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## **‘Tell All the Truth, but Tell it Slant’: A Poetics of Truth and Reconciliation**

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*There is a voice that tries to speak the truth. This essay will suggest that the discourse on the South African Truth and Reconciliation Commission [TRC] has perhaps ignored this most invisible of things, and has looked for the truth of the Commission everywhere except where it might be found, if indeed it can be found at all. To the extent that it is possible to oppose the truth of the voice to another truth, it may be useful to make use of a notion of poetics; even a sublime poetics.*

### INTRODUCTION

The Truth must dazzle gradually  
Or every man be blind –<sup>1</sup>

But how can we speak of truth and reconciliation? Can there ever be a correct register?

The first problem: how could an aesthetics of truth and reconciliation come about in South Africa? There is a certain risk with this thesis, as it imposes a categorization on a kind of scholarship that is eclectic and mercurial. Perhaps it is wrong to isolate one of its elements, a certain

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1 Emily Dickinson, alluded to by Archbishop Desmond Tutu in the foreword to TRC, *Truth and Reconciliation Committee of South Africa Report* (1998).

aesthetic leaning, and to see this as its predominant mode of argumentation. Whilst accepting this problem, it is still possible to maintain that an aesthetics does run through certain responses to truth and reconciliation, and does at least allow one to see correspondences between the work of different scholars. It may be helpful, therefore, to sketch a putative genealogy that links South African work with the developing body of aesthetic jurisprudence. In doing so we will also have to account for the metamorphosis of the field, and describe the distinctive use of poetics and aesthetics by South African scholars. In taking this novel turn, it is not the suggestion that legal aesthetics simply abandon its underpinnings and constituting philosophies; rather, the time has come for a study of the transformation of legal aesthetics, as it becomes, perhaps most properly, a legal poetics.

To bring these themes together, we will study Archbishop Desmond Tutu's reference to Emily Dickinson's poem 1129 in the foreword to the report of the Truth and Reconciliation Commission (TRC). We will then try to read the 'grain' of the voice that speaks in the foreword, and attempts to reflect on its own mandate; the authority that allows it to talk, or the position from which it talks. We will need to deal with the idea of truth that was deployed by the Truth and Reconciliation Commission. Polyvocal, reflexive, and complex, there is no way that this can be criticized as a naïve approach to the manifold difficulties of the task with which the Commission had been charged. However, is there perhaps another way of thinking about the truth; a sense that communicates with the allusion to Emily Dickinson? Perhaps this is different. We might call it a sublime truth; a truth that is warranted by the events that have summoned it; or even a truth in/adequate for any way of talking about the momentous process, the work in progress that is the transition to democracy in South Africa.

## TOWARDS A POETICS OF TRUTH AND RECONCILIATION

The voice can be approached from the perspective of a legal aesthetics.<sup>2</sup> No attempt will be made here to summarize the legal aesthetics, other than to argue the following point. Aesthetics is not primarily concerned with a theory of the beautiful; maybe it would be more accurate to refer to a legal poetics,<sup>3</sup> a term that is perhaps far more useful in considering the South

2 P. Goodrich, 'Europe in America: Grammatology, Legal Studies, and the Politics of Transmission' (2001) 101 *Columbia Law Rev.* 2033–84, at 2075.

3 If aesthetics is the philosophy of the beautiful, then it would seem that aesthetic jurisprudence must have some concern with revealing the beauty of law. Although some have taken this approach, see E. J. Weinrib, *The Idea of Private Law* (1995), it represents a narrow interpretation of the possibilities offered by thinking through aesthetics. Aesthetics is much more than a theory of the beautiful. Building on the etymology of the term aesthetics, it appears more concerned with a quality of experience and sensation; perhaps aesthetics even extends into an account of human

African scholarship that will orientate our reading. Our argument will attempt to locate the South African scholarship within the broader discourse of legal aesthetics, before turning to a more focused discussion of the poetics of truth and reconciliation.

For the South African scholar, aesthetics could never be orientated towards disinterested reflection. Aesthetics provides a publicly orientated discourse of political possibility.<sup>4</sup> It is concerned with the question of how a new beginning is possible. A commitment to the politics of legal scholarship does not necessarily make South African work distinctive; rather, the originality of the position, the great difference with the predominant forms of Anglo American scholarship, is a rejection of the intellectual bankruptcy of the legal philosophy of the old apartheid order, a sense of the need to articulate a robust democratic culture: a need to start afresh. It would be interesting to study the broader social underpinnings of this generation of scholars, the institutional alliances and intellectual genealogies of those scholars who have turned to aesthetics, but space is limited here.<sup>5</sup> We need to focus on what makes South African scholarship different, and the way in which truth and reconciliation is thematized within a broadly aesthetic framework.

The appearance of truth and reconciliation as a theme within legal aesthetics has made for a certain reworking of the underpinnings of the field. There are, of course, immediately problems with how one even begins to think of legal aesthetics, and we at least have to acknowledge this before we return to our main point. How does legal aesthetics relate, for instance, to a 'jurisprudence of appearances'<sup>6</sup> or other cross-disciplinary forms of legal scholarship and social theory? Even if we acknowledge that the boundaries of the field remain unsettled, it is still probably accurate to argue that the foundations of legal aesthetics do, for the most part, draw on American scholarship. As one way into this complexity, we will contrast two pieces of work that represent opposing positions; different visions about the composition of legal aesthetics. One particular line is orientated towards a reading of what could be described as constitutional law.<sup>7</sup> This work's motivation is to produce a legal hermeneutics based on a sophisticated model of the understanding of literary texts and a humanistic ethics. It is rooted in

being or human community. Certainly the trajectory through Heidegger offered by Jean-Luc Nancy considered in this paper suggests that this understanding might be possible. The notion of poetics could also be built upon Heidegger's foundation. For an alternative account of aesthetics, without a Heideggerian underpinning, see P. Schlag, 'The Aesthetics of American Law' (2000) 115 *Harvard Law Rev.* 1049–117. See, also, A. Gearey, *Law and Aesthetics* (2001).

4 See, also, W. Le Roux 'From acropolis to metropolis: the new Constitutional Court building and South African street democracy' (2001) 16 *South African Public Law* 139–68.

5 P. Goodrich, *Working Friendships* (forthcoming).

6 See R. Sherwin, *When Law Goes Pop* (2000) 107.

7 See J. Boyd White, *Justice as Translation* (1990).

American legal and political culture. Indeed, one might think of it as legal aesthetics in the form of a 'democratic conversation', a pluralistic approach to a political reality that has always been mediated by a fundamental constitutional document. Although influential, recent work has departed from the concerns of this approach.<sup>8</sup> Acknowledging an inheritance from critical legal studies (CLS), it is perhaps sceptical of sweeping claims about democratic conversations, and attempts to deploy aesthetics to both map American jurisprudence, and to suggest a new direction in legal argumentation. This 'dis-associative' approach is not so much concerned with a model of democratic culture, as the mechanics of lawyering, and the legacy of critical legal studies for both practical and philosophical accounts of American law.

Another important theme that needs to be touched upon is the issue of race. Legal aesthetics in America either came late to this topic, or dealt with it in an implicit, or largely untheorized manner.<sup>9</sup> To deal with this point properly would require an extended consideration of CLS and the emergence of critical race theory (CRT); again, space prevents such an engagement, but we can make a couple of essential points that touch upon the possibilities that this thought offers to others working within related areas. In its American beginnings, critical race theory can be understood as a response to the failure of the anti-discrimination law to achieve any real sense of social advantage for the black community. In a more extended sense, CRT provokes a way of thinking about the law that is not limited to a historical time and place, but is an engagement with law's complicity in the violent perpetuation of an economic and social order. Building on both these elements, the second generation of CRT scholars are at present turning to aesthetic theory to elaborate a more sophisticated model of such themes as ideology, and the way that the 'colour line' is lived.<sup>10</sup> One would expect that this kind of thinking would be more central to legal aesthetics, but perhaps there is still a sense in which it remains somewhat ghettoized within American legal theory as a whole. Indeed, when we turn to the South African scholarship, it would appear that rather than draw on this body of work, the thematics of race, humanity, and community tend to take their reference points from continental philosophy.

So, our first observation would be that aesthetics has been an engagement with the specifics of American law and culture. Although American culture is certainly marked by social conflict, this scholarship does not emerge from a context where a war of liberation has changed the political order. In other words, legal aesthetics has worked within a conceptual universe that takes a

8 Schlag, *op. cit.*, n. 3.

9 See K. Crenshaw et al. (eds.), *Critical Race Theory* (1995).

10 A. Farley, 'The Black Body as Fetish Object' (1997) 76 *Oregon Law Rev.* 480. See, also, J.A. Farley, 'Thirteen Stories' (1999) 15 *Tuoro Law Rev.* 2. For a different treatment of anti-Semitism, see R. Weisberg, *The Failure of the Word* (1984).

democratic culture and the contestations within it, as its essential context. This is not to argue, however, that there are no influences from American scholarship, but, when legal aesthetics has to address a radically different political situation, the field should be rethought, and must open itself to transformation and reception in a different jurisdiction.

To return to our concern with the transformation of the field, we must look for a theme that has been taken and reworked, and adapted for a different context. This would put us back in touch with a certain legacy of CLS, but, as we will presently see, this is a mutated form, one that would see the American movement as only one of its reference points. Our concern is with Cornell's notion of recollective imagination.<sup>11</sup> This thesis can be read as both a continuation of CLS, and a work in aesthetics. Recollective imagination takes as its starting point the key CLS problematic; the indeterminacy thesis.<sup>12</sup> Indeterminacy must not be conflated with what now passes as 'postmodernism'. The thesis must be understood as an insistence that the questions one can ask of an institution are not made from a transcendental or external viewpoint; they come from within the context itself. Indeterminacy cannot be associated with a collapse into subjectivism, or a banal anti-foundationalism. In its most elaborate form, Cornell's development of indeterminacy suggests that there is no schema that can comprehend 'the real'. The truth of any given reality cannot be found in an account of its totality. There is something that resists reduction into an ideal schema. Recollective imagination, though, presents itself as a way of imagining a future, a future that might be different from the past. In this sense it carries forward the radical edge of CLS, but recasts it in aesthetic terms.

Aesthetics, then, is about situatedness. It is concerned with the complexities of embodied existence that cannot be reduced to ideal or interpretative schemata. Perhaps Cornell's work does represent a kind of terminal point in the CLS legacy; perhaps it indicates that the radical project is now only imaginable as an aesthetics. However, the suggestion that Cornell's work has been influential in the development of an aesthetics of truth and reconciliation needs to be taken with a number of caveats. Firstly, although there is perhaps a direct influence in some cases, it is not suggested that Cornell represents a reference point for all South African scholars working within this problematic. It is also worth noting that her work is itself mutated in its 'application' to South African political realities. This essay also risks a certain distortion of Cornell's own concerns. Whilst there is a hope that the present work is sensitive to a feminist perspective, it is clearly not an explicitly feminist engagement. There has been a rich and varied feminist response to the Truth and Reconciliation Commission, but

11 D. Cornell, *Transformations* (1993).

12 See D. Kennedy, 'The Structure of Blackstone's Commentaries' (1979) 28 *Buffalo Law Rev.* 7.

integrating this perspective more thoroughly within the present work would be difficult; it may be necessary, at least for the moment, to listen to the quiet voice of Emily Dickinson as a way of negotiating these concerns. But this is to run ahead of the argument. To some extent, the genealogy that has been presented thus far stresses the input of American scholarship into South African legal theory; arguably, there is also an influence that derives from a different, but related source: 'British' critical legal studies.

The appellation 'British' has to appear in quotation marks, as it is more properly described as work done by a diverse body of scholars in British institutions, who are themselves of different nationalities, or might even refuse to identify with something as reductive as nationality. It can also be read, again with certain caveats, as the transmission and transformation of traditions of continental philosophy. We can perhaps think of it as an ongoing negotiation of elements of Marxist, Heideggerian, and deconstructive themes, committed to a re-imagining of the possibilities of legal thought. Moreover, it remains a form of aesthetic thinking, taking seriously the centrality of texts such as *Antigone* for any authentic engagement with the law.<sup>13</sup> It poses the essential questions: 'how is my life to be lived; how do I create myself; how do I create a world of meaning?'

Although perhaps not explicitly an aesthetics or even critical legal studies, there is also work that draws on autopoiesis and postmodern thought that has influenced thinking about truth and reconciliation.<sup>14</sup> It represents a certain style of thought; a particular way of setting up an argumentative approach. The pressing issue is to understand how the past continues its grip on the present; and whether it is possible to carry forward memory in such a way that we are not held by the dead hand of the past. Most importantly, this forces a thinking of institutional memory and, specifically, law's relationship with memory. One could deploy a more deconstructive register that sees memory as carrying a certain excess, something that escapes representation. This could be thought of as a problematic indicator of a path not taken, a past that could still be brought to be, there is a certain 'irrecoverable'<sup>15</sup> quality of the past, a remainder that ghosts those events that are remembered. Is it possible to imagine a future?

Approaching South African scholarship through this genealogy suggests that it is somehow derivative, or parasitic on 'modes' of thought drawn from elsewhere. Unfortunately, this problem must remain as it is not possible to explain the other influences, the other intellectual trajectories that converge and diverge. Such a project will have to await another occasion. The central argument here, however, is that even if South African scholarship does draw

13 See C. Douzinas, *The End of Human Rights; Critical Thought at the Turn of the Century* (2000) and C. Douzinas and R. Warrington, *Justice Miscarried* (1994).

14 See E. Christodoulidis, 'Law's Immemorial' in *Lethe's Law; Justice, Law and Ethics in Reconciliation*, eds. E. Christodoulidis and S. Veitch (2001).

15 *id.*, at p. 211.

on these resources, it claims them as its own, and transforms them into a new problematic. So, the next part of the argument will be to address the South African scholarship that has taken aesthetics as a way of approaching truth and reconciliation.

## THE SLOWLY SPREADING LIGHT: A POETICS OF THE POLITICAL

Johan Van der Walt's work provides a poetics of the political that takes truth and reconciliation as a definitional moment. How can we understand it as a poetics? The poet is a maker; the poet puts together materials like a *bricoleur*, to suggest a new beginning, a new composition, to make the world anew. This returns, in part, to the indeterminacy thesis, but it is only one of its reference points. The poetic – or even the philosophical poetical – is a desire to posit the general account, to provide foundations, but it is not outside of the processes it observes; rather it occupies a 'reciprocal' relationship.<sup>16</sup> It is no more prior to the law or to politics that these terms are independent of the philosophical. This reciprocal constitution of these different discourses attests to our own situation or 'state', which, in a certain philosophical vocabulary, is the way in which our intellectual engagement with the moment is in part determined by an inheritance; a set of concepts and ways of thinking. Rather than separate out any of these strands of thinking, or 'moments', we perhaps need to appreciate their historical location: a history that is not necessarily one of a working through of a spirit or a determining logic, but an arrival at a particular conjugation that is enabled by its past. This demands a new approach. It cannot be thought on the basis of sociology, or a history of South African law and politics, which is not to say that it does not make use of these modes of thought. Perhaps, then, it is ultimately a poetics because it is concerned with a style of thought, a way of recomposing differently so that something new can appear.

What appears? This is the central question of a poetics of community. Returning to the issue of putting together the resource differently, we can focus this question most sharply if we return to the question of style. Certain discourses have always sought to speak for the community. Law, in this sense, has always been an account of the community under law through its articulation of sovereignty. Of course, law or jurisprudential reflections on sovereignty are not the exclusive articulations of community. One could equally find it in modernist sociology, where the consensual or conflictual underpinnings of human community provide an orientation to study. Likewise, political discourse seeks to talk of community in terms of power and authority. Hobbes' *Leviathan*, rethought in different ways in the liberal tradition; Rousseau's or Mandela's notions of the people; the notion of

16 See P. Lacoue-Labarthe and J.-L. Nancy, *Retreating the Political* (1997).



*ujamaa* in Nyerere and the different African traditions are all perhaps variations on this essential theme. Again, risking generality, and banality, a poetics would follow a certain line or a disturbance within these fields. Once again, this is not to say that poetics opposes itself to either law, politics, or any other discourse of the social. It is to suggest that it takes a different inflection, a different way of saying; but it also says something different. Community cannot be thought on the basis of the inclusion into a collectivity that is then spoken for by party, president, or spirit. Poetics would seek to de-link the movement from community to sovereignty, or, at least to see what gets left out, what is lost, in an easy movement between the two. It would prefer to speak in terms of a sharing, a relationship of specifics that cannot be turned into a generality.

Could this provide a thinking of truth and reconciliation?<sup>17</sup> There are many difficult registers here, not least the problem of truth, and its relationship to the very notions of community and poetry. The briefest of sketches will have to suffice, to suggest no more than the outline of a complex and necessary space of thinking. As it may be possible to sense from the above, what is at stake here is the mutation of a certain Heideggerian discourse; it is as if Heidegger is being rethought to privilege the notion of being together (*mitsein*), as the primordial human condition. There are many difficulties. Being in the world, as a structure, is already a given: an original and indivisible whole, a total system, which determines or conditions how we consider the elements that compose its totality: it 'always comes first'.<sup>18</sup> Does this totality of being suggest that it has to be encompassed by an equally totalitarian theory of truth? Even if we were to depart at once from models of truth as adequation and to deploy a notion of truth as uncovering or revealing, would this help us? Do we need a theory that sets everything and everyone in its right place? The theoretical orientation suggested above would demand a subtler account of the truth.

If one accepts that Heidegger represents only a beginning, then this way of thinking does not have to lead to a grand theory of truth as the unveiling of being, a philosophical discourse that creates itself as an ambitious and exclusive monument to a way of speaking the truth. How could this discourse be interrupted, without losing its essential and important insight, the notion of

17 See *After the TRC: Reflections on Truth and Reconciliation in South Africa*, eds. W. James and L. Van de Vijver (2000). Colin Bundy's essay in this collection (pp. 9–21) examines the location of the TRC within a 'broader' understanding of South African history; this is, in particular, an attempt to make sense of the Commission in 'fairly conventional social science terms'; an endeavour that would relate it to 'legislation', 'political and social processes'. It is a discourse that would 'distance' itself from the 'TRC as political drama or morality play, and eschew rhetorical celebration or denunciation of the Commission'. It would seem, then, that there is an idea of history that can be aligned with social science, against the misunderstandings of the aesthetic and the rhetorical.

18 M. Heidegger, *Being and Time* (1962) introduction, part 1, division 1.

our being in a world that makes sense for us? What would this make for in terms of a notion of truth: how could one talk about the truth of community? If, as Heidegger tells us, this returns to 'Being in the World'<sup>19</sup> then it must also return to the notion of *mitsein*, and what is shared in community as the form of being in the world. A thorough reworking would take us towards the notion of care.

Care is always a kind of disposition to the world, to projects in the world. Care, and hence a notion of truth that may relate to it, could indicate the way that life is always thrown up ahead of itself, enabling projection. But, might this projection be related to a truth that does not seek an essential revelation, or a return to a truth of being as that which is unveiled or revealed? Truth might be 'something' that must be shared amongst us, 'something' ongoing.

It is precisely this thematics of the truth and reconciliation that Van der Walt's work suggests. Truth and reconciliation becomes an 'event'; it does not posit a substance, a new sovereignty, a way of gathering together the 'being' of the new South Africa. As an event it is, in the sense to be elaborated, a telling, a sublime marker: it aims to undo three centuries of oppression and violence in two years, to save the law from the filth into which it had fallen.

There are at least two separate but related aspects of this account; they could be described as an idea of a non-totalizable 'we' and a future directedness. Given sufficient space, these concerns could be related back to the problematic of truth outlined too briefly above. Risking schematism, we shall develop these two themes in such a way as to appreciate their specificity, and their relationship. The 'we' that is to be addressed here is the 'we' of a *nomos*, and hence a law, yet not a 'we' that can be spoken for by the law. Perhaps, then, there is a *nomos* that may coordinate with the law, but is not identical with the law. This difficult relationship can be put in less normative terms, by thinking of a certain temporality, which is not necessarily historical time:

The time or timing of reconciliation can therefore not be thought in terms of presence. Nor can it be thought in terms of a future not yet present, a future that will become present . . . it must be conceived in terms of the non time or negative time between present and future . . . It occurs as the time or timing that holds past, present and future in play.<sup>20</sup>

A time of being together, a time of a pure sovereignty that could found the law is not available. We must think the Commission's task as one of radical incompleteness; a paradoxical openness and irresolution that must nevertheless provide a mark, a foundation, and a boundary between what was, and what can come to be. In words stolen from Jean-Luc Nancy, it is 'what happens when we risk saying "we are inaugurating history" instead

19 *id.*, at p. 261.

20 J. Van der Walt; unpublished manuscript in the author's possession.

of simply saying “this has been history”.<sup>21</sup> Anticipating the way that we will speak of this problem, we could say that the paradoxical task that we need to think could be expressed in a poetic register: to redeem time from time in time; or rather, in a more political mode, to represent a break in a history.

However, we need to turn to another central issue, and to the work of a second scholar who shares, but cannot be reduced to, Van der Walt’s problematic. We need to make this turn to think about the voice; a notion essential to poetics, and to a poetics of law. Such a thinking might build on the work of Karin van Marle. For van Marle, the voice is to disassociate from any sense that it summons into a presence of recollection. In this sense, we can trace a line of ‘inheritance’ back to the aesthetics of recollective imagination suggested above. But, this is now firmly related to the politics of truth and reconciliation:

She is sitting behind a microphone, dressed in her beret or kopdoek and her Sundaybest. Everybody recognises her. Truth has become Woman. Her voice distorted behind her rough hand, her undermined Man as the source of truth. *And yet nobody knows her.*<sup>22</sup>

She, the truth, sits behind the microphone: she addresses us from a long way off (we might not hear her at all). A great deal could be said about the conjunction between the voice, truth, and memory, but we will take as our essential problematic that of van Marle’s: how is it possible to talk about TRC now, from our present? This is a question that clearly raises issues somewhat different from the need to respond to the TRC in the moments of its operation. Any discourse about the TRC is problematic, as it can never respond to the pain of those who spoke before the Commission. Van Marle’s essential theme is: how is a public discourse on the TRC possible?<sup>23</sup> This sense of van Marle’s work also takes us back to the very notion of the poetic as a saying, but now to a wider set of questions about the audience and rhetoric.

Indeed, criticisms of the TRC have been made by other scholars that draw attention to these issues. The TRC is accused of failing to find a correct level of address and discourse. The report did not balance ‘disclosure’ with ‘amnesty’.<sup>24</sup> For van Marle’s work moves towards a concept of literature as the only form capable of carrying both a respect and a criticism of the TRC, but also a notion of the ongoing nature of reconciliation as a work in progress. Drawing on notions of narrative as ‘patchwork’ or ‘jigsaw puzzle’, her concern is with a thinking-of process that is not necessarily end-directed,

21 J.-L. Nancy, ‘Finite History’ in *The Birth to Presence* (1993) 144.

22 A. Krog, *Country of My Skull* (1998), cited in K. van Marle, ‘Law’s Time, Particularity and Slowness’ (2003) 19(2) *South African J. on Human Rights* 239–55.

23 K. van Marle, ‘The Literary Imagination, Recollective Imagination and Justice’ (2000) 15 *South African Public Law* 137.

24 Bundy, op. cit., n. 17, p. 14.

that can compose and recompose pieces differently.<sup>25</sup> Of course, this is motivated by the need to push forward the legacy of the TRC, but not to this or that certain end. The key term is, perhaps, a thinking of open-ness, or in a slightly different metaphor, an ability to think in terms of uncertainty and doubt.

How can we develop these concerns? We need to turn to the report of the Truth and Reconciliation Commission.

## THE VOICE OF RECONCILIATION

We need to focus on the foreword to the report of the Truth and Reconciliation Commission; we need to try to read the voice, the voice of Archbishop Desmond Tutu that is speaking – one might even say ventriloquizing – the other voices of the text.

But why a concern with a voice? Surely this ignores the fact that this voice is already a text. However, it is this very way in which the voice has become the text, the official account, that is the problem. It will be suggested that the sublime voice does not so easily become archived,<sup>26</sup> does not so easily speak on the basis of its founding legal authority (although one of its registers is that of the law).

Why the sublime voice? Without, at least at this stage, entering into a rigorous analysis of the sublime,<sup>27</sup> it will be suggested that it might lend itself to a reading of the report of the TRC.

In *On the Sublime*, Longinus writes:

... what transports us with wonder is more telling than what merely persuades or gratifies us. The extent to which we can be persuaded is usually under our control, but these sublime passages exert an irresistible force and mastery ... the proper order and disposition of material are not manifested in a good touch here and there, but reveal themselves by slow degrees as they run through the

25 Van Marle, op. cit., n. 23, at 149.

26 Bundy, op. cit., n. 17, provides a definition of the Derridean notion of the archive:

at the heart of Derrida's critique ... [is] that it exercises power over knowledge. Archives confer authority on certain aspects of the past; they identify, classify and consign certain forms of knowledge into an apparent unity, and into a fixed, closed, artificially stabilised system.

At the same time, the archive is the repository of memory, and the site of a certain forgetting. This theme has been prevalent in critiques of TRC.

27 A starting point would be Jean-Luc Nancy's essay, 'The Sublime Offering' in his *Finite Thinking* (2003). Nancy draws attention to a distinction made by Boileau, Longinus's translator, between sublime style, a category of rhetoric, and the sublime in 'an absolute sense', namely, a way of speaking of subjects of 'great elevation'. The sublime as a rhetorical style is the sense primarily deployed in the present essay, although this, of course, shades into any way in which momentous events are themselves thematised.

whole texture of the composition; on the other hand a well timed stroke of sublimity scatters everything before it like a thunderbolt, and in a flash reveals the full power of the speaker.<sup>28</sup>

The sublime, then, is a way of speaking; it is a rhetoric known in its effects. It relates to ‘the proper order and disposition’ of material, that is revealed slowly; but also can flash before you like lightning. This account of the sublime is very close to the Emily Dickinson poem cited by Archbishop Desmond Tutu in the foreword to the *Truth and Reconciliation Report*.<sup>29</sup>

Tell all the Truth but tell it slant –  
Success in Circuit lies  
Too bright for our infirm Delight  
The Truth’s superb surprise

As Lightning to the Children eased  
With explanation kind  
The Truth must dazzle gradually  
Or every man be blind –<sup>30</sup>

We will return to this poem in much greater detail but, for the moment, it is possible to hint that it concerns a sublime poetics of truth that might be one way of ‘understanding’ the event of truth and reconciliation, one way of listening to the sublime voice.

In some ways, though, the voice that will concern us is an institutional voice, a voice that has chosen to speak for other voices, a voice with a mandate. This voice cannot ultimately speak for those who suffered, and for those who have no voice. To the extent that it can be distinguished, then, the concern is not so much with the voice of the victim, or even the voice of the perpetrator, but with an official voice: the institutional voice of Archbishop Desmond Tutu. Perhaps critics of the TRC have not looked, or listened to a quality of voice, a voice that speaks against itself, opposes itself, finds its own mandate problematic. Despite the fact that this is the official voice, the archiving voice, the voice speaking the official version of history, it is a voice that speaks against itself; perhaps it even speaks against the very task that it has been given.

## THE TRUTH OF THE TRUTH AND RECONCILIATION COMMISSION

The concern, then, is with how this voice gives itself a mandate to speak the truth, and how it problematizes its own mandate. We will focus on the foreword to the report of the TRC, because it is this very liminal space where the voice can best be heard; however, it will also be necessary to read

28 Longinus, *On the Sublime in Classical Literary Criticism* (1965).

29 TRC, op. cit., n. 1.

30 E. Dickinson, *The Complete Poems of Emily Dickinson*, ed. T. H. Thompson (1961) 506–7.

other parts of the first volume of the report to connect essential themes. There is one point to be stressed. The foreword is a peculiar space. It represents the last passage to be written, and yet the first confronting the reader; a kind of epilogue but at the same time a prologue. We could push this point. The foreword is both part of the report and strangely separate; both part and apart. Might it suggest possibilities by virtue of its positioning? If we speak of the success or failure of the TRC, the success or failure of the law, how does this relate to a voice speaking from a place that is both of and not of the report, a voice of the law, but of more or less than the law?

The truth to which the TRC was committed was, from the beginning, double and difficult. Criticisms have been made about the way in which the Commission resolved these difficulties, but our starting point is that there was a sophisticated understanding of the truth within the Commission. However, it is as if the TRC was hobbled from the very beginning. Its *modus operandi* severely restricted the 'truth' of the statements that it was charged to bring to light. The Commission was itself well aware of its founding dilemma. It is as if the need to record the narratives of human rights abuses changes their nature:

On the one hand, the Commission was a legal institution with the responsibility of making defensible findings according to established legal principles. This was particularly important, both to safeguard the credibility of the Commission's final report and to ensure that those who received reparations were genuinely victims as defined in the Act. On the other hand, the Commission embodied a moral and therapeutic process that aimed at acknowledging suffering and giving victims an opportunity to tell their stories.<sup>31</sup>

One way in which the Commission hoped that it would resist a legal logic was in the public nature of its hearings, where victims were given the chance to tell their stories without cross-examination. This procedure, though, did mean that corroboration became more difficult, and the therapeutic was raised above the legal. How could this be resolved? Methodological protocols were developed. Consider, for the moment, the way in which the Commission operated. Statements were taken from victims that identified the abuses that had taken place. It was important that these statements could be considered in a 'systematic' manner<sup>32</sup> so that the juristic or quasi-juristic mandate of the commission could be fulfilled. The minimum requirement was that there should be some conformity and 'consistency'<sup>33</sup> in the material. In other words, it was necessary to place some grid over the 'raw' material of remembrance, in its confusions, in its many languages.

31 References to the TRC report, *op. cit.*, n. 1, will give volume, chapter, and paragraph: 1, 6, 27.

32 *id.*, 1, 6, 9.

33 *id.*

As the Commission notes, the narratives themselves were in a form that was unsuitable to a legal or perhaps even quasi-legal presentation of the truth: chronology and the names of those involved became jumbled and obscured, especially as some people were recalling events that happened two to three decades ago.<sup>34</sup> Eyewitnesses had vanished or were unavailable, records had been destroyed, as part of the general erasure of apartheid's official memory. How could this be reduced to an institutional logic?

If there was a need to 'fine tune' the accounts of the victims,<sup>35</sup> then one could imagine how a lawyer would be able to demolish the 'truth' value of such documents in court. Protocols developed that show an increasing need to move beyond mere consistency of statement, to impose further forensic structures on the victim's narratives. In particular, the Human Rights Violations Committee and the Reparation and Rehabilitation Committee<sup>36</sup> made use of 'corroborative pointers' that would allow a more precise evidential structuring of information. Other requirements that determined the shape of narrative were perhaps more institutional or practical than directly legal: these were the impositions of an information management system, with its own archiving and organizing logic that coordinated the regional and the local, that allow cross reference and capture of data flows. Please do not misunderstand. These comments are not meant as a valorization of 'raw' narrative, as opposed to a kind of institutional memorialization or archiving. For instance, the very collection and corroboration of materials did allow the Commission to move from perhaps incorrectly remembered events to a more coherent representation of an abuse

So, the Commission was well aware of the difficulties of the truth with which it was dealing. There was, indeed, a certain reflexivity in the Commission's understanding of the truth. The Commission's report is careful to provide a social-scientific defence of its methodology. Its foundation is a belief in the possibility of 'objective knowledge' of the social world. Objective knowledge is understood in a special sense, that of an intersubjectively agreed truth, a truth held in common between social actors. A footnote states that this may be 'weaker' than objective knowledge, but 'it has the same practical effect.'<sup>37</sup> This question of effect is not developed. The main text returns to criticisms of the 'decontextualised' nature of the forensic record of human rights abuses, and the equally decontextualized nature of 'quantitative analysis'. One criticism argues that violence is understood in contingent social ways, by reference to social meanings that are accessible in the world of the person recounting the abuse. Such a criticism is not fatal to the work of the Commission, as it suggests that a quantitative method must be supplemented by approaches sensitive to the culturally specific

34 *id.*, 1, 6, 23.

35 *id.*, 1, 6, 11.

36 *id.*, 1, 6, 21.

37 *id.*, 1, 6, appendix to para. 10

construction of meaning. Indeed, the Promotion of National Unity and Reconciliation Act 1995 that set up the TRC demanded a methodological pluralism that made use of both quantitative and context-sensitive analysis.

There is a Weberian underpinning for this approach. Weber's sociological method requires that 'uniqueness' results from the 'combination of general factors' that can in themselves be isolated and subjected to analysis. Classical sociological method thus shows the same concern as the Commission with a sensitivity to individual cases and the need for general reflection. Generalities are to be made analysable through the imposition of 'ideal types', which are defined as 'controlled and unambiguous conceptions'<sup>38</sup> which allow the specific cases to emerge in their uniqueness. The language of ideal types is used to conceptualize the 'coding frame' employed by the Commission. The standard form analysis thus becomes the 'controlled and unambiguous concepts' that are employed to order the data. The main function of ideal types is to act as an organizer of comparison. Or, in the words of the report:

the aggregation of examples of a particular ideal type with one set of characteristics provides a basis for evaluation of a second aggregation of examples of a similar but distinct ideal type with a different set of characteristics.<sup>39</sup>

Ideal types thus allow a creation of categories of abuse, all with their own specific features, which can then be used to create general categories, that can form the basis of distinction from other general categories.

The concept of truth deployed by the Commission was based on a fourfold division, thus resisting the more usual distinction of subjective and objective truth. Truth can be divided into: factual or forensic truth; personal or narrative truth; social or 'dialogue' truth; and healing and restorative truth.<sup>40</sup> Different truths operated at different levels in the Commission's work. Factual or forensic truth was primarily a way of thinking about the way in which the Commission approached the organization of information, and the forensic requirements that impacted on the Commission's work. Its source is the Act itself and the task that the Commission is charged with, namely to:

prepare a comprehensive report which sets out its activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal.

In some ways this is a rather modest definition of factual or forensic truth. We will see that it is backed up by social scientific theory, and, at a more general level, by a theory of truth expounded by Ignatieff: 'All that a truth commission can achieve is to reduce the number of lies that can be circulated

38 *id.*, 1, 6, appendix to para. 13.

39 *id.*, appendix to para. 15.

40 *id.*, 1, 5, 29.



unchallenged in public discourse.’<sup>41</sup> It is a version of the truth that allows a number of negative claims to be made; it allows the clearing up of disinformation.

Personal and narrative truth is somewhat different. In Desmond Tutu’s words, it is the truth as perceived by an individual. It is perhaps easier to say what this truth is not. It is not legal or forensic truth, as tested in a court of law. Personal and narrative truth allows an approach to the past, a particular expression of memory, an oral tradition. It is the truth of subjective experience, recounted in a personal language. Personal truth, though, is not just the truth of individuals; it is an account of the past that builds into a national narrative: ‘the Commission sought to recover parts of the national memory that had hitherto been officially ignored.’ It is the undoing of silence, and the recognition of voices that have not been given a chance to enter into the archive and the record. It is, by its very nature, complex and messy: ‘transcripts of the hearings, individual statements, a mountain of press clippings and video material’. Personal and narrative truth thus appears to exist in these excessive forms, resisting reduction to a simple thematic.

Social truth is the conjunction between the Commission’s ‘process’ and ‘goal’. The definition that the TRC employed presents this form of the truth as that which emerges through dialogue and contestation.<sup>42</sup> This theory provides the foundation for the central notion of the Commission’s transparency, and the requirement that as many people as possible participate in its deliberations. It stresses a kind of due process, but not in strictly legal terms:

[T]he process whereby the truth was reached was itself important because it was through this process that the essential norms of social relations between people were reflected.<sup>43</sup>

Healing or restorative truth sounds a religious note. It is truth in the context of ‘human relationships’;<sup>44</sup> borrowing a legal idiom, it could be said that it has both vertical and horizontal effect, describing relationships between fellow citizens, and between citizens and the state. Perhaps it is the most controversial form of truth; it is future-orientated, and performative:

truth as factual, objective information cannot be divorced from the way in which this information is acquired; nor can such information be separated from the purposes it is required to serve.<sup>45</sup>

It is a truth that denies the objectivity of truth; it is truth in the services of a particular project. It is a kind of unveiling, or a placing in permanent record

41 *id.*, para. 33.

42 *id.*, para. 40.

43 *id.*, para. 42.

44 *id.*, para. 43.

45 *id.*, para. 44.

of facts that were not considered worthy of public articulation. In this way it underlies reconciliation, as it is a public acknowledgement of the pain of the victims of apartheid, and a recognition that the future has to be different from the past.

To found; to justify the truth through philosophy or social science. A guarantee of the truth of the report through references to protocols, to different levels of the truth; perhaps ultimately to a complex, polyvocal truth, but, still something that can guarantee the truth of many voices. Is this the only way that the truth could be deployed?

Can we oppose another way in which the truth might be indicated, might appear? Might appear to disappear?

### THE TRUTH MUST DAZZLE GRADUALLY

In the foreword to the report of the TRC, Archbishop Desmond Tutu alludes to a poem by Emily Dickinson: ‘the Truth must dazzle gradually/ Or every man be blind –’:

1129  
Tell all the Truth but tell it slant –  
Success in Circuit lies  
Too bright for our infirm Delight  
The Truth’s superb surprise  
  
As Lightning to the Children eased  
With explanation kind  
The Truth must dazzle gradually  
Or every man be blind –

If there was a poetics of truth here, how would it announce itself? A starting point may be to speak in terms of the metaphors of visibility that the poem creates. We might say that this poem is about the modes of truth’s revelation, or rather, truth as process, as a working through of something that resists revelation, of truth as resistance itself, perhaps. Can the truth announced by this poem be thematized?

Tell all the Truth but tell it slant – /Success in Circuit lies

Truth has to be a totality; its mode is to be entire, but it is precisely this entirety that demands a particular mode of announcement, a ‘slant’, an indirection. This is the meaning of ‘circuit’, that which is curved or slanted, but, and this is the sense of the metaphor, is closed in on itself. Circuit, then, picks up on the notion of truth’s totality. The poem is concerned with an order whose totality can only be told all at once, but all at once through indirection. We need to pursue this conundrum. Indirection suggests that something is left out, indicated rather than stated; totality suggests the total self-presence of presence itself. Perhaps the circuit is even the world; the possibility of a world or – to borrow Nancy’s word – a world that makes

sense, and whose sense is connected with truth. At this most general level, then, it seems necessary that we engage with a certain ontology of both sense and truth, as indicated by the work of Van der Walt. But, for the moment, we need to remain with the words of this poem.

From where is the voice that announces this truth speaking? The poem is surprising in its modesty: the sublime theme of truth's revelation is expressed in two short stanzas, as if there is a virtue in a kind of indirectness, of allowing the sublime theme to announce itself by its absence. There is a register of voice that indicates by not speaking, or by saying very little, a voice that works through indirectness. If we are convinced by the poem, if we find it compelling, then its authority must be related to a similar gesture towards what is not said, or even what cannot be said. For this poem about the truth is perhaps a poem that avoids speaking about the truth at all. In the end the truth is something that must be surprising: 'The Truth's superb surprise' is a strange expression that promises everything and nothing. We know it is a surprise; a surprise whose nature is to be superlative, but this still begs the question of what is the object of the surprise. We are left with the sense of a superlative of which we can say very little. Is this the lightning? Or the explanation of the lightning that makes it less frightening; that explains it as an event less awesome than it is? There is a kindness, a care, which conceals the truth. The truth, it seems, must hurt, must leave its mark. We will return to the latter concern in a moment, for we need to pursue the relationship between truth and language. It is as if the truth's presentation must detract from the event itself, something must escape, must remain unsayable about the truth, for such is the very possibility of being able to talk about it. Does this take us towards the sense of the last strophe?

The Truth must dazzle gradually/ Or every man be blind -

If the truth is like lightning, then it must come of its own accord. Truth would appear, to shift the metaphor, to have its own agency; the place of the commentary, of the articulation of truth, is entirely secondary. But, at the same time, it is the commentary, the explanation, the poem as commentary on the truth, where truth appears – or appears to disappear. The resistance to truth could be language itself; or language that can form the only – but the flawed – record of truth's event.

But, it is not just language. Truth has a relationship with the body, with its gaze and hearing. Perhaps the truth is its effects. The peculiarity of the truth is that it appears to mark the body, and to leave its mark thereupon. If the truth has dawned, the subject who knows the truth would be dazzled, unable to see for the truth. The sense of the closing metaphor is strange. We are left with a choice between being dazzled and being blind – or a choice between blindness and blindness. To know the truth is to be crippled.

But what does the final mark of the poem indicate? A hyphen, a dash, indicates that something has been broken off, or discontinued but may be

picked up, developed. This is at least the conventional syntactical meaning. In the poem, the concluding hyphen might indicate that the poem itself is incomplete; it concludes with a pause, a pause that, in a sense, is its relationship to the world. It is the point at which the poem ends, and thus the point at which the reader stops; her gaze is drawn from the poem to the page, from the page to the book, and everything that lies outside of these two quatrains. At the same time, though, it echoes the hyphen that concludes the first couplet. The hyphen interrupts the movement from the slant nature of the telling, to the 'success' that lies in indirectness, in the circuit, or the totality. Perhaps, then, this hyphen marks the tone of a voice, that seeks to indicate the world as the interruption of the totality of the text; or rather, prepare the place where the world surprises the text, and the text surprises the world. A mark that indicates both openness and closure at the same time, by indicating what must disrupt the poem.

Could we hear this voice speaking in the report? Is there a quality in Emily Dickinson's poem, a tone of voice, a thematic that one can also hear in Archbishop Desmond Tutu's words?

Reading the foreword to the report, one might sense that Archbishop Tutu is describing the radical incompleteness of the Commission's task. The report provides a paradoxical irresolution that must nevertheless mark a foundation, a boundary between what was, and what can come to be.

The task of the Commission is expressed, first of all, as an orientation to history; a history that is in some ways arbitrarily defined as a period that exists between the Sharpeville massacre, and inauguration of Nelson Mandela as President. This raises the question of how one defines and understands a history of violence and colonialism: how does one orientate to a historical violence? Could it be defined by the founding of the Boer state? Or the coming of the British colonialist? The Dutch Trading Companies? There is, of course, an institutional determinant. The Commission was charged with investigating abuses within a certain period. But this does not alter the fact that any date must be somewhat arbitrarily imposed. This point can be joined to the way history and violence are presented in the foreword. Violence is ongoing; the Commission is located within a history that is ongoing. Its paradoxical task could be expressed, first of all, in a poetic register: to redeem time from time in time or rather, in a more political mode, to represent a break in a history, and hence, the sublime task, to create a moment through which history can be judged.

These are terrifying themes. How can they be approached? Consider the narrative that opens Archbishop Tutu's account:

All South Africans know that our recent history is littered with some horrendous occurrences – the Sharpeville and Langa killings, the Soweto uprising, the Church Street bombing, Magoos Bar, the Amanzimtoti Wimpy Bar bombing, the St James' Church killings, Boipatong and Sebokeng. We also knew about the deaths in detention of people such as Steve Biko, Neil Aggett, and others; necklacings, and the so-called 'black on black' violence on

the East Rand and in KwaZulu Natal which arose from the rivalries between IFP and first the UDF and later the ANC. Our country is soaked in the blood of her children of all races and of all political persuasions.

As in epic poetry, the narrative makes use of the form of the list: a catalogue of death and injury; a violence that explodes into the mundanity of the everyday; the dead littering the Wimpy bar, laid out on Church Street, in the ruins of a pub. The list does not discriminate. It suspends the debate about the legitimacy of a violence that opposes the apartheid state. It presents. History is a pile of corpses. These are the indiscriminate killings of the 'terrorist' bomb – but they must be seen as existing in a series, alongside those deaths in custody, alongside the abuses of the power of the state. Furthermore, this is not a violence that can be neatly divided between the actions of the state, and those of the liberation movement. Violence turns inwards, becomes 'black on black'. Note that this violence becomes the mark of being a South African. 'All South Africans know' or, later:

Violence has been the single most determining factor in South African political history. The reference, however, is not simply to physical or overt violence – the violence of the gun – but also to the violence of the law or what is often referred to as institutional or structural violence.<sup>46</sup>

This is an appeal to a universal: to be South African is to have been implicated in this history of blood, to be 'soaked in the blood of her children of all races and political persuasions'. If a universal of suffering can be invoked, this might allow some movement towards that possibility of judgement, that im/possible division between a past and a future:

There is always the possibility that this division could be marked by a forgetting; that 'bygones' could be left as 'bygones'.<sup>47</sup> The distinction between the past and the present is thus a certain amnesia. The present emerges from an erasure; and, of course, perhaps this could allow a certain point from which to start again. Why must be the past be confronted?

This question is answered in different ways. A literary model is employed, Dorfmann's *Death and the Maiden* is cited, to suggest that the past needs to be confronted for the restoration of the human dignity of those who have suffered abuse. Dorfmann's play presents the torturer who takes responsibility for his acts, and, in so doing, allows the person who he has tortured to recover a sense of self. In this sense, then, the settling of accounts with the past is to restore to selfhood those who have been denied basic human dignity. Given the racist construction of the apartheid state, this can be conjoined to a second theme that we will examine separately, racism. The theme of the individual coming to selfhood cannot be separated from the effects of a racist political, legal and social order. If we were to take this particular theme at its most general level, we could see this confrontation with the past as the very dividing line between a Western racism, and an

46 id., 2, 68, 44.

47 id., 1, 1, 26.

order that might come after. Of course, the risk with this generalization is that we miss the specificity of the South African situation, but, by the same token, the sublime nature of the Commission is that it does make a demand for a total reassessment of a much broader history.

The question can be answered in a somewhat different way. This focuses on the problem of repetition. If the problems of South Africa's past are not resolved, they will repeat themselves, and revisit the problems of the past on the future. At the risk of imposing a broader theme, what we are reading here is a theory of historical time. Against repetition is a time that remains open to future possibility. Repetition is a time of no movement, of a poisonous stasis. Against repetition there must be some form of affirmation that is simultaneously a breaking with the past, and an inauguration of the future as that which is properly to come. Again, let us consider another modest statement. Archbishop Tutu is dealing with an attitude towards the past:

It is to take care that the past is properly dealt with for the sake of the future.

Another paradox: care of the past is in fact an attitude towards the future. It is a phrase that invokes a notion of human finitude, of a life in time. We can thus see the coming together of themes that relate both to the political situation in South Africa, and a more general, perhaps the most general of questions: what does it mean to be human? In other words, facing the past is not just an essential South African political reality; it is as if this reality manifests the most pressing of questions that could be asked of a contemporary politics. To elaborate this theme, to allow the future is to allow the appearance of a genuinely human ontology. This, of course, relates back to the first way in which the question has been answered. Racism is what blocks this possibility of the human, and condemns to repetition, to a circular time. To relate this back to the earlier point, it takes us to the very inauguration of the Commission itself, and the possibility of creating the break in time, the judgment of the past. Presently we will relate this to the other central themes of the Commission's task: the nature of truth and the quality of reconciliation.

Perhaps this question is left open. It is as if the Commission cannot itself resolve the need to confront the past, at the same time that its legal and political duty is to do so; the modesty of the last sentence attests to a process that is itself a passage of time, an ongoing attempt to understand a history. It might also be possible to say that this is an evasion that concludes this section of Archbishop Tutu's argument; indeed, the foreword goes on to consider the composition and operation of the Commission. Should this point have been more thoroughly discussed, given the importance of this opening statement? Or, is there not a textual strategy in operation at this point in the discourse?

One could read it in two ways. In the moment of composition, there is clearly no way in which the Commission can offer any assurance that the legacy will be faced, that a democracy will emerge from the ruins of the apartheid state. All it can perhaps offer is an account of itself; of its own

functioning and brief. It is as if in this innocuous statement, ‘And I imagine we can assume ...’, we again encounter a kind of sublime. In this deft movement from an ‘I’ to a ‘we’, there is an embodiment of the very task of the Commission, the creation of a space where the I and the we correspond; here is a kind of imagined universal, existing for this moment only in the terms of this address, in this spoken or written text, in the very imagination that it is possible to make a distinction between the past, the present, and the future, a distinction that cannot be guaranteed, but has to be made.

### CONCLUSION: THE SUBLIME, SLOW VOICE

Perhaps there is a need for an aesthetics of truth and reconciliation. Karin van Marle has written:

[L]aw in its relation to time, to the past, the future and the particularity of the event, fails to follow an approach other than that which its own institutional form necessitates. The TRC is one example of an event that exposed these limits and failures. The example of art and its relation to and interaction with time, memory and imagination show a more open and fluid way of contemplating time and show the significance of slowness as a way of interaction with daily life, past, present and future.<sup>48</sup>

This is clearly a powerful claim that art must enter into and disrupt law’s institutional logic. But how would this thematics of slowness and of temporality relate to the voice: what is the relation between the voice and time? Could we speak of a time of the voice, the moment of utterance, and the time of history (without borrowing T.S. Eliot’s voice)? But, to return to one last theme, if the voice speaks from the foreword, which is both within and outside of the law, what possibilities existing within the law might it whisper?

48 Van Marle, *op. cit.*, n. 22.