

# RECONCILING THE NATION

## JUSTICE, TRUTH AND INSTITUTIONALIZED POLITICAL TRANSITION<sup>1</sup>

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### Abstract

This paper analyses the construction of a discourse of “reconciliation” and “justice” in post-apartheid South Africa. Reconciliation not only meant different things to different people, but the articulation of this meaning was fundamentally important in the invention of many institutions and policies, and especially in the effort to deal with the violence and inequities of the past. Yet apparent consensus was reached in South Africa and the Truth and Reconciliation Commission (TRC) eventually emerged as the best solution to the problem of transitional justice. Evidence suggests that this consensus was made possible, and heavily structured, by the metaphorical power of stories such as that of the “Chilean national reconciliation.”

### 1. INTRODUCTION

What more laudable goal than that of reconciling the nation after destructive policies and institutionalized injustice, of restoring peace, order and the rule of law, of establishing and guaranteeing the equality of each and every citizen? Such goals, and such language, are the fundamental building blocks of the reassuring, optimistic, stimulating form of public speech that Edelman (1964) has called “hortatory speech.” The South African Truth and Reconciliation Commission (TRC) was instituted as part of a social project articulated in this form of language and therefore heavily influenced by it in both its form and its content.

Legally speaking, the TRC’s most interesting aspect is the manner in which it was reportedly created. It is now part of its own mythological narrative that its birth was the product of negotiation, compromise and consensus between those representing the victimized and those representing the wrongdoers. As any good story, this is a “dramatic” simplification: while government repression clearly dominated the apartheid era, victims and perpetrators of outright violence—the only direct focus of the TRC—could in fact be found in nearly all political groups, as well as in the much more massive non-group of apolitical or non-aligned individuals. Further, so-called “political violence” has become a tradition that survives to this day, especially in the province of Kwazulu-Natal.

To many analysts and political actors in South Africa, the fact that nearly all parties were tainted by the use of abusive violence explains in large part – or in its totality – the unwillingness of the main formations to call for conventional, retributive justice to deal with the matter of past crimes linked to apartheid policy (Hayner, 1994; Jung and Shapiro, 1995; Nel, 1995). However this is a rather limited explanation, as it fails to account for the

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elimination of a wide range of possible solutions *other* than traditional courtrooms which would have been equally compatible with this basic understanding of the situation – the most obvious one being doing absolutely nothing which, historically, has by far been the favourite answer. In short, while the TRC as a solution happens to fit this description of the situation, neither its form nor its existence are really *explained* by it. By this I do not mean that a deterministic causal model for the creation of the TRC is needed, possible or even desirable. What I propose is to discover the main cultural elements that established, modified and maintained the conceptual framework underlying the new institution.

Serious talk about a truth commission in South Africa began shortly after the 1990 tentative normalization of opposition political groups by the ruling National Party (NP) and only became more urgent immediately after the April 1994 democratic elections. The new government was constituted along the lines of a (temporary) “power sharing” concession made by the African National Congress (ANC) to the incumbent NP during the constitutional negotiation process. This meant that one of the two Vice-Presidents would be the leader of the NP, F. W. de Klerk (the other one was current President Thabo Mbeki), and further that the NP would be represented in the Cabinet by a small cohort of ministers (6 out of 28 in 1995; Gastrow, 1995: xxi). Like any other piece of legislation, the TRC Bill was debated and negotiated in its least detail in that mixed Cabinet, in multipartite Justice Committee hearings and in Parliament before being passed in July 1995, each step including members of the ex-government.

The TRC started sitting in early 1996 and wrapped up its work in late 1998, with the publication of a final Report (TRC, 1998; as of January 2001, the specific Committee dealing with amnesty grants is still at work). Upon release the Report was immediately rejected by both the ANC and the NP. A few high-ranking members of the ANC, resenting their being bundled up with apartheid assassins, attempted to impose a publication delay through the courts but were unsuccessful. The NP dismissed the Report with general criticism about unfairness, and F. W. de Klerk obtained a court injunction against the publication of any information and findings about his actions and responsibilities inside the old government. The Report was published with a blank space under his name (TRC, 1998: vol. 5, ch.6, par. 103 and 104). The third major party at the time, the Inkatha Freedom Party (IFP) also rejected the findings as “biased.”

All along the language used to propose, support and organize the future TRC had to combine the politically crucial idea that the “conflict” was over, that political life had been normalized (*peace and order*), with the popularly prevalent and politically powerful one that some of its consequences still had to be addressed (*justice*). This common language had the capacity to allow most major political parties to explain, glorify or defend their participation in the elaboration of the TRC as a national project – or account for their inability to do better. This is what hortatory language provides: a series of tools meant to demonstrate that the best solution was found and that the administration is effective in the way it addresses social problems. However, it would be helpful to go further and examine the power of this language not only to produce public satisfaction, participation and quiescence, as Edelman described it, but also in actually shaping the main characteristics of the project and the society it is to fit in,

through its power to impart new nuances to old words. In essence, to offer a new understanding of the social and what needs to be done about social problems.

To do this I will borrow extensively from Foucault (1972, 1984) and especially from his analysis of the power of discourse and its relation to practice. Following the above title, constructing justice after transition includes not only figuring out what form of action to take in order to do and/or give the appearance of doing justice but all the while reconstructing the nature of the transition as well. As we will see it is the entire master narrative of post-apartheid South Africa that is being “problematized” or rethought, and in such a fluid conceptual environment it is predictable that public speech will have a powerful defining effect by providing new rhetorical and intellectual “anchors” to fix, understand and communicate reality. It is my contention that in that process some key symbols become focal points of attention, ostensibly for the examples they provide, but more importantly for the way they facilitate the reorganization of party-political divergence into temporary agreement on *ad hoc* administrative action. In this case, I will examine the way “Chile,” as a myth of national reconciliation, was integrated in the TRC debate and helped configure the direction and socio-political meaning of the future Commission, of the way it would do “justice” and how it would define the history of South Africa for future generations.

I do not argue that factual or mythical Chile in itself created or determined the shape of the TRC as we know it. Obviously, multiple other factors were also at play. Rather, what we will see is how language is “wrapped around” history, exemplars, projects, etc. to create a consistent socio-political discourse and disarm resistance. In addition, this alternative way of understanding the creation of the TRC has the advantage of entirely eradicating the conventional traps of voluntarism or the opposed socio-political determinism that most accounts to date have tried to navigate, so far with limited success.

## **2. DISAGREEMENT OVER RECONCILIATION**

There is an interesting evolution visible in the very title of the Commission and of its founding act. Around 1992, and in (later ANC Minister) Kader Asmal’s now famous speech (Asmal, 1992), the possibility of a commission of inquiry in post-transition South Africa is referred to simply as a “truth commission” as it was in Argentina, the pioneer of the model. A year later we see the name “truth and *reconciliation* commission” slowly appear, probably as a result of the advancing negotiations and the fact that it would have to be compatible with extensive amnesty provisions, as the “Chilean National Commission on Truth and Reconciliation” had been. In another year, the law founding the institution was renamed the “Promotion of National Unity and Reconciliation Act” by the joint Senate-National Assembly committee on Justice which reviewed the Bill, with no mention of the truth at all because, according to some: no man, no mortal can ever aspire to know the whole truth, and because [Chairperson of the Committee on Justice J. de Lange] was open to all suggestions and kept a very open mind we got rid of the Truth and Reconciliation Bill. It is now the Promotion of National Unity and Reconciliation Bill (M F Cassim [IFP], N. A. Hansard, May 1995: 1405).

I do not want to make too much of this, but it is an interesting point of departure for this opening section, as it illustrates rather well the general tone of the political and legislative

discourse of reconciliation. This reconciliatory tone at the same time exemplified and demonstrated the existence of an ethos of democratic negotiation and “real” political transition. It also made it easier to articulate the well-foundedness of granting amnesty to criminals on the basis that they were abusively zealous in pursuing past *political* goals: past crime is transformed into a disproportionately intense disagreement that has now been solved (see Leman-Langlois, 2001). Yet, evidently if we were to submit “reconciliation” and “national unity” to Mr Cassim’s standards for truth they would also fail to pass his test. Even though all sides consistently managed to portray reconciliation as a tangible reality, few attempted to articulate even a vague description of it. The reason is simple: while “truth” is threatening when it is not known in advance, for reconciliation it is the opposite: it remains non-threatening and positive *until* it is clearly defined. Once it is, it invariably displeases, disappoints or offends just as much as the truth.

Following Edelman, “reconciliation” is easily recognizable as a staple theme in hortatory speech. In transitional societies it is an overarching one and in a country where a political transition is understood as having averted civil war, all public speech about reconciliation *is* reconciliation, it already demonstrates in both its content (the attitude being conveyed) and in its form (the vocabulary) the end of strife and division – or at least their transformation into democratically acceptable *opposition*. That it means contradictory things to different people is easily solved by avoiding definitions. What is important is the fact that it always means something positive. So in a way speaking of reconciliation shows, enacts, gives life to reconciliation in reality: the hortatory language used to support the project (and, actually, that used against it as well) has already pre-digested all and any disagreement into one limited to the *methodology* of reconciliation. However, one does not have to dig too deep to see fundamental divergence between speakers.

**a. Administrative reconciliation: making the country “work”**

The question of whether or not reconciliation was a factual reality in South Africa was more than simple rhetoric: it was an important focal point in discussions about the TRC and whether its objective should be to promote, defend or create it – and how to go about meeting any of these goals. We have seen why, by nature, hortatory speech is not compatible with analytical definitions of its vocabulary, and “reconciliation” was no exception. In addition, the uncertainty about whom was to be reconciled with whom was also ignored; or rather, it was redrawn and simplified as a dynamic between two groups, the ex-government and the ex-resistance movement. Incidentally I will say this only once in this text, but it applies throughout: I do not mean by the above that individual politicians, advocates and TRC members had not thought of these matters at length and did not dispose of nuanced, insightful and highly sophisticated conceptualizations of the principles, goals and methods involved. Quite the contrary. However, what I describe here is the construction of a general “working knowledge” that sustained the creation of the institution. Because this knowledge involves the creation or discovery of common denominators and their articulation in hortatory language, it is by nature simplified and hegemonic: it is meant not to explore possibilities but rather to close as many doors as possible, leaving only an indisputable Taylorist *one best way*.

This apparent levelling of what Foucault (1972) calls the “discursive field” – the set of existing discourses offering competing ways to understand what is thinkable, feasible, true, etc. – is helped immensely by the use of rhetorically powerful examples or images. One such image is that of parliamentarians themselves calmly debating the affairs of the state. The image of reconciliation offered by parliamentary activity is a rational one, consistently opposed to the “emotional” irrationality of revenge, giving itself as an implicit example in what appears as a feedback loop. It is the reconciliation of national parties that were once enemies but are now merely opponents, a reconciliation brought about by negotiation, compromise, and the proper, objective evaluation or recognition of the historical and social context as calling for such an end to conflict. Protecting social peace, order and economic continuity is one of the most important focal points of this conception of reconciliation: administrative efficacy is taken as proof of concrete reconciliation because a working, functional society is a tangibly and measurably productive one. For then President Mandela, during the debate before the final reading of the TRC Bill in Parliament, reconciliation produces stability and prosperity:

I have no doubt that we have here the cream of South Africa, the leaders in thinking, who want to remove every factor which might contribute in withholding investors from our country. The socio-economic program which we have set ourselves requires immense resources. We cannot face these problems if there is instability in our country. This nation-building must not be a question of rhetoric. Let us, in discussions of this nature, make sure that we hold hands and that we are able to show our people that we are concerned in reducing the level of crime in this country. I refer to ordinary crime and political crime. I have no doubt that the world, which believes that we have achieved a mere miracle, will applaud us if we are able to resist the temptation of scoring points against one another (N. A. Hansard, May 1995: 1352-3).

If one puts the “leaders in thinking” in charge of designing a solution to the apartheid past they will do so not by simply following or respecting the necessities of economic prosperity but by specifically putting them on top of the agenda. Further, note how the “miracle” metaphor in this context reinforces the image of the parliamentary dispensation as a microcosm of the country, members being “representative” of their constituents in the way they behave towards each other as well, in the way they want stability, and that they can achieve it if they “hold hands” and “resist the temptation of scoring points against one another.”

[...] it is very interesting that we, as members of this National Assembly, have already set an example by being able to work together. Even though we heckle each other during debates, there is no record of fisticuffs or taking pot shots at one another—even though we have so many differences and despite what the newspapers have been saying about a few “cowboys” who may be present in this House (S Mkhathshwa [ANC], N. A. Hansard, May 1995: 1361).

This reasoning is circular but at the root of this very common discourse is the idea that the fresh start given South Africa through the democratization of politics and liberalisation of society is in itself the fruit of a *form* of reconciliation: there was violent conflict, now there is not. Even the TRC Report says that “if political circumstances – literally power arrangements in a social order – constitute the primary explanation [for human rights abuses], such circumstances

must be changed. In South Africa this has already been effected” (TRC, 1998: 5, 7: 147). Once the situation is defined that way, the sudden transformation of the conflict into negotiations for the establishment of a democratic dispensation, followed by a new Constitution, by elections, and finally a “Government of National Unity,” served as a powerful example of real, tangible “reconciliation,” (a “small miracle,” as it is often referred to) albeit only negatively defined as the disappearance of open conflict. The common phrase, “post-conflict justice,” in this context, is normative rather than descriptive.

*i. Reconciliation for the ANC Government*

The lingering matter of justice was particularly salient for the ANC, who had historically positioned themselves as champions of the victims of apartheid. The discourse of peace and prosperity alone was insufficient, hence the need for an *ad hoc* structure or program instead of simply distributing amnesty in minimum accordance with the constitution. Because of this unfinished aspect of the nation-building project the ANC’s hortatory language could only be conditional. Fortunately there existed a way to protect the post-conflict narrative, through a very powerful and seductive representation: just reconciliation was not yet achieved, but it was indelibly inscribed in the nature and culture of South Africans, as an ingrained human characteristic. In those terms of ineluctable destiny it could be spoken of as a tangible reality. At the time of the early drafts of the TRC Bill, J. de Lange, who helped write the original version and would later chair the Joint Committee on Justice that reviewed the penultimate one, had put it this way:

the call for a truth and reconciliation commission does not derive its authority from the Constitution nor from any law. It derives its authority from our morality, as human beings, as a people who want to heal our nation and restore the faith of our nation and the international community in our commonly-held future and in our humanity (N. A. Hansard, August 1994: 862).

This also entirely solved the difficulty that in fact there was nothing to restore things *to*, no just, or even adequate, non-apartheid past or civil relationships to rebuild in South Africa, and reconciliation from the start was an abstraction: it meant restoring society to the way things *should have been* in the past, not as they actually were. As Minister of Justice Omar said, in his first speech in parliament:

because we are going to grapple with our legacy in a humane, systematic and open way, we have arrived to a situation in South Africa in which we can create the conditions for a new patriotism [...] a patriotism that can evoke all that is good in our country and which can draw on all the traditions of our people (N. A. Hansard, May 1994: 24).

Again, the ideals of reconciliation come from culture and already existed in the past, but were stifled or ignored. It does not matter that there are no relationships to restore, since we all know perfectly well what form they should have taken in the first place. Note the play on the future tense, the conditional, all strengthened by the invocation of tradition and patriotism. All the conditions are there, the good will, the knowledge, etc. to reconcile, only a propitious venue remains to be provided.

We in the ANC have no problem whatsoever in disclosing our actions and we have unequivocally agreed and supported the idea of a truth commission from the outset. By adopting this position we follow a unique and rare example which very few countries in the world have followed, where both the past government and the national liberation movement were drawn into a truth commission. I need to emphasize that we do so in the hope that this will advance reconciliation (D. P. Jana [ANC] N. A. Hansard, May 1995: 1354).

Situating reconciliation as part of tradition, and inscribed in normal, reasonable human behaviour also allows the speaker to avoid having to expose (or indeed imagine) and justify an entirely new mode of social relations and thus risk dissension. It links the proposed project to tradition, shows it to be tested and true, part of the ways in which things have been done for a long time, or should have been done if only people had been reasonable sooner or more in touch with their cultural heritage. The Interim Constitution, as well as both the TRC's advocates and its foes, frequently mention *ubuntu*, which one might describe as "reflexive humanity," that one's humanity is revealed in one's treatment of others. However it usually simply stands for spontaneous forgiveness and togetherness. Note that as a traditional African concept *ubuntu* locates the burden of overcoming the past squarely on the shoulders of those who were at the receiving end of most of the violence of the apartheid era, and who must now forgive or at least abandon any hope of conventional criminal justice. Like the "new patriotism" that is different from the old one while still rooted in cultural tradition, the effect is to both defuse conservative fears and to appeal to those who desire change. Throughout, reconciliation is always a given, indisputable in its basic nature as well as in its desirability.

The most important consequence of this discourse, for us, is that it supports the claim that the government must then do what it can to *produce* reconciliation. In the words of J. de Lange, "reconciliation and reconstruction and development are not a single event or even a series of events. They are a process and, in all probability, a lengthy process" (J. de Lange [ANC], N. A. Hansard, August 1994: 859). Like Mandela above, he is tying "reconstruction" (i.e. phones, electricity, water, roads, schools, etc.) and "reconciliation," thus representing the latter to be as uniformly understandable, concrete, producible and measurable as the former. Conversely, it potentially provides any new policy with the justification that it is needed to further reconciliation. The nation is to go to work on its social problems the same way it improves its infrastructure, in a vast project of modernization. And even more importantly, it shows that national reconciliation must be integrated to properly designed administrative action, and that unless it is, it will not happen.

The Truth Commission is but one of many mechanisms that we as a nation are putting forward to use, to address the legacy of apartheid in our country. [...] If we look at the truth commission within this holistic picture and view it as one of those many mechanisms to address the legacy of apartheid—our past—then I am sure we will agree that, at the end of the day, it will enable us to achieve the national reconciliation and unity we seek (J. de Lange [ANC], N. A. Hansard, May 1995: 1431).

ii. *The ex-government/NP position*

The ex-government's general post-transition discourse was also articulated around reconciliation but the implications were entirely different: "there is indeed the real danger that a commission of truth and reconciliation may distort the truth and destroy whatever reconciliation we may have achieved" (P. J. Steenkamp [NP], N. A. Hansard, August 1994: 897). This was a popular view, that since the 1992-1993 Convention for a Democratic South Africa (CODESA) brought together all parties to the conflict and eventually produced an Interim Constitution, general elections, a Government of National Unity and a final Constitution, the people of South Africa must be reconciled already. This was the logical conclusion for those who saw the apartheid years, especially since the 1986 state of emergency, as a vast struggle for political supremacy between two factions (e.g. Giliomee and Schlemmer, 1989). It is also the view of the Inkatha Freedom Party (IFP), in the colourful language of J. H. Van der Merwe:

[...] let us assume that both [spouses] come out with the full truth [of their pre-marital sex life]. What would the effect be on their marriage? I say they would probably be building it on sand. It would not survive. The bride and the bridegroom should rather say to each other, "let us close the book on the past" (N. A. Hansard, August 1994: 2096).

Strangely, I was told the same story during an interview with a different IFP member, more than three years later.

Sometimes the tone is almost flowery: "the further perception exists that the Truth Commission will bedevil the agreeable spirit of reconciliation which has become prevalent in the country since the election" (R. H. Groenwald [NP], N. A. Hansard, May 1995: 1407). Or knowledge about what happened in the past is important for reconciliation, but on the other hand it can cause alarm which can ruin reconciliation. All reconciliation which exists at present can easily be torn to shreds in the face of terrible revelations about the past. The idea that the Truth Commission will finally close the book and usher in a dispensation of reconciliation and understanding is praiseworthy in its idealism, but highly doubtful in its consequences (J. R. de Ville [FF], N. A. Hansard, May 1995: 2236).

Not that this should be taken as pure political artifice. It is perfectly, or at least *equally* logical to think of reconciliation as continued political peace (at least at the administrative level, since street level political violence still exists), which also fits perfectly with Mandela's exhortations above, and can use the parliamentary image just as well. There have indeed not been massive, sustained efforts at violently reversing privilege in the country, and this can be thought of as reconciliation as well, the acceptance that the situation is unchangeable or at least unimprovable. According to Minister Fisser:

the instruments created in this Bill can be utilized to wreck a fragile but precious reconciliation that has so carefully been built over the past years. It can permanently place South Africa back in the mode of polarization, hatred, accusation and counter-accusation. On the other hand, these very same instruments,

correctly used, can cement the reconciliation so far achieved (C. Fisser [NP], N. A. Hansard, May 1995: 1356).

In case it was not clear, a moment later:

what [F W de Klerk] and President Mandela, together with others, did was to offer this country the opportunity of reconciliation that already exists. If we say that the past may never repeat itself, then we must also say that nothing may destroy the fragile reconciliation that already exists (*Ibid*).

In short, while the government offers the political reconciliation and the working parliament as an example that reconciliation is possible and that agreement can be reached on how to bring it about, the opposition portrays the same state of affairs as the proof that reconciliation has already occurred. The discourse of the IFP and the NP represents reconciliation as effective reality since 5 December 1993, the date the interim Constitution was signed. After all, following the adoption of the definitive Constitution on 8 May 1996 huge placards were claiming, “One Law for One Nation: the New Constitution is Here.”

But then there was the matter of *justice* and the language of *crime* that had been used to describe the past. How does one include justice in a paradigm that is consistently legitimized by its pragmatism?

### 3. THE JUSTICE OF RECONCILIATION

This reconstruction of the present necessitated an entirely different discourse than that usually heard about crime, victimization and more importantly, “justice.” Conventional criminal justice was already linked to revenge and prosecution to persecution in the transitional context (see Leman-Langlois, 2001), and yet *justice* remained as desirable, positive as “reconciliation” in popular culture. But any new justice solution suggested had to be compatible with the conception of this peaceful, well-ordered, already reconciled and cross-forgiven society, and of course without seeming superfluous. Political public speech thrives on the heroically averted crisis (Edelman, 1964: 13) and it is difficult to be enthusiastic about redundancy.

The TRC was created because, according to the text of its founding Act, the Constitution states that the pursuit of national unity, the well-being of all South Africans citizens and peace require reconciliation between the people of South Africa and the reconstruction of society; and since the Constitution states that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization (preamble to the TRC Act).

There is the beginning of a specific articulation of the relation between reconciliation and justice here, one that avoids the conceptual proximity of criminal justice with revenge or retribution. Justice is instead presented as a break in the cycle of violence. According to Minister of Justice A. Omar, this is “historical justice”:

this Bill seeks to [deliver justice to the people] by laying down the basis for ending political violence and violence of all kinds. It lays down the basis for establishing the rule of law in our country and for building a human rights culture in which the dignity of every single person will be respected. This is historical justice (A. Omar [ANC], Sen. Hansard, June 1995: 2259).

Note how well this also fits with the super-punitive populist discourse on conventional crime: we need amnesty now and we need to establish the final cut-off date so that we can revert to a normal society in which crime can be treated as crime and nothing else. Criminals are getting away with murder. If we as politicians do not straighten out the legislation urgently, South Africa is in danger of becoming the crime capital of the world. Perhaps I should speak a short while on the death sentence [...] (R. J. Radue [NP], Sen. Hansard, September 1994: 1473).

The new reconciliatory justice discourse allows smooth transitions between national forgiveness and advocacy for the reinstatement of the death penalty.

There was broad, cross-party agreement that there is some urgency in finding a solution that would insure justice (specifically *criminal* justice i.e. *order through the application of state control*) in the long term, whether or not that solution was itself just. I submit that is because during the transition phase, post-conflict order (peace) was procured by existing or imminent national reconciliation, while the very organization and distribution of state control was still problematic. The state power structure was still being negotiated so the immediate application of state control was not a priority. Further, there was little conceptual need for immediate conventional criminal justice, because “post-conflict” society was not defined in terms of crime but in terms of (past) political violence.

This “post-conflict” narrative is both widely evocative and very flexible, and all participants in government can find it rhetorically profitable, albeit for different reasons. At the same time, it is crucial to understand that as a new construction it starts already contested by preexisting worldviews and conventional knowledges about crime and punishment that are incompatible with it. The “post-conflict” or “transition” narrative really amounts to a series of nuances imposed on socio-political realities by a new problematization of the situation. I am not arguing that it is more or less empirically correct: empirically observable reality is of secondary importance in this process. One way or another, it adds up to an entirely new way to understand the nature of the political transition, and therefore directly affects the decision on the course of action needed to complete or secure it. One way to disqualify resistance is to anchor the discourse in practical experience, i.e. to find a way to talk about “transition,” “justice” and “reconciliation” through a concrete example. Enters Chile.

The second main function of the foreign concrete example is to flesh out consensus without actually speaking directly of the matter at hand, having to decide who was wrong, etc. As seen above, the broad consensus on “reconciliation” was extremely shallow – that is what made it so flexible – and therefore could not on its own support a unified course of tangible action, let alone dictate the modalities of an *ad hoc* institution. And the case of “justice” was a lot worse: while reconciliation implies no moral imbalance, only objective *conflict*, “justice” (as «forgiveness») inevitably means that there is injustice to be redressed. It is therefore inherently politically divisive. This is actually the result of another difficulty with “justice:” that part of its outcome – the main part, under a conventional understanding of *criminal* justice – was understood as already decided by the Constitution: all *politically motivated* criminals would receive immunity, with or without accessory requirements. This essentially completed the transfer of responsibility from the individual to the political group he or she would be understood to be a part of, so (in)justice was from the start made into a matter of political group

relationships. Without indirect examples, this could have degenerated into a paralysing political and administrative impasse.

**a. Reconciliation and Justice “as in Chile”**

“Chile”’s impact on the construction process was primarily as a myth, meaning that all knowledge and all speech about Chile was really a proxy, a reflexive metaphor. It served as a focal point around which the post-conflict South African society could be being constructed (on this particular function of myths, see Carbonell and Rives, 1990; Edelman, 1964; Flood, 1996; Thompson, 1985). It allowed the articulation of clear value judgements without risk of confrontation or of pigeonholing the speaker in a moral position that risked not being as flexible as required by the political arena.

We have seen that suggestions that “Chile” and other South American truth commissions might be interesting examples to follow became politically viable as early as 1992; Kader Asmal was one of the first to openly mention these options, and thus by his influential status in the ANC (and as a legal scholar) at least in part constitute them as a valid, legitimate replacements to conventional justice. Of course at the time he defined the model very differently from what the TRC would become, adding for example in 1992 that legal challenges to amnesty in Chile were a positive indication that retribution or deterrence might still prevail: “justice, not punishment is being proposed to compensate victims of past wrongs. But there is increasing pressure [...] to respect the obligation of successor democratic governments to investigate, prosecute and punish the crimes of former regimes” (Asmal, 1992: 15).

Poor timing may partly explain why the other well-known “truth commission” (no “reconciliation” in that one’s title), in Argentina, was not a major influence on the TRC discourse. It had completed its work by 1983, well before even the state of emergency in South Africa. On the other hand, the Chilean “National Commission on Truth and Reconciliation” had been instituted just before South Africa saw its first Indemnity Act and it was sitting at the time when the Special Working Group was working out the details of individual amnesty in South Africa.

But beside its greater distance in time, there were far more important characteristics that excluded the Argentinian Commission from the range of valid options in the newly redefined post-conflict South Africa. For instance, it had opened the way to numerous trials and convictions of the members of the old junta, and then down the hierarchy, actually causing a minor revolt of groups of army and navy officers (see Feitlowitz, 1998; Garreton, 1994; Rosenberg, 1991). Faced with increasing opposition within the Armed Forces, the government eventually decided put a stop to the trials, with a law literally called *punto final* or “full stop” in February 1987, that drew a final deadline for filing new cases. Even that turned out to be insufficient to calm the military. Another law, the *Due Obedience Law* enacted a mere month later, essentially pardoned all but the highest ranking military officers. The Argentinian Commission was designed, as the Goldstone Commission in South Africa, to investigate covered-up misdeeds and refer those responsible to the State Attorneys for prosecution. It operated on a very conventional understanding of criminal justice and mass pardons were an afterthought that made the administration appear to waver on moral issues.

By contrast, the Chilean Commission had a very limited brief right from the start: to find out what happened to 2 920 people who were assassinated or “disappeared” (it had become a transitive verb there). In the end, its report did not mention who was involved in the disappearances or in the more straightforward cases of murder, it only made the stories and the names of the *victims* public knowledge. In that sense, the idea of “truth” it operated under was extremely basic, difficult to contest and most importantly, non-accusatory: Mr. X was going to buy some cigarettes, he was taken from the street into a van to a secret detention centre, tortured, killed and buried at location y. What is more, all hearings of the Chilean Commission were held in camera, the final report “named no names,” and declined to endorse an amendment to the constitution that would have allowed the President to dismiss those responsible from the army or civil service (Ensalaco, 1994: 665). It limited itself to blaming institutions in general, such as “the army” and “the presidency.” In its final report, the Commission noted that it “refrained from taking a stand on whether the use of force on September 11, 1973 [the Pinochet coup], and immediately thereafter was legitimate,” underlined the “fundamental role played by the armed forces and security forces in the history of the country” and warned against attempts “to sully these institutions, or to detract from their contribution to the country and the role they are called to play in the future” (as quoted in Ensalaco, 1994: 662).

Further, and perhaps consequently, the Chilean Commission left no sort of wake whatsoever: in July 1992 a research article was published by *Americas Watch* noting that “the Rettig Report [report of the Chilean Commission, named after its Chairperson Raul Rettig], with its deeply disturbing revelations and conclusions, has not resurfaced since” and that copies of the report were not distributed “to avoid the political divisions reflected in the issue of past abuses” (quoted in Hayner, 1994: 622). So by 1994 it was clear that “Chile” possessed qualities that were almost irresistible to many South African groups. Substitute “National Party” and “South African Defense Force” for “armed forces” in the quotes above and you get an almost literal excerpt from any submission of the NP to the TRC. At the same time, it was also compatible with any discourse advocating administrative action to complete the transition, with arguments that reconciliation was not complete, etc. It also provided an appearance of administrative rationality, pragmatism, awareness of the effect government action could have on the stability of the country, investment, etc.

**b. A restored moral order through consensus about historical truth**

In February 1994 Albie Sachs (later to become Constitutional Court judge), attending one of the conferences on post-transition justice in South Africa, described what he thought was the most important requirement of post-conflict solutions:

one wants public acknowledgement in ways that are meaningful, that reach your heart and reach you as a human being. This would entail acknowledging that not just you as an individual but your generation, your endeavours, your dreams and your goals were fundamentally right and human. All of it fitted in with internationally accepted norms of morality and good conduct and were right for this country. If that is acknowledged—as well as the pain, the damage, the hurt

done in resistance on the other side—an immense forgiveness and magnanimity will be waiting to come out (in Boraine, Levy and Scheffer, 1997: 23).

But later he explains: “what we heard from Chile was beautiful, a report with the name of every person—our family, our father, our daughter, someone known and recognized as an individual” (*Ibid*, p. 130). What is described in this second quote comes very short of the goal stated in the first one: “recognizing people as individuals” is not equivalent to recognizing that they were *right* in fighting an *evil* regime. Purely factual truth does not carry that message very well but this is precisely where its power rests: the moral neutrality of pure fact made the Chilean Commission successful in avoiding political confrontation. The desire to avoid conflict essentially leaves the facts to themselves, with the implicit conviction that they have the power to immediately provoke the proper moral judgement.

In his book about the TRC, K. Asmal (Asmal, Asmal and Roberts, 1996: 17) rejected this point of view and argued that the Commission should demand contrition from amnesty applicants. Others also were doubtful that facts would restore morality:

I therefore propose that, although it is not obligatory in terms of this Bill, it is in the interest of reconciliation and the building of one nation that the following should occur. Firstly, there should be a genuine act of repentance in the form of a public apology made to the victims and to the nation by the perpetrators. Secondly, a voluntary gesture of compensation should be made (D P Jana [ANC], N. A. Hansard, May 1995: 1355).

But in the end, any discourse that implied differential moral standings of legally sanctioned political groups was excluded from the TRC project. All arguments to that effect were portrayed as overly idealistic, unrealistic, irrational or simply administratively impossible, and the truth-as-moral-compass discourse quickly dominated the debate:

firstly, the truth must be established after an investigation and a fair procedure have been implemented. Secondly, the truth must be set out unreservedly, unequivocally and must be acknowledged by the perpetrators themselves. Thirdly, the truth of the violations must be made known to the public. If these three elements are met, then we are in fact in the process of healing the wounds of the past and we are then moving towards reconciliation and the reconstruction of this country of ours (M E Surty [ANC], Sen. Hansard, June 1995: 2246).

Of course, the resulting nebulous relationship between historical facts and public morality, left to itself, remained inconclusive in terms of policy. It did have the advantage of fitting rather well with the discourse of administrative legitimacy and functional political consensus that had absolute priority in “post-conflict” South Africa.

Future TRC Deputy Chairperson Alex Boraine, who also had a hand in the early drafts of the TRC Bill, testified in front of the Standing Committee on Justice in early 1995 after an exploratory trip he had taken to Chile:

one of the best things that emerged from the Chile experience is the two volumes of history, quite brilliantly conceived and executed and I had the opportunity to visit the country and spend time with people who were the writers and the historians and the lawyers and many other professions of people who were involved, many on a voluntary basis. And that has done almost more than anything

that the truth and reconciliation commission [sic]. It said no longer do we have to say this is what happened, people now accept that it did happen, that is what it was like and it is for the world to see and for me to see and I think part of the restoration of the moral order [...] (A. Boraine, oral submission to the Standing Committee on Justice, public hearings on the TRC bill, Feb. 1995, trans. p. 70).

Boraine recognizes that the Chilean Commission's work was insufficient in restoring the "moral order." Rather, it was a sort of catalyst for essentially external processes; and in fact the TRC was also often portrayed in that way. This discourse has the advantage of including the explicit and all-important goals of creating a uniform morality, reconciling the nation and "preventing the past happening again" that are offered in support of the TRC, while avoiding moral judgement. There is only a promise of an eventual moral conclusion in the *future*. In practice this turned out, predictably and also by the TRC's own admission, to be unattainable. But the elaboration of this discourse was most influenced by its socio-political context, not by predicted objective consequences. This is where the rhetorical function of mythical "Chile" becomes interesting. It turned factual, neutral truth into the missing moral engine that must propel justice, "as in Chile": successful, peaceful, economically productive and definitely *post-conflict* Chile. Whether or not this representation of Chile is historically correct does not matter: as I have said, "Chile" here is not real; it is a reflective myth of an ideal South Africa. It is part of the language of the TRC project.

In the quote above, Boraine was responding to a comment from M. Smuts, of the Democratic Party (DP): "your [proposed] history committee is going to write up nothing more or less than a history of human rights in South Africa, stretching from 1960 AD to 1993. This is unworkable" (M. Smuts [DP], Standing Committee on Justice, public hearings on the TRC bill, 10 Feb. 1995, trans. p. 67). But this history-writing objective is far from a simple matter of quantities. While Smuts indeed proposed cutting the time window to 1976-1993 instead of starting with the 1960 Sharpeville massacre, her objection still makes no sense without a pre-decided idea of what level of detail must be part of the history to be written. Obviously, someone could write a history of human rights in South Africa in one afternoon, if only the broad lines were needed. In fact, Smuts is clearly concerned with an entirely different matter: the danger of producing a revisionist history was clearly present, given the frequent insistence from the ANC side on the moral relativism repeated here today, the idea and the argument that if one dies at the hand of the liberation movement one somehow is suffering less than when one dies at the hands of the state (M. Smuts [DP], N. A. Hansard, May 1995: 1386).

Clearly, one sees "moral relativism" where one wants to see it, but it is interesting to see the issue contested in this way. According to Boraine, "in a word, it is important that knowledge of the past is known and shared, but it is equally important that this knowledge, this truth, is acknowledged by the South African community—if reconciliation is to have any chance in that deeply divided country" (Boraine, 1996, not paginated). Elsewhere:

South Africans desperately need to create a common memory that can be acknowledged by those who created and implemented the apartheid system, by those who fought against it and the many more who were in the middle and

claimed not to know what was happening in their own country (Boraine, 1996, not paginated).

In a way, Boraine and Smuts are in agreement over the use of a unified truth as a (future) moral compass, but for the latter it only applies at the level of individual actions: what the TRC should do is limit itself to a compendium of stories of victimization, with no context or “understanding” of how they came about. That is exactly what was done in Chile, where the context was presented as morally equivocal, with only human rights violations being clearly wrong. On the contrary, both Sachs and Boraine for example represented “truth” or “history” as an eventual moral vindication of the victims, the freedom fighters, etc., those who were on the “right side” at the time of the struggle. “Chile” is useful here because it can be a good example for both. It even offers something for traditional *opponents* of a truth commission, which is why the myth is so persistent and powerful:

I want to point out that no perpetrators were named in the Chile Truth Commission and I therefore think this is the way we should also go about this. I see no reason why it should really be necessary to mention or to name perpetrators. What is important is to know what happened and whether it is B or whether it is C, it does not matter (C. Viljoen [FF], oral submission to the Standing Committee on Justice, public hearings on the TRC bill, Feb. 1995, trans. p. 49).

We could sum up the various articulations of truth and reconciliation under a simplified table:

TABLE 1: THREE TYPES OF RECONCILIATION THROUGH TRUTH

type	made necessary by	adopted by	“truth” is	main example*
“enlightenment”	a falling out in the past; misinterpretation of intention; cultural differences; “misguided idealism” (de Klerk)	ex-government; remaining old elites	explanatory	<b>Chile:</b> “no perpetrators were named in the Chile Truth Commission”
“forgiveness”/“contrition”	wrong(s) committed by one of the parties	ex-resistance; downtrodden; victims	accusatory	<b>Chile:</b> “one wants public acknowledgement in ways that are meaningful”
“prosperity”	<i>apprehended</i> counter-productive social strife (Mandela)	new elites	satisfactory	<b>Chile:</b> “We sacrifice justice for truth so to consolidate democracy and avoid confrontation”

\*Quotes taken from text above, 1) C. Viljoen; 2) A. Sachs; except 3) K. Asmal: N. A. Hansard, May 1995: 1381.

As we progress towards the right side of table 1 important and potentially confrontational nuances start to disappear, until they are completely invisible.

In short, Chile was a direct model for the South African Commission, and in fact the two institutions are hardly comparable. Rather, it could be used to support and illustrate the argument that a truth commission can be successful, regardless of the speakers’ standards of success. Because Chile could be recognized to have all these different facets that were deemed desirable by different people, it allowed the integration of widely different agendas and thus helped maintain the appearance of political reconciliation, rational negotiation and productive consensus.

#### 4. CONCLUSION: JUSTICE AS PUBLIC QUIESCENCE

I would like to conclude by making three points about the main consequences of this construction of justice in post-conflict South Africa.

##### a. *Post-conflict justice*

Despite the discourse of appeasement and reassurances that moral blame would be avoided, there were obvious limits to the discourse of unified truth leading to restored morality. Still, by and large the discourse supported by stories such as “Chile” allowed the new government to maintain the “hard line” on truth also shared for example by Boraine and Sachs above (all the truth, *and* under an ethically unified version) while showing its reasonableness and amiable flexibility not only on retribution but on moral condemnation as well (hate the sin, love the sinner). There was near-perfect common understanding on this aspect: the books will be closed, the past will be left behind, looking backwards is unhealthy, etc. With unavoidable exceptions “Chile” shows the process of building a TRC discourse that placates those clamouring for something to be done, those who are eager to turn the page, those who think everyone was wrong, those who think victims need recognition, etc., and, crucially, without actually determining any tangible parameters for what to actually do.

Post-conflict justice is just what it sounds like: the continued production of peace and quiet. Whether or not it is concretely successful is a separate question, but the goals and the organization of any institution or program or other administrative action created to further it will have for first mission to minimize publicly visible contestation. Post-conflict justice exists to publicly demonstrate that the conflict is over, not to tangibly endeavour to bring it to an end. It is often called “transitional justice” but the rationality is the same: transitional justice is there to enact the reality of transition, usually understood as transition from openly conflictual times. Table 1 above shows three basic, generalized forms of reconciliatory truth. None has to do with a mindset, emotions, practices, relationships, etc., the only content of “reconciliation” is truth. It is never defined independently. Reconciliation does not involve mediation, individual reparation, visible social cooperation, “learning to live together,” or any other such conceivable concrete action. Consequently, the TRC did not include any of these things.

So is this justice or not? Some of the actors quoted above speak of “sacrificing justice” for a greater good, while others present the TRC project as a different form of justice, be it called “restorative,” “social” or “historical.” I think one thing is now evident: this question is entirely secondary because in fact the definition of “justice” is too flexible. Thus it is not primarily important in the conception, negotiation, organization or operation of the institution. The priority is to maintain the (arguably new) social order. So what Edelman (1964) is missing in his analysis of hortatory speech is that when political discourse is produced, it is not simply the result of an effort to rhetorically navigate through existing popular criteria of justice, fairness, etc. to protect political power. Its function is not simply to permit constant evasion or “spin” or administrative *carte blanche* (although it is certainly that), but also to actually *produce the context* where projects, be they institutions, programs, initiatives, or on the reverse *laissez-faire* and neglect, will be evaluated. That is what each of the discourses about Chile were so helpful with: the production of a context where truth commissions could be agreed upon as valuable alternatives by the greatest number of actors, a context where justice was

understood as continued peace, equal security and “equal-opportunity” (liberal/capitalist) prosperity. I am not arguing that this is a right or wrong way to conceptualize justice; certainly, it is a different way, with different consequences in practice.

**b. The strategy of reconciliation**

I think the story of the creation of consensus about the future TRC illustrates rather well a concept found in Foucault that is often misunderstood, the idea of a “strategy without strategists” (see Dreyfuss and Rabinow, 1983: 187). The creation of the TRC is best described and understood as the slow and labourious beating of a conceptual path towards a common “solution” to a problem defined in contradictory ways and situated within opposed immediate political strategies, with the help of rhetorical and conceptual tools that little by little homogenize and focus disparate discourses into a more unified (albeit hollow) worldview. That does not mean that competing discourses disappear, only that they become manageable through cooptation, exclusion or apparent irrelevance. Looking back this could be identified as the result of an implicit or explicit understanding between dominating groups, under a “conspiratorial” understanding of Foucault. But this would mean adopting the human reflex to interpret events with the help of *a posteriori* rationality as its own explanation. I submit that at any point of the process, action has been contingent and unpredictable and apparent consistency emerged – in fact, consistency was the main thing being constructed – through language precisely as part of this reflex to create order and predictability in representations of the social.

The fact that myths such as *Chile* have an important role in this process seems to indicate that even shallow consensus is constant and difficult work, which is the opposite of what is generally understood as strategy. Strategy involves pre-existing planning and cooperation towards clear objectives; what we have here on the contrary is the ongoing and delicate integration of opposite viewpoints under a unified symbolic banner. The result of this negotiated production of reality only looks as if it had been planned because it includes its own rationality as its only standard. It is in fact a series of unforeseeable consequences as well as arbitrary and contingent interpretations of situations and concepts.

**c. The limited impact of the truth**

Reconciliation slowly became indistinguishable from truth, or bound to it by such a powerful causal relationship that the distinction appeared as a theoretical or “philosophical” matter only. I have argued that this relationship was consolidated at least in part by the reflexive myth of “Chile.” Not that this relationship would have been *unimaginable* otherwise, of course. But just as Kader Asmal introduced the idea of truth commissions in 1992, what Chile did in the popular discourse, the working knowledge of the TRC, was to make these specific concepts part of the general problematization of the context, part of how the situation at hand was constituted as a specific object to be addressed by specific means. Binding truth to reconciliation had many rhetorical advantages, and we have seen how powerful it could be in responding, or giving the appearance of responding to disparate claims from just about every shade of the socio-political spectrum. However, in return it also seems to have imparted a

peculiar flavour on “truth,” to have made it “conciliatory.” Peace and quiescence became parameters, or boundaries of truth because they were now part of its definition.

So, predicably, South Africa’s Pinochets were not called in front of the TRC. Unsuccessful, and in fact half-hearted efforts were made to call ex-president P. W. Botha before the Commission, very late in the exercise, and after endless coddling of the Groot Crocodil found by many to be incompatible with the TRC’s mission to unearth the truth (Krog, 1998; Pigou, 1998). The same situation prevailed with Mangosuthu Buthelezi, head of the IFP, and the Commission did its mea culpa in that regard (TRC, 1998: 5, 6: par. 55); the head of the IFP was not subpoenaed because of the risk of upsetting the political balance in Kwazulu-Natal. Only two members of the old government have applied for amnesty, and for one or two isolated acts; at the NP hearing, only de Klerk took the oath and was questioned, the party a solid, silent block behind him. The Commission made no attempt to find cracks in that block with its power of subpoena; as in Chile, peace and quiet were seen to take precedence over truth-finding.

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