

## TRANSITIONAL TRUTH AND HISTORICAL JUSTICE: PHILOSOPHICAL FOUNDATIONS AND IMPLICATIONS OF THE TRUTH AND RECONCILIATION COMMISSION

Leigh M. Johnson

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.... And we have tried, in whatever way we could, to weave into this truth about our past some essential lessons for the future of the people of this country. Because the future, too, is another country. And we can do no more than lay at its feet the small wisdoms we have been able to garner out of our present experience.

—Archbishop Desmond Tutu

**I**nternational politics in the last thirty years has witnessed the emergence of a new form of regulative body, particularly in those situations marked by a transition from repressive regimes to democracy. Although it has taken various constitutive forms, the model of the Truth Commission has increasingly served as an essential element in mapping out the communal options for relatively peaceful and restorative transitions, often after nations have been cleft apart by dictatorships, oligarchies, civil wars, apartheid, or otherwise oppressive systems. The very nature of transitional situations regularly necessitates that the creation of intervening institutions and political bodies be undertaken in “crisis” mode, with little to no idea of the details of the dispensation to come. However, as concrete historical instances of Truth Commissions accumulate, and as their structures and aims become more standardized,

it is necessary to articulate the philosophical foundations and implications of the Truth Commission form. Specifically, we must attempt to explicate the tacit philosophical assumptions about truth, justice and, in this case, reconciliation, which underscore the work of Truth Commissions. Additionally, we must understand the legitimating theoretical framework that justifies the claim that Truth Commissions are a unique political solution to the arguably unique situation of endemic state violence in the late-twentieth and early-twenty first century. It is the aim of this paper to investigate these legitimating philosophical frameworks, which very often depart from traditional liberal or democratic political theory, by considering the South African Truth and Reconciliation Commission.

The following is divided into three sections. In the first section, I will rehearse the historical context of the South African Truth and Reconciliation Commission (TRC), including the forty-year system of apartheid and the transition to democracy in the early 1990s, in order to demonstrate the legitimacy of analyzing the South African TRC as a “model” case. In the second section, I will discuss two particular philosophical themes, which I view as central to the legitimating theoretical foundation of the TRC: transitional truth and historical justice. In the final section, I will address some of the objections to the TRC that can be found in the contemporary literature surrounding Truth Commissions and transitional justice, with an aim to answering these objections in light of my treatment of transitional truth and historical justice.

Though the particular historical details of each Truth Commission are essential to understanding all of the nuances of its construction and objectives—as well as the degree of its success or failure—my purpose here is not primarily to give a history of the South African TRC. Rather, I hope to develop a critical analysis of the philosophical assumptions and positions that informed the constitution, implementation, and operation of the Truth and Reconciliation Commission. To that end, the following should be understood as a philosophical treatment of what has come to be a genuinely new political form, requiring new philosophical frameworks. My own philosophical methodology is largely informed by the recent tradition of deconstructive analysis, which aims to solicit the way in which various philosophical systems are disrupted and revised under the pressure of their own internal contradictions. Hence, my treatment of the themes of transitional truth and historical justice are intended to highlight the manner in which the TRC opens up

new avenues of political thought within the traditional liberal-democratic discourse of truth and justice.

### I. HISTORICAL CONTEXT OF THE SOUTH AFRICAN TRC

The most obvious starting point when considering the historical context of the TRC is the forty-year system of state racism in South Africa, beginning in 1948 with the election victory of the Afrikaner National Party (NP), which went by the name *apartheid*. Apartheid was, of course, the brutal system that South African was transitioning *from* in what came to be known as the “new dispensation” of a culture of human rights.<sup>1</sup> Even prior to the TRC’s official denouncement of it, apartheid had been declared a crime against humanity in many international contexts.<sup>2</sup> However, the Commissioners’ own view of the context of the TRC was much broader. Despite the fact that the Commission’s Mandate limited its investigations to violations of human rights committed or suffered in the course of political acts between the years of 1960–1994, the TRC *Report* notes that these years, and apartheid itself, must be placed in the larger context of a protracted history of racialized human rights violations in South Africa. To that end, I will begin where the Commission began and attempt to follow their narration, though in a decidedly more abbreviated manner.<sup>3</sup>

Like many states, South Africa marks the beginning of its tragedy of racial violence with the invasion of European colonial settlers and the brutal institution of slavery between 1652 (when slaves were first imported to the Cape) and 1834 (when slavery was officially abolished). Although it has been argued that the Dutch East India Company did not originally envisage the use of slave labor in their settlements, by the mid-seventeenth century, when the company imported its first two shiploads of slaves (one from Angola and another from Dahomey), the Cape had set itself on a slave labor-dependent economic course from which it would not retreat for some two centuries (Thompson, *HSA*, 36). Almost simultaneously, European settlers embarked upon many wars of “dispossession and colonial conquest,” including the so-called “frontier conflicts” between white settlers and the Khoisan (*TRCSAR*, Vol. 1, 25). From 1659 to 1906, white European settlers continued their northward conquest of Southern Africa, until the armed resistance effectively ended with the Bambatha uprising of 1906. The seventeenth and eighteenth centuries were marked by the systematic elimination of indigenous peoples (particularly the

San and Khoi-khoi) by both Boer and British settlers. The "Great Trek" of the Afrikaners, which would come to occupy a central place in Afrikaner nationalist identity formation, and the African nationalists' *difaquane* or *mfecane*, involved protracted and bloody battles between the Afrikaner trekkers and indigenous Zulu populations over the rights to the South African frontier.<sup>4</sup> By the turn of the twentieth century, the conflict between the British and the Afrikaners also escalated, culminating in the South African War of 1899–1902, and the forced detention of Afrikaners in concentration camps, where almost twenty thousand died.<sup>5</sup> Finally, in recounting the chain of events leading up to the institution of apartheid in the mid-twentieth century, the *Report* also notes the genocidal war directed at the Herero people by the German colonial administration in South West Africa, which brought them "to the brink of extinction."<sup>6</sup>

Even in the deceptively compact form with which the TRC *Report* presents it, the narrative history of human rights violations in South Africa is striking. The legacy of European exploitation and expropriation yielded a particularly virulent strain of racism in South Africa that has modified itself slightly over the years, but never disappeared. In the years immediately following the South African War, and as one of the first acts of the post-unification South African Party government, Alfred Milner's administration undertook what can only be described as an Anglicizing strategy of social engineering that would serve as a preamble to Afrikaner apartheid. In 1913, the Land Act dispossessed black South Africans of all but 7% of the land, effectively re-mapping the entire nation according to the territorial separation of blacks and whites. As the TRC *Report* notes, the Land Act "set in motion a massive forced removal of African people that led, amongst other things, to the deaths of many hundreds of people who found themselves suddenly landless" (TRCSAR, 27). Solomon Plaatje, in his early history of black South Africans' experience of the 1913 Land Acts, recounts a story of a couple who, along with their young child, had been forcibly removed from their land and found themselves suddenly homeless. After days of travel, the child grew sick and eventually died. Plaatje writes: "Where could they bury the child? They had no right to bury it on any land. Late that night, the poor young mother and father had to dig a grave when no one could see them. They had to bury their child in a stolen grave" (NLSA, 83–4).

The land of Southern Africa was stolen from the indigenous black majority on a grand scale. In 1909 the South Africa Act,

passed by the British Parliament, consolidated Britain's four colonies into one nation, which was granted juridical independence under a constitutional arrangement that transferred power to a minority of white voters. Disenfranchisement was added to dispossession when, in the 1936 Representation of Natives Act, African voters in the Cape were denied voting rights. By 1948, the racialized social engineering project of South Africa, begun by the British and Boers, yielded its intended result. The Afrikaner National Party, campaigning under the slogans of Afrikaner Christian-Nationalism and an attention to the growing "poor white problem," took control of the South African government under the leadership of *Die Doktor*, Daniel François Malan. The National Party would immediately usher South Africa into the era of apartheid, from which it would not emerge for over forty years.<sup>7</sup> To further cement its authority and reduce the likelihood of its ouster in future elections, the National Party passed the 1956 Senate Act, which disenfranchised so-called "Colored" male voters. In conjunction with the early anti-British rhetoric of the National Party, the overriding ideology emerging from 1948 on centered around a policy of racial exclusivity, in which the nation of South Africa was to be shaped by and for Afrikaners.

The TRC Commissioners acknowledge that, in one sense, legal apartheid was simply the next step in a long development of increasingly stringent *de facto* segregation. Many of the laws enacted during the apartheid era were simply updates on systems of exclusion already in place (for example, the industrial Color Bar and limited African property and voting rights). However, apartheid was unique in the level of attention paid to the implementation of official segregationist legislation on the most micro-level of social and political life. The Commissioners write:

the apartheid system was of a qualitatively different type. No longer content to tolerate a *de facto* pattern of segregation in which "gray" areas of social mixing remained—such as in urban residential patterns and interracial personal contacts and relationships, including marriage—from 1948, the new government set out to segregate every aspect of political, economic, sporting, and social life, using established legal antecedents where they existed and creating them where they did not. Although making use of the forms of democracy (elections, proper legislative processes and so on), it constructed a totalitarian order that was far from democratic. Apartheid sought to maintain the *status quo* of white supremacy through the implementation of massive social change. It was thus an ideology, simultaneously of change and of

non-change; or alternatively, perhaps, of reactionary change (TRCSAR, Vol. 1, 29–30).

Apartheid legislation itself, the worst of which was enacted between the years of 1948 and 1960, constituted a system of human rights violations against non-whites. Among the most significant pieces of legislation that sedimented the system of apartheid were seven Acts, which the TRC *Report* singles out for their devastating import. These include: the Population Registration Act of 1950,<sup>8</sup> the 1950 Group Areas Act,<sup>9</sup> the 1949 Prohibition of Marriage Act and the 1950 Immorality Amendment,<sup>10</sup> the 1950 Suppression of Communism Act,<sup>11</sup> the 1953 Separate Amenities Act,<sup>12</sup> the 1953 Bantu Education Act,<sup>13</sup> and the 1959 Extension of University Education Act.<sup>14</sup> Almost entirely within the first decade of their coming to power in South Africa, the National Party had begun a successful and overwhelming “white counter-revolution” (Kuper, AN).

A litany of legislation hardly tells the whole story of apartheid, however, nor does it give an adequate historical context for the TRC. Apartheid’s systematic, brutal, state-sanctioned racism literally ripped the South African nation asunder, and then “recreated [it] in the image of a series of racist utopias” (TRCSAR, Vol. 1, 34). In the 1960s and 70s, as Afrikaner Christian-Nationalism continued to entrench itself in legislation, the liberation movement of black South Africans became more militant. Still suffering under an official ban by the South African state, both the African National Congress (ANC) and the Pan-African Congress (PAC) developed militant youth wings, named *Umkhonto weSizwe* (MK, or “Spear of the Nation”) and Azanian People’s Organization (AZAPO), respectively. Additionally, the 1960s brought with it a newly radicalized non-white student and labor movement. South African Black Nationalism joined the wider international movement in the Black Consciousness philosophy of Steve Biko who, along with Nelson Mandela and others, became the voices and faces of the anti-apartheid struggle.<sup>15</sup> Some pressure also came from the international business sector throughout the 1970s and 80’s as the result of international boycotts and anti-apartheid sentiment in Europe and North America.<sup>16</sup>

As in most political movements, South Africa’s anti-apartheid struggle had its own flashpoints, which galvanized both sides. The story of apartheid cannot be told without focusing on two central events, the Sharpeville Massacre of 1960 and the Soweto Uprising of 1976. (Significantly, the TRC’s Mandate authorizes the Commission to begin its investigations with the year 1960, widely viewed

as the beginning of the worst years of apartheid's violations.) Frustrated with the oppressive system of "pass laws,"<sup>17</sup> and mobilized by the increasingly active organization of the ANC and PAC, black South Africans descended in protest on a police station in Sharpeville in 1960. Despite their obvious protection in armored cars, the police opened fire on the crowd, killing sixty-nine and wounding more. Subsequently, the apartheid government stepped up its pressure against the liberation movement by declaring a state of emergency and, more significantly, officially banning the ANC and PAC. Both the ANC and PAC movements went underground or into exile, and both shifted more resolutely to a strategy of armed struggle after Sharpeville. Additionally, Sharpeville ushered in the era of the "Vorster laws," named after NP *Hoofleier* and Nazi sympathizer Baltazar Vorster.<sup>18</sup> (Prime Minister Hendrik Verwoerd, and after him Prime Minister Vorster, are largely responsible for implementing "Grand Apartheid" and the ensuing oppressive "security" state, respectively.) In 1976, at the height of student activism in South Africa, students took to the streets of Soweto in a series of demonstrations protesting the Bantu Education Plan in general, and in particular the requirement that all schooling be administered in the Afrikaans language (the "language of the oppressor"). Like Sharpeville before it, the Soweto rebellion became a focal point for police violence against protestors, resulting in hundreds of deaths. Also like Sharpeville, the police force clamped down on the resistance movement in general, arresting student leader and Black Consciousness activist Steve Biko, who mysteriously died in police custody. Unlike Sharpeville, however, Soweto galvanized the anti-apartheid struggle in empowering ways. Symbols of the resistance proliferated—the clenched fist, the slogan *amandla awethu* (power to us, the people), the singing of *Nkosi Sikelel iAfrica*—and the collective memory of Soweto took on a symbolic meaning that was substantially different than Sharpeville. Dan O'Meara, in his account of Afrikaner political thought, recognizes the significance of Soweto in the following:

Yet unlike Sharpeville sixteen years earlier, "Soweto" entered South African political culture not as a massacre, but as a proud and glorious rebellion. Those who died were not seen as victims of apartheid but as heroes in the struggle to overthrow it. Soweto showed that significant numbers of urban black South Africans no longer perceived themselves as the passive victims of white power, but rather as the active makers of their own history. (*FLY*, 180)

Of course, according to the ideology of Grand Apartheid, Soweto was hardly "proud and glorious." Rather, Soweto signaled a real threat to the integrity of the white-nationalist project, a "crisis of apartheid," and many attribute the increase in state-sanctioned repression to this perceived threat.

The entry of P. W. Botha as NP Prime Minister in 1978 inaugurated the era of "Total Strategy" reforms. South Africa was in crisis, and Botha inherited the advantage forged by his predecessor, Vorster, who had redefined the terms of the conflict in broader racial terms.<sup>19</sup> When the *verkrampptes* were expelled from the National Party in 1969, it was mostly as a result of a persistent ideological conflict that had finally reached its apex. The question was whether the NP "was to remain the vehicle of exclusively Afrikaner nationalism, or had it become the bearer of a broader, bilingual, white South African nationalism?" (*FLY*, 265). Vorster accepted the latter, effectively broadening the support base of apartheid by expanding the population who viewed it in their best interest. Botha, like Vorster before him, viewed the decisive terrain of the struggle to be the domain of public opinion, and borrowed heavily from conservative ideologues of modern conflict, mainly General André Beaufre (former commander of French forces in Algeria) and Samuel P. Huntington (American political scientist and theorist of "modernization," especially with respect to the Vietnam conflict).<sup>20</sup> In order to address the fundamental problems of South Africa, Botha's Total Strategy ideology explicitly set out "to redefine three important elements of official discourse: the nature of the 'war'; its contending forces—the definition of self ('us') and of the other ('them'); and the broad lines of Beufrian defense ('compromise' or solution)" (*FLY*, 264). The "Total Strategy" was thus conceived with an aim towards conflating military and political strategy, such that the overall success of any and all proposed reform depended on an absolute concentration of power in the National Party central government.

The 1982 White Paper on Defense set out, unambiguously, the Total Strategy view of apartheid's crisis. In Botha's words, the Republic of South Africa was experiencing a "full onslaught of Marxism" (*FLY*, 265). The ideology of Total Strategy purported that South Africa's crisis was not merely one of *racial* conflict, as evidenced by the Western powers' (whom Botha viewed as complicit in the schemes of Moscow) abandonment of South Africa. Rather, as Botha told Parliament, the conflict was between "the powers of chaos, Marxism and destruction on one hand, and the powers of



Christian civilization and the upliftment of people on the other" (*FLY*, 265). Explicit racial/racist rhetoric gave way to pragmatic economic rhetoric, focused on remodeling domestic and regional politics in such a way as to ensure South Africa's survival. Botha's famous warning to his constituents—"adapt or die"—galvanized widespread support for his technocratic, rationalistic and strategic ideology of reform. White capitalists and "securocrats" backed the general ideology of the Total Strategy in the hopes that adaptation would, in fact, result in the survival of South African apartheid.

By the mid-eighties, however, the structural problems of the Total Strategy and later the strategy of low-intensity domestic warfare, combined with increasing black resistance to Botha's reforms, signaled the beginning of the end of apartheid.<sup>21</sup> In 1986, a State of Emergency was declared, which only brought the costs of counter-revolutionary activity to bear more heavily on the apartheid state. Botha's administration had consistently alienated large segments of the Afrikaner base of the NP, and was struggling for new ideas to rally them again. International sentiment was again shifting heavily against the NP regime. South Africa's second major military crisis in Angola further divided the already polarized NP sharply and sounded the death-toll of apartheid. O'Meara sums up the end of Botha's administration:

After forty years in power, the National Party had come to recognize that its historic mission to impose apartheid on South Africa had failed. Key moral brokers of the Afrikaner establishment were even harsher in their judgment. While P. W. Botha could declare apartheid a "mistake," and F. W. de Klerk acknowledged that the NP's policy was "on the rocks," the entire society remained imprisoned in the crumbling but still standing ruins of apartheid. Yet the NP government seemed completely unable to demolish their foundations, and clung to power with petulance and viciousness. (*FLY*, 381)

Botha's successor, F. W. de Klerk, was a man without many options. Inheriting the failures of Botha's reformist strategy, unable to repeat anything like the 1986 crackdown without committing political suicide, de Klerk simply was forced to try what had been unthinkable for almost forty years.

The National Party, in the words of Pik Botha, had "run out of alternatives" (*FLY*, 402). By 1989, the ANC began signaling their willingness to negotiate and, under international pressure to do so, de Klerk realized that he must release ANC political prisoner Nelson Mandela. De Klerk's Cabinet tried desperately to come up

with strategies to recapture the Afrikaner initiative, but very soon realized that “when P. W. Botha had jettisoned Verwoerd’s version of ‘moral’ apartheid for the dubious experiment of ‘power-sharing’ in the early 1980s, [the NP] had cast off a priceless political resource—the morality of its own project” (*FLY*, 402). Measure by measure, de Klerk began inching the National Party, and apartheid, toward its end. On February 2, 1990, the decades long ban on the ANC and PAC was lifted, and the South African Communist Party was de-criminalized. Nine days later, Nelson Mandela was released from prison. Negotiations with the ANC began and with them the general outline of a restructuring of South Africa. Joint government/ANC declarations (known as the Groote Schuur and Pretoria Minutes) laid out the timetable: talks (1990), negotiations (1991/2), abolition of statutory apartheid (1991/2), a referendum (1993), and implementation (1994) (*FLY*, 405).

The negotiations period and the transition to South Africa’s new democracy was a tense, and sometimes bloody, enterprise. Factional differences and allegiances flared, not only between the NP and ANC, but also Inkatha Freedom Party (IFP), PAC, AZAPO, the Democratic Party (DP) and the South African Communist Party (SACP). Very often, more progress was made in response to activities *outside* of the negotiating room—boycotts, strikes, mass demonstrations, and even assassinations—than inside. Nevertheless, the ANC and the NP were able to construct a draft constitutional agreement by the end of 1993, which led to the first truly democratic elections in April of 1994 and the establishment of a “Government of National Unity.”<sup>22</sup> The elections were sanctioned as free and fair by independent monitors, and on May 10, 1994—three hundred and forty-two years after the Dutch East India Company formed a settlement on the Cape of Good Hope—Nelson Mandela was sworn in as the President of the new Republic of South Africa. The dominant theme of Mandela’s inaugural address was reconciliation. Taking over a country literally racked with the cumulative effects of racism, colonialism and apartheid, Mandela invoked the image of a New South Africa:

Out of the experience of an extraordinary human disaster that lasted too long, must be born a society of which all humanity will be proud. . . . Never, never, and never again shall it be that this beautiful land will again experience the oppression of one by another. (Thompson, *HSA*, 264)

Mandela immediately began a series of symbolic public acts intended to cement his commitment to reconciliation in the public

eye.<sup>23</sup> Arguably, the greatest of these was the setting up of the Truth and Reconciliation Commission.

Based on precedents in Latin America and Eastern Europe that had recently experienced transitions from oppressive regimes, the South African Truth and Reconciliation Commission Mandate authorized it to investigate human rights violations since March 1960 (the same month as the Sharpeville Massacre). Unique to the South African TRC was the fact that it would conduct its business in public hearings, and that it would be given the power to subpoena witnesses and to grant amnesty to individuals.<sup>24</sup> What is sometimes overlooked in considering the context of the TRC is that in both 1992 and 1993, the ANC independently conducted two different Truth Commissions (known as the Skweyiya and Motsuenyane Commissions) involving inquiries into the abuses the ANC inflicted on some of its own members while imprisoned or detained. Because a semi-corrupt judicial system, as well as the scope of involvement in the crimes of apartheid, made criminal prosecution logistically impossible, South Africans were forced to look for other means to satisfy the collective need for justice during the transition. The aim of the Truth and Reconciliation Commission was to bridge the racial abyss in South Africa, to forge some common understanding of South Africans' shared past under apartheid, and to promote reconciliation in the interest of the future of the incipient democratic dispensation.

In sum, the South African Truth and Reconciliation Commission is model case for investigating the themes of transitional truth and historical justice for a number of reasons. First, South Africa's crisis is indicative of the wider post-colonial crisis, in particular the way in which social and political issues have been polarized along racial lines. The TRC understood itself to be a potential salve for strained and often broken race relations, which over centuries of state-sanctioned racism had sedimented into an almost intransigent civic attitude. If one is committed to viewing race as an essential element in the "truth" of contemporary political discourse, the South African TRC points the way to how this discourse needs to be rewritten. Secondly, the South African TRC operated under the assumption that setting straight the historical record was itself a form of justice. That is, the master narrative of apartheid had not only erased non-white experience from the official history and collective historical consciousness of South Africa, but the human rights violations committed in the name of apartheid literally "disappeared" many of the men and women who

were violated.<sup>25</sup> Often, the justice that the TRC was able to bring about centered on no more than disclosing the fate or location of a body. Confronting the facts of past crimes in a public forum, in the view of the TRC, was the only way to clarify and acknowledge the truth, to respond to the needs and interests of victims, and to contribute to justice and accountability in the absence of an effective system of retributive justice. Finally, the South African TRC was explicitly committed to the idea of national reconciliation, which makes it unique in one sense among other Truth Commissions,<sup>26</sup> but I contend that this very uniqueness also makes it a better model for analyzing what kind of normative philosophical principles such commissions may offer.<sup>27</sup> Of the twenty-one Truth Commissions to date, it is arguable that the most successful have been those committed to national reconciliation.<sup>28</sup> Archbishop Desmond Tutu, Chairperson of the TRC, noted repeatedly that the sort of truth and justice that the TRC was pursuing was indispensable to the kind of future for which South Africans hoped (*NFWF*, 1999). With Tutu's proviso in mind, I will now turn to two philosophical themes of the TRC that help productively link oppressive histories to liberatory futures.

## II. TRANSITIONAL TRUTH AND HISTORICAL JUSTICE

The complicated project of evaluating Truth Commissions, in one sense, already begins on the nether side of one of the most difficult practical and theoretical questions facing societies in transition. That is, the existence of Truth Commissions *per se* signals a commitment to what has come to be known as a "politics of memory." In recent scholarship, some have taken exception to the notion that transitional justice is best served by a collective commitment to or reconstructing of memory, and have instead suggested that "forgetting," if not more healthy, is at the very least less divisive and destructive for nations emerging from oppressive regimes.<sup>29</sup> Hence, I must acknowledge at the outset that my analysis of the South African TRC already bears within it certain evaluative assumptions, namely: (1) that there is a necessary link between truth and justice or, stated differently, that justice remains deficient inasmuch as it does not pursue a disclosure of the truth of the injustice committed, (2) Truth Commissions are the effective culminations of a commitment to the politics of memory, and (3) as Charles Maier states, the form of the Truth Commission "suggests that societies and historians can establish narratives that are

emancipatory and not simply efforts to control history or to channel the transition from one dominating culture to another. *But a truth commission itself does not complete this narrative task; it only offers us the possibility—an advance, to be sure, but hardly a guarantee either of justice or democracy*" (Maier, *DHDJ*, 273).

The Commissioners of the South African TRC contributed immensely to the theoretical scholarship of such an endeavor by including a section in their *Report* on the "Concepts and Principles" sustaining their work. In this section, the Commissioners address the four "notions" of truth that guided their investigations: factual or forensic truth, personal or narrative truth, social or "dialogic" truth, and restorative truth (*TRCSAR*, Vol. 1, 110–4). The performative effect of this taxonomy of truth, I will argue, indicates that the classic metaphysical conception of truth as a fixed and stable category is already disrupted. By dissociating and delegating the differential operations of truth, the Commissioners implicitly acknowledged that the figure of the truth they were constructing was, by its nature, already in transition. We must keep in mind that the truth constructed and sanctioned by the TRC, in the end, would be measured primarily by what it could *do*; specifically, the TRC sought a truth that could serve as the basis for reconciliation. The intimate relationship between the imposition of power and the control of knowledge was, at one and the same time, what the TRC was attempting to disrupt and reorient. Embedded in the power regime of apartheid was an elaborate structure of lies, and the TRC aimed to resist the perpetuation of both those lies and the oppressive form of power that they generated. Yet, the Commission was not giving up on "truth" altogether, or simply conflating the veracity of a certain narrative with the occupation of the dominant power position. Rather, the TRC's conscientious diffusion of the meaning of "truth" aimed at the provisional and transitional nature of truth, a kind of empowering critical element within truth that could only come from the position of the powerless. Before explicating the notion of transitional truth that I would argue served as the basis for the TRC, however, I will briefly rehearse the multivalent definition offered by the TRC in their *Report*.

### 1. *Factual or Forensic Truth*

The first sense of truth that the TRC notes is, theoretically speaking, the most familiar one. Factual or forensic truth corresponds to the common "legal or scientific" conception of truth as a

“bringing to light [of] factual, corroborated evidence, of obtaining accurate information through reliable (impartial, objective) procedures” (Maier, *DHDJ*, 111). The Promotion of National Unity and Reconciliation Act, no. 34, of 1995 (henceforth, the Act) required the Commission to examine factual or forensic truth in two different areas. First, the Commission was to make findings on the level of *individuals*, that is, “what happened to whom, where, when and how, and who was involved?” (111). To the best of its abilities, outside the strictures of a legal process, the TRC adopted a method of verification and corroboration for the testimonies that it heard and accepted in order to establish the facts of individuals’ situations. Secondly, the Act mandated that the TRC make findings of factual or forensic truth on a *systemic* level; the Commission was to comment on the “contexts, causes and patterns of violations...to report on the broader patterns underlying gross violations of human rights and to explore the causes of such violations” (111). This proved to be more difficult.

Michael Ignatieff has argued, “all that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in public discourse” (*AF*, 113). One of the most formidable obstacles to the pursuit of factual or forensic truth on a *systemic* level is that Truth Commissions are forced to rely on the cooperation and honesty of perpetrators in uncovering the details of abuses and violations committed by the former regime. As a result, the completeness of the reconstructed truth narrative is inherently limited by the willingness of perpetrators to participate in the process of reconciliation. Most perpetrators who testify before Truth Commissions are reluctant to disclose the full extent of their responsibility or complicity in human rights violations—and consequently are reluctant to disclose the full extent of the violations themselves—or (as in the famous case of Adolf Eichmann (Arendt, *EJ*, 1963)) they tend to disseminate responsibility over a large bureaucratic enterprise that itself dissimulates factual truth. Given the challenge of these limitations on factual or forensic truth, as well as a recognition of the importance of reconstructing some viable narrative of systemic abuses, the TRC realized that it was necessary to turn to supplementary conceptions of truth if they were to honor the spirit of their mandate.

## 2. *Personal and Narrative Truth*

The TRC acknowledged that in the South African context, where the value of oral tradition is paramount, the process of personal storytelling by both perpetrators and victims was indispensable to unpacking the multi-layered truth of the experience of apartheid. Archbishop Tutu repeatedly emphasized the Commission's responsibility to listen to anyone and everyone who appeared before it, such that "everyone should be given a chance to say his or her truth as he or she sees it."<sup>30</sup> The notion of personal or narrative truth also derives from the psychoanalytic model, where the "talking cure" is emphasized in the process of healing traumatized psyches (Brauer, *CAO*, 60-77). The South African TRC provided an environment in which deponents could "tell their own stories in their own language," in hopes of contributing to the reconciliation process by way of validating the "individual subjective experience of people who had previously been silenced or voiceless" (*TRCSAR*, Vol. 1, 112). Factual or forensic truth, it was demonstrated, inevitably left gaps in the knowledge it was meant to convey. Personal stories, perceptions, myths and experiences allowed for a much wider record of South Africa's collective past, even if it was a conflictual or self-contradictory record. Further, the uncensored validation of victims' personal accounts went a long way towards diminishing the stronghold of apartheid's "master discourse," as emphasis shifted away from the conservative perspective of the victor to the critical perspective of the victim.

It was, naturally, impossible to collate all of the personal and narrative truths into one coherent story. Yet, the value of personal or narrative truth is not to be found in the production of a master narrative (as is the ostensible aim of factual or forensic truth), but rather to serve primarily as a supplement. In addition, personal narratives in the context of the TRC, as opposed to the context of criminal trials, offered an opportunity to uncover lessons that would not have met the strictest requirements of legal admissibility. Hence, the addition of personal narratives as a supplemental truth category was a decision on the part of the TRC to opt for, in the words of Antjie Krog, "the road... to restoring memory and humanity" (*TRCSAR*, 113). Investing value in the personal narratives of victims was equivalent to restoring their positions as legitimate subjects and citizens in the new dispensation. Contrasting the respective values of factual or forensic truth and personal or narrative truth, Rudi Teitel writes:

If the commissioners offer the moral authority of voices of political dispassion and neutrality, victims conversely offer the moral authority of the impassioned voices of those who suffered state horror firsthand and up close. The victims of prior oppression are the historical inquiry's primary source of evidence, the stewards of the nation's newfound history. . . . Those who previously suffered most at the hands of the state become its most credible witnesses and authoritative voices. When the victims' testimony is narrated by the commissioners' quasi-state authors, it becomes a shareable truth, a national story, and the basis of transitional consensus. (*TJ*, 82)

That is to say, personal narratives offer a historical truth from the point of view of the least advantaged, and thus the point of view with the most critical force. However, factual truth, even when supplemented with personal narrative, still ran the risk of producing a kind of myopic interpretation of events. The focus on individual facts or individual experiences needed further supplementation in order to fulfill the TRC's mandate to address systemic violations.

### 3. *Social Truth*

Judge Albie Sachs, a central contributor to the debates preceding the establishment of the TRC and later a Constitutional Court judge, made a distinction between what he called "microscopic truth" and "dialogic truth" in the following: "The first [microscopic truth] is factual, verifiable and can be documented and proved. 'Dialogue truth,' on the other hand, is social truth, the truth of experience that is established through interaction, discussion, and debate" (Boraine, *HN*, 109). The TRC Commissioners viewed social or dialogic truth to be the link between its actions and aims. By way of its public format, the TRC generated a wide scale "interaction, discussion and debate" between victims, perpetrators, academics, non-governmental organizations (NGO's) and the national and international citizenry. Although not bound by the same rules as standard legal proceedings, the TRC's processes were governed and guided by a conscious effort to provide an environment in which all views could be heard impartially and weighed rationally against one another.

The philosophical grounds for rational and deliberative social truth are perhaps best found in the literature surrounding deliberative democracy.<sup>31</sup> The TRC Commissioners themselves make a veiled reference to this tradition when they write that, in their view, it was "through dialogue and respect that a means of pro-



moting transparency, democracy and participation in society was suggested as a basis for affirming human dignity and integrity" (TRCSAR, Vol. 1, 114). The actual findings of the Commission were, in principle, subordinate to the integrity of the process by which the truth was pursued. The emphasis on social truth and the rational and deliberative process of its production demonstrated, in the opinion of the TRC, a commitment to a particular set of "norms of social relations" (TRCSAR, 114). Central to these normative social relations, which the TRC was both reflecting and promoting, was the indissociability of establishing the truth and affirming the dignity of human beings. National reconciliation was not possible without first cementing the foundations of rational truth and the moral worth of political subjects. To that end, the TRC's commitment to dialogic truth underscored their adoption of, in broad terms, the traditional liberal-democratic discourse of rational and autonomous citizens and subjects, capable of effectively deliberating about collective meaning and values.<sup>32</sup>

#### 4. *Healing and Restorative Truth*

As a final truth category, the Commissioners offered what has become a central concept in the literature surrounding reconciliation and transitional justice: "restorative" truth. In the very project of explicating a taxonomy of truth, the Commissioners realize that such an undertaking:

"explicitly rejects the popular assumption that there are only two options to be considered when talking about truth—namely, factual, objective information or subjective opinions. There is also 'healing' truth, the kind of truth that places facts and what they mean within the context of human relationships—both among citizens and between the state and its citizens. This kind of truth was central to the Commission." (TRCSAR, Vol. 1, 114)

The TRC was mandated to conduct its investigations with a view to both the past and the future. Part of its work could thus be framed in the classical epistemological paradigm, that is, an investigation meant to acquire *knowledge* about the events and experiences of apartheid. However, in order to transform this knowledge into an active agent for change in the future, the TRC needed something more. What was needed was some means of creating a common memory, such that the citizens of South Africa could collectively work against the repetition of both the objective fact and the subjective experience of apartheid. Consequently, the Commis-

sioners argued that *knowledge* must be supplemented by *acknowledgment*. Objective, factual information alone was epistemologically valuable, but not necessarily morally or politically valuable. Acknowledgement of the knowledge that the Commission acquired meant that information was placed on a public record, to be shared as a truth-in-common, which would ostensibly serve as a foundation for reconciling the subjective experiences that isolated South Africans from one another.

Acknowledgment understood as the construction of an official, public and shared narrative is a double-edged sword. Among other things, it runs the risk of mimicking the form of "victor's justice," that is, the reinstatement of truth as the exclusive prerogative of the powerful. The Commissioners did argue that healing or restorative truth *qua* acknowledgment was "central to restoring the dignity of victims" (TRCSAR, 114). However, it is also the case that one of the primary functions of restorative truth is to bridge the abyss between the divisive categories of "perpetrator" and "victim," to reconcile each with his or her humanity in order to restore the common humanity of all. The idea and experience of a common humanity was itself a casualty of apartheid, and perhaps is the primary meaning underlying the term "crime against humanity" in that context Cynthia Ngewu, the mother of one of the individuals known as the Gugulethu Seven, embodied this vision in her testimony:

This thing called reconciliation . . . if I am understanding it correctly . . . if it means this perpetrator, this man who has killed Christopher Piet, if it means that he becomes human again, this man, so that I, so that all of us, get our humanity back . . . then I agree, then I support it all. (Krog, CMS, 142)

Public acknowledgment of the price that South Africans paid during the apartheid years, in the form of the TRC's officially sanctioned "truth," restored the human dignity of both perpetrators and victims. Hence, the final category of "healing" or "restorative truth" is meant, in many ways, to combine and activate the other three definitions of truth employed by the TRC.

Antjie Krog, a reporter with the South African Broadcasting Company who was assigned to cover the work of the TRC, argues that in the absence of a substantial relationship to which South Africans could (or would want to) return, restorative truth was less about "reconciliation" than simply "conciliation" (CMS, 143). However, TRC Chairperson Desmond Tutu invokes African *ubuntu* philosophy as a counterpoint.<sup>33</sup> Tutu, in describing the nature and importance of *ubuntu* for restorative justice and truth, writes:

You can only be human in a humane society. If you live with hatred and revenge in your heart, you dehumanize not only yourself, but your community... In the African *Weltanschauung*, a person is not basically an independent, solitary entity. A person is human precisely in being enveloped in the bundle of life. To be... is to participate. (CMS, 143)

Tutu acknowledged the background of the constitutional commitment to “a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization” (CMS, 126). *Ubuntu* philosophy assumes that human beings are always already related in their humanity; on such account, every conciliation is a reconciliation. Part of what was being liberated in the new democratic dispensation was just such traditional “African” value systems.

##### 5. *The Effective Meaning of the TRC Taxonomy*

As I implied at the outset of this explication of the TRC’s taxonomy of truth, the Commissioners’ careful delegation of the different operations of truth reveals two theoretical assumptions in their work: (1) the traditional metaphysical conception of truth as a stable, fixed, and primarily epistemologically valuable category is inadequate, and (2) alternatively, South Africa’s “truth” had to be measured by what it could *do*, in this case, by how well it could contribute to the ethical and political work of national reconciliation. Consequently, as demonstrated above, the TRC found it necessary to provide a rich and multivalent definition of truth, which is best understood as a truth proper to the particular situation of a polity-in-transition. *Transitional truth*, I propose, is a composite category that can synthesize the various meanings of truth that the TRC provides, and is helpful in beginning to articulate the philosophical foundations and implications of the Commission. Further, I argue that the value of *transitional truth* is best understood in the context of *historical justice* (rather than, primarily, retributive or even compensatory justice). The normative claim here is that the work of establishing the truth about a state’s past wrongs, although necessarily contentious and transitional, is itself a form of instituting accountability and responsibility and is essential to any liberatory political transition.<sup>34</sup>

As Rudi Teitel suggests, the historical accountings pursued and ultimately provided by Truth Commissions are “less foundational than transitional” (TJ, 70). They do not arise in a vacuum,

and are not simply uncovered whole cloth. Rather, the truth of Truth Commissions is itself a process of constructing and reconstructing a common narrative, tempered by both the historical accounts already in place as well as a liberatory vision of the future that motivates the desire for change. Political transitions are instances of “conscious historical production,” when the “politicized nature of history often associated with repressive rule is exposed” by the responses of those who have been oppressed (*TJ*, 70). Inasmuch as every political regime bears within it its own truth regime, we must understand transitional societies and Truth Commissions as instituting a fundamentally performative critique of the formerly repressive truth regime. In *Power/Knowledge*, French theorist Michel Foucault reminds us: “Each society has its regime of truth, its ‘general politics’ of truth; that is, the types of discourse which it accepts and makes function as true” (*P/K*, 131). Thus, the distinctness of the content or substance of a transitional truth regime will depend on the degree of critical transformation it performs. Ignatieff’s suggestion regarding Truth Commissions’ ability to “reduce the number of lies” that can go unchallenged in public discourse can be seen as both a negative and positive definition of transitional truth. Negatively, transitional truth performs the operation of critically de-legitimizing the claims of the previous repressive truth regime—the very same claims that buttressed and authorized the power of the repressive socio-political regime. Positively, transitional truth opens up the arena of legitimacy to previously silenced or contested accounts, and in so doing, constructs a wider “net” of authority. Hence, transitional truth, understood as the primary justificatory episteme of political transformation, allows for not only an essentially democratic, but also liberatory, reconstruction of a shared historical narrative.

In situations of transition from oppressive to liberatory politics, the pursuit of historical truth is itself an attempt to de-legitimize the predecessor regime while at the same time establishing the legitimacy of the successor regime (Teitel, *TJ*, 72–3). Repressive political states very often rely on their power to control information (or later, to deny information) about the methods of their oppression. Particular historical accounts are always associated with particular historical regimes, though “the uses of knowledge in politics are generally obfuscated by those in power” (*TJ*, 72–3). However, as the TRC demonstrates, recognition of this fact does not necessarily mean that the new (liberatory) objective is to be

viewed as reductively replacing a “false” history with a “true” one. Warning against this temptation, Teitel writes:

Yet, the assumption that “truth” and “history” are one and the same evinces a belief in the possibility of an autonomous history of the past belying the significance of the present political context in shaping the historical inquiry. However, modern theorizing about historical knowledge considerably challenges this conception. When history takes its “interpretive turn.” there is no single, clear, and determinate understanding or “lesson” to draw from the past but, instead, recognition of the degree to which historical understanding depends on political and social contingency. (*TJ*, 70)

There is, and must be, a dynamic interaction between the “old” historical account and the “new” historical account in order for something like historical justice to be done to a collective experience. For example, the findings of the TRC, in particular the reports of victims’ testimonies, must be understood as “counter-accounts” that in their very form advance a “critical” reformulation of the former apartheid regime’s historical narrative. The historical account that the TRC constructed was “emplotted”<sup>35</sup> in deliberate ways that explicitly responded to the prior regime’s own accounts, e.g., by categorizing certain deponents as “victims.” Thus, by responding to and refuting the predecessor regime’s account in juridical categories that the previous regime also shares, the TRC is able to construct a “critical truth” of victims that does not pretend to be wholly discontinuous with or unintelligible to the “perpetrators.”

Transitional truth, as long as the transition is *from* oppressive regimes *to* liberatory ones, can be viewed as concomitant with critical truth. In the process of constructing transitional truth, Truth Commissions can help constitute a transformative normative order that emphasizes historical justice—the restoration of history as a shared experience rather than the imposition of the perspective of the powerful—without necessarily having to repeat the cyclical violence of forcibly replacing one truth-narrative with another. I agree wholly with Teitel’s argument that claims: “Truth is not synonymous with justice; neither is it independent of justice. Instead, it is better understood as a virtue of justice” (*TJ*, 89). Further, I would contend that without *historical justice*, the promise of other forms of justice (retributive, compensatory, even restorative) diminishes exponentially. At minimum, retributive justice requires the capacity to discern victim from perpetrator. Likewise, compensatory jus-

tice requires a full understanding of the wrong committed before the appropriate redress can be quantified. Even restorative justice assumes some common commitment to a shared narrative. Consequently, the implications of transitional truth and historical justice, as well as the association between the two upon which I wish to insist, provide the best evaluative model for understanding the positive benefits of bodies like the Truth and Reconciliation Commission.

Before turning to some of the objections that have been raised to the TRC and other similar Commissions, I want to comment briefly upon the significance of such bodies in the context of racial violence. It is no accident, in my view, that the South African TRC is becoming more and more the model appealed to by societies suffering from the legacy of colonialism, imperialism, and their attendant racism. The TRC's unique strength was not only its ability to address, in a formal and public way, the causes and effects of systemic *racial* violence, but also its insistence that the enormous challenges inevitably uncovered in doing so required a new philosophical framework of reconciliation. Without abandoning wholesale traditional notions of justice, the TRC conscientiously forged a way to acknowledge and condemn the manner in which justice and its dispensation has historically been reserved to (Western, European) whites. Further, the TRC recognized that addressing the problem of apartheid was a matter much larger than could be addressed through recourse to individual perpetrators and individual victims. It was impossible, or at any rate irresponsible, not to address their investigations to individuals *as* whites or *as* blacks.<sup>36</sup> As a result, the TRC should be viewed as a huge advance in the project of coming to terms with the historic role of white supremacy and racialized oppression.

### III. OBJECTIONS

One of the most systematic objections leveled against the South African TRC can be found in Amy Gutman and Dennis Thompson's article "The Moral Foundations of Truth Commissions." In that article, Gutman and Thompson contend, "the three most common [moral] justifications of truth commissions are incomplete from a democratic perspective" (22). The three "moral justifications" to which the authors refer are what they term the "realist response," the "compassionate response," and the "historical response." Alternatively, the "democratic perspective" that

Gutman and Thompson endorse holds three requirements for the moral justification of truth commissions in place of traditional means for retributive justice: (1) that truth commissions be moral in *principle*, (2) that they be moral in *perspective*, and (3) that they be moral in *practice*.<sup>37</sup> In large part, Gutman and Thompson's strongest objections fall under the more general category of scholars who object to the TRC's specific power to grant amnesty. These detractors view amnesty *per se* as an abrogation of justice, and hence not morally justifiable. (I will address this larger category below.) However, without addressing the details of Gutman and Thompson's entire argument, I would like to address specifically their treatment of the "historicist response," which is the position closest to the one I have put forth in the previous section.

It should be noted that of the three justificatory models (realist, compassionate, historicist), Gutman and Thompson have the *least* objection to the historicist response. They argue that the historicist response, unlike the realist response, satisfies the first requirement of invoking an explicitly *moral principle*. Historicist accounts emphasize the importance of both truth and reconciliation, and endorse "a moral condemnation of the past as a way to start developing some common moral standards for the future" (MF, 33). Similarly, the historicist response, unlike the compassionate response, satisfies the second requirement of adopting an explicitly *moral perspective*. On this count, Gutman and Thompson acknowledge that even though the perspective of the TRC is asymmetrical—that is, it favors the victims—this asymmetry is in fact a morally justifiable perspective. However, Gutman and Thompson go on to argue,

The major weakness of the historicist justification is a failure to live up to the third challenge, which asks that the practices of the commission itself exemplify the practices of the democratic government toward which the society is striving. . . . The standard historicist justification implies that there is a truth about the past to be finally discovered and authoritatively acknowledged. This truth, moreover, is not merely factual but already evaluative. (MF, 34)

To answer Gutman and Thompson's objection, I would argue that any justificatory model that relies primarily on *historical justice* as its foundation must also, as I have done above, include a notion of transitional truth. Gutman and Thompson's worry is that the historicist model runs the risks of approximating too closely the model of "victor's justice," that is, of instituting a new power regime

among the formerly victimized, without significantly altering the victimizing nature of that power regime. In addition, Gutman and Thompson worry that the TRC effectively imposed a particular historical narrative on those who would not accept it of their own free will, thus making the new historical account anti-democratic.

Gutman and Thompson appeal to the tradition of deliberative democracy as a suggestion to how the TRC might have avoided a failure of this third moral requirement. However, I contend that their objection is misplaced on two counts. First, as I have explained above, it is a fundamental misunderstanding of the theoretical framework of the TRC to construe its work as the institution of a “final” and “evaluative” truth. The *Report* is unambiguous in its repeated recognition of the mutivalence of the truth it was reporting, and of the potential for various evaluative judgments. That is not to say that there was *no* evaluative substance to the historical account put forth by the TRC, but rather that it was a consistently self-reflexive and self-critical account, very much imitating in *practice* the *principle* of its moral basis. Andre du Toit notes in his response to Gutman and Thompson that the latter seem to hold to the mistaken assumption that “in principle the demands of justice are the same even in radically different kinds of historical circumstances” (*MFA*, 124). Correspondingly, I would argue that Gutman and Thompson do not fully appreciate the manner in which truth also does not operate according to fixed, transhistorical norms.

Secondly, it is arguable that the alternative that Gutman and Thompson favor is itself objectionable. They characterize their position thus:

Deliberative democracy offers the most promising perspective by which to judge the work of truth commissions that engage in public deliberations because, more than other conceptions of democracy, it defends a deliberative politics that is explicitly designed to deal with ongoing moral controversy. (*MF*, 35)

The idealized tradition of deliberative democracy is certainly admirable, and perhaps even ultimately desirable, but Gutman and Thompson again fail to evidence an appreciation of the specific context of transitional situations. The model of deliberative democracy, as Gutman and Thompson frame it, would leave few options for including the range of testimony and perspectives that the TRC was able to solicit. Deliberative democracy depends on the model of a rational, autonomous, moral agent as the fundamental “unit” of its deliberations.<sup>38</sup> Those who could not, or would not, abide by the rules of rational deliberation would be silenced



or ignored. Consequently, the precise domain and contours of the “ongoing moral controversy” would be virtually impossible to delineate. In short, the clean and orderly operations of idealized deliberative democracy would be ill-suited for the provisional, morally ambiguous, and contentious transitional situation in which the TRC found itself.

Apart from Gutman and Thompson’s specific argument, the most widespread objection to the TRC has surrounded the issue of amnesty or impunity. Proponents of this objection seems to naturally divide themselves into two camps: first, those who believe that granting amnesty in cases of gross human rights violations is either morally prohibited or illegal under international law and, second, those who object to the granting of amnesty inasmuch as it is linked to the “religious” act of forgiveness. I will address the second of these positions first.

The best representative of the objection to the TRC’s discourse of forgiveness may be found in Commissioner Malan’s “Minority Opinion” within the *Report*.<sup>39</sup> Commissioner Malan accuses the TRC, under the leadership of Archbishop Tutu, of harboring a religious bias. However, the most provocative and philosophically interesting formulation of this objection can be found in French theorist Jacques Derrida’s work, which questions the manner in which Tutu seemed to conflate political and religious discourses (*OCF*, 25–59). The general argument objects to the imposition of a hyperbolic sense of ethics and an overdetermination of the meaning of reconciliation. The manner in which the TRC decided amnesty cases, it is further argued, is less concerned with justice than with providing a performative model of the kind of personal grace that South Africans ought to exhibit. Naturally, these detractors argue that it is simply impossible to insist on forgiveness, that forgiveness (even in the form of amnesty) should not be a forced moral order. Even if it is agreed that such an order would be the most desirable, it is nonetheless inappropriate to expect its implementation by a severely traumatized people.

Derrida primarily objects to what he sees as a contradiction internal to the Western-Christian discourse of forgiveness. There is a caveat of forgiveness, Derrida argues, already inscribed in the Abrahamic tradition of forgiveness *qua* exoneration from a debt remitted; it is too much within a history and a heritage that links the repentant subject with the transgressive event, the “who” with the “what,” as if that identification could provide the equation of a calculable forgiveness with a calculable justice. Forgiveness *itself*,

within this history and heritage, will always be impossible, because it possesses what Hannah Arendt calls the structural limit of the *human* domain: "people will be incapable of forgiving what they cannot punish, and they will be incapable of punishing what reveals itself as unforgivable" (*OCF*, 37). As long as one equates the logic of criminal prescriptibility with a logic of forgiveness, then according to Derrida, one remains locked in an order of historicity that will continue to make calculations of devastating import to the possibility of any future. It is this "equivocation of the [Abrahamic] tradition" that troubles Derrida on the subject of an international political discourse of forgiveness: "Sometimes, forgiveness must be a gracious gift, without exchange and without condition; sometimes it requires, as its minimal condition, the repentance and transformation of the sinner" (*OCF*, 44). Pure forgiveness, for Derrida, the forgiveness of the unforgivable that is not immediately appropriated into an economic exchange, must occur with "no meaning, no finality, even no intelligibility" (*OCF*, 45). It cannot be reducible to juridical concepts like amnesty, excuse, or prescription, and it cannot depend on a penal order as a condition for its possibility. The absolute reference for forgiveness, its "unconditional purity," must remain heterogeneous to the "order of conditions" that allow it "to inscribe itself in history, law, politics, existence itself" (*OCF*, 44). Pure unconditional forgiveness, "forgiveness without power," (*OCF*, 59) forgiveness irreducible to any calculus of meaning, remains impossible, quasi-transcendental, to come.

Hence, Derrida both objects and does not object to the discourse of forgiveness in the TRC. He worries that forgiveness and amnesty will be confused, thus conflating two heterogeneous terms and heterogeneous discourses. However, inasmuch as the discourse of forgiveness is first and foremost oriented toward the future, toward opening up possibilities that are or have been closed off in the political domain, he views it as the only possible means to achieving reconciliation on the order that the TRC desired. My discussion in Part II is consistent with Derrida's aims. Both transitional truth and historical justice are intended to reorient political discourse toward what I would term a "politics of the possible." As such, I would endorse Derrida's warning that we should be vigilant to the manner in which reducing the essentially moral act of forgiveness to some political calculation is counterproductive. Importantly, neither Derrida's argument nor my own rules out the inclusion of amnesty as justified power of the TRC. In sum,

Derrida's objection is far more suspicious of forgiveness than amnesty *per se*. Consequently, I will briefly address the stronger version of the objection to amnesty, before drawing to a conclusion.

It has been argued that the power to grant amnesty is, in principle, opposed to the work of the TRC. Inasmuch as Truth Commissions represent a commitment to the "politics of memory," then it is argued that they must reject amnesty, which by some accounts serves as the preeminent example of a "politics of forgetting." Members of Griffith Mxenge's family, Steve Biko's family, and other survivors filed lawsuits challenging the very existence of the TRC in response to the amnesty provision (Minow, *BVF*, 56). The Constitutional Court of South Africa rejected their claims, finding that neither the South African Constitution nor the Geneva Convention prevented granting amnesty in exchange for truth.<sup>40</sup> Even still, objections to the amnesty provision of the TRC remain one of the most hotly contested aspects of the South African transition.

In his essay "Amnesty, Truth, and Reconciliation," Ronald Slye emphasizes that the amnesty process the South African TRC adopted was unique, and should be considered separately from the generic objections that are made regarding amnesty powers for Truth Commissions in general.<sup>41</sup> The very definition of amnesty provides an individual with protection from civil or criminal liability; to this extent, amnesty is seen as a compromise of justice. The interesting question raised by the TRC, however, was "whether the granting of amnesty *must* detract from the goals of truth, reconciliation, accountability, and the creation of a human rights culture" (Slye, *ATR*, 170). To this question, Slye adds two further inquiries: (1) How much does amnesty contribute to the quantity and quality of truth? and (2) How much does amnesty contribute to reconciliation? (*ATR*, 170). On both counts, Slye carefully demonstrates that, given the practical political aims of truth and reconciliation—which it should be noted, the TRC was *mandated* to enforce—amnesty was in fact an augmentation of justice, rather than a diminishing of it. In order for this argument to hold, I would contend that it is necessary again to have already displaced the centrality of the notion of retributive justice, as well as fixed and discernible historical truths. When such a conceptual shift is granted, amnesty need not be viewed as the counterpoint to justice. In the selective instances in which amnesty was applied by the TRC, it did not erase accountability, but provided a model for a more communal, and thus reconciliatory, accountability.<sup>42</sup>

## CONCLUSION

The argument for Truth Commissions, on the model of the South African TRC, need not be limited merely to pragmatics. Although it is often the case that in transitional situations, political decisions are made between a host of non-ideal options, there is a strong theoretical basis for justifying the foundations and implications of bodies like the TRC over and against even more traditionally ideal political strategies for justice. Demonstrating these theoretical justifications, however, almost certainly requires re-thinking the classical categories of truth and justice, as well as coming to grips with the reality that transitional situations are less and less an anomaly of political life in the twenty-first century. Apartheid still stands, in popular discourse, as the most extreme form of state-sanctioned racism, but the model of the TRC should not be limited to those situations in which racial reconciliation has been necessitated by gross violations of human rights. The South African Truth and Reconciliation affords a real opportunity to reevaluate the normative values of traditional liberal theory and perhaps to seek, outside of that discourse, a version of justice that opens up genuinely new possibilities for contemporary multiracial democracies.

## NOTES

1 *Truth and Reconciliation Commission of South Africa Report*, Vol. 5, §24 and *passim*.

2 The General Assembly of the United Nations, on numerous occasions, labeled apartheid a crime against humanity (GA Res. 2189; GA Res. 2202; GA Res. 39/72A; GA Res. 2074). In addition, the Security Council of the United Nations also separately declared apartheid as a crime against humanity [S.C Res. 282, Resolutions and Decisions of the Security Council, 25 UN SCOR at 12 (1970); S.C Res. 311, Resolutions and Decisions of the Security Council, 27 UN SCOR at 10 (1972); S.C Res 392, Resolutions and Decision of the Security Council, 31 UN SCOR at 11 (1976); SC Res 556 (1984)]. Other international bodies, which passed resolutions concomitant with the United Nations, include the International Law Commission (ILC), the International Court of Justice (ICJ), the African Charter on Human and Peoples' Rights. The TRC report also lists various conventions and charters that underscore the widespread international opinion of apartheid as a crime against humanity. Despite the largely unanimous opinion regarding the status of apartheid as a crime against humanity, the TRC report does also include a Minority Opinion, written by Com-

missioner Malan, which questions the legitimacy of these declarations. See *Truth and Reconciliation Commission of South Africa Report* Vol. 4, "Appendix: A Crime Against Humanity" and Vol. 5. "Minority Opinion."

3 The section entitled "Historical Context" reflects the Commissioners' framing of this larger context, and can be found in Vol. 1 of the *Report*, pp. 24–43. A large portion of the following historical account is drawn from the Commissioners' timeline of major events leading up to the apartheid years. For a more general historical account of South Africa, see Leonard Thompson's *A History of South Africa* (New Haven: Yale University Press, 2000). Henceforth, *HAS*. An authoritative source regarding the early years of greater Africa's encounters with Europe is Thomas Pakenham's *A Scramble for Africa: The White Man's Conquest of the Dark Continent from 1876 to 1912* (New York: Random House, 1991). For an alternative early account of indigenous South African life, originally published in 1916, see Solomon Plaatje's *Native Life in South Africa* (New York: Raven Press, 1969). Henceforth, *NLSA*.

4 See Donald R. Morris's *The Washing of the Spears: A History of the Rise of the Zulu Nation Under Shaka and its Fall in the Zulu War of 1879* (DeCapo Press, 1998) and Norman Etherington's *The Great Treks: The Transformation of Southern Africa 1815–1854* (Longman, 2001).

5 TRCSAR, Vol. 1, 26. See also Thomas Pakenham's *The Boer War* (New York: Perennial, 1992).

6 TRCSAR. See also Pakenham, *A Scramble for Africa*, 602–611.

7 It is beyond the scope of this paper to analyze the evolution of the concept of apartheid within National Party politics. However, an excellent treatment of the intricate workings and internal conflicts of the National Party can be found in Dan O'Meara's *Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948–1994* (Athens: Ohio University Press, 1996). Henceforth, *FLY*. O'Meara's account of the events leading up to and during the NP's *verligte/verkramp* wars is especially helpful in understanding the ideological struggles surrounding the particular form that apartheid was to take in South Africa.

8 This Act classified all South Africans into one of four racial categories: White, Bantu (black), Colored, and Indian. The effect of this act was particularly devastating to the Colored community, in which many families were divided and separated on the basis of different racial classifications.

9 This Act divided the country into zones that were to be occupied exclusively by members of designated racial groups. The intent of the

Group Areas Act was primarily to uproot and remove the black population from its proximity to the white population, which resulted in the destruction of many black communities.

10 Both pieces of legislation prevented interracial marriages and prohibited sexual contact of any kind across color lines.

11 The immediate impact of this Act included the banning of the Communist Party within South Africa. However, the more extended impact of the Act included the suppression of all forms of political dissent, even those that were not explicitly or implicitly communist in ideological orientation.

12 This Act racially segregated the use of all public amenities and facilities, effectively denying use of most to black people.

13 This Act implemented the basis for a separate and inferior education system for black African pupils. It was based on the racist assumption that blacks needed only as much education as would be appropriate, in the words of Dr. Hendrick Verwoerd, "in accordance with their opportunities in life." The effect of this legislation was the "under-skilling of generations of African children and their graduation into an economy for which they were singularly under-equipped." (*TRCSAR*, Vol. 1, 31).

14 This Act denied non-whites admittance to tertiary educational institutions. Instead, non-whites were consigned to separate ethnic colleges for Indians, so-called Coloreds, and Africans (further separated by Zulu, Sotho, and Xhosa-speaking).

15 See Steve Biko's *I Write What I Like*, and Nelson Mandela's *The Struggle Is My Life*. For an excellent overview of Black Nationalist thought in South Africa, see C. R. D. Halisi's *Black Political Thought in the Making of South African Democracy*.

16 For an analysis of the economic impacts of apartheid, including internal and external boycotts, see Vol. 4, Chapter 2 of the *Report*, under the section title "Institutional Hearing: Business and Labor."

17 Passes, or *dompas*, were a significant element in the "Grand Apartheid" plan. The original intention was to aid "influx control," effectively augmenting the segregation of South Africans into "white" areas and "homelands" or "Bantustans." Stated bluntly, pass laws kept blacks out of white neighborhoods and slowed black urbanization. Pass laws strictly controlled the employment, classification, and general movement of blacks. The anti-pass campaign was one of the first and most successful mass mobilization efforts of the ANC and PAC.

18 The TRC *Report* (Vol. 1, §58–9) devotes a special section to mentioning the impact of the “Vorster laws.” The Commissioners write: “[Security legislation in the 1960s] amounted to a sustained attack on the principles of the rule of law. The suspension of the principles of *habeas corpus*, limitations on the right to bail, the imposition by the legislature of minimum goal sentences for a range of offenses and limitations on the ability of the courts to protect detainees all contributed to a mounting exclusion of the authority of the courts from the administration of justice, thereby seriously eroding their independence. Security legislation introduced into the law a definition of sabotage so broad and all encompassing as to render virtually all forms of dissent illegal and dangerous.”

19 For an excellent overview of the Vorster era and the “crisis of apartheid,” see O’Meara’s *Forty Lost Years*, 135–240.

20 For an in depth analysis of the ideological forbears of Botha’s “Total Strategy,” see O’Meara, *Forty Lost Years*, 254–65.

21 Again, the unraveling of apartheid during the Botha years is a complicated matter, and the complex details of it are beyond the scope of this paper. I refer the reader to O’Meara’s account in Part IV of *Forty Lost Years*.

22 For an overview of contemporary South African history, leading up to the transitional negotiations, see William Beinart’s *Twentieth Century South Africa*. Thompson’s *History of South Africa* provides an excellent account of the transitional process and the “New South Africa” of Mandela’s administration. Tom Lodge’s *Politics in South Africa: From Mandela to Mbeki* is helpful in understanding some of the economic, social and political effects of the transition, as well as the relative successes and failures of the Mandela and Mbeki administrations.

23 “He visited in their homes ex-President Botha and the widow of Hendrik Verwoerd, the principal architect of apartheid. He had General John Williams, the former Robben Island comander, to dinner. He even took lunch with Percy Yutar, who had prosecuted him and got him sentenced to life imprisonment, and he joined the Sunday congregation in an Afrikaner church. In his most successful gesture, he identified with the South African rugby team, who were all Afrikaners except for one Coloured man, by walking onto the field wearing the Springbok jersey after South Africa won the World Cup against New Zealand; the largely Afrikaner crowd cheered him wildly.” Thompson, *HSA*, 274.

24 For the best comparative analysis of various Truth Commissions (twenty one in all), see Pricilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York: Routledge, 2002).

25 For a general discussion of “disappearing,” which has been a central focus of many Truth Commissions (especially in Latin America), see Priscilla Hayner, *Unspeakable Truths*, 50–71.

26 The only other Commissions that include the term “reconciliation” in their official titles are those of Chile (*Comisión Nacional para la Verdad y Reconciliación*, or National Commission on Truth and Reconciliation, 1990–1991) and Sierra Leone (Truth and Reconciliation Commission, 2000–present). *Unspeakable Truths*, 305–11.

27 It should be noted that I am not alone in suggesting the exemplarity of the South African TRC. Robert Rotberg, in a collection of essays evaluating different aspects of Truth Commissions, sums of the opinion of many experts who study truth commissions when he writes: “A book examining the nature of truth commissions inevitably must focus largely (but not exclusively) on the new standard-setting model of the practice. The TRC, though flawed in many ways, has set a high standard for future commissions. . . . The South African commission has become the model for all future commissions. . . .” see “Truth Commissions and the Provision of Truth, Justice, and Reconciliation” in *Truth v. Justice*, 5–6.

28 See “Truth Commissions and the Provision of Truth, Justice, and Reconciliation.” The twenty-one commissions (their names, and dates of operation) include: Uganda (Commission on the Inquiry into the Disappearance of People in Uganda since the 25<sup>th</sup> January 1971, 1974), Bolivia (National Commission of Inquiry into Disappearances, 1982–1984), Argentina (National Commission on the Disappearance of Persons, CONADEP, 1983–1984), Uruguay (Investigative Commission on the Situation of Disappeared People and Its Causes, 1985), Zimbabwe (Commission of Inquiry, 1985), Uganda (Commission of Inquiry into Violations of Human Rights, 1986–1995), Nepal (Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period, 1990–1991), Chile (National Commission on Truth and Reconciliation, 1990–1991), Chad (Commission of Inquiry on the Crimes and Misappropriations Committed by the Ex-President Habré, His Accomplices and/or Accessories, 1991–1992), South Africa-ANC (Commission of Inquiry into Complaints by Former ANC Prisoners and Detainees, 1992), Germany (Commission of Inquiry for the Assessment of History and Consequences of the SED Dictatorship in Germany, 1992–1994), El Salvador (Commission on the Truth for El Salvador, 1992–1993), South Africa-ANC (Commission of Inquiry into Certain Allegations of Cruelty and Human Rights Abuses against ANC Prisoners and Detainees by ANC Members, 1993), Sri Lanka (Commission of Inquiry into the Involuntary Removal or Disappearance of Persons, 1994–1997), Haiti (National Commission for Truth and Justice, 1995–1996), Burundi (International Commission of Inquiry, 1995–1996), South Africa (Truth and Reconciliation Commission, 1995–2000), Ecuador (Truth and Justice



Commission, 1996–1997), Guatemala (Commission for Historical Clarification, 1997–1999), Nigeria (Commission of Inquiry for the Investigation of Human Rights Violations, 1999–2000), Sierra Leone (Truth and Reconciliation Commission, 2000–2001).

29 For a general discussion of the contrasting positions of a politics of memory and a politics of forgetting, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, 118–120. For representative examples of the argument against “too much memory” see Michael S. Roth’s “Remembering Forgetting: Maladies de la Memoire in Nineteenth-Century France,” 49–86; Charles Maier’s “A Surfeit of Memory? Reflections on History, Melancholy and Denial,” Aviam Soifer’s *Law and the Company We Keep*, 104–111.

30 *The Report*, Vol. 1, 112. In his “Minority Opinion,” Commissioner Malan charges that the TRC emphasized this personal and narrative sense of truth above all others, such that a large part of the *Report* was devoted to the somewhat ambiguous “truth as one sees it” principle. Commissioner Malan argues that, because of this misplaced emphasis, the TRC neglected its responsibility to verify or corroborate as much as possible the truth that it was endorsing. In their collective response to Commissioner Malan, the other Commissioners flatly reject his accusation. See “Minority Opinion” and “Response to the Minority Opinion” (*TRCSAR*, Vol. 5).

31 See especially Jürgen Habermas, *The Theory of Communicative Action: Reason and the Rationalization of Society*. For a more general overview of the discourse of deliberative democracy, see *Deliberative Democracy: Essays on Reason and Politics*.

32 By this “broadly conceived” traditional liberal-democratic discourse, I mean to refer to the largely Western philosophical tradition spanning from the Enlightenment “social contract” authors (Hobbes, Locke, Rousseau, Kant) up to contemporary liberal theorists like John Rawls. There is some question, which I will briefly address in the following, whether or not this liberal tradition is fully compatible with the African *ubuntu* philosophy, which the TRC explicitly acknowledges as a philosophical point of reference. In the minds of the Commissioners, however, it is clear that they view the Western liberal-democratic discourse of the respect and rights of autonomous moral and political agents to be complementary to the more communitarian *ubuntu* African philosophy.

33 *Ubuntu*, commonly translated as “humaneness,” is often summed up in the phrase “*umuntu ngumuntu ngabantu*” (“people are people through other people”). In the *Report*, the Commissioners acknowledge that, in the process of writing the new Constitution for South Africa,

there was a “spontaneous call” for a return to the traditional African values of *ubuntu*. *TRCSAR*, Vol. 1, 127.

34 In connecting the themes of transitional truth and historical justice, I am borrowing, in slightly modified form, some of the normative arguments of Rudi Teitel’s *Transitional Justice*. However, Teitel’s objective is primarily to reinforce the preeminence of the role of *law*, as it is commonly understood in the liberal tradition. I depart from her analysis on this point. Teitel claims that the liberalizing potential of history can be found, first and foremost, in the institution of the law, or the appeal to the institution of the law in situations where it has been distorted. On the contrary, I am much more inclined to follow Jacques Derrida in his strategic separation of justice from the law, and his insistence that the appeal to justice is “before” or “beyond” the strictures of the law. It is beyond the scope of this paper to give a full treatment of Derrida’s argument. Hence, I refer the reader to Jacques Derrida’s seminal essay “The Force of Law: The ‘Mystical Foundation of Authority.’”

35 For a discussion of the role of “emplotment” and “categorization” in the construction of historical accounts, see Teitel, *TJ*, 85–8.

36 Of course, I mean here “as members of a racial group” generally. The Indian and so-called Colored community, in South Africa’s case, should be understood as implied.

37 *MF*, 23. To satisfy the first requirement (“moral principle”), the authors contend that the truth commission “should explicitly appeal to rights or goods that are moral and therefore are comparable to the justice that is being sacrificed.” For the second requirement (“moral perspective”), the authors contend that “the justification of a truth commission . . . should offer reasons that are as far as possible broadly accessible and therefore inclusive of social cooperation.” For the third requirement (“moral practice”), the authors contend that the justification “should offer reasons that are to the extent possible embodied or exemplified by the commission’s own proceedings, and are not only intended to be put into practice by other institutions, observers, and future governments.”

38 I will only suggest here that Gutman and Thompson also seem unwilling to recognize the Eurocentricism implicit in the discourse of deliberative democracy. One of the advantages of the TRC, and one of its chief philosophical accomplishments, was its ability to meld the traditional Western juridical and political discourse with the traditional African values of community and *ubuntu*. I have serious reservations regarding whether or not a strict model of deliberative democracy would have been able to accommodate non-European modes of discourse with the same success.

39 See "Minority Opinion," TRCSAR, Vol. 5.

40 See *Azanian People's Organization v. President of the Republic of South Africa*, Case CCt 17.96, Constitutional Court of South Africa, July 25, 1996.

41 The TRC was given the right to grant *individual* amnesty, and only on the condition of a full disclosure of the truth by the amnesty applicant.

42 Desmond Tutu often discusses the role of "shame" in public accountability. Those who testified before the TRC and were granted amnesty could only do so at the expense of disclosing to everyone their responsibility for or complicity in human rights violations. Tutu convincingly argues that the shame that was brought upon the perpetrators after their testimony could itself be seen as consistent with the model of retributive justice as well.

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