The pursuer has all the information about the pursued while the pursued is not even aware that he is being watched. The change in the personage is an egoistic feature of Ciceronian rhetoric, which comes to the fore when the orator seeks to aggrandize himself. The use of *ego* positions Cicero at the centre of power, as a result of his responsibility as the watchman for the state. This global policing of someone like Catiline stresses how extensive Cicero's satellite influence is within the context of the Catilinarian discourse.[13] The republic's reaction to Catiline's outrages is simulated in 18 when Cicero employs *prosōpopoeia* (dramatic impersonation). In 17-18, Cicero assumes the *persona* of the heraldic voice of the state and addresses Catiline directly, as he constructs a speech for the country.

> Now your native country, the mother of us all, hates you and fears you and decides that you have had no single thought for a long time save for her destruction. Will you neither revere her authority nor obey her judgements, nor fear her power? She, Catiline, thus confers with you and, as it were, though silent speaks: "No crime for some years now has come into existence except through you, no outrage without you; you alone."

Since the whole country now hates Catiline, Cicero advises him to withdraw somewhere from the common gaze. Cicero uses direct speech here to simulate the reticent republic, in order to give voice to the feeling of the state, of which he is the mouthpiece. This heraldic role-play is an expression of power because it does not only enhance Cicero's hegemony, but also empowers him, as consul, to extirpate Catilinarian terrorism from Rome.

Clearly, oratorical hegemony does not only consist in the locus of power that it holds, but also in its effort to monitor other hegemonies that may be constituting a threat to its survival. The conflicts that are generated compel a struggle for survival among the hegemonies and the more powerful triumphs. The nationalistic twist in which the self-definition is rendered gives a rather potent vibrancy to performance of Ciceronian ethos, and to be

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[13] Historically, policing is an essential feature of the domain of men. Hearn (1992: 133) says,

> In the policing of crime, one set of men work against, and sometimes with, another set of men.

Although policing is a way of keeping public order, it also serves as a means of control over other masculinities.

able to subordinate other respectable institutions of power, he employs the name-dropping technique. Naming is very important, because it reiterates the recognition of oratorical hegemony and enhances authority in the course of delivery and defining its territory (*locus*). Territoriality and area of jurisdiction are tacit concepts that should be noted in a conflict situation, and claims to resolving conflicts. In other words, hegemony clearly defines its scope of operation, and establishes itself as the governing authority within that territory. Observably, too much self-definition leads to tyrannical use of oratorical power.

Tyrannical oratorical performance

Oratorical hegemony asserts itself not only by a speaker's explicit declaration to the effect that he possesses the power or the mandate to act on behalf of the state. The actual exercise of power in a forensic context translates power from mere theoretical definition to the actual exertion of force. This is exemplified in Cicero's approach when he asked Catiline to go into exile. Verbal force in oratorical performance and physical violence are two concepts to be distinguished. For Cicero, force emanating from oral performance constitutes a greater threat to life than physical violence. According to Cicero, in his *Pro Caecina* (a speech delivered in 69 BCE):

> Force (*vis*) which touches our persons or our lives are not the only form of force: much more serious is the force which removes a man from a definite position or situation by exposing him to the danger of death and striking terror into his mind. Thus there are many cases of wounded men whose minds refuse to give way, though their bodies are weakened and who do not abandon the position they are resolved to defend; others, on the contrary, are driven back although unscathed; which proves that a greater degree of force is brought to bear upon the man whose mind is terror-stricken than on the man whose body is wounded. (42)[14]

Cicero's conclusion is that the violence which is applied in a verbal (in this case, oratorical) context, has a greater effect on one's opponent than the physical violence that is applied through the use of a weapon. His recognition that verbal violence is more potent than physical violence may have propelled him to employ such force that could disorientate Catiline and excommunicate him from Rome. The emphasis is on displacement from a place (*locus*). In modern rhetorical terms, this is what Winifred Bryan Horner, a classical rhetorician, calls "subtle appeal to force".[15] Neal Wood, a

[14] Translation by Neal Wood.
[15] Horner 1990; cf. Ratcliffe 2000.

Ciceronian political philosopher, calls it "psychic violence".[16] Jeff Hearn, a contemporary scholar who works in the area of masculinity and management calls it "verbal, emotional, mental and psychological violence".[17] Wood rightly concludes in connection with this passage that Cicero considers psychic violence a more potent means of control and manipulation than physical violence. Wood also says, "We recognize it as one of the chief traits of the Roman political arena and the stuff of tyranny, and throughout history psychic violence is most prevalent among tyrannical regimes."[18] In the first *Catilinarian* speech that we are presently looking at, Cicero demonstrates the tyrannical side of his oratorical hegemony. One should bear in mind that his power of oratory is used on a par with other official mandates, which enhances an ethos befitting of an ordinary powerful speaker.

In 20ff, Cicero develops this trajectory by first pleading and reasoning with Catiline as to why he should leave the country, and then suddenly he switches to using the imperative:

> If our country speaks to you thus, as I have said, ought she to obtain her request, even though she cannot use force? (...) Leave the city, Catiline, free the state from fear; into exile if you are waiting for this word, go. What is it, Catiline? What are you waiting for? Do you notice at all the silence of these men? They approve it; they are silent. Why are you waiting for authority of the words of those whose wishes you see when they are silent?

Cicero uses *oxymoron*[19] to make his point here: the sound of silence. He plays around with the understanding of the legal maxim, *tacere consentire est* ("to remain silent is to consent") but over and above that, Cicero makes an explicit mention of the *auctoritas* he possesses to ostracize Catiline which lies in the senators' silence:

> In your case, however, Catiline, when they say nothing they express their approval; their acquiescence is a decree. By their silence they cry aloud. And this is true not only of these men whose authority is, forsooth, dear to you, whose lives are most cheap, but also those most honourable and noble Roman knights, and the other brave citizens who are standing around the senate. You could see the crowd of them, their zeal you could perceive, and their voices you could hear a little while ago.

Cicero makes the occasion seem more of social rather than political extrication of the republic from Catiline who now constitutes a menace to the security of the state. Cicero uses his vantage position to manipulate the

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[16] Wood 1988: 187.
[17] Hearn 1998: 88.
[18] Wood 1988: 187.
[19] As a figure of rhetoric, "oxymoron" is defined as: "placing two ordinarily opposing terms adjacent to one another. A compressed paradox"; cf. G. Burton, Silva rhetoricae/The forest of rhetorics, at http://rhetoric.byu.edu/. (Eds.)

silence of the senate to his advantage. For Cicero, the tacit decree of the senate can translate into his verbal (oral) aggression against Catiline. Continuing from the above passage, he goes further to say that he has kept Catiline away from the fury of the senators, but for the moment he would persuade them to accompany Catiline to the city gates. Without a doubt, Cicero demonstrates how manipulative, tyrannical and global his oratorical influence is in this situation. He has complete sway over both the senate and Catiline himself. He operates with the full confidence that everybody under his oratorical influence can be persuaded and moved to do whatever he has asked them to do. This claim is also an indication to Catiline to recognize his regime in the forensic space and his *l'etat-c'est-moi* position. In addition, Cicero's use of the presence and consent of the senators as his inartistic proof strengthens his case. The consensus of the men that he clearly manipulates to his advantage shows to what extent the senate is supportive of him, but this is rigged. Cicero has indicated earlier in the speech that some members of senate disbelieve him. This undue manipulation of material to corroborate argument is another tyrannical move of Cicero to exert his influence against Catiline.[20]

In Section 30, Cicero constructs his own response to the earlier version of the appeal on behalf of the nation. Probably Cicero would have killed Catiline if the occasion had been given, but since there are some senators who are blind to the conspiracy, his action would then have been considered as unnecessarily vicious. Therefore he would rather Catiline left the country: "Under their influence, many ignorant men as well as villains would be saying that I acted cruelly and tyrannically if I had punished Catiline."

Cicero's concern that some men would not be favourably disposed to his action leads to the use of paralipsis[21] that brings to light what his true intentions are. In this excerpt Cicero uses the word *regie* meaning (in the Republican Roman situation of that period) *tyrannically*, which is an indication of a reigning hegemony. Although he promises to use it sympathetically, the abuse of power that is inherent in tyranny cannot be divorced from its use in the present context.[22] For Cicero, what will establish the authenticity of his claims will be Catiline's union with his accomplices

[20] Asking the senate to vote for Catiline's exclusion would have been another unjust move, because that would be very intimidating to some members of senate, who would not want to be seen as associating with Catiline. The attitude of members of senate cited in 16 shows how schizophrenic the senators were.

[21] As a figure of rhetoric, "paralipsis" is defined as: "Stating and drawing attention to something in the very act of pretending to pass it over. A kind of irony"; cf. Burton, *op. cit*. (Eds.)

[22] Earl (1966: 59) believes that *regere* connoted some degree of abuse.

when he reaches Manlius' camp. Cicero reckons (*intellego*) that killing Catiline alone will only be a temporary measure implying further risk from the side of Rome's bandits, but his expulsion along with that of his friends will be a more lasting solution (30).

As noted above, Cicero's theory of force as a means of dislocating a person or persons is an important weapon; Ciceronian oratorical hegemony has used this weapon to displace Catilinarian military hegemony. Ciceronian hegemony is being established in the use of force, a means to sustaining his ascendancy and a way of eliminating potential rivals and competition in the forensic place. This enactment of the displacement of Catiline and his group from the city justifies the claim that Cicero's theory is valid, but only to a point. In the same Catilinarian discourse, there are some inconsistencies that reveal that in social relations, hegemony is not absolute. While some of these inconsistencies can be seen as performance, others can be seen as genuine, which reflect the true state of the orator's emotions.

Oratorical hegemony as victim

A paradox inherent in the hegemonic position held by Cicero, is the depiction of himself (Cicero), the senate, and the republic as victims of Catiline's outrages (2, 8, 16). In his portrayal as victim, Cicero employs a rhetorical *topos* to romanticize Catiline's adversarial activities in order to win the sympathy of the senate, and also to provide a justifiable ground for Catiline's exclusion. The common concern in the present situation is the security of the state, and its protection against Catiline's onslaught. In 2, Cicero goes so far as to declare to the senate that Catiline's presence in their midst is to mark members of senate out for murder:

> Yes, truly, he even comes into the senate; he becomes a sharer in the public counsel; he denotes and marks out with his eyes each of us for the slaughter.

This passage locates the enemy within the sphere of political influence, and makes the senate look vulnerable.[23] Every member of the senate becomes a potential victim of Catiline's atrocious plans, however, the senate itself has been passive about it, despite their knowledge of him wanting to embark on massive political murder. Perhaps if members of the senate feel uneasy about Catiline's presence, they might be supportive of his proposal to excommunicate Catiline. To further corroborate his point, Cicero recounts a

[23] Vasaly (1993: 52) has expressed a similar opinion.

recent activity of Catiline who came to the house of Marcus Laeca, planning to kill the whole senate. Cicero tells of the scheme of how he has mapped out the city, in which areas people were to be killed; and above all, of two Roman knights who were designated to assassinate Cicero (8ff). Nevertheless, before the close of the meeting of the Catilinarians, Cicero has heard about the plans and has assigned armed guards to protect his house and before dawn he had told some eminent men in the city (10). Cicero's harangue about Catiline's victimization of the republic reaches its climax when Cicero claims that he had been pursued by Catiline when he was consul-elect, and also when he became consul (15ff). Although Catiline has tried several times without success, Cicero wonders why the former has not desisted from such moves (16). For Cicero, Catiline's presence in the state threatens the stability of the state, and he should therefore leave and go into exile (10, 18, 21, 22, 23). Cicero suggests it would be more permissible if Catiline besieged the country from outside than from inside as consul: hence, Cicero's prevention of Catiline from the consulship (27).

Such a construct of Catiline is that of military ("Rambo") masculinity that is prevalent in most modern African states. Cicero suggests (somewhat ironically) that Catiline should save his military discipline for the hardship he might encounter in the bush (27). The antagonistic role that Catiline is assuming makes a military *coup d'état* a very real threat. Whether this is a true assertion, or Cicero is trying to pre-empt the events is a different ballgame altogether. The adversarial juxtaposition of Catilinarian and Ciceronian hegemonies in this speech typifies the contestation and rivalry that ensue between the military and civilians in countries where the military are considered powerful, but – from a constitutional and bureaucratic point of view – unprofessional. In addition, this situation is identifiable in areas where there are incessant political upheavals. The subject of victimization, which Cicero develops most eloquently in this speech, is in no way compatible with the true character of Cicero. Since the orator believes that the emotion is the seat of power, Cicero simply makes a pathetic appeal to the senate in order to win their support. For technical reasons, although victimized, Cicero's consular personality still emerges as more powerful and influential than Catiline's, simply because the former is backed up with a senatorial mandate.

In conclusion, I have tried to demonstrate that power has many faces in an oratorical context. I have also argued that the duty of the orator is to identify the different kinds of power that exist within the context of his operation, and to convert them into a manipulative oratorical tool, leaving the audience to grapple with the morality of his rhetoric.

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CHAPTER 8
SOVEREIGN BODIES, SOVEREIGN STATES AND THE PROBLEM OF TORTURE

Lisa Hajjar

ABSTRACT. The interests of sovereign states and individuals do not always agree and this complicates the politics of human rights at the broadest levels. Relatedly, torture is not merely the infliction of pain but involves complex interconnections between morality, legality and politics. Justice, on the other hand, is an abstract principle that is devoid of the immediacy on physical destruction. And on the whole, the necessity for collective security takes precedence over the interests and desires of the individual.

> There remain deep tensions between the traditional internal autonomy of states (sovereignty) and international concern for individual welfare, tensions that pervade both the law and the politics of international human rights and embarrass the international effort to improve the condition of individual human beings everywhere. (Henkin 1990: 13)
>
> Torture is the calculated infliction of pain, but it is also an emblem of state power. To talk about torture is not just to talk about pain but to enter into a complex discourse of morality, legality and politics. (Cohen 1991: 23)
>
> [J]ustice is an abstract principle. In contrast, security is a tangible concern. Bombs and blood speak loudly, in clearer and more convincing tones than words and principles. Even from a moral standpoint, security's interest in survival takes precedence over the individual's interest in liberty. (Zamir 1989: 377)

Introduction[1]

Torture – the deliberate infliction of pain and suffering by agents or representatives of (some) authority – has been practiced in many societies throughout history and utilized for a wide variety of purposes: religious, juridical, punitive (see Peters 1985). But its construction as an "international problem", which calls forth an international response, has a relatively recent vintage. The massive prevalence of state torture during World War II became one of the driving concerns behind a veritable revolution in

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international law to create and define human rights (see Henkin 1991; Lauren 1998).[2] And the struggle against torture figures centrally in the history of an international movement that has developed over the last few decades to promote human rights. Today, to talk about torture is to talk about a problem that is clearly and broadly construed as a form of human-rights violation. Moreover, within the pantheon of human rights, the right not to be tortured stands out as one of very few rights that are absolutely non-derogatable.[3]

In this article, my central concerns revolve around three general questions:

1. how the international legal prohibition of torture infringes upon (and thus alters) the sovereign powers of states;
2. how the right not to be tortured exemplifies the ways in which human beings are constituted through law as "international subjects"; and
3. how the practice of torture and efforts to enforce its prohibition affect and reflect struggles over rights – of humans and of states – in the contemporary era.

In general, the development of an international human-rights regime over the past fifty-odd years has encroached on the "terrain" of states by establishing new restrictive criteria and refining pre-existing standards of rule.[4] Among the effects of this process are a gradual, if partial, erosion of a Westphalian international order[5] where the sovereignty of the modern nation-state functioned as a supreme power and international laws were oriented overwhelmingly to the rights and responsibilities of states in their

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[2] Human-rights laws and humanitarian laws (laws of war) have distinct histories (the latter of far longer genesis), although together they have become sources of reference for the humane and lawful treatment of human beings.

[3] According to Fitzpatrick (1994: 209), there is a core consensus in the key human-rights instruments of four non-derogatable rights: the right to life; the prohibition on torture and cruel, inhuman and degrading treatment or punishment; the prohibition on slavery; and the principle of non-retroactivity of criminal laws.

[4] The phrase "human-rights regime" is commonly used in reference to the global(ized) enterprise of institutions and agents engaged in processes and practices to make, monitor and/or enforce international human-rights laws. Although this "regime" lacks anything resembling a centralized structure or power base, its institutional coherency derives from a general/common mandate to promote and enforce human rights, as defined by international law.

[5] The international order established by the peace treaties signed in Westphalia (now a part of the German Federal Republic) in 1648 CE (notably at the towns of Münster and Osnabrück). Putting an end to the Thirty-years War and the Eighty-years War, these treaties enacted the sovereignty of national states as a guiding principle. (Eds.)

relations with one another, excluding, for the most part, matters concerning the relations between states and their own subjects. However, the establishment of a human-rights regime did not undermine the centrality of states to political life around the world. Rather it entailed the elaboration of *internationalized norms of government* to which all states would be expected to adhere,[6] while preserving the general principles of states' rights, including those associated with institutional sovereignty (i.e., autonomy and non-interference).[7] Human rights are contemporary international legal constructs which obtain their "universalizing" character from the political fact that people are subjects of states, and states are subjects of international law.

As the period/process of decolonization wound down by the 1970s (see Simpson 1996), the international order largely assumed a post-colonial form envisioned in human-rights law: a globalized array of (ostensibly) independent sovereign states, each bearing responsibilities to provide, protect and respect the rights of people within its domain. In crucial ways, the human-rights regime accommodates and even reinforces state sovereignty because it relies on individual states to behave and conform, and depends on the system of states to act against those that do not (see Falk 1985).

Notwithstanding the persistence of state-centrism in the international order, the content of humanitarian laws and human-rights conventions promulgated in the decades since World War II signifies some important changes.[8] By "recognizing" that people have rights *as humans,* and not merely as protected classes of subjects in relations between states, the very meaning of being human has been redefined in and through international

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[6] As ᶜAbdullahi An-Na'im explains,

> States are responsible for bringing their domestic law and practice into conformity with their obligations under international law to protect and promote human rights (...). This principle is fully consistent with the principle of state sovereignty in international law, since it does not purport to force any state to assume legal obligations against its will. It simply seeks to ensure that states effectively fulfill legal obligations that they have already assumed under international law (An-Na'im 1994: 167).

[7] The means of articulating and promoting international norms vary. They include the obligations incumbent on states as members of the United Nations (UN) to recognize the principles contained in the Charter and other UN conventions; activities at the international level to promulgate new laws and conventions, which bear the expectations that states will ratify and implement these laws domestically; and the far less centralized legal interpretative processes of "elevating" legal norms from conventional to customary status.

[8] The most important innovation in humanitarian law (laws of war) since World War II is the promulgation of the four Geneva Conventions of 1949 and their 1977 protocols. All human-rights conventions are of this post-war vintage.

law.[9] And through the elaboration of new standards and distinctions between what is legitimate or acceptable, and what is illegitimate and forbidden in the treatment of human beings, the meaning of state sovereignty has also been modified. For example, state practices like mass killings or forced relocations of domestic civilian populations, which once might have been criticized as "immoral" or "bad politics", have been recast as *state crimes*, and their perpetrators made vulnerable to punishments and reprisals sanctioned by law. From the Nuremberg Tribunals of 1945 to recent exercises in international "humanitarian intervention", the sanctity of the sovereignty principle has been circumscribed in ways that would themselves have been illegitimate in an earlier era (see Gutman & Rieff 1999; Minow 1998; Neier 1998).

Although the principles that undergird international human rights are far from being "universally" embraced or accepted, there are certain general understandings about what those principles are. Prevailing ideas about human rights integrate a vision of morality, law and politics. The moral dimension is premised on the assertion that all people have certain rights by virtue of their being human; the legal dimension holds that human rights are those enumerated and codified in international instruments; and the political dimension establishes obligations to act in accordance with these laws.[10] Thus, human rights, especially those characterized as "political" or "civil" in nature, represent international efforts to regulate the relationship between states and their subjects.

One of the major problems of human rights is how to bring the lofty principles enshrined in international law to bear in the government and treatment of people around the world. I would highlight two aspects of this problem, that relate directly to the practice and the prohibition of torture. One is the weaknesses and inefficiency of enforcement mechanisms at the inter-state level capable of effectively holding states accountable to the laws. The second pertains to the difficulties in interpreting the applicability of international laws when conflicting interests are at stake. Although *violations* of human rights are condemnable, the *reasons* underlying the violations are often imbricated in legally recognizable rights and interests of states. International laws recognize states' rights to act in their own interests, and the determination of what those interests are is left largely to the

[9] For example, Turner (1993) has suggested that a social theory of human rights can be built on the universality of the "frail human body" which needs protection from the vicissitudes of state violence and technologies of destruction.

[10] Although the ideals that comprise the range of "human rights" are contested and evolving, there is a core belief that certain rights are – or should be – universal.

discretion of states themselves (e.g., access, control and distribution of resources; immigration policies; criminal justice systems). Such prerogatives are fundamental to the politico-legal constitution of state sovereignty.

The potential contradictions between human rights and states' rights are heightened in times of conflict, whether manifesting as international war or internal strife. When states deem themselves to be at risk or threatened by "enemies", whether foreign or domestic, they can find substantial latitude in international law to justify the institution of exceptional measures to defend and protect "national security" as those in power perceive it (e.g., imposition of emergency legislation; restrictions on movement, speech and association). National security is generally interpreted in statist terms as the defence of the state itself and of the "public interests" for which the state is responsible (e.g., territorial integrity, law and order, national economy). The problem of delineating between circumstances in which a state's restriction or even out-right violation of human rights can be construed as legitimate or acceptable, and those in which such derogations would be clearly illegitimate, create an interpretative morass. This problem becomes even more complicated when the violations alleged to be occurring are so grave as to warrant legally sanctionable reprisals. The debates that raged over the legal justification for intervention in the recent conflict in Kosovo exemplify this problem of interpretation: Was the evidence of potential genocide and ethnically motivated dislocation of Kosovar Albanians by Serbian military (and paramilitary) forces so compelling as to create a legal imperative for international intervention on their behalf,[11] or was foreign intervention in a "domestic" conflict (since Kosovar Albanians are citizens of Yugoslavia) an illegal violation of state sovereignty?

But such interpretative difficulties are also productive: they fuel discursive, political and legal interventions that serve, albeit in limited and inconsistent ways, to operationalize an international jurisdiction of law. Because of the institutional weaknesses of enforcement mechanisms at the inter-state level, non-governmental organizations that comprise the human-rights movement have found cause and opportunity to operate in the breach to promote adherence to international laws (see Keck & Sikkink 1998). The various strategies deployed for such purposes include monitoring and reporting on violations to foster awareness, advocacy work to encourage powerful actors (namely state governments and/or the United Nations) to

[11] The actual form that this intervention took – by North Atlantic Treaty Organization (NATO) forces without obtaining the backing of the United Nations Security Council – complicates the issue further by raising questions about the legality of the pursued course of action.

intervene in ways that would curb or stop violations, and litigation to adjudicate the applicability of international laws. Human-rights activism and networking fulfil a panoptic function of international surveillance which feeds other types of efforts (military, diplomatic, economic) to regulate and "discipline" the behaviours and activities of states in accordance with the norms and standards of international law.

The issue of torture epitomizes both the challenges and the productive potential of human rights. The prohibition of torture, which is enshrined in a number of international instruments (see Kellberg 1998), extends to all human beings regardless of any aspect of their identity or political status (i.e., citizenship, nationality, race, nationality, religion, sex, etc). In so doing, it fortifies a universalizing conception of what it means to be human by constituting all people as "international subjects" with a common right not to be tortured. And because the prohibition of torture is non-derogatable, it universalizes a common restriction on all states that applies under all circumstances, including conflicts and wars.

The extent to which the right not to be tortured is violated – as it is often and in many places – illuminates the gap between international legal standards and state behaviour. The prohibition is not adequately or effectively enforced in such a way that torture becomes *impossible*, or so potentially costly as to be *irrational*. The possibilities and rationalities for torture persist (even as torture is publicly denied) as an "emblem of state power" (Cohen 1991: 23), a tactic of control engaged in by dozens of states around the world, and creating tens of thousands if not millions of victims. But the picture is not entirely bleak nor is the gap between legal principle and political practice static. Rather, the legal prohibition sanctions forms of action that carry consequences. Allegations that torture is being perpetrated by public agents invite (incite) incursions into the sovereign domain of states, at minimum in the form of invasive scrutiny, and possibly manifesting as a more concerted punitive approach directed against those responsible for torture.

The various issues and contestations that circulate around the problem of torture

I begin with a conceptual framework for understanding of torture within the larger field of human-rights law and practice. I then take up the question of why states torture, focusing on the connection between the politics of national security and the perpetration of this particular brand of violence. I

draw briefly on examples of torture in Latin America and Northern Ireland, and then turn to Israel, the West Bank and Gaza (Israel/Palestine). There is a good reason for using Israel/Palestine as the key example: to date Israel is the only state in the world to have officially sanctioned practices that constitute torture according to international law, albeit under the euphemistic label of "moderate amounts of physical pressure." It is the *publicness* of debates and contestations over torture in Israel/Palestine that provides a unique insight into the more general themes of this article, particularly the problematic relationship between national security and human rights. I consider in some detail the history of Israeli torture of Palestinians and struggles against it by Israeli and Palestinian human-rights lawyers, activists and organizations. A qualified victory in this struggle was achieved in September 1999, when the Israeli High Court finally rendered a decision against the commonplace use of state-sanctioned "pressure" tactics, although this decision does not go so far as to close the window of opportunity for continuing torture. I conclude by suggesting a connection between the problem of torture in Israel/Palestine and recent developments elsewhere in the world in the struggles against human-rights violations and violators.

Human rights and torture

Many scholars who focus on human-rights issues work with an intention to cultivate or fortify connections between the academy and the political and legal terrains where struggles over rights are waged. Scholarly interventions can serve to substantiate exposures and criticisms of violations, and extend the kinds of challenges to prevailing conditions in which such violations occur. In my own work as a teacher, I gained a heightened appreciation for the utility of the problem of torture to understanding human rights from students in my seminar, "Human Rights in Theory and Practice". To explain, most students begin the semester assuming that human rights are self-evident, and that the central problem is that they are frequently violated. Within a few weeks, however, their assumptions are challenged as they familiarize themselves with various debates over human rights (e.g., universalism versus cultural relativism), as they study the problematic history of the enterprise (e.g., the fact that part of the world was still colonized when key instruments and institutions were created, or the cynical uses of human rights to advance Cold War agendas), and as they consider that even the matter of who is "human" is not a universal given. By the middle of the semester, many of them become uncertain about what it means

to be "for" human rights, or even sceptical about their legitimacy as an internationalized concern. It is at this point that we come to the section on torture. I found that as they engage with the issue of torture, they recuperate a commitment to the idea that human rights are important, albeit informed by a more critical awareness of the problems and limitations. Moreover, by studying the kinds of efforts that are mounted to enforce the prohibition of torture, their appreciation for the value and necessity of rights-oriented action to fight and protest against violations is bolstered. Reflecting on what it is about torture that has such a powerful effect on my students, I can identify five elements that might account for such a response.

First, understanding torture and its prohibition provides certain clarifying insights into the nature of rights in general. As juridico-political constructs, specific rights are "created" by specific laws, notwithstanding the kinds of philosophical arguments which propose that rights have a "natural" or *a priori* basis which laws merely codify. The *right* not to be tortured is established by the laws prohibiting torture. This right is tantamount to the *outlawing of practices* that constitute torture, as defined by law. According to Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the practices prohibited refer to

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when pain or suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Understanding the right in terms of prohibited practices helps to counter a common misconception that rights are things (that can be owned, given, lost, etc.). Rights are not things, despite that they are often framed and discussed as such because of the ways law reifies by categorizing, defining and delimiting its objects. Rather, *rights are practices that are required, prohibited or otherwise regulated within the context of relationships governed by law.*

It is important to note that, contrary to uses of the term "torture" in everyday language, its legal definition does not extend to all kinds of inflicted pain and suffering.[12] The prohibition of torture hinges on the nature

[12] Such a "popular" rather than "legal" understanding of torture is used by Asad (1996) when he cautions that we should be sceptical about the universalism of the prohibition of torture because it

of the relationship between victims and perpetrators. For example, slapping someone, tying her up, denying her sleep or food, though all potentially brutal, dehumanizing and illegal, do not qualify *legally* as "torture"[13] unless the "torment [is] inflicted by a public authority for ostensibly public purposes" (Peters 1985: 3).[14] It is also important to note that the quantity, intensity and duration of pain and suffering that would qualify as torture are vague and contested.[15] However, the prohibition is contingent primarily on the purpose or motivation behind the practice rather than the effects on the victim (see MacEntee 1996).

Second, the international prohibition of torture is both a product and an epitomization of changing ideas about legitimacy in relationships between states and human beings, and the rights of each. Understanding the impetus behind the prohibition helps to historicize the development of human rights. At a particular point in recent history, the practice of torture came to command a degree of opprobrium that transformed (elevated) it into a matter deemed to warrant international regulation. Torture is not necessarily the "worst" form of abuse that states can perpetrate on human beings – for if one had to rank horrors, genocide and disappearances might top the list. Rather, the construction of torture as an international crime hinges on the kind of

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represents a

> modern dedication to eliminating pain and suffering [and] often conflicts with other commitments and values (Asad 1996: 1082).

While his points about modern (and Western) views of pain are well-taken, he mistakenly conflates pain and suffering with torture in order to make an argument that understandings of and attitudes about pain are not universal and therefore cannot be marshalled into a "universalist discourse" of prohibition. It is on this basis that he can ask why sadomasochism is not prohibited under the rubric of torture (Asad 1996: 1099). However, torture is legally defined as a particular kind of political practice that depends on the nature of the relationship within which it occurs, and it is to this specificity that the prohibition is directed. In other words, the prohibition attends to the kind of practice that torture entails rather than the kind of effect it produces (i.e., pain and suffering).

[13] Some noteworthy efforts, especially by feminists, are being taken to expand the legal definition to include forms of torment inflicted by "private" actors, thereby extending the prohibition covered by existing laws on torture to include domestic violence and even female genital mutilation. See, for example, Copelon 1994; Coomeraswamy 1999.

[14] The concept of "public authority" is not strictly limited to states; it could include any organized movement or group that exercises a level of control and authority over populations and/or territory.

[15] Efforts to quantify pain are sometimes used to distinguish between "torture" and "cruel, inhuman or degrading treatment." According to Rodney (1987: 80),

> only the organs of the European Convention of Human Rights have attempted to conceptualize the difference between the various limbs of the formula of the prohibition (torture, inhuman treatment, degrading treatment...).

relationship between people and the state that the prohibition seeks to regulate. It is the perpetration of pain and suffering on people who are *in custody*. This specificity distinguishes torture conceptually, empirically and legally from other forms of violence, such as those arising in the context of warfare or conflict (see Scarry 1985). Moreover, the imperative to prohibit this particular brand of violence has become so widely accepted among the international community that it has acquired the status of customary law,[16] and as such carries extra-territorial jurisdictional force that would enable any state to prosecute those suspected or charged with perpetrating or abetting torture.

Third, the content of the international legal prohibition of torture represents an "ideal" type of human-rights norm. It invests humans with a kind of sovereign right over their bodies and minds (albeit limited to the legally prescribed context). Like the principle of sovereignty governing relations among states, this right establishes principles of sanctity and security based on respect for boundaries (in this case the body and mind of the individual). Furthermore, this individualized sovereignty is accorded greater weight than the sovereign rights of states because international law explicitly prohibits torture under all circumstances. There are no exceptions (not even the famous "ticking bomb" rationale) that allow for the suspension or derogation of the individual's right not to be tortured.[17] If the state is the arbiter of legitimate violence, as is well established in international law, and torture is an illegal form of violence, then the state has no *right* to torture. Thus, the right of people not to be tortured marks an important line in the limits of states' rights. In contrast to the ambiguities and loopholes characterizing many of the laws governing human rights, the legal prohibition of torture is "muscular" and uncompromizing.

There are, of course, debates over the legal parameters of the prohibition, notably whether it would include the death penalty or corporal punishment. But these debates are marginal to the discourse on torture (which is not to suggest that they are of marginal importance) because they conflate torture and punishment. Torture may be punishing in terms of the violence that it entails; it might provide a means to punish (e.g., its use in eliciting a

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[16] For example, in *Filartiga v. Pena-Irala*, the USA Court of Appeals, Second Circuit held that the right of freedom from torture is part of customary international law.

[17] Article 2.2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states:

> No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

confession that is then used to secure a conviction); and its widespread use might be construed as producing an effect of collective punishment. But ultimately the practice of torture is distinct – that is, distinguishable – from punishment because it occurs outside the scope of judicial review and control.[18] *Torture is extra-legal.*

Fourth, the powerful, globalized consensus to the effect that torture constitutes a human-rights violation exemplifies the possibilities of universalism in a political world defined by differences.[19] No society on earth advances the claim that torture, *as legally defined*, is a valued or integral part of its cultural heritage or political culture. If such an argument *could be made*, it would be: the practice of torture would be acknowledged rather than denied. On a related point, the prohibition of torture universalizes a common status for human beings as "individuals with rights". While the human-rights regime is rightly criticized for privileging Westernized notions of the autonomous individual over collective identities, there is no debate that the practice of torture produces individualized suffering or that the right not to be tortured inheres in the individual rather than some collectivity.

Fifth, the struggle against torture is among the most visible and productive manifestations of human-rights activism. The results of such activism have served to make a liar of every torturer who has said to his victim,

> Go ahead and scream. No one will hear you.

The world has heard – has been forced to hear – if not the screams themselves, then at least the echoes of such screams. Through monitoring, reporting and documenting torture, those screams have been brought into the public domain where they demand and command an audience. The practice of torture may be denied by those who perpetrate it as well as by those who are indifferent to the suffering of its victims, but when torture is alleged, the secrecy on which it depends is challenged, and the kind of power it embodies is confronted. Even if the practice of torture is never completely eradicated, the organized, collaborative efforts to enforce the prohibition

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[18] According to Garland (1990: 17),

> Punishment is (...) the legal process whereby violators of the criminal law are condemned and sanctioned in accordance with specified legal categories and procedures.

See also Garland 1990: 241-47. It is worth noting that in this 300 page book about punishment, the term "torture" does not appear in the index and there are only a handful of passing references to it in the text.

[19] For a discussion of the historical roots of this universal norm, see Peters 1985.

empower activists around the world.[20] More importantly, this empowerment is dynamic, as indicated by the burgeoning attention to human-rights laws and the influence of human-rights organizations on international politics.[21]

Why torture?

Now we must ask, if there is such a powerful prohibition against torture, and this prohibition enjoys such a wide international consensus, why does torture remain a shockingly prevalent problem? If one were to accept state rhetoric at face value, there is no torture in the world. No torturing regime defends or even acknowledges its own torture *as torture.* Sometimes they simply lie. Sometimes they shift the blame to "aberrant" or "overzealous" agents who acted against orders. Sometimes they rely on euphemisms, claiming that their practices do not qualify as "torture" (see Cohen 1995a, 1995b, 1996). Yet when a state utilizes torture tactics, there are justifications at work, even if they are shrouded in secrecy and denied in public.

The justifications and rationalizations for torture are often traceable to *raisons d'état*, especially when the torturing state can claim a threat to national security. As Edward Peters (1985: 6-7) explains, the history of modern torture is integrally related to the history of the modern state.

> Much of modern political history consists of the variety of extraordinary situations that twentieth-century governments have imagined themselves to face and the extraordinary measures they have taken to protect themselves. Paradoxically, in an age of vast state strength, (...) much of state policy has been based on the concept of extreme state vulnerability to enemies, external or internal (...). By focusing on the public character of torture (...) we may be able to regard torture in the twentieth century no longer in the simplistic terms of personality disorder, ethnic or racial brutality, residual primitivism, or the secularization of ecclesiastical theories of coercion, but as an incident of some forms of twentieth-century public life (...) less observed but no less essential to the state's notion of order.

The modern state, despite the manifold forms it takes, bases its claims to institutional legitimacy (domestic authority and international recognition) on its status and identity as the representative of the socio-political collective

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[20] For example, the UN Committee against Torture (a mechanism of the Convention against Torture) invites and relies on information provided by non-governmental organizations that investigate allegations and monitor the occurrence of torture and ill-treatment.

[21] In 1984, the year the Convention against Torture went into effect, the UN created the position of a Special Rapporteur on Torture. Among the responsibilities of this position is an annual public reporting to the UN Commission on Human Rights about the Rapporteur's interventions in specific countries and responses received.

that comprises the nation. National security, then, is grounded in a *politics of representation* – of a national "society" or "community" by the state. Although national security imperatives are context-specific, the extent to which they are invoked to justify torture raise some common questions:

- what/whose interests does the state represent,
- how can those interests be threatened,
- why is torture perceived as a "necessary" means to combat a threat (whether utilized as a punitive reprisal or "defensive" strategy), and
- who could be construed by state agents as appropriate targets for such practices?

The use of torture in the defence of national security contributes to the constitution and reinforcement of national boundaries. It establishes a class of innocents – those members of the nation *in good standing*, whose interests and security are the responsibility of the state. It simultaneously operationalizes a politics of exclusion of categories of people deemed to threaten the national order, who either "need" to be tortured or do not deserve not to be. Of course, inclusions and exclusions of various sorts are integral to – indeed, constitutive of – state politics, whether obtaining along demographic lines of national, ethnic, racial or religious difference, or along ideological lines of political difference. But when it comes to the relationship between national security and torture (and other types of gross violations), the politics of inclusion and exclusion manifest themselves as an extreme form of differentiation between the "legitimate community" and "enemies of the state". Those subjected to torture are categorized as a dangerous or degraded "type", and their dehumanization is *confirmed* through torture. In this regard, torture compares to warfare, since both are forms of violence directed at "others" (see Scarry 1985: 60-63, 139-45). But what distinguishes torture from warfare is the nature of the practice itself. The practice of torture targets individuals already in custody.

One of the most common forms of demonization is the charge of terrorism, which smacks of danger and thus provides an "ideal" justification for state violence and the suspension or derogation of human rights. Terrorism is a concept both broad and flexible enough to encompass a variety of challenges to the political authority of the state and/or the economic status quo (emphasizing violence, but not necessarily limited to violence). It tends to be applied to non-state actors or organizations engaging in struggles against the state (see Weinberg 1992). However, in national-security discourse, terrorism often is represented as *sui generis,* lacking any

cognizable logic of its own beyond a will to terrorize, to which the state *responds* with "counter-terrorism". Given the well-documented relationship between "counter-terrorism" and torture, the critical issues are how the casting of resistance as terrorism occludes the *relational* nature of violence, delegitimizes whatever grievances stimulate or motivate anti-state activism (e.g., repression, discrimination, denial of the right to self-determination), and contributes to the delineation between "legitimate" and "illegitimate" communities, leaving the latter vulnerable to state violence and perpetuating an atmosphere of conflict. In a 1987 report to the UN Commission on Human Rights, the Special Rapporteur on Torture writes:

> Especially where civil strife has taken the form of guerilla tactics, military and security personnel feel threatened and may gradually fall into the practice of physical abuse and torture to extract information about their opponents. Every person living within the guerilla area may be seen as a potential enemy who withholds information and may, therefore, be forced to disclose it by all available means..[T]he inevitable effect of such practices is that mutual hatred increases and life becomes ever more violent. (UN Doc. E/CN.4/1987/13, ch. VI, para. 73, cf. Duner 1998: 120)

The issue of resistance by non-state groups, including terrorism, has been a particularly vexing problem in the interpretation and application of international human-rights law, and an enduring point contention between the international human-rights movement and state governments (see United Nations: General Assembly Resolution 48/122 of 20 December 1993: Human Rights and Terrorism, para. 2). Typically, governments criticized for violating the human rights of their opponents have tended to respond that such criticisms are biased. Such governments tend to argue that comparable scrutiny and criticism is not directed against violations perpetrated by non-state groups; they may also claim that states' own perceptions of the dangers their enemies pose to national security are not given adequate consideration. For those who champion the doctrine of national security, human rights themselves pose a subversive threat to limit the state's capacity to engage in "counter-terrorist" activities.

A somewhat contradictory element in the justification of torture is the imperative of public denial. Because of the powerful international prohibition of torture, states have an interest in not being *labeled* as engaging in or condoning torture, because such labelling would make them liable or vulnerable to reprisals. However, as long as states can deny that torture is occurring, or as long as they manage to distinguish their coercive interrogation practices from torture, the rights of the individual can be subordinated to the rights of the state. According to Antonio Cassese (1990: 91-92),

> "Modern" torture has become more "sophisticated". Although physical pain continues to be inflicted, with increasingly refined instruments, often endeavours are made to use methods that leave no traces – and therefore no evidence – in order to avoid any possible accusation.

The perceived need to torture and the compelling need to lie about or deny it are two sides of the same coin: the power and rights of the state, both in relation to its human subjects, and in relation to other states in the international order.

Understanding why states torture involves a consideration of the particular (context-specific) threats to national security that they consider themselves to face. In South America, for example, throughout the 1970s and' '80s, a number of regimes utilized torture (and other illegal practices) on an enormous scale, and coordinated such activities among themselves. Why? In *A Miracle, a Universe*, Lawrence Weschler (1998: 98-99) summarizes an explanation for the gross violation of human rights in Brazil, Uruguay, and elsewhere on the continent. He situates these practices within an interlocking national, regional and global context. Briefly, the model of import-substitution industrialization began to fail in the late 1950s and into the 1960s in country after country. The working classes and leftist groups were sufficiently mobilized and organized to exert strong political demands and claims on social goods. However, economic crises made it increasingly difficult for states to maintain even existing levels of health and educational services, and pension benefits, giving rise to political crises, including anti-state violence. Across the continent, militaries seized power with the aims of ending unrest, depoliticizing assertive workers, (re-)privatizing production, and reinserting the national economies back into the global capitalist system. The resultant rampancy and scale of violations of human rights, among which torture featured prominently, were related to the threat to national security that these regimes purported themselves to be combating, namely a localized manifestation of "international communism".[22] Although most of the victims shared a common national identity with the perpetrators, the justification for extraordinary state violence was provided by an ideological differentiation demonizing leftists, communists and socialists. Those targeted by the military regimes were construed as national traitors and/or

[22] Within the context of the Cold War, but especially after the Cuban revolution gave "international communism" a foothold in the region, the USA military and intelligence services played an active role in bringing together and training members of the hemisphere's militaries, and contributing to their indoctrination in the dangers of the communist menace and the value of free-market economics. The USA-run School of the Americas was one of the training grounds for South and Central American torturers, and USA agents played a direct and indirect role in torture and other gross violations throughout the hemisphere.

guilty by association or proximity to traitorous political movements. Weschler (1998: 121) describes the doctrine of national security guiding these military regimes as

> a fearsome piece of work. To begin with, there is the matter of sheer breadth of the threat it feels justified in enjoining. The enemy – the International Communist Movement – is perceived as covertly operating everywhere, all the time, in all fields of human endeavor. The threat is no longer conceived as one of conventional war, nor even as one of *sedition* (the doctrine's word for armed insurrection), but rather as one of *subversion*.

In recent years, most of the South American military regimes have been replaced by civilian governments, and "international communism" has eroded as a feasible threat. In some countries there have been investigations and published reports on state violence, taking as their title "never more" (*nunca mas, nunca mais*). But a question remains whether the governmental transitions have sufficiently changed the relationship between people and the state to guarantee that the prohibition against torture will be respected in the future. The doctrine of national security remains strong, and the imperatives of fighting "terrorism" continue to be utilized to justify violent reprisals against insurgents.[23] For example, the governments of Peru and Colombia have sought to isolate their own battles against guerrilla groups from the constraints of human rights, and the Inter-American Commission on Human Rights has avoided including terrorism into its mandate (see Tomasevski 1998: 194-97).

In Northern Ireland, which has been wracked by decades of conflict, the main protagonists of violence were the British government, Protestant "loyalist" militias, and the Irish Republican Army (IRA). The politics of differentiation in Northern Ireland assumed national, sectarian and ideological form, obtaining as a conflict over the nature and boundaries of the state itself: an independent, reunited Ireland versus a permanently divided Ireland with the north remaining linked to the United Kingdom. While Britain castigated IRA resistance as nothing more (or less) than terrorism, the IRA has defined its cause as a political anti-colonial struggle against foreign rule. In *Formations of Violence*, Allen Feldman (1991) highlights the relational nature of political violence throughout Northern Ireland, including the state's use of torture in the interrogation of prisoners. He distinguishes his concerns from those of Elaine Scarry (1985), who focuses specifically on the *torture relationship,* and for whom victims

[23] While charges of terrorism were leveled against opponents during the era of military regimes, these days anti-state activism tends to lack a popular base and/or an ideological mandate of socio-political transformation.

become objects because they lose all agency as torture "unmakes" their world. While Feldman concurs that the infliction of pain does indeed objectify victims, he contextualizes torture within the broader context in which it occurs. He proposes that captured IRA members who were subjected to torture retained their subjectivity because they comprehended their suffering as part of the national struggle, in which they were actively engaged.[24]

> The body made into a political artifact by embodied acts of violence is no less a political agent than the author(s) of violence. The very act of violence invests the body with agency. (Feldman 1991: 7)

> It is not only a matter of what history does to the body but what subjects do with what history has done to the body. (Feldman 1991: 177)

Feldman's informants (at least the more "hardened" paramilitaries) discuss interrogation as a "shared political arena" in which both interrogators and interrogees are participants (rather than actors and objects).[25] He describes how prisoners counteracted the violence perpetrated upon them through "counter-instrumentation" of their own bodies,[26] for example provoking a beating to force the interrogator to play his "ace card" right away, thereby diminishing his capacity to maintain control over the interrogation (Feldman 1991: 138-39).

The history of British torture of Irish prisoners in Northern Ireland bears some striking similarities to Israeli torture of Palestinians from the occupied West Bank and Gaza. First, in both contexts, as resistance against the state escalated over the years, governance was increasingly organized in terms of counter-insurgency. Second, both states fancy themselves liberal democracies committed to the rule of law. But both have utilized emergency legislation and justified their own uses of violence as legitimate and necessary means of dealing with terrorism. In both contexts, terrorism is conceived quite broadly in terms of how it is defined (opposition to the state) and who can be suspected of engaging in or supporting it. Third, while the use of "torture" is officially denied, allegations by prisoners, lawyers and human-rights activists have forced judicial intervention to grapple with the

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[24] Scarry localizes torture in the body of its victims, expressed poignantly with the phrase "my body hurts *me*." In contrast, Feldman's account of torture could be expressed with the phrase "my *cause* hurts me."

[25] In my own research among Palestinian prisoners, a number of the more highly politicized activists offered similar analyses of their experiences in Israeli interrogation.

[26] Other examples of IRA paramilitaries' "counter-instrumentation" of their bodies included the "blanket," "dirty" and hunger strikes.

contradictions between "enemy" individuals' rights and the state's right to preserve security as it sees fit. Fourth, in both contexts, the struggle against torture has focused domestic and international attention on the once-hidden world of interrogation (see Feldman 1991: 110-14; Ginbar 1996). The comparison falls, however, on the states' responses to allegations of torture (Ginbar 1996: 5-9). A legal challenge was mounted against Britain's "five techniques" in the interrogation of suspected IRA activists on the grounds that they violate the European Convention on Human Rights (*Ireland v. United Kingdom)*.[27] Although a majority decision by the European Court of Human Rights decided that the five techniques do not amount to "torture", but to the lesser – also prohibited – category of "inhuman and degrading treatment", the British government decided to forego their use.[28] In contrast, the Israeli state, suggesting that its own interrogation tactics compare to Britain's five techniques, has taken the unprecedented step of according public sanction for their use. This position is based in part on the European Court's decision that such techniques do not constitute "torture."

Israeli national security versus Palestinian human rights

Before proceeding with a consideration of Israel's distinctive position on interrogation, it is necessary to consider briefly how the Israeli-Palestinian conflict has played out as a case study of the potential contradictions between national security and human rights. Since Israel is a Jewish state, national security is defined ethno-nationally. While the meaning of Jewish/Israeli *security needs* has changed over time, the meaning of *security threats* has remained remarkably consistent since 1948: it encompasses anything that can be construed as challenging Israel's existence and viability as a Jewish state or the safety and well-being of members of the Jewish nation. Thus, Palestinians' collective/national aspirations have been deemed threatening – and demonized – on the grounds that they compete and conflict with those of Jews, since both nations have claimed the same "homeland".

Because Palestinians are stateless and dispersed, their struggle for national rights (i.e., to sovereignty and self-determination) has taken

[27] The five techniques include wall standing (i.e., position abuse), hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink.

[28] The European Commission to Prevent Torture opined that the five techniques do constitute torture. The British government accepted the opinion of the European Commission and the minority decision of the European Court that the tactics constitute (or come close to) torture.

"unconventional" forms, including guerrilla warfare. The Palestine Liberation Organization (PLO), which emerged in the 1960s to lead this struggle, was characterized by the Israeli state (until 1993) as a terrorist organization, and its members and supporters as terrorists or proponents of terrorism. For the Israeli state, although Palestinians are exteriorized along national (i.e., demographic) lines, the threat they pose to Israeli national security is *geographically* "internal" because of the large number of Palestinians living under Israeli rule, whether as citizens (i.e., those residing inside the 1949 armistice boundaries, or "Green Line") or residents of the territories occupied in 1967 (*i.e*, the West Bank and Gaza). Since most Palestinians have identified with the PLO (regarding it as their national representative), it was easy for Israeli officials to justify the repression of Palestinians on the basis of Jewish/Israeli national security and the negative imperatives of governing a segment of "the enemy" within. As Israeli lawyer Dana Briskman (1987: 57) comments,

> Generally speaking, everything connected to Palestinian Nationalist [sic] activities and especially to the PLO was considered *prima facie* a threat to security which could justify limitations and restrictions of rights.

For those Palestinians living under Israeli military occupation in the West Bank and Gaza, their individual and collective rights are ostensibly guaranteed by international legal instruments, most prominently the Fourth Geneva Convention. However, the Israeli state has rejected the *de jure* applicability of the Fourth Geneva Convention to its rule in the West Bank and Gaza on the grounds that these areas are not "occupied" but "administered".[29] From this highly controversial interpretation of its legal rights and duties in these areas, the Israeli state has accorded itself the prerogative to define – and circumscribe – Palestinian rights on terms of its own choosing, rather than those set out in international law.

By charting such an "original" politico-legal course for itself, Israel has resisted the influence and authority of the international community on matters relating to the government of both the land and population of the West Bank and Gaza. This defiance suggests a larger tension between the principles of state sovereignty and the trend in international legal discourse over the last 50 years that seeks to curb the excesses of state autonomy.[30]

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[29] This involves a complex legal, political and historical argument. See Hajjar 1994; Shamgar 1982a; Shehadeh 1988.

[30] For example, Israel does not recognize the authority of the commissions governing the International Covenant on Civil and Political Rights or the Convention against Torture, although the government does submit periodic reports.

What makes the Israeli case so interesting and difficult is that Israel does not reject the importance of legality to assessments of its rule over Palestinians in the West Bank and Gaza. Rather, it holds that its policies and practices are legally viable, if different from international opinion; that Israel has the right, as a sovereign state, to interpret its obligations independently because these interpretations arise out of the actual conditions on the ground (including the fight against terrorism); and that it cannot be made to do otherwise because alternative interpretations are advanced in attempt to constrain Israel politically (and perhaps to bolster or benefit its enemies) (see Bar-Yaacov 1990; Shamgar 1982a: 32-33; Shefi 1973; Yahav 1993). According to Itzhak Zamir (1989), an Israeli High Court justice, the privileging of national security over "basic human rights" finds very wide support in Israel.

> It is particularly difficult in Israel to reach a suitable balance between the interest of national security and that of human rights. The special conditions which prevail here foster an extreme approach, which tends to assign absolute priority to national security above all other interests, and to disregard the need to strike a balance between them. This approach finds adherence both among the general public as well as in ruling circles. (Zamir 1989: 376-77)

The discourse and politics of Israeli national security incorporate an explicit or inferred reference to national identity and difference. This is evident in the ways security laws are applied, and in the ways (potential and actual) "victims" and "perpetrators" are construed. For example, inter-communal violence is regarded as a security violation if it involves Palestinian-on-Jewish attacks, but if the protagonists are reversed, it is usually treated as a "crime", the latter often bearing lesser punishments and higher burdens of proof for conviction. Only in the rarest of instances have Jews been accused of violating Israeli security, and these cases tend to involve either anti-Zionist activities of some sort or direct attacks against the state (e.g., the assassination of Prime Minister Yitzhak Rabin). It is by understanding the nature of Israeli state rule over Palestinians (especially the prerogatives that the state has accorded to itself in the name of security), that we can understand how and why Israel has sought to legally justify and politically rationalize its violation of Palestinian human rights, including the use of violent and coercive tactics on prisoners during interrogation.

Israeli torture

Generally, practices of torture are obscured by the clandestine nature of interrogation and the institutional insularity of security agencies. Most of

what is publicly known about torture comes from those who have been on its receiving end. This was the case in Israel/Palestine until 1987. That year, an official commission of inquiry, headed by former High Court justice Moshe Landau, issued a groundbreaking report about the activities of the General Security Services (GSS) (Landau 1987).

The Landau Commission Report confirmed what had long been alleged by Palestinian detainees, their Palestinian and Israeli lawyers, and numerous human-rights organizations: that GSS agents had routinely used violent interrogation methods on Palestinian detainees since at least 1971, and that they had routinely lied about such practices when confessions were challenged in court on the grounds that they had been coerced.[31] While the Landau Commission was harsh in its criticism of GSS perjury, it adopted the GSS's own position on the rationale that coercive interrogation tactics are necessary in the struggle against "hostile terrorist activity".[32] The Landau Commission described GSS interrogators as "ideological criminals" who had erred while doing their "national duty" (see Landau Commission Report, pp. 31-39). According to the report:

> The investigation staff of the GSS is characterized by professionalism, devotion to duty, readiness to undergo exhausting working conditions at all hours of the day and night and to confront physical danger, but above all by high inner motivation to serve the nation and the state in secret activity, with "duty being its own reward", without the public glory which comes with publicity. It is all the more painful and tragic that a group of persons like this failed severely in its behavior as individuals and as a group. In saying this we are not referring to the methods of interrogation they employed – which are largely to be defended, both morally and legally (...) – but to the method of giving false testimony in court, a method which now has been exposed for all to see and which deserves utter condemnation. (Landau 1987: 4)

The most problematic aspect of the report was not what it revealed about the past, but the conclusions and recommendations it offered. The report's authors argued that national security imperatives demand the option of coercion in the interrogation of Palestinians, and that the state should sanction GSS agents' use of physical and psychological "pressure" in order to eliminate their need to perjure themselves.

Before addressing the consequences of the Landau Commission Report and the debates and contestations that have ensued in its wake, we should

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[31] In Israeli courts, rules of evidence require that a confession be given of the detainee's free will in order to be legally admissible. Nevertheless, the leading school of thought in the Israeli legal system holds that even if coercive methods are used, the confession can be admissible if it was *signed* without coercion. See Human Rights Watch/Middle East 1994: 243-44.

[32] The Landau Commission also adopted the broad definition of terrorism utilized by the GSS, which encompasses virtually all forms of Palestinian nationalism.

consider the history of torture in Israel/Palestine prior to 1987. A comprehensive history of Israeli interrogation has yet to be written, and the conditions do not exist for such an undertaking. It is useful, however, to compare what is known about this history with official Israeli discourse on the subject prior to the publication of the Landau Commission Report.

Between the late 1960s and 1987, numerous accounts and reports of Israeli interrogation methods were published, but those which claimed the routine use of torture and ill-treatment were officially challenged as anti-Israel lies and smears, and refuted by arguing that such claims were based on pernicious fabrications by Palestinians and other "enemies of the state." Since information about interrogation *does* rely on accounts provided by those who have been interrogated, for decades many international observers were sceptical or reluctant to label Israel a torturing state because of the difficulty of independently confirming such claims. For example, Amnesty International did not use the word "torture" in reports on Israel until 1990, although it had long been involved in researching and publishing on matters related to the interrogation of Palestinians (Cohen 1991: 24). Certainly another factor tempering criticism of Israeli interrogation practices was the zeal with which claims of torture were challenged by officials and supporters of the state.

In the early years of the Israeli occupation of the West Bank and Gaza, Palestinian resistance manifested itself predominantly as armed struggle by a small number of *feda'yin* (guerrilleros), and it was met with Israeli responses that were predominantly military (as opposed to legal). To the extent that captured *feda'yin* were interrogated, the main purpose was general information-gathering, and the use of torture tended to be "penal" (i.e., to punish) rather than "judicial" (i.e., to extract confessions to be used in court).[33] There were two reasons for the limited need for "court-worthy" confessions during this period: one was the wide scale use of administrative measures such as detention and deportation to punish and deter resistance, and the other was a tendency among *feda'yin*, when captured, to readily admit their actions and accept the consequences because they considered themselves prisoners of war.

Eventually, the decline of armed attacks from within the occupied territories and the expanded capabilities of the Israeli military court system coupled to allow for increased use of legal (as opposed to military) means to deal with and punish resisters. As the demand grew for forms of evidence that would hold up in court, interrogation was increasingly aimed at

[33] On this distinction see Rejali 1994: 6.

producing confessions to be used for conviction. By 1970-71, the complete isolation – and thus effectiveness – of interrogation as an institutional component of the legal process had been achieved (Hunt 1987). Some lawyers representing Palestinians began reporting claims by their clients of the use of measures such as beatings, electric shock, death threats, position abuse, cold showers, sexual abuse, and denied access to toilet facilities. In 1970, the Israeli publication *Zu HaDerech* reported a new policy to discourage military courts from investigating the conduct of interrogators:

> Noting the importance and vitality of [the GSS's] security responsibilities in this area, it is the duty of the court to avoid disturbing them in their tasks (cited in Amad 1973: 19).

Some of the ill-treatment is merely primitive: prolonged beatings, for example. But more refined techniques are also used, including electric-shock torture and confinement in specially-constructed cells. This sort of apparatus, allied to the degree of organization evident in its application, removes Israel's practice from the lesser realms of brutality and places it firmly in the category of torture ("Israel Tortures Arab Prisoners").

Although the Israeli government, through its embassy in London, ridiculed the findings and conclusions of the article as "fantastic horror stories" in a published response (July 3, 1977), then-Prime Minister Menachem Begin personally ordered a curtailment of torture in Israeli prisons and detention centres.[34] However, by the end of the 1970s, local and regional events (including intensified Jewish settlement activity in the occupied territories and the signing of an Egyptian-Israeli peace treaty) led to an escalation of Palestinian resistance against the occupation, which in turn led to an escalating number of arrests and interrogations. By the early 1980s, the hiatus on torture had ended.[35]

The events that precipitated the establishment of the Landau Commission were not directly related to the interrogation of Palestinians. Rather, two scandals implicating GSS agents had come to the public's attention, one involving torture of an Israeli Circassian officer in the army (who had been

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[34] To compensate for governmental restrictions on this means of gathering information and evidence, beginning around 1979 the GSS developed a new technique: the procurement and use of Palestinian informers in prisons. See Be'er & ᶜAbdel-Jawad 1994: 63.

[35] An important legal development relating to interrogation was instituted in 1981; henceforth, a person could be convicted on the (sole) basis of a third-party confession, whereas previously a conviction was contingent on a first-party confession or material evidence. This legal development was modelled on the domestic Israeli "Law Amending the Evidence Order, 1979" (see Tsemel 1989: 130). This institutionalized the admissibility of hearsay and expanded the "benefits" accruing from interrogation. These benefits also accrue to GSS agents: each conviction that results from an interrogation is recorded as a credit in the personnel file of the agents who conducted the interrogation (see Levy 1990).

suspected of treason), and the other involving the murder of two Palestinians already in custody (they had hijacked a bus) and a subsequent cover-up (see Lahav 1988). The Landau Commission's mandate was to bring to light any illegal actions perpetrated by the GSS and, in doing so, begin the process of restoring public (Jewish Israeli) confidence in the security establishment. However, the report of the Landau Commission, especially the recommendation that the state sanction the use of violent interrogation tactics, became a topic of intense criticism and debate.[36]

The Landau Commission Report advanced the argument that Israeli penal law could be interpreted to allow interrogators to use "moderate physical pressure" (as well as various forms of psychological pressure) as part of the fight against terrorism.[37] According to this argument, the "necessity defence" legally permits people to use violence in "self-defence", thereby mitigating criminal liability of someone acting to prevent grievous harm.[38] However, in applying such an argument to interrogation, the "self" is the Jewish nation, and the "people" are Israeli state agents operating in an official capacity. Thus, in a single rhetorical manoeuvre, the people, the nation and the state are conflated and represented by the GSS. By the same turn, Palestinian detainees are dehumanized; they become, not people with a right not to be tortured, but *a priori* "terrorists" and "ticking bombs". The Landau Commission's rationalization for such measures is based on a three-part contention:

1. that Palestinians have no moral right to legal protection given their predisposition toward terrorism,
2. that the GSS operates morally and responsibly in discharging its duties to

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[36] For example, a double issue of *Israel Law Review* (1989) was devoted to critical assessments of the Landau Commission Report. See also Public Committee against Torture in Israel 1990; Cohen & Golan 1991, 1992; Ron 1997.

[37] The law at issue is Section 277 of Israel's penal code, which prohibits the use of physical force during interrogation. According to this law, a public servant is liable to imprisonment for three years if s/he uses or directs the use of the use of force against a person or threatens or directs a person to be threatened for the purpose of extorting a confession or information relating to an offence. The Landau Commission suggested that this prohibition could be legally circumvented by utilizing a broader interpretation of the "necessity defence", as contained in Section 22 (Article 34 [11]) of Penal Law, 1977.

[38] The Landau Commission report suggested that the necessity defence could be interpreted to include not only its originally intended exception for cases of "imminent danger", but could also include "the concept of lesser evil", by which

> the harm done by violating a provision of the law during an interrogation must be weighed against the harm to the life or person of others which could occur sooner or *later* (p. 57, emphasis in the original).

preserve national security, and
3. that GSS interrogation methods do not constitute torture (see Landau 1987: 79).

The recommendations of the Landau Commission were adopted by the government, making Israel the first (and thus far the only) state in the world to officially sanction the use of interrogation methods that constitute torture according to international law. In doing so, Israel set in motion the first public challenge to the core principle underlying the legal prohibition against torture: that the individual's right not to be tortured takes precedence over any possible state right or interest. The coincidental timing of the Report's publication (October 30, 1987), its endorsement by the Israeli cabinet (November 8) and the outbreak of a Palestinian *intifada* (uprising) (December 9) bore directly on the handling of security suspects at a time when the number of people being arrested and interrogated was sky-rocketing. Thus we can say that the Landau Commission Report decisively transformed the *discourse* of Israeli interrogation while preserving the *practices*. Whereas prior to Landau, the state had denied torture categorically, now it denies that "moderate physical pressure" constitutes "torture".[39]

The specific methods and guidelines that the Landau Commission recommended, and that the state accepted, were contained in a classified appendix to the report. Although secret, human-rights lawyers and activists seeking to challenge their legality have forced the state to admit or acknowledge that routine methods include threats and insults, sleep deprivation, hooding and blindfolding, position abuse, solitary confinement (including in refrigerated or overheated closet-like cells), subjection to excessively filthy conditions, and physical violence (including a method known as "shaking" which produces a whip-lash effect[40]) (see Cohen &

[39] For example, the Office of the Military Advocate General (1992: 10) stated,

> While, in dealing with hardened terrorists involved in the commission of grave security offences, the use of a certain degree of force is often necessary to obtain information, the disproportionate exertion of pressure on subjects (i.e., by torture or maltreatment) is strictly forbidden. Israel has repeatedly condemned all use of torture.

[40] The use of "shaking," a method of physical violence that leaves no marks on the body, was extensively used after the adoption of the Landau Commission's recommendations. In 1995, the Israeli cabinet approved "shaking" in "exceptional circumstances." Following the death of a Palestinian detainee, ᶜAbd al-Samad Harizat, as a direct result of shaking, the late prime minister Yitzhak Rabin said,

> There was a malfunction in the interrogation method. It had been used against 8,000 interrogees and there was no problem.

Golan 1991, 1992; Ginbar 1996; Human Rights Watch/Middle East 1994). As a result of legal pressure brought on the state by lawyers representing Palestinian clients, the government formed a ministerial committee in 1991 to look into interrogation. This committee's deliberations resulted in a revised set of guidelines, although any changes in tactics were minimal.[41]

In 1991, the policy of permitting "moderate physical pressure" became more legally problematic when the Israeli Knesset[42] ratified the UN *Convention against Torture and Other Cruel, Degrading or Inhuman Punishment*. The government exempted itself from adhering to this Convention in its conduct vis-à-vis Palestinian residents of the West Bank and Gaza on the grounds that the political status of these areas remains to be determined,[43] a line of legal reasoning that draws on the Israeli distinction between "administration" and "occupation" (Human Rights Watch/Middle East 1992). That year, a draft Law against Torture was submitted by Hadash (a coalition of leftist Israeli parties) to the Knesset, but it did not survive a first reading.

Over the decades of Israeli occupation, tens of thousands of Palestinians have been subjected to interrogation methods that constitute torture. Between 1987 and 1994 alone, an estimated 23,000 people were tortured. Despite the publicity surrounding this problem, the Israeli government, courts and a majority of the Jewish public consistently refused to accept that the international prohibition against torture applies to Palestinians. Even some leading Israeli legal liberals have refused to acknowledge and condemn torture by state agents. For example, Ruth Gavison, a prominent law professor and president of the Association of Civil Rights in Israel (ACRI, the country's largest and most prestigious civil rights organization), was quoted as saying,

> I don't know of any state which confronts terror attacks of the sort we deal with here, and which does not strike against the body or welfare of detained persons suspected of being connected to terrorist activity (cited in Baram 1998: 23).

Despite overwhelming evidence that methods used routinely in interrogation constitute torture, such broad and consistent refusal on the part of the Israeli mainstream to take a stand against torture has served to marginalize and even demonize those Israelis involved in the struggle

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Interview on Kol Israel, July 29, 1995, cited in Ginbar 1996: 58.

[41] The new guidelines were issued in a classified booklet titled *The Procedure for Extraordinary Authorization during Interrogation*. See Ginbar 1993.

[42] The Israeli Parliament (Eds.)

[43] This exception takes no account of the fact that interrogation of Palestinians from the territories actually takes place within the territory of Israel (i.e., inside the 1949 armistice line).

against it. The latter have been criticized in speech and print as "sympathizers" or "defenders" of "terrorism" for their efforts (see Levy 1999).

Legal challenges to torture

Every year, Israeli human-rights lawyers have submitted hundreds of petitions to the Israeli High Court on behalf of Palestinian clients in interrogation;[44] most of these petitions seek an *order nisi* (show cause) for incommunicado detention, and/or Court intervention to force prison authorities to grant a meeting with the client, and/or to challenge the use of violent tactics in the case of that specific client. But some lawyers affiliated with Israeli human-rights organizations, of which the *Public Committee against Torture in Israel* (PCATI) has been most active, have mounted a more aggressive and expansive litigatory campaign seeking a Court decision to declare the use of physical and psychological violence illegal because it conflicts with domestic Israeli penal law and international conventions to which Israel is a signatory.[45] One PCATI attorney, Allegra Pacheco, described this work as a "Sisyphus-like struggle in the highest court in Israel to permanently abolish torture in Israel" (1999a: 9).

In 1991, PCATI petitioned the High Court to void the Landau Commission Report and publicize the secret interrogation guidelines. The petition was rejected in 1993; the Court stated that the guidelines have the status of an "internal directive" and therefore are not subject to judicial intervention. Although the justices handling the petition were privy to the guidelines, they did not render an opinion regarding their legality vis-à-vis Israeli or international laws. In 1994, PCATI brought a petition against the government of Israel that was even more ambitious in its aims: in addition to calling again on the Court to order the state to publish the secret guidelines, the petition challenged the GSS's right to detain and interrogate people without explicit legislative authorization (see Pacheco 1999a: 10-33). The petition challenged the GSS's existence as "extra-legal"[46] and the content of

[44] Although Palestinian lawyers have also been involved in the legal struggle against torture, only lawyers who are members of the Israel Bar Association are permitted to bring cases and petitions before the High Court.

[45] For a collection of PCATI petitions and High Court decisions, see Pacheco 1999a.

[46] The petition pointed out that the GSS operates under the authority of the Israeli government and the office of the Prime Minister,

> based on the assumption that it is an executing arm of the government, carrying out the

its activities as "aberrant" and illegal. On this latter point, PCATI drew, in part, upon the new Basic Law: Human Dignity and Liberty (1994). According to the petition,

> [T]he fact that the government authorizes the [GSS] interrogators to harm the bodies and dignity of persons is a constitutional disgrace which undermines the integrity of the legal system and challenges its right to exist (Pacheco 1999a: 13).[47]

The High Court issued an *order nisi*, but it left the case pending.

Although the High Court was not entirely immune to granting relief in certain cases, its general pattern of decisions and delays served to preserve the secrecy of GSS interrogation practices and confirm the state's ability to exempt itself from adhering to international conventions in its treatment of Palestinian detainees. Thus, the High Court effectively added its stamp to the position that using violent tactics on Palestinians is legally permissible. Such a rationalization hinges on the notion that any harm perpetrated by interrogators is lesser than the possible harm that detainees pose for the class of innocents, those civilians who are the victims (actual or potential) of terrorism. Consequently, the High Court was directly contributing (rather than passively conceding, as is sometimes argued) to the subversion of the right of individuals not to be tortured, by according the state an anachronistic form of extreme and absolute sovereignty to do as it will to the bodies of its subjects. Needless to say, Israeli and Palestinian human-rights activists, as well as other sectors of the international human-rights movement, have been highly critical of the Court's failure to apprehend Israeli torture as a crime, let alone act to prevent it. As one Israeli human-rights organization, B'Tselem, described the situation as recently as 1998:

> In Israel, torture is institutionalized, with its own routine and systematic bureaucracy. Torture is governed by detailed regulations and written procedures. A whole contingent of public officials participate in the practice of torture: in addition to the GSS interrogators who directly perpetrate torture, doctors determine whether a detainee is medically fit to withstand the torture, a ministerial committee headed by the Prime Minister oversees the procedures, state attorneys defend the practices in courts and finally the High Court of Justice has effectively legalized torture by approving its use in individual cases without ruling on its legality in principle. (Felner 1998: 1, 15)

> residual jurisdiction of the Israeli government to defend the security of the state... (Pacheco 1999a: 12)

What makes the GSS "extra-legal" is that, not only is there no specific law regulating it, but its activities usurp the jurisdiction of other bodies that are regulated by law: the GSS

> maintains a parasitical relationship with authorized authorities like the police or the prison service (Ibid: 16).

[47] The petition also argued that the prohibition against torture is "universal," "customary" and "absolute," and quoted from the *Filartiga* (USA) decision (Pacheco 1999a: 25-27).

A legal breakthrough in the struggle against torture came as a result of several petitions challenging specific tactics referred to as *shabeh. Shabeh* is a combination method involving tying a detainee to a small slanted chair, keeping a filthy sack over his head, exposing him to loud music and sometimes extremes in temperature, and causing sleep deprivation. Drawing on an earlier High Court decision (*Mubarak et al v. GSS*) which ruled that painful handcuffing is prohibited, PCATI attorneys representing two clients (Fuad Awad Qur'an and ᶜAbd al-Rahman Ghanimat) sought a decision that would serve to prohibit *shabeh* on the basis that it constitutes methods that cause pain.

In January 1998, the High Court combined these petitions with four others pertaining to interrogation, and convened an unprecedented panel of nine justices to consider the matter.[48] At the first hearing, state attorney Shai Nitzan acknowledged that *shabeh* causes pain and affects the detainee's physical and mental state, but asserted that it is not used *in order to cause pain*; rather, it is an administrative measure used to control people during the "waiting" period between interrogation sessions (Pacheco 1999b: 5). The High Court adjourned after a single day without ruling on the petitions. Rather, the Court issued a statement calling on the Knesset to take responsibility by promulgating legislation, rather than leaving it up to the Court to decide each petition in an *ad hoc* manner. While such a statement coming from the country's highest judicial authority is problematic on a number of levels, the most glaring is its disregard for the already existing laws that govern interrogation: the international instruments prohibiting torture.

The nine-justice panel reconvened for a second one-day session on May 20, 1998, at which time state attorney Nitzan offered a new explanation for the use of *shabeh*: he admitted that it was indeed a factor in the interrogation process rather than merely an administrative measure. Although this was, in effect, an admission that the government had been lying to the Court for years, no action was taken. The panel reconvened for a third time on January 13, 1999. At that hearing, one of the PCATI attorneys, Allegra Pacheco, drew the Court's attention to the fact that in May 1998 the *UN Committee against Torture* (the international body authorized to monitor adherence to the *Convention against Torture*) had reiterated its position that Israeli interrogation tactics include methods constituting torture, and should cease

[48] In an attempt to marshal public pressure and influence the High Court, B'Tselem released a new report, *Routine Torture*, the day before the scheduled hearing at a press conference during which actors demonstrated some of the interrogation methods regularly used on Palestinians. Pictures and images of these re-enactments were covered by all the major Israeli media.

immediately (see B'Tselem 1998: 12). One justice on the panel asked Nitzan to comment on this, to which he quipped,

> We all know quite well how the United Nations decides when it comes to Israel,

thereby suggesting that the problem was international anti-Semitism rather than the state's use of torture. That was the end of the discussion (Pacheco 1999b: 1). Once again, the Court adjourned without setting a date for continuation. However, in February 1999, Nitzan announced a change in *shabeh*, stating that cloth hoods would be replaced by blackened goggles, that the small slanted chairs would be replaced by regular chairs, and that prisoners would not be shackled quite as tightly. Nevertheless, lawyers claimed that these purported changes were not, in fact, instituted in the treatment of most prisoners (Pacheco 1999b: 1-2).

Finally, on September 6, 1999, the High Court rendered a ruling prohibiting *shabeh*, "shaking" and other forms of *routine* violence during interrogation.[49] Although this decision marked a victory for the thousands of victims of torture, as well as for human-rights lawyers and activists, it fell short in a number of crucial regards. It neither acknowledged that GSS interrogation methods constitute "torture", nor completely forbade their continued use under "exceptional circumstances." The Court's ambivalence about curbing GSS prerogatives was evident in the words of Chief Justice Aharon Barak: "Our apprehension that this decision will hamper the ability to properly deal with terrorists and terrorism disturbs us." Moreover, the Court suggested (again) that the government could pass legislation to legalize these methods. Steps to do so were subsequently prepared.

In recent years, the problem of torture has taken a new twist. The political changes wrought by the Israeli-Palestinian negotiations – which began in 1991, produced a Declaration of Principles in 1993, and led to the establishment in 1994 of a Palestinian Authority (PA) with limited "self-governing" powers in parts of the West Bank and Gaza – have not ended the incidence or risk of torture in Israel/Palestine. On the contrary, Palestinians have continued to be tortured by the thousands in the interest of Israeli national security, only now the torturers also include Palestinian as well as Israeli security agents.[50] This extension of torture into the age of negotiated

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[49] Two days after the decision was issued, on September 8, 1999, Human Rights Watch (HRW) sent a letter to Yossi Beilin, Israeli Minister of Justice, urging him to submit legislation to the Knesset clearly prohibiting torture and ill-treatment, and begin prosecuting GSS agents responsible for torture. According to Hany Megally, executive director of the Middle East and North Africa division of HRW, "It's up to Minister Beilin to give the ruling teeth."

[50] Between 1994 and 2000, at least 19 Palestinians have died while in custody of the Palestinian

agreements stands as a scathing indictment of the "achievements" of recent diplomacy. PA torture, like Israeli torture, must be understood in the context in which it occurs: the larger political agenda of the PA, namely the project/process of state-building, hinges on an ability to satisfy Israeli security demands. Thus, torture becomes a means for the PA to demonstrate its "good faith" intentions in this context where torture is no crime.

Conclusion

Torture has become an international matter through the promulgation and uses of international laws and conventions that prohibit it. Certainly Israeli and Palestinian human-rights lawyers and activists have understood the importance of situating their activities within a larger – global – context in their efforts to bring international laws and political pressure to bear on both the Israeli state and the PA to stop torture. In keeping with such efforts to situate the "local" within a "global" context, I would like to suggest a connection between struggles against torture in Israel/Palestine and recent developments elsewhere in the world. In the 1990s, the human-rights enterprise entered a new era. This phase is characterized by the development of agendas and strategies to prosecute violators of human rights.[51] Many of the international laws governing human rights include mechanisms for enforcement through prosecution, but it is only recently that such options have begun to be exploited.[52] The establishment of international tribunals for Rwanda and the former Yugoslavia, the passing of a treaty to create a permanent International Criminal Court, and the arrest of former Chilean dictator Augusto Pinochet all indicate moves in this direction. Although there are serious problems with each of these examples, they represent significant, albeit nascent, changes at the international level: an expansion of the human-rights enterprise from a struggle *for rights* to a struggle *against violators*. I would argue that targeting violations *legally* (rather than diplomatically, economically or militarily), and charging, trying, convicting

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Authority.

[51] In this particular regard, I would suggest a positive reading of what Carol Greenhouse (1998: 15) more sceptically describes as an emergent "criminal trial paradigm": "[T]he public fascination with spectacular public interrogations (...) suggests the pervasiveness of the criminal trial as a public discourse involving high stakes and emotions."

[52] Indeed a recurring theme in human-rights scholarship published prior to the mid-1990s is frustration with a pervasive refusal to take seriously the legal options, thereby relegating human rights to the realm of moral outrage or, at best, political leverage.

and punishing violators in courts of law – in other words, turning the *violence of law* against the perpetrators of state violence – has a potential to affect and alter the ways in which state power over people is exercised.

Of all the human-rights violations that international laws target, torture lends itself most readily to a litigatory agenda. This is being vividly demonstrated in the Pinochet case. Pinochet was arrested in London on the basis of an indictment issued by a Spanish judge. He was charged with a number of violations of international law. The first decision by the British House of Lords rejected the legal grounds for the charges of genocide (because the victims of Pinochet's regime do not "fit" the legal definition since they were not killed because of their national, ethnic or religious identity). But the decision upheld the indictment on the charge of torture (as well as attempted murder). Although this decision was overturned subsequently on a technicality, a second decision by the House of Lords narrowed the scope of indictable crimes,[53] but upheld the indictment on charges of torture. This development has literally revolutionized the ways in which people around the world can imagine – hope and fear – new uses of existing laws. At a March 1999 conference, "Investigating and Combating Torture" (sponsored by the University of Chicago), Sir Nigel Rodney, UN Special Rapporteur on Torture, noted that torture is the reason Pinochet remains in England.

At this juncture, the prospect that those who perpetrate or abet torture might face prosecution holds forth a possibility for changing the practices and discourses associated with the sovereign rights of states, at least in regard to their treatment of people in custody. The challenge is in transforming the principled prohibition against torture into practice. Of course, states that lie, deny or euphemize about their own use of torture are unlikely to enforce domestically the UN Convention against Torture. But the enforceability of this convention is extra-territorial, a provision which makes geography itself a potential resource in the struggle against torture. At the risk of sounding glib, torturers sometimes travel. Pinochet was arrested during a personal trip to London. This involved a kind of "human-rights intelligence" to take advantage of his movement out of Chile, where he enjoyed an impunity of his own making.

In countries around the world, many torturers and their records are known. The first question is whether such knowledge can be translated effectively into a basis for action should an opportunity to use it arise. The

[53] The second decision by the Court of Lords made 1988 the cut-off year for indictable crimes, because this was the year the United Kingdom signed the Convention against Torture.

second question is how to translate the possibilities into *legal obligations* to act by those who are empowered to do so, namely the governments of other states. The possibilities have been illuminated by recent events and developments; following Pinochet's arrest other leaders suspected of authorizing or perpetrating torture (e.g., from Iraq, Yugoslavia, Croatia) have reportedly cancelled or terminated plans to travel abroad out of fear of their own arrest. The translation and consolidation of these possibilities into broader action begs the contribution of scholars to advance substantive arguments that might prove influential in transforming the enforcement of international law from a political option into a legal duty. While it remains too early to tell whether torturers will face increasing risk of prosecution in some legal venue, this prospect should give pause to any state that uses torture, for when it comes to torture, there is no legal defence.

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Part Three: In the Sphere of Public Deliberation

CHAPTER 9

RE-CLAIMING IDENTITY AS TRUTH

ON THE POLITICS OF THE AFRICAN RENAISSANCE

Reingard Nethersole

ABSTRACT. In South Africa, the politics of identity as promoted by the African Renaissance seeks to undermine the violence and assumptions of Western ethnocentrism regarding the African Other. In this way, it resembles the ideologies of négritude, the African personality and the Harlem Renaissance which emerged much earlier. However, the African Renaissance in formulating a discourse of authenticity undermines a Nietzschean appreciation of truth and its multiple possibilities.

The old English meaning of the noun *truth* was "trustworthy". To establish trust between former enemies in order to create common ground for a humane future after the demise of divisive, thoroughly unjust *apartheid* was the major aim of the *Truth and Reconciliation Commission* (TRC). In tune with the rejection of Manichaean[1] thinking, resulting from imperial and totalitarian perspectives up and including the Cold War, the TRC thought to create the condition of "being true or factual", as implied by the Latin term *vērus*, about the violent, hidden South African past. The "theatre of pain and catharsis" as the *Mail and Guardian* (19-25/4/1996: 5), called the TRC's first meeting, quotes the Anglican prelate, Desmond Tutu:

> We are charged to unearth the truth about our dark past; to lay the ghosts of the past so that they may not return to haunt us. That it may thereby contribute to the healing of a traumatised and wounded nation; for all of us in South Africa are wounded people.

Once "the truth" about atrocities committed on both sides would have been "confessed", that is narrated and interpreted on the level of moral justice rather than legally verified or validated, reconciliation as an interactive form of dialogue between perpetrators of empirical and symbolic violence would

[1] *Manichaean*: referring to a scheme of thought associated with the name of the religious innovator Mani (Persia/Iran, 3rd century CE), and positing a radical division of the world into good and bad; in fact the scheme has much older antecedents, e.g. in Zarathustrian thought. (Eds.)

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have been set in motion, and "nation building" on the basis of mutual understanding and trust could commence.

Evidence of the reception of this largely socio-political process inaugurated by the TRC suggests a rather mixed effect on the diverse peoples of South Africa. Although the media spectacle provoked profound soul-searching on the part of Afrikaans-speaking intellectuals, South African liberals seemed dissatisfied with the TRC's historico-narrative paradigm. Whereas the former appeared deeply touched by what might be called *moral justice* inscribed in all narrative truth, the latter were concerned rather with *legal justice*, a justice less defined by taking moral responsibility than by verifying and apportioning factual guilt.[2] Antjie Krog's *Country of My Skull* (1998) and Anita Jeffrey's *The Truth about the Truth Commission* (1999) serve as examples, respectively. By-and-large, though, the limits of the desired process of reconciliation, facilitated by mutual "understanding" and solidarity with those who suffered under *apartheid*, are only too apparent in as much as many victims think of the TRC as "toothless" because of its explicit rejection of *retributive justice*. Others, like Mahmood Mamdani (1998) took the Commission to task for failing to define the terms of the social debate and to set the parameters for truth-seeking. Holding that, similar to Mamdani's conclusion, the "truth" of colonial and neo-colonial racial and economic oppression has been obscured, many Black African intellectuals like Malegapuru Makgoba (1999) and Thami Mazwai (1999) advocate an African Renaissance. This rebirth is tilted towards the majority of Black South Africans for the purpose of releasing traditional values and energies from a local history of colonization and oppression. Their project, more than five years after the transition to democracy, coincides with Thabo Mbeki's attempt to deal with the threat of exclusivist ideologies and largely racist extremist alliances by mapping an affirmation of cultural diversity (multiculturalism) across redistributive (socialist) economic transformation.

Following in the wake of the deliberations of the TRC, the African Renaissance seeks to restore the hidden, forgotten and, at the hands of the colonizers and Western ethnocentrism, actively discredited narrative of the African Other. As a recuperative move, the African Renaissance establishes selfhood by undertaking "the voyage in" like other anti-colonial writers and thinkers since the 1940s. Suffice it to mention in this regard *négritude*, the praise of the African personality, and even the Harlem Renaissance of the

[2] It has to be kept in mind, though, that the TRC was constituted by various committees, one of which is the Amnesty Committee whose decisions are binding. Contradictions such as between the main (Tutu) Committee and the rest of the Commission arise precisely from differences between *moral* and *legal*, narrative, obligatory and verifiable or "factual", binding truths.

1920s, associated, among others, with names like Césaire, Fanon, Nyerere, and Langston Hughes, respectively. In the book edited by Malegapuru Makgoba (1999) after the September 1998 conference organised by him and Thami Mazwai, the African Renaissance operates with a rhetoric of self-affirmation, of becoming subject after the colonial reduction to slave, subaltern or generally the non-human savage. Thus, the African Renaissance is

> about Africans being agents of our own history and masters of our own destiny (Makgoba 1999: xii).

On the one hand, the rhetoric of the varied contributions to Makgoba's book derives its persuasive force from comparisons like "as good as" or "better than". Being "black in the world", and thus an "African" means being as good as a "white European", producing as good a history, a science, a philosophy etc., and being in possession of as good a rationality as the "white" man. The "white man" merely reduced the African to his inferior Other in the process of colonization and slavery. Now is the time to claim, or rather, to re-claim, the stolen past, to de-colonize the mind, and to infuse current Western science and everyday life with forgotten and buried traditional practices. With respect to human conduct and relations, *ubuntu* is superior to Western, European ethics, and, besides, it is the African people, in the words of Makgoba (1999: iv ff),

> that gave birth to humanity, language, science, technology, philosophy, wisdom, and so forth.

On the other hand the rhetoric purposely shuns any relational components, reducing the African Renaissance to an immanent absolute. There is only the still-to-be-fully-restored, authentic African tradition in Africa, and if you don't like – excuse the metaphor – doing like the Romans do when in Rome, then there is no place for you. In other words, current rhetoric employs a dual argument of a relational and of an exclusivist kind. This double argumentation makes the present debate around Africanization iridescent because it veils the actual aim and content of the emergent formation of an important and unique tradition.

Such construction of tradition resonates with a world-wide, contemporary bracketing of the *ethnos*, together with accompanying moves towards defining and establishing identity. Hence Makgoba (1999: v) continues in his Introduction:

> Why are the British, the Australians, the Israelis, and Germans revisiting the issue of identity and culture towards the end of the twentieth century? The answer is simple,

Makgoba says, providing a bulleted three-point response:

- Identity and culture are important national matters.
- When national identity and culture are not clearly defined, articulated or skewed, social tensions increase, national reconciliation and success (economic, educational, political) are stunted.
- National culture and identity are the common thread that weaves society together and facilitates coherent development.

However, Makgoba's somewhat simplistic answers obscure the reason for the current concerns with identity and culture; reasons, which I would argue, are to be found in increasing technological, economic and cultural globalization. Recently, sociologists, foremost among them Manuel Castells (1996-98), have pointed out that the prevailing issue of "identity" is a corollary of globalization which, in turn, according to Anthony Giddens (1990), has been facilitated by an accelerated process of modernization. Globalizing processes break down the historical nexus between nation, state, societal community and territory, and create anxiety in the face of post-modern instabilities. An engagement with alterity, supported by postmodernist ethnography, in a period of decisive shifts in global cultural politics and values, is thus producing the reassertion of national and group rights to recognition and respect. With regard to Europe and Asia, economic globalization demands the strengthening of regions across historical state boundaries which globalization renders fluid and economically unnecessary. On the eve of the "third millennium" – as counted by the Christian calendar – we are in the midst of another huge upheaval in world affairs, comparable in impact to the urbanization process. Peoples – and governments – are seeking to re-appropriate and reinterpret their inherited traditions, while facing at the same time the complication of cultural "globalization" in a world-economy of hegemonic commodities and information. American-Hispanic, African, Indian, Slavic, Islamic and Chinese peoples are asserting their equivalence with Europeans, Anglo-Americans and Japanese both in their own regions and on the world stage. Scholarly preoccupation with "multiculturalism" (Taylor 1992) in the wake of the Canadian debate of the late sixties, cross-culturalism – post-colonialism – hybridization or *métissage*, inter-cultural and intra-cultural dialogue, etc., on the one hand, and identity, on the other, testify to this current situation world-wide.

The African Renaissance can be seen, thus, as yet another symptom of globalization with its stress on reclaiming identity as a collective or communitarian rather than an individualistic affair. Since the notion of the individual, and individual rights, are regarded as Western imports, a return to the collective "we" is generally implied, in place of an individual subject who, as Kant has advocated, frees himself from self-imposed immaturity.

The African Renaissance, it seems, surmises President Mbeki's vision of the new "struggle", for he regards it as a "contribution to the recovery of African pride, the confidence in ourselves that we can succeed as well as any other in building a humane and prosperous society" (Mbeki in Makgoba 1999). This rebirth of an African identity is seen to be the necessary successor to the 1994 liberation, and precursor to the success of the coming "African century". Although discussion of the much desired African Renaissance in the main eschews reference to the TRC's deliberations, the TRC's envisaged nation-building project remains part of emerging African identity politics.

Recourse to identity thus appears as self-representation in the place of hegemonic representation by others like the colonial master, the ruler or the particular symbolic order of power. Therefore, such recourse to identity insists on articulating the narrative which these powers or agents of representation try to obscure. This is where the work of witnessing, memory, testimony, and solidarity achieves importance, work which the TRC succeeded in doing, despite Mamdani's (1998) critique to the effect that it turned a political compromise into a compromised truth in order to support the political. In fact, contestation is the very hallmark of the domains of truth and identity, for, rather than constituting immutable "facts" they are historically contingent constructs in and through language. Thus, the anti-Platonic turn in Western philosophy, illuminated repeatedly by, for instance, Richard Rorty (1999), and represented in particular by Nietzsche–Foucault, Marx–Althusser, Heidegger–Derrida, and Dewey–Rorty, rejects an eternal, essentialist (monistic) Truth; for, as Nietzsche (1979: 84) observed already more than a hundred years ago, truth is

> A moveable host of metaphors, metonymies and anthropomorphisms: in short, a sum of human relations which have been poetically and rhetorically intensified, transferred, and embellished, and which, after long usage, seem to a people to be fixed, canonical, and binding. Truths are illusions we have forgotten are illusions; they are metaphors that have become worn out and have been drained of sensuous force, coins which have lost their embossing and are now considered metal and no longer coins.

There are a number of considerations which arise from this, by now, famous constructionist statement:

- truth is plural;
- truth is a verbal/discursive construct referring to human relations;
- truth is the effect of *poësis* and rhetoric, which is to say: truth is produced or created in a process of making (*poësis*, "the poetic" in Greek means condensing, whereby the poet is a "densifier" who "thickens" language).

The rhetorician, on the other hand utilizes persuasion in order to establish truth.

- truth is the result of an (impoverishing) historical process; impoverished because it removes truth from a general economy, rendering its "sensuous force" of exchange abstract.

Most importantly, though, truth, unlike identity when locked into *authentēs* (Greek for "author")[3], has to be thought of as non-substantive and relational. Although truth, like identity, functions as a stable criterion within the flux of phenomena, truth, – unlike identity – presupposes a process in order to establish equivalence or congruence between two entities or phenomena. This process, which is more often than not an agonistic one, is a struggle to "match" two entities, either by way of "matching" evidence with the performed act in a deliberative judicial manner in order to "establish the truth", as the jurist would put it. Historians usually require a match between an event and a document, for example, thus raising "documentation" to the status of proof. Proof as an important element in the construction of truth, of course, operates decisively in logic; thus, in the specific case of Aristotelian logic, truth is produced formally and purely linguistically. From a rhetorical perspective, truth, like the truth in or of science, can be said to be "true belief", in as much as a particular scientific community can arrive at consensus with respect to the analysis of specific observations. Apart from these outcome-based constructions of "truth", there is, moreover, truth in the (Heideggerean) shape of *alētheia* or that which is hidden from view and awaits being extracted or essayed from *lēthe*, the stream which nourishes the dead souls. In this sense, truth as disclosure describes best, perhaps, the narrative working of memory.

Whereas the TRC's proceedings oscillated between these ways of constructing truth, allowing more weight in accordance with its intention, perhaps, for the construction of historical truth in pursuit of *moral justice*, the African Renaissance's construction of identity dissolves historical or narrative truth in authenticity. In as much as any narrative truth aims at behavioural changes (which are required, for instance, for self-affirmation and/or reconciliation), it has a (historically) rightful place, despite its possible lack of *legal* or legally "binding" *justice*, something for which the TRC has been accused by a number of different voices including that of Jeffrey. Yet this does not change the specific distinction between truth and

[3] In the sense, not of literary creator, but of "actor", i.e. "someone who carries out a deed by his own hand" – and most typically used for "murderer" and for "autocrat". (Eds.)

identity. Whereas both may be narrative in nature, truth stands to non-truth in a relation of deliberation, informed by either evidence, proof or revelation. Identity, however, stands to non-identity in a relation of alterity. Moreover, where *ethnos* – from which derived the notion of race in the modern era – is figured into identity, it becomes exclusive and grounded in non-negotiable authenticity and not in deliberation or consensus.

Ethnos in the Greek *polis* as much as in the modern nation-state or in the South African nation-building project is based upon an identity shared by a collective. Such shared "markers" might be constituted by way of an ancient concept of blood-ties (e.g. clan, tribe, and current German nationality), or citizenship (Greek *polis* and Roman Empire, USA), or the essentially European Romantic notion of a common culture and language. In each case it is proof of authenticity, not proof of truth, which decides on inclusion or exclusion of the group. Sadly, the project of nation-building on the basis of reconciliation seems to have been diverted by identity politics around the question of authenticity with regard to who is an African. Such authenticity operates on the level of immanence, and is dependant on its constitutive parts which, moreover, have to be traceable to an origin. Authenticity, thus, is always onto-logically founded and non-negotiable.

In as much as identity requires the matching of qualities and markers to a perceived authenticity or an *authentēs*, it tends to cut itself off from other entities and becomes exclusively grounded in an axiology and not in justice, whereby differing values, including truth-values, are regarded as unauthentic, and hence undesirable. Identity politics establishes an absolute, monistic Truth, THE truth of its ontologically defining qualities which are closed-off from any relational aspects with which Nietzsche saw truth as circulating within an economy of exchange. No wonder then, that multiculturalism's *ethnos* in the form of identity as truth, instead of fostering heterogeneous interactions between different identities, produces a flourishing cultural separatism, a kind of totalitarian particularism which, according to Wolfgang Welsch (1992) carries a retribalization in the form of discovering "roots" and "traditions".

In the retrieval of the forgotten, hidden, masked and obscured stories, historical truth, as uncovered by the TRC for instance, can, imbued with *moral justice*, speak the truth to political power in relation to the excluded. In as much as the African Renaissance seeks to build an image of the African as one constructed by himself/herself and not by others for the purpose of building his/her own development with his/her own hands, the project is concerned, like the TRC, with historical truth. However, where the African Renaissance turns into identity politics in order to achieve political

power, the historical truth is jettisoned for the sake of exclusivity. For truth as seen to be residing in identity is no longer plural, relational, and deliberative. Instead of being a "sensuous force" of exchange between diverse and distinct people who have to share the same country and the same, increasingly globalizing world, an undue emphasis upon the claim to ethnic, authentic identity is in danger of rendering the "coin" of truth into useless "metal".[4]

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[4] Reference is made once more to the image of the touchstone as used in Ancient metallurgy, cf. Cassin, this volume, footnote 8.

CHAPTER 10

"TRUTH AND HISTORY" IN THE POST-*APARTHEID* SOUTH AFRICAN CONTEXT

Lydia Samarbakhsh-Liberge

ABSTRACT. The intention of this paper is to show that "truth" is not a very well-defined topic in the study of history. By considering "history" as interpretations of processes and interpretations of human experiences, we affirm here that all historians make choices between certain sources and certain bodies of evidence, that they make choices in their presentation and the articulation of facts. Pursuing these general concerns, this paper presents firstly the dominant traits of history teaching during the apartheid *era. Then, it goes on with two specific problems within the historical discipline in the post-*apartheid *context: the evolution of history teaching at school, and the use of history in a particular public document, the Truth and Reconciliation Commission (TRC) Report.*

"Truth and History" [1] is one of the major issues debated among historians, whatever their subject of research. It was the topic of the last biennial Conference of the South African Historical Society: *"Not Telling: Lies, Secrecy and History"* (hosted by the University of the Western Cape, July 1999). As the title of the conference indicates, it is interesting and exciting for historians to demonstrate what could be considered as a lie, how other historians are dealing with sources and evidence and how they tell history.

The intention of this paper is to show that "truth" is not a very well-defined topic in the study of history. We are not pretending that truth does not exist. We believe that truth does exist. But by considering "history" as interpretations of processes and interpretations of human experiences, we affirm here that all historians make choices between certain sources and certain bodies of evidence, that they make choices in their presentation and the articulation of facts. Therefore, people have to be aware that historians have considerable power. This power is so strong that some historians could use it to paralyze anyone challenging their work. Such historians could purposefully omit facts or people, they could whisk out of sight certain primary sources – because "they do not fit their view" – or they could invent non-existing sources in order to prove that they are right in saying what they say. This type of impostors does exist among historians. Even if they

[1] I thank for their support Dr Cynthia Kros, University of the Witwatersrand, Mrs Cathérine Blondeau, Cultural Attaché at the French Embassy and Director of the French Institute of South Africa, as well as Sylvie Kaninda, Marielle Martinez and Laurent Chauvet.

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represent a minority, we should not underestimate their power. We argue that it is not impossible to challenge them; the point is how.

The topic of "Truth and History" is a false "good topic". History is interpretations and tales by people who are themselves sensitive to their own time and society. They are themselves citizens with philosophical and political opinions, with beliefs and ethical principles. This influences inevitably the way they tell history.

Of course, history does not belong to historians alone, yet historians are particularly responsible before society for what they present and analyse as the past, and how they do this. Historians are always under the pressure of social demands and politics. This is why it is never enough to read the work of one historian only, on a specific matter. Different history books and sources provide different approaches and their combination helps to apprehend an epoch in its diverse dimensions.

This paper presents firstly the dominant traits of history teaching during the *apartheid* era. Then, it goes on with two specific problems within the historical discipline in the post-*apartheid* context: the evolution of history teaching at school, and the use of history in a particular public document, the Truth and Reconciliation Commission (TRC) Report.

From the history of politics to the use of history as a political instrument

During the *apartheid* era, the discipline of history was subjected to huge debates and arguments, precisely because the various historical discourses were deeply linked with fundamental political issues.

The supporters of *apartheid* were obsessed with the need to find historical justifications for the system, and claimed that they were telling the truth because they were in possession of irrefutable evidence. The historians who were opposed to the *apartheid* system as well as to its official historical discourse developed views that were different from those of *apartheid*'s supporters. Many of them were nourishing the desire to "restore the truth".

In order to address the question of "Truth and History" in South Africa today, we need to recall briefly what the relationship was between truth and history among historians during the *apartheid* era. Contrary to a widely held view, historians who supported *apartheid* were not avoiding the debate on "Truth *in* History".

In her paper on history teaching at the University of Durban-Westville during the 1960s-1980s, the historian Uma D. Mesthrie recalls the questions asked to students preparing their essays on history:

> For instance, is (or was) he a scientific historian? Does he belong to a specific cultural, religious, or political group? Is (or was) he in a position to present his facts objectively? Has he been contradicted by another historian? Is he telling the truth? (Mesthrie 1999: 8.)

It is quite incredible that such questions were being asked, considering that the students had only one single reference book available during the 1970s – for the undergraduate curriculum –, notably *Five Hundred Years: a History of South Africa* by C.F.J. Muller, a Professor of History at the University of South Africa (UNISA). Yet, the historians who supported *apartheid* affirmed that their historical analysis was nothing less than *scientific*.[2] Knowing that the diversification of sources – primary and secondary – as well as the critical analysis, confrontation and comparison of such sources, are fundamental to an historian's work during his training and will remain so throughout his career, *apartheid* historians simply claimed that there were no accurate sources available regarding the pre-colonial past.

> This book recounts the activities and experiences, over a period of nearly five hundred years, of the White man in South Africa (…). For the history of these five centuries we have incomparably more reliable sources than all the centuries before the Portuguese discoveries. Naturally the history of South Africa did not begin with the advent of the White man and the non-Whites have played an extremely significant role in South Africa's development. Nevertheless, reliable factual records in exact chronological focus concerning the Bantu, Hottentots and Bushmen are too scarce for an authoritative history of the non-White to be written at this stage. It must also be recognized that during these centuries, and especially during the 19th and 20th centuries, the White man played, and is still playing, a predominant role in the history of South Africa.[3]

As the historians Uma D. Mesthrie and Cynthia Kros[4] emphasize:

> [T]he History syllabus of the old South Africa did not (...) deny that Africans could have civilization, industry and perhaps, most importantly, their own "nation states" but it denied that it could be studied – because of a lack of evidence and sources, and denied that it had the same decisive importance for the nation. Furthermore, Black people were encouraged to see themselves as ethnically distinct from the Whites as well as other Black people[5]:
>
> > It was, however, [at least, so the textbook writer alleged – Eds.] the Whites, who, in Southern Africa over the last century and more, have directed the historical development and led to a much clearer imprint of [the African's] way of life.[6]

The official historical discourse during the *apartheid* era was strongly linked to the issue of "nation building". The South African nation is young if one considers the *South African Union Act* of 1910 as its "birth certificate".

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[2] See, for example, Grundlingh 1989.
[3] Muller 1969: 190 quoted by Mesthrie 1999: 8.
[4] Kros 1999: 7.
[5] Kros 1999: 7.
[6] *Survey of South Africa* quoted by Mesthrie 1999: 10.

From then on, nation building required an historical discourse which took South Africa out of the British Empire as regards "national identity" – and set the foundations and principles of the *South African* society. It was a society which was already deeply divided: the rule of a minority – "white" – over a majority – "black" – was already effective. The development of Afrikaner nationalism – from the establishment of the Afrikaner republics to the victory of the National Party in 1948 and the installation of the *apartheid* system – was considered as the main issue of the time, despite the African people's claims for land and political rights.

Historians have paid a lot of attention to Afrikaner nationalism, its roots, its rhetoric and its evolution. The more enlightened and critical of these historians, for instance Marianne Cornevin, demonstrated the powerful links between religion, history and politics in the ideology of Christian Nationalism; she described this discourse as a tale of *mythicism*, *falsification* and *mystification*.[7].

South African historians today recall that the South African history taught during *apartheid* times was *biased* to the point of making many pupils and students lose interest:

> For generations history teachers in South Africa classrooms have been forced to trot out Afrikaner Nationalist ideology, presented as the story of South Africa's past. The story is familiar to us all – South African history is dominated by 1652 when Jan van Riebeeck landed at the Cape to build a refreshment station. It then proceeds inexorably through a litany of succeeding Cape governments, slogs through a few frontier wars and reaches a high point with that heroic epic – the Great Trek. Thence the story winds gently down through the Afrikaner republics, the Anglo-Boer War, Union, Pact, various *gevaar* ["danger"] elections and the inevitable Nationalist victory in 1948. Many pupils abandon the history classroom as fast as their legs will carry them at the first available exit point – Standard Seven. History is seen as a subject choice for those not gifted enough to do Sciences or Mathematics.[8]

There was no opportunity, no space, for criticism and debate: history was "one" unchallengeable tale. Historians who supported *apartheid* were using their authority to impose the idea that there could be no alternative views or interpretations of a process, and that their conception of history was the relevant one. Any other historical discourse was regarded and presented to the students as propaganda and as "anti-scientific."[9] Until the 1970s, the political evolution of South Africa since 1948 – i.e. the installation of *apartheid* – was put in the context of the fight against the so-called Communist menace:

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[7] Cornevin 1979.
[8] Kros & Greybe 1997: 6.
[9] Mesthrie 1999: 16.

> Communism poses a threat to every inhabitant of South Africa. Under the pretext of fighting for the liberation of all-Africa, it has nothing less in mind than world-domination. (...) In 1962 the South African police uncovered the Communist inspired Rivonia plot, which was geared for total chaos in South Africa. (...) South Africa's fight against Communism seems likely, in the near future, to become a way of life.[10]

In the 1980s, this issue disappeared from the syllabus, and students were asked questions about the African National Congress (ANC), the Pan-African Congress (PAC), Mohandas Ghandi or Tengo Jabavu, but, in spite of that, the orientation of history teaching remained the same. The Afrikaner people had brought civilization to this part of the continent and "their" history was the history of South Africa. It was a history of heroes, "great men (Kruger, Smuts, Hertzog and Verwoerd) with visions for their people". History was the tale of the leader's *sacred quest* (like the European medieval *De Vita Caroli* of Eginhard).

Uma D. Mesthrie notes that even if political protest could be strong among students in the 1970s and 1980s, they did not go to the point of using their examination papers as an opportunity to defy the official historical discourse. And, surely, the questions asked did not give them a chance to do so. However, she reports the remarks of two University of Durban-Westville students once daring to express their frustrations with the history curriculum:

> the majority of textbooks see the white man as the hero and always the winner. The black man is portrayed as a bad person who has no rights. (...) Do leaders like Shaka, Dingane or Moshoeshoe have no interest outside their interaction with whites?[11]

and Uma D. Mesthrie adds,

> there was a call for "people's history – not the perspective of the ruler".

More recently, and regarding the Anglo-Boer War of 1899-1902, historians have shown that several aspects of the conflict had been *hidden*, e.g. the "black" concentration camps, in order to victimize the Afrikaner community more than any other.[12] This victimization was the bedrock of a strengthened claim for independence from the British authority. If we look at the official calendar, which punctuated the years during the *apartheid* era, we can see that it contained celebrations of battles – mainly, "Boer victories" – and religious celebrations. The monuments erected on South African soil were also mainly celebrating the glory and/or the martyrdom of the Afrikaner people. African heroes or kings were not forgotten but – as was mentioned before – were presented as especially evil and bloodthirsty, and

[10] Quoted by Mesthrie 1999: 10.
[11] Mesthrie 1999: 17.
[12] Kessler 1999.

most of all, as losers.

Apartheid ideologists and supporters *distorted* sources, evidence and facts, and in doing so, distorted processes of events or collective and individual intentions and motivations.

A recent study of the period of the 1920s-1930s shows that the Black "working class" regarded history as a story written by and for white people. Therefore, in reaction to what they considered as *lies* told by the "Whites", they developed counter-discourses in order to reassert the values of the African indigenous historical heritage.[13] These counter-histories, which were particularly used by trade unionists and political activists in their writings or speeches, intended to restore self-esteem and confidence among the people oppressed by the segregation. This was not aimed at dividing the African people: whatever their "tribe", they would identify with the figures of late heroes like King Dingane or Shaka. They united against discriminatory policies and laws.

Despite counter histories and discourses, history seems to have been seen by people as divided, as the segregated society they were living in. People were more sensitive to the history or the story of their own community, tribe or group. History was not used to unite people: it was a tool to divide and oppose them just as they were divided in the society according to the *Population Registration Act* of 1950. People were sharing a history of conflicts, wars and violence and not a history where they found themselves united for – or, worse, against someone or something. This state of affairs produced a common representation of history seen as a jigsaw puzzle, an image that can be illustrated by the Report of the TRC:

> The past, it has been said, is another country. The way its stories are told and the way they are heard change as the years go by. The spotlight gyrates, exposing old lies and illuminating new truths. As a fuller picture emerges, a new piece of the jigsaw puzzle of our past settles into place. (TRC Report, D. Tutu, Foreword, §17)

According to our own research, historical landmarks and reference points tend to fluctuate from one person to the next; and the same fluctuation can be observed in the individual case of each and every South African.

Despite the number of victims' frustrations, the TRC has done an essential work in restoring knowledge about the *apartheid* era, especially regarding the 1960-94 period.

It must also be underlined that the existence of the TRC opened the way to critical historical analyses, free from the *apartheid* ideology as well as

[13] Ndlovu 1999.

other official historical discourses such as that of liberation movements.[14] Long before the end of *apartheid*, several historical schools of thought developed analyses of South African history but were not necessarily in agreement. Their divergence was not a problem; such divergence is part and parcel of history as an academic discipline. However, divergence became a problem a new history curriculum had to be shaped.

Does the end of the apartheid era open up the way to the truth in the teaching of history?

Here, we point out two different aspects of the practice and the use of history. First of all, the problems historians and history teachers experience when they seek to break away from the old contents as well as the old teaching methods of the history syllabus.

Different answers were given to the following question:

> How would we contest a particular version of South African history? Our long experience with Afrikaner historiography should have taught us that it is not simply by denying that it is "true" and parrying with an alternative version of the "truth". (…) Laying claim to the "truth" is futile and can shut off the possibility of dialogue altogether.[15]

The quality of history lies not only in its contents but also in the manner in which it is taught. Between 1993 and 1995, a group of teachers, historians and publishers participated in a series of conferences on the state of history teaching and textbooks in South Africa. In 1994, these delegates drew up a manifesto emphasizing the need

- to be analytical and explanatory
- to teach skills and contents inseparably
- to reflect the process of writing history
- to develop pupil's power of empathy and moral judgement
- to seek to reconcile different groups of people with each other
- to show that "ethnicity, culture and identity have been constructed over time"
- to locate South African history within regional, continental and world contexts
- to retain a common national core but allow for regional or school-based flexibility of choices (…) to stimulate understanding and interpretation.

However, many historians and history teachers or lecturers have been disappointed by the interim history syllabus. Research led by the History Workshop of the University of the Witwatersrand shows the disillusion of some "practitioners" of history:

[14] For example see Ndlovu 1998.
[15] Kros 1998: 15.

> many teachers are still unhappy with the new curriculum. (...) teachers interviewed in 1995 (…) express their opinions and outline some of the problems they experience in implementing the new syllabus. "I hate it. I still find the history for Standard Threes extremely boring." (…) I feel you must know the truth (…) you cannot simply forgive and forget when you do not know what it is you are forgiving and forgetting. One of [the topics in the textbook] is headed *The Freeburghers – The First Real South Africans* – this sort of thing really hurts (Kros & Greybe 1997: 1).[16]

They were complaining about the persistence of racial stereotypes, generalizations and misconceptions. The crucial question remained:

> The old history curriculum and its textbook have been universally condemned for many years. Teachers and the education authorities alike have acknowledged that history needs a thorough overhaul. This leaves us all with the question: if Afrikaner Nationalist history is now discredited, what should replace it? (Kros & Greybe 1997: 7)

> In post-*apartheid* South Africa, history has to justify its place in a under-resourced, pressurized curriculum (…) South African history continues to be experienced as abrasive and damaging for most pupils and the big question what history can offer beyond the usual bland platitudes, has not been addressed. At the same time we acknowledged that there are very difficult questions to be addressed within South African history about identity, national reconstruction, reconciliation, as well as those related to pupil's cognitive growth. (Kros & Greybe 1997: 13)

In other words, the problems with which the architects of the new history curriculum were confronted, were the strong political demands. Even today, the contents of history are still linked to the fundamental question of nation building, which is redefined in the context of a multicultural democratic society. South Africa is in search of its national identity, and according to its new Constitution, it has now to encompass ethnic, racial, gender and religious diversity among the South African people. But, nation building is not, and has never been, a natural process; it is a socio-political one.

The South African transition has been shaped by the consensus-seeking spirit – some called it "compromise" – and the historians of the History Sub-Commission for a New Curriculum have been put under pressure by this consensual ideal. There were disagreements among them. The interim syllabus reflects their inability to find a suitable compromise.

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[16] The offence to which the last sentence in this quotation refers, consists in the following: calling the *freeburghers*, i.e. White inhabitants of the Cape during the 17th and 18th century – in so far as they were not in the employ of the United East India Company – "the first real South Africans" implies a denial of the presence, and of claims to full constitutional and national status, of other contemporaneous groups, and of their descendants today; it thus reiterates the very foundations of the *apartheid* ideology. At the back of such a statement is another inveterate Afrikaner fiction about South African history: the claim that Black, Niger-Congo ("Bantu") speaking people (as distinct from Khoi-San speakers, generally with somewhat lighter skin colour) arrived at the Cape at the same time as Europeans, instead of centuries earlier, and therefore could not lay greater claim to the land than the Whites. (Eds.)

Its "successor", *Curriculum 2005*, which is now being introduced step by step, integrates history and geography into a so-called *Learning Area of Human and Social Sciences* (from Grade 1 to Grade 9). Deciding in favour of such integration is important because it will have profound effects upon the contents as well as the teaching of history. The integration is worrying many historians and history teachers, who see it as a dilution of their discipline. Some blamed the African National Congress (ANC) – as the political organization in power – responsible for the deceptive contents of the interim syllabus. However, we would like to argue here that South Africa is in the grasp of a culture and policy of consensus, which need to be analyzed further than it has been so far.

History – seen as a tale about the past – is not only a scholarly issue. Many forms of *media* – e.g. literature, television, songs, plays, the press, museums, which could be called "non-professional" vehicles of the historical discipline – provide the people with historical knowledge or historical narratives. Some of these *media* provide narratives based on historical events but with a view on entertainment rather than history teaching *per se*. By the same token, they can may favour the symbolic rather than the realistic aspects of historical events.

Here, we would like to focus on a particular aspect of the "production of history" by "non-professionals". Nation building also requires initiatives aiming at historical popularization with an aim of making historical knowledge accessible to a large public. However, some risks attach to the popularization of history: it can lead to the reproduction of misinterpretations, it can create stereotypes and anachronisms. History must often be presented in a simple way in order to be understandable; that does not mean dissimulating the contradictions and the paradoxes of an epoch. "Popularization" does not necessarily mean "simplification". However, those involved in historical popularization sometimes underestimate, and even thwart, the capacity of the public to learn, think and analyze.

Those in charge of a public authority or power, foremost the government, also popularize history and use it in their discourses. We would like to take the example of the *Truth and Reconciliation Commission* which played an historical role and which has provided a historical narrative.

The TRC as a context for the production of history

As the TRC commissioners know full well, the work of the Commission and its Report were historic and historical documents. "Historic", firstly, because

of the Commission's specific and original conditions and frame of reference (an emphasis on reconciliation, truth and justice, which differs from the European experience of the post-World War II trials at Nuremberg, Germany, or from the Chilean Truth and Reconciliation Commission, for example). Secondly, because the Commission appealed to "ordinary" citizens to tell their stories as part of the history of the country. Moreover, the report is an "historical document" because it has revealed a great deal of information about the *apartheid* era as well as the immediate post-*apartheid* era and the transitional period.

> Inevitably evidence and information about our past will continue to emerge, as indeed they must. The report of the Commission will now take its place in the historical landscape of which future generations will try to make sense – searching for the clues that lead, endlessly, to a truth that will, in the very nature of things, never be fully revealed. (TRC Report, D. Tutu, Foreword, §18)

However, we would like to argue here that, like any historical tale and like any historical document, the Report's historical point of view – especially on the pre-*apartheid* era – can be criticized. Before presenting some of our criticism, it must be emphasized that we see the TRC partly as an illustration of the culture of consensus, and, therefore, its historical analysis as shaped by the consensus. The latter point is acknowledged openly in the Report:

> We believe we have provided enough of the truth about our past for there to be a consensus about it. There is a consensus that atrocious things were done on all sides. We know that the state used its considerable resources to wage a war against some of its citizens. We know that torture and deception and murder and death squads came to be the order of the day. We know that the liberation movements were not paragons of virtue and were often responsible for egging people on to behave in ways that were uncontrollable. We know that we may, in the present crime rate, be reaping the harvest of the campaigns to make the country ungovernable. We know that the immorality of *apartheid* has helped to create the climate where moral standards have fallen disastrously.(TRC Report, D. Tutu, Foreword, §70)

The existence of the Commission and its two and a half years of work have directed the South African public's interest in history mainly towards the *apartheid* era. The reason for this clearly lies in political and social issues. Because this period is quite recent, history and politics merged in people's minds.

The Report presents the historical context – not process – that led to the establishment of the *apartheid* regime: the history of South Africa is presented as a history of conflict, injustice, violence and atrocity:

> Hence the type of atrocities committed during the period falling within the mandate of the Commission [1960-94] must be placed in the context of violations committed in the course of:

- The importation of slaves to the Cape and the brutal treatment they endured between 1652 (when the first slaves were imported) and 1834 (when slavery was abolished).
- The many wars of dispossession and colonial conquest dating from the first war against the Khoisan in 1659, through several so-called frontier conflicts as white settlers penetrated northwards, to the Bambatha uprising of 1906, the last attempt at armed defence by [an] indigenous grouping.
- The systematic hunting and elimination of indigenous nomadic peoples as such as the San and the Khoi-khoi by settler groups, both Boer and British, in the seventeenth and eighteenth centuries.
- The Difaquane or Mfecane where thousands died and tens of thousands were displaced in a Zulu-inspired process of state formation and dissolution.
- The South African War of 1899-1902 during which British forces herded Boer women and children into concentration camps in which some 20,000 died – a gross human rights violation of shocking proportions [here is inserted a footnote: "In his evidence to a Commission workshop on reconciliation, Mr. Ron Viney indicated that a similar number of black people was exhumed from British concentration camps. (Johannesburg, 18-20 February 1998.")]
- The genocidal war in the early years of this century directed by the German colonial administration in South West Africa at the Herero people, which took them to the brink of extinction.[17]

The Report tries to give information about the legacy of colonialism and segregation; it also seeks to emphasize the need for national reconciliation based on a consensus about the past.

This summary shows that the Commission takes up several stereotypes for example about the Anglo-Boer War. The Report clearly looks at this event from a predominantly Afrikaner perspective: the traditional Afrikaner belief that they were the principal victims of the war is acknowledged, and the mention of the black concentration camps appears merely in footnotes… In another part of the Foreword, we can read:

> This is not the same as saying that racism was introduced into South Africa by those who brought *apartheid* into being. Racism came to South Africa in 1652; it has been part of the warp and woof of South African society since then. It was not the supporters of *apartheid* who gave this country the 1913 Land Act which ensured that the indigenous people of South Africa would effectively become hewers of wood and drawers of water for those with superior gun power from overseas. 1948 merely saw the beginning of a refinement and intensifying of repression, injustice and exploitation. It was not the upholders of *apartheid* who introduced gross violations of human rights in this land. We would argue that what happened when 20,000 women and children died in the concentration camps during the Anglo-Boer War is a huge blot on our copy book. Indeed, if the key concept of confession, forgiveness and reconciliation are central to the message of this report, it would be wonderful if one day some representative of the British/English community said to the Afrikaners, "We wronged you grievously. Forgive us." And it would be wonderful too if someone representing

[17] TRC Report I, 2: 25-27. This abstract is followed by the mention of events such as the 1913 repression of strikes, 1920 killings, 1960 Sharpeville, 1976 Soweto uprising; then, Plaatje 1916 is quoted.

> the Afrikaner community responded, "Yes, we forgive you – if you will perhaps let us just tell our story, the story of our forebears and the pain that has sat for so long in the pit of our stomachs unacknowledged by you." As we have discovered, the telling has been an important part of the process of healing. (D. Tutu, Foreword, §65)

As our own research brings out, the claim for bringing the "British community" to ask for forgiveness is not unanimously shared in South Africa. And, we can ask "who are, for instance, the 'British/English community', and who are their representatives mentioned here?" Are we talking about the British Queen? The English-speaking South Africans? And, if the answer to those questions is uncertain, who are then their proper representatives?…

Indeed, the words of the Report can be interpreted as a desire to coax the "Afrikaner community" (and who are, in the spirit of the Report, the authorized representatives of that particular community?) into accepting, officially and massively, the blame for *apartheid*. And such an effect has to be achieved in a consensual way. So, the report expresses sympathy with the excessive sense of victimization as developed by Afrikaner nationalist historiography, in order to make the Afrikaners agree that *apartheid*, too, was an *evil* regime. But, once more, who is authorized to speak on behalf of the Afrikaner community, and to agree or disagree with the Report on this matter?

The historian Deborah Posel emphasizes that the historical discourse of the TRC report is more descriptive than analytical and explanatory.[18] She argues that the Report uses mainly a clinical vocabulary – surgery and psychology – to speak about the past. It speaks of "wounds" which should be "cleansed" by a "balm" – i.e. "the word which is delivering the truth" – in order to be "healed". Because the work of the TRC was dealing with strong emotional issues as well as political and social ones, the way the Report speaks about the past is mainly emotional, even if it tries to avoid this tendency.[19]

Historians cannot use the terms "evil" or "healing the wounds" as they are used by the TRC, by a priest or by a politician. It is morally effective, and, as such, a similar choice of words was used, in a very different context, by the supporters of *apartheid*, in order to qualify their enemy, Communism, and to justify their policy. These categories of vocabulary belong to an emotional range, and therefore, it is inadequate for historians to use them. What is more, such choice of vocabulary amounts to the trivialization of

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[18] Posel 1999.

[19] For an example, see the part of the Report devoted to a discussion of the different kinds of truth.

periods, of political regimes and of events such as Nazism or the *apartheid* regime; it paves the way for denial, or for normalization of the reign of the arbitrary. Therefore, historians have to be able to keep their sense of humanity, humanism (in the terms now current in South Africa: their *ubuntu*) precisely because they are dealing with human experiences, and also in order to avoid positions and points of view that are purely emotional.

History is also at stake in the TRC Report's chapter on "Reparation and Rehabilitation Policy",[20] which deals with the national duty of remembrance and commemoration. History is seen as material for symbolic reparation: renaming streets and place, erecting new monuments, organizing public official celebrations and a National Day of Remembrance. It has to do with the need to "re-map" the South African landscape which was shaped by the Afrikaner nationalist historical discourse.

The culture of consensus ensures that political goals may be reached slowly but not necessarily surely. The time spent on trying to reach consensus could also be used to change the goals to be achieved. The practice of the political consensus led to the first democratic elections, and that was unquestionably a major achievement; but, given the nature of history as a critical academic endeavour, consensus cannot be as beneficial in history as it is in politics.

In history, neither consensus nor claimed truth are accurate

We would like to conclude with the words of historians of the History Workshop:

- We have to get away from essentialism. It is important to acknowledge differences, but also to recognize that they are made over time and might be different in different times. Very simply, this gives us the power to believe in change.
- As History teachers we have to get away from the idea of telling the "correct stories" –we don't have to have consensus.
- We are not to be afraid of uncertainty – uncertainty is liberating.
- We should think of History as providing a forum for dialogues –understanding that all history is partial and is therefore always open to further interrogation and critical examination. (Kros 1998: 19)

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CHAPTER 11

MAY I HAVE YOUR FAITH?

TRUTH, MEDIA AND POLITICS

Johann Rossouw

ABSTRACT. The multiplication and expansion of forms of media have indeed created new universals and this obviously has far-reaching implications in philosophical terms. This paper contends that human rights and economic neo-liberalism are two dominant points of reference in the production of truth in the media and politics in the present age. However, it can be argued that this regime of truth is destructive of Platonic ideals regarding the good life.

Introduction

One of the characteristics of our time is that it has become extremely difficult to grasp the phenomena which affect our everyday lives. One of the reasons for this is the unprecedented scale on which various forms of media have made it possible to create and disseminate new universals. This phenomenon poses a particular challenge to the thinker: although one is confronted with the daunting task of analysing it, it changes so quickly and functions on such a large scale that it is nearly impossible to make sense of it. Indeed, the constellation in which truth, the media and politics function today has fascinating philosophical and social effects. I shall try to analyse this constellation in this paper, albeit rather sketchily. In this analysis I grant that my argument can only be a local reaction to global processes. It is thus not by any means my aim to wax grandiosely about these huge concepts – truth, media and politics – as if they were static and transparent entities. I must further add to this qualification that an argument like this could doubtlessly be enhanced with more thorough empirical examples from the daily media. However, I prefer to restrict myself to a more conceptual approach.

Plato's legacy: Reality preferred above appearance

Ever since the time of Plato the distinction between appearance and reality has been a defining characteristic of metaphysics, epistemology, ethics and politics in the Western philosophical tradition. This is not the place to

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investigate how this distinction has affected these various fields. But what is certain, is that ever since Plato reality has been preferred above appearance. Throughout the history of philosophy there were numerous theories on what constitutes reality and appearance and on how these two affect one another, but the fundamental preference of reality above appearance was never upset. Even a critic of Plato as radical as Nietzsche did not upset this dichotomy. In fact, Nietzsche's critique of Plato's hatred of this world was based on the fact that Plato's world of ideas privileged a world of appearance above the real world. Hence Nietzsche was more of a Platonist than Plato himself.

As is well-known, Plato's theory of knowledge lay at the basis of his views on ethics and politics. The philosopher as the one who can lay claim to the highest form of knowledge in the figure of *episteme,* is also the one fit to live the good life and rule the polis. *Episteme* as truth is specifically demarcated from appearance and allied with reality, albeit that reality in the Platonic knowledge scheme is the world of the ideas. Although Plato's world of the ideas has been severely discredited not only through the critiques of Nietzsche and Heidegger, but also by the advances of contemporary physics, it can be argued that these various critiques have all been in the name of a more *realistic* world-view. In fact, not only have these critiques upheld the Platonic preference for reality above appearance, but they have also served to confirm what I would like to articulate as a given of being human, namely that we instinctively seek out the truth, even if that truth might be local and historical and not necessarily as good as Plato saw it. Giving up the pretence to universal truth outside the realm of natural science, and inside the realms of ethics and politics, does not imply that humans are prepared to give up on the idea of truth as such. Truth remains an elusive ideal and a contested terrain.

Media and politics as forms of truth-telling

From this perspective some of the developments in media and politics in our day and age are very interesting. Both media and politics are in principle forms of telling the truth. The media, as the etymology of the word brings out, act as the relay between the reader, listener or viewer, on the one hand, and the original event, on the other hand. The politician, at least in a representative democracy, acts as the relay between, on the one hand, the citizens of his constituency, whose interests he must represent, and, on the other hand, the centres of state power. The media are judged according to the extent to which they reliably testify to the event, whereas the politician is

judged according to the extent to which he remains true to his promises as well as to his constituency's interests.

But this similarity between media and politics as contexts of truth-telling should not mislead us into believing that these two spheres today rest on an equal footing. There was a time when the media needed politics, but today politics need the media. To paraphrase Régis Debray: a president visiting a foreign country in the 1960s might have taken two journalists and thirty intellectuals with him, whereas a president visiting a foreign country in the 1990s probably takes two intellectuals and thirty journalists with him. In fact, as I shall try to show, certain changes that came about in the media since the 1980s have also had a profound effect on the way that we conduct politics. What are these changes in the media?

Changes in the media since the 1980s: economic and philosophical

It seems to me that there have been at least two important changes in the media since the 1980s, the first one being economic and the second one philosophical. As far as economic change is concerned we have witnessed, in the developed world, a major shift in the global economy in the past two decades away from manufacturing and towards services. In fact, although countries like India, Brazil and Russia still hold some of the world's major mineral deposits which would position them better in a global economy dominated by manufacturing industries, these countries are nowhere near the top of the service-dominated global economic log.[1] On the other hand, developed economies such as those of the USA, France and Britain have maintained their strong position in the global economy through their dominance of the service industries. The media are doubtlessly one of the dominant service industries. With the advent of cable television and the Internet we have seen an unprecedented growth in the profits and power of media companies.

The second, philosophical change in the media is linked to the first economic one, namely that the classic Platonic relation between appearance and reality has for the first time been inversed. The reality of the inhabitants of traditional societies was formed by what they experienced every day in their immediate vicinity, or through what they heard by word of mouth as news travelling through the countryside – news emanating from other rural communities or from remote cities. Even in the early twentieth century CE

[1] Ramonet 1999: 1.

this was still the case in the USA where folk music served as a medium of transmitting news throughout the North American heartland in the 1930s. However, the reality of the inhabitants of modern societies is now predominantly formed by the media. Whereas the inhabitants of traditional societies could still to some extent evaluate the importance and verify the truth-content of the news that reached them through traditional media, modern societies have to a large extent lost this control over the evaluation and verification of news. A woman living in Johannesburg who reads about an earthquake in Turkey has no means of verifying what information she has about this event other than through what she learns in the media. And whereas the priorities of news in traditional societies were largely determined by communal interests, communal interests today have to compete with profit margins in determining what is deemed to be newsworthy. Thus, philosophically speaking, we find ourselves at a historically unprecedented point: for the first time, appearance has supplanted reality, that is, the world as it appears to us through the media has come to circumscribe the world of our everyday reality. The images and stories that we are fed through the media are now determining our reality. Of course, it would be nonsensical to claim that all media information is of the same quality, and part of the resistance against the idea of a totally virtual reality does come from the possibilities that more responsible media agents offer. But this does not alter the fact that the modern sense of reality is determined by appearance; the near and the immediate are no longer necessarily determined by what is physically near and immediate, but by what is merely near and immediate *in an electronic or printed form.*

The undiminished value of truth

However, this supplanting of reality by appearance should not lead us to believe that truth has a lesser value today than what it had in traditional societies. On the contrary, if we accept that humans have a certain need for hearing and telling the truth, then the modern media are among the most ingenious economical schemes ever, earning a profit from this basic human need. It is no coincidence that the modern media's economic muscle is similar to that of another major growth industry, one aiming at the basic human need of food, namely genetic engineering.

Truth, as Jacques Derrida[2] showed in an unpublished lecture on the

[2] Derrida 1998.

politics of testimony, circumscribes all communication. Even if you are lying to me, you would not be able to do so if I were not believing that you were telling me the truth. A lie is an untruth which is presented as a truth. Thus even the lie, which is supposed to be the opposite of truth is in a certain sense defined as a lack of truth. Truth is the determining condition for the lie. Precisely this tension between, on the one hand, the expectation of being told the truth, and, on the other hand, the uncertainty of whether we are in fact told the truth, has led, in my opinion, to so many devices of verifying the truth throughout history. From torture, in which pain is bartered for truth, to procedures in court hearings, to the surveillance and confessional techniques which Michel Foucault investigated in works like *Discipline and Punish* and *The History of Sexuality*, humanity has invented a vast array of truth-telling and verification devices. The media themselves make use of such devices: eye-witness accounts, photographs, politicians' public statements, press releases and statistics, to name some.

So far I have avoided speculation on why the truth is such an important human need. This is a question which can by itself fill many books; let it suffice to say that the truth is one of our most important devices for creating security. It is when we do not know what to believe, that we feel insecure. But when someone has convinced us of his truthfulness, *we reward him with our faith in what he says*. At the risk of sounding pompous: *faith is a corollary of truth.* Heidegger had good reason to state that the hero is the one who can remain in the in-between of postponed meaning. Perhaps this is one of the explanations of the growth in the media industry in especially the last fifteen years: the end of the Cold War and the rise of the irrational markets, whose determining factor is what is so aptly referred to in financial columns as "sentiment", have created huge uncertainty for ordinary citizens all over the world. And this global uncertainty has brought growth to the truth industry of the media, not to speak of that other great truth-telling industry, religion. In this context one might well paraphrase Marx[3] and say that the articles of faith are the opium of the people. To supply one example from contemporary South Africa, one could argue that – without wanting to dispute the valuable possibilities of the concept – Thabo Mbeki's African Renaissance has not only served so far to neutralize the Africanist[4] opposition, but also has the potential of calming a population impatient for delivery. The truth is a wonderful tool with which chaos and centrifugal

[3] Marx, K., 1971, "Zur Kritik der Hegelschen Rechtsphilosophie" (1844), in: Marx, K., *Die Frühschriften: Von 1837 bis zum Manifest der kommunistischen Parti 1848*, ed. S. Landshut, Stuttgart: Kröner, pp. 207-224. (Eds.)

[4] See footnote p. 7 (Eds.)

socio-economic forces can be contained.

On a more concrete level, large, and in our time increasingly unstable, political units do pose a serious challenge to those that must maintain stability. For the state, truth is an important project. The history of the rise of the modern media is beyond our present scope; let it suffice to say that the rise of the nation-state was intimately connected with the rise of the media. Part of the increasing instability of the state is brought about by the markets of multi-national companies (including some media corporations) and their increased influence. This once more underscores the dependence of politicians on the media as a tool for maintaining stability. One problem is of course that, as a source of further complexities, the interests of the media and the state do not always coincide.

The role of power

So far I have left a very important factor out of this examination of truth, media and politics, namely the role of power. In contemporary philosophy one can hardly refer to power without bringing up Foucault's name. Foucault's discussion of power has raised many questions and implications. However, for the purposes of this paper I want to only make a very limited use of two of his least problematic notions of power, namely

- That there is always a certain relation between power and truth, and
- That power must be understood from its intentionality.

In the light of Foucault's proposition on the relation between power and truth, and if my assumption is correct that the truth has a security effect, then that would in itself imply that whoever brings security by telling the truth, gains power in the process. As far as Foucault's proposition on the intentionality of power is concerned, I briefly quote him:

> Power relations are both intentional and non-subjective (...). [T]hey are imbued, through and through, with calculation: there is no power that is exercised without a series of aims and objectives.[5]

If we apply this proposition to the rise of the modern media we can perhaps understand that phenomenon better. In the twentieth century, firstly the Second World War and secondly the Cold War were important contexts in which the media functioned. The old notion of propaganda, of which we

[5] Foucault 1990: I, 94-95.

interestingly have heard so little since the end of the Cold War, was used primarily as a way of maintaining political order. The Western media themselves as a function of the political regimes which they represented, played no small role in mobilizing their own citizens for their good cause, and in undermining the communist regimes at the same time. An important part of the Western media message in that era was on the values of democracy and human rights. In fact, the states which were conceivably undemocratic and disrespectful of human rights were regarded through Western eyes as the pariahs of the world. There are, however, two important points that must be made with regard to this era if we want to understand what is taking place in the truth regime of the media in the post-Cold War era. The first point is that a so-called democratic upholder of human rights like the USA was itself involved in gross human-rights violations during the Cold War, notably in Indonesia during the 1960s and Cambodia during the 1970s.[6] The second point is that precisely the discourse of human rights with its tendency towards dualistic discrimination between "the victims" and "the perpetrators", the just and the unjust, on the basis of the Western victory in the Cold War – once again power and truth interplaying – has been elevated to the status of a metaphysical blue-print in contemporary reporting. But before I elaborate on this point I would like to fill in a few more details of the new power constellation of the post-Cold War era, since that also helps to further understand another metaphysical blue-print of contemporary reporting: that of the *neo-liberal market.*

I mean that the shift from military hegemony towards economic hegemony has greatly added to the superpower status of the USA, which today is possibly exercising more global power than any preceding state in history. The obvious consequence of this is that what has economically worked for the USA is supposed to be of universal value for the rest of the globe. Thus we witnessed the Clinton administration pushing hard for changes in global commerce through the establishment of economic pacts like the North American Free Trade Association with Canada and Mexico, as well as the neo-liberal World Trade Organization. Further to that, it has increased its stranglehold on older economic institutions such as the World Bank and the International Monetary Fund. And lest we might be tempted to think that military and political domination is unimportant for the USA, there is always their strength in (and sometimes, when it suits the USA

[6] On the USA's support for general Suharto's repressive Indonesian regime after the political instability during 1965-66 in which more than 500 000 people were "summarily executed" see Ramonet 1998: 1. On the USA's support for the bloody Khmer Rouge regime in Cambodia during 1978, see Chomsky 1999.

agenda, their defiance of) the United Nations, as well as their insistence on maintaining and enlarging the North Atlantic Treaty Organization (NATO) which has the advantage of permitting the USA cowboy outings in places like Kosovo, former Yugoslavia, under the pretext of re-establishing human rights. It is this new power constellation that has provided the modern media with its two most important metaphysical categories, namely human rights and the neo-liberal market.

Human rights and the neo-liberal market as contemporary conditions of truth

This brings me to the central part of my argument on truth, the media and politics. For this I want to refer briefly to Foucault again. In his professorial inaugural lecture at the Collège de France in 1970, Foucault argued that in a discursive field there are at any given time rules at work to determine what qualifies as truth and what not:

> [O]ne would only be in the true (...) if one obeyed the rules of some discursive "policy" which would have to be reactivated every time one spoke.[7]

Although Foucault in this lecture had the more specific fields of the human sciences in mind I think that this basic discursive device for producing the truth can be applied with fruitful consequences to what, broadly speaking, qualifies as truth in post-Cold War media reporting. Here I would like to contend that the modern media's two most important metaphysical categories, namely human rights and the neo-liberal market, function as such Foucaultian rules of truth that must be complied with before something can be accepted as truth. Before I proceed to cite a few examples from the media on how this truth regime functions, I would like to make three very brief conceptual points about human rights and economic neo-liberalism:

1. Since the end of the Cold War the market economy has become the determining knowledge paradigm world-wide. This tendency was already foreseen by some of the pioneers of the Frankfurt School (Horkheimer, Adorno, Marcuse) more than half a century ago, but in our day and age we are witnessing the opening of this deadly flower in all its ruthless excess. The charismatization of religion and the commercialization of

[7] Foucault 1972: 224.

education, as if all knowledge was a product and all students consumers, are but two examples of the hegemony of this paradigm.

2. Although the matter cannot be analysed in the context of this paper, it is interesting to ask ourselves, to what an extent economic neo-liberalism and human rights are seen as necessary counterparts. The fact that these two models of thought went so well together in the USA does not mean that this should necessarily be the case universally. And if we look at the USA itself, it is increasingly becoming clear that an overemphasis on the profit motive is beginning to undermine some of the fundamental human rights. Here I think of the violation of the right to privacy which is increasingly being undermined by companies' surveillance of their employees,[8] as well as the violation of the right to life which is being undermined by erratic civilian violence,[9] not to speak of the poor quality of information which the American population is being treated to by their media.[10] Then there is also the extent of socio-economic devastation that had been caused throughout Africa by the application of neo-liberal Structural Adjustment Programmes.
3. There is no doubt that both human rights and neo-liberal economics do have value in the right context, but they cannot be universalized in an unqualified fashion. In fact, establishing these two entities as sacrosanct metaphysical points of reference has the effect that they simply become two more exclusivist principles in the long history of metaphysical closure, the analysis towards which philosophers like Heidegger and Derrida directed so much of their efforts. For example, much can be said about the socio-economic effects of the annual human-rights evaluation of countries around the world by the USA State Department; a similar logic is exhibited through American credit agencies' (e.g. Moody) annual gradation of countries' investment potential. Such evaluations have severe repercussions for countries that do not live up to the American criteria involved.

Human rights and the neo-liberal market as conditions of media truth

This brings me then to four concrete examples of how human rights and the neo-liberal market function as metaphysical categories of truth in current media reporting:

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[8] Duclos 1999.
[9] Hutto 1999.
[10] Schiller 1999.

1. The first example comes from a paper entitled *The Irresponsible Citizen* that Bronwyn Harris[11] of the Centre for the Study of Violence and Reconciliation gave at a conference on the Truth and Reconciliation Commission (TRC) at the University of the Witwatersrand in June 1999. In her paper, Harris analyzed readers' Letters to the Editor, as well as the original reporting, concerning the TRC in *The Citizen*, South Africa's second largest newspaper. What she found was a sustained effort at trying to prove that the real victims of the TRC hearings were not the people who were victimized in various ways during the *apartheid* regime, but white South Africans; allegedly, the latter were being turned into victims by the TRC through the fact that they were portrayed as the perpetrators. In other words, by trying to construct the TRC as a witch-hunt against whites, whites were now the actual victims. What we thus see is a good example of how the categories of victim and perpetrator which are such familiar parts of the human-rights discourse were misused to construct a truth according to that newspaper's reactionary agenda.
2. A second and perhaps more disturbing example comes from a report published by Régis Debray in *Le Monde Diplomatique* in June 1999.[12] Debray relates certain events that followed on his visit to Yugoslavia and Kosovo during the recent war there. The purpose of his visit was explicitly to meet members of the Yugoslavian democratic opposition in Belgrade as well as to witness the situation in Kosovo on a first-hand basis. Following his return to France he published an open letter to French president Jacques Chirac on May 13, 1999, in the leading newspaper *Le Monde,* in which he argued that the NATO intervention in Kosovo was misguided. Immediately after the publication of this letter a huge controversy broke out and, from all sides in the French media, Debray was labelled as a sympathizer of Milosevic (the Yugoslavian president who instigated the Kosovo crisis) and a misguided intellectual romanticizing the situation in Kosovo. The explanation of this extraordinary outburst lies in violent disdain for a critical voice that questions the dominant consensus on French foreign policy. In this specific situation, precisely the re-establishment of human rights was used as a flimsy excuse for a war that eventually displaced hundreds of thousands of people and severely retarded the democratic cause in the Balkans. The Kosovo war is a particularly disturbing example of how twisted media reporting has become. The British Prime Minister Tony

[11] Harris 1999.
[12] Debray 1999.

Blair did, for example, take charge of NATO communications during the Kosovo war, sending more than twenty diplomats to assist NATO's spokesperson Jamie Shea with the aim of providing, and I quote, "good speech" (*bonne parole*).[13] Journalist Robert Fisk of South African newspaper *The Independent* reported the following: during a live television broadcast a NATO general admitted the use of impoverished uranium cancer-causing ammunition against Serbian soldiers, but this statement was edited away in a subsequent broadcast by the American news broadcasting network CNN.[14]

3. As far as economic neo-liberalism is concerned, media reporting on Britain's decision, in the Spring of 1999, to sell off its gold-reserves is also a very telling example. For a good six weeks after the decision was made public, the South African media nearly unanimously saw fit not to critically comment on this decision. Tony Blair was after all seen as a voice of the left and a friend of South Africa. It was only after the June 1999 elections when the impact of the decision hit home, that further thought was paid to the decision. In other words, the political standing of a Western leader was more determining in South African media reporting than the actual effects that his decision would have on the South African economy. On a broader scale, the aftermath of the South-East Asian economic collapse during the final months of 1997 was also very revealing. Up to then very few critical voices were heard against the march of market economics. It was only after billions of dollars were withdrawn from that region and fears of a domino effect on Western markets started to be felt, that some of the purported free-marketeers started calling for the nationalization of Japanese banks. In the case of South Africa it is remarkable how little labour-intensive foreign investment has been made in the country, despite the fact that we are in the process of witnessing the cutting back of the state budget and the national budget to the sacrosanct deficit of 3%. Considering the much more diverse economic debate that existed in the country before 1994, the speed with which nearly all political and media players in South Africa have reached a silent consensus on the neo-liberal economic model remains one of the most astounding chapters in contemporary South African history.
4. The last example that I want to give of the determining power of human rights and economic neo-liberalism's truth effects is of a somewhat

[13] Laurent 1999.
[14] Fisk 1999.

different nature, namely the somewhat absurd controversy that broke out after Mpumalanga[15] premier Ndaweni Mahlangu's infamous statement that it is "OK for politicians to lie". What I find particularly interesting about this whole controversy is the dishonesty that went with convicting Mahlangu, as if, contrary to what his evaluative statement implied, politicians never lie. There are after all numerous indications as to how low politicians world-wide have sunk in the 1990s, from the British Tory politician who admitted that he did work "economically with the truth", to USA president Bill Clinton's blatant lies about the Lewinsky affair, to politicians in Cyprus who recently defended their involvement in a share scandal on the grounds that it might have been unethical but definitely not illegal. In the sphere of politics, one has always known that certain truths could have far-reaching undesired effect if they were made public, and such truths were consequently lied about. I want to argue that the controversy that befell Mahlangu was rather due to the fact that he broke the unwritten rule of how much honesty is publicly permissible in our era. Mahlangu's honesty about dishonesty threw the cosy relationship between politicians and the media, as well as the media's pretence to truthful reporting, into an uncomfortably sharp light.

Conclusion

In conclusion, it seems to me that we have arrived at a point where human rights and economic neo-liberalism have become the two dominant points of reference in the production of truth in the media and politics. No politician who wants to win an election can afford, today, to cast himself against this truth regime, nor can any newspaper, radio or television station that wants to be profitable go against this tide. In order to diagnose this regime we would need to pay close attention to its ecological, social and psychological effects on people today, be it that they are already inside the developed world, or still trying to get in. We shall have to ask what the values of this truth regime are in comparison with previous truth regimes. However – and this seems to me the most important point – we shall have to find new strategies for mobilizing citizens and protecting the ethical. The current truth regime has succeeded in turning the good life into a life-style adventure. Thus, appeals to the good life of Platonic ideals would no longer do the trick. Perhaps only the realization of the disastrous effects that this regime could have, perhaps

[15] A province in north-eastern South Africa, formerly known as Eastern Transvaal. (Eds.)

only more disruption than what we have already experienced, is our best hope for limiting the excesses of this truth regime.

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CHAPTER 12

THE JUDGE AND THE PEOPLE

DELIBERATING ON TRUE LAND CLAIMS

Philippe-Joseph Salazar

ABSTRACT. Apartheid in both its discursive orientations and its facticity entailed the setting apart of people of different races. It also employed a series of mechanisms to regulate and control space, the rights of individuals and the scope of their movement. However, after the dismantling of apartheid, a policy of restitution came into existence in which land and space came to be regulated differently thereby contributing to the gradual dismemberment of the cartography of apartheid.

Introduction

Crucial recent developments in South Africa have included the advent of nation-wide democracy in South Africa, the development of public deliberation and the emergence of norms for a rhetorical culture. In the immediately preceding period, the South African state regulated, as is well-known, the usage, function and allocation of space within the "population groups" by controlling the verbalization of space.[1] The word *apartheid* is itself strictly coded: it denotes the act of literally setting people apart. Space, and state rhetoric,[2] were indeed codified, in the *apartheid* era, by the 1950 Group Areas Act,[3] that determined the location of people in accordance with their racial classification, following on the Native (Urban Areas) Acts of 1923 and 1945 and the Native Trust and Land Act of 1936. The Group Areas Act codified space in much the same way as the Population Registration Act codified "race". The Group Areas Act provided public deliberation about the built environment and human ecology in general with a formidable vocabulary. Here is, excerpted, the *apartheid* rhetoric concerning the non-communal sharing of civil space:

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[1] This chapter is a version, abbreviated and rewritten for the purpose of this volume, of chapter 8, sub-section 1 ("Space as Democratic Deliberation") of my book Salazar 2002. Further material and analyses will be found in: Salazar 2000, 2002a, b, 2003, a, b, in press (a), (b); also cf. the French-English version of the TRC Report (in press).

[2] By "state rhetoric", I mean: the argumentation carried by its agents to persuade the white minority that the *apartheid* policy was to its benefit.

[3] Act No. 41 of 1950. Group Areas.

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> Be it enacted by the King's Most Excellent Majesty, the Senate and House of Assembly of the Union of South Africa, as follows: – 1. (Definitions) In this Act, unless the context otherwise indicates – (...) (v) "controlled area" means any area which is not a group area or a scheduled native area, location, native village, coloured persons settlement, mission station or communal reserve (...) (ix) "group" means either the white group, the coloured group or the native group (...) and includes (...) any group of persons who have (...) been declared to be a group (...) (xv) "marriage" includes a union, recognized as a marriage (whether or not of monogamous nature) in native law or custom or under the tenets of the religion of either of the parties of the union (...) 2. [restates the racial classification under Act No. 30 of 1950] 3. (1) (Establishment of group areas) The Governor-General may, whenever it is deemed expedient, by proclamation in the Gazette – (...) (b) declare that (...) the area defined in the proclamation shall be an area for ownership by members of the group specified therein (...) 4. [Occupation in group areas] (1) As from the date specified (...) no disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in any group area to which the proclamation relates, except under the authority of a permit (...) 6. [Governing body for certain group areas] (1) The Minister may by notice in the Gazette, establish for any group area (other than an area for the white group), a certain governing body to be constituted in accordance with regulation.[4]

For 40 years, deliberations on space were fed by such rhetoric, in this case the argued use of rhetorical commonplaces which fixed definitions of space, property, the transmission of rights, the rights to sojourn and the right to travel; and which set "the white group" apart as a spatial entity, autonomous, detached, removed, untouched. The main medium of this practice was the law and its operatives, embodied in the "permit".

In democratic South Africa, public rhetoric concerning space has been radically displaced. Remarkably little attention has been paid to the "rhetorical democracy" that is at work in the debates in and around the Land redistribution programme.[5] To begin with, the Group Areas Act has found in the Restitution of Land Rights Act of 1994 its rhetorical *katēgoria* (retort and accusation):

> Chapter I. (Introductory Provisions) (...) 3. [Claims against nominees] Subject to the provisions of this Act a person shall be entitled to claim title in land if such claimant or his, her or its antecedent ["its" refers to "community" as a "person"] – (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time.

The policy of restitution rights is the response to the policy of Group Areas. Restitution of land amounts to remixing spaces and erasing, step by step, the

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[4] Act No. 41 of 1950. Group Areas.

[5] The Commission on the Restitution of Land Rights had received 11,000 claims by March 1997. In the 1998/99 Budget, a stated objective was to have expenditure on land redistribution and land reform grow from $114 million to $162 million by 2000/1. The national Budget provided for the expenditure of $33.5 billion for 1998/99. (Budget Speech, March 11, 1998). Act No. 22 of 1994. Restitution of Land Rights Act.

discrete cartography of *apartheid*. The new constitution is fittingly combined with a process of restitution.

Public deliberation regarding claims for restitution is largely restricted to the Land Claims Court as most cases are complex judicial matters that involve individuals and communities. Two examples will illustrate this closed and complex process of popular deliberation, by which the deleterious effect of *apartheid* upon the human ecology of space is somewhat nullified. Space is powerfully argued in a rhetorical tension between judicial[6] and popular deliberation, whereby the Judiciary (here vested with a political mission of redress) and the Sovereign (the people who have been previously disenfranchized) are face to face – and try to establish the "truth" of claims and counter-claims.

The Cato Manor case, Durban, 1996-1997

One exemplary case pertains to an agreement reached between municipal agencies and private citizens. The latter had been forcibly removed, in the early 1960s, from the well-known African and Indian suburb of Cato Manor in Durban, after it had been declared a white area – until it was "de-proclaimed" a white area and proclaimed an Indian area in 1980.[7] The judgment offers an excellent insight into how judicial rhetoric and public deliberation intersect – albeit in the words of the judge who made the agreement an order of the court.

The first point is that, of the 511 respondents who opposed the municipal agencies' applying, in terms of the Act, for Cato Manor not to be restored to possible claimants (a pre-emptive action), 510 were represented by lawyers; the remaining one respondent was declared by the judge to have made "a good impression on the Court". In other words, before the judgment could enter into the details of the agreement (and just before the recounting of the history of the forced removal), the judge had to establish that the 511 citizens could, by proxy or directly, show their respect for forms and procedures; in other words, that their deliberations were forensically credible. This would later impact on the Court granting an order. The judge

[6] One should say "forensic" to follow normal rhetorical usage, but the adjective is somewhat confusing.

[7] Land Claims Court of South Africa, case number 15/96. The agreement made an order of court can be retrieved (like all judgments of the Court) from the website maintained by the University of the Witwatersrand, Johannesburg, at www.law.wits.ac.za. Quotations are taken from [5] to [25].

moved on, after the historical account of the forced removal, to affirm the ethos of the respondents, stating that to "return to their roots" is their "dream" – contrasting it, in the same section, with

> the establishment [by the municipality] of a virtual city in the area with a complete infrastructure.

The judge proceeded by adding and amplifying details, using both quantitative and qualitative commonplaces ("schools, hospitals, libraries"; "overseas" funding; "Reconstruction and Development"; "substantial employment opportunities"; "significant boost"; "upgrade" of "informal" settlements), as if an accumulation of details serves as ethical proof of the good faith of the municipal agencies, to the effect that somehow counterbalances "the dream". In other words, the judge summarized two equal but contrasted deliberative positions, carefully balancing with his choice of words two "virtualities" – that of a lost past ("roots", "dream"), and that of a future filled with the promise of "development" (a "virtual city"). The judge then recorded that the parties, having accepted oral evidence "to amplify the papers", heard only two of the three municipal witnesses before negotiating the agreement placed before the Court. The judge described and recast the act of reaching an agreement as "no mean feat".

In sum, public deliberation was validated by judicial evaluation – as a rhetorical exercise between two equal parties, of equal strength, with equal claims.

Yet the remit of the Court is to measure this agreement against legal procedures and the Act. Does the settlement meet the requirements of the Act? It cannot be merely a "rhetorical" agreement (in the vulgar sense of "deceitful"), it must be a "true" argument. It has to speak to the Act. The problem becomes one of how to validate public deliberation (in this sense, truly rhetorical). The judge has to recast, for the second time, the process of public deliberation.

This time, he has to step outside the debate between parties to measure its outcome against the People's interest. He has to imagine a hidden debate between the parties in agreement and the People. This must take place in order to test whether the agreement is a false agreement, that is, an agreement that entrenches the status quo instead of addressing the question of what happens after a forced removal. It could be that the parties pretended to settle in order to share the spoils of the new investments in Cato Manor. In that case, the agreement would be not the outcome of democratic public deliberation, but a deal; rhetorically, an agreement in words, words that

pacify, obfuscate and deviate.

The judge therefore has to test whether the agreement is in the "public interest". Public interest is, in short, the rhetorical ethos of the People, which the parties must show proofs of having evinced in their negotiations. The agreement ought not to be an agreement in words and in form only; it must be the result of an imaginary debate between the two parties and their symbolic inner self, the People. The judge has a duty to perform this imaginary deliberation because, worryingly,

> no argument was placed before the Court on the concept of public interest because the matter was settled.

The judge then sets about defining "public interest"; this is because the Act does not define it, and because the two parties in the case do not argue for it. The judge literally has to seek arguments that should have been proposed during the negotiations. He thus fails, in a manner of speaking, the two parties by not acting in the "public interest", by eschewing a needed elaboration on precisely "public interest". A test is needed. References are sought ("gleaned") from a dictionary, cases (notably for liquor licences!), legal literature, and (at length) two Australian cases concerning aboriginal land rights. The judge then summarizes this review by affirming, tautologically, that a balance between private and public interest has been struck – "public interest" having been never defined as such, but considered rather as a result of factors. The inability of judicial rhetoric to extend beyond an extensive definition and to reach an intensive one is matched by the illogical conclusion that the settlement is in the "public interest".

What we witness is a remarkable failure to flesh out the Act. This is simply due to the fact that the judge is seeking guidance from records of public deliberation that are mute on this crucial aspect. It is also a sign of the fact that public deliberation was sought as a source for interpreting the Act. Had the negotiators addressed subsection (6) of section 34 of the Act, the judge would not have had to imagine and summon piecemeal interlocutors so odd that they could be described as "gleaned". The judge does not realize that in saying,

> against the advantages to the public interest of restoration (...) had to be weighed and balanced the advantages to the public interest of the development,

he has defined neither, but is merely re-iterating the positions of both parties. In the end, the test is no test at all, and the weighing of public deliberation by judicial review was a fiction that left, in fact, the last word to the public deliberators. The judge, literally, rubber stamped the deliberated agreement, and validated the truth held by the parties.

This entire case is exemplary of how popular deliberation, when it casts itself in terms of negotiations, agreement, balance and "good impressions" in Court – in short, when it appears to embody the spirit of democracy and to respect legal decorum – can "truly" argue for space and, literally, say what is the truth in terms of one case of space ecology.

The Kruger Park case

Another exemplary case concerns the claim lodged in 1995 by the Makulele Community and the authority controlling the world-famous Kruger National Park, and the ensuing judgment.[8]

The Makulele people settled in the area some two 200 years ago, but were removed in 1969 and forcibly settled on a farm, while their land was mostly incorporated into the Kruger Park. The judge sums up this brief history by stating that

> it is common cause that their removal was a result of racially discriminatory legislation and practices.

Reviewing the claim and reflecting on the deliberative process that had been conducted before the Court entered the proceedings, the judge begins by setting the spatial conditions within which the claim itself is located. The land in question is deemed of importance for "conservation (...) and the promotion of biodiversity", "strategically" (it borders on Zimbabwe and Mozambique), "mineral deposits", and "access" by the "broader public" (as it is now in a national park). The argument underlining the importance of this specific space runs from Nature to Public, in ascending order. This space is "truly" public space throughout. The judge then notes that the claimants are asking for a right (ownership) which they did not enjoy prior to their removal, and notes the complexity of having eight parties involved (six ministries, one provincial government and the Makulele Community). This forms the backdrop to the written settlement that was finally entered into. Given a complex space, with a complex claim, between a complex of parties, agreement was reached with the help of two mediators. The judge merely endorses the "truth" of the processes so far engaged by public deliberation, noting that they "presumably" followed this route as a result of the direction, in the Act, that stipulates that "mediation and negotiation" must be attempted. The qualifying adverb "presumably" is already a critique (from the domain of judicial rhetoric) addressed to public deliberation.

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[8] Land Claims Court of South Africa, case number 90/98. Quotations from [8] to [12].

What is at stake now is whether, having received the referral, the settlement must be made an order of the Court. In the previous case of Cato Manor, the judge did not question the validity of the referral, but applied legal reasoning to establish whether the settlement was, in substance, respectful of the Act. By contrast, in the present case the judge asks, in his review, whether a Court order is at all necessary. Two rhetorics of agreement are at stake. The judge asserts the Court's role in careful terms:

> The above represents the background to this matter. What is the Court's function when a matter is referred to it in terms of section 14(3) of the Restitution Act? Section 14 (3) does not expressly or by implication oblige the Court to make any agreement referred to it an order of court, notwithstanding that the parties may request it to do so. Obviously the Court must treat such a request seriously and only refuse it for good reason. The Restitution Act is clearly geared to promote the resolution of restitution claims by negotiation, mediation, agreement. Where the parties succeed in achieving this, the Court should as far as possible give effect to the intention of the parties.

The basic argument is that there must be good reason for the settlement to receive Court validation, as public deliberation is then validated by a judiciary (imaginary) debate (as in the Cato Manor case), and the public admitted, as it were, to having acted as if in a court room. The Court order – the text that contains the judgment, its collocation of sentences and paragraphs – then represents the absent "oratory"; the arguments and exchanges of which the Court has been deprived by public deliberation itself.

The judgment is there to restore the dignity of legal rhetoric to the deliberative truth reached by the parties; or, as it is stated, to "give effect to the intention of parties". In giving "effect to intentions", the Court would show that it has been persuaded, just as the parties have been, and that, from settlement to court order, all rhetorical means (of which the oratory of the written judgment is a signal instance) have been exhausted. That the case has been – at the level of rhetorical expertise and not only at that of its factual contents – a "true" deliberation.

The judge then proceeds to make two "enquiries". The judge "enquires" into the validity of public deliberation. Firstly, is the Court persuaded that the agreement entitles the claimant to a restitution? With amendments, the Court agrees that, on the first ground, public deliberation has been forensically correct, inclusive of "public interest" being served. But as regards the second "enquiry", the judge hands down that the agreement itself cannot be made an order of the Court. Why?

Instead, the Court has prepared, in consultation with the parties, another court order. This new court order avoids legal confusion that may arise in

the future. Yet, rhetorically, it can also be read as the only manner in which the judge could assert the primacy of legal oratory and, fictitiously, reintroduce the parties into the courtroom and make them argue their case (albeit not on the substance of the claim but on incidentals of the case).

Conclusion

The Land Claims Court judgments may indeed be read, with regard to establishing the truth of land restitution claims, as deliberative sites for conflict, tension and resolution between two sorts of persuasion: public deliberation and judicial review, the latter positing itself as fulfilling the unfulfilled, ill-formed, misshapen words and thoughts of the former. They also signal that the Judiciary, when it probes into the People as a deliberative entity, enters itself into deliberation and helps shape a "rhetorical democracy".[9]

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[9] Further cf. Salazar 2003a and in press (a), also cf. (c).

CHAPTER 13

TRUTH IN POLITICS, AND THE POLITICAL SPHERE IN CONGO (BRAZZAVILLE)

Abel Kouvouama

ABSTRACT. This paper attempts to unravel the consistencies and inconsistencies in the Congolese public's conceptions of truth in politics. In pursuing this approach, the author also employs his personal experiences as a major player in the national conference of Congo in order to reveal the problems related to the invention of pluralist democracy in a polity as complicated as Congo-Brazzaville.

Introduction

Since 1989 and in particular since the fall of the Berlin wall and the acceleration of the social movements on the African continent, sub-Saharan African societies have been undergoing political and religious reconstitution linked to situations of crisis. One-party political systems crumbled during the national conferences which were then seen as a panacea for the socio-political crisis. Most of these national conferences, led by men of the cloth and in particular the Catholic Church, were based on a political register (including the public denunciation of former leaders who failed), as well as a religious register (including the public acceptance of their faults and their being forgiven), and aimed for a regime based on political truth. The Sovereign National Conference of Congo (Brazzaville)[1] occurred after its counterpart in Benin (1990), and lasted five months.

The aims of this paper are:

- on the one hand, to understand the points of agreement and disagreement in the public statement of truth in politics,
- and, on the other hand, to point out the difficulties related to the invention of pluralist democracy within a political sphere as heavy as that of Congo-Brazzaville; here my argument will be based on my own experience as a member of society and as a key player[2] in the national conference of Congo.

[1] After a few decades of being in use, Mobutu's designation "Zaïre" (for Congo-Brazzaville's eastern neighbour state) was reverted to "Democratic Republic of Congo"; however, in the present paper, "Congolese" will exclusively refer to Congo-Brazzaville. (Eds.)

[2] I myself acted as adviser to the Conference as delegate of the Congo Society of Philosophy.

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The Sovereign National Conference and the rites of politically-related institutions

To speak about politics in today's Congolese society presupposes that there are epistemological, historical and cultural implications on which that society is based. The epistemological basis resides in the apprehension of Congolese society marked, firstly, by the endogenous evolution process being blocked and, secondly, by colonial over-taxation. With the cultural basis appears the double relation of interiority and exteriority, characterized by the combination of two different cultures, i.e. Congolese post-colonial and European. The many consequences resulting from the clash and confrontation of the different social and cultural forces allow us to measure the restricting effects of colonial over-taxation and the effects of the demands brought about by the newly created situation, i.e. the situation of the Congolese production of political modernity. [3]

Whether we refer to the political, economic, social or cultural domain, the existence of a hybrid area of material and spiritual activities results in a situation where a social endogenous logic is permanently present within Congolese production of political modernity. This endogenous logic is based on the primacy of the group and of kinship relations over the individual. But equally there to stay is an exogenous social logic characterized by the primacy of the individual over the group. The organization of material and spiritual activities, which is often a difficult and tumultuous process, in most cases involves considerable oscillation in the positions that political subjects take vis-à-vis these two logics, as brought out in their behaviour and mentality. With the disorganization of identity-related markers, the renewal of social and symbolic representations entails making selections from foreign cultural elements and from ancient Congolese cultures. Management of politics and democracy cannot therefore avoid the many consequences of the combination resulting from the uninterrupted process of endogenous production of political modernity in Congo.

The National Conference of Congo was organized in favour of mass movements by the then President of the Republic, Denis Sassou-Nguesso, on the 25th of February 1991. It took place at the convention centre of Brazzaville, with 1100 delegates representing political parties, workers' unions, civil organizations (i.e. development NGOs, scientific associations and learned societies), as well as the various religious denominations, representatives of the state, and political and administrative personalities.

[3] Eboussi-Boulaga 1993.

The desire to break away from the former system had informed the role played by intellectuals, syndicates, the army, Youth and Women's Movements, as well as churches and religious sects. Thus, the means to apply political legitimacy, with a view to installing a democratic state, were validated through a general national Congolese convention.

The first visible signs of the political quest for meaning were, on the one hand, the affirmation of individual and collective expression and of the respect for discussion ethics, and, on the other hand, the elaboration of procedures of political truth under the chairmanship of a man of the church, Mgr. Ernest Kombo, in charge of the Charismatic revival movement and member of the Catholic Church. The quest for political truth required locutors not only to display logically coherent thought in accordance with the principles of reasoning, but also, where the substance of their verbal contribution was concerned, to remain in touch with unfolding past events which were actualized for the circumstances.

To prepare the ground for the unfolding of the political subjects' discourse and that of civil societies, and to guaranty their immunity while speaking publicly to tell the truth, the first part of the national conference was devoted to internal regulations, proclaiming the sovereign character of the conference. The reports which were simultaneously given on the radio and television, were to include the assessments of the various delegations concerning the political, economic, social and cultural situation of ill-gotten assets, embezzlement and political assassinations.

During the subsequent sessions of the various commissions set up, including those on ill-gotten assets and political assassinations, the speakers, under oath, were to tell the truth. Most of the members of the various commissions were young intellectuals (lawyers, civil servants and academics). Already during the first days of the commission, Mgr. Kombo, who was elected unanimously as chairman, sought to channel the violence of political denunciation into a pacifying space, by putting before the Convention the following triptych:

- Denunciation
- Recognition of one's faults
- Asking for, and accepting, collective forgiveness.

All this took place while a variety of rituals were performed, rituals which came from ancient Congolese as well as Christian culture. It was on the seventh Sunday of the beginning of the national convention that, through the radio and television, Mgr. Kombo called on the whole of Congo to clean

cemeteries and make offerings to the dead. A second event was then to take place when the 1100 participants were to plant a tree bearing the name of the commission, in a public area baptized "Garden of National Unity" for the occasion. By symbolically including the dead in the process of national reconstruction, Mgr. Kombo wanted to prepare the people to accept, before "invisible but present witnesses", the statements on political truth which were to be made during the following weeks, including those on political crimes committed by former Presidents of the Republic Marien Ngouabi and Alphonse Massambat-Débat, as well as those of Cardinal Emile Biayenda. The tree could then symbolize resurrection through religion as well as return to life by the renewal of political institutions and individuals who were to be elected subsequently to ensure new governmental responsibilities. Finally, the third major ritual event was to unfold during the Sovereign National Convention's closing ceremony, with the rite of washing one's hands in a fountain. All the participants were asked to perform this act including the President of the Republic, Denis Sassou Nguesso, who remained in power during the time of the Commission. The hand-washing fountain took place inside the convention centre itself. The rite was supposed to mark national reconciliation after five months of political discussions which had become violent at times.

The Sovereign National Conference had been, from the start, a moment of high hopes for the Congolese population, a place in which to introduce the basics of pluralist democracy and the founding of a constitutional state. To the advantage of the people, lessons were to be drawn from the experience of the political, economic, social and cultural management of the one-party system; and it was time to democratically examine and redefine collective and individual responsibilities so as to eliminate all forms of exclusion and political violence from the new political order which was to be installed during the transitional period. The Convention was about rewriting symbolically a new social world that included all concepts, such as people's sovereignty, the constitutional state, and respect for human dignity (beyond the visible material aspects of politics, economics and culture). The Sovereign National Convention undertook to fix this symbolic rewriting in the collective memory, by adopting a Fundamental Act. The Preamble of this Act, used subsequently in the Constitution which was enacted on the 15th of March 1992 by popular referendum, stipulated the following:

> Dignity, freedom, peace, prosperity and love of the country were, under the one-party state in particular, hindered or held up by totalitarianism, confusion of the authorities, nepotism, tribalism, regionalism, social inequalities and the violation of fundamental rights. The *coup d'état*, justified in Congolese history as the only way to regain power, has destroyed all

democratic life. Intolerance and political violence, violation of individual and collective rights, the summary execution of real or assumed political opponents, the cowardly assassination of peaceful citizens for political ends have plunged the country deeply into mourning, have maintained and increased hate and division between the various ethnic communities making up the Congolese Nation.

Consequently, the Congolese people:

- proclaim its firm desire to build a constitutional State and a united and brotherly Nation;
- solemnly proclaims to rightfully disobey civil duties and to resist any individual or group of individuals who seize or exercise power after a *coup d'état* or after any other form of violent act;
- reaffirm its attachment to the principles of pluralist democracy, to the rights as defined by the United Nations Charter of Human Rights of 1948, the African Charter of Human and People's Rights adopted in 1981 by the Organisation for African Unity and the Charter of Rights and Freedom adopted in 1991 by the Sovereign National Conference.

The Sovereign National Conference: Stating a principle of truth in politics by means of political denunciation

The process used for the democratization of political life occurred in such a way that analysing it has become a delicate matter today. Indeed, it was based on a difficult balance between, on the one hand, the desire for a clean break (marked by the sustained denunciation of former state authorities, condemnation of summary executions, and acceptance of one's faults), and, on the other hand, the former ruling class asking for forgiveness (followed by the unsuccessful end of the national conference). With the process of pacification of society and the political sphere, in the face of the crises of confidence and legitimacy of the former ruling class, the consensual search for trust, to maintain a public space for discussion, was effected through a third party: a man of the cloth. By adopting political ritualization with a reasoning based on denunciation, forgiveness and consensus in order to obtain political truth, the Sovereign National Convention was not able to achieve completely its ambitious collective goals. One reason for this has to do with political leaders' concepts of power and of the state. Being in the hot seat and having to articulate publicly a political truth that would disqualify them, appeared to them as the end of their political career in Congo.

By going, point by point, through the locutors' discourse, one is struck by the strong utilization of politics. First of all, one must understand politics on the basis of its double metaphysical dimension:

- as a given of human nature, and
- as the art of managing the city according to principles of equity and justice.

Then, beyond pure political theory, one must also understand politics in terms of a domain of action, in the sense of Max Weber, i.e. as a rational activity oriented towards a practical purpose. And because it calls for appreciation or discredit, and therefore assessment, the political act, as public action, refers, not only to meaning (thus revealing the particular dimension of human existence), but also and especially to the exercise of such power as is supposed to produce a new meaning having direct consequences for citizens' daily lives. Because of this, the act that consists in speaking at the Sovereign National Convention (seen as a space for public debate or palaver), in order to admit one's faults, was paradoxical in so far as conflict, denunciation, pluralism and consensus were coexisting.

Patrice Yengo, who had definite ideas on these matters, was of the opinion that

> the end of a one-party system does not automatically result in democracy. In Congo, it gave rise to the partisans of the former dictatorship, who had spread out to various regional political parties, to recreate the dictatorship by regenerating the ideological basis of the ruling class; the latter having always ignored the principle of contradiction.[4]

One of the first tasks which the Sovereign National Conference imposed on the Congolese population was to progressively rid themselves of the totalitarian image which had taken over public, cultural and scientific life, as well as the private lives of individuals. Indeed, individuals had lost heart for personal effort, moral, political and economic transparency, as well as for intellectual and cultural creativity.

But the Sovereign National Convention has also been a place of violent expression, where violent words condemned armed violence. In Paulin Hountondji's opinion, speech, which is part of parliamentary culture, needs to be found not only within African cultures, i.e. palaver culture, but also within the French parliamentary culture of 1789, where speech was radical, exigent and rebellious. After recalling the Beninese experience of the "National Convention of *Forces vives*" for its exemplary merit and its true impact on the contemporary history of the sub-Saharan African region, Hountondji concludes that a conference is one way to conquer democracy among many others.

> While the convention was a celebration of reason, it was also a celebration of true politics, where language prevailed, and where pluralist democracy was suddenly rediscovered.

But according to Hountondji,

> what is essential is precisely the conquest itself and the fact that it unfolds and becomes

[4] Yengo 1994: 9.

> generalized in front of our own eyes. For, we undoubtedly live at the end of the 20th century in what is a great era, marked by a global process of democratization whose importance we are only beginning to understand. In the East as in the South, dictatorships are crumbling, and together we rediscover, with regained joy and fraternal feelings, the great principles of freedom and equality (...). Thus true politics was regained, a politics to be understood as a celebration of reason, as the happy rediscovery of great principles, as a forceful return of ethical exigency leading to the final condemnation of the continuous violations of human rights which form the basis of dictatorships. It is also to be understood as the emergence of morality into a domain that pretended to ignore it until then: the domain of human management (...). Morality is claiming its legitimacy, freeing the power of thouhgt that had been humiliated, that no longer dared making itself heard and that had become content to mutter in the loneliness of the individual conscience and the isolation of confessionals (...). Reason, which was choked by the sound of weapons and the ideological drone of the dominant thought, is finally and again going to express high and loud its reprobation and, in the name of a few standards and universal rules, going to say *no*.[5]

During our philosophical discussions which took place during an international conference organized by UNESCO, in Yamoussoukro, Ivory Coast, on Philosophy and Democracy in Africa (March 1999), Paulin Hountondji was less categorical about the general impact of his first proposal, and he invited participants to question the reasons justifying the return of contested, former political leaders on the political scene during democratic elections – elections that in themselves were sometimes questionable, as was the case with the first post-national conference elections of 1992 in Congo-Brazzaville.

The search for truth in politics over a period of thirty years came up against the refusal of political players to tell the truth about their own politics, despite the political and religious rituals engaged in. Indeed, neither truth nor the pacification of the political space were reached by the mere act of the "raising of the moral standards" of Congolese political life, by the rituals of collective cleansing, by the cleaning of cemeteries and by having 1,100 persons plant a peace tree in the newly established "Garden of National Unity". Access to political truth became a game of permutation, submitted to the complex combinatorial analysis of norms: those issued from ancient Congolese community-based cultures and those inherited from individual and contractual modern Congolese and European cultures. As soon as these norms made it possible to access truth in politics by seceding from democracy-related conflicts, they excluded democratic undertakings in the sense that certain events, and the most crucial events at that, once more were allowed to pass as indescribable and as "politically sacred".

Yet, in political democracy one needs to invoke the social logic of the exercise of power. Political democracy implies the judicial equality of all

[5] Hountondji 1991: 5-7.

citizens in the eyes of the law. The ideology of representation consists in establishing rightful equality, and making such equality to be respected, despite the given of natural, physical inequalities; and such equality, and the respect it receives, depends on the pluralist and harmonious management of existing differences and identities that, each individually, bear on the representational or imaginary form of social homogeneity.

The Congolese nation-state has inherited two reference systems from two logics that are contradictory, both in their production and distribution systems, and in their socio-cultural framework of membership. As it happened, socio-economic and pre-capitalist practices based on family units, were combined with those governed by a capitalist form of production. As a result, in the state, individuals identified themselves in two ways: sometimes by claiming membership of a social class based on their position within the production process; and sometimes by referring to ethnic identity. Based on this, and largely dependent upon people's political aspirations and involvements, differential importance was attached to different organisatory principles within of the structure, such as ethnic affirmation, class consciousness and religious belonging. In most cases, if individuals in power or in search of political power were using ethnicity for their own political ends, one could understand the purpose of their practice more easily by taking into account their ideologies of representational power and those of ethnic, religious and identity-related forms of reference. In actual fact, the Congolese nation-state is the inevitable result of an endogenous and an exogenous legacy:

- on the one hand, the logic used for running and managing the political power of pre-colonial politically minded Congolese communities, characterized by the interpenetration of temporal, spiritual and religious power, and governed by the notion that ultimately, power is not a human attribute but a prerogative of God;
- and on the other hand, a legacy based on the fact that this contemporary nation-state is the result of the logic used for running and managing the colonial power that was based on the institutional separation of politics and religion, as well as that of public and private spheres, among others.

However, in this light, the democratic process obeys as much to the internal subjective causes of the dynamics of the social movements of each country, as to the external objective causes that result from the global democratic rush which has been intensified by the media.

Violence and the citizenship crisis

After the Sovereign National Convention, the main reason for the exacerbation of conflicts between the various Congolese political players, from 1993 onwards, can be understood through each player's conception of political power. Being a context for the accumulation of personal wealth, as well as for clientelist distribution of material and financial resources, the state became a stake between political groups which were fighting for exclusive control over it along the lines of ethno-regional rivalries. Yet, the two main political forces of the transition period (June 1991 to August 1992) already had in them the seeds of political violence, with Brazzaville as the main centre of activities. In April 1992, when both political parties won the municipal and legislative elections, they decided to give more importance to territorial as well as ethnic anchorage. In August 1992, the presidential elections were won by Pascal Lissouba, who was supported by Denis Sassou-Nguesso and his party (Parti Congolais du Travail, PCT). However, after signing the electoral and government agreement with the Union pour le développement et progrès social (UPADS) on 11th August 1992, the PCT denounced the agreement as it felt betrayed by UPADS; the latter had reserved, in Prime Minister Stéphane Bongho-Nouarra's government, only three ministerial posts for the PCT out of 27. Without delay, on 30 September 1992, the PCT then signed an agreement with Union pour le Renouveau Démocratique (URD) which included all the parties of the new opposition within the National Assembly, thus creating a change of majority. On 31st October 1992, a vote of no confidence was passed against the Bongho-Nouarra Government and the new majority asked for the resignation of the Prime Minister, as per the Constitution.

Since then, Congo-Brazzaville has entered a long period of instability as well as political and military crises. In January 1998, after Sassou-Nguesso's military victory, the country held a forum on National Reconciliation, Unity and Democracy, which did not bring back the peace for which citizens had hoped so much. The South African experience of the Truth and Reconciliation Commission is a source of inspiration for some of the Congolese political key players as well as those of civil societies.

Finally, while the complexity of the social and political fight for pluralist democracy in Congo should not be seen in a pessimist light, one must acknowledge the difficulties attending the realization of such a goal in the near future. As a result, one is left with two impressions:

- firstly, the Congolese nation-state in search of democratic legitimacy

remains powerless, in the face of the decline of Congolese institutions and political life, while political wars occur time and again (1993 to 1997, 1998 and 1999), and in the face of the implacable logic of international trade which imposes a negative sanction on all non-conformist national politics ;

- secondly, international trade (seen as an illegitimate co-sovereign), could end up as a complete substitute for people's sovereignty.

Despite the war situation which is still perceptible today, and despite the failed attempts for "political negotiations" between the protagonists, I think it is important to postulate the creation of a pluralist democracy for Congo in the immediate future. Such a democracy should then have the following characteristics:

- a plurality of political parties, professional and scientific associations, and development NGOs;
- freedom of opinion, associations and movements;
- the separation of the executive, legislative and judicial powers;
- free elections at regular intervals, thus allowing citizens from towns, municipalities and regions to take collective decisions;
- the acceptance of the alternation principle in government;
- the spreading of a culture of democracy by fighting ethnocentrism when promoting regional cultural diversity, and by decentralizing the means for cultural action;
- the spreading, among citizens, of a culture of democracy that is a culture of peace
- the latter being founded on universal values of the respect of life, justice, freedom, tolerance, solidarity, human rights and equality between genders.

This culture of democracy must truly be one of peace. Such peace has to spring from the fact that the behaviour of social and political key players' is based respect for others, for the cultural identity of other, for the spirit of equity and solidarity when distributing wealth, and for the promotion of environmental quality for all by using science and technology rationally and efficiently, in the name of peace and democracy. In this way, a democracy based on co-operation will complement a democracy based on peaceful confrontation. The peaceful confrontation of ideas, and co-operation in solving fundamental societal problems, will be the two main ingredients out

of which a viable democracy will be born in Congolese society in the near future.

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CHAPTER 14

DISCURSIVE PLURALITY

NEGOTIATING CULTURAL IDENTITIES IN PUBLIC DEMOCRATIC DIALOGUE

Mary Jane Collier & Darrin Hicks

ABSTRACT. This paper is an attempt to reconcile the gap between our practical and theoretical knowledge. The authors begin by briefly describing and critiquing the traditional conceptualizations of democratic disagreement: conflicts of interest and conflicts of principle. They then propose that the dilemmas in democratic practice engendered by intercultural contact necessitate a new conceptualization of democratic disagreement that can account for discursive plurality. This account of democratic disagreement – which the authors term "conflicts over political speech" – demands that we turn our attention towards exploring how cultural identities are enacted and negotiated through plural discursive systems. The authors conclude by discussing the implications of these assumptions, as well as interrogating our own received presuppositions about the interface between cultural identity and political participation, for constructing a transformative model of public democratic dialogue.

When members of different groups come together as a political community to solve a pressing social problem or to resolve a divisive conflict, they, more often than not, begin (and, too often, end) their democratic dialogues with the questions about what is "true". Factual accuracy, while important, is simply an insufficient basis for public deliberation. Democratic communities, in particular those constituted by a diverse citizenry, face social problems that are simply too complex to be solved through factual inquiry alone. The problems, though keenly felt, are dynamic; to even begin engaging them mandates the creation of social learning processes.

Moreover, the conflicts that divide citizens are rarely conflicts over what is *true* – they are often multifaceted disputes over what is *just*. Interpretations of what is just are always conditioned by the traditions and social practices that constitute conceptions of the good, and these conceptions of the good are in turn mediated through our cultural identities. Therefore it stands that group members will legitimately disagree over what is just and that this disagreement will not be resolved through some ideal of universal reason or rational choice. Rather, justice, if it is to be redeemed as a standard that could reconcile division, will have to be understood as a problem of coordinating communicative action in a pluralist society.

In this paper we contend that inquiry about public dialogue and deliberation is strengthened when we recognize the current socio-cultural

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global environment. Here technological and economic advances as well as changing political landscapes have made access to and contact between different cultural groups and multiple discursive systems the rule rather than the exception. As a result political discourse is marked by diversity in interests, principles, and in ideas about appropriate conduct and procedures. If scholars of and participants in public deliberation recognize that the interaction is inherently a process characterized by negotiating, promoting, and challenging group identities, they will know that such communicative processes involve a plurality of discursive systems and preferences. Unfortunately, our practical knowledge of discursive plurality – the fact that the forms and functions of political discourse are as plural as the conceptions of the good it is called on to reconcile – has yet to adequately inform the extant theoretical models of democratic disagreement and conflict resolution.

This paper is an attempt to reconcile this gap between our practical and theoretical knowledge. We begin by briefly describing and critiquing the traditional conceptualizations of democratic disagreement: conflicts of interest and conflicts of principle. We then propose that the dilemmas in democratic practice engendered by intercultural contact necessitate a new conceptualization of democratic disagreement that can account for discursive plurality. This account of democratic disagreement – which we term conflicts over political speech – demands that we turn our attention towards exploring how cultural identities are enacted and negotiated through plural discursive systems. We conclude by discussing the implications of these assumptions, as well as interrogating our own received presuppositions about the interface between cultural identity and political participation, for constructing a transformative model of public democratic dialogue.

Models of democratic disagreemen (a) and (b): Conflicts of interest and conflicts of principle.

Traditionally, political and social theorists have conceptualized democracy and political disagreement, in particular, from within an interest-based model of politics. Interest-based models understand democracy as a process where individuals express their preferences, compete with others so that their preferences will influence the formation of public policy, and register those preferences in a vote (Young 1996).

Two basic assumptions that differentiate interest-based models of democracy from their republican and deliberative counterparts are a

commitment to methodological individualism and the definition of successful democratic decision-making as the result of the competition between coalitions for self-interested votes. Interest-based models posit that individuals form their interests without regard to others' needs. The rational political actor justifies her or his conduct by weighing the costs and benefits of risk and precaution in terms of "willingness to pay" and considers others needs, preferences and desires only when they stand to further or lessen her or his own. In democratic decision-making, then, individuals and interest groups formulate and vote for policies that will best further their own private interests, fully expecting that all others will do the same. Interest-based models conceive of politics as a contest among power seekers. Political power is achieved through influencing the formation of individual preferences and having the ability to marshal those preferences into the service of one's own interests.

Given that the presence of a plurality of individuals and groups with competing interests, desires, and needs is an interminable aspect of democratic polities, conflict between political actors is seen as a natural and even necessary aspect of politics. When there is a moderate scarcity of desirable social goods, political actors have to compete for resource allocation. Moreover, when one individual's or group's actions restrict or negatively impact another individual's or group's actions, those parties will engage each other in a contest to see whose will shall prevail. Democratic institutions transform these contests into legal battles over the allocation of rights and responsibilities. These rights and responsibilities, within an interest-based conception, are reduced to the status of resources to be allocated amongst the parties. This competition for rights and resources and the ensuing conflicts that it engenders constitutes what is commonly described as a "conflict of interest".

In conflicts of interest, parties contest the outcome of administrative decisions, and, hence the application of a set of principles for allocating resources. Yet, what is, for our purposes, the distinguishing feature of conflicts of interest, is that the parties typically respect the authority of the decision-making body, the procedures used to determine allocation, and the principles used to justify social policy. That is, while these conflicts can become extremely protracted, the parties do not challenge the authority of the decision-making body to adjudicate the dispute. There is also a general agreement about the procedures used to settle these disputes. The standards of evidence as well as the types of reasons that can be advanced are respected. In short, in conflicts of interest both the principles for determining resource allocation and for regulating the communicative actions of those

parties competing for advantage, are affirmed.

Examples of conflicts of interest abound. Many disputes over property rights, resource allocation, the burdens of paying for public utilities, and the distribution of risk can be understood as conflicts of interest (although, as we will argue, these conflicts have moral and communicative dimensions that are often rendered invisible because they are too defined as conflicts of interest).

Framing political disagreement in terms of conflicts of interest also shapes the models of dispute resolution that we invent and favour. When political disagreement is understood as the competition for personal advantage, the favoured methods of dispute resolution will be negotiation and strategic bargaining. If political disagreement is understood as primarily arising from the problems of resource scarcity, and thus, resolved by fair and efficient resource allocation, negotiated rule making and arbitration will serve as the dominant methods of conflict management.

What marks each of these models of political disagreement as conflicts of interest, is that their success relies upon a strong, centralized and undisputed decision-making agent and an authoritative set of rules of communicative engagement. However, as we will argue, the authority of extant decision-making agents and rules of communicative engagement have themselves increasingly become the source of political disagreement, particularly in cases of cultural politics. In such cases, which we call conflicts of principle and conflicts of political speech respectively, not only do interest-based models of dispute resolution fail to adequately address the heart of the political conflict, their application may in fact work to intensify the conflict, as well.

However pervasive conflicts of interests are in contemporary societies, the new forms of political struggle accompanying the introduction of democratic norms and practices into the workplace, the family, and sexual relations over the last thirty years demonstrate that an interest-based model of political conflict fails to account for the most interesting and increasingly important forms of democratic disagreement. Many political disagreements now seem to be rooted in much "deeper" differences than conflicts of interest. As the cultural and religious diversity of the citizenry grows, through both migration and enfranchisement, the diversity of collective aims, moral outlooks, received knowledges, and worldviews grows. It is no longer reasonable to assume that a shared moral and political framework exists to guide public deliberation and debate. As the new social movements have demonstrated, the political vocabularies used to frame issues and propose solutions as well as the legitimacy of extant procedures for

resolving political conflicts, are often the source, rather than the cure, of political disagreement.

Following James Bohman (1995), we call these disputes over the authority of decision centres, the principles of adjudication, and the principles of justice underwriting social policy, "conflicts of principle". Conflicts of principle differ from conflicts of interest in that parties disagree not only because they have divergent needs and desires but because they construct their identities from incommensurate moral orders and social grammars, an incommensurability that both constitutes and intensifies the divergence in their worldviews and interests. Hence, traditional methods of dispute resolution, which attempt to reconcile interests through formulating mutually acceptable compromises, are of little use when applied to conflicts of principle. In conflicts of principle parties not only differ in regard to some issue, but disagree on how to go about resolving their conflict (Pearce & Littlejohn 1997). They disagree over what counts as evidence and what conditions must hold to qualify a policy or project as just. Moreover, one or more of the parties often refuse to respect the authority of those who sit in judgment. In short, political disputes become conflicts of principle when they go beyond conflicts about particular beliefs or interests and focus directly on the principles of adjudication. Conflicts of principle, if deep enough, seem to radically question the very possibility of democratic resolutions.

The struggle over land rights between Australian Aborigines and a mining company as documented in Werner Herzog's film *Where Green Ants Dream* is an illustrative example of a conflict of principle (Reading 1992). The mining company possessed "legal" ownership of the land and wished to begin excavation. The Aborigines, however, claimed that the land was sacred burial ground, and therefore attempted to stop all mining operations. This dispute was not simply over who owned the land, which would be a conflict of interest, that the notion of property as such is the locus of the conflict; hence, there is a conflict of principle.

> When this dispute came before the court the judge ordered the Aborigines to produce evidence for their claim that the land was sacred. They responded that they could not present the objects that could verify that the ground was indeed sacred, because to look at these objects was a sin that would result in the death of the viewer. At that point an Aborigine man referred to as the "Mute" stood up and began to speak. The judge was perplexed. He asked why he was referred to as a "Mute" if he could speak. The other Aborigines replied that was because he is the sole surviving member of his tribe, so no one else could speak his language and he couldnot speak the language of anyone else. The judge then turned to the Aborigines and told them that because they failed to produce any legal title or evidence of the lands' sacredness and the "Mute's" testimony was untranslatable, he had no recourse but to rule in favour of the mining company. The Aborigines implored the judge to step outside of the

boundaries of the law to adjudicate the dispute, but he refused.

Herzog's film does not present the Aborigines as mere losers in a legal battle. Rather, the aborigines have been injured because the principles defining justice in terms of property and the evidentiary procedures used to adjudicate the conflict systematically divested them of the means to present their case.

We understand recent attempts to formulate a deliberative account of democracy as a response to the demands of the deep pluralism signalled by conflicts of principle (Bohman 1996; Dryzeck 1990; Rawls 1993; Gutmann & Thompson 1996). Deliberation is understood in these models as a process by which individual convictions are translated to public reasons. Deliberative democrats view deliberation as a method for regulating disagreement and resolving differences of principle through critical discussion, which is a method that shifts political power from a basis in interest groups and ethical commitments to an institutional framework constituted by a set of rules for managing difference.

We endorse deliberative approaches inasmuch as they acknowledge the constitutive force of communication (i.e., communication is never merely the transmission of information, but in most cases involves the constitution of a meaningful order of persons and things). This view of communicative action serves to re-specify justice as a problem of, and, more importantly as the result of, coordinating communicative interaction in a diverse society in which particular histories and collective memories are constituted. By grounding democracy on a model of public debate, rather than a model of strategic bargaining, deliberative models can offer a constructive answer to the question of how diverse groups are to mediate their differences. Deliberation is, thus, a superior alternative for mediating political disagreement in a pluralist democracy compared with strategic bargaining, arbitration, voting and other forms of dispute resolution, grounded in an interest-based conception of democracy.

We part ways with deliberative theories, however, when they privilege one form of discourse – namely critical-rational discussion – over all others. We concur with Iris Marion Young's (1996) claim that the valorization of deliberation over other discursive forms such story-telling, rhetoric, or conversation (to name but a few) may actually work as a form of cultural imperialism, silencing minority voices by devaluing the methods of expression, bodily comportment, and modes of self-presentation of groups whose views have already been systematically disregarded in public forums. Thus, ironically, deliberative norms may actually foreclose the possibility of

a radically democratic dialogue.

Deliberative theories often mistakenly conceptualize discourse as a relatively stable, univocal, phenomenon. That is, they overlook the fact that modes of communication are irreducibly plural. Conversation, debate, discussion, narrative and poetic speech are not simply different "forms of expression", but rather each of these genres of communication is constituted by different norms, functions and effects. Furthermore each genre activates a different moral and political universe establishing distinctive rights, obligations and orientations to the other. For instance, think of the many functions that the question can have and how the form, function, and effects of the question are shaped by the trajectory of the speech genre in which it is embedded. It makes all of the difference in the world if a question is part of a cross-examination, a narrative, a casual conversation among friends, a visa application, an inquisition, a doctoral examination or police interrogation. Each of these speech genres depends on questions to do their work, but each assigns radically different roles, rights, responsibilities, and strategies, to the speakers. To unproblematically assume that the question functions innocently in deliberation – and to assume questions work only to clarify parties' positions – , is to turn a blind eye to the experience of having a discussion turn into an interrogation, a trial into an inquisition, or worse.

Given the irreducible plurality of religious, philosophical, political, and moral views animating contemporary societies, it is not surprising that political philosophers would theorize discourse monologically. Discourse, for contemporary political philosophy, serves as the Archimedean point[1] by which the other forms of plurality can be reconciled. In other words, discourse must be theorized as a stable, non-plural phenomenon, for it to serve as the foundation of a democratic theory that fully accepts the "fact of reasonable pluralism" (Rawls 1993) and that views its mission as devising a scheme by which these diverse views can be reconciled without coercion.

We need to recognize, as well, that parties in real political disputes operate with a number of co-present orientations to public discussion, and that these orientations even tend to be inconsistent. The commitment to politeness norms, for instance, works in tandem with the rational presupposition of unforced consensus. In real talk we juggle the need to

[1] The Hellenistic mathematician and physicist Archimedes (287-212 BCE) is reputed to have boasted:

> Give me a place to stand and I will move the earth

Hence the common philosophical usage of the expression "Archimedean point" for any (claim of an) objective, fixed position from which to make a comparison or a judgement. Many modern philosophers, meanwhile, have come to consider such a claim unwarranted and obsolete. (Eds.)

make decisions based on the force of the better argument with the need to forge social cooperation by holding our tongues. Just how we juggle these sometimes conflicting interests is what makes real talk so much more complex than any theoretical system of designed speech. By reducing the complexity of actual communicative action to a relatively univocal model of critical discussion and by ignoring the plurality of discursive forms co-present in any attempt to mediate differences of principle, deliberative models may actually negate the very advantages they purport to accrue.

Conflicts of principle present a formidable challenge to reflexive scholars and practitioners committed to designing discursive methods and forums capable of transforming potentially violent and divisive political strife into productive and peace-oriented dialogue, a dialogue in which the differences separating groups are seen as resources rather than obstacles for constructing a shared, yet heterogeneous, ethical vision. To meet this challenge we must first abandon the effort to justify democratic principles by appealing to universal standards of reason and rational choice. Instead, we must uncover the specific and multiple cultural and historical traditions that constitute a community's political lexicon. Second, we must not make the mistake of reifying these traditions; instead, we must remind ourselves that they were constituted through searching dialogue and debate, and that only in the present have they become taken-for-granted procedures for coordinating action. The seeds of revision and reform exist in the forms of practical reason animating communal life. Therefore, principles of justice and procedures of adjudication can be remade and re-imagined in and through public dialogue.

Conflicts of interest and conflicts of principle are widely recognized as challenges that are faced by democratically oriented groups. Inattention to discursive plurality, however, often leads theorists and practitioners to ignore a third, and we believe an increasingly important, form of democratic disagreement and, hence, to overlook the communicative resources for constructing a transformative model of intercultural dialogue.

Models of democratic disagreement (c): conflicts of political speech

Just as the emergence of new social movements revealed the plurality of, and hence the conflict over, political principles, what Tully (1995) – in indebtedness to Taylor – calls the "politics of cultural recognition" points us to the plurality of, and hence conflict over, political speech. The intercultural demands that constitute much of contemporary politics range from the

establishment of schools, social services and media in one's first language to the struggle for the right to

> speak and act in culture-affirming ways in public institutions and spheres (Tully 1995: 2).

Let us grant that the right to participate in political institutions in ways that recognize and affirm, rather than exclude or assimilate, culturally diverse ways of speaking, thinking, and acting of citizens, is a prerequisite to political freedom and democratic governance. It then follows that many of our political institutions will have to be rebuilt from the ground up, because they were originally constructed to privilege the traditions of argumentation and modes of speaking of white, propertied males.

Moreover, that cultural groups are internally heterogeneous; they are also constituted in and through a plurality of ways of speaking, thinking and acting. Therefore, the primary mode of political disagreement in the twenty-first century CE may be *conflicts over the forms and effects of political speech*, rather than over interest or principle. The complexity of the problem, most notably its recursiveness, is signalled by the difficulty in coining a succinct term to describe such conflicts. In conflicts over political speech, the rules and norms controlling the speaking opportunities afforded to parties, the performative standards for formulating speech acts, and the limits of what discourses can be heard as authentic and true are opened to challenge, re-evaluation, and revision. At the very least, because the conventions governing speech will have to be ratified to some degree by all parties prior to engaging in deliberation over interest or principles, discursive conflicts will come to occupy a great deal of time and energy of both established and newly forming democracies.

Cultural group identification and discursive plurality

When community members meet and deliberate with one another, they do so as individuals who speak as, and speak for, various groups. Group or cultural identities are enacted through the social discourse, and are both the foundation from which and the creative ongoing accomplishment in which political standpoints are articulated. Group members speak, in part, with voices based on who they are and what they know, and norms that group members bring to public meetings about what is appropriate and effective conduct. In addition, inter-group norms are contested and co-constructed by multiple parties in their discourse throughout their contact, and are as varied and diverse as the individuals that comprise the groups.

Cultural identities in these contexts are broadly viewed as ongoing problematics, social enactments, and performances, in the sense that group identifications are social and observable. When members of different groups meet, the engagement is a

> participatory ritual performance in which actors not only pursue interests strategically and display themselves expressively, but reproduce and reconstitute social and political relationships with one another (Forester 1996: 309)

Cultural identities are enacted in spontaneous as well as strategic forms, and are featured, hidden, challenged, and negotiated, in the emerging discourse as members of the public engage each other.

Culture is more than visible group affiliation in that it is a set of enduring and changing, ideological and institutional, interpretive, constitutive, and creative, situated norms and practices, shared by a group of people who enact their paradoxical affiliations with, and distinctions from. other groups (Collier 1999a). Our approach to culture focuses primarily upon the communicative or discursive system that constitutes identity affiliation or characterization; but this is not to suggest that multivocality or individual differences within the group are not acknowledged. It is to say that patterns among those who affiliate with a particular group, as well as individual differences, do emerge, and those patterns are apparent to insider members of the group as well as outsiders. Tajfel (1978), Tajfel & Turner (1979), and Giles (1980) discuss the tendency among humans to define social identities in inter-group terms and to use social comparisons to designate group insiders and outsiders. What interests us is the multiple forms and outcomes in which the character of the group identities and the relationships between groups emerge in democratic dialogues.

If we recognize that language is articulate contact (Stewart 1995), it follows that discourse is used to construct "realities", that include histories, relationships, and social identities (Shotter 1993). Symbolic activity is the forum through which we come to know about ourselves and others, as individuals and members of multiple groups, and we learn and revise what is valued, prescribed, and prohibited.

Discourse, therefore, is the means through which we constitute and negotiate political and institutional policies as well as norms for localized political practice. Billig (1995) as well as Jenkins (1997) point out that nationalism and ideology as broader structural processes, are reflected in situated discourse about what is strongly valued, moral, normal, respectable, and sinful. Van Dijk (1993) specifically points to the forms and functions of elite discourse dominating newspapers, televised news, as well as textbooks

and conversational texts, which become the sites of cognitive transformation and racism as well as the reproduction of ideologies and institutional policies within and across groups in various kinds of social contact.

Let us agree that cultural norms and premises emerge in discourse that is constrained by histories and past experiences, present power relations, externally imposed ascriptions, and internally avowed boundaries. Let us moreover agree that such norms and premises are enacted within co-constructed relationships. Then it becomes evident that we must incorporate multiple levels of analysis into an approach to cultural identity negotiation in public democratic dialogue. Therefore, following Giddens (1984), we recognize the role of the institution, group and relationship, and the individual, in interaction and production of discursive systems. For example, sometimes privileged groups exert influence upon groups and individuals through establishing a particular norm of conduct that becomes rewarded, if not the required standard within many institutions.

In the traditional deliberative model in the USA, individualism is valued and privileged, and the ability to be a strong adversary and have a critical voice is esteemed. Tannen (1998) describes this tendency in the USA as "the argument culture". Basing her conclusions on popular discourse in multiple forms, she describes the educational as well as political systems as institutions that socialize USA Americans to value individually-expressed critical ability.

> Our glorification of opposition as the path to truth is related to the development of formal logic, which encourages thinkers to regard truth seeking as a step-by-step alternation of claims and counterclaims. Truth, in this schema, is an abstract notion that tends to be taken out of context. (Tannen 1998: 260).

She also notes what she describes as seemingly automatic inclinations among individuals in the USA to oppose, criticize, and verbally assault political leaders.

In summary, as humans, we constitute our political standpoints, make community decisions, and constitute our group identities and relationships with each other in historical, institutional, and structural contexts, as well as in everyday contact with one another. Cultural identity is the character of the communicative system that is contextually constructed by those affiliating with a particular group in social contact such as that in public deliberation. Below, we describe several of our assumptions about how cultural identities are enacted and negotiated through plural discursive systems, and discuss the implications of such assumptions for political dialogue.

In meetings in which community members gather to make decisions, cultural identities are avowed and proclaimed by "insider" group members

as well as ascribed by "outsiders" and "Others"; and often such avowals and ascriptions are quite different and become contested. Cultural identities are thus constructed in the "spaces" and "moments of time" in contact between group members. A second assumption we make about intercultural contact is that cultural identities are constituted over time and to some degree, endure as well as change (Collier & Thomas 1988; Hecht et al. 1993). Cultural identities are enacted in local, dynamic contexts, in which histories are invoked as well as futures predicted. Such contexts include and go beyond the immediate environmental context (such as who is interacting with whom in what location), and also include the chronology of past, present, and predicted future, that are socially constructed. Histories of groups both enable and constrain actions, they determine to a considerable extent who says what to whom, what kind of relationship is created, as well as what consequences emerge.

> An illustration will be taken from a pre-conference session for representatives from organizations working with youth in Israel and Palestine in 1998. The location of the meeting, Jerusalem, was not only contested and difficult, if not impossible, for some of the Palestinians to visit, but also the definitions of what the meeting meant to each group, and histories about such meetings, were understood very differently. For many of the Palestinians, it was precluded that the pre-conference session could produce satisfying contact and dialogue, not only due to conflicts of interest and principle, but based on such interpretations of the past and predictions for future dialogue as would limit their agency, and silence or disconfirm their preferred identities (Collier 1999b).

A further assumption important in this context is that we assume the existence of multivocality within as well as across cultural group members. Martin (1997), among others, researching Whites in the USA, points out that while members of high status and privileged groups acknowledge the diversity and a range of voices within their own group, they often minimize the multivocality present in out-groups, and view out-group members as almost faceless representations, as "Others" who are essentially alike. These kinds of categorizations are often expressed in over-generalized and overly simplistic stereotypes, and serve to discount individual agency, limit the potential for counter-hegemony, and minimize the heterogeneity of group voices. In this way, the discourse is the means through which some voices are privileged and others may be silenced.

Other important assumptions we make about cultural identity negotiation in intercultural democratic dialogue are that individuals have more than one cultural identity that may be potentially enacted in each situation; and that multiple cultural identities affect and emerge in group members' conduct across contexts. McClintock (1995), in a feminist critique, calls for researchers to recognize the intersections and relationships between gender,

race, and class characterizing our contact. She discusses the voices of women of colour who challenge Eurocentric feminism, who argue that it is inappropriate to talk of an essential female (or male) character, to privilege gender over other conflicts, or continue using the categories of race, ethnicity and class to benefit and justify the existence of the middle and upper classes.

The range of cultural identities that can be salient, and the twists and turns in identities being featured, depend upon topic, context, and the emerging patterns in the dialogue. In a 1992 study of South Africans, focus group participants avowed their ethnic identity in explicit ways using phrases such as "As an Afrikaner..." or, "I am Zulu and we believe in..." Racial designators were more commonly used when describing others. Topics such as "the new South Africa being constructed in 1992" brought out variations in avowed and ascribed identities ranging from recognition of shared nationality, ascription of distinct differences in race, ethnicity, and social class, as well as disagreement about what it meant to be male or female (Collier & Bornman 1999). One "Coloured" young woman described in the same study said,

> I am like many people in one person. I am South African, Coloured, speak three languages, am middle class, a woman, and hope to be a mother who will have a successful career. I sometimes speak from one of these and at other times, I am all of these.

This example illustrates how, from the perspective of individual group members at a community meeting, one or a few cultural identities may take precedence or become more salient than others. It also illustrates the possible consequences when recognized leaders/facilitators of public meetings, with intentions for fairness and justice, design and implement agendas and procedures to meet the needs for the different race groups represented at the meeting may in practice, limit the agency of some group members to feature class or gender identities and issues.

If individuals have a range of cultural identities, this does not imply that ontologically we assume all people to have the ability to change identities like chameleons change colour to blend into their surroundings; nor does it imply that humans react to others and/or the environment in mere deterministic fashion. We presume that individuals have individual agency as well as interact in social contexts that are constrained by histories, social structures, institutions and ideologies. Some individuals have greater freedom and choice to feature particular identities and ignore others.

> In our personal case as authors of this paper, as scholars who are European American, our respective ethnic heritages are not particularly salient to either one of us in our everyday conduct, and we can choose to feature or not mention our ethnic heritage as we so desire.

> This kind of agency is a form of unearned and often unrecognized advantage for members of some groups, i.e., it does not occur to most Whites in the USA that race is important or that it is the standard by which other groups are judged, since it becomes "invisible" and a "taken for granted" (Hitchcock & Flint 1997).

As Foucault has pointed out, discourse is the site or process in which resources are sought, maintained, allocated to others, and contested; therefore, in the context of public and democratic deliberation, we need to acknowledge the role of power and privilege in negotiating multiple identities through discourse. Individuals constitute who they are as group members, in part through what resources they have and are given by others, and through the ability to obtain or distribute resources. We also agree with McClintock who calls on scholars to study

> ...a more diverse politics of agency, involving the dense web of relations between coercion, negotiation, complicity, refusal, dissembling, mimicry, compromise, affiliation, and revolt (McClintock 1995: 15).

Sometimes cultural identities are contested and conflict with one another. Hegde (1998a) found that while Asian Indian women immigrants in the USA may be rewarded within their own community when they take on more traditional roles and *a fortiori* when, in the process, they produce sons, their success as women is also measured by the standard set by European American women who are expected to combine motherhood with having a respectable job or profession.

A common pattern in intercultural relationship development is based on initial negative, over-generalized, stereotypes about the "Other". Collier (1998a) describes the discourse of Israeli, Palestinian and Palestinian/Israeli young women who worked on various projects and spent time together; the avowals and ascriptions that made up their discourse were complex, paradoxical, and sometimes brought up in-group conflict as well as in-group/ out-group conflict. Hybridity of identities was apparent in the voices of Palestinian/Israelis who live in Israel and have Israeli identification cards and trace their ancestry and cultural roots to Palestine. They described their identities as

> "living in two worlds" or "seeing things from both sides as well as the middle" and "having no home and nobody who accepts us, not Israelis because of our roots, not Palestinians sometimes because of where we live" (Collier 1999b).

The process of intercultural identity negotiation is a complex and multifaceted one. For every individual representing a group, multiple identities may emerge as salient, and some identity norms for what is viewed as appropriate conduct may conflict. Relationships with other individuals as well as inter-group dialogue require an appreciation for the many levels of

discourse and variations in normative force across institutions, communities, relationships and individuals.

Intercultural identity negotiation and conflicts over political speech

Robert Reed's (1990) investigation of the counter-revolutionary effects of formal rules of debate in Portuguese Municipal Assemblies provides a telling example of an intercultural identity conflict over political speech. In 1976, two years after Portuguese military officers overthrew Antonio Salazar's six year corporatist regime in a bloodless coup, the Portuguese people ratified a revolutionary constitution. The latter established a democratic government comprised of a system of municipal assemblies. "In these assemblies, people of all walks were to meet as equals to discuss and resolve local issues" (Reed 1990: 134). To fulfil the revolution's promise, the new Assembly had to make decisions based on a fair hearing of members' opinions. To organize discussion and to adjudicate conflicts of opinion the Assembly adopted Robert's Rules of Order.[2]

The adoption of Robert's Rules, however, created a division within the Assembly. On the one hand, there were members who were comfortable using Robert's Rules and were adept at manipulating them to their advantage. These members were referred to as *Politicos* ("real politicians"). On the other hand, some members were extremely uncomfortable using Robert's Rules. These members, referred to as "Officeholders", refused to conduct their discussion according to the formal rules and generally remained silent during Assembly meetings. Reed (1990) found that the distinction between "Politicos" and "Officeholders" cut across class, cultural, and political lines. The cleavages between members was, instead, primarily constituted by the desire to use formal rules of deliberation, and the capacity for manipulating them. Though Robert's Rules are designed to ensure that all members have an opportunity to engage in a fair and efficient form of political debate, they set an "admission price" that is much costlier to some members than others.

Reed argues that the reason that "Officeholders" did not comply with Robert's Rules is that these formal conventions struck them as a

> strange, confusing, and very artificial way of organizing debate. At times the Rules strike them as simply unfair (Reed 1990: 137).

[2] In 1876, USA army general Henry M. Robert set out to bring the rules of the American Congress to members of ordinary societies with the publication of *Pocket Manual of Rules of Order*. It sold half a million copies even before its revision in 1915, and made Robert's name synonymous with the orderly rule of reason in deliberative societies. (Eds.)

The introduction of formal procedural constraints into public debate in the Portuguese Assembly thwarted the peoples desire that all members have an equal voice. Thus while the Assembly members may have been equally elected, the imposition of Robert's Rules insures that they are not all equally effective. In this sense, we can say the introduction of a deliberative model of democracy, albeit in a very particular form, was counterrevolutionary.

Reed's (1990) description of the ways that procedural constraints can silence some participants and disregard their cultural identities shows how conflicts over political speech can cripple democratic hopes. Moreover, it shows how the effects of conflicts over political speech, not to mention their suppression, give us reason to pause in our endorsement of deliberative theories.

One could object to this line of argument by claming that the example of the Portuguese Assembly is stilted because it involves the adoption of a highly standardized, very formalistic model of parliamentary procedure. Yet, it was not anything inherent to Robert's Rules that led the "Officeholders" to reject them. The conflict over Robert's Rules is emblematic of an even deeper division among the members of the Assembly. The fundamental disagreement concerns the role of the assembly, the cultural identities of office holders and politicos, and the nature of public and intercultural debate in the assembly. Robert's Rules are not inherently discriminatory; if all parties agree to their use, and have equal adeptness, skill and knowledge about their use, they can be applied in a fair and neutral manner. The "Officeholders" rejected Robert's Rules because they were forced to abandon the ways of speaking that constituted their political and cultural identities.

We propose that the deliberative model is not actually a "one system fits all" model and that it gives some group members advantage over others. Presuming a universal value to be inherent in one model of public decision making overlooks the existence of multiple group norms and multivocality within each group; in the same way, such a presumption misrepresents and oversimplifies the process of negotiating group identities, relationships and resources. Although discourse itself is marked by an irreducible plurality, and our forms of talk are as pluralistic as the commitments we hold, it still is the foundation for a radical democratic politics. If participating in political debate comes at the price of giving up the form of life that members wish to assert and protect, then public political participation is simply too costly. Yet, to give up our faith in deliberation – in other words, our faith that disagreement can be settled in democratic, and potentially non- violent ways – is also too costly, for without full and equal participation in a culturally

diverse public dialogue of all citizens, the hope for a radical democracy is sure to perish.

The challenge, then, is to look to our conversational practices for some guidance in inventing and implementing dialogic methods and forums that can make good on deliberation's promise. What is needed in such contexts is a way to facilitate a means through which multiple voices may fully participate in order to coordinate their action. Such dialogue would require and become transformative in our recognition of multiple cultural voices, norms for conduct, and emerging community.

Transformative public, political dialogue

Engaging discursive plurality in intercultural dialogue

Public dialogue is always intercultural and plural to some degree. Along with Hegde (1998b) we distinguish between pluralism as an ideal social philosophy (separate and supposedly equal, "I'm OK and You're OK") and plurality, the recognition of differences and social structural hierarchies. Discursive plurality emerges when the dialogue is critical, engaged and ongoing; and, in addition, the alternatives are, as Edward Said describes, acknowledged as "real forces" (Wicke & Sprinker 1992).

Moving beyond Buber (1972) who features mutual and positive intentions for each other and the relationship in his approach to dyadic dialogue, we define intercultural dialogue as a process in which each of the participant individuals speaks both as an individual *and* as a group that is identified in institutional and historical contexts. Intercultural dialogue is transformative in that it is an emergent and dynamic communicative form, a constituted space that is a borderland (Anzaldua 1987), and a "third space" (Bhaba 1994). Such dialogue is a discursive accomplishment in which ideas and alternatives are engaged, diverse voices and identities speak as well as listen, reflexivity encouraged, and procedures and norms are continually deconstructed and reconstructed.

Reflexively examining implicit assumptions and privilege

Because we want to study, understand, write about, as well as facilitate the development of dialogic processes that incorporate discursive plurality and recognition of multiple cultural identities, we found it useful to begin our collaborative discussions by interrogating our assumptions about knowledge, academic inquiry, as well as praxis about this topic. We recommend a similar reflexive move for scholars and/or practitioners. Deconstructing such

"taken-for-granted" assumptions and practices reveals alternatives.

As scholars we, the authors of this paper, bring our cultural identities and all their paradoxical contradictions and tensions to the study of intercultural political discourse with all of its inherent contradictions and tensions. Our identities are also politicized and a product of multiple forms of socialization. For example, as USA authors, we recognize that institutions and ideologies in the USA teach whites to be racist, males to be sexist; by the same token, these institutions and ideologies reinforce special norms in which women of colour are marginalized and immigrants are made to feel oppression. Such ontologies shape our epistemological assumptions and methodological preferences as academicians and facilitators of dialogue.

In the same vein, we recognize that each of us brings to the study and practice of discursive plurality and public dialogue, evaluative standards of what is central and "normal". Such standards emerge in contexts and processes of contested power and privilege. We agree with Hitchcock & Flint (1997), who argue that

> Those in the center, those who occupy a dominant status such as whiteness, experience the center not so much as a consciously acknowledged status, but rather a complex of features in their social experience that have surrounded them since inception. (Hitchcock & Flint 1997: 1).

In public dialogue, the discourse of whites in the USA becomes that which is established as the standard to which all other groups should be held. According to Hitchcock and Flint (1997), this standard defines is what is normal, distinct from outsiders, what is comfortable, legitimate, obvious, not open to contradiction, and often, ordained by God.

Negative consequences occur when those of us with some degree of power and privilege fail to ask such questions as "Who am I and what privileges do I take for granted? What are my invisible standards?" (Martin 1997; Hitchcock & Flint 1997). The danger lies in reinforcing class-ism, racism, sexism, and all the other forms of elitism that silence voices and disconfirm identities, not to mention prohibit democratic deliberation.

In general, viewing discursive and cultural plurality as a resource involves asking outsiders as well as insiders to explicitly answer the following question,

> What are the implicit and taken-for-granted assumptions as well as the norms for the dominant voices/group members, and who is regulated or left out? What are the results?

Such interrogations need to be built into public dialogues as ongoing processes, in order to discourage one group of individuals from setting agendas to speak for others, or from presuming that one norm or procedure

is always best.

Consequently, along with Hooks (1989), we recommend dialogue between all parties regarding the experience of exploitation, oppression, and dominance in order to identify spaces for understanding each other. We also advocate what Delgado (1994) describes as deconstruction of discourses of power as well as reflexivity in discussing the importance of being open to critiques of implicit privilege and alternative interpretations. Building such reflexive intercultural dialogue into the overall public deliberation process transforms the process; Hasian describes this as reframing

> …partial visions into larger representations that are in constant need of critical interrogation, through political *intervention* rather than description or ahistorical explanation. (Hasian, in press: 8)

In order to encourage such reflexive dialogue, we specifically recommend that such processes of intercultural dialogue are monitored by intercultural teams of facilitators, and that there are explicit opportunities for participants to describe and evaluate the ongoing process

Recognizing Contradictions in Intercultural Relationships.

Creating as well as maintaining intercultural borderland spaces/moments requires redefinition and transformation of what so far have been dualistic orientations, not only in what we know about others, but also in how we go about the being and becoming (Sacks 1984) of our relationships. Relationships are characterized by contradiction, multivocality, flux and flow (Baxter & Montgomery 1996). Therefore, also in such public contexts the initiation and maintaining of relationships is an ongoing predicament, in which group representatives are constituting, through ascription and avowal, their group identities as well as their relationships with each other. Intercultural relationships are therefore negotiated in both dynamic flux and coordinated patterns.

Constant tensions and contradictions characterize relationships and groups. Baxter (1998) identifies three contradictory tensions that apply in public relationships:

- connection and autonomy,
- novelty and predictability,
- and openness and privacy.

Collier & Thompson (1997) identified several dialectic tensions in the interview discourse and open-ended survey responses of adolescent friends

in the United Kingdom. Those relevant to public dialogue include the tendency toward openness and receptivity to others, to be contrasted with a tendency toward closed-ness and privacy. A third dialectic tension is linguistic convergence/divergence, which is a tendency toward use of the high-status group's language and the contradictory tendency to diverge and use one's own primary language. Jones and Bodtker (1998) found dialectical tensions in their examination of an international collaboration and social justice project in South Africa related to degrees of belonging, engaging and speaking.

These kinds of dialectic tensions and contradictions illustrate the value of transforming dualistic, polar opposite categorizations such as true/untrue, good/bad, individual/group, centre/margin, insider/outsider to both/and possibilities in our views of intercultural dialogue. Such scholar and practitioner descriptions may minimize essentializing, and recognize hybridity. When multivocality as well as group memberships are acknowledged, descriptions of discourse are more valid and coherent with everyday discourse.

In addition, re-categorization, or the featuring of the community group as salient along with or over other group identities, can be encouraged, whenever appropriate, by describing or asking group members to articulate what their stories have in common. Making community identities salient may also offer a way of applying appreciative inquiry to celebrate what the community members can avow and perhaps collaborate to achieve (Pearce & Littlejohn 1997).

Continually re/constructing structures and norms

In this kind of dialogue, the role of discourse in constituting "truths" is recognized and therefore, multiple truths and norms for conduct are presumed. Multiple political standpoints that may change over time are acknowledged as constituent groups approach decisions and goal achievement. A flexibility of structures may best serve the democratic community, i.e., we suggest beginning with an assumption that one procedure may not fit all (and then again, it may...). What we think of as traditional norms and procedures need not be replaced with another newer norm or procedure, but questioned along with posed alternatives. Lederach (1995) calls a similar principle "recycling" and defines it as the mixing of old, used things with fresh ingredients, to recreate a new product.

Translating

When multiple cultural systems and identities are being enacted through

multiple discursive frames, various forms of translation may be necessary. Translation may be needed across languages and across the "grammars" and structures that undergird language systems (Pearce & Littlejohn 1997). For instance, concepts such as sovereignty or reconciliation mean quite different things to different groups in South Africa. In addition, the traditional may need to be translated and reconstructed into the situated, and into the present. Academics may need to translate what they do to be more relevant to practitioners and community residents. Local residents may need to translate how they are speaking as officeholders.

Co-creating New Political Rituals

Forester (1996) recommends the creation of deliberative political rituals in order to create political transformation. He makes several suggestions. The first is letting the "messiness" and details surprise and teach us. The second is to allow stories and narrative accounts to supplement rationality as sites of values and identities. Third is to encourage some transformation of relationships and identities over time, as well as to recognize that emergent issues, agendas, and goals/ends may alter ideas about what is at stake. Finally, he outlines what he calls structuring of unpredictability as a ground for learning and decision making.

As we define the goals of intercultural democratic dialogue, they include a commitment to find ways of living together in just and reasonable ways, even when differences seem irreconcilable. Cornel West describes, for example,

> ...solid and reliable alliances of people of colour and White progressives guided by a moral and political vision of greater democracy and individual freedom in communities, state, and transnational enterprises (Cornel West 1993: 217)

Intercultural democratically-based relationships and communities require us to embrace the plurality of discourse systems and to define the differences as potential resources rather than obstructions to the process. Transformation of our contact into borderland dialogues can occur through reflexive interrogation of privileged assumptions, uncovering alternative modes of discourse, and the willingness to reconstruct and add to the more traditional models of deliberation and advocacy.

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Part Four: Conclusion

TRUTH IN POLITICS

ETHICAL ARGUMENT, ETHICAL KNOWLEDGE, AND ETHICAL TRUTH

Eugene Garver

ABSTRACT. The central claim of this discussion is that the deliberative process makes our desires and opinions ethical as much as it makes them rational, as it makes a plurality of people into a community. Every community is limited as it is constituted by things it knows and cannot know. Making our desires and opinions ethical can mean hardening them into prejudices as well as making them the basis for deliberation towards truth.

> Dans l'amitié comme dans l'amour on est souvent plus heureux par les choses qu'on ignore que par celles que l'on sait.
> La Rochefoucauld, Réflexion morale, 441.

Aristotle does not give solutions to contemporary political problems. He could not have imagined them, and so does not speak to them. However, the world in which he operated, and what he made of it, are so different from our world, that his very singular mode of thought can be useful. Among other things, he surprises us by emphasizing the role of friendship and trust in politics.

> Friendship would seem to hold cities together, and legislators would seem to be more concerned about it than about justice. For concord [*homonoia*, literally, being of one mind] would seem to be similar to friendship and they aim at concord above all, while they try above all to expel civil conflict, which is enmity. Further, if people are friends, they have no need of justice, but if they are just they need friendship in addition; and the justice that is most just seems to belong to friendship (Ethics VIII.1.1155a22-29; see EE VII.1.1234b23-32).

The modern state has figured out ways of living without friendship. Consider the contrast to Machiavelli, who says that a good state needs both good laws and good arms, but where good arms are found, good laws follow automatically, while without military strength, good laws are worthless. Nothing about friendship and trust there. It is the genius of liberalism to dispense with friendship and to found communities on rights and thus on a form of justice that can do without friendship.

Periodically, though, the richer form of community associated with

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friendship rather than justice alone, has its revenge. Periodically, we rediscover that even minimal communities of strangers depend on trust. We become aware of this when trust breaks down. I want to look at a peculiar sort of breakdown of trust.

Truth is disruptive. Most of the time, communities get along by looking for agreement and consensus instead of truth. They reasonably assume that "what everybody knows" really is true, and so take agreement as a sure sign of truth. The community can tolerate peaceful dissent, because disagreements are differences of opinion or taste that are not worth fighting over. Different people see some things differently, and that by itself need not threaten the community.

To take a very mundane example, some years ago E.D. Hirsch wrote a series of books that were very influential in the United States of America. In these books he claimed that citizenship depended on common education, which in turn depended on common knowledge among citizens. To live together we have to share background knowledge without which communication is impossible, as everyone knows who has tried to communicate with a computer. Everyone in the USA must know that George Washington was the first President, that there is a story that he chopped down a cherry tree when a boy, and that crossing the Delaware river was an important event in the Revolutionary War. I cannot remember what its importance was, but that does not disqualify me from USA citizenship. I can understand the public deliberations of my fellow-Americans. When they refer to Washington crossing the Delaware I know what they are referring to. Knowing such facts supplies a background knowledge that allows us to understand each other as fellow-citizens. Anyone who has ever lived in more than one country can see the appeal of what Hirsch is claiming. I can understand French perfectly, yet sometimes get terribly confused in France because I do not know the French equivalents of Washington chopping down a cherry tree. Hirsch produced book after book containing long lists of things everyone needed to know.

George Washington never did chop down a cherry tree. It is a fable invented a few generations later as part of a campaign to deify the first President. Its truth does not matter for it to be effective. To be an American and to speak to and understand fellow citizens, everyone needs to know it. In addition to knowing it, you might also believe it, while I regard it as a moral fiction. That does not matter. This civic knowledge is like knowing a language.[1] English is no more the language of truth than Tswana, but for us

[1] This emphasis on agreement at the expense of truth is not inherent in liberalism – one need only

to get along in the United States, we are told, everyone must speak English.

At its extreme, this picture of democracy resting on agreement rather than truth is embodied in Richard Rorty's idea of conversation. The enemy of civilization is seriousness. Like the Enlightenment polemics against "enthusiasm", Rorty thinks that serious people cannot be part of a community, since they insist on being right. We should not adjudicate among our differences but should celebrate them, in epideictic rhetoric,[2] just as we celebrate the variety of fictions in great literature.

We often think that we can do without political trust, that justice without friendship is a perfectly adequate kind of justice. According to Ernest Gellner, "it is effective government which destroys trust" by making it superfluous.[3] Liberalism has made government "effective". Trust in other human beings reduces complexity, but effective government does a better job of that reduction. On reflection, though, we discover that even our relations with strangers and enemies is based on trust. We most commonly become aware of the need for trust when it breaks down. And just as we often think that we can do without political trust, we often think that trust does not need to have anything to do with truth. Trust is generally based on agreement. We trust people who are like us, since we can rely on them and predict what they will do. So we trust people who look like us, talk like us, and share the knowledge that George Washington crossed the Delaware. In order to understand you, I have to assume that you agree with me on a whole mass of background knowledge. This background knowledge that we share, whether it is true or not, enables us to trust one another. But sometimes[4] trust

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think of Mill – but it is part of liberalism's contemporary configuration. To parallel this philosophical change, consider the changes in the rationale for insisting on English asthe USA's official language. Early in the 20th century, immigrants were told that they had to learn English because it was the language of democracy and of human rights, while today the justifications are pragmatic and conventional. As with Hirsch, we have to have something in common in order to get along, and it does not matter much what that something is. For a nice review of the history of the "English only" movement, see Nunberg 1992.

[2] The Greek epideictic means "fit for display". Thus, this branch of oratory is sometimes called "ceremonial" or "demonstrative" oratory. Epideictic oratory was oriented to public occasions calling for speech or writing in the here and now. Funeral orations are a typical example of epideictic oratory. The ends of epideictic included praise or blame, and thus the long history of encomia and invectives, in their various manifestations, can be understood in the tradition of epideictic oratory. Aristotle assigned "virtue (the noble)" and "vice (the base)" as those special topics of invention that pertained to epideictic oratory;
cf. http://humanities.byu.edu/rhetoric/Branches%20of%20Oratory/Epideictic.htm. (Eds.)

[3] Gellner 1988: 143.

[4] *Ethics* I.6.1096a16-17:

> It would appear desirable, and indeed it would seem to be obligatory, especially for a philosopher, to sacrifice even one's closest personal ties in defence of the truth. Both are

relies on a deeper truthfulness, and is endangered when agreement as exposed as common error.

Sometimes, what everybody knows is not good enough. Sometimes truth and not just agreement becomes important. The myths about the first President are harmless, but some collective opinions are not. If "everyone" believes that God intends the races to be separate, then that consensus is not good enough, and has to be disregarded in the name of truth. By the same token, what everyone knows about the relations between the sexes might not be knowledge but prejudice. In general, the background knowledge that binds us together is both essential to our living together and always in danger of turning out to be prejudice. The recent popular studies that claim to prove that religious belief is good for your health say nothing about the truth or even the content of those beliefs. In that case, religious beliefs are like the "knowledge" that George Washington chopped down a cherry tree. Sometimes what matters about a religious belief is whether it is true or false, and sometimes what matters about a political belief is not whether it is widely held but whether it is true.

It is tempting to present the relation between truth and agreement in a Kuhnian narrative. Kuhn built his influential argument on the periodic alternation of paradigms in science on the distinction between "normal science" and "revolutionary science". By analogy, let us say there is "normal community", in which people work towards agreement. There are no epistemological crises of members of that community wondering whether their agreements track truth. Periodically, however, there are "revolutionary movements", in which disruptive truths destroy the existing community. Since normal communities define what counts as rational, these injections of truth cannot be rational. They are emotional appeals to take seriously the pains of the victims or the needs of the neglected. The scientific analogues are inspired guesses that run far ahead of the evidence. After the revolution, these new truths are assimilated. They become domesticated, civilized, and rationalized. Truth becomes commonplace. There is a new consensus. The community returns to a new stable existence founded in a new set of agreements. On this account, revolution is the antithesis of community. There are no communities of truth, only of agreement. Hobbes' sovereign defines right and wrong, just and unjust. New sovereigns define truth again for the community, but until they succeed in becoming sovereign, they offer not truth but force. On that picture, competing interests, tastes and desires

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dear to us, yet it is our duty to prefer the truth.

The question is when we have such an obligation, and what actions that obligation entails.

can co-exist in a community, but competing truths are in a state of nature towards each other. The modern state is an alternative to civil war because it reduces truth claims, and claims to justice and other values, to interests, tastes and desires.

Aristotle's idea of rhetoric offers some help in understanding how communities can aim at truth – and agreement based in truth, and agreement to pursue the truth – and not merely agreement. The kind of practical rationality suitable for aiming at agreement is different from practical reason aiming at truth. In the former case, Rawls' method of reflective equilibrium is what we want. The purpose of democratic deliberation and public reasoning is to preserve and harmonize as many widely held beliefs as possible to arrive at a consensus, separating those areas in which we must agree to disagree from those where compromise and common deliberation are possible. By contrast, Aristotle helps us to expand rationality beyond instrumental rationality and so extends justice to include friendship. Truth and not merely agreement enters a community when it moves beyond justice to friendship, and beyond a limited kind of instrumental rationality to the fuller practical rationality that includes appeals to character and emotion. As I will show later, Aristotle's *Rhetoric* is especially useful for us today because there the appropriate kind of political friendship does not already presuppose a moral consensus and violate democratic values of pluralism, equality and freedom.[5] In that way, a community based in truth need not be more homogeneous or uniform than a community of pure agreement, not a community of friendship less amenable to pluralism and diversity than a community of pure justice.

The purpose of the modern liberal state is to have justice without demanding friendship. Aristotle would regard the liberal community not as a community in his sense at all but as an alliance, a peace treaty or a

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[5] For one observation of the difference in practical reason that aims at agreement and that which aims at truth, David Strauss argues that formalistic legal reasoning has its place when agreement is the goal.

> Issues of equality and reproductive freedom (...) elicit strong reactions. In these contexts, people are less likely to accept a solution just for the sake of having the matter resolved with minimal friction. They are willing to live with controversy as the price of trying to resolve the issue in the way they think is right. They are therefore much more likely to force the issue by directly addressing the moral rights and wrongs. But in dealing with separation of powers issues it is more important that the issue be settled than that it be settled just right – so that we know which acts are valid, which political actor must make which decision, and so on. Consequently our practices are more formalistic. That is what conventionalism predicts, and that is our practice. The more important the provision, the less formalistic its interpretation. (Strauss 1996: 918).

commercial treaty. Fellow citizens in his community "care about each other's virtue" (*Politics* III.9.1280b5-12). That is just why liberalism revolted against Aristotelianism. To care about one another's virtue is, from the modern point of view, to impose my values on you. The appeal to truth rather than agreement has no place in a liberal democracy. In a liberal state governed by instrumental rationality, you and I discover that through working together, dividing our labour and exchanging goods, each of us can get more of what we want. Which things you think are good and which things you desire is of interest to me because I can deliberate about which of your desires I can satisfy at what price. Whether what you want is truly good or not is no concern of mine.

If you are my friend, though, rather than my potential customer or trading partner, I care about whether what you desire really is good. It is for this reason that truth is so dangerous and so potentially disruptive. There is a limit to how many friends I can have because there is a limit to how many people I can put up with caring about what is good for me. This is the appeal of liberalism, with its pluralism and tolerance, its legalism. But such peace comes at a price, and the price is the sacrifice of truth for agreement. Claims about truth and not merely agreement usually come, paradoxically, from excluded outsiders rejecting the myths that reject them, and such outsiders are the last people rulers usually regard as friends – hence my Kuhnian picture – but the turn to truth is a reconstitution of community in the name of friendship and not only justice.

Justice and agreement require a narrow sense of what counts as rational. Liberalism shows its origin as an alternative to religious civil war. In such situations, truth, justice, and stability require that everyone be rational in the narrowest possible sense, appealing only to impersonal evidence and ways of thinking, in order to deliberate about ends all agree to. Justice is severed from friendship and re-defined in terms of what is legally available. It is the genius of liberalism to make a political ideology out of this narrowing of rationality to instrumental rationality with criteria for rationality such as publicity, impersonality and universality. Yet there is a price to pay for such narrowing of practical reason, and that price becomes evident periodically when we do have to worry about truth.

A concern for truth rather than agreement changes the nature of community, as well as the nature of political argument and democratic deliberation. The important issue is how a community can orient itself to truth without destroying the freedom that is modern liberalism's gift to the world. Agreement-seekers speak the language of freedom, democracy and constitutionalism, while truth seekers speak the totalitarian language of

coercion, whether in the name of national unity or some higher purpose. Here I think Aristotle can help. In the *Rhetoric*, there are three sources of persuasion: argument (*logos*), emotion (*pathos*) and character (*ēthos*). My thesis is that the friendlier we are, the more my legitimate and rational rhetorical appeals to you can be emotional and ethical. The more we are strangers, or enemies, or simply mistrust each other, the more emotional and ethical appeals are illegitimate and outside the art of rhetoric, and the more rhetoric is confined to logic. In situations of suspicion and mistrust which set the problem that liberalism was designed to solve, appeals to character and emotion as ways of encountering and communicating truth make things worse.

Disputes which are more intractable when framed in terms of an opposition between the rational and the emotional become more productive when we talk about the Aristotelian trio of *ēthos*, *pathos* and *logos*. Modern psychology encourages us to think solely in terms of a choice between the rational and the emotional. If those are the alternatives, then the Kuhnian vision of periodic alternation between rational argument about agreement and irrational appeals to truth makes sense. It is part of Aristotle's genius instead to talk about his trio, *ēthos*, *logos*, and *pathos*, and it is ethical argument that is the way of moving from justice to friendship, from agreement to truth.

There is a circularity here, which shows why there are no simple solutions to the problems of truth in politics. The friendlier we are, the more our emotional and ethical appeals are rational and argumentative rather than irrational appeals to personal experience or authority. Without friendship, potentially rational appeals are perceived as emotional and so as potentially coercive. What counts as a conversation-stopper and what as a contribution to deliberation cannot be determined outside of context. But while, on the one hand, it depends on how friendly we are whether emotional and ethical appeals are licit, on the other hand, friendship in the relevant political sense depends on our having this broader sense of rationality that includes the emotional and the ethical. With a broader sense of rationality, we can see the concern for truth as a form of common reasoning and not as its own form of violence.[6] There is, thus, a circularity between truth and reconciliation.

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[6] Rorty 1994: 4:

> Moral decisions that are to be enforced by a pluralistic and democratic state's monopoly in violence are best made by public discussion in which voices claiming to be God's, or reason's, or science's, are put on a par with everybody else's.

For another account of how the less trust, the more narrowly logical and formalistic practical reasoning must be, see Strauss 1996: 924:

Hence the important truth behind the cliché of "confidence-building measures".

There is always, within practice, a difference between the rational and the irrational, and that boundary is always subject to revision and criticism. Since to call something irrational is pejorative, everyone wants to claim rationality for themselves and to characterize others as irrational. People in power get to define what is rational, but that does not mean that rationality is only a matter of power. Concretely, modes of argument are not owned by one side or another, and so a way of arguing that a ruler introduces can be adopted by a dissenter for her own purposes. I can testify personally that the "same" words, drawn from the "same Bible", sound and mean something completely different when they are a reading from the Old Testament during a Catholic mass and when they are a reading from the Hebrew Bible at a synagogue service.[7] As Dewey put it,

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> When a nation does not have well established traditions, the words of its constitution are correspondingly more important in providing something on which people can agree. When a nation is just starting, it is important for political actors to be able to point to the text of the constitution to justify their actions. Creative interpretations of that text will breed distrust and make it more likely that whatever consensus exists will dissipate. Once people think that their political opponents are playing fast and lose with the text, all consensus is more likely to break down because there is so little to fall back on. Only by staying very close to the text – being as formalistic as possible – can political actors in an immature regime convince others that they are acting in good faith. By contrast, once a society develops political traditions, political actors can be more confident that their opponents, even if arguably departing from the text, will operate within the traditions, or will be reined in by other forces in society if they do not do so.

Kent Greenawalt 1995:157:

> At least for many religious arguments, the speaker seems to put himself or herself in a kind of privileged position, as the holder of a *basic* truth that many others lack. This assertion of privileged knowledge may appear to imply inequality of status that is in serious tension with the fundamental idea of equality of citizens within liberal democracies.

[7] Saperstein 1989: 59-60:

> Though one frequently hears the assertion that Christians share with Jews a profound commitment to the Bible as the Word of God, a cautionary note is in order. We must not forget that the Hebrew Bible is not the same as the Christian Old Testament, even though it may contain precisely the same books.…The essential story of the Hebrew Bible as read by Jews is quite different from that of the Old Testament as read by most Christians. For Jews, it is essentially a book of history and of law, providing an account of a people's origin and golden age and the constitution of the legal system. For Christians, it is essentially a book of prophecies and types, a preparation for things to come, important not as history in its own right but as prefigurement and prophecy of a new dispensation which would make the old obsolete. Reading the same words, the content turns out to be quite different.

> Even when the words remain the same, they mean something very different when they are uttered by a minority struggling against repressive measures, and when expressed by a group that has attained power and then uses ideas that were once weapons of emancipation as instruments for keeping the power and wealth they have obtained. Ideas that at one time are means of producing social change have not the same meaning when they are used as means of preventing social change.[8]

While I think the Aristotelian idea of ethical argument can help us to see how a community of truth is possible, I do not want to oversell *ēthos* as a panacea. There are certain community-building things that only *ēthos* can do, but each of Aristotle's three sources of proof, *logos*, *ēthos* and *pathos*, can be used to make a community more open or more closed. Each can be used in the name of progressive and retrograde causes. Nietzsche talks about reasoning as a weapon of the weak, to be used against people who are strong enough not to need to give reasons. The strong never apologize, never explain. On the other hand, being rational is a mark of a ruling class, who rely on calm reason instead of the messy emotionalism of outsiders, whether women or other groups that the powerful want to think of as less civilized.[9]

Just as the purely rational can sometimes insure the stability of communities, sometimes restrict entrance into communities, and sometimes provide access to the weak, so both *ēthos* and *pathos* can be sometimes community building and sometimes community destroying. Consider, on *pathos*, these lines from the late US Supreme Court Justice Brennan:

> The framers [of the US Constitution] operated within a political and moral universe that had experienced arbitrary passion as the greatest affront to the dignity of the citizen(...). In our own time, (…) the greatest threat (…) is formal reason severed from the insights of passion.[10]

Intensity of emotion can gain hearing for a cause where reason alone produces indifference. Protest movements such as prohibition of alcohol, anti-abortion, or vegetarianism depend on shocking the feelings, not on rational appeals. On the other hand, feelings of offence and outrage have been used to justify the *status quo*, as in laws against inter-racial marriage or homosexuality.

And so too for *ēthos*. Rational appeals to character or ethical arguments

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[8] Dewey 1987, XI: 291. See too Balkin 1993: 869-891. Contrast the variability that Dewey observes to the demand for replicability in the sciences.

[9] Bohman 1997: 332:

> Deliberative democracy should not reward those groups who simply are better situated to get what they want by public and discursive means; its standard of political equality cannot endorse any kind of cognitive elitism.

[10] Brennan 1988: 17. Similarly, just as *ēthos*, *logos* and *pathos* can all be used to advance progressive or retrograde causes, there is nothing inherently superior about narrative rather than argument. For this see Garver 1999.

are both useful and dangerous. They can constitute and can destroy communities. In both cases, they are especially powerful:

> [There is persuasion] through character (*ēthos*) whenever the speech is spoken in such a way as to make the speaker worthy of credence (*axiopiston*); for we believe and trust (*pisteuomen*) fair-minded people to a greater extent and more quickly [than we do others] on all subjects in general and completely (*pantelōs*) so in cases where there is not exact knowledge (*akribēs*) but room for doubt (...) character is almost, so to speak, the controlling factor in persuasion. (I.2.1356a5-13, cf. I.9.1366a28, II.6.1384a23).

Like *logos* and *pathos*, *ēthos* can cut both ways. All practical reasoning is based on opinions, and which opinions count – those which Aristotle calls *endoxa* – is an ethical question. Character, *ēthos*, and trust have been used to defend privilege against outsiders. "Trust me. I know what is best, and I will act in the interest of all, not just of one group." On the other hand, personal testimony has often been used by outsiders to gain a hearing. While established and reputable opinions seem to limit practical reasoning to agreement instead of truth, the word of outsiders presents character and personal experience that seems to supersede reasoning in the name of truths accessible by more noble methods than the rational calculation that is the method of agreement. The friendlier we are, the more I interpret what you say charitably. But, too, the friendlier we are, the angrier I became when I think you have wronged me.

Character as a source of belief, conviction and persuasion sets the boundaries within which reasoning might then work. The certainty of knowledge and testimony beyond criticism can make deliberation unnecessary, but it can thereby destroy community. To present oneself with self-certainty as uniquely possessing the truth is to withdraw from community, and so create suspicion. Both the power and the danger of *ēthos* comes from its being beyond criticism, since we deliberate about things that can turn out in different ways but often need to act with single-minded decisions. Character is a principle from which reasoning starts. But character itself is not derived from reason. Because of this finality, sometimes the ethical – the character we impute to someone – is another name for prejudice; sometimes it is a form of knowledge that cannot be reduced to the purely rational. Because he thought that all true communities were founded on truth, however partial that truth sometimes is, and not merely on agreement, Aristotle did not need to worry about distinguishing *ēthos* from prejudice; we do.[11]

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[11] There is thus an affinity between *ēthos*, as simultaneously historically contingent and constitutive of practical rationality, and Vico's *sensus communis* and its adaptation in Gadamer. In opposition to the Kuhn-inspired picture of alternation between normal communities of

Ethical arguments are especially worthy of attention because they occupy the essential political middle ground between rights and politeness, between instrumental rationality and the sort of friendship and love that dissolves personal identity, the kind which Plato thought essential to a good state and which Aristotle thought reduced political association to a family. Aristotelian political friendship is not an alternative to justice, but its fulfilment. Ethical argument will help us see how to aim at and acknowledge truth without destroying community. It allows us to negotiate the relations between truth and agreement as goals of political argument. The crucial rhetorical question for ethical argument is not whether I have a right to speak, or you have a duty not to prevent my speaking, but whether I should listen. The issue is the same whether I am talking about the *ēthos* which comprises aristocratic privilege and accumulated experience or the experience of the victim. For logic in the narrow sense, there is no difference between the question of whether I have a right to speak and whether you should listen. That logic is universal and so does not have to worry about audience, about relations between speaker and hearer. Thus the criteria for rationality I mentioned above, universality, publicity, independence of point of view, impartiality. Ethical argument allows us to raise the crucial question of what is worth listening to. What *should* I hear? What *can* I hear? To use another American example, one person might feel great pain at being excluded from military service because he is a homosexual, while another feels equally great pain when she learns that homosexual males are allowed to serve in the military, but we still have to answer the political question of which feelings of pain deserve our attention. It is only the *ēthos* of the community that can decide which emotions, and which reasons, we should listen to. The dispute about homosexuals in the military is precisely a dispute about the American *ēthos.*

The *Rhetoric* offers a resource, certainly indirect, for confronting the circularities I mentioned, that the more friendship in a community, the more ethical and emotional appeals count as rational, while friendship requires taking someone else's discourse, be it emotional or ethical, as rational, the circularity that what we share is rational, and so rationality varies with community. It is often assumed that ethical arguments, appeals to character, to what "goes without saying", "what everybody knows" are feasible only in a community characterized by homogeneity and consensus; in the same vein, it is assumed that modern states are instead characterized by a diversity that

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agreement and period disruptions in the name of truth is the idea that criticism is possible only within a community of discourse, an idea elaborated in MacIntyre 1988 and 1990.

makes appeals to *ēthos* and *pathos* unpersuasive and sometimes coercive. That is why liberalism limits practical reason to instrumental reasoning, reasoning about means to ends we all agree on. The more diverse the community, the argument goes, the more limited rationality must be.

For Aristotle, the *ēthos* that is, and ought to be, the most powerful and authoritative source of belief must be an *ēthos* created by the argument. If we are talking about relying on a pre-existing *ēthos* of reputation or shared beliefs, then of course homogeneity and consensus are necessary for making ethical appeals. Just when we need *ēthos* the most, we cannot have it or use it. We have to choose between the community in which people care about each other's virtue and the community which values privacy and personal freedom. But if by *ēthos* we mean *ēthos* created by the argument itself, then that presupposition of uniformity disappears.[12] Rhetorical trust is not trust in people who agree with us, or who look like us, but trust that someone is speaking the truth.[13]

This limitation of *ēthos* to rational *ēthos* offers a way of understanding trust and friendship, the terms I have been stressing, that avoid the awkwardness, or worse, of imposing Aristotelian ethical concerns on

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[12] Just as in Aristotle's *Rhetoric*, the only *ēthos* that counts as part of the art of rhetoric is *ēthos* constructed in argument, so in the *Ethics* and *Politics homonoia,* "being of one mind," the closest Aristotle comes to talking about agreement and consensus, is not a matter of sharing beliefs, but of sharing dispositions to act, that is, sharing practical knowledge.

> *Homonoia* is not merely sharing a belief, since this might happen among people who do not know each other. Nor are people said to be in concord (*homonoia)* when they agree about just anything, e.g. on astronomical questions, since concord on these questions is not a feature of friendship. Rather a city is said to be in concord when [its citizens] agree about what is advantageous, make the same decision, and act on their common resolution. (*Ethics* IX.6.1167a22-30).
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> See also *Ethics* IX.6.1167b3-4: Concord, then, is apparently political friendship (*philia*) (...) for it is concerned with advantage and with what affects life.
>
> McKeon 1957: 99. To be of one mind is not to be of one opinion. Men are of one mind when they possess reason to judge statements of truth, understanding to appreciate statements of their own values and those of others, desires ordered under freedom, and love of the common good for which men are associated. When men are of one mind in these abilities, they can be of different opinions without danger to society or to each other.

[13] Fuller talks about the difficulty of assessing intent in economic regulation and other non-criminal parts of the law. He says that

> the required intent is so little susceptible of definite proof or disproof that the trier of fact is almost inevitably driven to asking, "Does he look like the kind who would stick by the rules or one who would cheat on them when he saw a chance?" This question, unfortunately, leads easily into another, "Does he look like my kind." Fuller 1969: 72-3.

modern liberal democracies. A rhetorical reading of trust and friendship, like a rhetorical understanding of character, avoids the more substantively moral meaning of friendship, which is inappropriate for liberal democracy. Thus I look to Aristotle's *Rhetoric* and not to his *Ethics*. If friendship means presenting one's beliefs, desires and values as arguments and charitably interpreting another's appeals as arguments, then it does not have to extend past the rhetorical situation itself. Similarly, there does not have to be any affection in the friendship and trust that are tied to argument. Rhetorically, when friendship is tied to argument, it is also limited to argument, recalling the connection, in Greek, between *pistis* as trust and *pistis* as persuasion. We do not have to yearn for Aristotle's imagined *polis*. Caring about one another's virtue, making political participation into a positive good – these can be interpreted rhetorically so that they do not carry connotations of community inappropriate for pluralistic democracy. This sort of friendship does not mean affection. It means treating each other as rational agents.[14]

Truth is always potentially disruptive of community. But, just as there is a difference in rhetoric between the kind of *ēthos* produced by argument and *ēthos* as pre-existent reputation, so there is a difference between an appeal to truths which trumps public reason – "Because of my position, or because of my suffering, you must defer to what I say" – and appeals to truths which expand public reason, and so which do not destroy community but deepen it.

Therefore the appeals to character that enhance deliberation and community are those in which such *ēthos* is rational, rationally generated and rationally received. On the other hand, and this seems to me the more interesting conclusion, the ultimate criterion for what counts as rational is an ethical criterion. There is no criterion for practical rationality apart from

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[14] *Politics* VII.6.1327b24-1328a7:

> *Thymos* is the faculty of our souls which issues in love and friendship; and it is a proof of this that when we think ourselves slighted our spirit is stirred more deeply against acquaintances and friends than ever it is against strangers (...).This faculty of our souls not only issues in love and friendship: it is also the source for us all of any power of commanding and any feeling for freedom (...). It is *thymos* that causes affectionateness, for spirit is the capacity of the soul whereby we love (...). It is from this faculty that power to command and love of freedom are in all cases derived).
>
> A city is maintained by proportionate reciprocity. For people seek to return either evil for evil, since otherwise [their condition] seems to be slavery, or good for good, since otherwise there is no exchange (*Ethics* V.5.1132b32-1133a2).
>
> Civic friendship (*politikē*) looks at the agreement (*homologia*) and to the thing (*to pragma*), but moral friendship (*ethikē*) at the intention (*prohairesis*); hence the latter is more just – it is friendly justice (*dikaiosunē philikē*) (*E. E.* VII.10.1243a32-34).

specific deliberative situations. What Arthur Fine says about scientific objectivity seems to me to apply equally to practical rationality, namely that there is no simple criterion for the rational, but that it is "trust-making", that is, *ēthos*-making. Objectivity, he says, is

> that, in the process of inquiry, which makes for trust in the outcome of inquiry. Here objectivity is fundamentally trust-making not real-making (...) . There is no list of attributes of inquiry that necessarily make it objective. What counts as an objective procedure is something that needs to be tailored to the subject-matter under consideration in a way that generates trust. It follows that attributes like 'unbiased' or 'impersonal' may be objective here and not there (...) . In every case the question is whether a process marked out as objective makes for trust in the product.[15]

The *Rhetoric* does not presuppose a definition of what is rational, prior to considerations of effective persuasion. Criteria for rationality develop as the art of rhetoric explores the nature of deliberation in its political context. What counts as rational is itself negotiated in the process of persuasion. That is how truth need not destroy community, even a liberal community founded in freedom.[16]

There is a specifically practical reason why practical rationality is ultimately an ethical idea. Democratic or public knowledge is not only knowledge that everyone has. Normally, in the individual case, if I know something I also know that I know. Similarly here for communities. If we know something, we have to know that *we* know. There are things that each of us might know, but which *we* do not know because it is not public knowledge, not democratic knowledge. We cannot acknowledge that we

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[15] Fine 1998: 18. Cohen 1996: 100:

> Which considerations count as reasons? A suitable answer will take the form not of a generic account of reasons but of a statement of which considerations count in favour of proposals in a deliberative setting suited to free association among equals, where that setting is assumed to include an acknowledgment of reasonable pluralism. This background is reflected in the kinds of reason that will be acceptable. In an idealized deliberative setting, it will not do simply to advance reasons that one takes to be true or compelling; such considerations may be rejected by others who are themselves reasonable. One must instead find reasons that are compelling to others, acknowledging those others as equals, aware that they have alternative reasonable commitments, and knowing something about the kinds of commitments that they are likely to have – for example, that they have moral or religious commitments that impose what they take to be overriding obligations. If a consideration does not meet these tests, that will suffice for rejecting it as a reason. If it does, then it counts as an acceptable political reason.

[16] That criteria for practical rationality are themselves rhetorically negotiated is reason to reject Habermas' hopes for a universal, procedural criterion for practical reason. The difference between the rational and the coercive is neither universal nor purely procedural. I agree with Habermas in finding the root of community in argument, and thus in practical rationality, but I think that ethical argument is fully rational without needing to be universal and procedural.

know it, and it cannot figure in our practical deliberations. There is an extensive literature on the difference between public and private preferences, but the relation between private and public knowledge has not been explored in analogous ways. As an outsider, it would be silly for me to explore South African examples. In general, however, each citizen can know something, and there still can be a value to official demonstrations and symbolic affirmations which convert knowledge from something that each person knows to something that everybody knows and which therefore can figure in deliberations. The art of rhetoric can play a useful role in understanding how to convert widely distributed knowledge into shared knowledge, a rhetorical and rational version of Rousseau's conversion of the will of all into the general will. To pick a non-controversial example from the United States, each citizen of that country might know that, statistically, women live longer than men, and white Americans longer than black Americans. However, as a public we are ignorant of these data. We cannot use them, for example, as the basis for arguing that women should pay more or less into retirement accounts than men, or that blacks should pay more or less than whites for medical insurance. Explanations of international problems in terms of national character no longer have a place in our public discourse. We are democratically ignorant of these facts, as of many other facts about race, gender and class. Maybe we should be. But whether we should be or not, the reasons we can share depend not only on what the reasons are but on who we are.[17]

Thus democratic knowledge is the result of argument, in which what each knows, becomes something that everybody knows, and so becomes part of the *ēthos* that constitutes community and is the basis for reasoned deliberation. That movement from the will of all to the general will should sometimes be resisted. This at least is what Socrates advocates when, in the *Apology*, he asks jurors to stop relying on what everybody knows and instead to judge as individuals. He tries to dissolve democratic knowledge into knowledge by individual citizens, and replace prejudice by judgment on

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[17] *EE* VII.12.1244b29-34:

> If one were to abstract and posit absolute knowledge (*to ginōskein auto kath' auto*) and its negation (...), there would be no difference between absolute knowledge and another person's knowing instead of oneself; but that is like another person's living instead of oneself, whereas perceiving and knowing oneself is reasonably more desirable.
>
> If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion (Madison, *Federalist* 49).

the evidence. It is debatable, and was the subject of the jury's deliberations in judging Socrates, whether this dissolution of democratic knowledge builds community or destroys it. In that case, as in every case, it is debatable whether truth is simply disruptive or can constitute community.

We may entertain the idea that democratic knowledge has as its counterpart democratic ignorance: things that each of us might know but which we as a community cannot know, and so cannot use as the basis for deliberations. This idea is clearer in judicial than in deliberative contexts. There are truths that are not admissible as evidence. If I am trying to prove that you are a rapist, I may not be allowed to show photographs of the violent effects of the assault in question, since they say nothing about whether you are guilty. In legal language, the "prejudicial effect" of these truths outweighs their "probative value". My examples of actuarial differences between men and women, blacks and whites, might fit the same description. Articulating these differences in public is likely to have prejudicial effects that may outweigh any value of using knowledge of these differences as the basis for deliberation.[18] Democratic ignorance is often the realm of the private. And so juries are routinely told to ignore something they just heard. This is a demand, not of amnesia, but that something not become common knowledge.[19] What democracies know and what they do not know, what they should know and should not know, is an ethical question.

Communities of diversity and plurality are constituted by argument, rational processes that are oriented to truth as well as agreement. My picture of the nature of democratic deliberation is different from another currently popular supplement to liberalism, which can be traced back to the American political writer James Madison in the *Federalist Papers* (1787-1788), in which the process of rational deliberation takes those given preferences, desires and opinions of citizens, and transforms them through deliberation into rational desires and opinions, subject to rational criticism.[20] Brute desires give way to rational desires. Selfish preferences are replaced by judgments about what is best for all. Thus Aristotle in the *Politics* talks

[18] There are other grounds for the inadmissibility of truth in law. One of the most interesting for our purposes is privilege. I cannot be forced to offer true evidence, and in some cases may not offer it even if I want to, if I came to know something in a manner whose confidentiality prevents disclosure.

[19] See Stephen 1995. One might also consider the example of the American ritual of Catholic and, to a lesser extend, Jewish nominees to the Supreme Court promising that their religious beliefs will be irrelevant to their performance as Justices. See Levinson 1990.

[20] See especially Sunstein 1984, 1986, 1991, 1996.

about the advantage of democracy coming from an addition of partial opinions into a superior joint judgment (III.11.1281b1-10; cf. III.13.1283b 27-34). Within a stable democracy it naturally makes sense to work along these lines of transforming preferences into reasons through deliberation. But, even in stable democracies, we should be mindful of ways that the opposite process can occur. By being aggregated, preferences become more fixed, less open to criticism, less revisable. They become consensus and prejudice. Thus Socrates' strategy of dissolving community into individuals claiming truth outside *endoxa.* In the *Apology,* Socrates tries to remake the jury into a set of individuals rather than a corporate body.

Socrates' example should make us pause: sometimes instead of a gain in rationality, deliberation results in agreement that is equivalent to prejudice. It is not selfishness that is sacrificed but truth. What makes community rational is the outsider attacking community in the name of truth, as Socrates does. On my account, the deliberative process makes our desires and opinions ethical as much as it makes them rational, as it makes a plurality of people into a community. Every community is limited, as it is constituted, by the things it knows and cannot know. Making our desires and opinions ethical can mean hardening them into prejudices as well as making them the basis for deliberation towards truth.

And so the ominous truth of the La Rochefoucauld epigram which I set at the top of this article. If friendships are sometimes enhanced by ignorance, it is often just the kind of ignorance I am describing here, where both friends may themselves as individuals know something, but, by leaving it unsaid, stop the knowledge from being shared, reciprocal knowledge. Each knows, but they do not know that the other knows, or at least do not have to acknowledge that the other knows. Communities in a similar position possess democratic ignorance.

But this idea of democratic knowledge, as well as democratic agreement, gives grounds for hope as well. What we know and who we are vary together. The process of bringing truth to a community is not finished when each becomes aware of something. It is the community as a whole which must do the knowing. That is a job for rational persuasion, for trust and friendship, that goes beyond *ēthos* in the individual and community-disrupting sense. The interesting challenge for truth in politics is to move from something which each of us knows to something that *we* know.

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POSTSCRIPT

ARISTOTLE IN AFRICA

TOWARDS A COMPARATIVE AFRICANIST[1] READING OF THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION

Wim van Binsbergen[2]

ABSTRACT. *In this Postscript to the collection* Truth in Politic: Rhetorical Approaches to Democratic Deliberation in Africa and beyond*, the author argues that its project, while at first superficial glance appearing to deal with abstruse topics of limited applicability (a reading of the South African Truth and Reconciliation Commission in terms of Aristotelian rhetoric), in fact addresses phenomena of the greatest significance for the African continent as a whole, thus taking up major debates in* Quest *over the years. These include: the reflection on the philosophical canon (in this case: Aristotle and rhetoric); the development of an African philosophy that is relevant to major current transformations on the African continent – in this case the viability of the state, democracy, reconciliation and freedom; that is critically and radically aware of the global hegemonic context in which it is being produced; and that yet situates itself, globally, in the field of tension between the universal and the particular. In this way, this Postscript both situates, and vindicates, the present collection, and offers a manifesto for* Quest *in the future.*

Introduction: Why this Postscript

I whole-heartedly share the conviction of my fellow-editors (Philippe-Joseph Salazar and Sanya Osha), as to the quality and the relevance of this collection. Its project, i.e. seeking to elucidate contemporary African politics (and particularly the epoch-making 1994-1998 Truth and Reconciliation Commission in South Africa) in the light of Aristotelian rhetoric, directly addresses the *raison d'être* of *Quest* as an African journal of philosophy. Especially in this first issue of *Quest* under my responsibility, I feel it is not out of character (to use an expression from Aristotle's philosophy of virtue) for me to examine, in this Postscript, this collection as a coherent whole, and to highlight its dilemmas and solutions. I thus build on the shorter overview presented, in the Foreword, by Philippe-Joseph Salazar, who was the main intellectual and organizing force behind the conference on which the present

[1] Cf. the footnote on p. 7 of this volume.

[2] I am indebted to my fellow-editors Philippe-Joseph Salazar and Sanya Osha for constructive remarks on an earlier version of this argument. However, the responsibility for this argument's shortcomings and one-sidedness is entirely mine.

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collection is based. Far from disqualifying the various contributions in this volume for the specific disciplinary and geographical and temporal focus they each take, my aim is to bring out their potential to contribute to what, through major debates featuring some of the great names in African philosophy, have been the leading themes in *Quest* through the years:

1. the reflection on the philosophical canon, both in the North Atlantic and in Africa (with possible extensions towards the world's other philosophical traditions, in Islam, Judaism, India, China, the New World, etc.);
2. the conceptual and theoretical effort to develop African philosophy into a tool that illuminates, by comparison and contrast, current socio-political developments on the African continent;
3. the critical reflection on the North Atlantic dominated, hegemonic context in which African knowledge production takes place today, and the formulation of radical anti-hegemonic alternatives; and finally
4. the exploration of the possibilities for an intercultural production of knowledge that, while affirming its specific (e.g. African) roots in space and time, yet situates itself in the field of tension between the universal and the particular.

Applying these themes to the present volume implies assessment, and therefore deviation from the editorial pretence of neutrality. Considering the seriousness of the matters we are dealing with, such may be inevitable. Even in a book centring on rhetoric, elegance cannot always take precedence over what is perceived (albeit from an individual standpoint) as relevance. While most authors in this collection prefer the Aristotle of *Rhetoric*,[3] exploring (by Aristotle's own definition[4]) the possibilities of *persuasion*, others feel more comfortable with the Aristotle of *Organon*,[5] exploring the possibilities of arriving at a literal *truth* through formal procedures. The latter approach implies a more compelling, less malleable and less performative conception of truth than the former, even[6] in intercultural matters like those at stake in this volume. The four objectives outlined above are full of contradictions,

[3] The *locus classicus* of rhetoric is, of course, Aristotle's book of that name, available in a number of modern editions and translations, including: Aristotle 1926, 2001, 1991. In the present volume, the contributions particularly by Salazar, Cassin and Garver contain essential pointers to the main issues, and important classic and recent writings, in the field of rhetoric. For the application of rhetoric as an analytical tool in the South African context today, see the brilliant Salazar 2002. For an excellent recent collection also cf. Bernard-Donals & Glejzer 1998.

[4] Aristotle, *Rhetoric*, I, 1, $1355^{b}26$.

[5] Cf. Aristotle, *Organon,* numerous editions e.g. Aristotle 1938, 1960.

[6] van Binsbergen 2003b.

each in themselves and the four of them in their combination; so is contemporary Africa, South Africa, the relation between South Africa and the rest of the African continent; so is my own (and our contributors'!) personal and professional positioning in all these issues. It would be a miracle, indeed a rare feat of rhetoric, if we had managed to keep all these contradictions nicely tucked under the blanket of polite but superficial editorial apotropaic formulae (or of silence, which is even more polite).

Avoidance of critical elements would also have been counter-productive, considering the fact that from its inception *Quest* has boasted to be a context of *philosophical discussions* – which necessitates bringing out contradictions into the open, not in order to force them in a particular direction that happens to suit a particular author's personal, political and disciplinary outlook, but so that they can be further addressed by regular and respectful debate. Therefore, this Postscript is not intended to overrule the preceding contributions with a last word of editorial power, but to honour them by initiating the discussion to which they, and the major issues they deal with, are entitled.

Indeed, considering the robust foundation of the present collection in a well-established philosophical tradition (that of rhetoric) which is gaining more and more in recognition and popularity in recent years, and in profound and unmistakable, responsible scholarly grappling with the democratic transformation of South Africa as one of the most significant processes affecting the African continent in recent decades, there is no reason why the debate to which the present collection seeks to contribute, should not already begin within the pages of the present collection, in this Postscript. In fact, that debate already started during this collection's original conference. I was not there, but if I had been there, my paper and my contribution to the discussions would have been along the following, mainly constructive lines. Part of what I have to say, serves to bring across my own professional views of Africa to rhetoricians; but much of what I have to say is rather intended to elucidate, and vindicate, the rhetoric deployed in the present collection, to Africanists from other disciplines.

Aristotle

The rhetorical tradition emerged nearly two and a half millennia ago in Ancient Greece, founded by the Sophists (foremost Protagoras), developed and formalized by Aristotle of Stagira, and further taken up by, among others, Cicero in Rome two centuries later. After a chequered existence in

subsequent centuries it recently received a new lease of life in the context of Nietzsche-inspired relativism and anti-foundationalism, postmodernism, globalization, and the proliferation of intercultural and transcultural communication settings. This volume's arguments are inspired, not by the Aristotle of *Organon* but by the Aristotle with a keen sense of the practical negotiation of truth in concrete political deliberation – a practice he got to know inside-out as a Macedonian migrant spending much of his working life in distant Athens. Little surprisingly, Aristotle, like Plato,[7] was rather critical of the *dēmokratia* of his time.[8] Having participated in that city's intellectual life for decades (the last twelve years as head of the *Lukeion* school), Aristotle finally became more or less democracy's victim himself when, after his former pupil Alexander the Great's death in 323, and, "lest Athens should sin twice against philosophy" (the first time being the judicial murder of Socrates in 399 BCE), our philosopher had to flee that glorious city for the Aegean island of Euboea, where he died within a year.[9]

The Stagirite's ghost may rest in peace: given Alexander's short life this time table forensically exonerates Aristotle from the Afrocentrist allegations to the effect that he stole the contents of his books from "Africa", i.e. from the Ancient Egyptian temple academies (*prw ᶜankh*, "houses of life") subjugated through Alexander's conquest of Egypt. Such allegations were initiated by the great USA Black emancipationalist Marcus Garvey (1887-1940), subsequently elaborated by G.G.M. James,[10] and since enshrined in the Afrocentric canon. Lefkowitz and Howe have convincingly refuted them. However, the well-informed initiator of the *Black Athena* debate, Martin Bernal, treats James' allegations with considerable patience. And for some reason:[11] although the specifics of an Egypt-Aristotle connection are extremely improbable, yet it is with the present state of scholarship simply undeniable that already before the Hellenistic amalgamation of West and East, the Ancient Near East including Egypt was a major source for the emerging Greek mythology, philosophy, science, technology, and aesthetics. The extent to which Ancient Egypt can count as an integral part of "Black", sub-Saharan Africa is a different question, and one so complex and so highly politicized that we cannot treat it within the present, limited scope.

Therefore, whatever (*pace* Nethersole, this volume) the considerable

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[7] Plato, *Republic*.
[8] Cf. Aristotle *Politics* (1932) IV (VI) 1, VI (VII) 1-8 ; Bierens de Haan 1943.
[9] McKeon 2001.
[10] James 1973.
[11] Lefkowitz 1994, 1996; Howe 1999. For the opposite view, see Bernal 1987-1991; cf. van Binsbergen 1996, 1997, 2000a, 2000b, where I identify as a moderate Afrocentrist myself.

merits of the Afrocentrist position in general, Africa cannot appropriate Aristotelian thought as if the latter could only be fully understood against an African background.[12]

Alternatively, however, much of the present volume would appear, if only at first and superficial glance, to revive the opposite, *Euro*centric dream: the view that processes in contemporary Africa may be uniquely understood by the application of models of democracy, politics, rhetoric and public truth evolved (perhaps even initiated) in Ancient Greece, – the very same Ancient Greece that was alleged by Eurocentric identity construction from the 18th to the 20th century CE (and even in some passages in the present book – as if the *Black Athena* debate never took place) to be the unique cradle of European civilization, two and a half millennia ago.

With its reliance on rhetoric as a philosophical sub-discipline, this volume's intellectual genealogy goes back directly to the origins of the Western philosophical tradition. This suffices to indicate the *philosophical* relevance of the present collection. Given the orientation of *Quest: An African Journal of Philosophy*, it is the *African* relevance that may still need to be argued, beyond the over-obvious point that South Africa (whose 1994-1998 Truth and Reconciliation Commission – TRC – features centrally in this collection) is a part of Africa and that therefore the recent developments in that country are African issues. Beyond the wider issues enumerated in the four points above, this volume's more specific, and especially *comparative*, Africanist relevance can be argued on at least two counts:

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[12] This does not rule out that the Ancient Greek democratic structures, and their rhetoric, as described by Aristotle, originally may have sprung from a very wide-spread and ancient complex of pre-statal local democracy, in which local communities largely run their own affairs on the basis of the peer deliberations of local men in frequent assemblies from which women in reproductive age, children, and strangers, are excluded. Traces of this complex which may still found in rural communities all over the Mediterranean including North Africa. But in fact its distribution is much wider and includes much of rural Asia and rural Africa. In the latter continent (but in close parallel with, for instance, Ancient Germania) the man's assembly – often included in a small local sacred forest area – is a common feature in many village environments, and the community process largely hinges on village moots. The complex is even found in the New World. Therefore it is likely to go back to the Upper Palaeolithic, like most cultural and linguistic Old-World communalities that are not due to recent globalization. From the bird's eye perspective of the several millions of years of human cultural history, Ancient Athens and village Africa far from belong to totally different worlds. Bernal (1993) suggests specific Phoenician influence on the democratic patterns of Greek city states, but while this is in line with the general Asian and African formative influence on emerging Ancient Greek culture and society, it is – as usual with Bernal – too narrow an explanation in that it misses the point that Ancient Greece shared a common linguistic and cultural origin with many Asian and African societies even before the three components in this equation started to specifically influence each other.

a. the need for socio-political reconstruction throughout the African postcolony[13] of the 1990s and 2000s, and
b. the possibility that, despite the glorious transition to majority rule, and despite whatever healing and morale-boosting effects the TRC, the African Renaissance, and *ubuntu* may have had, South Africa since the advent of democratic majority rule in 1994 may yet have proceeded somewhat in the direction of becoming another African postcolony.

Let me elaborate each of these points, of which especially the second one is undoubtedly controversial.

The TRC and Africa (a): Reconstruction in the African postcolony?

In the first place, myriad threads of demographic, linguistic, cultural and historical continuity link South Africa with the rest of Africa, and since the establishment of majority rule even South Africa's social exclusion from that continent has been lifted. However, the wider comparative African applicability of the TRC case, and of a rhetorical approach to the TRC, as advocated in the present collection, goes further than this nominal point. Considering the global flow of information and political aspirations, it cannot have been by accident that the beginning of the end of *apartheid* in South Africa (Nelson Mandela's release from long-term imprisonment in 1990) followed shortly after the fall of the Berlin wall, and more or less coincided with massive national democratization movements elsewhere in Africa. These movements (to which Kouvouama's contribution in the present collection refers) clamoured against the devastation of African postcolonial polities as a result of such national ills as constitutional unaccountability, large-scale corruption and embezzlement, illegal use of violence, capturing of the state by a minority defined in ethnic, region or class terms, etc.

The experiences of "the African postcolony" in the 1980s very clearly demonstrate that *apartheid* may be a *sufficient* condition to corrupt and destroy a state, but that it was, and is, not a *necessary* condition: other African states have collapsed, in the same period and more recently, due to the very different factors listed above. These processes have often acerbated in the 1990s, have combined with global pressures wrecking African national economies and facilitating civil war, and as a result in nearly a

[13] Cf. Mbembe 1992, 2001; Osha 2000; Werbner 1997; Comaroff & Comaroff 1999.

dozen African countries (out of just over fifty) the state now only exists on paper. There, the socio-political fabric is destroyed by internal strife and absence of consensus, and a national reconstruction comparable to what was envisaged in the TRC would be called for.

In the present collection, the contributions by Osha (Nigeria) and Kouvouama (Congo-Brazzaville) briefly explore this parallel between these two African countries, and South Africa under the TRC; but also other countries come to mind, e.g. Sierra Leone, Liberia, Ivory Coast, Congo-Kinshasa, Angola, Guinea Bissau, Burundi, while a reconstruction process actually is going on in Rwanda and Uganda. Both authors go about their analysis in a remarkably un-rhetorical fashion: they identify themselves as African actors, and they parade, in their argument, other such actors who, in the democratization wave of the early 1990s and in Nigeria's more recent return to democracy, insist on the literal, metaphysical and moral truth in politics, and on seeing that truth brought out and lived by in everyday political life. Also, both authors forego the chance of comparatively assessing, reversely, what the Nigerian and Congolese experiences could mean for our understanding of South Africa.

The very rhetoric explored in the present volume in itself aptly describes (in its dissociation of politics and ethics, in its view of truth as primarily the outcome of the skilful situational management of words) some of the main perversions of politics in the African postcolony – the kind of perversions the democratization wave of the early 1990s battled against throughout Africa. These perversions also seem to indicate some of the possible steps in what racialist opponents of African democratic majority rule in South Africa have always invoked as an doom scenario, notably that country's possible transformation into a (special type of) postcolony:

> The key to Protagoras' paradox here ("everyone has justice, and those who do no have it must be killed") is the following: *Everyone is just, even those who are not*. They must pretend to be just and that is all they need to be just "in a certain way". In affirming that they are just, they recognize justice as constitutive of the human community and by so doing justice itself is integrated in the city – in a way, it is the praise of virtue by vice that universalizes virtue (Cassin, this volume).

Plato failed, practically (in the Syracuse episodes, 367 and 361-360 BCE) to install philosophers at the head of the state, just as he fails to convince, theoretically (in his *Republic*),[14] that such would be a desirable arrangement. However, when philosophers/rhetoricians begin to articulate, as established socio-political practice and perhaps even as a form of social

[14] Plato 1975. Popper 1957 is a major and passionate critique of Plato's position on this point.

virtue, the very sleight-of-hand in the public negotiation of truth for which politicians have been notorious for millennia, including modern African politicians, then we have a very different proposition from Plato's, notably: philosophers who "tell it like it is" and who thereby may well deserve their seats next to the actual rulers:

> Protagoras' analysis goes beyond being applicable to the TRC's practice and the TRC as a model for deliberation within reconciliatory politics. It shows two things: Firstly, that repenting, the apology or the request of pardon, is that much less necessary since *"the one who does not infringe justice is a fool"*. (Cassin, this volume; italics added WvB)

African philosophers, including Hountondji, Gyekye and Osha,[15] have spoken out vehemently against African politicians' unconstitutional and, in general, unlawful use of power, and against the high levels of corruption that are usual in that context. *While the rhetoric-based approach is undeniably realistic and illuminating as a description of practice*, does it merely identify an evil to be exposed? or should it be considered to offer a model for emulation?

In the words of Philippe-Joseph Salazar, this collection's emphasis on rhetoric has the explicit aim of contributing to the instruments that may enable South Africa to become and remain a viable democracy. Can we extend the application of rhetoric to postcolonial Africa as a whole? Let us realize that many Africans, including South Africans, and especially those outside the circle of elites controlling or at least exploiting the state and the economy, have a less cynical understanding of democratic politics than the one advocated by Protagoras. This is in fact a contrapuntal theme running through this entire collection, in complement to the element of a-moral verbal manipulation studied by rhetoric. In Garver's words (this collection):

> On the other hand, and this seems to me the more interesting conclusion, the ultimate criterion for what counts as rational is an ethical criterion.

And the same dilemma of moral truth that is capable of being transmuted, in the hands of politicians, into a usable, manipulative truth that no longer

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[15] Hountondji 1991; Gyekye 1997; Osha 2004. It is important to note that these African philosophers condemn corruption and the abuse of power, not so much by reference to any traditional, precolonial African value or philosophical thought, but by cosmopolitan reference to such modern principles implied to be more or less universal: constitutional order, justice, and human rights. In Kouvouama's words (this volume):

> But the Sovereign National Convention has also been a place of violent expression, where violent words condemned armed violence. In Paulin Hountondji's opinion, speech, which is part of parliamentary culture, needs to be found not only within African cultures, i.e. palaver culture, but also within the French parliamentary culture of 1789, where speech was radical, exigent and rebellious.

unites but divides and excludes, informs Nethersole's contribution, where (critically continuing the debate on the African Renaissance), she concludes that

> In the retrieval of the forgotten, hidden, masked and obscured stories, historical truth, as uncovered by the TRC for instance, can, imbued with *moral justice*, speak the truth to political power in relation to the excluded. In as much as the African Renaissance seeks to build an image of the African as one constructed by himself/herself and not by others for the purpose of building his/her own development with his/her own hands, the project is concerned, like the TRC, with historical truth. However, where the African Renaissance turns into identity politics in order to achieve political power, the historical truth is jettisoned for the sake of exclusivity. For truth as seen to be residing in identity is no longer plural, relational, and deliberative. Instead of being a "sensuous force" of exchange between diverse and distinct people who have to share the same country and the same, increasingly globalizing world, an undue emphasis upon the claim to ethnic, authentic identity is in danger of rendering the "coin" of truth into useless "metal". (Nethersole, this volume)

Rhetoric helps us to pinpoint some of the defects of the political situation in the African postcolony, and (when rhetoric is applied to a process of national reconstruction like the South African TRC) it clearly offers us perceptive insights into some of the remedying mechanisms.

The TRC and Africa (b):The model of the African postcolony as a sword of Damocles hanging over democratic South Africa

Meanwhile, in the second place, in addition to the possible application of the TRC model to other African countries, the new South Africa has been up against cynical, anti-democratic and racialist critics who have suspended the threatening model of the African postcolony over South Africa, and who cannot wait to see this sword of Damocles drop and destroy all that hope, heroism, generosity and hard work have built and are still building. So far they have been proven wrong, yet it is generally admitted that there are worrying tendencies in post-*apartheid* South Africa, in such respects as the eroding national consensus; the widening gap between generations, classes, and genders; the excessive crime rate; the oligarchization and primitive accumulation attending the partial Africanization of the elite; the progressive installation of a politics of make-believe (as in state pronouncements on HIV/AIDS); and the rigid (although inevitable, and democratically supported) control over the South African state by the ruling African National Congress (ANC).

Osha in his contribution explains why the equivalent of South Africa's TRC could not work in a post-colony like Nigeria today, despite a return to

democracy: the new regime is too closely associated with the ancient regime than that it could afford "full disclosure" on TRC lines. But was the South African situation with the TRC really fundamentally different?

When does disclosure bring catharsis?

Did the TRC's "full disclosure" bring the catharsis that was hoped for and that – many would deem – was indispensable for the country's future? The fact that, traded off against "full disclosure", the perpetrators of *apartheid* got away with amnesty without further incrimination or punishment, might lead one to suggest that also in the South African case there was – under comparable conditions of successfully established post-conflict democracy – a comparable kind of continuity with the evil past, a comparable impossibility of making a clean break, as in Nigeria. This is a crucial question to ask in relation to the TRC. If the answer would turn out to be affirmative, in the sense that the TRC (rather than constituting a cathartic break with the past) would be found to be primarily a manipulative cover-up of the past, then not only our image of the new South Africa would be tarnished, but also many of the rhetoric-inspired contributions in the present collection would have to be faulted for being over-optimistic and idealistic. We therefore will let the argument have its full contradictory course, before finally coming to a conclusion that confirms the TRC to be a fundamental and historic transformation of South African society – in fact (or so I will argue) the very birth of the South African nation – in, through such a conclusion, the value of the rhetoric approach will be highlighted.

First then, as from the devil's advocate, some of the doubts which too positive a reading of the TRC would have to accommodate.

As stressed by Barbara Cassin in the present volume, in the TRC there was the nominal equivalent of the Ancient Greek *isēgoria*,[16] the fundamental democratic right to speak; but what is the benefit of such speaking, when it only lifts the burden of not having spoken out from one's pained heart, while one's words – one's *disclosures* and *accusations* – carry no effect in the sense of legal action being taken against the perpetrators? Does not such a right to speak amount, after the lifting of *apartheid*, to a new subordination, this time justified not by reference to alleged "racial"[17] inferiority but by

[16] Albeit that, in ways that could have been acknowledged more explicitly in this collection, such a right was reserved to male free citizens, excluding women, slaves and foreigners (*metoikoi*), who together formed the great bulk of the Athenian population, and the heart of the economy.

[17] Contrary to such concepts as "class", "caste", "ethnic identity" etc., "race" is not a scientific

reference to the common good of living together peacefully? Is the common good consciously perceived by all South Africans, and by all in the same terms?

These are some of the questions I will consider in the following pages. For answers, it is simply not good enough to appeal (as our contributions frequently do) to Hannah Arendt's notion of politics as "story-telling", if we wish to bring out all the layers of power, agency and pain that are involved. Was the TRC's "full (but repercussion-less) disclosure" perhaps a case of repressive tolerance, so that peaceful transition to democratic rule could be forced down the throat of the majority of the population, despite its long years of suffering and its pent-up indignation – thus leaving the country's infrastructure and basic class structure largely intact, at the price of a substantial replacement of White by Black elites? For clarity's sake: we are still in with the devil's advocate, still in the process of setting up our argument's props so that the final, positive conclusion can be reached (in the section of the nation's birth pangs, below). I am not advocating that South Africa's coming to terms with the perpetrators of *apartheid* should have been more revengeful and bloody. But if the frame of reference for such coming-to-terms appears to be one-sidedly set by the political desire to placate Christian,[18] upper-class and White[19] concerns, and to ignore the historic African tradition except by pressing into service the nice, forgiving

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concept but, instead, a local collective representation, explicitly and consciously (in anthropological parlance, "emically") used by members of specific societies in the past and at present in order to articulate and explain, among themselves, socially constructed difference. South Africa and the USA are among the few societies today where "race" functions as such a collective representation at the emic level, in the sense that it can still be used in polite conversation and in official expressions. Unfortunately, Afrocentrists have often copied this usage, even though it lies at the root of the very oppression they are battling against.

[18] As Doxtader quotes Tutu (1994: 223) in the present collection:

> The victims of injustice and oppression must be ready to forgive. *That is a gospel imperative*. (Italics added, WvB).

Despite the presence of historic African and Asian expressions and the local growth of Islam, there is no denying that Christianity has established itself as the dominant public expression of spirituality in South Africa throughout all segments of the population. Considering that it was also invoked to justify *apartheid*, an appeal to Christian imperatives is not exactly without contradiction. But an important point, and I will repeat it throughout this article, is that Christianity never was the only spiritual expression in South Africa, especially not in the uncaptured recesses of private life, among people of African descent in rural areas and informal urban communities, and among Asian-derived segments of the population.

[19] As Osha quotes Tutu (1996: 43) in the present collection:

> in the matter of amnesty, no moral distinction is going to be made between acts perpetrated by liberation movements and acts perpetrated by the *apartheid* dispensation.

aspects of *ubuntu*,[20] then how can one expect true cleansing and liberation from the past, genuine catharsis to have taken place? How can such a move be conceptualised? This is the central question I shall try to answer in this paper. The rhetoric-inspired analyses in the volume will help us greatly in finding the answer, but in the process we will have to add to them – at least, that was my impression – a conceptual analysis in terms of the varieties of transcendentalism and immanentalism, which help pinpoint the specific frame of thought, and the specific context of political organization (appreciably different from that of Ancient Greece and Rome), in which *apartheid*, as well as the TRC, can be more precisely situated.

Doubt that the TRC was effectively, and exclusively, about a catharsis of forgiving that was inevitably to take place, is not entirely absent in the present volume. Thus Samarbakhsh-Liberge points out the aporia that arises when, like in the case of the TRC, excessive emphasis on national consensus thwarts the formulation of profoundly unwelcome home truths – of which, of course, *apartheid* offered one interminable series. From Villa-Vicencio's sensitive contribution we glean:

> I would rather offer the comment of a young woman named Kalu; it highlights the internalized emotions inherent to the transition from the old to the new: (...)
>
> > What really makes me angry about the TRC and Tutu is that they are putting pressure on me to forgive (…). I don't know if I will ever be able to forgive. I carry this ball of anger within me and I don't know where to begin dealing with it. The oppression was bad, but what is much worse, what makes me even angrier, is that they are trying to dictate my forgiveness.
>
> Her words capture the pathos involved in the long and fragile journey towards reconciliation. No one has the right to prevail on Kalu to forgive. (Villa-Vicencio, this volume).

"Pain is not an argument"

This passage from Villa-Vicencio is one of the few instances in this collection where disloyalty is shown vis-à-vis an otherwise carefully maintained consensus among the contributors: the view that *a person's pain and sorrow do not constitute grounds for political, legal or historical consideration*.

In the more technically rhetorical pieces, the position is advocated that

[20] While ignoring a major Southern African historic value, very much implied in *ubuntu*: the adamant refusal to give quarter to sorcerers – as the perpetrators of *apartheid* are from a traditional perspective, having indulged in a cult of power that transgresses the codes of humanity. Cf. van Binsbergen 2001.

such consideration would rent the fabric of the political community – like the Athenians' argument on amnesia and amnesty in 403 BCE, elegantly and illuminatingly analysed in this collection by Barbara Cassin, in the footsteps of Nicole Loraux. Such a position does not preclude even, apparently, a measure of technical admiration for the craftsmanship invested in the instruments through which pain and sorrow were inflicted:

> When Philippe-Joseph Salazar evokes the South African *apartheid* legislation, the Population Registration Act 30 of 1950, he rightly pitches his analysis at the level of language itself:
>
> > One could admire the linguistic feats of the Lycurgus of Southern Africa (Salazar 1998: 27).
>
> The South African Act is well and truly that of a "nomothete" which transforms the meaning of words... (Cassin, this collection).

Aristotle provides[21] extensive discussions of emotions, and the political implications of his views have been receiving renewed attention recently.[22] It is not he who rules out emotions from the political domain. That they are yet largely absent from this collection,[23] may be due to the fact that in this book Aristotelian rhetoric is often filtered through a remarkable combination of French rationalist thought (which ever since Descartes has had no room for emotions), and the more general North Atlantic tradition of positive law, where the impassionate and the objective represent lofty ideals, and contain the promise of a solution, a way out. Hence the paucity of references to the existential dimension of pain and suffering even in Hajjar's excellent socio-legal piece on torture as an aspect of, particularly, the suffering of the Palestinian people, in the present collection. The same view ("pain is not an argument") is also manifest in Samarbakhsh-Liberge's piece on the representation of history in the recent South African situation. Inspired by the millennia of suffering of the Jewish people, Jitay's contribution comes perhaps closest to articulating the alternative view. He typically does so by reference to a long-ago situation (the destruction of the Temple of Solomon in 587 BCE), at a time when, and in a place where, politics and law had not yet completely fissioned into domains of their own to such an extent that they could already be thought of as (semi-)autonomous *vis-à-vis* religion, or

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[21] Notably in his *Nicomachean Ethics*, and *Rhetoric.*

[22] Cf. Sokolon 2002, and extensive references cited there.

[23] Cf. Garver, this collection:

> but we still have to answer the political question of which feelings of pain deserve our attention.

But his answer, however sympathetic, is in terms of a rationality away from pain.

vis-à-vis the everyday life of production and reproduction. For only when such complete fission is a fact, can the political domain pretend to be impervious to pain.

What, then, are the preconditions for such impermeability? Still slowly proceeding towards the promised, positive conclusion concerning the TRC's significance, we will try identify these preconditions in the following discussion of transcendence in the statal domain.

The transcendent state as a precondition for apartheid

One of *apartheid*'s main justification strategies was its painstaking legalism, which added the pretence of utter legality to everything done in the name of *apartheid*, and to the format in which it was done. This has further enhanced tendencies already excessively developed in North Atlantic modern society: the reliance on the written word as an immensely powerful source of legal authority;[24] on the constitutionally empowered institutions to create, maintain and legitimate (through words) such legal authority; and on formal, bureaucratically-organized organizations in which this word is carried out to become practice. Like its cousin, nazism, *apartheid*, with its illusory legalism, is not just a form of barbaric atavism and nothing more. Both forms of political perversion could only be a product of a modern, rationally organized, highly literate society, where the power of the written word carries the *transcendence* needed to be able to think and act beyond the here and now of personal relationships, beyond personal identification and charity based on face-to-face contact, in which the recognition of shared humanity is normally inevitable. *Apartheid* did not preclude condescending friendly relations between bosses and workers, between nannies and their charges; but neither did such relations preclude *apartheid*.

Transcendence is not a universal capability of human thought – on the contrary, it is a very specific mental stance which, although universally implied in the capacity of words to refer beyond the here and now, only comes to full fruition in concrete historical settings that are informed by writing, the state, an organized priesthood, and science. These institutions are achievements that, in human history, only emerged (in highly productive combinations) in the Ancient Near East c. 5,000 years ago. These institutions have informed the thought and action of selected (especially literate) minorities of specialists in all continents including Africa in the subsequent

[24] Weber 1969.

millennia, endowing them with the capability of controlling (even vicariously and virtually, in their absence or after their death) socio-political situations, and of freely experimenting with thought, science and religion through the power of the abstract word. (In the most literal sense the word, and especially the written word, is mightier than the sword, for it is only the word that enables people to exercise command across vast expanses of space and time, whereas sheer violence is confined to the here and the now. Therefore, it is the word, not physical violence, that creates the transcendence of states, although violence is an almost indispensable factor in maintaining such transcendence.) However, outside such specialist minority contexts, human thought and action have remained, in great majority, geared to the immanence of immediacy, personal experience, and the human scale. Only relatively exceptionally, through generalized literacy, extensive involvement in formal organizations (of the state, private enterprise, and religious, professional and recreational self-organization), and extensive conversion to formalistic, abstract participation in world religions, could this immanence significantly give way to transcendent stances among the majority of local populations. Cities and the formal sector are the world's seats of transcendence. Villages and kin groups tend to remain the seats of immanence. Since human reproduction usually takes place in the intimate circle of kin groups, humans almost invariably start life as immanentalists,[25] only gradually learning language, which although usually limited to everyday immanentalist contexts, does opens the door towards writing, the state, the law, science, and God – in short, towards transcendence.

By implication, the dissociation of the political sphere from the productive and reproductive sphere is very far from a universal given, but occurs only in contexts where transcendence (notably, in the form of the state) is firmly established as a historical achievement.[26]

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[25] There is nothing more immanentalist than the infant engulfed by its mother's total presence. By the same token, there is nothing more transcendentalist than male attempts to conceal, through the power of their word, the fact that they lack the essential organs (uterus and breasts) of visible, undeniable reproduction. This suggests that a gender contradiction may often attend the contradiction between immanentalism and transcendentalism. Such a contradiction is very conspicuous in the creation stories of the Ancient Near East, which belong to the initial period of the emergence of writing, the state, organized priesthood, and science. In these stories' most sophisticated recensions, male gods (such as Marduk, and YHWH) establish their right to rule through an act of creation, not from their own body or from that of the earth, but *by the power of their word*. Note that the immanently reproducing female (Tiamat, the earth, the snake, Leviathan) is such gods' moral enemy, even if in the Genesis account of the creation of man an older, female dispensation still shimmers through. Cf. Fromm 1976: 231f; Pritchard 1969.

[26] *Pace* Cassin, who in her paper repeatedly assumes "the autonomy of the political" to be a universal given that may be invoked with the same confidence in the case of modern South Africa

The *apartheid* state (with its abstract denial of the common, violence-shunning humanity on which life in villages and kin groups tends to be based) is, even more than most other states, based on transcendence. Only under conditions of extremely entrenched transcendence is it possible to arrive at such a dissociation of the legal sphere and of the political sphere, that these spheres become totally impervious for the charitable and communicative values that usually inform the intimate spheres of production and reproduction.[27]

The Ancient world's limited relevance for an understanding of today's issues

Still on our way towards a conclusion on the TRC, and having made substantial progress, we will now make a slight diversion to argue a point that seems to counter some[28] of the implications of the rhetoric-based contributions in the present collection: the Ancient world's limited relevance for an understanding of today's issues.

As stressed in Garver's thoughtful contribution to this volume, Aristotle uses the concept of "friendship" to denote, with a term derived from the informal domestic sphere, a fundamental prerequisite which he attributes to the political sphere. Clearly, therefore, the dissociation between these spheres was considerably less developed in Aristotle's time than it came to be in post-Renaissance Europe, when the rationality of the absolutist state made a claim to total transcendence, thus paving the way for such aberrations as the nazi state and the *apartheid* state.

The incomplete dissociation of the legal and the political spheres in Aristotle's time – the basis of his political "friendship" – informs his rhetoric. It is the rhetoric of the assembly, before the same free males who only hours earlier found each other on the market-place, and who only hours later will re-adjourn in the gymnasium, in the public spaces of leisurely philosophical discussion, or in the seedy mature male comforts of banquets spiced up with willing boys and girls – banquets served and paid for partly

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(on good grounds) as in the case of Ancient Athens (on far more dubious grounds).

[27] In principle, the transcendent (and violent) dissociation of the political sphere from the sphere of production and reproduction is typical of statehood in general, and has nothing to do with *apartheid* as such. For a detailed analysis of a precolonial South Central African state along such lines, cf. van Binsbergen 1992 and especially 2003d.

[28] By no means all, as is indicated by Garver's sobering opening remark (this volume):

> Aristotle does not give solutions to contemporary political problems. He could not have imagined them, and so does not speak to them.

by slave labour. Only by taking Aristotle's rhetoric out of that historic context, translating it into a modern Western Indo-European language, appropriating it by formalized, discipline-based ("transcendent") scholarship, assuming that it addressed political conditions comparable to those of modern statehood, and endowing it with a postmodern reservation vis-à-vis truth and institutional order, can we make Aristotelian rhetoric at home in the modern, transcendent state contexts of today. In a comparable way, Herodotus and Thucydides may be called the first historians yet no modern historian would academically survive if her methods and concepts were not fundamentally different from those of these two illustrious "founding fathers"; by the same token, the Olympic Games only in name, and nostalgically, revive an Archaic Greek custom going back to the eighth century BCE. By innovatingly applying Aristotelian rhetoric in a political context that is mainly in name ("democracy") comparable with Aristotle's elitist city-state, modern rhetoricians create (as is perfectly justifiable) an essentially new conceptual framework in order to illuminate (as the present volume beautifully demonstrates) the political aporias of today – while endowing that framework with the illustrious genealogy that its rootedness in Aristotle's writings can provide.

Inherent in this intellectual trajectory is the difficulty modern rhetoric will have to appreciate that the transcendent power of the modern state cannot be relegated, for the full one hundred percent, to the dextrous performance of political oratory and other strategies illuminated by rhetoric. Such strategies continue to play a major role (as modern media research indicates, referred to in this volume by Rossouw's piece), but instead of being responsible for creating, praxeologically, the entire political space an actor may have, they only serve to assert and actualize such political space as that actor already, transcendentally, derives from the letter of the law, from political and legal institutions. The praxeology, the dramaturgy and the aesthetics of verbal contests of rhetoric, and the generation of power in such contexts as a mere dextrous display of individual *agency* (as analysed in the present volume by the Nigerian scholar Ige for Cicero's Catilinarian orations) tends to be only one side of the medal – the other, necessarily complementary side being established, institutionalized legal authority in the Weberian sense.[29]

In the wake of recent Ciceronian scholarship which he cites, Ige presents

[29] Weber 1969. For a recent argument on the limitations of agency and the remaining need for a structural and institutional analysis, in the context of African national states and traditional leaders today, see van Binsbergen 2003c.

the famous case of Cicero's four orations against Catiline as a mere verbal contest along rhetorical lines between two individuals, Cicero and Catiline, who are alleged to be essentially each other's exact match. Bringing only Cicero's own text to support this reading (and Cicero is one of the founders of rhetoric; however, there is also Sallust's contemporaneous account of this episode) leads Ige to depart from the traditional reading of the case. The latter has largely been in terms of the challenge of

- a recognized social and political misfit who made a mess of his military commission, had a sex scandal involving a most sacred Vestal virgin, and otherwise was involved in such unsavoury court cases as to be even ineligible to put himself up as a *candidate* for the exalted state office of consul (Catiline), by
- one of the two recognized supreme officers of the state (Cicero) deploying – *not only his oratorical skill but especially his formal legal powers as invested in his exalted office.*

Rhetoric does help us understand the taxonomics and the dramatics, the deployment of words and gestures, in such a contest, in other words to see how the letter of the legal word is turned into actually exercised socio-political power. But despite these helpful pointers, the question remains: Do the praxeological dynamics captured by rhetoric need an indispensable basis of institutionalized legal authority, or can they create power fully at their own impetus? Perhaps rhetoric was actually more autonomously effective in Cicero's time (when the Roman Republic was collapsing after half a millennium) than (under conditions of far more developed trancendentalization of the state) in the England of Margaret Thatcher (*pace* Calder in this volume), and perhaps (as Ige perceptively suggests, and as can be further articulated in terms of my notion of immanentalism) there is, in this respect, a parallel between Cicero's Rome and a contemporary African postcolonial state threatened by a military *coup d'état*.

It is time, however, to terminate our excursion into the Ancient world, and to return to our analysis of the TRC's significance in transcendentalist terms.

What the immanentalist domain brought to the TRC

In this connection, let us first pose an utterly, but (see below) understandably forbidden question in the South African context: "To what extent did the

population of South Africa constitute 'one nation' under *apartheid*, and to what extent was it really *one nation* that came to the TRC to be healed (and to be healed by whom, and by what)?"

Drawing on parallels in Greek Antiquity when the Athenian nation was divided over the differential response (collaboration or patriotism) to the attacking foreign force from Sparta, or proclaiming that the TRC was really about "how to heal a nation", etc. – all this begs the question as to whether South Africa was arguably one nation under *apartheid*. The aporias of the *apartheid* state play us tricks here and prevent us from giving an unequivocal answer to this question. Apartheid legislation, pass laws, the creation of bantustans, were all based on the malicious, paper-thin ("transcendent") fiction that only Whites were the lawful citizens of South Africa, and that all others belonged to other nations. The rhetoric (in the vulgar sense) of "Two Nations" or of a multiplicity of nations was the stock-in-trade of White minority discourse in South Africa and South Central Africa throughout the twentieth century CE, replicated in book titles, journalistic products etc.; even the designation "rainbow nation" for the democratic, new South Africa (evocative of a plurality of colours, castes, "races", somatic appearances) still appears to carry a distant echo of such usage. Against this background, admitting that South Africa was *not* one nation under *apartheid* would imply siding with the very forces of *apartheid*. But alternatively, affirming that it *was* a nation even under *apartheid*, would amount to a somewhat unrealistic denial of the gross constitutional and socio-economic inequalities, and of the resulting exclusion and humiliation to which the vast majority of that alleged "nation" was subjected.

At any rate, clearly the main purpose of the TRC was *to make South Africa much more of a nation*. Provided we define what we mean, the idiom of healing is not inappropriate here. Healing may well be defined as the process of catalytically facilitating the transition from a defective state to a state of greater completeness: thus, in this connection, from not-yet-a-nation to more-of-a-nation, or to nationhood, *tout court*. Much like a *sangoma* (Southern African diviner-priest) may be said to "heal a person" spiritually by bringing a human being who is too damaged to count as a full person, into contact with such symbols, words, arguments, images for identity and emulation, and by inducing her (or him) to engage in such rituals and concrete practical acts, that she can finally become the person she could not yet be before.[30]

[30] Archbishop Tutu presided over the first ever meeting TRC hearing under a huge banner whose

Let us now try to cast some more light on what, outside the transcendental state, would be the informal, immanentalist sphere of everyday life of production and reproduction – where pain *is* very much an argument – , a sphere which some victims and survivors cannot have failed to bring to the TRC.

In the comparative Africanist perspective we have become aware, since the late 1970s, of the differential degrees in which the modern, transcendentalist central state has actually been able to capture the lives and the minds of its citizens in African contexts. Empirical studies of state penetration have shown that, especially in rural areas and in informal urban communities, state penetration is usually the case to a limited extent only.[31]

These findings carry an important message for South Africa as, primarily, another African country. One of the most conspicuous, and deceptive, features of the South African situation is that the state, and modern formal organizations in government, services, industry, religion, sports, etc., are so well established and have such a grip on public life, that (for risk of ridicule and anger, and also for the more internalized sanctions that attend collective representations, i.e. a community's socially-constructed self-evidences) it is difficult to think of South Africa in other terms than as a fully-fledged modern country, – a country that happens to be in Africa but that should really be counted in the ranks of the North Atlantic region, or of Australia and New Zealand (where, however, somatically conspicuous descendants of the pre-conquest population, and their cultures, are – already for sheer numbers – much less visible in the public life than is the case in South Africa). It appears to be almost impossible (also for those reflecting on the South African socio-political order in writing, as Southern African intellectuals – perhaps with the exception of left-wing anthropologists) to see through the illusion of the transcendent, self-evident order which this state of affairs engenders, and to entertain, instead, an awareness of immanentalist alternatives: of people who (despite the unusual – but manifestly failed – insistence on the part of the *apartheid* state on penetrating into, and controlling, all aspects of life) do not consciously pattern their life and their self-identity in terms of that transcendent order.

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central text read "HEALING OUR PAST". The choice of words is remarkable: one may attempt to heal people, even a nation, from the undesirable effects of the past, but healing something as virtual as *the past* itself can only amount to the attempt to *change* the past, which is not in the nature of things; or to change whatever is painful in the *representation* of the past, which is where rhetoric comes in. Picture at: http://www.megastories.com/safrica/rainbow/finals/truth.htm.

[31] Bratton 1980; Cliffe et al. 1977; Geschiere 1984; Hyden 1980; Hyden & Bratton 1992; van Binsbergen et al. 1986.

Here I am referring to people who do not see themselves primarily as citizens of the state and participants in the national economy, who are largely strangers to that order and its highly specific procedures,[32] but who instead define themselves in much more idiosyncratic and local terms; and who primarily pursue the symbolic projects proper to their own idiosyncratic local horizons rather than the symbolic projects of the state, national politics, industry, and mass consumption.

Treating the whole of South Africa as effectively one nation has the advantage of avoiding the trap of fragmenting divisiveness which the *apartheid* state has dug, but has the disadvantage of denying and muting of these centrifugal idiosyncrasies.

In my cultural analyses of modern Southern African societies, especially their urban sectors, I have often found it illuminating to depict the situation of historic local culture as one of "having gone underground" – an imagery akin to that of uncapturedness (Hyden). It is not that such cultural knowledge, and the related practices, have been completely eclipsed by the onslaught of the modern state, education, world religions, the capitalist economy, urbanization, globalization, consumerism etc. It is rather that the latter complex of forces has created a context in which expressions of historic local culture (such as the allegiance to puberty rites, ancestral cults, High God cults, beliefs and practices relating to sinister aspects attributed to the unseen – witches, familiars, ghosts – , traditional healing, traditional leadership, clan structures) *are no longer socially permissible, can no longer be negotiated to the public domain* (except perhaps in some highly

[32] The present collection offers an interesting case (in the contribution by Collier and Hicks) of what happens when, taking for granted the utter transcendence of the modern state, procedures of deliberation are introduced there that have no roots in immanent, everyday local experience. When after the lifting of fascism in Portugal in 1974 CE municipal assemblies adopted Robert's Rules to structure their internal deliberations, this disadvantaged many of the local delegates because these formal procedures, which USA Army General Roberts had derived from USA Congress procedure in the late 19th century, were bewilderingly alien to them. The case is doubly instructive, because, as affirmed USA intellectuals of the late 20th century CE, the authors from whom this example is derived do themselves not even seem to realise the element of cultural alienness involved here: planting an Anglophone nineteenth-century North American ruling-class set of procedures into a Lusitophone twentieth-century popular Southern European environment. Those bewildered in this case became disadvantaged strangers to the political culture they were supposed to carry. We must not assume that the rules and the stakes of the democratic process are the same everywhere and at all times, and immediately obvious to all participants. In most North Atlantic countries democracy as representative government through universal franchise is a relatively recent phenomenon, less than a hundred years old; it had to be learned from scratch, in ways that differed only slightly, in scope and in time scale, from the ways in which very similar democratic procedures had to be learned by most Africans in the main wave of Independence around 1960, or by South Africans other than Whites in the early 1990s (van Binsbergen 1995).

fragmented, folklorized, commodified form), without serious negative sanctions for the social actors involved, in terms of ridicule, shame, suspicion, allegations of backwardness, of tribalism, of satanism, etc.[33]

The same factors that caused these centrifugal expressions to go underground and to be banned from the public space, have led to their conspicuous absence from mainstream scholarship in South Africa, including that addressing the TRC.

The TRC as a nation's birth pangs

On the other hand, if one does acknowledge these centrifugal, immanentalist elements (of a linguistic, cultural, ethnic, religious, and lifestyle nature), and if one accepts that they are especially to be found among the South African people of African and Asian background who were the principal victims of *apartheid*, then one must inevitably acknowledge[34] *that different people brought very different things to the TRC.*

The TRC was, therefore, not a well-defined arena where (in ways open to transparent rhetorical analysis) some already established ritual of "healing the nation through full disclosure and amnesty" could be effectively staged along lines that were clear to all participants, and on which they all agreed. It was primarily (but also that seems to be something rhetoric can handle) a place of utter confusion, staged by people who (as literates, as citizens conscious of their constitutional responsibilities, as academics, as adherents of world religions) identified with the idea of the transcendent state after the imported North Atlantic model, and who saw it as their main task to usher into greater allegiance to that model, those for whom the transcendent state was far less self-evident: those who were entertaining the centrifugal, idiosyncratic, implicitly African and Asian, orientations indicated above, and whose main life experience with the state had almost destroyed them, to

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[33] Cf. van Binsbergen 1993, 2001, 2003b espec. chs 5 and 6.

[34] As implied, albeit not with specific reference to the TRC, by Collier & Hick, this volume:

> Many political disagreements now seem to be rooted in much "deeper" differences than conflicts of interest. As the cultural and religious diversity of the citizenry grows, through both migration and enfranchisement, the diversity of collective aims, moral outlooks, received knowledges, and worldviews grows. It is no longer reasonable to assume that a shared moral and political framework exists to guide public deliberation and debate. As the new social movements have demonstrated, the political vocabularies used to frame issues and propose solutions as well as the legitimacy of extant procedures for resolving political conflicts, are often the source, rather than the cure, of political disagreement.

boot, being *apartheid*'s designated targets and victims.

It now finally becomes possible to state what, beyond the content-less, truth-less game of rhetoric (but in a formulation that owes a lot to this volume's rhetorical analysis – including the occasional remarks on sacrifice scattered there), and beyond the preservation of White, Christian and elite interests (but in a formulation that also owes a lot to Christianity), may have constituted the true stakes and the true heroism of the TRC:

Of course, the past was not healed. Neither was the nation healed, certainly not in the way Tutu suggested (notably, by speaking out without negative consequences for the perpetrators). No, the nation was *born*. Speaking out was no longer the issue. Pain resides, and is domesticated and healed, at a profound inner level where words scarcely penetrate.[35] People who had no reason at all to trust the state, in whatever trappings, yet showed themselves generous and courageous enough to prefer the perpetrators' undeserved amnesty to civil war. The victims and survivors thus sacrificed such revenge as they were entitled to. They could only hope to heal themselves through the act of such generosity – but also, in this very act, *they effectively created the nation of South Africa for the first time.* In doing so, they extended to the perpetrators of *apartheid* once more the humanity which the latter had lost by denying it to their victims. And thus the victims and survivors who spoke during the TRC, affirmed their own humanity (*ubuntu*), which is the moral hub of any nation, any political system worth considering.

What a huge moral and constitutional responsibility this generates for South Africa's current majority government! What a package for Aristotelian rhetoric yet to accommodate in its attempts to make itself relevant to the world today!

Counter-hegemonic challenge as a principal task for African intellectuals

This collection's rhetoric-inspired reading of the TRC seems to be based on the assumption that the Aristotelian rhetorical perspective, increasingly popular again in recent years, is so *universal* and so *perennial* that applying it to contemporary South Africa is neither an anachronism, nor a distortion, nor an act of naïvety, nor a hegemonic imposition. Depending upon one's

[35] Here we touch upon a major shortcoming of current, main-stream political analyses: their lack of appreciation of the deeper, subconscious or unconscious levels of the political actors' personality as a determinant of political behaviour. For attempts at remedy, cf. Gay 1985; Fromm 1973.

epistemological and political position in the intercontinental construction of knowledge, however, the project of analysing contemporary South Africa through the spectacles of Aristotelian and Ciceronian rhetoric would not be entirely impervious to such allegations, however much the integrity and the scholarship of the authors involved are beyond doubt – and however much, as we will see below, such allegations can be countered by an higher-order intercultural philosophical argument.

We have already touched on *historical* reasons of specific differences in political structure, for taking a somewhat more relative view of the relevance of Ancient Greek and Roman models for present-day issues. But there are also important *epistemological and knowledge-political* reasons which – far more than the historical ones – relate to the very *raison d'être* of *Quest: An African Journal of Philosophy*.

In the course of the twentieth century CE, main-stream North Atlantic philosophy has largely given up the idea of the possibility of a privileged vantage point[36] from where to overlook the world and mankind objectively, dispassionately, and authoritatively.[37] Aristotelian rhetoric, or main-stream Western philosophy in general, cannot be claimed to be such a vantage point any more, – but neither can, of course, any other intellectual perspective that is brought to bear on the issues at hand, including African philosophy, African political science, African Studies in general. The point is not to deny the validity of any particular perspective, including Aristotelian rhetoric, but to deny any perspective's claim to a monopoly over validity.

Meanwhile, especially with regard to Africa, universalist claims emanating from the North Atlantic tradition cannot fail to arouse deep-seated sensitivities. It is only two centuries ago that Hegel – still considered a giant of the Western philosophical tradition, usually without further questions being asked – denied Africa a proper place in the history of mankind; and less than half a century since the prominent British historian Trevor-Roper expressed himself in similar fashion.[38] Ever since the

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[36] Popularly referred to as "the Archimedean point", although this was meant, by Archimedes, as a mathematico-physical, not as an ontological, construct.

[37] For a Foucaultian critique of this illusion, based on the concept of genealogy (which is ultimately Nietzschean), see: Rabinow 1984; Foucault 1977. Cf. also Kimmerle 1985; and: Nietzsche 1887. The impossibility of an epistemological Archimedean point is also argued in: Rorty 1979; and from a totally different point of view in: Putnam, 1978, 1981. Such impossibility, in other words, is a received idea in contemporary philosophy.

[38] Hegel 1992; for a critical distance from the perspective of contemporary intercultural philosophy, cf. Keita 1974; Kimmerle 1993; Verharen 1997; also Eze 1996, 1997b. H.R. Trevor-Roper, then Regius Professor of History at Oxford, United Kingdom, soon to be knighted Baron Dacre of Glanton, said in a Britsh Broadcasting Corporation (BBC) television broadcast in 1963:

Renaissance, Europe has constructed its own exalted image of itself by contrasting it with a correspondingly negative image of Africa and its inhabitants – the *Invention of Africa* (Mudimbe) has amounted to the construction of North Atlantic identity, culture, history, science, philosophy, religion, and statehood, by denying these same achievements to Africans.[39] The denial and the suppression of African knowledge, initiative, dignity, language, culture and identity were ubiquitous aspects of the colonial experience in Africa, including post-conquest South Africa, and of White racialism vis-à-vis persons of African descent in Europe and the New World. Needless to say, the inhabitants of the other continents received very much the same treatment at the hands of Europeans and of the latter's descendants in the Americas. Complementing Mudimbe, South Asia particularly has produced its own highly illuminating and highly indignant reflection on these processes, in the form of Postcolonial Theory, where "hegemony" and "the subaltern" are key concepts.[40] In the present collection, only Nethersole makes reference, dismissively, to this set of ideas, however much they form the obvious context to look at formerly colonized societies. And even[41] Africanist anthropology, which through its elaborate methodologies of fieldwork would claim to have avoided the violence of representation that is otherwise inherent to North-South knowledge construction, could be argued to have fallen into the same hegemonic subordination of Africans and their life worlds.

Intercultural knowledge between universalism and particularism

One cannot simply send Aristotle, without elaborate preparation and protection, into such a global mine field, and trust that he will escape unscathed.

> Perhaps in the future, there will be some African history to teach. But, at present there is none: there is only the history of the Europeans in Africa. The rest is darkness, like the history of pre-Columbian America, and darkness is not a subject for history (published in Trevor-Roper 1965).

However, in extenuation we may plead, firstly, that Trevor-Roper here expressed himself – in the best tradition of British empiricist scholarship – on the then unavailability of high-quality African historiography rather than (like Hegel did) on the ontological impossibility for Africans to have history or histories; and, secondly, that one of his students has been Terence Ranger, who became a great historian of Africa, contributing to the creation of precisely what Trevor-Roper claimed did not yet exist.

[39] Mudimbe 1988, cf. 1994.

[40] Cf. Bhabha 1986, 1995; Rattansi 1994; Spivak 1987, 1988, 1990.

[41] This is the *Leitmotiv* in: van Binsbergen 2003b.

The present argument provides, *inter alia*, such preparation and protection. For there is one attractive perspective under which the rhetoricians' appeal to Aristotle in order to illuminate current South African conditions need not be hegemonic nor suspect, even though Europe has constructed itself by monopolising the Ancient Greek heritage, and by dissimulating the fact that this heritage in itself was greatly indebted to Asia and Africa.

Philosopher of science Sandra Harding[42] has cogently argued that the claims of modern, North Atlantic dominated, science of being objective, rational, and universal, are largely a myth springing from the fact of North Atlantic actual hegemony. *Largely – but not entirely,* and after elaborate attempts to argue the opposite, she has to admit that, especially in the natural sciences, the truth claimed by science is at least *partly* justified, i.e. is at least *partly* underpinned by the validity of its epistemological procedures, independently from such power as the North Atlantic region is capable of investing in its science, or is capable of deriving from its science. Identifying with women in science, and with people in science other than from the North Atlantic region, Harding sees this conclusion as a reason for hope and as empowerment for these long excluded groups. By contrast, yielding to the postmodern tendency towards complete fragmentation and relativism (as if anything else were a suspicious Grand Narrative in Lyotard's sense)[43] she sees as unacceptable disempowerment: as if global scientific knowledge, long wielded by North Atlantic males as their main source of power, all of a sudden has to be declared useless and merely local, an *ethnoscience* among myriad others at the very moment that previously excluded groups begin to gain access to such knowledge.

Harding's argument exemplifies the tension of universalism ("Aristotle is universally applicable and universally illuminating") versus particularism (..."but only with regard to Ancient Greece and not to Africa today"...), between which intercultural scholarship situates itself.[44] Many centuries of scholarly transcendentalism have made it utterly uncomfortable for us as globally-orientated modern intellectuals to live (at least, to live *professionally*) with what yet makes up the standard experience of social life and what is practically accommodated as such in the immanentalism of informality: *contradiction*. In the quest for consistency at the level of words, we are inclined to try and lift the contradiction by destroying either of the

[42] Harding 1997; cf. van Binsbergen 2002.
[43] Lyotard 1979.
[44] Cf. van Binsbergen 2003b.

two poles between which it is stretched and creates tension. Our very difficult task however, when seeking to make sense of the complex phenomena of our global life world by bringing to bear upon them points of view and modes of thought from a plurality of life worlds belonging to different locations in space and time, is not to destroy the contradiction, but to make the best of it, indeed to thrive by it, in an act of balancing and negotiation. In this specific case this means both qualifying Aristotle's alleged universality, and yet identifying the specific conditions under which his thought would be illuminating beyond Ancient Greece, even when applied to Africa today. Lest North Atlantic scholars be suspected that what they have cherished for centuries while they could still monopolize it, loses its attraction for them now that they have to share it intercontinentally, let them *not* throw Aristotle out at the very moment in history when African and Asians have gained the scholarly access to expertly read, criticize and apply Aristotle.

And let African and Asian scholars act in the same spirit. If "The master of those who know"[45] can be seen as part of mankind's shared, global heritage of thought, then there is no reason why he should not be applied to African conditions. But then, of course, it can also be admitted that the great gap that separates Athens and the TRC in time and space, realistically requires major adaptations, as well as an awareness of genuine differences. In an inclusive, global perspective Aristotle's thought could not remain un-adapted, let alone that it could be thought of as sacrosanct and all-explaining. Therefore, the application of Aristotle in a contemporary African context could never be a one-way process, conducted by scholars who know all about Aristotle, nearly all about formal legal texts as produced in formal, bureaucratic legal settings under the aegis of the transcendent state – and virtually nothing about the life worlds, the cosmologies, the languages, kinship systems, political and legal institutions, day-to-day struggles, pastimes, religious, artistic, culinary, sexual expressions, etc., of the African people whose life is greatly affected (but far from completely determined – my refrain of centrifugal immanentalism again) by such formal settings. Considering the sensitivities attending the situation, the suggestion of another hegemonic assault, this time in the name of Aristotle and rhetoric, must be avoided at all cost. Hence this Postscript.

In other words, from the same inclusive, global perspective, the continued relevance of African models for African life, and the potential

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[45] Dante, *La Divina Commedia*, *Inferno* IV: 131, referring to Aristotle:

'...'l maestro di color che sanno'.

relevance of comparative Africanist models, not only to other parts of Africa but also to the rest of the world, need also be admitted, and explored in concrete terms.

Learning from the rest of Africa in order to better understand South Africa

The point is, therefore, *not* that the contributors to this volume (which, as is relevant at this point, contains one of the most subtle recent analyses of intercultural communications and deliberations, in the contribution by Collier and Hicks) should be faulted for advocating a rhetoric-based perspective; the point is that they have just left it to others to sort out how such a perspective could be combined with other valuable perspectives such as the anti-hegemonic and comparative Africanist one. Considering the great investments of expertise and experience already needed to cover one field of scholarship, such an academic division of labour is perfectly acceptable, provided other disciplines, other perspectives, other political commitments, other identities, move in, in order to complement and complete what rhetoricians on their own disciplinary impetus cannot adequately cover or represent.

What could we learn then, finally, if we complemented a rhetorical perspective with a comparative Africanist one?

a. It would bring us to explore the specifically *African* forms of rhetoric, such as employed in traditional African polities and in African traditional courts of law (also, albeit in modified form, in South Africa), and would throw additional light on the modalities of story-telling and of public construction of truths that constituted the TRC exercise.[46]
b. It would allow us to identify and study, in addition to the Christian models informing Archbishop Tutu's TRC frame of reference, and the Athenian models informing Salazar's, Cassin's and Garver's rhetorical analyses of reconciliation in the present book, specifically *African* forms of reconciliation, and appreciate that these have constituted, for centuries, "African technologies of sociability" of great and proven effectiveness.[47] If such models were not explicitly mobilized in the TRC

[46] African rhetoric: Cf. Bloch 1975; Knowles-Borishade 1991; Finnegan 1970. Also cf. Comaroff 1975, for traditional oratory in the South African context; van Binsbergen c.s. 2003a, with extensive bibliography, for recent studies of traditional leadership and customary law in Africa; Oomen 2003 for an insightful study of South African rural local courts today.
[47] Van Binsbergen 1999, revised version incorporated in van Binsbergen 2003b: 349-374; cf. van Binsbergen 2003b: Introduction, pp. 32f.

exercise, they may yet have been implied in what some of the victims and survivors brought to its sessions.

c. It would have made us realize that the widely attested failure of the Westminster model of parliamentary democracy throughout postcolonial Africa suggests deep-seated structural incompatibilities. In view of our argument so far, we can now suggest that these incompatibilities have to do with the impossibility of planting a modern state in a local context so saturated with immanentalism that the transcendence of the state finds insufficient support there (mainly, but not exclusively, because of a difference in mode of thought, but also for historical reasons: because of the pain which earlier experiences with the state have inflicted). This would make us think twice before arguing, as a matter of course and as an automatism, the obvious applicability of the original, Athenian model of democracy, or of the modern Westminster model, to South Africa, as another part of Africa. In particular (since evidently, these incompatibilities exist at the level of socio-political structure, not of individual innate ability) it would force us to reflect on the structural preconditions for transcendence (through effective and prolonged participation in a viable state and in viable formal organizations – in such fields as health services, education, religious life, sports and other recreations – , high and sustained levels of literacy, effective divulgation of modern cosmopolitan science), and to direct citizenship training accordingly.

d. It would have made us explore – in addition to the Athenian democratic model which has been effectively (albeit at the price of considerable misrepresentation) appropriated by the North Atlantic tradition (and which, therefore, is difficult to detach from Eurocentrism) – historic *African* ways of going about democracy, popular participation, social and political justice, constitutional law, dating from before the imposition of the transcendental colonial state, and in part surviving (in more or less adulterated, neo-traditionally encapsulated, and perverted, forms) in the niches of the colonial and the postcolonial state. Africanist political anthropology (some of whose finest classic products[48] happen to deal with Southern Africa) and African philosophy (including the *ubuntu* variant) have done much to put these African political forms and conventions on the map. We cannot simply ignore their existence. Neither can we simply take for granted that in the national reconstruction of post-*apartheid* South Africa such African elements are necessarily

[48] Gluckman 1958, 1969; Krige & Krige 1943; Kuper 1969; Schapera 1938, 1943, 1963, 1970.

> without the slightest relevance, and are completely absent from the minds and the feelings of especially the survivors and victims of *apartheid* – many of whom have retained (within the local horizons that are the home of immanentalism) a modicum of knowledge of and of allegiance to time-honoured Southern African cultural traditions. (Again we must add: "in whatever selected, newly-invented, or perverted way" – of course, the point is very sensitive since a major strategy of the *apartheid* state was to justify the spatial, social and constitutional distinction between Whites and Blacks, by artificially furthering the ethnic distinctions between Black Africans, in a policy of *divide and rule* that, in retrospect, has made any expression of historic local or regional cultural identity in South Africa today, suspect as a possible product of the *apartheid* state.) Characteristically, *sangomas*, although specialists in the dynamics of collective healing and reconciliation at the level of the kin group and the local community in Southern Africa, were virtually absent from the TRC process, whereas the concept of *ubuntu* was only very sparingly used in that context.

Conclusion

I have attempted to show how the present collection's project, while at first superficial glance appearing to deal with abstruse topics of limited applicability (a reading of the South African Truth and Reconciliation Commission in terms of Aristotelian rhetoric), in fact addresses phenomena of the greatest significance for the African continent as a whole, thus taking up major debates in *Quest* over the years: the reflection on the philosophical canon (in this case: Aristotle and rhetoric); the development of an African philosophy that is relevant to major current transformations on the African continent – in this case the viability of the state, democracy, reconciliation and freedom; that is critically and radically aware of its hegemonic context; and that yet situates itself globally, in the field of tension between the universal and the particular.

In this way, this Postscript both situates, and vindicates, the present collection, and offers an manifesto that may serve as Preface for future volumes of *Quest*.

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ABOUT THE CONTRIBUTORS

CHARLES CALDER is Senior Lecturer in English at the University of Zambia, Lusaka, Zambia, and active in the field of the history of rhetoric. The Third African Symposium in Rhetoric was held in Lusaka (August 2000) under his chairmanship.

BARBARA CASSIN (Centre National de la Recherche Scientifique CNRS, Paris) is France's leading philosopher of Ancient rhetoric, specializing in the Pre-Socratics and the Sophists. Her numerous works include the seminal *L'Effet sophistique* (1995), *Voir Hélène en tout femme, d'Homère à Lacan* (2000). She currently heads the *Vocabulaire européen des philosophies* project.

MARY JANE COLLIER is Professor of Human Communication at the University of Denver, USA. Past editor of *International and Intercultural Communication Annual*, she is joint-author of award-winning *African American Communication* (1993). She was Resident Fellow at the Centre for Rhetoric Studies, Cape Town, South Africa, in 1999.

ERIK DOXTADER is a Fellow of the Mc Arthur Social Science Research Council, and Associate Professor of rhetoric at the University of Wisconsin-Madison, USA. He has published extensively on the South African Truth and Reconciliation Commission, and is a Senior Fellow of the Institute for Justice and Reconciliation, as well as a Past Resident Fellow at the Centre for Rhetoric Studies, both in Cape Town, South Africa.

EUGENE GARVER is a noted American philosopher of ethics (*Aristotle's Rhetoric*, 1994). He holds a Chair in Philosophy at St. John's University, Minnesota, USA. His contribution was made possible thanks to a Foreign Researcher Grant of the National Research Foundation, South Africa, while a Resident Fellow at the Centre for Rhetoric Studies, Cape Town, South Africa, in 1999.

YEHOSHUA GITAY is Emeritus Cohen Chair in Hebrew at the University of Cape Town, South Africa, and is Visiting Professor of Rhetoric in Haïfa, Israel. A signal specialist of biblical rhetoric (*Isaiah and his Audience*, 1991) he has also acted as consultant in public argumentation during Israël's general elections in 1999.

LISA HAJJAR is Professor of Sociology at Morehouse College (Atlanta, USA) in the Law and Society Program at the University of California, Santa Barbara, USA. An anthropologist specialized in human-rights discourses, she is also engaged in Arab Studies. Her contribution to the present collection was made possible by the French Institute in South Africa.

DARRIN HICKS is, at the University of Denver, USA, engaged in field studies of community deliberation (especially public health rhetoric). He is currently writing a book on popular argumentation and governance.

JOHNSON SEGUN IGE, a Nigerian academic, and and sometime lecturer in Classics at the University of KwaZulu-Natal (Durban, South Africa). His doctoral dissertation is on Ciceronian rhetoric. He is actively involved in the Association for Rhetoric and Communication in Southern Africa.

ABEL KOUVOUAMA, Professor of Comparative Philosophy at Marien Ngouabi

University (Brazzaville, Congo), is currently an Associate at Maison des Sciences de l'Homme (Ecole des Hautes Etudes en Sciences Sociales, Paris, France).

ANDREA LOLLINI is a graduate in Law from the University of Bologna, Italy, currently associated to the Ecole des Hautes Etudes en Sciences Sociales (Paris, France). He is writing a book on the legal rhetoric of the South African Truth and Reconciliation Commission.

REINGARD NETHERSOLE initiated the study of Comparative Literature in South Africa. She now heads a newly-created Institute in Cultural Studies at the University of Pretoria, South Africa and is Emeritus Professor at the University of the Witwatersrand (Johannesburg) , South Africa. She has published extensively on postmodern theory and is the editor of the JoFo Series in multicultural studies at Peter Lang Publishing Group.

SANYA OSHA is a well-known Nigerian writer and political commentator. He holds a professorship in philosophy at the University of Ibadan, Nigeria. His latest project is a study of the Ghanaian philosopher Wiredu in the African philosophical context.

PHILIPPE-JOSEPH SALAZAR is Distinguished Professor in Humane Letters at the University of Cape Town, South Africa, and Director of the Programme in Rhetoric and Democracy at the Collège International de Philosophie (Paris, France). He is Founding President of the Association for Rhetoric and Communication in Southern Africa. One of his most recent book deals with South Africa as a rhetorical democracy (*An African Athens: Rhetoric and the Shaping of Democracy in South Africa,* 2002). He is preparing a French edition of the Truth and Reconciliation Report.

LYDIA SAMARBAKHSH-LIBERGE is a Research Fellow at the Institut Français d'Afrique du Sud (Johannesburg, South Africa). As a graduate from the Centre d'Etudes Africaines (Ecole des Hautes Etudes en Sciences Sociales, Paris, France), she is conducting doctoral research on history-writing in South Africa,

WIM VAN BINSBERGEN, Editor of *Quest*, is Professor of Intercultural Philosophy at the Erasmus University, Rotterdam, and Senior Researcher at the African Studies Centre, Leiden, the Netherlands. His fields of specialization include modern and traditional states and politics in Africa, African religion, and Egypt-Aegean relations in the Bronze Age. He carried out extensive anthropological fieldwork in Botwana, Guinea-Bissau, Tunisia, and Zambia, with shorter explorations in South Africa, Zimbabwe and Benin. Since 1990 he has entertained extensive academic contacts with South Africa. He is a practicing *sangoma* (diviner-priest in the Southern African tradition). One of his latest books is *Intercultural encounters: African and anthropological lessons towards a philosophy of interculturality* (2003).

CHARLES VILLA-VICENCIO, a leading South African theologian (*Civil Disobedience and Beyond*, 1990), was seconded from his Chair in Religion and Society (University of Cape Town, South Africa) to that country's Truth and Reconciliation Commission, whose research team he headed. He is founding director of the Institute for Justice and Reconciliation (Cape Town).