

African Yearbook of Rhetoric

vol. 2 no.1 2011



Rhetorics of Justice in Post-Societies

AFRICAN YEARBOOK OF RHETORIC

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AFRICARHETORIC PUBLISHING

African Yearbook of Rhetoric, Vol. 2 No.1, 2011

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Publication of this volume of the
African Yearbook of Rhetoric
was made possible by the
National Research Foundation of South Africa,
UID 67950
(Bi-lateral project South Africa/Romania)
and supplemented by an IRR grant UID 68508.

Printed by:
The INCWADI Press
PO Box 293, Newlands, 7725
Cape Town
Republic of South Africa

Publisher:
AfricaRhetoric Publishing
PO Box 677, Melkbosstrand, 7437
Cape Town
Republic of South Africa

ISSN 2220-2188

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Foreword

This second issue of the *African Yearbook of Rhetoric* deals with the question of the sense of justice in post-societies. What we mean by a post-society is what used to be called a soft concept, yet to moulded by arguments exchanged and debates engaged. As it happens, a team of scholars from Romania and South Africa have tried to unravel, from the perspective of their own post-societies, why it is that in popular perceptions, grandly described as “the public sphere”, justice has been not as well served as anticipated after the violent fall of Ceausescu’s communism and the concerted demise of apartheid. Public debates in Romania and South Africa are traversed by nostalgia of a better past. In terms of rhetoric, as Aristotle warns, it is an unbending evidence that political betterment may adopt unjust means toward a just end, and that just policies may result in tearing the social consensus without which democracy cannot endure. The public is caught in this aporia, unable to and untrained in separating arguments of justice from arguments of expediency, and from arguments of value. Public debate often gets caught in this tangle, and far too often politicians, far from helping the public to make sense of the tangle, abound in confusing issues of policies, values and the law, to serve their own narrow sense of immediate prudence.

This second issue of AYOR brings together distinguished writers, and one junior author, philosophers, political and social scientists, and of course rhetoricians, from polities that are labouring under a sense of injustice after the end of a greater, self-evident injustice. They write on Argentina, Poland, the ex-Yugoslavia, Romania and South Africa. They write on melancholy, reconciliation, frustration, hope and religion. They write also about theory and practice. They write on the risks of democracy bereft of an intelligence of the past and atoning without weighing arguments of the present.

The Editor.

Amnesty means oblivion: the politics of “pardon” in post-communist Romania¹

Ștefan-Sebastian Maftai

In 2001, under the initiative of Romania's President in office Ion Iliescu, a bill was proposed that polarised public opinion: the bill promised amnesty to those involved in the violent episodes of the 1989 Revolution, in the inter-ethnic conflicts of March 1990, which surfaced in the Transylvanian city of Țirgu Mureș or in the famous *mineriade* of 1990 and 1991, the so-called “miner riots”, events that took place in Bucharest, the country's capital, and damaged considerably the fragile display of democratic life emerging in the first two years of post-Communist rule.²

In January 1990, Romania's governing *National Salvation Front* announced that it will field candidates to compete in free multiparty elections to be held that April. Nationwide demonstrations against the Front were held. Approximately 20 000 people demonstrated against the regime in Bucharest. At the same time hoards of “counter-demonstrators”, including coal miners allegedly brought in by trucks, besieged the offices of opposition parties. On April 22 the same year, hundreds of student protesters erected a tent city in the University Square of Bucharest, calling for a delay in national elections and for the resignation of Interim President Iliescu. In June, after weeks of peaceful demonstrations in Bucharest, riot police ousted demonstrators and burned their tents. President Iliescu appealed to the “working class” to “save democracy” from “fascists”. Suddenly, almost 10 000 coal miners were allegedly brought in by trucks to “restore order” in Bucharest. It is still believed today that the miners were just an instrument for Iliescu's main plan of enforcing a mild post-totalitarian authoritarian regime in the first years after the collapse of Communism in Romania.

However, in 2001, at the time of the legislative proposal, Iliescu believed that the adhesion to the idea of “general amnesty” would mean that Romania would finally have the chance of stepping into “normality”, by leaving behind the residues of the past, which were thought of as “obstacles” in the way to “*national reconciliation*”. The press dismissed the idea.³

¹ This work was supported by the Romanian National Authority for Scientific Research, project number PN II – CAPACITATI 109/2008: *Rhetorics of Justice and Deliberative Perceptions of the Rule of Law in Post-Communist Romania and Post-Apartheid South Africa*.

² For the information cited below, see *Foreign Affairs* 70, 1 (1990/1991): 206-48.

³ See the harsh criticism of the proposal by the cultural media in: Mircea Mihaies, “Amnesty National”, *România literară* 24 (2001).

According to historian Adrian Cioflâncă,⁴ this initiative has been a strong example of blanket amnesty promoting impunity instead of encouraging responsibility, accountability, truth or political reconciliation. He actually criticized the 2001 initiative by claiming that this bill had four serious, critical flaws.

Firstly, this kind of measure would promote “amnesty without truth”, contending that “amnesty requires a rational forgetting, *i.e.* to know the truths and to store them in [an] orderly manner”. He also dismisses the initiators’ argument that this “amnesty law” would have a “South African precedent”, because “in the South African case the amnesty was theoretically granted instead of full confession” whereas “in the Romanian case, amnesty would mean the incineration of the past truths — not putting them in the middle ground”. Secondly, this amnesty law would be an “amnesty without perpetrators”, because “in order to *forget*, the Romanians have to know *whom* to forget”, in the sense that “in Romania, nobody established the culprits (with a few marginal exceptions)”. Thirdly, “blanket amnesty” would be an “amnesty without request”, because “amnesty doesn’t imply gratuitous forgetting”. In cases of amnesty, a “symbolical request” or a “*mea culpa*” would have to precede the amnesty. Otherwise this would be a form of “groundless oblivion”, risking an encouragement of “irresponsibility”. Fourthly, this kind of amnesty would eliminate any attempt at reconciliation; it would be “amnesty without reconciliation”, by not being the result of a “public pressure”, but only of a pressure “simulated by parliamentary means”.⁵

By voting in such a law, the Parliament would do nothing but restore the same “politics of oblivion”, which was also ubiquitous, in my opinion, in the political life before 1989. The author also sees that the “post-1989” political governments have not changed their policies very much in comparison to the former regime, preferring “politics of oblivion and forgiving to politics of remembering, restoring or disclosing the real past”.⁶ He also contends that the first post-Communist governments as well as the society itself as a whole were not so keen on openly debating or disclosing disturbing facts about the Communist past. It was actually more convenient to assume a “general tacit, *de facto*, amnesty” regarding those who were deemed responsible for crimes and abuses, an amnesty “which is the result of a pact of silence — an authentic *social contract* — concluded between politicians and citizens”.⁷ Furthermore, the politics of memory put into practice mainly under pressure from civil society (NGOs, the *intelligentsia*) or international

⁴ Adrian Cioflâncă, “Politics of Oblivion in Post-Communist Romania”, *Romanian Journal of Political Science* 2, 2 (2002): 85-93.

⁵ Cioflâncă, *Romanian Journal of Political Science*, 93.

⁶ *Ibid.* 88.

⁷ *Ibid.* 88.

organisations — comprising limited public access to political archives, partial disclosure of collaborationists, etc. — did not bring the expected results to Romania's public life. In fact, these kinds of policies, which were basically institutionally (governmentally or non-governmentally) implemented, *and not stemming from the general public's demand*, had a very limited effect on the social and political life of the everyday Romanian citizen. Only a small minority, representing a highly educated, relatively well-off class of citizens, were really interested and really *influenced* by these types of policies and debates. Actually, governmental, political and sometimes even cultural support of these active policies has been generally fragile and, moreover, often instrumental to political parties. Communist as well as post-Communist societies tolerated "politics of oblivion" under a false sense of security and under a chronic lack of democratic governance, democratic policies, democratic education and democratic exercise. Cioflâncă collects five explanations for the phenomenon of "oblivion": the sentiment of intense *nostalgia* for Communism; the sentiment of *shame* touching every person who not only collaborated with the regime but also participated in Ceaușescu's rituals of power; the sentiment of *guilt*, allegedly addressing to the Romanian's well-known cowardliness with respect to their tolerance of the system's abuses; the absence of decommunisation and the continuity of the Communist elite after 1989; finally, the *Leninist legacy*, which still influences the reading of the past through Communist paradigms. These explanations, which can also serve as instrumental excuses for interested parties, developed into a full-blown set of ideological theses showing immunity or resistance towards the democratic challenge of "disclosure".⁸

It is obvious that these techniques of resistance to disclosure (tacit amnesty) are part of a larger strategy, that of "de-responsibilisation", which has its own set of arguments.⁹ Paradoxically, de-responsibilisation was a post-Communist strategy for governments to gain a large popular audience: by giving the impression that the "people" were not responsible for supporting the Communist regime, a faked sense of "unity" is perfected. Thus, the Romanian "nation" has never been in support of tyrannical rule, it always played an "heroic" (*i.e.* tacit) resistance towards Communism. The real opposition to the Communist government was the lack of any opposition, which is finally deemed as noble or praiseworthy¹⁰. Symbolically, through this ritualistic exercise of "vacuuming" political responsibility, the whole Romanian "nation" is completely "amnestied", "absolved" or "pardoned". The granted "absolution", or disengagement from its responsibility for the past, as well as

⁸ The "theses" appear in: Cioflâncă, *Romanian Journal of Political Science*, 90-91.

⁹ See the description in: *Ibid.* 92-93.

¹⁰ Daniel Barbu, "Etica ortodoxă și 'spiritul' românesc" [The Orthodox Ethics and the Romanian "Spirit"], in: Daniel Barbu, ed., *Firea românilor* [The Romanian Way of Being], (Bucharest: Nemira Publishing House, 2000): 59-60.

society's uninterrupted refusal of political action as a *civil body* or civil society in post-Communist times sealed a so-called "social contract" between Romanian society and post-Communist governments. This kind of "contract" or "agreement" had also been persistent in Communist times as long as the political body of citizens had been left in a perfect, "tranquil" state of civic disengagement, "undisturbed" by political decisions. However, in modern political terminology this means that, by accepting from its government the symbolical ritual of "amnesty" *en masse*, this "nation" also accepts the blame or incriminates itself *en masse*. Drawing upon a famous statement by an ex-Minister of Defence on the occasion of a proposal regarding granting the Romanian Army indiscriminate amnesty for the crimes committed by some members of the Armed Forces during the Revolution, we may contend: "The honour of the 'nation' is not saved by amnesty, but by justice".¹¹

Iliescu's initiative to pass such a bill on "amnesty" was not an isolated event. In 1991, Ion Cristoiu, a well-known journalist, asked for a general amnesty for all the persons involved in the events of the Revolution.¹² Also in 1991, 23 members of the newly elected Parliament petitioned for a general amnesty related to the crimes committed during the Revolution. It is interesting that an amnesty for what happened during the Revolution of 1989 had more pleas than an amnesty for the crimes committed during 45 years of Communism. It's like the whole fate of Communism depended on the verdict about the responsibility of the perpetrators and the truth of the events surrounding that crucial moment of 1989. In time, "1989" began to carry the whole symbolic burden of Communism in Romania between 1945 and 1990. Sergiu Nicolaescu, a well-known film director during the Communist regime, connected to the regime's propaganda machine through his nationalist motion pictures and, afterwards, a close associate of the freely elected President Iliescu and also a member of his party and a senator after 1990, was the initiator of a Senate Commission to investigate the events of December 1989. In 1994, he suggested that a general amnesty should be given to all those who were in any way connected to those particular events. In 1998, after Iliescu's party stepped out of power, a somehow different approach to these matters was suggested by Constantin Dudu Ionescu, a member of the now anti-Communist opposition, and the interim Minister of Defence, who proposed the passing of a bill that should amnesty the crimes committed by Army officers in December 1989, with the *exception* of cases connected to criminal law. Dudu Ionescu had been encouraged in his

¹¹ When asked about the possibility of granting the Romanian Army general amnesty in relation to all the crimes committed during the Revolution of 1989 by some of its officers, Minister Gheorghe Tinca replied: "The honour of the Army is not saved by amnesty, but by justice", http://www.portalulrevolutiei.ro/arhiva/1998_184.html.

¹² Ion Cristoiu, "(Un moment ratat: Tribunalele revoluționare [A Wasted Moment: The Revolutionary Courts])", *Express Magazin* 26 (1991).

proposals by the President in office at that moment, Emil Constantinescu, the anti-Communist opposition leader. In fact, in his 1996 Presidential campaign, Constantinescu promised to encourage political initiatives that should advance the search for the “truth” of 1989, at the same time showing a commitment towards determining criminal law courts to finalise their investigations in the trials of Army officers, who had already been brought to trial for criminal offences committed during the last days of Ceaușescu’s regime.¹³ Even the opposition leaders didn’t realise finally that looking for “justice” in a traditional way, or simply seeking to punish political crimes with conventional methods and at the same time defending a philosophy of “justice” based on righteousness, will do nothing more than keep Romanians away from a “common” — or commonly oriented — “truth” and compel the alleged perpetrators to bury the “truth” with them and to find ways of escape.¹⁴ The outcome of the endless search for the “guilty” parties was the indefinite delay of the exercise of traditional justice, the stronger and stronger plea for a general blanket amnesty, the implicit surfacing of a policy of secrecy or oblivion, a somewhat expected tendency to put trust in different “theories” and “rumours” about the “real” events that took place or about the “real” perpetrators of these real crimes. All in all, despite the officialised version of the “truth” sanctioned by the first post-1989 presidency, a “tacit amnesty”, which still keeps Romanian society divided, confused, and after all silent in its own private, quiet way of everyone on every street corner having his or her own “opinion” (*i.e.* “truth”) about the past. We know now, 20 years later, that the trials of the Army officers lasted for up to 18 years, with impossible delays and with very few tangible results.¹⁵ Almost all of the *Securitate* and Army officers who were indicted were acquitted or received blanket amnesty or a Presidential pardon.¹⁶ Those who were not tried are still among us, carrying their “truth” and taking their “righteousness” to their graves. The first post-Communist decade witnessed a frenzy of heavily publicised indictments and criminal trials without any considerable results. These indictments did nothing more than to polarise the public opinion with respect to the legitimacy of the trials themselves. Also, these trials spawned a

¹³ Claudiu Săftoiu, “Armata Română, față în față cu morșii revoluției” [The Romanian Army, faced with the dead of the Revolution]: http://www.portalulrevolutiei.ro/arhiva/1998_184.html.

¹⁴ See the discussion on political “truth” as related to transitional justice in: Philippe-Joseph Salazar, Sanya Osha, Wim van Binsbergen, eds., “Truth in politics. Rhetorical approaches to democratic deliberation in Africa and beyond”, *Quest: An African Journal of Philosophy* 16, 1-2 [special issue](2002): 13-17.

¹⁵ See “Revoluția Română din 1989” [Romanian Revolution of 1989]: <http://ro.wikipedia.org>.

¹⁶ “Grațieri și amnistii legate de Revoluția Română din 1989” [Pardons and amnesties related to the Romanian Revolution of 1989], (<http://ro.wikipedia.org>). “Ucișorii din decembrie ’89, spălați de păcate de justiția post-comunistă” [The murderers of December 1989, absolved from their sins by the post-Communist justice system]: <http://www.newspad.ro/Ucigasi-din-Decembrie-89-spalati-de-pacate-de-Justitia-post-comunista,66898.html>.

deep public mistrust relating to the effectiveness of Romanian justice in general. Probably, the first step towards this generalised public mistrust in Romanian justice came from the crucial moment of the Revolution: the “Ceaușescu Trial”, which had all the ingredients of a show trial.¹⁷

However, Defence Minister Dudu Ionescu’s take on amnesty has been slightly different: the granting of amnesty would provide the search for the “truth” of “1989”, because the military would ultimately testify the “truth”, without any fear that their depositions would be used against them in a military court of law. President Constantinescu agreed with the Minister’s proposal and tried to present the idea to the general public. Soon afterwards, eminent representatives of the civil society utterly dismissed the idea, by considering it “inappropriate”, because in their opinion, “amnesty meant oblivion”.¹⁸ Several NGOs criticised the President of trying to exonerate officers accused of shooting unarmed civilians. However, the proposal for amnesty stipulated that amnesty would only be granted to persons who were not involved in criminal lawsuits. Thus, an opportunity to find the “truth” has been wasted.

Actually, the first move towards amnesty was Decree no. 3 of January 4th 1990, a Decree that intended “the amnesty of some crimes and the pardon of some penalties”.¹⁹ The Decree amnestied political crimes committed after 1947 by people who protested against the Communist regime, including the protests against the Ceaușescu regime, which were considered criminal offences according to the old Socialist rule of law, but also any criminal offense that received a penalty of up to less than three years of imprisonment, with the exception of serious criminal offenses (such as murder, robbery, rape etc.) and human rights violations. Another Decree, no. 23 of January 13th 1990, enforced the ban of amnesty on crimes and human rights violations that were committed by persons who were representatives of the old state apparatus.²⁰ These decrees were signed by Interim President Ion Iliescu, under the authority of the Council of the National Salvation Front, the interim revolutionary government-parliament that had 145 members and ruled as a governing body, both executive and legislative, in the name of the Romanian people “by reuniting representatives of all the country’s patriotic forces, of all social classes and of all nationalities”, as “the supreme organ of

¹⁷ I use “show trial” following the definition of the term from *Collins English Dictionary*, (NY: Harper Collins, 1991): “a trial conducted primarily to make a particular impression on the public or on other nations, esp. one that demonstrates the power of the state over the individual”. See also the Kafkaesque shorthand record of Ceaușescu’s trial at: “Stenograma procesului Ceaușescu” [Shorthand Record of Ceaușescu’s Trial]: <http://ro.wikisource.org>.

¹⁸ Săftoiu, *Ibid.*

¹⁹ “Decret-Lege Nr. 3 din 4 ianuarie 1990 privind amnistierea unor infracțiuni și grațierea unor pedepse”: <http://www.lexex.ro>.

²⁰ “Decret-Lege Nr. 23 din 13 ianuarie 1990 privind grațierea unor pedepse”: <http://www.lexex.ro>.

State power” until the first free elections of 1990.²¹

These decrees actually granted amnesty to many members of the military or the police who participated in the repression of the 1989 Revolution before December 22. Also, most of the Presidential pardons granted to political perpetrators who were actually trialed and sentenced were signed by President Iliescu during his two terms in office (1992-1996; 2000-2004). In 2004 Iliescu pardoned Cozma, the leader of the miners’ riots of 1990, 1991 and 1999.²²

It seems that the business of “pardoning” political crimes, as well as “condemning” them is basically a job for the State authorities, in this case for the President, not for the governed “people”. As I mentioned before, the public debate on transitional “justice” developed more and more into a job for the elites, not for the general public.²³ After 1990-1991 the debate on “truth” and “justice” simply left the political ground and migrated into the cultural domain, mostly into history and morals.²⁴ The economic crisis that began in 2008 only deepened the public disinterest in these kinds of debates. However, the Presidential authority on matters of “transitional justice” continued during the second decade of post-Communism not only with “pardons” but also with “condemnations”: in a rhetorical gesture that countered President Iliescu’s “pardons”, in 2006, President Băseșcu prepared an official “condemnation” by issuing a 600 page *Final Report of the*

²¹ See the Decree no. 2 of December 27 1989, the foundational document of the Council of The National Salvation Front: “Decretul-lege nr. 2 din 27 Decembrie 1989. Decret-lege privind constituirea, organizarea și funcționarea Consiliului Frontului Salvării Naționale și a consiliilor teritoriale ale Frontului Salvării Naționale”, *Monitorul Oficial* 4 (1989).

²² “Romania’s Iliescu Pardons Leader of Miners’ Riots”: <http://www.euronews.net/2004/12/16/romania-s-iliescu-pardons-leader-of-miners-riots>.

²³ Except for the historical moment of the “University Square” in January-June 1990, which ended abruptly with the “mineriads”, there is no other event of such level of public demand for “truth” and “justice” in Romania’s post-Communist history.

²⁴ Amongst thousands of books containing testimonies, written documents or commentaries about the history of Communism in Romania and about the history of the Romanian Revolution already published, perhaps the most impressive public document is the 158 episodes documentary about the victims of Communism from 1945 to 1989 entitled *Memorialul durerii* [Testimonies of Suffering] and produced by Lucia Hossu-Login for Romanian Television between 1991 and 2006. In my opinion, this is the most comprehensive visual account of the story of Communism told by its victims and by its perpetrators, which had a public audience on national television larger than any other visual or written accounts on this subject. Some of the interviews she conducted were with high-ranking officials of the repressive communist apparatus who were famous for their heinous crimes and these are considered unique historical documents, as well as some victim’s very disturbing testimonies. The producer, Lucia Hossu Longin envisioned this project as a “moral lawsuit against Communism”. Although it never gained the real political significance it deserved, the documentary is, on a small scale, comparable to the South-African TRC documents. 100 episodes of her documentary series were solicited by the Hoover Archives and by the Library of the US Congress. See also the script of 36 episodes published in: Lucia Hossu Longin, *Memorialul Durerii: o istorie care nu se învață la școală* [Testimonies of Suffering: A history one does not learn about in school], (Bucharest: Humanitas, 2007).

Presidential Commission for the Analysis of Communist Dictatorship in Romania”, which is usually known as the “*Tismăneanu Report*” after the name of the President of the Commission, who coordinated the research activities.²⁵ The *Tismăneanu Report* had most likely been envisioned by its initiator as an equivalent to a *TRC Report*, and as a symbolic grand closing of Romania’s communist history. The report has been heavily criticised, both by left-wing politicians and intellectuals and by political and intellectual liberals.²⁶ In the discourse which he prepared for the official issuing of this report, Băsescu declared:

“My goal is to bring a real national *reconciliation*, especially when many failures of the past are still affecting us. Our society suffers from a generalized mistrust... we can see that the lack of respect for the human being is still present. Some could ask who gives us the right to condemn... the right to condemn is given by the obligation to make the *state institutions function* in a democratic society. ... But in order to function, any administrative institution needs qualified citizens, not only professionally, but also qualified for democracy and freedom”.²⁷

However, the issuing of the report has also been interpreted as a political gesture in itself: in 2006, just before Romania entered into the EU, Băsescu became the first Romanian President to “officially condemn” communism. He also intended to counteract nostalgia and to weaken the popularity of the left-wing parties by using the Communist past to legitimise the presidency in power.

My interest throughout this paper concerns not only the fact that the concept of “transitional justice”, which includes practices, such as “amnesty”, “pardon”, “condemnation”, “decommunisation”, “lustration” and “disclosure”,²⁸ has been politicised throughout Romania’s post-communist history, but also that “transitional justice” is usually conducted under an institutionalised, mostly governmental or presidential authority. The demand of the society as a whole has not generated directly the search for “truth” or

²⁵ *Report* is downloadable at: http://www.presidency.ro/static/ordine/RAPORT_FINAL_CPADCR.pdf.

²⁶ See: Alina Hoge, “Coming to terms with the communist past in Romania: an analysis of the political and media discourse concerning the Tismăneanu Report”, *Studies of Transition States and Societies*, 2, 1 (2010): 16-30. See also: *Iluzia anticomunismului. Lecturi critice ale Raportului Tismăneanu* [The illusion of anti-communism. Critical readings of the Tismăneanu Report], eds. Vasile Ernu, Costi Rogozanu, Ciprian Șiualea, Ovidiu Țichindeleanu, (Bucharest: Editura Cartier, 2008).

²⁷ Băsescu, quoted in: Hoge, *Ibid.* 23.

²⁸ See my “‘Revolution of the rule of law’: transitional rule of law in post-communist Romania”, *Studia Universitatis Babeș-Bolyai. Philosophia* LV, 1 (2010): 55-65.

“justice” in Romania.²⁹ Romanian society has a weak concern for inquiring about or demanding such democratic “transitional justice” practices, such as “amnesty” or “pardon”. Instead, a “tacit” form of amnesty is more convenient, especially when supported by the State. In addition, practices such as “amnesty”, for instance, are always associated with “oblivion” both by the left-wing and by the right-wing political forces. Almost no politician thought of a possibility of an “amnesty” without “oblivion”. This is also perhaps caused by the fact that the concept “forgiveness” is usually misread as a non-political, moral concept or as a political tendency to grant an unconditional amnesty. Those who focus on transitional justice in Romania usually observe the “nonforgiving character of the institutions managing and supporting the transitional justice drive”.³⁰ There is still a strong confusion between righteousness and “truth-searching” on one hand; “amnesty” and “oblivion”, on the other hand. Basically, there is confusion between righteousness and transitional justice. The supporters of transitional justice practices sometimes do not see the unconstitutionality of their proposals. This is why the concept of “justice” is usually read exclusively as a battle between good and evil instead of being understood as a democratic struggle to achieve a consensus about common political values or common expectations.³¹

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²⁹ This is also the thesis of Elin Skaar, “Truth Commissions, trials: or nothing? Policy options in democratic transitions”, *Third World Quarterly* 20, 6 (1999): 1109-28, who considers that weak public demand for “justice” in transitional countries is always influenced by the strong influence of the outgoing regime.

³⁰ Adriana Mica, “Forgiveness and Disclosure Scandals in Romania”: inter-disciplinary.net/ptb/persons/forgiveness/f1/mica%20paper.pdf.

³¹ About the historical failure of the Romanians to attain common political values, see Daniel Barbu, *Bizanz contra Bizanz: Explorări în cultura politică românească* [Byzantium against Byzantium: Explorations in Romanian Political Culture], (Bucharest: Nemira, 2001): 11-31.

Virtuous justice, and its price in truth in post-dictatorial Argentina

Claudia Hilb

“What happened? Why did it happen? How could it have happened?” These are, says Hannah Arendt, “the questions with which my generation had been forced to live for the better part of its adult life”.¹ These are also, the questions which *my* generation — the generation of the victims of the Argentine military dictatorship and of the radical leftist militants of the 1970s — has been forced to live with for the better part of its adult life. These questions, along with the difficult task of formulating answers to them, are what I would like to briefly address here.

Toward that end, I will focus my attention on the contrast between justice and truth, citing as a counterpoint what I consider an example of truth’s disclosure: South Africa’s Truth and Reconciliation Commission. I will again argue that in Argentina the emphasis upon justice entailed, viewed twenty-five years later, a certain sacrifice, a certain loss of truth. In what way did the persecution of justice bring with it a loss of truth? But also, is it possible, or even desirable, to attempt to restore what has been lost, to recuperate a more complete truth? Or is this loss simply a price that must be paid?

In Argentina, the new beginning, a rupture with the past terror at the hands of the Junta, took shape around the trials of the highest echelons of the military. In 1983, the government of Raúl Alfonsín had barely assumed office when it ordered the formation of the National Commission on the Disappearance of Persons (CONADEP), composed of prestigious individuals from Argentine academia and culture. In just nine months (December 1983 to September 1984), after an exceedingly thorough preparation, CONADEP brought together testimony regarding almost nine-thousand disappearances,² the organisation of concentration camps, the functioning of the policy of disappearance, torture and assassination.³ CONADEP’s results, published under the title *Nunca Más* (or Never Again), formed the basis for the case against the Juntas.⁴ The prosecution selected 709 cases upon which it based

¹ Hannah Arendt, *The Origins of Totalitarianism* (New York, San Diego, London: Harcourt Inc., 1951): xxiv, [preface to part three].

² More precisely, 8961. See Emilio Crenzel, *La historia política del Nunca Más* (Buenos Aires: Siglo XXI, 2008): 115.

³ See Graciela Fernández Mejjide, *La historia íntima de los derechos humanos en la Argentina (a Pablo)* (Buenos Aires: Sudamericana, 2009).

⁴ The 1st edition of *Nunca Más* in November of 1984, sold out in two days. 500,000 copies have been sold to date. See Crenzel, *La historia política del Nunca Más*, 131.

its indictments against the nine Commanders of the Armed Forces, who ruled the country in three successive juntas between 1976 and 1983.⁵ In addition to providing such legal groundwork, CONADEP also provided Argentine society with a sobering and horrifying account of “what happened”, a description which would make it impossible to deny the levels of barbarism reached by the Juntas.

The evidence provided by CONADEP, combined with the harrowing courtroom testimony of its victims, brought about the historic Judgement Against the Juntas, with life sentences for two of the nine generals, lesser sentences against three others, and the acquittal of the remaining four. Except for a few rare cases, neither before, during, nor after the trial were there any contributions on the part of the perpetrators that might have helped to understand “what happened”.⁶ Their voices were not necessary, not at least in order to convict them (both morally and legally). The voices of the victims, along with those of the representatives of the rule of law, the text of *Nunca Más*, and the judgement itself had unequivocally established a truth sufficient enough to condemn (again, both morally and legally) those responsible (the unprecedented criminal acts of the dictatorship, the state-sanctioned policy of massive disappearances, systematic torture, the theft of children born in captivity).

“What happened” has remained an established fact to the extent that since then it has been impossible to deny (at least publically) the criminal and evil character of the Dictatorship’s actions.

By contrast the path taken in South Africa was quite distinct. The Truth and Reconciliation Commission’s task was to listen to both the victims *and* the perpetrators of horrendous human rights violations. First came the testimonies of the victims or their families. Then came the victimisers seeking amnesty. No criminal could know with certainty, *a priori*, whether he or she would be named in an indictment. Those who did not seek amnesty and who were subsequently indicted, or those who did seek amnesty and did not, in the judgement of the Commission, give a full and exhaustive account, would then be subject to the full penalty under ordinary law. All of the “gross violations” of human rights were included in this dispensation, no matter which side committed them.⁷

⁵ Fernández Mejjide, *La historia íntima de los derechos humanos en la Argentina*, 300. Of the 709 cases presented, says Fernández Mejjide, the Tribunal decided to examine 280. Crenzel (*La historia política del Nunca Más*, 138) gives the figure of 711 cases. The indictment of the prosecutors would try to prove the direct responsibility of the Chief Commanders; see Carlos Nino, *Juicio al Mal Absoluto* (Buenos Aires: Emecé, 1997): 136, ff.

⁶ Carlos Nino (*Juicio al Mal Absoluto*, 136, ff) correctly shows this, especially of the circumstances in 1984 or 1985, when newspapers would have been willing to give generous compensation for such confessions.

⁷ Philippe-Joseph Salazar, ed., *Amnistier l’Apartheid. Travaux de la Commission Vérite et Réconciliation. Sous la direction de Desmond Tutu* (Paris: Seuil, 2004): 27, (bilingual edition).

The South African solution was based on the fact that those with the most to gain from telling the truth were the criminals themselves. This is perhaps the most inspired aspect of the South African approach, as well as the substratum underlying reconciliation: the final dénouement engendered a common interest of both victims and victimisers in the search for a broader truth.⁸ So as not to run the risk of going to prison, the criminals were required to give exhaustive accounts of their crimes in the presence of the victims or their families.⁹ Neither pardon nor remorse were conditions for amnesty. But there were on occasions both pardons and remorse.

As the manner in which the amnesty program created a community of common interest between victims and victimisers in favour of more complete exposure of the truth seems surprising, this surprise might allow us to shed light on the incompleteness which still hangs over the violence suffered by Argentine society regarding “what happened”. In this case, the silence of the perpetrators, their self-interest in maintaining silence, blocked any possibility of knowing the fate of victims, of recovering their bodies, and above all, of finding the children stolen by their parents’ murderers. While in South Africa the appearance of the perpetrators before the TRC for the purpose of exposing the whole truth did in many cases make it possible to know with certainty the fate of the victims so that their families could recover their remains; what was achieved in this regard in Argentina (exhumation in clandestine cemeteries, the appearance of young people expressing doubts about their identity to the associations of victims’ families), was almost always the result of slow, painstaking work on the part of those organisations allied with victims of state violence. Today, much is still unknown.

The South African program sheds light on the primary price paid by truth in Argentina: the silence of the perpetrators necessarily resulted from the judicial focus, characteristic from the start of the new beginning inaugurated by the restoration of democracy. Who among the military or its accomplices would be interested in talking, willing to pay the price not only of ostracism from their peers, but also of facing prosecution? And though doubt might have eaten away at some, this doubt ended up dissipating when at last one of them, Scilingo, spoke. Freely giving testimony, first in Argentina and then in Spain, Scilingo was finally tried under Spanish law.¹⁰ At that time, no one said (at least not publicly) that this sentence would put an end to the possibility of more confessions by other military figures involved in the terror. No one suggested then that the door left ajar by Scilingo’s confession had

⁸ See Barbara Cassin, “Amnistie et pardon: pour une ligne de partage entre éthique et politique”, in *Le genre humain 43*, « *Vérité, Réconciliation, Réparation* », Barbara Cassin, Olivier Cayla and Philippe-Joseph Salazar, eds. (Paris : Seuil, November 2004): 37-57, [50-51].

⁹ On the curative effect of storytelling see Cassin in *Le genre humain 43*, and Salazar, « Une conversion politique du religieux », also in *Le genre humain 43*: 59-88.

¹⁰ Spanish law gives to Spanish tribunals universal jurisdiction over crimes against humanity, genocide or terrorism wherever they might have occurred in the world.

been firmly shut by the trial in Spain. Neither did anyone warn that a perfect opportunity to force the door open had been lost, that it might have been possible to gain access to more information — the fate of prisoners, the location of bodies and the whereabouts of the children abducted in captivity.

Justice and punishment for the guilty: this was also the undisputed rubric under which the laws of Full Stop and Due Obedience (1987) were annulled by the Congress in June of 2005. At no time was consideration given to any outcomes other than judgement and sentencing. No one (again, at least not publically) imagined that reopening the cases might offer another opportunity to get a more complete truth from the mouths of those accused. While in 1985 the Argentine trials had set a new precedent, with only Nuremburg and a few other cases providing the jurists and politicians with material for reflection and comparison, in 2005 such material was abundant. Yet the South African case served as a lesson that no one knew how to heed (if they had even wanted to). No one imagined proposing even the possibility of a reduction in sentencing, not to mention absolution, for those who provided factual evidence about “what happened”. Once more, no one considered that a clarification of the facts on the part of the perpetrators might be, in effect, at least as valuable as insisting on punishing by example. The South African lesson was ignored.

Why was the South African option, which exchanged truth for amnesty or sentence reduction so unimaginable, even twenty years later? The attempt to respond to this question sends us down more than one path. One of those paths brings us to the fact that from the beginning the appearance before the court of those responsible for state terror was (even with all its difficulties) a primary component of the policies of the democratic government of Raúl Alfonsín, and that judgement and punishment for the guilty was the only option acceptable to the representatives of the victims. Punishment before the law was the basis upon which Argentina closed the wound of political evil and around which a new beginning took shape, with all of its value and virtue, but also with a price paid in truth due to the inhibition of confessions.

The emphasis upon justice, in which the overriding concern was the fact that there had been victims on the side of society, and perpetrators on the side of state power, a concern which condensed the multiple coordinates of a story that had ended in atrocity into one indisputable truth — that the barbarism of state terror should never be repeated, *nunca mas* — effectively blocked the reappearance of these questions: Why did it happen? How could it have happened? This blockage is the second path I would like to turn to now.

Referring specifically to the Argentinean case, Andreas Huyssen states that there can be “a kind of forgetting which is necessary for cultural,

legal, and symbolic claims on a nation's political memory."¹¹ The condensing of the sense of "what happened" provided by *Nunca Más* and the trials into the figure of the disappeared, the passive victim of state terror permitted "all of Argentine society, including both those that did not participate as well as those who benefited from the dictatorship, to meet around a new national consensus: the clear separation between those that had committed crimes, on the one hand, and the victims, on the other — the guilty and the innocent."¹² "Even politically desirable forms of forgetting will yield results that distort and erode memory."¹³

The CONADEP report and trials contributed to a crystallisation of meanings which when confronted by the need to judge and put an end to the terror, inevitably simplified the complexity of what had taken place: criminals guilty of state terror against innocent victims were being judged. Telling the story in terms of the guilty (the military) and the innocent (their victims), was eventually superseded by another story: that of the "bad" (the military and those that supported it) and "the good" (those who opposed them). But despite whatever weight of truth one might have attributed to them, these stories fell far short of taking into account a more complex truth,¹⁴ one that would have to maintain as a common legacy the conviction that there had occurred in the military of Argentina something which should never occur again, *nunca más* — that is, a radical form of evil in the shape of torture centers, disappearances, and death — without simplifying the answer to the question of "why did it happen" in terms of the sudden arrival of evil falling upon the innocent and the good.

Is the distortion that Huyssen refers to necessary? Is it not possible to contribute to the pursuit of a more complete truth without by the very act of doing so disturbing the consensus about the radical nature of this evil?

My generation was the main victim of a radical evil. It was not the perpetrator. But the armed youth organisations of the Left do bear a responsibility in the advent of state terror, as they did contribute to making possible its advent insofar as it represented the culmination of a long period of banalisation and legitimisation of political violence and assassination. State terror was not its necessary consequence (radical evil is never a necessary consequence), but this banalisation of violence set the conditions that made

¹¹ Adreas Huyssen, "Resistencia a la memoria: los usos y abusos del olvido público", Conferencia, Porto Alegre, INTERCOM, 2004. Please consult www.scribd.com/doc/20389040/Huyssen-Andreas-Resistencia-a-la-Memoria-los-usos-y-abusos-del-olvido-publico.

¹² Huyssen, "Resistencia a la memoria", 6.

¹³ *Ibid.* 3.

¹⁴ See Claudia Hilb, "La responsabilidad como legado", in César Tcach, comp., *La política en consignas. Memoria de los setenta* (Rosario: Homo Sapiens, 2003). In this area, the works of Hugo Vezzetti are indispensable: see Hugo Vezzetti, *Pasado y Presente. Guerra, dictadura y sociedad en la Argentina* (Buenos Aires: Siglo XXI, 2002) and *Sobre la violencia revolucionaria. Memorias y olvidos* (Buenos Aires: Siglo XXI, 2009).

it possible. Twenty-five years later, to rest upon the consensus generated by the extraordinary accomplishments of CONADEP and the trials is to refuse to discuss our responsibility for the world in common in which that violence was made possible. Behind the reluctance to go beyond the necessary simplification of collective memory hides the resistance to rethinking about how some of the victims, how a strong, radicalised, leftist movement, might have contributed to the arrival of evil.

CONADEP and the trials — exemplary, historic — must not serve as an excuse for avoiding reflection upon the responsibility borne by these radicalised forces and those who participated in them. Said otherwise, by insisting on justice, we recognise the legacy of the best of our recent history, although we must make sure that this insistence does not harbour the refusal to assume our own responsibility, the refusal to examine the story of the guilty and the innocent, the evil that besieged good. We must avoid this concealment so as not to repeat the arrogance of those who believed themselves to be the very incarnation of good. And for that it is necessary to reopen the questions of *Why did it happen? How could it have happened?* Not in terms of Justice, but in terms of an inquiry into the truth, so as to foster a proliferation of accounts.

The South African example is, once more, illuminating. The TRC regarded as equal all acts which were considered “gross violations of human rights,” whosoever might have committed them, on either side. At the same time as it declared the intrinsically evil and criminal nature of the apartheid regime, the provisional Constitution of 1993 also established a commission which would treat as equal all crimes committed either for or against it. The South African resolution affirmed the equality of victims and of victimisers, an equality between *acts* of “gross violations of human rights”, without however postulating even for an instant that it should declare itself neutral or indifferent as regards to the *cause* defended by this or that individual or to the morality of his struggle. Identifying Evil as such, although it provides a framework, does not exhaust the search for truth. The overcoming of evil required a new beginning in which its participants (above all on the pro-apartheid side, but also on that of the anti-apartheid militants) might individually and publically take responsibility for their actions: the new beginning would have to be established taking on the burden of the past, a past marked by evil. Stated otherwise, with evil’s outline — apartheid — traced, we find ourselves before a collective assumption of responsibility for the future, based upon the recognition of everyone’s past responsibility. Once more, the South African example opens an arena for re-encounter: those who participate in it will be the founders of a new beginning.¹⁵

¹⁵ The word “perpetrator” is understood as “that which commits the crimes” and that which “acts as father”. In their participation in the arena of construction of truth about the past, perpetrators also become founding fathers. See Philippe-Joseph Salazar, “Perpetrator ou De la citoyenneté

In Argentina, the trials imposed a consensus that is now our common legacy: the dictatorship of 1976-1983 perpetrated evil, and this evil must never happen again, *nunca más*. But here again, we propose that the term evil does not exhaust the work of truth, and this work should not leave unscathed those of us who participated in the political movements of the 60s and 70s. There are important differences between the Argentine and South African situations: among these it shall be said that the horrible acts committed in the fight against apartheid can be viewed as having taken place in the framework of the fight against evil. Holding up this mirror in Argentina, the responsibility of the radicalised, armed, political forces, the very same that suffered the greatest number of victims at the hands of state terror, should not be framed in terms of the fight *against* the state terror. Rather, it must be addressed in its relation to the *subsequent advent* of the terror. The participation of the anti-state forces in the violence cannot, thus, be justified in terms of the fight of good against evil, if for evil we understand the state terror unleashed by the military dictatorship in 1976.

Given the challenge of preserving the line of demarcation between the violence of the Left and the subsequent terror unleashed by the state, given the challenge of opposing itself to those who would seek to equalise insurgent violence and state terror, the assumption of responsibility for political violence on the part of the Left must pass through a very narrow straight indeed. But this responsibility in preparing the conditions that may have made possible the terror of the state makes even more urgent, in our view, the willingness to accept its weight. The South African example shows that accepting responsibility does not entail a blurring of the line beyond which lies radical evil, that which *nunca más* must be allowed to happen. As Michael Walzer puts it, the common legacy of a “never again”, *Nunca Más*, should be viewed as our “thin memory”, that which — its differences notwithstanding — nourished our democratic re-founding. But it is our responsibility, as yesterday’s participants and as today’s intellectuals, to contribute to the development of “thicker” memories, memories that restore the complexity and clarify the shadows and moral dilemmas of those who, believing themselves to be working for the good, contributed to the onset of evil.

Perhaps it is the very virtue of the trials against the Juntas which has made the emergence of truth so difficult in Argentina: in the first place, in the form of confession on the part of the direct participants in state terror, and in the second place, as an attempt to understand, to develop the more complex truths, in which the magnitude of evil does not block reflection upon “how it could have happened”. Reconciliation, pardon, and remorse — so much present in the South African process — are all but prohibited in the Argentine

criminelle”, in *Rue Descartes* 36, *Philosophies Africaines : traversée des expériences* (June 2002): 167-179.

debate. I do not deny the difficulty posed by these terms. Nor am I unaware of the danger of confusing their moral or religious character with their political significance. For my part, sustained as I am by those who, with sensitivity and intelligence, have reflected upon this in the shadow of the Nazi horror, I tend to believe that pardon, with respect to its *political meaning*, must go hand-in-hand with atonement.¹⁶ Only where there is a common acceptance that what happened should never have happened, where there is then remorse for having contributed to what happened — only then is it possible to imagine the foundation of a common space for reconciliation. I venture the hypothesis that reflection on these notions in political terms can become possible only if a shared arena between those who can forgive and those who can feel remorse can be found. But the very existence of this shared arena, its creation, supposes one way or another a common interest (inter-est, inter-being). This interest was achieved in the Truth and Reconciliation Commission of South Africa, and is absent from the Argentine resolution emphasising justice.

Finally, this leads me to ask whether the rejection of the terms remorse, pardon and reconciliation in the Argentine debate might not show the traces not only, as we want to believe, of our opposition to erasing the marks of guilt and innocence, of murderer and victim, but also of our inability to build alongside justice that space of common inter-est, where the truth, the facts, and our responsibility for them might unfold. The scene of the trials, for all of its extraordinary accomplishments, has forestalled the possibility of remorse and forgiveness between people. It has hindered the exposure and recognition of individual responsibility. Just as justice gave us the new beginning in the form of *Nunca Más*, perhaps today it might be possible for us — participants yesterday and today — to contribute a new variation on that beginning, a new variation on that history. Perhaps it might be possible that, twenty-five years later, our emphasis upon justice might no longer take its toll on truth. Of course this is about historical truth, but it is also about putting an end to the unbearable, unacceptable continued silence of the perpetrators. Putting an end to this silence might depend upon a variation — one to whose fragile possibility this text hopes to contribute.

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¹⁶ See Vladimir Yankélevitch, *Le pardon* (Paris: Aubier, 1967); Hannah Arendt, *The Human Condition* (London and Chicago: Chicago University Press, 1958); Hannah Arendt, *Eichmann in Jerusalem* (New York: Penguin, 1963); Hannah Arendt, *Responsibility and Judgment*, Jerome Kohn, ed. (New York: Schocken Books, 2003); Jacque Derrida, *Pardonner: l'impardonnable et l'imprescriptible* (Paris, L'Herne, 2005), and "Versöhnung, ubuntu, pardon: quel genre?" in Cassin, Cayla and Salazar, *Le genre humain* 43, 111 – 158.

Between the signs of transition's justice

Erik Doxtader

“Post” does not arrive of its own accord, at least if the promise of justice in the aftermath is to count for more than fate. In the theory and practice of transitional justice, an increasingly central element of contemporary human rights discourse, there is then a road (yet) to travel, a path on which we may struggle to recognise the choice(s) of our words. Here, I would like to reflect briefly on this perhaps rhetorical path — it is rarely acknowledged as such — and to do so in order to consider the directions in which the work of transitional justice is being pushed and pulled.¹ Where is transitional justice policy headed with respect to the problem of how societies (and individuals) emerge from and move beyond deep division, including the collective and individual trauma of systematic violence? How does the theory and practice of transitional justice conceive the distance that must be traversed in order to realise one of its oft-repeated goals, the move from past to future? What baggage must be shed or carried to reach this new beginning?

While these are general questions that cannot be fully approached let alone answered here, they are important nevertheless as their terms betray that transitional justice is a relatively new and unsettled concern — the UN, for one, only began to employ the term with any precision in 2004.² Moreover, these questions suggest that transitional justice may be a bit lost, although it would be more accurate to say that it is divided from itself, torn in two directions. More accurate still would be to say that transitional justice abides in a kind of *stasis*, literally a “language trouble” that stems from diverging (some say, incommensurable), although poorly theorised accounts of the transition — the concept, work, and event of transition — that occasions, modifies, and perhaps emerges with(in) transitional justice.³ This then is my quite limited and somewhat artificially demarcated concern, a reflection on the implied and articulated temporal paths (or premises) of transitional justice, one that tries to go just a bit beyond the reductive and frequently invoked distinction between the provision of amnesty and the production of memory — time lost or time accounted for. In doing so, I hope to shed a bit of light on a relatively new element of transitional justice policy, a “right to

¹ On the larger question of rhetoric's place in the discourse of human rights, see Erik Doxtader, “The Rhetorical Question of Human Rights — A Preface”, *Quarterly Journal of Speech* 96, 4 (2010): 353-379.

² For one of the first direct appeals to transitional justice within the confines of the UN, see Report of the Secretary General, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies”, 23 August 2004 (S/2004/616).

³ Barbara Cassin, “Politics of Memory: On Treatments of Hate”, *Javnost: The Public* 8 (2001):9-22.

truth” that has not received significant attention and which may warrant our concern for the way in which it defends what may prove to be an exceptional, an exception-making, vision of rule of law.

What is the transition presupposed in “transitional justice”? Let me approach this question indirectly, from one source of the question’s provocation, a slogan that has provoked significant and ongoing debate over how to define and practice transitional justice. Reproduced below (A.), this slogan is a sign in several senses. Most simply, it forms a banner. Given to marking an occasion, it signifies a place and mode of public discourse, a forum dedicated — in name — to the taking place of language. It is a bit redundant. As at least this particular version lacks punctuation, perhaps in a sort of thin Lacanian sense, the slogan points to a transition, a moment in which things are not as they seem, and a time in which what seems to be is not (yet). As this uncertainty applies to the slogan itself, it is a source of doubt if not controversy; we are torn over how to judge the veracity and felicity of its appearance, a rhetorical appearance and the appearance of a rhetoric that, together, may reveal and disclose as much as it obscures and conserves. Read today, this cut is an exigence, a sign of the unforgettability of the forgotten, a remnant that has yet to come to legibility.⁴



Most will recognise this banner as the announced calling and presented calling card of South Africa’s Truth and Reconciliation Commission. This body emerged partly, but only partly, from the post-amble of the 1993 interim constitution, a document that ended statutory apartheid and which held that “reconciliation between the people of South Africa” warranted the creation of an amnesty for the “acts, omissions and offences associated with political

⁴ Giorgio Agamben, *The Time that Remains*, Patricia Dailey, trans. (Palo Alto: Stanford UP, 2005): 39-40.

objectives and committed in the course of the conflicts of the past".⁵ The Commission itself began work in 1996, under the auspices of legislation that begged more questions than it answered. With its three basic committees charged respectively to hear testimony from victims of apartheid-era violence, adjudicate amnesty applications from perpetrators, and formulate recommendations for reparation, the Commission's efforts were justified publicly through a "campaign of persuasion" that included then Minister of Justice, Dullah Omar's claim that the TRC was "building a future for South Africans" and that "as there is a conflict between what the international community is saying and what is in the interests of the people of South Africa then I think that we will have to live with that kind of conflict".⁶ And conflict there was, particularly around the matter of amnesty. As it convened in East London for its first victims' hearings, the Commission found itself set to embark on what Antjie Krog would later refer to as a process of giving stories so as "not to die of life", a making (up) with language that was defended by some as a promising and "unique experiment" and condemned by others for condoning impunity at the cost of the country's new constitution.⁷

This ambivalence is embodied in the TRC's banner. And, it is important to note that this banner was neither the first nor the last of its kind. In East London, the banner outside the hearing hall declared: "The Truth Heals". Only several months into its work, with the hiring of a Johannesburg public relations firm, did the Commission begin to feature the slogan that then appeared consistently at its hearings, although there were still other variations, some of which set a colon after "Truth" and others which placed a period after both "Truth" and "Reconciliation". Looking again at the version of the banner here, one is struck by a double and interlocking absence: there is no indication that the TRC is a South African event or that it is an event at all. Rendered anonymous or perhaps universal, the Commission does not convene under the banner of an action; a verb that articulates the link between its key terms. At best, we might speculate that the Commission holds within it a commissioning, a calling to set out on a mission or perform work for another (not infrequently an act and work of artistry). While such an interpretation may be a stretch, it is also productive to the degree that it highlights the terms on the banner that are frequently overlooked or reduced, ironically, to a placeholder. Reading horizontally, if not a bit too literally, the

⁵ The post-amble has become an altogether easy "origin" of the TRC, a view that comes at the cost of understanding reconciliation's much longer and richer history in South Africa. I have addressed this elsewhere. See Erik Doxtader, *With Faith in the Works of Words: The Beginnings of Reconciliation in South Africa, 1985-1995* (Cape Town/Lansing: David Philip/Michigan State University Press, 2009).

⁶ Dullah Omar, Testimony delivered to Parliament's Joint Committee on Justice with regards to the Promotion of National Unity and Reconciliation Bill (Cape Town: Archives of Parliament, 31 January 1995): 55.

⁷ Antjie Krog, *Country of My Skull* (New York: Times Books, 1998): 64.

Truth and Reconciliation Commission leads to “the road to”, a phrase that stands ambiguously between “truth” and “reconciliation”; in turn, reading vertically, the passage of “the road to” that links truth and reconciliation can be undertaken from two directions — top to bottom or bottom to top. As the Commission was something of a road show, a travelling body that convened in many dusty dorps, the banner also offers a visual pun with “the road to” and either “reconciliation” or “truth” occupying two lanes, with the ‘third term’ relegated to the shoulder, a position that is not without meaning, at least if considered in light of South African highway etiquette.

When confronting the question of what is happening on, in, or along the TRC’s road, it is important to recall that another name for road is ‘method’. Drawing from the ancient Greek (*hodos* and *methodos*), the Commission’s middle and perhaps operative term may refer to the path of a journey, a system or sequence of thought, a principle of beginning, a mode of pursuit or an intended direction, a means of discovery (recognition), or a way of speaking and acting. Fixing relative position and enabling (a leading) movement, the road that appears between truth and reconciliation may signal the start of an open-ended excursion, a dedicated search, or a passing between more or less familiar points. It may be unidirectional or a byway which may or may not allow u-turns. It may be walked along or crossed, the latter being an idea that is usually reserved for jokes but which adds important senses of proximity and relation to the problem — there is a difference in approach to the neighbour across the street and those living down the freeway. In either direction, however, the road’s span constitutes a spatio-temporal measure of linkage and separation. If it runs forth from inside to outside the city-state, the road may involve taking leave of *logos* and *nomos*, the words and law that define home.⁸ In antiquity, it was the figure of theory, the *theoros*, that walked this path. Called to wander toward wonder and then return with a meaningful account of unfamiliar spectacles and strange oracles in need of translation, theory’s road is a place (out of place) and a time (out of time) characterised by (dis)connection and the (im)potential for recognition in the midst of contingent encounter.⁹

The road opens (onto) the *question* of method. Understood as a way of encountering and conceptualising the traversal of space and the passage of time, the figure of the road thus serves to announce if not enact the problem of what it means to be(come) in(to) transition. Simultaneously, a moment between the times in which there may be no time at all and the

⁸ In the South African case, this precise dynamic proves a crucial point for reflection in light of apartheid’s obsession with raced-based zoning.

⁹ For accounts of this early sense of theory and the movements of the theorist see, among others, Andrea Nightingale, *Spectacles of Truth in Classical Greek Philosophy* (Cambridge: Cambridge University Press, 2004); For a subtle reflection on one of theory’s central “objects,” the Olympics, see Philippe-Joseph Salazar, “Rhetoric on the Bleachers or, The Rhetorician as Melancholiac”, *Philosophy & Rhetoric* 41, 4 (2008): 356-374.

movement of (a) being (between) somewhere/something and nowhere/nothing, the opening of a transition strains reference, sense, and relation. This tension may be intractable, at least as the announced (purposive) value of a transition presupposes precisely what must be created *through* transition. Within the context of the TRC and the larger issue of transitional justice, this means that the onset of transition brings a need to define and plot the relationship between such goods as truth and reconciliation at the same time that it renders the grounds of definition and interaction contingent if not suspect. In short, the method of transition begins with the *puzzle* of what it means to create the potential for shared meaning in time.

In the last several years, theories of transitional justice have offered several ways of putting the puzzle pieces together. One significant approach proceeds by figuring transition as a site of conversion, a moment of radical presence that blurs truth and reconciliation to the point where their difference fades. On the road, we lose our way (sight) in the name of learning how to begin again. As it echoes, if not follows, the Pauline tradition, the experience of transition calls us to stand as we are not; forsaking the words of law that have funded and rationalised division and violence exposes a vulnerability, a constitutive weakness (a loss of identity), in which it is possible to hear the word which holds the potential to turn enmity into a new time of friendship.¹⁰ Grounded then in no good reason, a gift without question of desert, the messianic truth of reconciliation is, as Agamben puts it, a “justice without law”, a “pure potentiality of saying” that refuses the “juridicising of all relations” and uncovers the “revelation of language itself” as a basis for abiding in a present that cuts the stranglehold of fate’s repetition.¹¹

While there is no doubt that the South African TRC proffered and defended something of this logic, in part due to the larger political-cultural and tradition reconciliation on which it rested, the more apt (secular) parallel may be the Greek amnesty of 403 BC, an edict that rendered a state of emergency inoperative by calling on perpetrators to account for their actions (or accept exile) and forbidding citizens to recall these past events. Arguably this prohibition served less to induce or condone amnesia than to displace memory from the law into the commons, a shift that aimed to return the ability of citizens to make and perform the oaths that compose the meta-conditions of collective life and the meta-normative grounds of law itself.¹² Like its religious counterpart, this approach invites combatants, along with perpetrators and victims, to appear before one another without standing, without precedent’s guidance or identity’s banister. The risk of such

¹⁰ Here, there is an important emphasis placed on what Arendt called “legal violence”, a concern that has not featured in the UN’s deliberations on transitional justice.

¹¹ Agamben, *Time that Remains*, 107, 135.

¹² For a fuller account, see Erik Doxtader “Easy to Forget or Never (Again) Hard to Remember? History, Memory and the ‘Publicity’ of Amnesty”, in *The Provocations of Amnesty: Memory, Justice and Impunity*, E. Doxtader and C. Villa-Vicencio, eds. (Cape Town: David Philip, 2003).

transition, a (re)turn to the potential for that recognition which goes well beyond a multiculturalist inculcation of tolerance, is the sacrifice by which it is inaugurated, a sovereign sacrifice of interest that is easily refused by the guilty and which leaves the innocent to abide in the artifice of a beautiful soul's story that arrives with no assurance of audience. In the transition that functions as a timeless present, a now-time for all time, the burden of life is not fate but its radical contingency.

The second and increasingly dominant approach to the transition that conditions transitional justice is far more linear and rests increasingly on a "right to truth". On this view, transitional justice proceeds from an asserted right of truth-telling and truth-being-told, a capacity and demand for an account(ing) (*logos*) of one's self that both follows from and composes the law's (*nomos*) mediation of morality and politics.¹³ As old as its counterpart, this (unforgiving) power of (the) giving (of) voice to truth in the name of justice entails the forensic-testimonial (re)presentation of memory to ensure the production and reproduction of history, an archive that documents, recognises, and aims to repair the costs of violence.

While it now counts as the mainstream premise of contemporary policy, this view of transitional justice found significant form in an influential 1997 UN report, entitled the "Question of the Impunity of Perpetrators of Human Rights Violations". Backed by decisions from the Inter-American Court for Human Rights and the penumbra alleged to emanate from various human rights conventions, the report begins with the claim that "there can be no just and lasting reconciliation without an effective response to the need for justice".¹⁴ All but forbidding the provision of amnesty to perpetrators, it goes on to contend that, "Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through systematic, gross violations of human rights, to the perpetration of heinous crimes".¹⁵ In recent years, this claim has become a central focus of transitional justice policy-making. The recently ratified *Convention for the Protection of All Persons From Enforced Disappearances* holds that victims have "the right to know the truth regarding the circumstances of enforced disappearances" and has supported efforts to ground transitional justice on a right to truth that, according to a 2007 General Assembly resolution, "presupposes the disclosure of the whole and complete truth about the

¹³ Michel Foucault, *Fearless Speech*, Joseph Pearson, ed. (Cambridge: Semiotext(e), 2001): 105.

¹⁴ Commission on Human Rights, "The Administration of Justice and the Human Rights of Detainees — Question of the Impunity of Perpetrators of Human Rights Violations (Civil and Political)", E/CN.4/Sub.2/1997/20/Rev.1, 1997, 4. In a much more extensive study, I have considered the development of transitional justice policy at the UN. See Erik Doxtader, "A Critique of Law's Violence Yet (Never) to Come: United Nations' Transitional Justice Policy and the (Fore)closure of Reconciliation", in *Theorising Post-Conflict Reconciliation: Agonism, Restitution & Repair*, Alexander Hirsch, ed. (Routledge, forthcoming, 2011).

¹⁵ Commission on Human Rights, "The Administration of Justice", 10.

events that occurred, the specific circumstances attending them and the individuals involved, including the circumstances in which the violations were committed and the reasons for their commission".¹⁶

Held to be inalienable and non-derogable, the "right to truth" has served to legitimise what have been recently defined as the appropriate "tools" of transitional justice.¹⁷ With this machinery comes a specific view of transition itself, one that is defined by a proceduralist case for the priority and presence of truth and reparation within "any peace and reconciliation scheme".¹⁸ Distinct from the questions left open (or undecidable) by the South African TRC's banner, this position firmly "resolves" reconciliation's position in the transitional justice equation — it is an end and only an end, a state of affairs that follows and which can only follow from a process of truth-telling that is conditioned by and additive to the rule of law. Accordingly, precedent, memory, history (and back to precedent) are the order of transition's day, a point made altogether clear by Madeline Albright's pronouncement that "Truth is the cornerstone of the rule of law. ... And it is only the truth that can cleanse... and begin the healing process".¹⁹ While the vigour of this faith may well give the most devout interpretation of reconciliation a run for piety's money, the more important issue is the way in which such a call to truth conceives transition as a linear event to be managed, an object of law that opens and gains from a truth-telling that, even if epidictic, proceeds within a developmental and diachronic model of wound, treatment, and healing. Warranted by a promise of law's grant of recognition, a status given and controlled *by* the law, the transition is not an event that interrupts the conceptual-historical continuity of juridical power in the name of asking whether and how to (re)constitute the law's underlying rule of recognition. One can speculate as to the ways in which this may re(inaugurate) the potential for bio-politics, particularly as subjects are hailed to a process of truth-telling given to fashioning the appearances of their legitimate standing. For now, the point is that the transition presupposed by a "right to truth" based model of transitional justice is a chronological form. It is a *chronos* indemnified from reconciliation's *kairos* in the name of reversing the causality of fate, a turn against the expressed hostility of life that proceeds by fating the cause of dignified words.

¹⁶ Report of the Office of the High Commissioner for Human Rights, "Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council' — Right to Truth", (A/HRC/5/7), 7 June 2007, 16.

¹⁷ See, for one, Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post Conflict States — Truth Commissions*: 2006.

¹⁸ Report of the Office of the High Commissioner for Human Rights, "Implementation of General Assembly Resolution 60/251", 13.

¹⁹ Cited in Yasmin Naqvi, "The Right to Truth in International Law: Fact or Fiction", *International Review of the Red Cross* 88, 862 (June 2006): 245.

In moving to conclude, it would seem that we are left between two modes of transition. On one path, this difficult moment holds a messianic call to (re)turn to the relational potential of language. On the other, there is a clock-bound duty to express the experience that produces collective progress. Largely from the latter, there has appeared an argument that these views are incommensurable, at least if the legal procedures of truth-telling are not granted prior (bordering on mythical) status. From the former, it has been heard that these diverging methods might be reconciled, although the argument is trite until such a time as its adherents can provoke a serious debate in policy circles about the meaning and operativity of reconciliation. As little attention has been paid to whether and how transitional justice abides within or composes transition, the same need for discussion exists in respect to whether these two accounts can be differentiated on the grounds that violence and atrocity have various and variable forms. There is also the more straightforward possibility that transitional justice has been misnamed, or named to legitimise the work of what some see as a colonising force. Both avenues are susceptible to this charge, at least as, on the one hand, a faith-in-the-word-for-now may entail a self-sacrificing commitment to ambiguity and as, on the other, an addiction to rule of law may consolidate expression at the cost of creativity and an understanding of “legal violence”.

If these are concerns that merit attention, the larger question is deeply rhetorical — in the best and worst senses — in that it calls for inquiry into the meaning of the appearances that emerge through the taking place of that language given to making time. Today, at a moment when proponents of transitional justice stand on their respective paths, look over, and accuse the other of hypocrisy, of being other than they seem, of producing semblance or duplicitous misdirection, the occasion of transitional justice that actually includes a sense of its occasion, may rest on a thinking of the transitional, a theorising of method’s road as a “scene of address” for those “acting words” that contain the potential for a judgment that is less a given law or faith as the constitutive and ongoing struggle of recognising.²⁰ To disavow such discovery, as Richard McKeon suggested quite forcefully in the months prior to the authorship of the Universal Declaration of Human Rights, is to risk the (philosophical) production of concepts that, in a very practical way, feed the very kinds of conflict that they seek to overcome. Such then are the signs of the times and the perhaps increasingly urgent need of their interpretation, a reading that relies less on fixing the reality of transition than embarking on a

²⁰ For devotees of the notion that narrative will rally to solve our problems, Judith Butler’s recent work offers a compelling challenge, see her, *Giving an Account of Oneself* (New York: Fordham University Press, 2007). I borrow here from Butler’s position, along with the argument in Alexander Düttmann, *Between Cultures: Tensions in the Struggle for Recognition* (London: Verso, 2000).

~ Between the signs of transition's justice ~

road that allows us to glimpse and struggle with its potential, a making of ethical life which defies the banner of precedent.

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Big Brother's shadow: History, justice, and the political imagination in post-1989 Poland¹

Cezar M. Ornatowski

“That is the question for a politician – how today to read this yesterday in the name of tomorrow?”
— General Wojciech Jaruzelski²

1. Introduction

Within the paradigm of “transitional justice”, the problematic of justice in “post” societies is generally conceived of in terms of “how new democracies have attempted to strike a balance between redressing the abuses of the former government and integrating victims and perpetrators in a post conflict society”.³ Transitional justice thus includes such measures as identifying, and perhaps prosecuting, perpetrators of crimes (lustration); restoring voice, as well as honour and dignity, to victims through public acknowledgement of past sufferings; reintegration of perpetrators into democratic society through public acknowledgement of the repression mechanisms of the old regime and their involvement in these mechanisms (truth telling); restitution of economic losses; and reform of state institutions.⁴ The measures have two major “normative aims: achieving justice for victims, and achieving a more just, democratic order”.⁵

Although post-1989 Poland has been largely successful at restitution and institutional reform, lustration of functionaries of the prior regime and prosecution of those responsible for its crimes have been stalled by conflicts over interpretations of the real-socialist past, conflicting narratives of the political transition, and, ultimately, conflicting attitudes toward the character and direction of the post-1989 democracy. It is on the conjunction of these conflicting interpretations and attitudes as they relate to the sense of the

¹ I borrowed the title from Mariusz Janicki and Wiesław Władysław, *Cień Wielkiego Brata: Ideologia i Praktyka IV RP* (Warszawa: Polityka, 2007).

² Wojciech Jaruzelski, *Stan Wojenny Dlaczego ...*, (Warszawa: BGW, 1992): v.

³ Theodore J. Piccone, “Review of *Transitional Justice*”, *American Journal of International Law* 90 (1996): 540-41, quoted in Paige Arthur, “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice”, *Human Rights Quarterly* 31 (2009): 321-367, [331]. Emphasis added.

⁴ See Lavinia Stan, “Introduction: Post-Communist Transition, Justice, and Transitional Justice”, in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning With the Communist Past*, ed. L. Stan (London: Routledge, 2008): 1-14, [3].

⁵ Arthur, “How ‘Transitions’ Reshaped Human Rights”, 357.

historical justness (or unjustness) of post-1989 Poland that this essay focuses. In his reflections on the problem of justice in post-communist societies, Vladimir Tismaneanu notes that “political justice cannot be separated from moral justice as a continuous exercise in working through the [totalitarian] past”.⁶ The question that underlies this essay is thus this: How are judgments of moral justice derived from “working through the past” and how do such judgments influence the sense of “justice”,⁷ and thus the sense of moral and political legitimacy, of the succeeding formation?

2. Attitudes toward the past in post-1989 Poland

Andrzej Walicki has argued that “[to] understand the complex story of the vicissitudes of transitional justice in Poland, it is necessary to place this problem in its appropriate political context and, in turn, to interpret this context in the light of different experiences with the communist regime”.⁸

In the wake of the transition of 1989, two dominant interpretations of the real-socialist past emerged in Polish political debate.

One interpretation is represented by a statement made by Marian Orzechowski, leader of the parliamentary club representing the formerly ruling Polish United Workers’ Party, in a parliamentary debate following the expose of Tadeusz Mazowiecki, the first non-communist prime minister in Poland and Central/Eastern Europe:

“For the creation of the new to succeed, it is necessary to preserve a balance between continuity and change. Nobody suggests, that the past 45 years in Poland, was a period of only achievements and successes. But an equally great exaggeration would be to declare, and such voices exist, that it was an unbroken chain of failures, that everything up to now – has been unsuccessful and bad. Nobody has the right to erase the historical achievements of the lives of two generations of tens of millions of workers, of working people, of the entire society. Our nation achieved over those years great civilisational progress, created many great and lasting things and values, although far below the measure of the present aspirations and expectations”.⁹

⁶ Vladimir Tismaneanu, “Foreword: Truth, Memory, and Reconciliation: Judging the Past in Post-Communist Societies,” in Stan, *Transitional Justice*, xi-xii, [xi].

⁷ “Justice” in this context refers, as it does for Aristotle, not just to issues settled by law, but also, and primarily, to all relations within a polity.

⁸ Andrzej S. Walicki, “Transitional Justice and the Political Struggles of Post-Communist Poland,” in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (South Bend, IN: University of Notre Dame Press, 1997): 185-238, [186].

⁹ Marian Orzechowski, *Sprawozdanie Stenograficzne z posiedzenia Sejmu w dniu 12 wrzesnia 1989*, 26. This and all translations from Polish in this essay are my own.

Orzechowski's statement nicely articulates the major outlines of what Kenneth Burke calls the "frame of acceptance" of the real socialist past in post-transitional Poland.¹⁰ This frame, while conceding the abuses and mistakes of the past, acknowledges its "achievements", primarily in terms of rebuilding the country from the devastation of war and offering social and economic advancement to individuals and groups not privileged in the pre-War social structure. This frame also helps to "justify" the efforts, privations, and struggles of the generations of Poles who spent their lives under real socialism. It is a frame widely adopted by former party leadership, many former rank-and-file party members, and some ordinary people for whom it legitimates, retrospectively, a measure of support for, or perhaps merely passive conformity to, the past system.

A different interpretation of the past is represented by a statement made in the same debate by Bronislaw Geremek, leader of the Citizens' Parliamentary Club, the parliamentary faction representing the former political opposition. "One should rather speak", Geremek declared in response to Orzechowski, of

"what is the balance of decades of consolidating and conserving a system that is contrary to the laws of life. One should speak of the *injustices* [done] to people and *wrongs* [done] to the nation, of the waste of efforts, [of] the alienation of the sense of human labour".¹¹

This "frame of rejection", in Burke's terms, legitimates active and moral opposition to the past system and "justifies" the experiences of those who feel themselves to be its victims.

These different interpretations of the past not only imply different moral evaluations of the epoch of real-socialism, but also feed into conflicting narratives of the political transition, ultimately lending divergent moral inflections to resulting figurations of the presence of the past in Poland's post-1989 political imagination. It is these figurations that ultimately underlie conflicting evaluations of, and attitudes toward, post-1989 democracy.

¹⁰ By "frame of acceptance" Burke designates "the more or less organised system of meanings by which a thinking man gauges the historical situation and adopts a role with relation to it". Kenneth Burke, *Attitudes Toward History*, 3rd ed., (Berkeley and Los Angeles: University of California Press, 1984): 5.

¹¹ Bronislaw Geremek, *Sprawozdanie Stenograficzne z posiedzenia Sejmu w dniu 12 wrzesnia 1989*, 31, emphasis added.

3. Narratives of transition

One narrative of the political transition (represented prominently in the memoirs and, in some cases, also court testimonies, of former officials such as General Wojciech Jaruzelski or Mieczyslaw Rakowski¹²) attempts to create historical continuity between the real-socialist past and the democratic present by representing the democratic present as in effect the outcome of the decisions and actions of the former authorities. Accounts based on this narrative defend the attitudes, decisions, and actions of the protagonists by making the democratic transition appear to be the outcome of official policies and strategies, with the opposition playing at worst a negative role as spoilers in the inexorable march toward “reform” and a market economy, and at best the role of “partners” in transforming the country.

In his political memoir, Mieczyslaw Rakowski, the last communist prime minister of Poland, suggests, for instance, that without martial law in Poland in 1981 there would have been no perestroika in the Soviet Union and thus no democratic transitions in Poland and elsewhere.¹³ A similar basic narrative is implicit in Orzechowski’s statement in parliament following the exposé and installation of the Mazowiecki cabinet, in which Orzechowski spoke of the occasion as a measure of the success of the “political and economic reforms, initiated eight years ago [that is, in 1981, the year martial law was declared by the Jaruzelski government] and presently [that is, with the installation of the non-communist Mazowiecki cabinet] deepened and accelerated”.¹⁴

This general narrative depends on two rhetorical operations: *metalepsis* and a dialectic that relativises. *Metalepsis* is a rhetorical figure that works by attributing the present effect to a remote cause (according to Sister Miriam Joseph, *metalepsis* involves either chains of cause-and-effect related productively, or of antecedent-and-consequent related temporally).¹⁵ Perelman and Olbrechts-Tyteca suggest that *metalepsis* facilitates “the transposition of values into [putative] facts”.¹⁶ In Rakowski’s and Orzechowski’s narratives, the transposition works as if it were backwards, endowing the putative cause (the Jaruzelski martial law regime) with the

¹² Jaruzelski, *Stan Wojenny Dlaczego*, Wojciech Jaruzelski, *Byc Moze To Ostatnie Slowo (Wyjasnienia Zlozone Przed Sadem)*, (Warszawa: Comandor): 2008. Mieczyslaw F. Rakowski, *Jak to sie Stalo*, (Warszawa: BGW): 1991.

¹³ Rakowski, *Jak to sie Stalo*.

¹⁴ Marian Orzechowski, *Sprawozdanie Stenograficzne z posiedzenia Sejmu w dniu 12 wrzesnia 1989*, 29.

¹⁵ Sister Miriam Joseph, *Shakespeare’s Use of the Arts of Language*, (New York: Hafner, 1947/1966).

¹⁶ Chaïm Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, trans. John Wilkinson and Purcell Weaver (Notre Dame, IN: University of Notre Dame Press, 1969/2000): 181.

positive valuations attendant on the consequences (perestroika and democracy).

Kenneth Burke suggests that there is a principle of “justice” in the relative proportionality (putative exchangeability) of the perspectives deployed in metaphor or analogy. Hence, for example, to place genocide in a relationship of “analogy” to the annihilation of an animal species (the example is mine, not Burke’s) violates the common sense of “justice” because it does not accord with the common sense of moral proportion (in this case involving an adjudication of what Burke calls the “degree of being”: people are generally considered to have higher moral “value” than animals).¹⁷

Such “analogical” (*analogia* in Greek means “proportion”) violations of the sense of justice, however, occur also in *metalepsis*, to the extent that the transposition of value also implies judgments of relative proportion. It is as if Adolf Eichmann defended himself in Jerusalem by suggesting (which he himself did not but which his defence at least implied)¹⁸ that, had it not been for the Nazis and the Holocaust, including his own role in it, the state of Israel would not have existed to try him. Which, in some sense, is arguably “true”, but such a defence would strike most people as deeply “unjust”, implying as it were that the organised massive violation of human rights, destruction, and horror of the Holocaust were “justified” by the subsequent creation of Israel.¹⁹ Certainly, few Israelis would be inclined to applaud the Nazis on that score.

Aristotle makes a distinction between justice as “the practice of complete virtue”²⁰ and two “partial” senses of justice (*dikaion*, justice not as universal principle but in application to particular sorts of transactions): distributive, which consists in the “distribution of preferment, property, or anything else which is divided amongst the members of the community”²¹ (this sense applies also to the determination of rights), and commutative (also called corrective, retributive, or vindicative, which “has a rectifying function in private transactions”).²² Aquinas and later commentators called the latter *commutativa justitia*, from *commutatio* (transfer), which in the old Latin

¹⁷ Kenneth Burke, *A Grammar of Motives*, (Berkeley and Los Angeles: University of California Press, 1969): 504.

¹⁸ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, (New York: Viking, 1963).

¹⁹ Which demonstrates, by the way, that the relationship between justice and truth is neither direct nor simple, and may be “ironic”.

²⁰ Aristotle, *Nicomachean Ethics*, trans. Martin Ostwald (Indianapolis: Bobbs-Merrill, 1962): V, 129b, 31.

²¹ Aristotle, *Ethics* V, 1130b, 30, as translated in Henry Jackson, *The Fifth Book of the Nicomachean Ethics of Aristotle*, (New York: Arno, 1973): 16. Ostwald translates the line as “distribution of honours, of material goods, or of anything else that can be divided among those who have a share in the political system”.

²² *Ethics*, 1131a. Jackson renders the line as “which rectifies wrong in the case of private transactions”, while the *OED* renders it as, “which is corrective in transactions between man and man”. “Commutative”, *Oxford English Dictionary*, (New York: Oxford University Press, 1985).

translations of the *Ethics* represented the Greek *analogia*.²³ Justice in its commutative sense thus implies an exchange or convertibility of two different qualities, with *analogia* (proportionate return) as the principle underlying judgments of the convertibility of values.

On such an account, the narrative of transition based on a *metalepsis* such as Rakowski's (similar *metalepses* underlie General Jaruzelski's defense during his trial for the crimes committed under martial law)²⁴ implies a fundamental equi-valence (via an implicit analogy) of post-1989 democracy and real-socialism, based (via the reverse transposition of value from the democratic present to the oppressive past) on a "normalisation" of the latter as just another political system (like the former) in which "politicians" did their best under difficult objective conditions – exacerbated by massive civil disobedience and Western hostility – to maintain and advance social order. Such "analogical" transfers of (moral) value deprive the post-communist 3rd Republic²⁵ of claims to historical justice (especially in the eyes of those who do not share the frame of acceptance of the real-socialist period) and thus play into the hands of its detractors, who see it as an extension of the pathologies of the prior epoch.

Such a narrative also relativises the "democratic" narrative of the transition as a "breakthrough" from an oppressive past to a democratic present, hard-won through years of popular struggle, delegitimising the claim of the democratic 3rd Republic to historical "justice" vis-à-vis the non-sovereign and totalitarian (thus "unjust") past and, in the process, compromising the new oppositional political elites.

The currency of this delegitimising narrative in the post-1989 popular political imagination is facilitated by the fact that the Polish transition was a negotiated rather than violent one. As one Member of Parliament pointedly noted,

"I think that not everybody is conscious of what has happened in our country. Perhaps they do not see it, because it is not the effect of revolution, barricades, or mass strikes. (...) We Poles, accustomed by history to sudden changes, to tragedies and sacrifices, do not value peaceful change, which nevertheless destroys the totalitarian system . . .".²⁶

²³ "Commutative", *OED*.

²⁴ Wojciech Jaruzelski, *Byc Moze Ostatnie Slowo (Wyjasnienia Zlozone Przed Sadem)*, (Warszawa: Comandor, 2008).

²⁵ Post-1989 Poland is called the 3rd Republic to emphasize its putative historical continuity with the pre-World War II 2nd Republic. The numbering is a deliberate omission of the presumably non-sovereign (or at least not fully sovereign) communist "Polish People's Republic".

²⁶ Aleksander Bentkowski, *Sprawozdanie Stenograficzne z posiedzenia Sejmu w dniu 12 wrzesnia 1989*, 35.

The negotiated character of the transition makes it easier to represent it retrospectively as a result of a “sweet” (and potentially also “dirty”) “deal” between the old and emerging elites, therefore as fundamentally a “continuation of the same” but with the ostensible exchange of elites while the old guard holds on (now through economic wealth) to behind-the-scenes political power behind the façade of democracy.

That is how its right-wing foes see the post-1989 3rd Republic, through a *metalepsis* that in effect reproduces the basic analogy between the past and present projected by the communist narrative, but that transposes the negative valuation of the communist past forward onto the post-communist 3rd Republic (in contrast to the communist “justification” narrative that transposes the positive valuation attendant on democracy backward onto the real-socialist past). In the eyes of its enemies, “democratic” Poland seems in fact ruled by a conspiratorial clique consisting in large part of the old apparatchiks (except now they have money, having parleyed their political connections into business ones, and that is how they wield political influence) and their allies from the former “opposition”; alliances and networks inherited from the past persist and explain why some people succeed and others do not, and so on.

Bronislaw Wildstein's²⁷ best-selling 2008 political novel *Dolina Nicosci* (Valley of Oblivion) is a good example of such a vision of post-1989 Poland: a polity corroded at its foundations by “networks” with roots in the old system, facilitated by the new, formerly oppositional, elites. Such fantasies constitute a specific inheritance of the totalitarian past in the succeeding democratic imagination – an inheritance not without political and social consequences.

4. Conclusion: Figurations of justice and attitudes toward post-1989 democracy

Burke suggests that “[t]he business of interpretation” is accomplished by the twin processes of “over-simplification and analogical extension. We over-simplify a given event when we characterize it from the standpoint of a given interest—and we attempt to invent a similar characterisation for other events by analogy”.²⁸ It is through such twin process, grounded in the basic analogy

²⁷ Opposition activist and well-known journalist, notorious for having obtained and posted on the Internet, in 2005, the list (dubbed “Wildstein’s List”) of supposed communist-era agents and informers.

²⁸ Kenneth Burke, *Permanence and Change: An Anatomy of Purpose*, 3rd edition, (Berkeley and Los Angeles: University of California Press, 1984): 107.

between past and present implicit, ironically, in both communist and right-wing nationalist narratives of transition, that many negative post-1989 social phenomena tend to be interpreted by many – even otherwise reasonable – people in Poland today as extensions of pre-1989 pathologies, rather than as artifacts of the new liberal democratic, capitalist situation. In this view, a phenomenon such as corruption (although endemic to many democratic countries that have never been communist, for instance India) appears as a sure sign of “contamination” of the new polity by the old system.

Such visions feed on frustrations born of popular expectations of historical “justice”: the revolution should “by rights” have brought down all involved in the communist apparat and elevated the suffering and struggling to power and economic privilege. As the former Speaker of Parliament once told me: many ordinary people feel betrayed by democracy because they see that some of the communists who once oppressed them turned into wealthy capitalists and still rule it over them, except now as employers rather than party bosses.²⁹

A consequence of these frustrations, fed by the relationships between past and present projected by both the left and the nationalist right (albeit for very different reasons), is the view, held by many in Poland today, that in the absence of revolutionary violence at the founding moment of the democratic Republic (a violent birth would presumably have interrupted such “analogies” and set the new Poland on a “just” course), Poland needs a visible symbolic rupture with the past. Such a radical, historical and axiological, break is represented by Jaroslaw Kaczynski’s (and his Law and Justice Party’s) conception of the 4th Republic to replace the “corrupt and compromised” 3rd Republic, a conception that Kaczynski tried to implement during his premiership, and the parallel presidency of his, now tragically deceased, brother Lech, between 2006 and 2007.

The Law and Justice party’s 4th Republic program diagnoses the fallen condition of Poland today as “post-communism”, but the term in the 4th Republic vocabulary designates not mere temporal succession but rather the persistence of “communism” – not as an ideology but as a specific condition of “injustice” (consisting largely in the fact that accounts with “communism” had not been settled and many former decadents continue in positions of economic, and putatively also political, power) – at the very core of the new democratic polity. As a cure (the program is redolent of metaphors of disease and pollution), the program calls for a total rejection of the 3rd Republic, “warped” through its negotiated “continuity” with communist People’s Poland, and for a “fundamental reconstruction of the state”, including the restoration of a “moral dimension” to the state’s economic and social policies that would provide “justice for everyone” (the title of the Law

²⁹The Honorable Maciej Plazynski, personal conversation, Gdansk, Poland, June 22, 2008.

and Justice program is *The 4th Republic – Justice for Everyone*).³⁰ It is a program for a continuing “moral revolution” that presumably picks up where “Solidarity” – not the “Solidarity” of the late 1980s, “compromised” by its Round Table “deal” with the communists, but the so-called “Fighting Solidarity” (Pol. *Solidarnosc Walczaca*) of the martial law years – left off. To achieve its vision of a “just state”, the program calls for two “parallel”, “coordinated” actions: a “cleansing” of the state (“getting rid of the inheritance of the PRL [communist Poland] and destruction of the networks that arose from its soil”) and its “consolidation” and “strengthening”.³¹

In “Four Master Tropes”, Burke connects irony to the problematic of law and justice. Irony, Burke argues, “approached through either drama or dialectic, moves us into the area of ‘law’ and ‘justice’”.³² That is because, to simplify Burke’s argument, since things inevitably will change, often if not always, into their opposite, “the developments that led to the rise will”, by an “ironic” bent, “by the further course of their development, ‘inevitably’ lead to the fall”.³³ The point, however, “at which different casuistries appear”, Burke notes, “is the point where one tries to decide exactly what new characters born of a given prior character, will be the ‘inevitable’ vessel of the prior character’s deposition”.³⁴

Translated into the terms of the Polish post-1989 debates this means: which of the visions of Poland that emerged post-1989 – the post-Round Table 3rd Republic or Kaczynski’s 4th Republic – is the proper “vessel” of the demise of communist Poland and the deposition of the historical continuity of the Polish democratic identity? Each of these visions in effect sees its rival as in some sense an (ironic) “continuation” of the communist past.

Critics of the 3rd Republic maintain that, under the general terms of liberal democracy, it in effect harbours the power elites, if not more or less clandestine structures of power and privilege, inherited from the previous dispensation. Critics of the 4th Republic point to the authoritarian and centralising bent of the Law and Justice party, with its cult of the Leader, insistence of ideological purity, almost “religious” sense of historical mission, the uncompromising “totality” of its vision of the “just state”, and practical reliance (demonstrated during its possession of the reins of government between 2006 and 2007) on surveillance, libel, and enforcement, as reminiscent of the prior system (which is why two journalists titled a book on the ideology and practice of the 4th Republic *Big Brother’s Shadow*).³⁵

As a result, unlike in some other post-totalitarian contexts, in the

³⁰ Prawo i Sprawiedliwosc, *Program 2005: IV Rzeczpospolita – Sprawiedliwosc dla Wszystkich*, (Warszawa: Komitet Wyborczy Prawo i Sprawiedliwosc, 2005): 6.

³¹ Prawo i Sprawiedliwosc, *Program 2005*, 12.

³² Burke, *A Grammar of Motives*, 516.

³³ *Ibid.* 517.

³⁴ *Ibid.* 517.

³⁵ Janicki and Wladyka, *Cien Wielkiego Brata*.

case of post-1989 Poland it is not the relationship between truth and justice that seems central to the sense of justice of the new democracy but the relationship between justice and freedom. In the liberal democratic 3rd Republic freedom prevails while justice remains incomplete;³⁶ on the other hand, in the “just state” represented by the 4th Republic, the case for justice in effect curtails freedom. Whichever vision ultimately wins out, it seems that Big Brother’s shadow is bound to continue to haunt the Polish post-1989 political imagination for a while yet.

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³⁶ Adam Michnik, one of the chief architects and opinion makers of the Polish 3rd Republic, reviled in Wildstein’s book and in 4th republic propaganda (not without anti-Semitic overtones) as a traitor to the cause of revolution, suggested during the conference “Reflections on the Transition to Democracy” convened in Managua in 1994 that during political transitions the logic of peace must transcend the logic of justice (since “justice may call for the guillotine”) even though compromise may appear to imply abandonment of justice (http://www.pjtt.org/assets/pdf/project_reports_pdf/LA/NICARAGUA%2094.pdf, 3).

J. M. Coetzee: Reluctant public intellectual

Reingard Nethersole

Complacent and yet not complacent, intellectuals of the kind I describe, pointing to the Apollonian “Know yourself”, criticize and encourage criticism of the foundations of their own belief systems. Such is their confidence that they may even welcome attacks on themselves, smiling when they are caricatured and insulted, responding with the keenest appreciation to the most probing, most perceptive thrusts. They particularly welcome accounts of their enterprise that attempt to relativise it, read it within a cultural and historical framework. They welcome such accounts and at once set about framing them in turn within the project of rationality, that is, set about recuperating them.”

— J. M. Coetzee, *Giving Offence*¹

Why should concern about public intellectuals be topical everywhere, not least in South Africa as evident from recent publications by Jonathan Jansen² and Themba Mbadlanyana?³ And why focus on notoriously publicity shy, writer-teacher J. M. Coetzee who *Mail & Guardian* critic Shaun de Waal once called “the Greta Garbo of South African literature”? What can be gleaned from a disjuncture between “sceptical rationality” and “sincere outrage”⁴ that is the subject of Coetzee’s deliberations on censorship, but more importantly what insight can be had from the hauntingly dense narrative “He and His Man”,⁵ read in lieu of the customary address expected of a laureate at the occasion of the prestigious award of the Nobel Prize for Literature in Stockholm in December 2003? These questions, I suggest, open a window into our current state of the commerce of thinking, into the space of Literature, and of our imagining a place for ourselves in a world ruled by economic rationality and fashioned by celebrity culture; a global world that places insoluble tension between the “intellectual” and the “public”. After all, the ideal of an examined life embodied by Plato’s Socrates that lies at the

¹ J. M. Coetzee, *Giving Offence* (Chicago: University of Chicago Press, 1996): 4.

² See Jonathan Jansen’s chapter “South Africa: Intellectuals, the state and universities” in the recently released book, *Poverty of Ideas – South African democracy an the retreat of intellectuals*. <http://www.universityworldnews.com/article.php?story=20091211084236622>

³ See Themba Mbadlanyana’s guest column of the Centre for Politics and Research under the somewhat alarmist heading: “The tragedy of our public intellectuals” (3rd May, 2010) <http://www.politicsresearch.co.za/archives/444>

⁴ J. M. Coetzee, *Giving Offence* (Chicago: University of Chicago Press, 1996): 5.

⁵ Further references to the Nobel Lecture “He and His Man” are from <http://www.nobel.se/literature/laureates/2003/coetzee-lecture.html>

heart of secular moral authority, is being rapidly drowned in the cross-currents of what Appadurai has called the “five dimensions of global cultural flows” (in form of “*ethnoscape*, *mediascape*, *technoscape*, *financescape*, and *ideoscape*”) that define the current “Disjuncture and Difference in the Global Cultural Economy”⁶ as something utterly unprecedented. What Coetzee sets into motion in his Nobel Lecture is the necessary preying “upon the old [stories]” that tend to be swamped by these “flows” in so far as “the young are to be forbidden”, to connect with the (Western) past, having to “sit for ever in silence.”

Socrates, you’ll recall, when speaking in his defence in the Agora of Athens, famously referred to himself as “a kind of gadfly” that “the god has placed ... in the city” for the purpose of serving its better conscience.⁷ Never entirely erased from Western intellectual memory, the Socratic position dedicated to finding the inconvenient truth in a society given over to amassing “wealth, reputation, and honours”⁸ reappears in Coetzee’s autobiographical fictions *Youth* and *Summertime*, transcribed into 14th century Middle English as “Ayenbite of Inwyt”,⁹ literally “prick of conscience”. Albeit confined to the literary text, and not published in a newspaper or uttered in the public square, Coetzee’s dissent from the political power of the day, memorably exemplified in the figure of Mrs. Curren in *Age of Iron*, arguably the prototype of a caring intellectual, bears comparison with Zola’s famous “J’accuse” of 1898 with which the French novelist called for justice in the Dreyfus Affair.

Figures of speech have a history and so have the subjects thus designated; the curious amalgam of “public” and “intellectual” made its appearance first in Russell Jacoby’s *The Last Intellectuals: American Culture in the Age of Academe* in New York in 1987. Soon thereafter the trope “public intellectual” entered South African discourse, undoubtedly gaining momentum from a survey organised by America’s *Foreign Policy* and Britain’s *Prospect* magazines. Their “thinkers list” sought to identify the world’s “Top 100 Public Intellectuals”, among them scientists, economists, philosophers, clerics, judges, scholars, and environmentalists, not to mention eleven writers, including Coetzee, Achebe and Soyinka, who have “shown distinction in their own field along with the ability to communicate ideas and influence debate outside of it”.¹⁰ The Africa-focused website *africapedia* was

⁶ See this seminal chapter in Arun Appadurai’s *Modernity at Large – Cultural Dimensions of Globalization*, (Minneapolis: University of Minnesota Press, 2003, 27-47):33.

⁷ Plato, *Apology* in *Five Dialogues*, trans. G.M.A. Grube, revised by John M. Cooper. (Indianapolis/Cambridge: Hackett, 2003, 21-44): 35.

⁸ See above p. 34.

⁹ See J. M. Coetzee, *Youth* (London: Secker & Warburg, 2002): 130, and *Summertime. Scenes from Provincial Life* (London: Harvill Secker): 4.

¹⁰ See here the site of *Foreign Policy*, http://www.foreignpolicy.com/story/cms.php?story_id=4379

undoubtedly aware of this global list when proudly citing J. M. Coetzee as one of the eight distinguished intellectuals from the African continent: “The 2003 winner of the Nobel Prize in Literature, Coetzee wrote his most famous novels – *Waiting for the Barbarians*, *Life & Times of Michael K*, and *Disgrace* – while a university professor in South Africa and the United States.”¹¹

Aside from the fact that Coetzee has settled in Adelaide in 2002 and become an Australian citizen in 2005, albeit important only to those who keep national scores of achievement, the degree to which this particular author and, for that matter, any writer devoted more to literary inspiration than the lime-light should be a “public intellectual” remains debatable. It is not obvious at all what constitutes public discourse in a data-driven world of statistics, news-eventisation in the media, blogs, social networking and sound-bite celebrity culture that undercuts debate. Coetzee most certainly deserves the epithet “intellectual”; but the “public” aspect in terms of score-cards handed-out by list keepers seems restricted to the “rhetorical event” of the Nobel award generally tied to academic inaugural occasions.¹²

Nevertheless, Jane Poyner seems to think otherwise when devoting an essay collection to *J. M. Coetzee and the idea of the public intellectual*.¹³ Adamant to frame the writer as “public intellectual”, the Exeter University critic prods Coetzee, in a rare interview, to comment on Said’s suggestion that the intellectual assume a public role and to “raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them), to be someone who cannot easily be co-opted by governments or corporations, and whose *raison d’être* is to represent all those people and issues that are routinely forgotten or swept under the rug”. Coetzee, with an always finely tuned ear to reasoned use of language, answers lapidary [lapidarily – ed.]: “[this] constitutes a definition, not a comment”. Deflecting Poyner’s oblique request to show his cards as “public intellectual”, Coetzee offers a critically illuminating, historically contextualizing explanation instead: “The resurrection of the term *public intellectual*, which for years was not part of public discourse, is an interesting phenomenon. What is the explanation? Perhaps it has something to do with people in the humanities, more or less ignored nowadays, trying to carve out a niche for themselves in the body politic”.¹⁴ The candour of Coetzee’s response alludes to the malaise of

¹¹ See <http://africapedia.com/TOP-AFRICAN-PUBLIC-Intellectuals>

¹² See for details on the “Nobel Prize” as “rhetorical event” tied to academic inaugural occasions Philippe-Joseph Salazar’s contribution that, besides offering a genealogy, also places the South African Nobel Prize (Literature and Peace, respectively) winners in context. Philippe-Joseph Salazar, “Nobel Rhetoric; or, Petrarch’s Pendulum”, in *Philosophy & Rhetoric* 42, 4 (2009): 373-400.

¹³ Compare with David Attwell’s empathetic, and highly informative contribution “The life and times of Elizabeth Costello. J. M. Coetzee and the public sphere”, in Jane Poyner, ed., *J. M. Coetzee and the Idea of the Public Intellectual* (Athens: Ohio University Press, 2006): 25-42.

¹⁴ Poyner, *J. M. Coetzee and the Idea of the Public Intellectual*, 22-23.

literary studies today, as staged so eloquently in “The Humanities in Africa” in *Elizabeth Costello* (2003) on the one hand, on the other, it points to the politicisation of the intellectual that underlies the peculiar American coinage of a trope precariously tying the idea of the “public” to the much older idea of the “intellectual”.

Whereas the idea of the intellectual has a strong provenance in France, the United States, where Jacoby introduced the pleonasm “public intellectual”¹⁵ before the horizon of a bitterly fought Culture Wars between politically conservative (Republican) and progressive (Democratic) academics and journalists, has always displayed an uneasy relationship between “public life” and the more insular “life of the mind”. In America the venerable tradition of anti-intellectualism was scarcely dented by the scholar-writer Emerson who, in the late 19th century, poignantly called the intellectual the “world’s eye”. Less concerned with what for French thinkers, like the late Pierre Bourdieu,¹⁶ constitutes a necessary critical counter-power without which there can be no effective democracy, the American discourse seems to respond to structural changes in the vocation, role, and place of the intellectual; adverse changes that also affected South African life as seen not only in Jansen’s and Mbadlanyana’s concerns, but also in Coetzee’s response to Poyner. And who will forget Coetzee’s portrayal of Lurie’s disenchantment with the sorry state of literary studies in the “Cape Technical University, formerly Cape Town University College” in *Disgrace*.¹⁷ “Professionalisation and academisation”, Jacoby argued,¹⁸ explain the dearth of successors to earlier thinkers who, orientating themselves toward an educated public, informed in “straightforward prose” a “non-professional audience” what stand to take on contentious subjects. Echoing a predominantly American anxiety about the viability of what is still sometimes called “the profession of thought”, Richard A. Posner on the right of the political spectrum bemoans the decline of what he terms “public intellectual products in a low cost market”.¹⁹ Posner’s much discussed 2001 *Public intellectuals: a study of decline* neither adds to

¹⁵ Of interest in this regard :Francois Beilecke and Katja Marmetschke, eds., *Der Intellektuelle und der Mandarin* (Kassel: Kassel University Press, 2005) and Helen Small, ed., *The Public Intellectual* (Oxford: Blackwell, 2002): 1-18.

¹⁶ Pierre Bourdieu, *Science of Science and Reflexivity*, R. Nice, trans. (Cambridge: Polity Press, 2004): 274. Rather than taking reasoned disagreement as a catalyst of progress, as suggested in the wake of the debate by British sociologist, Barbara A. Misztal’s exhaustive study, *Intellectuals and the Public Good. Creativity and Civil Courage* (Cambridge: Cambridge University Press, 2006) that examines Nobel Peace Prize laureates, the American discourse like the recent South African one seems to be more concerned with a lack of impartiality and commitment due to ‘Professionalisation’.

¹⁷ J. M. Coetzee, *Disgrace* (London: Secker & Warburg, 1999): 3.

¹⁸ Russell Jacoby, *The Last Intellectuals: American Culture in the Age of Academe* (New York: Basic, 1987): 27.

¹⁹ Richard Posner, *Public Intellectuals: A Study of Decline*. Cambridge, MA: Harvard University Press, 2001): 19.

Jacoby's earlier account nor does it say much about the profound transformation of the public domain historically ruled by the Fourth Estate, journalism and the newspapers, born with the Republic of Letters in the Enlightenment. Moreover, Posner's contentious tabulation, based on statistics derived from media, mentions and scholarly citations, of 546 people he determines to be "public intellectuals", does not venture much beyond Régis Debray's much more insightful, because historically more astute, *Teachers, Writers, Celebrities: The Intellectuals of Modern France*,²⁰ (and a likely source for Jacoby). Debray, drawing three consecutive intellectual cycles from university to publishing and media, had already argued, in the words of Said,²¹ that "once an intellectual's circle is widened beyond a like group of intellectuals — in other words, when worry about pleasing an audience or an employer replaces dependence on other intellectuals for debate and judgment — something in the intellectual's vocation is, if not abrogated, then certainly inhibited". Thus, Posner's attempt to prove "with precision" that "public intellectuals" gain attention as they lose scholarly credibility should not come as surprise in a market and media driven world.²²

Different nations look upon their thinkers and writers differently, yet there has always been general consent about the self-defined right on the part of the intellectual to worry the world and to believe that there is a symbiotic relationship between the private world of the thinker and the public world he or she wishes to address by means of reasoned persuasion or storied expression. That the intellectual should conscientiously pursue truth, even if it leaves people "uncomfortable" seems to be the consensus since Socrates' time; considerable disagreement, though, exists over whether an author like Coetzee, for instance, should have followed in Zola's footsteps and publicly offered pronouncements on national and transnational politics. In short, opinion as to where the writer-intellectual ought to position himself in public discourse, and if he should advocate specific causes differ sharply. On one side of the spectrum, Julien Benda in his seminal treatise, *La trahison des clercs* of 1927,²³ taking sides with Dreyfus, argues that the intellectual must maintain independence from all organised social bodies, especially political ones, in order to speak the truth to power. On the other end, Sartre in the 1940s openly sides with the French Communist party, sharply critiquing Benda (and Camus among others) for not advocating *littérature engagée*,

²⁰ Régis Debray, *Teachers, Writers, Celebrities: The Intellectuals of Modern France*, B. Mulhern, intro., D. Macey, trans. (London: Verso, 1981), published originally in France in the late seventies.

²¹ Edward W. Said, *Representations of the intellectual: The 1993 Reith lectures* (London: Vintage, 1994): 51.

²² As it seems to do for Jansen and Mbadlanyana referred to earlier.

²³ See English version: Julien Benda, *La trahison des clercs – The treason of the intellectuals*, R. Aldington, trans. (New York: Norton, 1980).

committed literature.²⁴ That taking sides and championing political causes can turn out in retrospect to have been misguided and even false, as Mark Lilla²⁵ argued recently when chastising “European intellectuals” on both sides of the Rhine between the World Wars, is not the issue. At stake, rather, is Benda’s suggestion that true intellectuals — as seems to be the case with the author-persona Coetzee²⁶ — might serve humankind best by being committed to universal ideas, while at the same time staying detached from the political passions of the masses and not taking sides in politics.

An intellectual’s mission in life, according to Edward Said’s 1993 Reith Lecture *Representations of the Intellectual*,²⁷ is to advance human freedom and knowledge. This mission often means standing outside society and its institutions and actively disturbing the status quo. At the same time, Said’s intellectual is part of society and should address his concerns to as wide a public as possible. Thus Said’s intellectual is constantly balancing the private and the public, something Coetzee demonstrates in his occasional public pronouncements on animal welfare. While his or her private, personal commitment to an ideal provides necessary force, the ideal must have relevance also for society. In a more recent 2002 essay, “The Public Role of Writers and Intellectuals”,²⁸ the late Said, champion of the Palestinian cause, albeit not uncritically, rejects heroic assumptions on the part of intellectuals to better the world by formulating utopian alternatives purportedly more just, visions of a morally grounded social and political order. This would too far exceed the current bounds of the potential of reason. Rather, the critical theorist must fundamentally aim to retain and promote an awareness of the contingency of such conditions and the extent to which such conditions are capable of being changed. Instead of succumbing to instrumental reason, Said suggests with recourse to Adorno that “overlapping yet irreconcilable experiences demand from the intellectual the courage to say that *that* is what is before us, ...the intellectual’s provisional home is the domain of an exigent, resistant, intransigent art into which, alas, one can neither retreat nor search for solutions”.

This position seems to suit Coetzee who in temperament is closer to Renaissance man Desiderius Erasmus than Martin Luther, and whose writing fits the avangardist template of Adorno’s rather than Lukács’ aesthetics.

²⁴ It should be noted that Sartre’s stance concerning politically engaged literature became more nuanced than originally pronounced in an accusatory tone similar to that of Benda in his epochal *Les Temps modernes*. See here Ungar’s introduction to Sartre’s “*What Is Literature*” and *Other Essays*, intro. by Steven Ungar. (Cambridge, MA: Harvard University Press, 1988): 18.

²⁵ Mark Lilla, *The Reckless Mind. Intellectuals in Politics* (New York: New York Review of Books, 2001): 215.

²⁶ Coetzee was subjected to strong attacks in the SA press in the 1980’s by among others, Gordimer, for not taking a more active stand against the Apartheid regime.

²⁷ Said, *Representations of the Intellectual*.

²⁸ Edward W. Said, “The Public Role of Writers and Intellectuals” in Helen Small, ed., *The Public Intellectual* (Oxford: Blackwell, 2002): 19-39, [39].

Typically referring to himself in his interview with David Attwell in the third person, Coetzee says: “Sympathetic to the human concerns of the left, he is alienated, when the crunch comes, by its language — by all political language, in fact”.²⁹ Neither pronouncements nor the public persona of the writer count but, as demonstrated in the Nobel Lecture, of utmost importance is the dogged work in and with quotidian language as measure of life, art, history, and truth. “It is hard for fiction to be good fiction while it is in the service of something else”, Coetzee asserts in the interview with Poyner³⁰ mentioned earlier. Hyperaware of the limits of his own authority — “the authority of the author has never amounted to anything more than a bagful of rhetorical tricks”, he says³¹ — and almost pathologically guarding his private thoughts and feelings before a public hungering after personal information and intimate confessions, Coetzee refuses in both interviews and narrative fictions to state his personal beliefs: “I am a writer”, he has his alter ego, Elizabeth Costello say, “It is not my profession to believe, just to write. ...I do imitations, as Aristotle would have said”.³²

Not surprisingly, Coetzee responds to Alfred Nobel's vision that a prize-worthy author writes for the sake of certain ideals, and gives us lessons in the application of those ideals, with a (post-Barthes, post-Foucault) refusal to set himself up as a purveyor of authorial truth. Nobel awardees in Literature usually reflect on the creative process and present themselves in the light of what they intended to achieve with their work, referring straightforwardly to influences that fashioned their oeuvre, and to positions taken in respect of specific issues. Coetzee's Nobel address is no exception, although unlike his 1991 predecessor: Nadine Gordimer, who explicitly refers to Sartrean commitment,³³ Coetzee eschews “deliberative” and “forensic”, political argument. Meticulously avoiding the personal pronoun “I”, and opting for a storied “ceremonial oratory of display”,³⁴ he demonstratively aims not at persuasion based on argument but on narrative seduction founded on *aethesis* or what for Hume amounts to the “sympathetic imagination” that connects the subject of the narrative with the narrating subject and the addressee (listener or reader) on a tour de force into the writer's laboratory. Although “the genesis story of a writer. ...the story that wrote her or him into being”, to use Gordimer's words, is inferred in Coetzee's Address, the drama

²⁹ J. M. Coetzee, *Doubling the Point. Essays and Interviews*, ed., David Attwell (Cambridge, Massachusetts, and London: Harvard University Press, 1992): 394.

³⁰ Poyner, *J. M. Coetzee and the Idea of the Public Intellectual*, 21.

³¹ J. M. Coetzee, *Diary of a Bad Year* (London: Havill Secker, 2007): 149.

³² J. M. Coetzee, *Elizabeth Costello. Eight Lessons* (London: Secker & Warburg, 203): 194.

³³ See Nadine Gordimer, “Writing and Being”, *Nobel Lecture in Literature* (Stockholm: Swedish Academy, 1991) at http://nobelprize.org/nobel_prizes/literature/laureates/1991/Gordimer-lecture.html

³⁴ Aristotle, *Rhetorica*, trans. W. Rhys Roberts in *The Works of Aristotle. Translated into English*, ed. W. D. Ross, 11 (Oxford: Clarendon Press, 1925): 1358a.

that unfolds between “He and his Man” does not so much exhort or defend creative writing than stages it. Setting the scene with a motto³⁵ taken from a passage of Defoe’s epochal adventure tale *Robinson Crusoe* (1719), Coetzee’s epideictic narrative discourse constructs creative writing as an event — in the present tense, reflecting on the past — of someone, “he”, Robin, sitting “in his room by the waterside in Bristol”, in the process of writing while also reading and reflecting, with a mixture of incredulity, curiosity, and empathy on numerous reports, sent to him by “his man” about how “decoy ducks” lure their fellow foreign ducks promising plenitude to greener shores, only to be ruthlessly slaughtered by Englishmen; about “an engine of execution” in Halifax, and the heart wrenching afflictions that befell the people of London in “the year 1665” when “the plague descends upon the city”.

These reports are derived from Daniel Defoe’s (1661-1731) *Tour Thro’ the Whole Island of Great Britain* (composed between 1724 and 1727 as a vivid county-by-county review and celebration of the British life and industry), and *A Journal of the Plague Year* (1722) that displays enticing powers of self-projection into a situation of which Defoe, having been four years old, only had experience through the narrations of others. Thus drawing his listener/reader in the guise of one of literature’s most influential characters, Robinson Crusoe, identified, besides the motto, by his paraphernalia “parrot” and “parasol”, into a narrative world that, according to Aristotle, explains action by motive (to write), relates behaviour to personality (a writer), and appearance to reality (the already written), the Nobel Lecture makes the reader look at the early 18th century world of acclaimed author Defoe who, together with Fielding and Richardson is usually regarded as originator of the modern novel.

Coetzee describes Defoe, in his “Foreword” to *Robinson Crusoe*, whose spectre hovers also over the 1987 novel *Foe*, as “a businessman trading in words and ideas, with a businessman’s clear sense of what each word or idea weighs, how much it is worth. As a thinker he may not be original, but his mind is acute and curious about life in all its aspects”. Tellingly, Coetzee’s (self-)portrait of the imagined writer, Robin, entails considerable speculation about what sort of a person “his man” (Defoe), the author of these writings of disaster, might have been in the quotidian surroundings of family, friends and acquaintances — foreshadowing Coetzee’s most recent autobiographical fiction *Summertime*. As a character in his own tale that was to elevate him into a powerful vision and role model for generations of readers, “He”, Robinson Crusoe, wants to fathom his

³⁵ The motto reads: “But to return to my new companion. I was greatly delighted with him, and made it my business to teach him everything that was proper to make him useful, handy, and helpful; but especially to make him speak, and understand me when I spoke; and he was the aptest scholar there ever was.”

mysterious author-father, Defoe,³⁶ who based on the life of historical mariner and castaway Alexander Selkirk (1676 - 1721), invented him in the first place and whom he ultimately eclipsed in the literary after-life. In like manner, Paul Rayment, in Coetzee's *Slow Man* (2007), seeks to get to know the persona of his inventor (fictitious) author, Elizabeth Costello, who battles to narrate him into life.

Inscribing himself into the protagonist, He—Robin, without ever using the pronominal shifter “I”, thus deflecting an authorial subject’s self-articulation by emphasising a zone of pronominal non-distinction, a “waterside” metaphorically speaking, between an internal world of the imagination and the external world from whence the reports originate, Coetzee in his characteristic mode of palimpsestious writing³⁷ performs in the Nobel Lecture the double act of reading and writing as fourfold reciprocity: (1.) between interlocutors (as illustrated by the choice of a particular passage as motto because it refers to teaching Friday, Robinson’s island companion and servant, to “speak, and understand me when I spoke”); (2.) between a historical life (Selkirk) and narrative fiction (*Robinson Crusoe*), lived-experience and the quest for transcendent meaning; (3.) between the world and the text (the “reports” sent by “his man” and their transformation in a solitary *situation d’énonciation*, [scene of uttering] “[i]n the evening by candlelight”, by way of balancing, what Coetzee once called in a brief “Note on Writing”³⁸ “the possibility of the threefold opposition active-middle-passive. ‘To write’ is one of these verbs”.); and (4.), between “He, scripteur, self-conscious narrator, and agent — not psychological subject — of the action, and “his man”, counter-voice, fellow writer, deliverer of statements (*énoncé*), “companion”, whom he “yearns to meet” but who remains infinitely unreachable.

When viewed within Aristotle’s tripartite typology of discourse and its timeline, narrative (present), interpretative (past) and deliberative (future) the Nobel Lecture moves in the *hic et nunc*, the present tense, typical of sense experience; interpreting the past always from the standpoint of an affected ethical self who recognises in Literature’s stories “life itself, the whole of life”, charging us to make, as the Nobel Lecture teaches, “due preparation for death, or else be struck down where we stand”. As he, Robinson, was made to see when of a sudden, on his island, he came one day upon the footprint of a man in the sand”. This Coetzee reads as a “sign” of our human condition: “*You are not alone*, said the sign; and also, *No matter how far you sail, no matter where you hide, you will be searched out*” (Italics Coetzee’s).

³⁶ See the Nobel Lecture for the varied descriptions that bear an uncanny resemblance to Defoe’s biography.

³⁷ See my “Reading in the In-between: Pre-scripting the “Postscript” to *Elizabeth Costello*”, in *South African Journal for Literary Studies* 21, 3/4 (2005): 254-276.

³⁸ Coetzee, *Doubling the Point*, 94.

Nothing escapes the Emersonian “world’s eye”, at least not on the plane of Literature.

Yet when considering Aristotle’s four tropes - the generic “metaphor”, its refinement by “metonymy”, “synecdoche” that marks transition into literal discourse, and, finally, “irony” that, in opposite to metaphor, represents the emergence of an ironic sensibility enabling conscious use of figurative language — Coetzee’s thoroughly “ironic” Lecture unmistakably engages a fourth discourse that stands in a reflexive relation to the other three in so far as it evidently recognises the constructed discursive nature of the experience offered by epideictic capturing of data (in Coetzee’s case 18th century novelistic fiction) and the world (i.e. capitalist economic production), the forensic pursuit of meaning, and deliberative discourse in quest of validity with reference to reason. This fourth or historiographic discourse takes account of the fact that experience (of the writer) takes place in a world already organised and semantically charged by discursivity, realizing that we live in a man-made world determined by human activity (narrating in its various modes and forms) in the shape of contingent facticity (the already narrated), demonstrated in Coetzee’s “awareness, as you put pen to paper, that you are setting in train a certain play of signifiers with their own ghostly history of past interplay”.³⁹ It is this consciousness of history as prologue, not as commoditised (national) tradition but as irreducible spectre, that ought to make readers of this and all other texts issued in the name of Coetzee look for the genesis of the (scriptural) experience bound to any given situation, and it must identify the forces and diverse discourses that interact in such a situation. It should be immediately obvious that historiography, in this sense, has nothing to do with a mere narration of events or their interpretation — as insinuated more often than not by contemporary mass media — but everything to do with a discursive labour on these discourses, as well as the deliberative one.

The Nobel lecture, despite its multilayered ‘weaving’ of sometimes heterogeneous voices and rhetorical discourses, remains essentially a soliloquy. It is an imaginary conversation with the self in a situation of writing-as-performance, out of which both self and subject have to forever write themselves anew, in an act of doubling back that is typical for Coetzee’s counterpunal voice, a voice immediately undercutting any authorial ascription and authoritative judgment, thus abstaining from all advocacy intervention usually demanded from public intellectuals. Although the Nobel Prize bestowed celebrity status on Coetzee, he is not, on Posner’s terms, a public figure issuing opinions, at least not until publication of the novelistic hybrid *Diary of a Bad Year*. In a format that juxtaposes *aethesis* with authorial comment, the protagonist, acclaimed author Senor C., assumes a public role

³⁹ Coetzee, *Doubling the Point*, 63.

by pronouncing freely in opinion pieces for a newspaper on current affairs from the standpoint of (universal) human freedom and knowledge. However, attractive, young Anya finds her employer's "*lone voice of conscience*" insufficient: "His track record is not so hot. In fact his track record is virtually blank" when it comes to "fighting" for human rights in the "real world",⁴⁰ Anya surmises. Obviously expecting some kind of direct intervention from a moral authority, she forgets that epideictic rhetoric is already praxis. How if not from storied worlds will we know that a certain kind of (modern) literary achievement and a certain kind of ethical integrity are inseparable? Coetzee's narratives for which "He and his Man" must here stand as example, display publicly an unflinching examination of self and world for which popularity scores are no measure.

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⁴⁰ Coetzee, *Diary of a Bad Year*, 197. Italics are Coetzee's.

Scholars and intellectuals in transition: on the social position of culture, science and intellectual work in postsocialist Slovenia

Vlado Kotnik

1. Culture in transition

Massive changes have taken place in the former socialist countries of Europe in the last twenty years. The political singularities, such as the creation of numerous new nation-states and radical changes of social and political systems within the newly created state formations, as the Slovenian social anthropologist Irena Šumi pointed out, “no doubt held promise of exceptional social situations which offered unique and unprecedented insights into human sociality”.¹ Namely, in the wake of the collapse of the former Soviet bloc, the socialist states from Eastern Europe and the Balkans have introduced a variety of novel policies and political arrangements indicating radical social, cultural and economic changes. However, as postsocialist and late-socialist states implemented new political values and social initiatives, they acted upon complex social and cultural systems that responded in quite different, also unpredictable ways and unexpected reversals.² This often happened because Western political elites, supported by their globally dominant disciplines of economics, political science, transitology or other kind, promoted models for the postsocialist countries that bear little connection to the social realities of their own countries. “Westernisation” of Eastern societies was among the most crucial emancipatory political paroles of Western as well as Eastern ex-socialist political and academic elites.

However, the everyday moral communities of socialism such as excessive political control, confiscations, absence of consumption and markets, and limited freedom of public speech have been undermined after the 1990s and replaced with new “epidemic societal diseases”, such as postsocialist corruption, criminality, the neoliberal rhetoric of justice and the new social inequalities.³ Many academic disciplines have addressed these

¹ I. Šumi, “Postsocialism, or What? Domestication of Power and Ideology in Slovenia,” *Anthropology of East Europe Review* 22, 2 (2004): 76-83, [76].

² See Sarah D. Phillips, “Postsocialism, governmentality, and subjectivity: an introduction,” *Ethnos – Journal of Anthropology* 70, 4 (2005): 437-442, [437-38].

³ For a more insightful understanding of the broader societal consequences caused, directly or indirectly, by drastic political turbulences and transformations in the countries of Eastern European see the following writings: Ivan Bernik, “Politics and Society in Postsocialism,” *International Journal of Sociology* 24, 2/3 (1994): 45-60; Michael Burawoy and Katherine Verdery eds., *Uncertain Transition: Ethnographies of Change in the Postsocialist World*, (New York: Rowman & Littlefield Publishers, 1999); David A. Kideckel, ed., *East European Communities:*

changes, and in some cases, notably that of economics and political science, disciplinary paradigms have been utilised not merely to explain what has been unfolding but also to make changes happen in a particular way. Yet, after more than two decades, many deficits remain in social science understandings of the “transition”. Maybe anthropology, sociology, philosophy, semiotics, rhetoric, communication and media studies and other fields of reflexive social sciences and the humanities were not politically prominent in the study of these major processes that have taken place, in some cases quite dramatically and brutally, in socialist and postsocialist societies of Eastern Europe and the Balkans, but recently they have started contributing significantly to this field, and thus have provided the necessary corrective to the deficits of “transitology” or political economics.

No doubt the sphere of science, scholarship and academic culture was, among many other social domains, strongly marked by these socio-economic and geopolitical changes that caused a break of socialism and the rise of a new social order, imported from the West into this culturally diverse but geographically contiguous area. Sociological, anthropological, ethnographic and philosophical studies of Eastern Europe and the former Soviet Union published in the last two decades have been shaped at least by three major societal circumstances: by the political upheavals of November 1989 in Eastern Europe, more precisely in Eastern Germany, and of August 1991 in the Soviet Union, and by dramatic disintegration of Yugoslavia in the early 1990s. Sociologically, anthropologically or philosophically informed accounts of events and lives in the postsocialist areas of Eastern Europe have in the past decade experienced significant growth. Sociological and anthropological descriptions of postsocialist societies in particular, have focused on the terrain of everyday life in general or specific social domains in order to make claims about the nature, process and essence of postsocialist and “transitional” social, cultural and economic transformations.⁴ The majority of recent studies on postsocialism and transition is, implicitly or explicitly, committed to the methodology of ethnographic fieldwork, which is usually seen as an imperative of an “anthropological” work still generating a unique and valuable form of knowledge. However, although the heterogeneity of this subfield remains remarkable; there are vast areas of social domains which still need to be investigated more systematically and meticulously. One,

The Struggle for Balance in Turbulent Times, (Boulder: Westview Press, 1995); Birgit Müller, ed., *Power and Institutional Change in Post-Communist Eastern Europe* (Canterbury: CSAC, 1998).

⁴ A hyper-production of different kinds of academic literature on these issues speaks for this argument: for example, Christopher Michael Hann, ed., *Postsocialism: Ideals, Ideologies and Practices in Eurasia* (London: Routledge, 2002); Caroline Humphrey and Ruth Ellen Mandel, eds., *Markets and Moralities: Ethnographies of Postsocialism* (Oxford: Berg Publishers, 2002); Maruška Svašek ed., *Postsocialism: Politics and Emotions in Central and Eastern Europe* (Oxford & New York: Berghahn Books, 2006); Katherine Verdery, *What Was Socialism, And What Comes Next?* (Princeton: Princeton University Press, 1996).

among many, is a critical reflection on postsocialist academic spheres, their scientific policies and practices, as well as on research agendas and ideologies that have taken place in newly established “transitional” realities.

2. Science in transition

The dominant focus in postsocialism and transition studies has been more on economic and political factors through analyses generally conducted at the national or international level, while a closer look at what has been happening in everyday life in urban contexts of postsocialist societies has not been brought up very often. It is actually anthropologists and sociologists who, by using ethnographic methods, have made visible problems and challenges that have until recently been obscured, tabooed, or taken for granted; from synagogue restoration in Eastern Europe to gay sex tourism in Prague or to the politics of rock music in Hungary.⁵

All these reflexive accounts have shown that specific issues and local topics can lead researchers to confront complex questions of individual agency and collective practices in the move away from socialism. The field of transitional science and academic arenas also gets a more and more visible position in postsocialism studies. Amy Ninetto, for example, has examined the shifting and contradictory role of the post-Soviet state in science and in the lives of scientists. Her research has been concerned with the ever-changing boundary between the laboratory and society, as well as with the movement of migrating scientists and the meanings attached to such academic mobility.⁶ Her exploration of intersections of the state and the market within contemporary Russian sciences challenges the common view that Russian scientists are overly “nostalgic” for the glories of Soviet science past. Instead, Ninetto demonstrates how scientists and scientific institutions creatively forge a range of relationships with state and market structures in order to adapt to the low levels of state funding available to them in the 1990s. In fact, Ninetto argues, the privatisation of Russian science in the Siberian science city of Akademgorodok requires the active participation of state actors. In this inquiry she highlights the power relations that move knowledge production to the supposedly “non-ideological” sphere of science. In her examination of postsocialist forms of governmentality, she argues that, in transforming “structures that were available under socialism into hybrid state-private ventures”, scientists have “reconfigured, and in some cases even

⁵ See Daphne Berdahl, Matti Bunzl and Martha Lampland, eds., *Altering States: Ethnographies of Transition in Eastern Europe and the Former Soviet Union* (Ann Arbor: University of Michigan Press, 2000).

⁶ A. Ninetto, “The Natural Habitat of Science: Shifting Locations of Freedom and Constraint among Migrant Russian Scientists”, *Anthropology of East Europe Review* 18, 2 (2000): 37-41.

strengthened, the relationship between state power and the production of knowledge". However, not certain whether this was a quotation]. Seeing 'the state' as it is constituted in Russian scientists' discourse challenges Western models of the autonomy of science".⁷ Ninetto's research maybe reveals the unexpected or less expected results of market reforms in arenas such as science and academia from a Western point of view.

Certainly this is not something that would really surprise, as many Eastern researchers have been watching from a "native" point of view similar processes of transitional reconfiguration and even decomposition of science that has taken place in many postsocialist countries in the last twenty years. Thus, the Russian example is maybe notorious due to the central role this country had played for the entire Eastern bloc, but is certainly not an isolated island where such transitional processes have restructured numerous domains of scientific life and intellectual work. Ironically, the very social processes that were supposed to remove or displace state control over science have invited the state back into science in different and predominantly not transparent ways in many East-European countries and their academic arenas.

Due to this it is not surprising that postsocialist governances, formal democracy, capitalism, neoliberalism, international alliances and formations (European Union, NATO, etc.) and common European projects (such as the Bologna reform and Lisbon strategy) do not give quite so much credence to the unique social, political, formal, and ideological reconfiguration of transitional European societies. In many postsocialist countries, certain fields like academic arenas, scientific policies, practices of scientists, and the role of intellectuals are hardly a topic carried out in any manner by any public or serious research agenda.

In Slovenia, constant politically and ideologically connoted discussions on "Slovenia's bright future", Slovenian society as a "learning society", "based on knowledge and proficiency", "national priorities of science", "inherent importance of science for Slovenian social progress and cultural development", "inputs and outputs of Bologna reform", etc. — the slogans which have sent all recent dominant Slovenian "scientific", "academic" and "political" *noblesse* into raptures — are actually paradigmatic representations of ideological terror that falsifies and mystifies the real status and the very social position of science, scholarship and academism in the country. These democratised totalitarian ideas, initiatives, expressions, and new administrative ecumenism in science, university, academia, and research — playing the role of an "ideological setting" which serves exclusively to the needs of the local political "despots" and their academic and scientific adherents and *souffleurs*, as well as their protected and submissive

⁷ A. Ninetto, "An Island of Socialism in a Capitalist Country': Postsocialist Russian Science and the Culture of the State", *Ethnos – Journal of Anthropology* 70, 4 (2005): 443-464, [443].

protagonists — were during the last twenty years of the Slovenian “transition period” imported to Slovenia very successfully and without any critical reflection from the United States, while the EU scientific policies remained ignorant of this politically inspired neoliberal academic “instruction”. The fact that the librarian service offered by a private and very profit-oriented company from the USA, Thompson ISI (with high charges for its services also in Slovenia), could have become the alpha and omega of the Slovenian national system of evaluating scientific production is screaming for a critical analysis of the Slovenian provincialism. Nevertheless, such a decision is in Slovenia mainly as a consequence of pressure exerted by so-called “hard”, “natural” science. The analytical objections formulated by some critical scholars proving that the production of knowledge within most of the “hard” sciences is, by its essence, technological and not epistemic, while the production of knowledge in social sciences and humanities is, by its nature, reflexive, and therefore vitally depends on theoretical production, have been neglected systematically.

Although transferring Western institutions (democracy, markets, consumerism, profitable science, etc.) to non-Western settings is a constant topic in political and economic discourses, it still offers a fascinating ground to analyze. Most sociologists and anthropologists have been critical of policies based on the transfer of Western models, which overlook institutional contexts and the strong threads of continuity that mark even the most dramatic of social ruptures. However, economists, politicians and other local specialists who have tended to dismiss such points have also forgotten to ask themselves how expectations of transition, which have consistently not been fulfilled all over Eastern zone, have been produced in the wake of state socialism and how they have been intensively reproduced after it. Peggy Watson puts forward an argument to show how an idea of the West and of liberal freedom is at stake in the interpretation of the events of postcommunism.⁸ Namely, an idea of how to transfer achievements of Western societies, such as western freedom, in itself presupposes that identities and cultures under democratic and communist regimes are the same — what, later on, have underpinned many tensions in West-East communication.

In Slovenia, the whole evaluation system used for scientific production has been practically fully absorbed into the state administrative system. It is impossible to work as a scientist or researcher outside the academic network put forward by state institutions, which should only “administrate” science; but it seems that they create suitable circumstances for the monopoly of the “hard”, “real” science over the “soft”, “unnecessary” science. This “totalitarianisation” to which, under influence of “hard”

⁸ P. Watson, “Re-thinking Transition: Globalism, Gender and Class”, *International Feminist Journal of Politics* 2, 2 (2000): 185-213, [185].

sciences, submitted not only social sciences and humanities but also the whole academic sphere, is not perceived as a problem in Slovenia. No matter how hard the Slovenian scientific policy tries to domesticate the greatest possible number of neoliberal administrative “innovations” from the American and related academic enterprises, the last years constantly served us with an annual fascination of the Slovenian academic and media sphere: we are talking about the obsession with the most renowned lists of top world universities. The Slovenian scientific administrators and expert bodies, such as the expert council for science and technology, have become obsessed with these lists and, in particular, with the rankings of the Slovenian universities on them. Such lists which are used more for the media promotion of particular academic elites and clientele with an already established global reputation than for proving the quality of scientific work could not leave Slovenian scholars and scientists, and particularly scientific administrators, ministers and their counsellors, indifferent. However, it is interesting to observe that scientific administrators and their academic adherents proposing such lists only strive for ranking on those “magic” lists which are obviously supposed to resolve all the problems of Slovenian science, scholarship and research while they do not mention the striking need for a thorough institutional and expert review of the Slovenian scientific institutions, necessary to improve the conditions of work and study at Slovenian universities, and consequently, also the possibilities for employment of their graduates.

The directives produced by different national expert bodies which feed the rankings of the Slovenian universities on those lists lead us to a conclusion, i.e. that the changes of the Slovenian academic sphere are necessary because of overly mediated lists, and not because of the actual circumstances which are far from being enviable. This indicator is probably reliable enough to convince us that the academic “elite” — confirmed by the state — has not yet overgrown all the transitional diseases, especially those related to the “enthronement” of appearance over contents, to the monopoly of declared and fictive reality over the actual one, and to the provincial *forma mentis*.

3. Intellectual work in transition

It was, among others, the work of Julia Kristeva, a Bulgarian theorist living in France, which importantly and with a fine intellectual power, challenged the question, definitely still actual in these days, “to what purpose serve the intellectuals”,⁹ scientists, researchers, scholars, etc. Familiarised with the contexts of life in a real-socialist Balkan country, she knew perfectly how it was to live as an intellectual in an environment of continuous and constant fight and risky personal engagements against the power and the terror of

⁹ See J. Kristeva, “À quoi servent les intellectuels?”, *Le Nouvel Observateur* 656 (1977): 20–26.

anti-intellectualism and anti-academism, as well as against human regression of all kinds. Furthermore, there is a newly installed (under the guise of “democratic” and “modern” political vocabulary) pathological resistance, on the institutional level, against the two profiles of citizen, namely against the critical intellectual and engaged scientist in almost all postsocialist East-European and Balkan countries.

Consequently, the real intellectual work and scientific reflexivity seem to become more and more difficult; even more, the rise of a new conservatism and “neoliberal newspeak” (according to Bourdieu and Wacquant)¹⁰ triumphing and dominating all spheres of contemporary societal life evokes in these newly installed European “democracies” a sophisticated risk and danger for all those who would like to practice serious, reflexive and responsible intellectual as well as socially engaged scientific work. No doubt, this social fact is in great contradiction with the political vocabulary represented by common EU projects and scientific policies (among them, particularly the Bologna and Lisbon reforms). Ironically, this internationally homogenised ideological vocabulary is directly opposed to the real social situation in science, research and intellectual activity in postsocialist milieus.

After redundant political negotiating about the “role” and the “importance” of national science, scholarship and academism for postsocialist societies’ future in changing Europe — as it was an intensively communicated topos of political attention in the 1990s — the majority of discussions taking place recently not only in Slovenia but in the EU in general have, not surprisingly, turned toward an absolute neoliberal trivialisation of the intellectual work and an applicative banalisation of science and scholarship.

Thus, we are facing an unconcealable fall and a highly contestable decrease of social value of the real intellectual work and of serious analytical science as well as an enormous lack of social responsibility in scholarship and research. The neoliberal and commercial reduction of the scientists’ work to the condition of temporary employees running from project to project, appears as a normal, accepted and totally unproblematic “social norm”. To paraphrase Bourdieu, this exploitation without limits is exactly the essence of contemporary academic neoliberalism.¹¹ The situation is even more problematic if scientists, scholars and researchers themselves perceive these exploitive “norms” and social processes as the naturally given historical necessity and as something that needs to be done for “their” vision of making and contributing to a “better world”.

In Slovenia as well as in comparable postsocialist countries, it still seems difficult to work as a researcher outside traditional academic

¹⁰ Pierre Bourdieu and Loïc Wacquant, “Neoliberal Newspeak: Notes on the New Planetary Vulgate”, David Macey, trans., *Radical Philosophy* 108 (2001): 6-7

¹¹ P. Bourdieu, “L’essence du néolibéralisme. Cette utopie, en voie de réalisation, d’une exploitation sans limite”, *Le Monde Diplomatique* (March 1998): 3.

institutions. This is so because the nationalised academic establishment determines the whole scientific and intellectual habitus.¹² The Slovenian scientific policy of transition has brought the administration of science and scholarship to some incredible absurdities. Researchers and even pedagogues are being continuously forced into competition for projects which usually represent their means for survival and, furthermore, into a frenetic race for foreign (especially EU) project funds which, when they finally get them, actually do not represent for them any increased social security but only an increased work load. In practice this means that all the time of a fully employed researcher is actually divided between applying for projects and writing reports about them. On the other hand, the unemployed or temporarily unemployed, as well as freelance scientists and researchers, or scholars who are active outside the academic establishment, cannot stand as candidates for national projects since only registered research organisations can apply for them. If, for one reason or another, a scholar loses his or her job or if he or she finds him or herself outside any institution which could cover his or her activities, the state behaves as if he or she simply ceased being a scholar, as if he or she lost his or her competences overnight. Such paradoxes are typical *bizareries* of transitional societies with badly formed and differentiated social systems.

Participation in science and scholarship is today subject to serious imbalances: the gap between an unclearly defined working status and the social security is enormous and is getting even larger. Without any doubt, the highest price of this imbalance caused by the “transitional scientific policy” is to be paid by young people who have just entered the field of science and who — without any responsibility or guilt on their part — are daily pushed by actual circumstances to inhuman humiliations, devaluations of their work and struggles for survival. Furthermore, young people are also most vulnerable in the struggle for jobs, continued work and career development since they frequently work on temporary projects. The whole story about the success of the Slovenian “knowledge-based society” is ridiculed by young scholars and experts with scientific degrees vegetating at employment services as they cannot find a suitable employment. The situation is becoming alarming, particularly for the profiles in the domain of social sciences and humanities. It seems that the latter would do better if they stopped existing, the sooner the better: they are socially weak, which is the more obvious the more profiled and critical is their discourse and the more scientific and intellectual is their thought. As we can assume, the process of turbo-neoliberal logic has already become firmly established in this area and has defined the fate of many

¹² For the provincial intellectualism and anti-intellectualism in the Slovenian academic sphere see Irena Šumi's fruitful article “Intelektualno delo v provinci, kaj je to?” [Intellectual Work in the Province, What is This?], *Emzin – Arts Magazine* 14, 1-2 (2004): 60-65.

scholars and intellectuals in Slovenia.¹³

The previously described imbalance in Slovenia results from the intentional cohabitation of two situations: an absence of a plan on the part of the state system and a union of the political, bureaucratic and mediocre scientific local clientele. Nowadays, the universalised and institutionalised “egalitarian” representation of the social world of science and academic sphere actually implements the respect for the images conceived on the basis of the collective definition of inequality. This is why, again and again, we have to deal with the production of new inequalities that exclude the social agreement and abolish what has been already achieved. From this viewpoint, the Slovenian academic sphere is a perfect example of a symptomatic (re)production of new (or the “old new”) inequalities. This is how the autonomous social domains of highly intellectual work, science and scholarship, have been put to the process of systematic transformation into a turbo-neoliberal enterprise of wage-workers, academic lumpenproletarians, anti-intellectual jobbers, profiteers and money-spinners. In “post societies” more and more scholars and scientists serve something other than scholarship and science; more and more researchers serve the fascination of the project, applying rituals rather than real research agendas; more and more intellectuals are forced to meet social margins of all kinds in the “postmodern” EU social enterprise. Is the conception of Sartre’s “engaged intellectual” or Gramsci’s “organic intellectual” still relevant or is it maybe a too idealised, abstract and inappropriate “personification” of today’s forms of intellectualism and reflexivity? Many recent ethnographies on postsocialism and transition offer a powerful critique of the discourse of “transition”. Ethnographic perspectives provide important information and data which can function as profound critiques of ideology, in this case exposing the discourse of transition to be both a regime of signs employed to justify the subordination of these nations and their academic elites to the imperatives of global trade and finance, and a poorly designed and executed blueprint to bring about a new social order. Such reflexive perspectives, also have the virtue of reminding us what the discourses of transition and postsocialism really are: theories which in the collective euphoria and drama between 1989.

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¹³ For more see Vlado Kotnik, “Bizarre Academism and Science in Slovenia: Elements for Anthropological Study of Postsocialism and Transition”, in Vladimir Ribič, ed., *Tranzicija i postsocializam: Antropološka istraživanja [Transition and Postsocialism: Anthropological Explorations]*, (Belgrade: University of Belgrade Press, 2007): 128–171.

The melancholy of the forgotten: a Lyotardian affection

Sergio Alloggio

Finalmente senza memoria.
— Luigi Malerba¹

An early Arendt's pessimism

And really, excess likes to provoke a corresponding change in the opposite direction.
— Plato²

In the winter of 1949-50 Hannah Arendt, who immigrated to the United States in 1941, returns to West Germany to fulfil her commitment to the *Commission for Jewish Cultural Reconstruction*.³ It is her first post-war visit to her homeland, in a time in which she is no longer German and not yet American. “The Aftermath of Nazi Rule: Report from Germany”, an article published in the American journal *Commentary* in 1950, is the printed testimony of that intense trip.⁴ The *Report*, while a minor article in Arendt's *opus*, nonetheless presents a number of remarkable observations made by a “young” thinker facing both the moral and physical devastation of her native soil — “a cloud of melancholy” in the heart of Europe as Arendt states.⁵

The argument in the first part of the *Report* highlights the German people's negation of their own “nightmare”, a strange set of “inability to feel”, “absence of mourning for the dead” and a “general lack of emotion”.⁶ This collective coldness is the most striking feeling felt by an ex-fellow citizen epitomised by Arendt in the awkward reaction as the general “refusal to face and come to terms with what really happened”.⁷

What is at stake here, for post-war Germans, is the public willingness, with all its argumentative tricks analysed in the first part of Arendt's article, to run away from the responsibility of their own previous acts. This attempt at escaping-from-reality could easily be a gift from the totalitarian Nazi regime

¹ Luigi Malerba”, “Finally without memory”, in *Itaca per sempre* (Milano: Mondadori, 1997): 174.

² Plato, *The Republic* VIII, 563 e 6-7.

³ See her explanations on this topic in Hannah Arendt, *Essays in Understanding: 1930-1954* (Orlando: Harcourt Brace & Company, 1994): 14.

⁴ Now in Hannah Arendt, *Essays in Understanding*, 248-269.

⁵ *Ibid.* 248-249.

⁶ *Ibid.* 249.

⁷ *Ibid.* 249.

as Arendt argues, but perhaps there is even a more bitter consequence to this collective immaturity: the post-war German *ethos* has removed the *Nazi digression* and everyone, in Arendt's eyes, "talk[s] and behave[s] superficially as though absolutely nothing had happened since 1932".⁸ This immense although unconscious act of *damnatio memoriae* especially affects the post-war youth in its incapability to reach a "consistent thought". The defeat of the Nazi regime should have restored the correct correspondence between truth and opinion, but somehow this did not happen. The end of totalitarianism has shown to release this strange side-effect: along with its fall, everyday life was re-established at the price of *unplanned yet accepted* collective denial. Arendt, who can look beyond this ridiculous *horror vacui* since she is the "vanguard"⁹ of her ex-fellow citizens, argues that the surface of the new Germany as well as its businesses are safe but something different populates the living body of her motherland. And when it is time to phrase or address this new strange interior, the *Report* of a political scientist suddenly turns into a diary entry:

"And one wants to cry out: But this is not real — real are the ruins, real are the past horrors, real are the dead whom you have forgotten. But they are living ghosts, whom speech and argument, the glance of human eyes and the mourning of human hearts, no longer touch".¹⁰

Even the three solutions (denazification, a free market and federalisation) provided by the Allies to help West Germany are for Arendt a big mistake: they have worsened the social fabric, producing "moral confusion, economic chaos, social injustice, and political impotence".¹¹ The second part of the *Report* is a subtle analysis of this triple failure. At the end of the article, however, the pessimism returns and the conclusion about the "melancholy story of post-war Germany"¹² connects the totalitarian destruction of one's existential roots with the recent immaturity that Arendt experiences among Germans. Both their inability to articulate what they felt, thought and did throughout the era of the Nazi regime and the Allies' failed strategy to get West Germany back on track (an "impossible task" for Arendt) strengthen her opening description of the "Germans' reluctance to face the reality of their destroyed country".¹³ In what follows, I try to reshape this early pessimism of Arendt's through some of Lyotard's, Butler's and Žižek's formulations on

⁸ Arendt, *Essays in Understanding*, 252-253.

⁹ Arendt, *The Jew as Pariah* (New York: Grove Press, 1978): 66.

¹⁰ Arendt, *Essays in Understanding*, 254. Incidentally, this is the only statement in the article in which Arendt addresses the reader/the German, the German reader, in the second person.

¹¹ *Ibid.* 256.

¹² *Ibid.* 268.

¹³ Arendt, *Essays on Understanding*, 269.

forgetting, permanent opacity and melancholy.

Forgetting the *Forgotten*: Lyotard and “the Jews”

Charmed by the abyss where a secret echo of yourself could resonate.

— Luce Irigaray¹⁴

In 1988 Jean-François Lyotard published a text entitled *Heidegger et “le Juifs”, Heidegger and “the Jews”*.¹⁵ It is a minor work in Lyotard’s bibliography. The occasion behind the book is the so-called *Heidegger affair*, an international debate started in 1987 by Victor Farías’ book *Heidegger and Nazism*. In his book Farías definitively condemns Heidegger’s Nazi militancy and his lifetime silence on both this event and Holocaust. What is important here are not Lyotard’s analyses and theses on the *Heidegger affair* and his related objections to Farías, Derrida and Lacoue-Labarthe. I rather want to focus attention on the second part of the book title’s phrase, “the Jews”; for it seems to me that Lyotard is one of the very few thinkers who have tried to pose the question of the philosophical meaning of Holocaust without providing easy answers or convenient short-cuts.¹⁶ Lyotard uses lower case, plural, and quotation marks to make “the Jews” a name for a kind of community with no nation, no philosophical/political/religious subject and to differentiate “the Jews” from actual Jews. This blanking operation allows the French philosopher to bond “the Jews” and Nazi extermination with the most powerful reflection of his book, that on the “Forgotten”. A particular declination of Lyotard’s notions such as *infancy* or *the sublime*, the “Forgotten” symbolises the erased debt that Western thought must *always* pay to itself in order to be able to gain both the representative and dialectic faculties. In short, in order to be what it claims to be.

Giving a brief account of the “Forgotten” will make it easier to understand what the *extermination of the “the Jews”* stands for. According to Lyotard, the “Forgotten” is thought’s greatest aporia which provokes our rational life as defensive response. An aporia that must be overcome, removed and forgotten to establish chronological order, memory and politics as we know them. Heidegger’s *Sein* or Derrida’s *différence* resemble

¹⁴ Luce Irigaray, *Elemental passions* (London: The Athlone Press, 1992): 12.

¹⁵ Jean François Lyotard, *Heidegger and “the Jews”* (Minneapolis: University of Minnesota Press, 1990).

¹⁶ Lyotard in *The Differend: Phrases in Dispute* (Minneapolis: University of Minnesota Press, 1988), analyzes the conflicting phrasal regimes of testimony after “Auschwitz”. See in particular, sections 9-38, 81-93, 152-170. Jacques Derrida, in his *The Work of Mourning* (Chicago-London: The University of Chicago Press, 2001) addresses part of Lyotard’s reflections on “we”, the destiny of mourning and forgiveness after Auschwitz; see the chapter “Lyotard and Us”, 216-241.

Lyotard's characterization of this impossible object that disrupts both representation and linear chronology:

“A past that is not past, that does not haunt the present, in the sense that its absence is felt, would signal itself even in the present as a spectre, an absence, which does not inhabit in the name of full reality, which is not an object of memory like something that might have been forgotten and must be remembered (with a view to a ‘good end,’ to correct knowledge). It is thus not even as a “blank space”, as absence, as *terra incognita*, but it is there nevertheless”.¹⁷

In shaping his idea of the “Forgotten”, Lyotard creatively uses Freud's analyses on primary repression and Kant's concept of the sublime. The “Forgotten” as unaware affection is what Freud, especially the later Freud, perceives as working behind “the sexual, castration of the mother, incest taboo, killing the father, the father as name, debt, law, paralyzing stupor, and... exogamy”.¹⁸ All these phantasmic scenes never took place and nevertheless they are necessary in the making of the rational self. These scenes are outside the representational but create the representational itself through deferred actions. These *stories* are the “first scene” that has to be removed and forgotten by *the human* to establish itself. In regard to Kant, we observe Lyotard's manoeuvre pointing to the same extra-representational *affection*, a kind of immemorial feeling. The notion of the sublime, analyzed by Kant in his *Critique of Judgment*, is something that is eternally out of the synthesizing aesthetic borders (time and space) of subjectivity. The sublime, which has neither form nor minimal representation, accompanies itself only with a *feeling*, a weird mixture of pain and pleasure given that it overflows subjectivity itself with its overarching, formless “presence”.

What interests Lyotard most in Freud and Kant is, on the one hand, this primordial shock the subject feels but which he/she is forever unable to transform into rational categories and, on the other hand, the erection of the representational apparatus as answer to this unbearable event. The “Forgotten” as the name for this hollow feeling and its simultaneous injunction to be sublated — Lyotard respectively calls it “unconscious affect” in Freud and “anesthesia” in Kant:

“In primary repression, the apparatus cannot at all bind, invest, fix, and represent the terror (called originary, but without origin, and which it cannot situate), and this is why this terror remains ‘within’ the apparatus as its outside, infuse and diffuse, as ‘unconscious

¹⁷ Lyotard, *Heidegger and “the Jews”*, 11.

¹⁸ *Ibid.* 19.

affect.”¹⁹

“[T]he incapacity into which imagination is put when it has to produce forms to present the absolute (the thing)... This is an insensible passibility and thus an anesthesia but one that leaves the soul open to an affection more ‘archaic’ than the givens of nature and that cannot be equaled by any imitation through form and figure”.²⁰

In short, the permanent diaspora,²¹ the unwanted alliance with a silent God, and the lack of any new *parousia* are the reasons why Lyotard indicates “medically incurable misery” as the “Jewish” *Grundstimmung*. Their legacy is to be constantly held hostage by a speechless other. Nonetheless “the Jews” must find a way to carry on this paradoxical condition of, as Lyotard puts it, an “interminable anamnesis of a ‘behind’, this too late in a deciphering of the too early according to the exorbitant law of listening to the inaudible”.²² It is the very notion of an impossible anamnesis that I think links the idea of “Forgotten” and “the Jews” in Lyotard’s book. “The Jews” as community are forced to keep the “first scene” in mind, otherwise they would be unfaithful to what has made them what they are. They are thus forced to remember something that happened outside one’s memory borders. For their “first scene” does not prescribe the means of its sublation, it reveals itself as an injunction whose force merely transforms “the Jews” into the heterogeneous community of who can never pay the debt back to their God. For that reason, the work of an (impossible) anamnesis undertaken by “the Jews” forbids them from any integration or domestication by the West — there is no chance for them of a restored authenticity or a political revolution. Lyotard names this attitude shared by “the Jews”, “the nomadism of thought”.²³ In this sense, the “Forgotten” is the general translation of the “jewish” experience of an unattainable anamnesis.

Consequently, the impossible anamnesis (through art and writing) is the only *positive* action left to them/us. And because their/our original dispossession and lack of a clear ending, anamnesis tolerates, allows and prescribes itself to “the Jews”/us only as an impossible operation: They are “[j]ammed between prophecy and endless repetition. One remembers constantly that it will arrive, and what arrives is only that one must remember it”.²⁴ In this sense, the impossible anamnesis binds “the Jews” with the

¹⁹ Lyotard, *Heidegger and “the Jews”*, 32.

²⁰ *Ibid.* 44-45.

²¹ The philosophical meaning of Israel is explained by Lyotard in *The Differend*, § 93.

²² Lyotard, *Heidegger and “the Jews”*, 22.

²³ *Ibid.* 40.

²⁴ Lyotard, *Heidegger and “the Jews”*, 37.

Western thought due to its operational laceration; it gives rise to a *sublime* hermeneutics in the former and to a writing/painting of the “unpresentable” in the latter.

Lost beginnings: Butler and Žižek between primordial opacity and convenient anamorphosis

Thus they are destitute of solid content and substantial filling.
— Hegel²⁵

In the book called *Giving an account of Oneself*,²⁶ Judith Butler argues that the “narrative capacity” of telling coherent stories about our life is the most important faculty to conquer responsibility and freedom. However, there is a limit in this subjective determination; that is a constitutive “opacity” which lives at the heart of the subject. This inner limit resides in those “early and primary relations [that] are not always available to conscious knowledge”,²⁷ and it exposes the subject to a permanent dispossession when one tries to give an account of the self. The blind spot, in Butler’s argument, is the very emergence of the self as “I” which remains always outside the reportable: “the exposure I seek to narrate is also the precondition of the narration, a facticity, as it were, that cannot yield to narrative form”.²⁸ Butler inscribes this impossibility in the formation of the primal experience of the body whose emergence enables “primary relations”, singularity and then the history of one’s life. Subjectivity, *already* formed by language and social relations, cannot jump behind the time of its own formation. Temporal impossibility inhabits all the stories that try to explain the primordial substance of their fabric:

“I cannot be present to a temporality that precedes my own capacity for self-reflection, and whatever story about myself that I might give has to take this constitutive incommensurability into consideration... [M]y narrative begins *in medias res*, when many things have already taken place to make me and my story in language. I am always recuperating, reconstructing, and I am left to fictionalise and fabulate origins I cannot know”.²⁹

²⁵ Georg Wilhelm Friedrich Hegel, *Science of Logic*, 1 (London: Allen & Unwin, 1929): 58.

²⁶ Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005).

²⁷ *Ibid.* 20.

²⁸ *Ibid.* 38.

²⁹ Butler, *Giving an Account of Oneself*, 39.

This “partial blindness” and “a prior not-knowing”, in Butler’s terms, are a space in which the subject was born and, for this very reason, this immemorial space will be forever lost. The act of birthing will be never visible by the subject it created. As in Lyotard’s reading of both Freudian primal repression and Kantian sublime, in Butler the emergence of subjectivity radiates its incurable opacity from the very beginning to the rest of one’s life. And again, in Butler we perceive the same dynamics of Lyotard’s rhetorical economy: The more that primordial affection is *observed* spreading out its magnetic inefficiency, the more the subjectivity/“the Jews” is forced to translate it by means of impossible anamnesis — art and writing in Lyotard, responsibility to the other in Butler. The aim of Butler’s book is indeed to pose this *primordial opacity* whose matter is rigorously unreadable as the basis for an ethics of shared “vulnerability” and “humility”. What I would like to emphasise here is how both Lyotard and Butler agree in presenting something that exceeds thought, that caused its deepest desolation, and nevertheless life *must* deal with its ghostly guest forever. As Butler writes:

“This prehistory has never stopped happening and, as such, is not a prehistory in any chronological sense. It is not done with, over, relegated to a past, which then becomes part of a casual or narrative reconstruction of the self... This prehistory continues to happen every time I enunciate myself”.³⁰

The destiny of thinking for Butler and Lyotard is thus bound to this *primordial opacity/Forgotten* — a destiny whose burden is to find a peaceful way to live with that haunting parasite we never met and never will.

In one of his articles the philosopher Slavoj Žižek,³¹ discusses mourning and melancholy against the anti-Freudian mainstream. While Freud opposed correct mourning to everlasting melancholy, the current anti-Freudian movement assumes the melancholic posture as the correct way to remain faithful to the lost object. Mourning, in the current “hegemonic intellectual trend”,³² has become the foreclosed position and melancholy has progressively gained an “ethical primacy”. The mistake in the “rehabilitation of melancholy” is what Žižek indicates as the abolition of “anamorphosis”.³³ Anamorphosis, as explained by the Slovenian philosopher, is a symbolic dynamic caused by transferring one’s perspective into the perspective field or, more clearly, an external space becomes the owner of the subjective “gaze”, which is itself transformed, in this way, into an objective feature of the external construction. Žižek states that “the paradox of anamorphosis is obliterated in

³⁰ *Ibid.* 78-79.

³¹ Slavoj Žižek, “Melancholy and the Act”, *Critical Inquiry* 26, 4 (2000): 657-681.

³² *Ibid.* 658.

³³ *Ibid.* 659.

melancholy”: when the subjective resistance to mourning is transferred from the subject itself to the very lost object, this operation involves a “confusion between *loss* and *lack*”. The melancholic assumes the lack of the object or cause of desire as a loss of something actually owned. Žižek’s objection to melancholy is that this feeling, via anamorphosis, covers up the original poverty that attains the subject(ivity):

“[What] melancholy obfuscates is that the object is lacking from the very beginning, that its emergence coincides with its lack, that this object is nothing but the positivisation of a void or lack, a purely anamorphic entity that does not exist in itself... this deceitful translation of lack into loss enable[s] us to assert our possession of the object; what we never possessed can also never be lost, so the melancholic, in his unconditional fixation on the lost object, in a way possesses it in its very loss”.³⁴

However, the relation between melancholy, anamorphosis and rhetoric is a current debate and there are radically different opinions about this topic.³⁵ Melancholy, in Žižek’s view, allows the symbolic hallucination of desire to create a (fabulous) past in which the lost object was real, close, and even owned. Melancholy, if we see it working against the misery that for Lyotard and Butler originates subjectivity, is thus the perfect *pharmakon* in order to overcome that unbearable primordial terror held by the lost beginning. Melancholy and convenient anamorphosis are thus defensive tools to guarantee that there was a (full) start — and a start always allows a politics of reactivation, restoration or recovering. Melancholy is then what I would call a *transcendental hallucination* the subject promotes to produce foundational stories. What Žižek in his Lacanese detects at the cross-road between “anamorphosis and sublimation” is the work of this transcendental hallucination that spares the subject his/her constitutive misery:

“[T]he series of objects in reality is structured around (or, rather, involves) a void; if this void becomes visible as such, reality disintegrates. So, in order to retain the consistent edifice of reality, one of the elements of reality has to be displaced onto and occupy the central void — the Lacanian *object petit a*”.³⁶

What cannot remain

³⁴ Žižek, “*Critical Inquiry*”, 660.

³⁵ See Philippe-Joseph Salazar, “Rhetoric on the Bleacher, or, The Rhetorician as Melancholiac”, *Philosophy & Rhetoric* 41, 4 (2008): 48-49.

³⁶ Žižek, “*Critical Inquiry*”, 662.

Perhaps that what the most faithful inheritance demands is the absence of any testaments.

— Derrida³⁷

It is now time to come back to Hannah Arendt, I have not forgotten her. What Arendt experienced in her exchanges with post-war Germans is what she called “the absence of mourning for the dead”.³⁸ This inability is caused by a general immaturity, the *leitmotif* of the paper, which blocks Germans from promoting a serious debate on what happened under Nazism and during the Second World War. There is no further examination in Arendt’s early paper of the origin of this immaturity; for Arendt it is simply a by-product of the end of Nazi totalitarianism. But maybe we can argue that post-war Germans’ immaturity is directly connected with the forgetting of “Forgotten”. Western thought and, above all, Western politics in Lyotard rest on the very erasing of the “Forgotten”. In order to be established, the *polis* needs the “memory of the memorial... it requires the forgetting of that which may question the community and its legitimacy”.³⁹ Only after this act of forgetting, “narrative organisation” can originate itself through a “realistic decision” that makes the “immemorial dispossession” an explicable scene. In Nazi Germany, “the Jews” were the last obstacle to the establishment of the Nazi “narrative organisation”. The final solution was the final answer Western thought created to eradicate Lyotard’s *incurable misery* and Butler’s *primordial opacity*. Nazi totalitarianism could not spare the symbol of what refuses any “project of authenticity”. But what happened in post-Germany, what Arendt saw, was the massive effect of a triple failure.

First, the Nazi effort to exterminate “the Jews” was unsuccessful — and this failure was the greatest (unconscious) attempt to eradicate the “Forgotten” in Western history. The extermination was the extreme answer to that which caused Nazism as totalitarian configuration. Stripped of Nazi ideology, post-war Germans were naked in front of that immemorial misery which the Nazis tried to annihilate, but that now, on the contrary, they had to face with no defensive apparatus.

Second, Germans were left without any help in mourning the loss of their previous “narrative configuration”. As we have seen earlier, Arendt notes that the only way in which post-war Germans saved their everyday life was by erasing “Nazi digression”. With the exception of Berliners, as Arendt notes, post-war Germans returned to their pre-war German ethos. They automatically reframed their cognitive system to set it on a melancholic patten: Nazism, in this way, could not be mourned since it was transformed

³⁷ Derrida, *The Work of Mourning*, 221.

³⁸ Arendt, *Essays in Understanding*, 248.

³⁹ Lyotard, *Heidegger and “the Jews”*, 7.

into a lost object. The sad thing to add is that post-war Germans acted in the same way as Žižek explains the working of the current “rehabilitation of melancholy” trend: keeping the object as lost enables its permanent anti-mourning effect. Lyotard knows the (political) tricks of melancholy. He is against mourning (we never possessed what causes the “first scene” therefore there is nothing to mourn) as well as Western melancholy (the “Forgotten” is something that must be forgotten in order to constitute the very basis of a subjectivity and this foundational forgetting creates its melancholic *pharmakon*). But I think that there is space in Lyotard for a different kind of melancholy, a melancholy which has no face and cannot even perceive the object of its longing. What I should call the Lyotardian *melancholy of the forgotten* is a pre-political affection whose force is to disrupt every political configuration Western thought erects to pay “that singular debt of interminable anamnesis”⁴⁰ to the “heterogeneous in itself”.

Thirdly, on the historical level another “narrative organisation”, another political beginning was to be established in post-war Germany, that is, the Allies’ reconstruction. In this sense, on both sides, East and West Germany, there was no need and no space for what undoes political legitimacy, for *the melancholy of the “Forgotten”*. Furthermore, how could the Allies have promoted in post-war Germany the impossible anamnesis of the “Forgotten” if they themselves are made by the same “realistic decision” against the terror of the unrepresentable? At the end, in post-war Germany, history, as forgetting of the “Forgotten”, needed to be on track as soon as possible.

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⁴⁰ Lyotard, *Heidegger and “the Jews”*, 94.

Les défis de la légitimité politique: L'État postcommuniste à l'épreuve de la société¹

Ciprian Mihali

La transition du communisme au postcommunisme, qui a commencé avec les événements de 1989 (la chute du régime Ceaușescu et l'instauration d'un pouvoir dit démocratique), est un processus complexe qui ne se laisse pas entendre seulement comme un passage mécanique d'un mode de vie en commun à un autre; elle n'engage pas seulement la transformation du tissu social ou des comportements les plus habituels des gens. Il y a également, dans une telle transition, une composante politique qui s'étend sur un spectre très large de significations, de l'articulation d'un lien spécifiquement politique entre les membres d'une communauté dite nationale jusqu'à la mise en place d'institutions politiques propres à la démocratie en train de s'instaurer à la chute du régime totalitaire et jusqu'à la création et la consolidation d'un État de droit comparable à et compatible avec ceux qui en constituent le modèle dans les pays de l'Europe occidentale. Si nous voulions trouver un terme qui puisse couvrir, ne serait-ce que partiellement et provisoirement, le processus politique récent, ce serait celui de "légitimité" avec les discours et les rhétoriques qui l'accompagnent.

Nous allons tenter d'analyser le devenir politique de la société roumaine postcommuniste à travers la question de la légitimité tout en mobilisant en même temps et de manière ponctuelle un faisceau de concepts comme le pouvoir, l'autorité, la légalité ou le conflit; tous ces concepts peuvent nous aider à comprendre plutôt les efforts et les dynamiques de la légitimation, ses sources et ses stratégies, ses résultats et ses contestations.

La légitimité: définition et enjeux

Le renversement du régime communiste a lancé un défi majeur à la société entière en termes d'abandon de l'ancien appareil du pouvoir et de construction du nouvel édifice institutionnel politique, juridique et administratif. L'État postcommuniste est bâti sur les ruines de l'ancien État, des ruines à la fois matérielles et symboliques, avec des continuités des pratiques de pouvoir et des représentants du pouvoir qui, au nom de nouveaux impératifs du jour (transition à la démocratie, à l'économie de

¹ This work was supported by the Romanian National Authority for Scientific Research, project number PN II – CAPACITATI 109/2008: *Rhetorics of justice and deliberative perceptions of the rule of law in post-Communist Romania and post-apartheid South Africa.*

marché, l'intégration européenne) ont compliqué le paysage d'une reconstruction sociale, politique, économique et institutionnelle, si souhaitée au niveau déclaratif, si mal négociée dans les faits. C'est pourquoi, depuis vingt ans, l'écart n'a pas cessé de se creuser entre, d'une part, la rhétorique optimiste, superficielle, populiste et à vocation électorale et, d'autre part, une réalité quotidienne difficile, piétinante, elle-même en décalage croissant d'avec la réalité vécue, fabriquée et vantée d'une élite dirigeante (politique, économique, administrative, universitaire).

Tout cela pose la question de la légitimité de la nouvelle construction étatique (pouvoir, gouvernance, rapports de force) et nous oblige à faire un bref détour par la dimension théorique de la légitimité. Et nous allons la traiter en trois points élémentaires: a) définition; b) formes et c) sources, pour la mettre en rapport avec deux concepts voisins et complémentaires (la légalité et l'autorité), afin de saisir enfin comment se décline-t-elle pour la société roumaine actuelle, en contexte de crise et de tentative de sortie de crise.

Pour notre propos, nous privilégions la définition dite "empirique" de la légitimité qui voit en elle "la qualité particulière reconnue à une entité sociale ou politique par ceux qui en sont sujet ou en font partie et qui lui confère ainsi son autorité".² Nous suivons la distinction proposée par les auteurs de l'ouvrage cité plus haut entre une compréhension "empirique" de la légitimité et une compréhension "normative". Si cette dernière, plus technique, retient des critères "auxquels un acteur, une institutions ou un ordre politique doit satisfaire pour être considéré légitime", comme par exemple le consentement de la population à travers des élections ou la mobilisation des principes de justice et d'équité, la première, plus riche, plus ouverte, engage un spectre plus large de comportements et de croyances autour de l'acceptation ou du rejet d'un pouvoir, d'une institution, d'un acteur. La distinction passe en fait plutôt entre une légitimité formelle (plus proche de la légalité) et une légitimité informelle, *de facto* (plus proche de l'autorité). Pour ce qui est de la première, largement étudiée en théorie du droit et en sociologie politique, nous retenons juste sa dimension rationnelle, légaliste, qui l'amène dans cette relation classique avec la légalité, et ce au moins depuis Carl Schmitt, jusqu'à Norberto Bobbio, qui nous fournit par ailleurs la formulation la plus synthétique:

"Le pouvoir légitime est un pouvoir dont le titre est juste; un pouvoir légal est un pouvoir dont l'exercice est juste. La légitimité est la perspective d'où se place d'ordinaire le titulaire du pouvoir; la légalité est la perspective d'où se place d'ordinaire le sujet. Là où le puissant

² *L'État en quête de légitimité. Sortir collectivement des situations de fragilité*, Séverine Bellina, Dominique Darbon, Stein Sundstol Eriksen et Ole Jacob Sending, eds. (Paris: Éditions Charles Léopold Mayer, 2010): 21.

invoque la légitimité, le sujet invoque la légalité. Que le pouvoir soit légitime, c'est l'intérêt du souverain; qu'il soit légal, c'est l'intérêt du sujet. Quant au souverain, la légitimité est ce qui fonde son droit, la légalité ce qui fonde son devoir; quant au sujet, au contraire, la légitimité du pouvoir est le fondement de son devoir d'obéissance, la légalité du pouvoir est la garantie principale de son droit de ne pas être opprimé".³

Une telle formulation met l'accent sur le titulaire légitime du pouvoir politique et ouvre un vaste chantier de réflexion sur la souveraineté de l'État et sur l'exercice du pouvoir, mais aussi, de manière indirecte, sur l'obéissance à la loi et sur l'exercice de la citoyenneté démocratique. On voit bien que tout cela tourne autour de la question du pouvoir et, plus précisément, d'une non coïncidence nécessaire entre légitimité et légalité. Nous avons expliqué dans un autre texte comment cette non coïncidence fonctionne-t-elle⁴ en faisant référence à des textes et à des auteurs de plus différents (Kojève, Goyard-Fabre ou Bouveresse). Retenons ici une seule idée utile pour notre propos: la distinction entre une société totalitaire et une société démocratique se mesure également dans la distance (annulée pour la première, sauvegardée pour la deuxième) entre légalité et légitimité, une distance qui fait place dans une démocratie à des formes de légitimité qui ne sont pas reconnues automatiquement comme étant légales (toute forme de désobéissance civile) et réciproquement (par exemple, l'usage abusif d'un droit). C'est dans ce creux, dans ce lieu vide de la démocratie, comme dirait Claude Lefort, que se négocie la pluralité, celle des acteurs sociaux, de leurs légitimités dissensuelles et leurs autorités concurrentes.

Et cela nous amène plus près encore de la légitimité "empirique", censée nous fournir une clé de lecture de l'actualité de la société postcommuniste. Nous disions plus haut que les transformations de la société roumaine après la chute du régime communiste peuvent être comprises sous la forme d'un devenir tordu des mécanismes de la légitimité. Mais si pour ce qui est de la légitimité normative (et donc de la légalité) un certain nombre de conditions formelles ont été remplies (et remplies d'une

³ Norberto Bobbio, "Sur le principe de légitimité", *Annales de philosophie politique* 7 (1967): 49.

⁴ Ciprian Mihali, "Pluralité des sources d'autorité, unité de l'État souverain", *Studia Universitatis Babeş-Bolyai, Iurisprudentia*, 4 (2010): <http://studia.law.ubbcluj.ro/articol.php?articollid=328>), accessed April 2011. Par exemple, chez Kojève, la distinction entre légalité et légitimité se fait en termes d'autorité. Ainsi, toute autorité est légitime, elle peut être légale aussi, mais toute légalité n'est pas nécessairement l'expression d'une autorité reconnue. Kojève va jusqu'à dire, d'une expression très forte par sa plasticité: "la Légalité est le cadavre de l'Autorité". Il comprend par cette formule la réification ou la mise à mort de l'autorité dans une coquille vide qui est celle de la légalité étatique, une légalité qui peut s'éloigner de la légitimité pour un pouvoir au fur et à mesure que son autorité s'évanouit. Autrement dit, un pouvoir est légitime tant qu'il jouit d'autorité; si celle-ci disparaît... le pouvoir se replie dans le légalisme.

manière elle-même très souvent simplement formelle), nous devons nous interroger davantage sur l'aspect empirique de la légitimité, c'est-à-dire sur les croyances et sur les perceptions que les gens ont du pouvoir et des institutions et sur leurs modalités spécifiques de reconnaissance de différentes figures de l'autorité.

De ce point de vue, donc, il convient d'utiliser des notions comme "confiance", "consentement" ou "réciprocité" qui décrivent des attentes (matérielles et symboliques) que la population peut avoir d'un pouvoir en place et de ses institutions et permettent en même temps d'ouvrir une voie d'interrogation sur les rapports entre l'État et la société. Il y va dans ce schéma d'une approche de la légitimité au quotidien, des relations qui se tissent entre les actions de l'État et la façon dont elles sont perçues par les personnes, ainsi que des réactions que celles-ci peuvent avoir en termes de comportement social, politique, économique ou culturel. Au jour le jour, l'État manifeste sa force ou sa faiblesse, au jour le jour les gens modulent leur confiance dans la hiérarchie institutionnelle en fonction de leur capacité de répondre aux attentes et aux revendications les plus modestes ou les plus hautes. L'État s'avère capable ou incapable d'agir dans l'intérêt du citoyen non seulement à travers des décisions législatives ou administratives qui modifient la vie individuelle et sociale, mais aussi à travers sa mise en scène symbolique et discursive qui accompagne son efficacité matérielle, sans pourtant la remplacer ou la rendre secondaire.

Les spécialistes de la question de la légitimité parlent de quatre sources de légitimité, dont la proportion offre l'image propre à chaque société de sa perception du pouvoir, de sa confiance dans les institutions et de l'engagement que ses membres sont prêts à faire pour participer à la vie publique. Le fonctionnement des mécanismes pluriels de légitimation donne un contenu au pouvoir et le transforme en autorité respectée et reconnue. L'exacerbation ou la suppression d'une (ou de plusieurs) de ses sources mènent d'une part à la fragilisation de l'État et, d'autre part, à la précarisation des relations sociales et communautaires, sur un fond de méfiance verticale (institutionnelle) et horizontale (interhumaine). Mais quelles sont les quatre sources de légitimité?⁵ "La légitimité par les procédures (input), la légitimité par les résultats (ou fonctionnelle output), la légitimité par les croyances partagées et la légitimité internationale".⁶

⁵ Nous laissons à dessein de côté ici la plus célèbre des classifications des types de légitimité, proposée par Max Weber. Celui-ci distingue entre "légitimité charismatique", "légitimité traditionnelle" et "légitimité légal-rationnelle". Si la première se retrouve notamment dans les régimes dictatoriaux et la deuxième dans les sociétés féodales, la troisième renverrait plutôt au mode d'organisation démocratique-bureaucratique de la société moderne. Certes, il s'agit ici d'idéaux types qui doivent être à chaque fois contextualisés et relativisés, d'autant plus si l'on a en vue la société postcommuniste, formidable mélange de légitimités et de figures résiduelles des leaders charismatiques et des rapports quasi féodaux de pouvoir.

⁶ *L'État en quête de légitimité*, 40.

Essayons maintenant d'analyser chacune de ces sources et de les décliner par rapport à l'évolution de la société roumaine postcommuniste.

Sources de légitimité dans la société roumaine postcommuniste

La légitimité par les procédures peut décrire dans le contexte qui est le nôtre ici la manière dont les structures de pouvoir mises en place après 1989 ont adopté (encore une fois: souvent de manière superficielle ou mimétique) des règles et des procédures afin de réorganiser le tissu social et institutionnel hérité de l'ancien régime. Si du point de vue théorique ce mécanisme de légitimation se revendique d'une logique démocratique qui implique la participation citoyenne et la réaffirmation d'une souveraineté populaire grâce à la prise en compte de la volonté du peuple et grâce à la prétendue transparence des stratégies décisionnelles, en pratique nous sommes les témoins d'un découplage entre le fait de détenir et exercer le pouvoir et la responsabilité engagée par cet exercice. "Les mécanismes de responsabilité des gouvernants s'étendent au-delà des élections et incluent la transparence, les contrôles et les contrepoids sur les centres de pouvoir, les normes procédurales, les audits de fonds publics, la couverture médiatique appropriée et le débat politique public... De tels mécanismes constituent une source potentielle de renforcement de la légitimité dans la mesure où ils offrent aux citoyens un moyen d'être associés au mode de gouvernement de l'État, au-delà du mode d'élection de ceux qui gouvernent."⁷ Si la légitimité procédurale fait en théorie état d'une telle association au gouvernement, nous devons remarquer toute de suite que dans la pratique il y a une augmentation du degré d'opacité qui entoure la prise de décisions politiques et économiques les plus importantes et, par voie de conséquence, la dissociation elle-même en croissance exponentielle entre les gouvernants et les gouvernés.

Input legitimacy décrit littéralement la légitimité à l'entrée, la condition même de possibilité d'une démocratie réelle qui articule le processus législatif avec les besoins et les attentes de la société. Le pouvoir est, de ce point de vue, une affaire de circulation, de communication et il s'accompagne de manière indissociable de son aura d'autorité. Il acquiert cette autorité par la rationalité visible dans l'organisation d'un appareil administratif et par la séparation claire qu'il est capable de faire entre le domaine public et le domaine privé, plutôt entre l'intérêt public et l'intérêt privé. Or cette source de légitimité est grevée profondément dans la société roumaine par le déficit de rationalité bureaucratique qui empêche systématiquement la compréhension par les personnes de la logique de

⁷ *L'État en quête de légitimité*, 43.

fonctionnement des institutions et qui encourage ainsi cette ancienne “vertu” balkanique qui est la débrouillardise, l’aptitude à court-circuiter les voies légales et fastidieuses, pour arriver aussi vite que souhaité à la solution dite “la plus convenable pour tous”, qui subjectivise la bureaucratie, qui la rend “humaine”. En d’autres mots, nous décrivons ainsi une familiarité quasi généralisée avec la corruption, un sens commun et une rhétorique quotidienne qui la rendent non seulement acceptable, mais dans une acception populaire, même nécessaire pour la négociation avec les institutions, le pouvoir, les agents économiques ou voire avec les autres. C’est une telle familiarité qui fait que la légitimité par les procédures, viciée sous l’impacte de la corruption, puisse retrouver les autres sources de légitimité, elles aussi placées sous le coup du vice. Et c’est toujours elle qui fait aujourd’hui de la corruption plus qu’une question de droit, de force ou de faiblesse de la machine judiciaire, et même plus qu’une problème de stabilité économique du pays (ce qui n’est pas le moindre des problèmes...): c’est une question transversale et largement partagée comme mode de vie même, comme forme de cohabitation avec toute forme de pouvoir, étatique ou non étatique, politique, économique, judiciaire, universitaire. Supprimer alors la corruption ne met pas en cause seulement le fonctionnement social de ce type de légitimité procédurale, mais plus intimement toute une série de pratiques interhumaines, de convictions individuelles et communautaires.

La légitimité par les résultats (Output legitimacy) fait référence aux réalisations et à l’efficacité de l’État.⁸ Au fur et à mesure que le nouveau régime démocratique se met en place après 1989, c’est cette source qui lui légitime de plus en plus le pouvoir. Sans négliger les autres sources, surtout les deux suivantes (symbolique et internationale, qui seront décrites plus loin), la légitimation par l’efficacité de l’acte de gouverner est celle qui mobilise les attentes les plus importantes de la part de la société. Elle a connu les aventures les plus spectaculaires depuis vingt ans et revient en force, à un niveau cynique et paroxystique, avec la crise récente. Ce n’est plus un secret pour personne que la crise structurelle qui affecte la société roumaine depuis 2009 n’est pas due seulement au contexte international, ni encore à quelques décisions erronées prises dans le passé récent par tel ou tel gouvernement. Elle est structurelle justement dans le sens où les principes de la gouvernance telle qu’ils sont définis aujourd’hui⁹ ont été systématiquement ignorés, sinon mimés, voire même bafoués.

Certes, nous n’ignorons pas l’équivoque qui entoure les discours et

⁸ *L’État en quête de légitimité*, 44.

⁹ “Répondre à un besoin ressenti par la communauté; reposer sur des valeurs et principes communs et reconnus; être équitable (négociée); être exercée efficacement par des gouvernants responsables et dignes de confiance; enfin, respecter le principe de moindre contrainte (obtenir à la fois plus d’unité et de diversité)”. Pierre Calame, *La Démocratie en miettes. Pour une révolution de la gouvernance* (Paris: Éditions Charles Léopold Mayer, 2003).

les pratiques actuels de la gouvernance, mais ces principes peuvent s'offrir comme des indicateurs pour comprendre, même si de façon extrêmement schématique, les causes profondes qui font de la Roumanie le pays communautaire le plus touché par la crise. Si l'on ajoute à ce paysage la complication populiste et électorale de 2008 (législatives) et de 2009 (présidentielles) nous pouvons plus facilement dresser le tableau de l'ignorance qui accompagne l'incompétence générale dans les institutions et dans la politique. Car comment expliquer autrement que par l'incompétence et par la prévalence des intérêts privés au détriment des intérêts publics les innombrables hésitations et décisions contradictoires prises par les pouvoirs en place, les scandales quotidiens qui dévoilent des conflits majeurs d'intérêts, la corruption endémique des institutions (ministères, police, douane, hôpitaux, administrations locales, universités), l'incapacité de ces mêmes institutions à mettre en pratique des mesures efficaces pour les faire sortir de la crise, sur un fond d'absence de vision et d'approche prospective ?

La légitimité par les croyances partagées (ou symbolique) concerne "les représentations collectives qui permettent au peuple de considérer l'État comme la seule et ultime autorité légitime et de partager un sens de la communauté et de l'identité intimement lié à l'État".¹⁰ Nous touchons avec cette dimension symbolique au point le plus sensible des stratégies de légitimité. Car si les autres sources se justifient des démarches formelles et des rationalités multiples (politiques, économiques, juridiques) cette source mobilise une diversité d'éléments et une pluralité de manifestations. Elle rend compte de l'enracinement d'une société dans ses traditions, dans sa/ses langue(s), dans sa/ses religion(s) et de la manière dont ces racines jouent comme facteurs de confiance, de solidarité et de communion au sein de cette société. Pour ce qui est de la société roumaine actuelle, la légitimation symbolique de l'État, de son pouvoir et de ses institutions dévoile une architecture stratifiée et multipolaire, avec des renvois au passé d'avant l'État national et à la religion orthodoxe, avec ses figures tutélaires ou autoritaires, réelles ou fictives, mais mobilisables à chaque fois que le présent se montre indigne par rapport à l'histoire. C'est pourquoi, même aujourd'hui et surtout dans le contexte de crise, des vedettes historiques justicières (Vlad l'Empaleur, plus connu en Occident sous le nom commercial de Dracula) ressortent comme des modèles à suivre par les hommes politiques au pouvoir, surtout quand ils embrassent des idéologies d'extrême droite. Il subsiste dans la société une rhétorique récurrente de la revanche historique, du retour aux moments glorieux du passé, une tendance à associer ou à comparer certains politiques avec ceux qui ont marqué de symboles forts l'histoire.

La crise récente n'a fait que rendre encore plus sensible cette rhétorique de la légitimité symbolique. Avec des gouvernants incapables (soit

¹⁰ *L'État en quête de légitimité*, 48.

par propre incompétence, soit contraints par le contexte financier international, FMI, Banque mondiale...), la tentation est grande d'un repli sur les symboles forts de la nation, avec le potentiel d'intolérance (augmenté avec l'affaire des *Rroms* roumains en France) et d'agressivité publique qui est semé jusqu'aux convictions et aux sentiments des gens ordinaires prêts à se laisser manipuler par ou à suivre des discours qui promettent une réalité qui n'existe certes que dans leur imagination.

Enfin, une dernière source de légitimation, sur laquelle nous ne nous attarderons pas, est *l'international*. Elle "octroie une reconnaissance à l'État, au régime et au gouvernement et soutient des orientations ou des actions particulières et peut soit converger vers la légitimité nationale, soit être en désaccord avec elle".¹¹ Nous remarquerons à propos de cette source qu'elle fonctionne dans la Roumanie postcommuniste comme un suppléant à l'ancienne théo-téléologie politique du communisme: tous les gouvernements ont fait de la reconnaissance internationale, surtout au sein de l'Union européenne, non seulement un objectif politique concret et immédiat, mais aussi une justification (sinon une excuse...) pour des décisions des plus originales, impopulaires et parfois en contradiction même avec ce qui serait un esprit politique ou juridique communautaire. D'autres part, tel que le souligne aussi les auteurs de l'ouvrage sur la légitimité que nous citons ici, la légitimité internationale peut prêter à des ambiguïtés tant qu'elle peut engager un État dans un rapport de plus grande aux exigences des institutions internationales (Commission européenne, Fond monétaire international, Banque mondiale, dans le cas de la Roumanie) qu'aux demandes sociales et tant que les gouvernants se sentent plus responsables et redevables envers ces institutions qu'envers leurs propres populations. Une ambiguïté qui est loin d'être levée sur la politique roumaine actuelle, malgré ses efforts discursifs qui visent à rassurer une société en perte de repères.

En guise de conclusion

Au bout de ce parcours, nous réaffirmons l'idée du pluralisme légitimateur qui détermine la relation entre l'État et la société. Étirée entre l'institutionnalisation incohérente du pouvoir, le vacillement des figures de l'autorité, la rigidité de la légalité et une somme compliquée de représentations et pratiques sociales, la légitimité façonne la société roumaine postcommuniste dans la concurrence de ses sources et dans la multiplicité de ses figures toujours partielles. La fin de la transition postcommuniste coïncide avec l'entrée brutale dans une crise structurelle de l'État et de ses institutions. Ni la rhétorique anticommuniste ni les discours

¹¹ *L'État en quête de légitimité*, 53.

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anticorruption, tant véhiculés depuis quelques années ne peuvent cacher et encore moins mettre fin à la crise qui traverse une société qui n'a pas su ou voulu négocier, assumer, sa séparation du passé et qui ne peut pas encore imaginer son avenir.

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“Untold suffering and injustice” in the best of all possible worlds¹

Emilian Cioc

In addressing the question of how justice is construed in post-societies, I will focus first and foremost on the thought-provoking nexus of transition and global crisis. The hypothesis made here is that, in a specific way, the latter marks the end of the former. Moreover, this dissolutive interruption would call for a sustained reconsideration of transition. Therefore, the question is: how does the current global systemic crisis affect not only developing or post-societies but “transition” itself as an operative notional construct? How does the global crisis affect justice in post-societies? Would it not be reasonable to consider the question of justice in post-transitional terms?

In the elaboration of these lines of questioning, some elements could be produced out of a comparative enquiry, specifically on post-communism and post-apartheid. Such a comparative endeavour is certain to need prudent limitations and patient protocols. What is at stake here is not to isolate identical, or at least similar, sequences of experience and practice that could eventually be recycled in an improbable transferable model. The aim is to follow the ways in which justice — and therefore politics — is relevantly constructed in contemporary societies. South Africa provides such an example: “The end of apartheid might have fired utopian imaginations around the world with a uniquely telegenic vision of rights restored and history redeemed. But South Africa has also been remarkable for the speed with which it has run up against problems common to societies — especially to post-revolutionary societies — abruptly confronted with the prospect of liberation under neoliberal conditions”.²

The methodological assumption behind my argument is that in order to seize adequately the significance of justice in post-societies it is necessary to say a few words about transition, and this in a political economy perspective rather than in transitional argot. As understood here, for reasons to be mentioned henceforth, transition proves to be an active interpretation of what Adam Przeworski sharply refers to as “the greatest ideologically inspired experiment since Josef Stalin initiated the forced industrialisation of the Soviet Union in 1929”.³ Obviously, this understanding is by no means that of the ordinary “transitology”.

¹ This work was supported by the Romanian National Authority for Scientific Research, project number PN II – CAPACITATI 109/2008: *Rhetorics of justice and deliberative perceptions of the rule of law in post-Communist Romania and post-apartheid South Africa*.

² Jean Comaroff, “Alien-nation: Zombies, immigrants, and millennial capitalism”, *The South Atlantic Quarterly* 101, 4 (2002): 779-805, [784-785].

³ Adam Przeworski, “The neoliberal fallacy”, *Journal of Democracy* 3, 3 (1992): 45-59, [45].

Even though transition is said to be essentially twofold,⁴ equally oriented to both democracy and market economy, one should not miss the considerable asymmetry between the two terms. It is this asymmetry⁵ that allows us to understand the reason why transition to democracy is so intriguingly depoliticised. As it is sometimes pointed out, “processes of democratisation, wherever they have occurred, have tended to coincide with the growing insignificance of government, itself a corollary of the growing crisis of the nation-state”.⁶ The statement allows for reinterpretation and radicalisation: processes of democratization as they took place in transition societies tend to coincide with the growing insignificance of politics (not only of government) going well beyond the nation-state paradigm. Exposing what he calls the neoliberal fallacy, Adam Przeworski offers a complete and stimulating depiction of this destitution of politics:

“The policy style inherent in neoliberal economic reform programs contributes to this process in the following way. Since the neoliberal ‘cure’ is a painful one, with significant social costs, reforms tend to be initiated from above and launched by surprise, independently of public opinion and without the participation of organised political forces. Reforms tend to be enacted by fiat, or railroaded through legislatures without any changes reflecting the divergence of interests and opinions. The political style of implementation tends toward rule by decree; governments seek to mobilise their supporters rather than accept the compromises that might result from public consultation. In the end, the society is taught that it can vote but not choose; legislatures are given the impression that they have no role to play in the elaboration of policy; nascent political parties, trade unions, and other organisations learn that their voices do not count”.⁷

This highly problematic devaluation of substantial democratic politics is crucial in order to elaborate an honest understanding of what happened throughout transitions to market democracy. The same indifference to interests and opinions is affecting justice in post-societies. Not only macroeconomic policies are railroaded and implemented, but also notions and meanings serving to teach people that in some way they have no role to play in the elaboration of meanings. Transitional justice, at least in its ordinary

⁴ Jozef M. van Brabant, *The political economy of transition. Coming to grips with history and methodology* (New York-London: Routledge, 2002): 2.

⁵ Joseph E. Stiglitz, *Making globalization work* (New York-London: W.W. Norton, 2006): 21.

⁶ John L. and Jean Comaroff, “Postcolonial politics and discourses of democracy in Southern Africa: An anthropological reflection on African political modernities”, *Journal of Anthropological Research* 53, 2 (1997): 123-146, [126].

⁷ Przeworski, *Journal of Democracy* 56. Also see Stiglitz, *Make globalization work*, 27.

repetitive form, is such a device railroaded and implemented in order to resolve the question of injustice in these new societies. Despite irreducible differences, Romania and South Africa seem to meet in this rhetoric and yet factual projection of transition. As Patrick Bond explicitly puts it, "South Africa's immediate post-apartheid domestic policy was excessively influenced by conventional neoliberal wisdom, in many cases imported through 'international experience' (a pseudonym for advice by the World Bank and its allies)."⁸

This import-and-implement scheme echoes a certain teleological fallacy structurally embedded in transitional representation. It presents the post-unjust past liberal democracy with its claim to bring together rights and freedom, elections and welfare, as the total realisation of a natural and, for that matter, supernatural necessity fulfilling human history. But this enthusiasm is soon to be proven problematic. It goes without saying: such a fallacy bears ideological and political interests. The genealogy of justice in transitional societies should be capable of undoing this teleological sophism. "Finally, it is one of the great ironies of our age that the liberal theocracy counselling transition managers into proceeding rapidly and holistically for the sake of democracy and free markets, as well as some managers embracing such precepts themselves, have presented their arguments in a thoroughly autocratic, often arrogant fashion, suggesting demagogically the need for a 'bold preemptive strike' for 'there is no alternative'".⁹

Yet another aspect is worth reminiscing especially about post-socialism. For very specific reasons, socialism is also a transition: to communism. In the case of socialist societies, communism should have been the genuine post-socialism. The irony is that, after what is conventionally called the fall of communism, post-socialism turned out to be capitalism in its neo-liberal form. In this respect, post-communism stands as a post-transition or, more exactly, as a transition reloaded. In a similar way, for the liberation movement who took the Freedom Charter for a politically founding document, post-apartheid should have been a socialist democracy forged in national terms. The irony, in this case, is that post-apartheid South Africa is a liberal democracy, a society in transition to liberal democracy, thus sharing a "post-socialist" condition.¹⁰

Reminding this convoluted and somehow surprising history of transitions also allows us to seize an even more fundamental aspect.

⁸ Patrick Bond, *Elite transition: From apartheid to neoliberalism in South Africa* (London: Pluto Press, 2000): 216.

⁹ Van Brabant, *The political economy of transition*, 466. See also Joseph E. Stiglitz, "Is there a post-Washington consensus consensus?" in Narcis Serra and Joseph E. Stiglitz, eds., *The Washington consensus reconsidered. Towards a new global governance* (Oxford: Oxford University Press, 2008): 51.

¹⁰ Nancy Fraser, *Justice interruptus: Critical reflections on the "postsocialist" condition* (New York-London: Routledge, 1997): 3.

“In formerly socialist countries, moreover, the rhetoric of “transition” – once used by the party to justify the shortcomings of socialism and presented as a mere transition phase *to* communism – was quite cynically transferred to the opposite camp. Now the poor and oppressed, literally dying of homelessness, disease, and hunger in Moscow and elsewhere, are told by cynical leaders that the suffering needs to happen during the transition to fully fledged capitalism, and that neo-liberal shock policies are aimed at making the transition short”.¹¹

The rhetoric of transition is always about justifying deficiency and limitations. It is constitutively linked to specific ways of dealing with suffering. The ways in which transition narratives tell or rather don't tell specific forms of suffering and injustices are meant to ensure that they are not intended; provoked as they are by impersonal and indifferent necessities. This kind of necessity engineering is the very rationale of the rhetoric of transition. Transition is also a singular chrono-logy, a “rationalisation of the time sequence”,¹² a highly elaborated procedure whose main task is, simply put, to organise delay and disillusionment and, even more precisely, to present impossibility as delay. Perhaps this is the most remarkable “narcotic effect” of transition as “a public relations” campaign adroitly stage-managed for a gullible public”.¹³ Suffering management is not the only and not even the main reason why time is so important in transition societies. As Przeworski explains it, “they are urged to short-circuit the democratic process by introducing reforms so swiftly that citizens will have no time to mobilise effectively against them.”¹⁴

“Transition” — as in “post-communism” or “post-apartheid” — is therefore to be described as a device to perform the function of a quarantine procedure: insular dysfunctions. Transition rhetoric procedures are meant to justify a time issue: why democracy doesn't materialise in a functional, substantive and undeniable way.

Would it then not be appropriate to reconsider the transitional representation of justice in post-societies? Post-societies generally claim that justice is vital, needing to be done, restored, guaranteed. And yet, the significance of this claim both imperative and declarative is not always clearly elucidated. Injustice experiences, the part of intolerable, the affirmation often difficult of a socially relevant demand for justice, due to this ambiguity both inevitable and engineered, serve all sorts of interests—political, judicial,

¹¹ Ugo Mattei and Laura Nader, *Plunder: When the rule of law is illegal*, (Oxford: Blackwell, 2008): 47.

¹² Van Brabant, *The political economy of transition*, xv.

¹³ *Ibid.* 473.

¹⁴ Przeworski, *Journal of Democracy*, 45-46.

economic. It is the very reason why it is decisive to reveal what the public discourse tells or refuses to tell in accordance to strategies and tactics implying interests when speaking of justice.

Despite the aforementioned teleological projection, the significance of justice and injustice imply an open deliberation including conflicts and opinions, conflicting rationalities, rational but not necessarily reasonable interests, powers, arguments and sensibilities. It obviously does not mean that the operational or deliberative meanings thus produced would be artificial, unauthentic, mere corrupted images of a non conventional, transcendent, natural-supernatural meaning which would have been forgotten, repressed, denied, but accessible for revelation. All discoveries are construction, that is innovation and invention, indistinctively. Moreover, determination is simultaneously negation. Therefore, to determine the significance of justice in a particular way is to deny or devalue other possible meanings and so to suppress the possibility of different social and political practices. Determination and its negation are never neutral, objective, in strict adequacy to rationality supposedly impartial and ideal. To use P. Bond's terms, "evolving rhetorics are themselves important markers of material processes".¹⁵

What would then be the major characteristics of the ways in which transition societies such as Romania and South Africa construe meanings of justice? "During transition periods, determinations of what is fair and just are products of what is perceived as previously endured injustices":¹⁶ this could be a useful formulation of the basic assumption in the transitional justice paradigm. Two remarks are decisive in this context. "Perception" is by no means spontaneous, natural or immediate. It is rhetorically engineered. Second, what is perceived does not exist independently of its perception. In other words, not only is perception technically assembled but it also produces its object, here the past. These questions are simply crucial because they are relevant not only for transitional contexts. As Amartya Sen explains, "The identification of redressable injustice is not only what animates us to think about justice and injustice, it is also central ... to the theory of justice".¹⁷ What was said about perception also applies to what Sen designates as "identification". This decisive moment, I suggest, should be formulated in a more resolutely constructivist way.

Let us now turn to post-socialist constructivist rhetoric of justice and notice an unprecedented discredit of the idea of justice. There are several elements explaining this decline. First of all, given its fundamental character,

¹⁵ Bond, *Elite transition*, 211.

¹⁶ Csongor Kuti, *Post-communist restitution and the rule of law* (Budapest: Central European University Press, 2009): 82.

¹⁷ Amartya Sen, *The idea of justice* (Cambridge MA: The Belknap Press of Harvard University Press, 2009): vii.

the promise or, to put it mildly, the agenda of post-communism bears the name and the sign of liberty. Second, it should be remembered that one of the fundamental claims made by communism is to eradicate the capitalist injustice. The conflict organised by the socialist state against capitalist injustices was massively counterfeit and it was consumed long before the fall of its regime. We therefore understand that for an anti-communist sensibility, justice is somehow stained, compromised. Third, justice doesn't go with equality. The fall of a pretended egalitarian regime seems to render justice suspicious, to severely damage it. Exploitation has no significance other than an ideological one. Nancy Fraser's depiction of the post-socialist condition perfectly acknowledges this discarded justice:

"In these 'postsocialist' conflicts, group identity supplants class interest as the chief medium of political mobilisation. Cultural domination supplants exploitation as the fundamental injustice. And cultural recognition displaces socioeconomic redistribution as the remedy for injustice and the goal of political struggle".¹⁸

The speed of this transformation would certainly be worth patient inquiry if one would take van Brabant's expression widely: transition is to be understood "in terms of sequencing, timing, sectoralism, intensity, and speed".¹⁹ In the same time, another fundamental significance of injustice in terms of spoliation is denied and banned. This shift in conceiving and practicing justice is related to the profile of the new economic model. The new organisation of societies knows how to use this "post-socialist" indeterminacy of justice and determines it in such a way that the demand for justice does not affect its dominance.

Mahmood Mamdani also speaks about "the collapse of a paradigm, that of justice",²⁰ which would also be the origin of the idea of reconciliation. Along the same lines, Comaroff and Comaroff say:

"Gone is any official-speak of an egalitarian socialist future, of work-for-all, of the welfare state envisioned in the Freedom Charter that, famously, mandated the struggle against the *ancien régime*. Gone, too, are the critiques of the free market and of bourgeois ideology once voiced by the anti-apartheid movements, their idealism reframed by the perceived reality of global economic forces. Elsewhere, we have suggested that these conditions, and similar

¹⁸ Fraser, *Justice interruptus*, 11.

¹⁹ Van Brabant, *The political economy of transition*, 5.

²⁰ Mahmood Mamdani, "From justice to reconciliation: Making sense of the African experience" in Colin Leys and Mahmood Mamdani, *Crisis and reconstruction: African perspectives: two lectures* (Nordiska Afrikainsitutet: Uppsala, 1998): 17.

ones in other places, have conduced to a form of 'millennial capitalism' ".²¹

The major stake is to disconnected injustice from economics. Neo-liberal market-founded economics, that is. As rhetorically construed by the dominant transitional discourse, justice only serves to rehabilitate capitalism (South Africa)²² or to guarantee its purity (post-communist societies).

Suppressing the political-economic dimension of injustice is threatening the very viability of a community restored in its possibility by a truth-telling based reconciliation process as quite early highlighted by certain observers. The consequence of all this is clearly stated by Zinaida Miller:

"Despite its claims to exposure, revelation and memorialisation, the project of transitional justice may simultaneously perpetuate invisibility and silence. The literature, institutions and international enterprise of transitional justice historically have failed to recognize the full importance of structural violence, inequality and economic (re)distribution to conflict, its resolution, transition itself and processes of truth or justice seeking and reconciliation".²³

This failure is what needs to be acknowledged. Thus, in post-societies, inequity as injustice disappears but without a purely endogenous explanation. As authors like Stiglitz or Krugman observe, this inconsideration of inequity is one of the defining lines of the Washington Consensus.²⁴ It is not at all out of regrettable negligence or a cultural consequence but because the stake is to give inequality some legitimacy.

Transition is in this sense an ad-hoc procedure meant to organise and control imperfections and impurities. Post-societies only recognise past injustice. Present times are simply incapable of injustice so that market democracy could be absolved of any trace of negativity other than accidental. The past is the political realm of injustice and human rights violations. The consequences of this perspective? Coming to terms with past injustice means in fact cleansing the present, in the form of a "process by which past grievances are sanctified into a shield protecting a new power against future critiques".²⁵ Strangely enough, apologising for the past ends up by making and apology of the present. By isolating injustice in the past, by determining the meaning of justice in criminal and transitional terms, this perspective fails

²¹ Jean Comaroff, *The South Atlantic Quarterly*, 785.

²² Michael MacDonald, "The political economy of identity politics", *The South Atlantic Quarterly* 103, 4 (2004): 629-656, [643].

²³ Zinaida Miller, "Effects of invisibility: In search of the 'economic' in transitional justice", *The International Journal of Transitional Justice* 2 (2008): 266-291, [267].

²⁴ Stiglitz, *The Washington consensus reconsidered*, 17.

²⁵ Mamdani, *Crisis and reconstruction*, 20.

to account for contemporary forms of injustice and for an inoperative rule of law. Thus the discourse on the injustices provoked by transition, by the market economy, the multiplication of massive and finally unjustifiable inequity, is totally deprived of its meaning and any deliberative force for that matter. That “inequality itself is not to be prosecuted or amnestied”²⁶ is not only the unintended consequence of the partial formulation of justice in transitional terms: it is its very presupposition. This genesis of the best of all possible worlds incorporates a sweeping violence just as its theodicy-like narrative proves to be perplexingly obscene as Derrida puts it:

“The expression ‘democracy to come’ does indeed translate or call for a militant and interminable political critique. A weapon aimed at the enemies of democracy, it protests against all naïveté and every political abuse, every rhetoric that would present as a present or existing democracy, as a *de facto* democracy, what remains inadequate to the democratic demand, whether nearby or far away, at home or somewhere else in the world, anywhere that a discourse on human rights and on democracy remains little more than an obscene alibi so long as it tolerates the terrible plight of so many millions of human beings suffering from malnutrition, disease, and humiliation, grossly deprived not only of bread and water but of equality or freedom, dispossessed of the rights of all, of everyone, of anyone”.²⁷

In crisis we trust!, the critics of capitalism — including certain anti-apartheid movements, for example — seem willing to pronounce. Indeed, there is an awaited crisis²⁸ in the hope that its fatal dysfunctions and disequilibria would irreversibly undermine certain directions of the globalising capitalism and thus promising revolutionary odds, opportunities for “the next struggle”,²⁹ for a radicalisation of the political revolution in social terms. But the “real” crisis having come to manifestation starting with 2007 proved to be quite the contrary. The global crisis is far from delivering on these revolutionary hopes especially because, for political purposes, the financial and then economic multiple disorder is rhetorically designed so as to ensure the safeguard and technical backup of the *status quo*. Rescue plans, bail-outs and austerity cutback policies can only endorse this affirmation.

²⁶ Miller, *The International Journal of Transitional Justice*, 268.

²⁷ Jacques Derrida, *Rogues: Two essays on reason*, Pascale-Anne Brault and Michael Naas, trans. (Stanford: Stanford University Press, 2005): 86.

²⁸ Hein Marais, *South Africa: Limits to change: The political economy of transition* (New York: Zed Books, 2001): 37.

²⁹ John S. Saul, “The next liberation struggle?”, *Review of African Political Economy* 30, 96 (2003): 187-202.

The crisis discourse and the transitional rhetoric surreptitiously congregate. One can easily recognize the same style of implementation, the same claim of “there is no alternative” rendering politics insignificant, the same urges to renounce deliberation and, for that matter, any creative institutional arrangements questioning the fundamental options. In short, global crisis is politics by fiat at a global scale. Nevertheless, “crisis” is the terminal-radicalised feature of “transition”. Just like transition, crisis has to provide a containing justification for failures, inequities, suffering, and injustices. Crisis is exhausting the possibility to signify injustice by means of an exclusive reference to the past reopening the possibility for a renewed demand for justice.

And so, unjust inequity is managed somehow differently. While transition strives to explain that impoverishment and suffering is a temporary and necessary phase promising a time for a better life for all, crisis admits that such a time cannot exist, justifying this impossibility by invocation of authoritative, non-political, technical and systemic constraints. The discourse of crisis thus completely and serenely abandons any promise of a better future, of future growth and welfare, and, ultimately, of future. Future is obsolete. As previously stated, one major objective of the transition-based representation was to deny any structural character of failures, errors, delays and shortcomings having occurred in the transformation toward a market designed world. In other words, it was meant to localise at the peripheries, to contain, to insulate an endless crisis-like series of events. The crisis discourse is, in a sense, the globalisation of a suspended transition.

At a conceptual but also ideological level, there are at least two critical events: the self-regulatory capacity of the market and the claim that a highly deregulated economy necessarily leads to sustainable growth and development. Both are extensively damaged and discredited. For these specific reasons crisis is an ad hoc procedure aiming to provide justification for conservative revolutionary policies. In doing so, the rhetoric of crisis is compelled to make use of a specific normativistic fallacy fictionalising implacable necessity: being what they are, things have to be the way they presently are and it would be both impossible and illegitimate for them to be different. Present times are simultaneously the completion and the confirmation of a normative nature. The binding nature of things it serves to account for, the discourse of crisis constructs piece by piece recycling contingent facts in order to assemble an objectivity that would present the harsh measures as mere translation of a rational and mandatory order, righteously determining the reconfiguration of political, social, economic and judicial practices. Briefly put, the trope of crisis is a complex device supposed to display the impossibility of a radical doubt cast on the reference system. It thus serves to safeguard the regime with the price of postponing democracy and of naturalising poverty and deprivation.

The crisis interrupts transition also in the sense that the democratic capitalism promised at the end of the road doesn't exist anymore. It would therefore be of great interest to think of the fall of socialism and the fall of the markets together. With due prudence, one could say that global crisis marks the fall of post-socialism. This offers an opportunity for scrutinising justice in post-transitional societies, mainly focusing on the possibility to rescale the demand for justice, justice capable of social reconciliation this time. An opportunity also to think justice not just as mere calculation of retrocession, redistributions and recognitions, lustrations or criminal convictions... To some extent, indeed, crisis seems to reveal what is denied, deactivated, excluded by the post-communist or post-apartheid determination of injustice. And the ways in which this comes back to haunt the best of all the possible worlds.

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Le global en ses horizons: En finir avec le post-religieux et le post-sécularisme

Patrick Michel

Il tempo invecchia in fretta

— Antonio Tabucchi¹

La religion bénéficie d'évidence depuis plusieurs décennies d'une forte visibilité,² donnant crédit à l'idée de son "retour", de sa "revanche" (sinon, plus directement de celle de Dieu lui-même), ce qui revient à inscrire le monde sous le signe d'un "réenchantement".³ Si cette visibilité apparaît comme incontournable pour rendre compte des transformations du monde actuel,⁴ elle ne devrait toutefois pas faire illusion. Très souvent, lorsque la religion semble être en cause, ce n'est en réalité pas centralement d'elle que l'on parle.⁵ Il reste qu'il n'est pas neutre que ce soit à travers elle que l'on puisse parler d'*autre chose*.

Les processus contemporains de décomposition — recomposition que connaissent nos sociétés mettent en tout état de cause en évidence l'obsolescence d'un dispositif conceptuel articulé pour l'essentiel, en matière de religion, sur les théories de la sécularisation et — symétriquement plus que contrairement — sur les "productions religieuses" de la modernité,

¹ Antonio Tabucchi, *Le temps vieillit vite* (Paris: Gallimard, 2009).

² La révolution iranienne et Solidarité en Pologne, du fait du rôle qu'y joue le religieux, ou plus exactement l'utilisation du religieux — donc la fin des années 70 et le début des années 80 — constituant, entre autres, le point de départ du processus.

³ Voir entre autres Gilles Kepel, *La Revanche de Dieu : Chrétiens, juifs et musulmans à la reconquête du monde* (Paris : Le Seuil, 1991); Peter L. Berger, *Le réenchantement du monde* (Paris: Bayart, 2001); Harvey Cox, *Retour de Dieu – Voyage en pays pentecôtiste* (Paris: Desclée de Brouwer, 1995); Régis Debray, *Dieu fin de siècle. Religion et politique* (Paris: Édition de l'Aube/Libération, 1994).

⁴ Clifford Geertz invitait ainsi à s'intéresser au réinvestissement, par les sciences sociales, du religieux comme mode de déchiffrement des transformations contemporaines. Il appelait par ailleurs à dépasser la perspective évolutionniste du paradigme sécularisant pour s'intéresser aux formes changeantes d'un religieux délocalisé, "déculturalisé", dans un monde en mouvement. Voir son intervention à la conférence "L'univers des savoirs", EHESS, Paris, 4-6 mai 2006. Des extraits de cette intervention ont été publiés dans le journal *Le Monde*: Clifford Geertz, "La religion, sujet d'avenir", *Le Monde* (5 mai 2006): 20.

⁵ Le conflit en Ulster se réduit-il à l'opposition entre catholiques et protestants? La violence au Nigéria à la tension entre chrétiens et musulmans? Ce qui se joue au Proche-Orient au face à face entre juifs et musulmans? Al Qaeda au seul islam radical? Et les débats en France sur le voile à l'école, le port de la burqa ou la "laïcité positive" à des prises de position concernant le religieux ?

qualifierait-on celle-ci de “post”. Il y aurait ainsi une “dimension religieuse de la mondialisation”.⁶ Cette dernière entraînerait des effets d’adaptation, d’ajustements ou aurait pour conséquence des transformations affectant la religion elle-même. Une telle approche participe d’une vision essentialisée du religieux, constitué dans l’analyse en un objet extérieur à des évolutions avec lesquelles ses relations seront dès lors étudiées.

Le propos sera ici, en un sens à l’inverse, de se saisir du religieux, tournant le dos aux théories indigènes des sociologies spécialisées, non *en tant que tel*, doté d’une pertinence qui lui serait propre,⁷ mais comme d’un indicateur qui, contextualisé, apparaît susceptible de constituer un analyseur, au demeurant remarquable, des recompositions du contemporain.

Ce qui est en cause n’est en effet jamais tant la religion que les utilisations simultanées et souvent contradictoires dont elle fait l’objet, i.e. la capacité d’acteurs à s’approprier des ressources symboliques rendues disponibles et à les mobiliser au service de stratégies concurrentes visant à habiter et orienter le mouvement contemporain. La question serait dès lors de savoir ce qui, dans ce jeu complexe d’instrumentalisations réciproques entre religieux et politique, religieux et idéologique, religieux et économique, est, en dernière instance, au service de quoi.

La réponse à cette question peut sembler découler du sens commun. Dans l’exemple du courant évangélique (la confession qui connaît la plus forte croissance mondiale), la diffusion du modèle à partir d’un centre émetteur (les États-Unis) viserait à servir les intérêts géopolitiques de ce même centre émetteur. Le problème est qu’il n’existe plus aujourd’hui un centre émetteur unique, mais une pluralité de lieux de production et de diffusion de ce protestantisme conservateur. Et c’est sans nul doute dans ces espaces distincts du centre émetteur premier que s’opèrent les synthèses les plus originales entre offre disponible, attentes des usagers et pratiques d’adaptation.

Les attendus sur lesquels se construisent les stratégies de l’offre sont sans doute d’intelligence immédiate: si la diffusion d’une influence, voire d’un modèle américain est aisément repérable, la justification de l’enrichissement individuel est, elle, nettement attestée. Et vaut partout: Patrick Haenni décrit ainsi l’émergence d’un “islam de marché”⁸ et la sociologue indienne Meera Nanda un “nouvel hindouisme”, où la *Bhagavad Gita* et les *Yoga Sutra* deviennent des manuels permettant d’apprendre à gagner de l’argent et à réussir en affaires.⁹ Igwara, évoquant quant à lui le cas du Nigeria, considère

⁶ Voir le dossier “Effervescences religieuses dans le monde”, *Esprit* 3-4 (2007).

⁷ Patrick Michel, “La “religion”, objet sociologique pertinent ?”, *Revue du Mauss* 22 (2003): 159-170.

⁸ Patrick Haenni, *L’Islam de marché - L’autre révolution conservatrice* (Paris: Seuil, 2005).

⁹ Meera Nanda, *The God market: How globalisation is making India more Hindu* (New York: Random House, 2009).

que la religion — toutes confessions confondues — est avant tout un grand *business*, la prolifération des Églises servant d'abord l'intérêt économique de leurs leaders.¹⁰

La mise en évidence des ressorts de l'offre n'épuise cependant en rien le sujet. Les recompositions induites par l'accélération du mouvement contemporain sont largement appréhendées et vécues par les acteurs sur le mode de la "crise", d'une tension entre des identités définies par des critères fictivement stables et une réalité où il est devenu impossible de faire croire en la stabilité des critères permettant de fonder l'identité.

De cette crise, les emplois et réemplois du religieux seraient tout autant un indicateur que les modalités d'une gestion d'autant plus difficile à cerner qu'elle est loin d'être univoque, en raison de la multiplication d'acteurs et de dispositifs religieux institutionnels poursuivant chacun des stratégies propres. Le recours au religieux comme répertoire privilégié d'énonciation des recompositions à l'œuvre et des repositionnements engendrés par ces recompositions constitue en fait *comme tel* un indicateur fort des évolutions contradictoires auquel les sociétés actuelles doivent faire face. Le religieux est ici ressource, à des fins de déchiffrement et d'approvisionnement d'une totalité éclatée, vécue comme en réorganisation: c'est l'ensemble des marqueurs qui hier encore fournissaient les repères stables permettant de penser les identités et dès lors les positions induites par celles-ci (pour fictive que cette stabilité ait sans doute pu être) qui apparaissent devoir être renégociés.

Les instrumentalisation politiques du religieux attesteraient donc non tant la force du politique (mesurée à sa capacité d'instrumentaliser) qu'au contraire sa faiblesse (évaluée à l'aune de ce qui pourrait être désigné comme une difficulté majeure à exister par lui-même). Par ailleurs, et concernant là l'idée que le religieux serait supposé se prêter plus que d'autres registres à l'instrumentalisation, soulignons simplement que, pour s'en tenir à un exemple, l'usage politique de l'islam n'est pas sans lien avec un processus où ont été vérifiées, les unes après les autres, les limites du recours à la croyance investie dans le nationalisme, l'anticolonialisme (le tiers-mondisme) et le socialisme.

Après la disqualification de l'utopie comme noyau de légitimation d'une entreprise politique, disqualification induite et attestée par l'effondrement du communisme,¹¹ la visibilité du religieux aurait au fond pour fonction première de souligner un déficit du politique si cruel qu'il lui manquerait les mots politiques pour s'exprimer. Registre d'articulation, en situation de flottement généralisé des repères et des marqueurs, il dirait

¹⁰ Obi Igwara, "Holy Nigerian Nationalism and Apocalyptic Visions of the Nation", *Nations and nationalism* 1, 3 (1995): 327-355.

¹¹ Sur cette problématique, voir Patrick Michel, *Politique et religion - La grande mutation* (Paris : Albin-Michel, 1994); et "Religion, nation et pluralisme – Une réflexion fin de siècle", *Critique internationale* 3 (1999): 79-97.

l'urgence et l'impossibilité simultanée de nouer un rapport renouvelé à une totalité. Et ce sur fond d'épuisement du croyable où plus encore sans doute que celle du religieux, c'est la crédibilité du politique qui est interrogée.

Deux remarques s'imposent à ce stade: en premier lieu, les contenus religieux propres n'ont ici qu'une signification toute relative. Le même contenu peut être mobilisé tant pour accompagner le mouvement que pour le contester, pour l'exalter ou le refuser, et bien souvent pour l'appivoiser, c'est à dire pour traduire, au moins provisoirement, les catégories de ce mouvement dans un registre plus immédiatement accessible afin, le cas échéant, de pouvoir les présenter comme compatible avec la tradition, cette dernière serait-elle inventée au fur et à mesure que l'on prétendrait la retrouver et la défendre.

En second lieu, se dessinent à travers les réemplois du religieux les contours d'un nouveau rapport au politique (nouvelles attentes, nouveaux acteurs, nouveaux terrains, nouvelles limites, nouvelles modalités d'appréhension de la "crédibilité").

Le religieux intervient au premier chef comme une ressource mobilisable à des fins de réorganisation du rapport à ces méta-repères, bousculés par l'accélération ressentie du mouvement contemporain, que sont l'espace et le temps.

La question est là éminemment politique: l'émergence d'un "temps de la simultanéité", pour reprendre la formule de Marc Augé,¹² signe l'obsolescence du temps linéaire de l'État-nation, le temps mondial de la globalisation se substituant à lui. Dans la même perspective, marquée par l'indissolubilité, soulignée par Norbert Elias,¹³ du lien entre temps et espace, le passage de l'espace semi-ouvert de l'État moderne à un espace entièrement organisé par les circulations qui y règnent et le refaçonnent en permanence, conduit à repenser pêle-mêle la frontière et la nation, l'État et la souveraineté, les constructions politiques de l'identité et dès lors les énonciations possibles, sinon admises, de cette identité.

Ce processus se nourrit des logiques de fond induites par l'accélération ressentie de la globalisation, sous toutes ses formes, celles-ci ne s'épuisant pas dans le seul registre économique et technique, mais contraignant à définir un rapport nouveau avec un mouvement multiforme et dont l'évidence ne saurait être mise en doute (échanges commerciaux, mouvements de population, standardisation et dès lors relativisation).

La description de l'espace contemporain (ou des différents espaces constitutifs de ce qui cherche à se donner pour un espace tendant à l'homogène et dont les dimensions coïncideraient avec celles de la planète) ne saurait en conséquence procéder du repérage des seules positions occupées dans cet espace. Ce sont les circulations qui définissent les positions,

¹² Marc Augé, *Pour une anthropologie des mondes contemporains* (Paris: Flammarion, 1994): 149.

¹³ Norbert Elias, *Du temps* (Paris: Fayard, 1997).

toujours ponctuelles, le repérage de ces circulations ne pouvant se déduire des positions occupées.

Dans ce contexte, et dans un monde caractérisé par les mouvements de populations, les brassages qui s'ensuivent, et les réactions suscitées par ceux-ci, le rapport au territoire apparaît en proie à de profondes transformations. D'où, entre autres, le malaise exprimé par un Samuel Huntington face à la présence massive de latino-américains aux États-Unis et le sentiment éprouvé d'une sorte d'expropriation qui en résulte: une déliaison entre territoire et modalités culturelles d'occupation de celui-ci. Un malaise qui, débouchant sur l'interrogation (non exempte de pathos): "*Qui sommes-nous?*",¹⁴ n'est pas sans faire écho à l'ouverture, dans un pays comme la France, à l'initiative du pouvoir politique, d'un débat sur "l'identité nationale". On notera que, dans les deux cas, le religieux apparaît comme central. Il intervient, chez Huntington, comme marqueur incontournable de l'intégration à la société américaine, via la conversion des immigrants au protestantisme. Quant à la France, maints commentateurs ont souligné que, sous couvert de (re)définition de l'identité nationale, l'islam et les musulmans étaient susceptibles de se voir mis en cause.

Il n'est, en matière de gestion des transformations du rapport à la territorialité, pas anodin que le règne de Jean-Paul II ait été le théâtre d'une (là aussi) redéfinition des modalités d'administration d'une universalité de l'Église mise à mal par l'évidence du pluralisme, la réitération (incontournable du fait de la prétention de l'Église à la "catholicité") de la vérité centrale étant ajustée, par le biais du voyage, aux réalités locales. Le monde n'étant jamais plus qu'un diocèse étendu, les "visites pastorales" en deviennent un mode de gouvernement, et la circulation la manière même d'habiter et d'orienter ce monde.

Un autre exemple, articulant de façon originale niveaux micro et macro, peut être trouvé dans la relation nouée à l'espace par le néo-pentecôtisme, la "transterritorialité" constituant le gage de la croissance globale de la mouvance.¹⁵ Il s'ensuit une remise en question de ces catégories que sont le local, le national et l'international. Les Églises néo-pentecôtistes participent simultanément des trois niveaux, parvenant de ce fait à les transcender, les moyens de communication de masse, comme outil emblématique de la recomposition du contemporain, constituant, à travers cet acteur nouveau qu'est le télévangéliste, l'opérateur de cette réarticulation. Sans surprise, ce modèle du télévangéliste a trouvé son équivalent dans le monde musulman. Des "télécoranistes", le prédicateur Amr Khaled en étant

¹⁴ Samuel Huntington, *Qui sommes-nous ? Identité nationale et choc des cultures* (Paris: Odile Jacob, 2004).

¹⁵ Voir Jesús García-Ruiz et Patrick Michel, *Et Dieu sous-traite le salut au marché - Éléments pour une socio-anthropologie politique des mouvements évangéliques à partir du cas latino-américain* (Paris: Economica, à paraître en 2011).

un exemple, sont ainsi apparus, attestant la simultanéité de la redéfinition, partout, de la relation à l'espace et au temps. Dans l'émergence d'un "islam mondialisé", ce qui est majeur n'est pas tant de qualifier ainsi l'islam que de mettre en évidence un processus où la mondialisation, se déployant, le requiert doublement, comme vecteur de ce déploiement et attestation, à travers les résistances que la mobilisation de l'islam permet de lui opposer, de l'état d'avancement de ce déploiement. Le phénomène apparaît en tout état de cause se décliner sur un spectre très large, de la figure de l'islamiste radical, ennemi déterminé de l'Occident, à l'émergence d'un "islam de marché",¹⁶ en passant par la progressive mise en place d'un "islam européen", tendant à s'éprouver comme islam authentique dans l'environnement culturel où il se trouve plongé (donc au-delà du fait que cet environnement lui serait étranger).

Mais cette "mondialisation de l'islam" n'est jamais que l'une des facettes d'un processus large conduisant, via l'explosion de l'offre de croire, à la concurrence sévère qui règne aujourd'hui sur le marché des biens symboliques.

La pluralisation généralisée de l'offre religieuse, susceptible d'avoir un effet non négligeable sur l'évolution de la demande, entraîne aussi une inévitable relativisation des contenus donnés à croire. En fait, cette pluralisation de l'offre religieuse alimente, sur fond de transformation du rapport au symbolique (non plus organisé par la référence à une norme mais requis de fournir à l'individu les éléments dont il a besoin à des fins de construction individuelle - et individuellement validée - d'un rapport au sens, au monde, à l'autre, à soi), cette crise du croyable qu'évoquait Certeau : trop d'objets offerts à croire, incapacité de ce fait de ces objets de susciter de la croyance, faute de crédibilité, et dès lors mise en évidence du caractère limité de la capacité de croire en mesure d'investir les objets qui lui sont proposés. Cette crise du croyable n'affecte pas le seul religieux et n'est évidemment pas en rapport avec les seules évolutions de ce religieux. On peut même considérer qu'elle touche encore plus nettement le politique. De ce point de vue, l'effondrement du communisme (comme entreprise visant, on l'a souligné, à gager le rapport au politique sur la référence légitimante à l'utopie) a joué un rôle sans doute décisif¹⁷ (Hobsbawm a, dans cette perspective, certainement raison de faire s'achever le XX^e siècle en 1989 contre ceux qui ont, ultérieurement, cru pouvoir présenter le 11 septembre en événement tournant).

Elle n'est également pas sans effet sur la pertinence reconnue aux marqueurs mobilisés à des fins de construction des dispositifs identitaires, la dérégulation qui en découle se donnant à voir dans le questionnement des "identités" et dans la substitution de sociabilités horizontales, déterminées

¹⁶ Patrick Haenni, *L'islam de marché - L'autre révolution conservatrice* (Paris: Seuil, 2005).

¹⁷ Michel, *Politique et religion*.

par l'adhésion, aux sociabilités verticales structurées par l'appartenance. Aux premières correspond un "religieux-héritage", aux secondes un "religieux-option", auquel est étroitement associée la "conversion".¹⁸ Le religieux apparaît, en tout état de cause, ici, requis, et mobilisé, à différents niveaux, à des fins de gestion des effets déstabilisateurs induits par cette dérégulation.

Emplois et réemplois contemporains du religieux constituent, dans cette logique, autant d'éléments de mise en évidence du brouillage des repères qui permettaient de distinguer entre espace public et espace privé. Alors même que les mouvements fondamentalistes manifestent "la dimension éminemment privée et individuelle de la foi moderne" ces acteurs religieux, "en investissant l'arène publique pour se tourner vers les instances gouvernantes sur un mode revendicatif", signalent — souligne Camille Froidevaux-Metterie, reprenant la formule de José Casanova¹⁹ — un processus inédit de "dé-privatisation de la religion", dans des contextes pourtant "précisément définis par le cantonnement privé du religieux".²⁰ Les multiples débats ouverts dans divers pays européens sur les codes vestimentaires, et plus largement sur la visibilité du religieux (les "signes ostensibles") attestent cette évolution, comme d'ailleurs la réindifférenciation, dont elle résulte et qu'elle amplifie, des champs religieux et politique.

Le religieux constitue un espace où sont mis en lumière les redéploiements induits par l'accélération de processus allant au-delà de lui. Incarnant cette accélération, la globalisation, au principe d'une désarticulation des sociétés, représente, selon la formule de Pierre Bourdieu, "un mythe, au sens fort du terme, un discours puissant, une "idée force", une idée qui a de la force sociale, qui obtient la croyance. C'est - ajoutait-il - l'arme principale des luttes contre les acquis du *Welfare State*".²¹

De la formule de Bourdieu, on retiendra en premier lieu, l'importance accordée au mythe, où l'on retrouve la perspective qui était celle de Claude Lévi-Strauss, définissant celui-ci comme *une vigoureuse protestation contre l'absence de sens*. Il y a là émergence d'un paradigme nouveau, porteur d'un sens — dans la double acception du terme: orientation et signification — auquel tout un chacun est requis d'adhérer et supposé se plier.

En second lieu, l'accent mis sur le fait qu'au-delà de tout contenu, ce qui est d'abord engagé participe d'une relation au croire. C'est à dire que la

¹⁸ Patrick Michel, "Elements for a semiotics of 'conversion'", in *Conversion in the Age of Pluralism*, International Studies in Religion and Society (ISRS) 17, Giuseppe Giordan, ed. (Leiden: Brill, 2009): 73-89.

¹⁹ José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994).

²⁰ Camille Froidevaux-Metterie, "Comment l'esprit de religion défie l'esprit de laïcité", *Critique internationale* 44 (2009): 13.

²¹ Pierre Bourdieu, "Le mythe de la "mondialisation" et l'État social européen", Intervention à la Confédération générale des travailleurs grecs, (GSEE) à Athènes, en octobre 1996, *Contre-Feux* (1998): <http://www.homme-moderne.org/societe/socio/bourdieu/contrefe/mythe.html>

logique en cause ici renvoie à la capacité de prendre en compte une posture résultant d'un *besoin* de croire et de satisfaire les attentes qui en résultent.

En troisième lieu, le soulignement de la volonté d'en finir avec une certaine forme d'État, historiquement construite, non dans la perspective de l'abolir, mais d'en transformer profondément la nature. D'instance ultime, l'État devient, dans le cadre de la globalisation, un simple mécanisme d'un ensemble infiniment plus complexe. Pour rester dans la perspective de Bourdieu, la globalisation constitue une rhétorique visant à déposséder les États, en grande partie dépassés face aux transformations auxquelles ils sont confrontés, de leurs prérogatives classiques, et notamment du rôle auquel ils prétendaient en matière de production d'une "identité" et de contrôle de celle-ci.

Le religieux est bien évidemment convoqué ici. Dans le cas des Églises néo-pentecôtistes, la logique est poussée très loin puisque aussi bien ces Églises, en s'appropriant les valeurs de l'individualisme, du marché, de l'argent, du fonctionnement managérial, s'auto-attribuent une fonction d'articulation de l'économique, du social et du politique, ce qui revient à assigner au religieux une fonction fédératrice de l'ensemble des différents sous-systèmes.

L'utilisation du religieux sur terrain politique, sans qu'il soit nécessairement besoin de référer cette utilisation à une foi et à un contenu de croyance, induit du fait même des spécificités du registre utilisé, une manière de voir le monde, de se représenter l'autorité et d'exercer le pouvoir. Elle oriente les programmes politiques, prétend redéfinir la normativité et verrouiller, puisque s'adossant à un absolu non négociable les régimes de vérité. Mais si le discours est articulé à partir du religieux, la démarche s'inscrit clairement dans le registre du politique, s'assignant le pouvoir pour objectif et la transformation des sociétés comme programme.

Ce n'est en fait là pas le religieux qui passe au politique, mais le politique qui, transitant par le religieux et captant à son profit l'opérationnalité plus grande prêtée à ce qui se réfère par essence à une légitimité ultime, se transforme en religion pour se redéployer comme politique. La religion n'apparaît jamais là que comme un moyen²² et un alibi, au sens fort du terme: ce lieu autre convoqué à seule fin de fournir la justification dont le fondamentalisme politique a besoin.

Le problème est-il dès lors des risques que le religieux ferait courir au politique? De la façon dont les contenus et dynamiques propres au religieux, ou à un certain type de religieux, appliqués au politique, l'informerait, pèseraient sur ses redéploiements et le menaceraient de perversion? Ce que

²² Comme le souligne Neal Gabler: "la tolérance politique ne fait pas le poids face à la véhémence religieuse". Voir "Le conservatisme, une nouvelle religion", *Los Angeles Times*, repris in *Courrier International* (17 décembre 2009): 998-999.

l'on observe, notamment aux États-Unis,²³ semble précisément participer d'un processus inverse, à savoir une appropriation par le politique des logiques du religieux pour se déployer, comme politique et non comme religieux, sur la scène. Comme le note Neal Gabler, le conservatisme est ainsi passé, au terme d'une évolution résultant moins de l'alliance entre la droite et les protestants évangéliques que "d'une conviction si inébranlable qu'elle ne souffre aucune opposition politique ...d'un mouvement politique à une sorte de fondamentalisme religieux".²⁴

Ce fondamentalisme, contraire à l'idée même de concessions, de compromis, de respect des droits de la minorité, d'acceptation de se plier au vote de la majorité, repose — souligne l'auteur — "sur des vérités immuables qui ne peuvent être négociées, faire l'objet d'un compromis ou changées", de sorte qu'il est "diamétralement opposé à la démocratie libérale telle que nous l'avons pratiquée aux États-Unis". Et Gabler de conclure: "quand la politique devient religion, chaque décision politique devient une affaire de vie ou de mort", "toute bataille politique est une croisade, une guerre sainte, une question de bien et de mal".²⁵

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²³ On notera d'ailleurs au passage que la sur-utilisation de la religion dans le discours politique et social aux États-Unis ne devrait pas faire illusion. Stephen L. Carter soulignait, dans *The Culture of Disbelief* (New York: Basicbooks, 1993): 44-45 ; combien la "religion" y était devenu un lieu commun, le sens même du mot, frappé de "trivialisation", posant problème: "que l'espace public soit saturé par la religion ne signifie pas que la religion soit prise au sérieux; et la présence de la rhétorique religieuse dans la vie publique n'implique pas que les citoyens à qui cette rhétorique s'adresse lui accordent le respect qu'elle serait susceptible de mériter". La religion devient un instrument de disqualification de "l'autre", dans une situation où 85% des Américains se pensent comme appartenant à une nation chrétienne: Carter relevait le silence fait autour des autres confessions, et surtout autour des juifs. Cette appréciation conduit à clairement poser la question de la diffusion du protestantisme conservateur dans le registre qui est le sien, à savoir le registre politique et idéologique.

²⁴ Gabler, *Courrier International*, 998-999.

²⁵ *Ibid.* 998-999.

Four easy pieces and a coda: Rhetoremes of justice

Philippe-Joseph Salazar

To reflect on justice and rhetoric is a minefield, or a field littered with commonplaces. However, rhetoric, as hermeneutic, accompanies justice, right from its very first steps into this minefield: as I have described it elsewhere through a close reading of the opening sentences of Aristotle's *Rhetoric*, in Kantian terms rhetoric is condition of possibility of justice.¹ To do rhetoric is to pay attention to attitudinal situations shaped by social situations of exigency, and words as mental institutions in the sense lent them by.²

Post-societies entertain a special relation to justice via dissent. If dissent, refusing to make the same sense of the State as the State requires for a sense of justice, is a common feature of totalitarian or police or falsely liberal regimes, democracy, as post-society, requires nonetheless consensus. It performs this exigency through those new, soft, acceptable forms of coercion called conflict resolution or consensus building or simply "the popular view". In post-societies, democratic ones, dissent is thus framed by rhetorical stratagems whereby a sense of justice is considered better served by enforcing a democratic common sense. Dissent, private dissent, vociferous dissent, against the grain dissent, a-narchic dissent from democratically enforced common sense are negatively perceived as "perverse" (literally a "path" that cuts across the common path of meaning) or "not constructive", or self-indulgent, unless they are already formed through an assent to communitarian views, commodity values, legitimated opposition. In short, real dissent challenges justice.

In post-, democratic, societies, a rarefied field, dissent from a perceived, received, conceived sense of justice is a game with exigency, that is with that which, in rhetoric, is called a "the rhetorical situation" whereby more than communication is set in motion: that is acts, performatives acts, of solution-scenarios that side-step dogmatic or accepted consensus.

To re-use Lévi-Strauss's notion of "*mythème*" that is stories and actions that express a unit of signification which, in turn, sheds light on behaviours and beliefs, to do rhetoric is to pay attention to rhetorical catagoremes (not Kantian, of course), or "rhetoremes".

Rhetoremes may help us go to the foundation and, within language as presence to the world, and rhetoric as presence to the *polis*, to trace, for what concerns here today, the site of dissent. In brief, to follow the path given

¹ Philippe-Joseph Salazar, "Rhetoric χ Rhetoric, or Rhetoric's Chiasm (being a unscrupulous meditation upon Deleuze, Miró and Rhetoric 1354a 1-11)", in *Chiasmus in the drama of life*, Boris Wiseman *et al.* (New York: Berghahn, 2011 forthcoming).

² Émile Benveniste, *Vocabulaire des institutions indo-européennes* II (Paris: Minuit, 1969).

by Heidegger: “The original meaning of “rhetoric” has long vanished. As long as we forget to ask the question of the concrete function of Aristotelian rhetoric, we lose the fundamental possibility of its interpretation and to perceive through it <the *Rhetoric*> that rhetoric is nothing else but a discipline whereby the *Dasein* interprets and expresses itself by itself” (my translation).³ My take on the subject is therefore different from that of Nancy Fraser when she tries to deal with the mapping of “abnormal justice”.⁴

§1. My first remark is by reference to a discussion some of the contributors to this issue of AYOR had among themselves regarding l' *État de droit* in South Africa and Romania. It flowed from the premises that the sense of justice and injustice is worth questioning after the advent of the rule of law, the *Rechtstaat*, l'*État de droit*. Apartheid, as far as I am aware, was not a *Rechtstaat* but rather a *Polizeistaat* where the law was an instrument in the hands and at the service of a parliamentary oligarchy, and whose domination knew only limitations they accepted, now and again, are arguable (separately from the fact that argument would lead, or did not lead to a policy change — such as the South African First Republic's prohibition of multi-racial marriages, or ownership of land). The South African First Republic pre-democratic was, in terms of natural justice, an unjust state of affairs and, in terms even of sovereignty, a state that constantly bordered on illegality, notably in foreign affairs and internal emergency regulations. However, with the advent of democracy and the Second Republic a sense of injustice has developed, which has no longer the same roots since South Africa is a legitimate state by current international standards, and a legitimate democracy by the same standards. Yet, there is dissent, and a sense that hopes in a just society, what ever it may mean, has not been fulfilled.

What is the rhetorical propinquity between “State” and “dissent”? Both words share a same origin: the *State* is that which makes a society *stand*, gives it a political *status* with regard to other states. For a nation to assume statehood is, literally, *to stand up* and be counted, in the belief, of course, that statehood provides the sort of benefits sovereignty is supposed to afford. Dissent is not different: from *stasis*, in Ancient Greek, dissent is both what we know, a belief for which we can, or should, depending upon the moral imperative or peer coercion, stand up; and a *status causae* as the Latin says, the act of stating rhetorically one's case and to do it in such a way that

³ Martin Heidegger, “Grundbegriffe der aristotelischen Philosophie: Marburger Vorlesung Sommersemester 1924”, in *Gesamtausgabe 18*, Mark Michalski, ed. (Frankfurt am Main: Klostermann, 2002): 110.

⁴ Nancy Fraser, “Who Counts”, http://www.transeuropeennes.eu/en/articles/201/Who_counts, [accessed April 2011]. Also in *Rue Descartes* 67 (2010): 50-59 (special issue Rada Ivekovic, ed.).

the statement of the stance can withstand verbal criticism or material violence — secured, under the rule of law, by freedom of speech and physical protection (*stasis 1*). However, one's stance challenges indeed the *status quo*. Dissent, in essence, challenges state. In its extreme form, when the cause made by a stand cannot be negotiated through argument, *stasis 1* leads to *stasis 2*, that is revolt and revolution, partly or wholly upsetting the State.

In short, dissent and State are on the same rhetorical vector, yet at two opposite points. In other words, behind dissent there is always the State, the desire of the State, the *dasein* of the State, to recall Heidegger. As a rhetorician, I cannot look at dissent without questioning the stories that feed a stance, the moment of the "surrection", the site of the challenge, and I cannot not perceive through a position of dissent a call that goes to the heart of the State.

My job, as it were, is to trace where the stance falters, how and why it does not achieve its form, and how it consumes its energy in derivative activities, and what shapes this faltering adopts. This is the first rhetoreme.

§2. My second remark concerns justice and dissent. Again, I pay attention to the words and I cannot not observe an analogy. To dissent is to judge. One cannot discard this node.

In an act of dissent, especially when "hope" regarding a "sense of justice" is concerned, a judgment is passed on justice. We, as taking a stance, pass judgment. Naturally, the forensic nature of acts of dissent is often obscured by deliberative (policy-making) or demonstrative actions. Nonetheless below the froth there is the fluid reality that, because our sense of justice has been hurt, we make a stand and we dissent in order to restore at least the "sense of" if not justice itself.

This is why, I suggest, stances of dissent often develop into aesthetic events, events of pure perceptions and shared aesthesis, to use a Kantian terminology. If to judge is relevant to the Kantian faculty of subsuming according to rules, we have to ask ourselves, what rules come into play in political or social dissent. This is the second rhetoreme.

§3. My third remark concerns the intention of dissent, when *stasis 1* glides along the vector toward *stasis 2*, that is, toward a critique of the State which may be regarded as a direct challenge, perhaps even an upset. With regard to justice, it is clear that judgment passed by an act of dissent is a censoring judgment: in one clean swoop the censorial function of the State has been taken up by a dissenting group or individual.

Benveniste explains how the lexicon for "to speak" and "to have authority or power" is originally so compact that these words are

interchangeable.⁵ “To speak”, “to speak up”, is “to exert authority” or power. It is essentially performative. The interest here, again, is not philological or historical but in what we learn from it.

A striking example is the noun *ensor*. It denotes the outcome of a process by which “to speak” has acquired a narrow specific meaning, referring to a specialized action of *auctoritas*. The verb *censeo* has moved, as it were, from meaning “to speak/to have power or authority” (like all verbs related to its paradigm) to what we attribute today to “to censure”. In other words, if dissent borders on censoring, the question that arises for a rhetorician, is that of the will to authority that animates it, and the will to power.

As Benveniste notes although in early in Roman history the verb *censeo* qualified highly specialised actions (formal census that set the tax rate in order to maintain the State and avoid corruption, in short: fiscal justice), it did retain a general meaning, “to give advice”.

However this general meaning carries some heavy baggage, which, I believe, is not without interest for our purpose. Livy, in a much quoted passage, makes it clear that *censeo* entertains a special relationship with declaring war (Livy I, 32, 11-12). It forms part of a verbal ritual, a rhetorical chain that produces the evidence that war must be declared — think of the censorial show of “evidence” by General C. Powell at the UN to legitimate the invasion of Iraq.

As recorded by Livy, the *censeo* process is as follows: the *rex*, “king”, asks each “conscript father”, each senator (they are not *censores* by function), *Dic quid censes*, “Tell what you think of it/ Give your advice/Speak your mind”. If each father of the republic answers *Puro pioque duello quaerendas [res] censeo*, “I believe/I am of the opinion that our due must be sought through a just and pious war”, war is declared. In sum, we are dealing here with the deepest, I believe, intent of any dissent, that is to declare war or to declare that a prevailing injustice is a war already declared on us - an act of political piety.

Indeed, the question of war as an act of censure is not military but has to do with ethics, and justice. To propose “to declare war” is to affirm that for war to be, the utterance must refer to what is “owed” (*res quaerendas*), and, in the same breath, to the nature of the claim/utterance/advice: *purum piumque*, in other words, “spotless” and “respectful of godly/familial duties”. It is not “war” that is declared in *censeo* but the affirmation that what is owed, the *res* due to the *respublica*, must be sought. *Censeo* possesses a strong denotative meaning: to help perform, with others of the same quality as us by virtue of a grouping, the just and correct act of preserving through war/revolt,

⁵ Benveniste, *Vocabulaire des institutions indo-européennes* II, 143-151.

what is owed the wider community, whether the wider community wishes it or not, or has the means to take shape as a wider community.

This is usually what underpins most popular revolts: we must reclaim what is owed us, and restore the just order of things political on behalf of the wider majority. It delivers a judgement about the *respublica*, an affirmation of its projected integrity. Such is the third rhetoreme.

§4. My final remark concerns actors of dissent who make a stand in the name of a sense of justice. In rhetoric, to make a stand is to apportion blame and perhaps praise, in any event to perform values. An act of public dissent says as much about the content of the claim as it does about the ethics of those who perform the claim. To a large extent the validity of a dissent is judged by onlookers through the public conduct of dissenters. In short: an act of dissent performs the inner ethics, the Kantian rules as it were, under which judgment has been passed on the Law, leading to the act of dissent (“if you behave badly during a *stasis*, this is indicative of your “real” values”).

Indeed, beneath *censeo* there is a verbal theme, **kens*, “to proclaim solemnly”, “to praise” — praise, as in the public proclamation of values, material or moral. They bring argumentative sustenance to the reality of material well-being. Declaring war, as we call it, brings forth a *censeo* action, both an affirmation of a necessity to recover what is owed and of its justice. In our case is a *rebel* s/he who is qualified as the one who can also “proclaim”, and distribute praise or blame, because s/he wages a counter-war (*rebellare*), a dissent.

In that sense, “to proclaim” dissent is an act of authority, perhaps of power. The stress is not placed on the object (to proclaim *something*) but on the verb and on its action: proclaiming. S/He who proclaims, in the absolute sense of the verb, acts authoritatively. And, by implication, “to proclaim” is “to censure” by dissent. To disentangle, in an act of dissent, the authoritative intent and effect (a “mandate”) from the will to power, is a task set to rhetoric.

That is the fourth rhetoreme.

To round off these Four Easy Pieces with a coda. I turn to Mary Douglas as rendered by Romain Laufer in his recent study of dogmatism in legal and social theory, with specific reference to what he terms “sophism”:⁶

“Mary Douglas...approaches the question of the role played by dogmatic ideas in the life of democratic societies. In an article entitled “Dealing with uncertainty,” she writes: ‘Certainty is not a mood, or a feeling, it is an institution: this is my thesis. Certainty is only possible because doubt is

⁶ Romain Laufer, “New rhetoric’s empire: Pragmatism, dogmatism, and Sophism”, *Philosophy & Rhetoric* 42, 4 (2009): 333-334.

blocked institutionally: most individual decisions about risk are taken under pressure of institutions. If we recognize more uncertainty now, it will be because of things that have happened to the institutional underpinning of our beliefs. And that is what we ought to be studying. . . . We need certainty as a basis for settling disputes. It is not for intellectual satisfaction, nor for accuracy of prediction for its own sake, but for political and forensic reasons. . . . The problem is not knowledge but agreement. . . . A liberal democracy . . . needs authority to back interpretation and control dissent. . . . The most fundamental idea which upholds the possibility of society, more fundamental even than the idea of God, is the idea that there can be certain knowledge. And this turns out to be extraordinarily robust, passionately defended by law and taboo in ancient and modern civilization".⁷

Laufer glosses Douglas by breaking down her text into six propositions:

1. There is an intimate relationship between the notions of certainty and the notion of institution.
2. In a democracy, certainty relies on some dogmatic proposition backed by some authority.
3. The authority that is allowed to 'control dissent' in a democracy can be described as relying on law and science. One is able to recognize in it a form of Max Weber's legal-rational type of legitimate authority (as opposed to the charismatic or the traditional types of legitimate authority).
4. There is a dynamic mechanism that allows the historical process of institutional transformations to be explained, and that mechanism leads to a situation in which uncertainty has to be recognised explicitly.
5. The fact that certainty is 'passionately defended by law and taboo' may explain the ambivalent attitudes developed toward sophism in times of uncertainty.
6. It is possible to study these processes by following 'institutional underpinning of our beliefs'."

Combining the four rhetoremes I have outlined with Laufer's rendering of the power of certainty is, in my view, a challenge set to rhetoric in coming to terms with the justice of dissent in post-societies.

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⁷ Mary Douglas, "Dealing with uncertainty", *Ethical Perspectives* 8, 3 (2001): 145-147.

The liberation legacy: literalist and normative torchbearers battle for the post-society economy

Garreth Bloor

The nationalisation of the mines, banks and monopoly industries is the policy of the ANC, and the change or modification of our views in this regard is inconceivable.

— Nelson Mandela¹

The legacy of historical narrative

Racism is a product of capitalism.

— Michael Parenti²

Apartheid is classified by some as a system of exploitation by capitalist forces of production, by which racism is a by-product of class conflict, used by the oppressor as a justification for oppression.³ The ANC emerged to take power after South Africa's peaceful negotiations in 1994 following a legacy of rhetorical appeal that backed a socialist-oriented alternative to the apartheid system. The economic manifestations of it were understood as capitalism or the open market.⁴ Any acceptance of the capitalist system in a post-democracy period would, in the light of this trajectory, constitute a continuation of the effects of oppression, whereby the starting point for economic behaviour is a legacy of an unjust structural arrangement.⁵

The transition from apartheid to democracy in South Africa remains fraught with perpetuating levels of socio-economic inequality according to critics, despite legal equality and Constitutional freedoms granted in law.⁶ Into

¹ Nelson Mandela, "ANC leader affirms support for state control of industry" (London, *Times*, January 26, 1990).

² Michale Parenti, *The culture struggle* (New York: Seven Stories Press, 2007): intro.

³ William Mervin Gumede, *Thabo Mbeki and the battle for the soul of the ANC* (Cape Town: Struik Publishers, 2005): 33-39, 69.

⁴ Ismail Vadi, *The congress of the people and freedom charter campaign*, foreword by Walter Sisulu (New Delhi: Sterling Publishers, 1995); also see: <http://www.sahistory.org.za>: accessed April 2011.

⁵ Nelson Mandela, "ANC leader affirms support for state control of industry", *The Times* (January 26, 1990).

⁶ Mark Horton, "Role of fiscal policy in stabilisation and poverty alleviation," in *Post-apartheid South Africa: the first ten years*, Michael Nowak and Luca Antonio Ricci, eds. (Washington D.C.: International Monetary Fund, 2005): 84.

this context, how has the South African government successfully tied economics realities and fiscally conservative macro-economic policy to the overall notion of justice in a post society, given the historical pledges?⁷ This paper seeks to present the rhetoric as one of ends versus means, whereby the Freedom Charter becomes a statement principle as opposed to one of action. The question is asked as to how the rhetorical normative socialist notions imbued in ANC speech and legislative proposals in the pre-1994 period gain widespread acceptance of macro-economic liberalism since 1994?

Lending populist appeal to macro-economic liberalism

In Aristotle's *rhetoric*,⁸ the ethos⁹ of the market-based macro-economic framework was a critical component of rhetoric making. Nelson Mandela's reconciliatory moment¹⁰ was a basis for which economic concessions to the principles of the Freedom Charter's demands for state control could be adequately accepted as legitimate in the eyes of ideological opponents within the tripartite alliance. Coming to the view that South Africa could not succeed in a globalisation economy without an open market economy,¹¹ the basis of the Freedom Charter evolved to that of a policy objective, not a policy statement.¹²

Has "opportunity" in the context of democracy replaced the social democratic promises of guaranteed basic deliverables as a starting point for material (economic) justice? And how do proponents of economic policy on both sides of the economic debate advance a rhetoric of justice in their policy orientations?

This paper will argue that the government has by necessity increasingly sought to advance a mildly refined definition of justice to match a macro-economic context demanded by the global economy. To achieve this

⁷ In order to qualify success in the political context of voter support.

⁸ Johann De Wet, *The art of persuasive communication: A process* (Cape Town: Juta, 2010).

⁹ Ethos as one of the three artistic proofs refers to the moral competence of the speaker in advancing the persuasiveness of the message. See: De Wet, *The art of persuasive communication*.

¹⁰ Philippe-Joseph Salazar, *An African Athens: Rhetoric and the shaping of democracy in South Africa*. (London: Routledge, 2002).

¹¹ Accounts collected by journalist Naomi Klein from academics like Patrick Bond indicate the change in Mandela's economic opinion was laid at the World Economic Forum in Davos in 1993. In William Gumede's account, when Mandela pointed out that South Africa's state-driven economic plans involved nothing more radical than what Western Europe had done under the Marshall Plan after the Second World War, the Dutch minister of finance dismissed the parallel. "That was what we understood then. But the economies of the world are interdependent. The process of globalisation is taking root. No economy can develop separately from the economies of other countries".

¹² Gumede, *Thabo Mbeki and the battle for the soul of the ANC*, 33-39, 69.

balance between descriptive policy and normative goals, the ANC has been required to satisfy legitimacy.

The problem facing ANC discourse was the need to meet the expectations of socialism with the necessary economic measures to ensure the country's successful transition into the global economy. Successive leader Thabo Mbeki was required to affirm the normative values of the Freedom Charter while communicating the principles of the market economy. Nelson Mandela did so by using his status as a reconciliatory symbol to persuade audiences of the necessity of broadly economic liberal principles as part of the principles for the attainment of democracy.¹³

Mbeki's prerogative was undermined by a continuation of the old logos inherent in the socialist appeal¹⁴ and the failure to improve micro-economic conditions alongside a new rhetoric of upward mobility. This prompted popular opposition and a battle to reclaim the notion of the Freedom Charter as a plan of action, not an ethos. The divisions within the ruling government between two split views emerged in conflict over economic policy positions.¹⁵ Thabo Mbeki however sought to advance the about turn of Mandela on economic policy and centralised leadership in the party in order to do so.¹⁶

In his address to the trade union FAWU (the Food and Allied Workers Union), Thabo Mbeki moves away from the Freedom Charter as a structured political policy, but rather envisages it as an ethos for which he congratulates his audience: they have upheld it.¹⁷ Thus in this context, the Charter becomes a matter of principle that has already been achieved, implicitly without the required procedures nationalisation or any socialist policy that had previously been understood as integral to the attainment of a post-liberation socio-economic end.

He tells his audience that the advances made in South Africa's democracy are indeed part of the struggle, ensuring they understand the ANC's legitimate continuation of the grievances of worker exploitation for which the union was established:

¹³ See 'Behind the rainbow', <http://multimedia.timeslive.co.za/trailers/2008/11/behind-the-rainbow/>: accessed April 2011.

¹⁴ Understanding reason as the constructed reaching of conclusions on the basis of accepted premises, the notion of logos in this context refers to the socialist worldview or understanding of reality. In it the logic of capitalist oppression could only be solved by its elimination in favour of a socialist state. See: The Manifesto of the South African Communist Party (SACP), 1921, <http://www.sacp.org.za/main.php?include=docs/history/1921/manifesto21.html>: Accessed April 2011.

¹⁵ See <http://www.leadershiponline.co.za/articles/other/273>: accessed April 2011.

¹⁶ Gumede, *Thabo Mbeki and the battle for the soul of the ANC*, 33-39, 69.

¹⁷ Thabo Mbeki: <http://www.polity.org.za/article/sa-mbeki-66th-anniversary-and-2007-national-conference-gala-dinner-and-award-ceremony-of-the-food-and-allied-workers-union-address-14092007-2007-09-14>: accessed April 2011.

“These achievements should not be seen outside the continuum of the historical struggles and events in which FAWU took an active part. The gains we have made are a manifestation of the vision espoused and advocated by the founders and leaders of FAWU”.

Mbeki attempts to do what James Boyd White is attempting, he “is trying to construct a new world and persuade his or her readers to share in it”.¹⁸

Rhetoric: aid to the divided interpretation

I argue that the debate that has emerged in public discourse between two essential readings of the Freedom Charter. One which saw it as a normative goal and prescriptive statement, and the other which backed the ethos of the document but did not accept it as a description of policy, but rather as a guide. A document offering a spirit by which laws could be made.¹⁹ The second reading came to dominate the ANC under the three successive presidents, while the literal interpretation remains a point of contention. While not always in political harmony, the ANC Youth League is the most prominent organisation holding to the literal reading of the Freedom Charter as a plan of action.²⁰

The ANC’s challenge to communicating a normative or what I shall term spirit-based reading of the Freedom Charter was complicated by initial stages in the movement’s rise to power beginning in the 1990s. Nelson Mandela wrote from prison shortly before his release that there could be no liberation without the nationalisation of the mines, financial sector and key resource areas of the economy.²¹

“The nationalisation of the mines, banks and monopoly industries is the policy of the ANC, and the change or modification of our views in this regard is inconceivable. Black economic empowerment is a goal we fully support and encourage, but in our situation state control of certain sectors of the economy is unavoidable”.²²

¹⁸James Boyd White, *When words lose their meaning* (Chicago: University of Chicago Press, 1985).

¹⁹ See Leon Louw, “Analysis of the ANC Youth League’s nationalisation proposals”, in *Nationalisation*, Temba Nolutshungu, comp.

²⁰ See Malcom Rees, “Nationalisation gains traction”: <http://www.citizen.co.za/citizen/content/en/citizen/business-news?oid=171145&sn=Detail&pid=146820&Nationalisation-gains-traction>: accessed, April 2011.

²¹ Patrick Bond, *Unsustainable South Africa: environment, development and social protest* (London: Merlin Press, 2002).

²² See Naomi Klein, “A democracy born in chains”, in *The shock doctrine: the rise of disaster capitalism* (New York: Metropolitan Books, 2007).

These words are not lost on a literalist reader of the Freedom Charter. The ANC government rose to power understanding that the principles of its economic policy would be encompassed in a socialist plan of action: the Reconstruction and Development Programme (RDP). The policy however was short-lived and from the office of Nelson Mandela the announcement of a new growth trajectory emerged. GEAR, created under the close eye of then future president Thabo Mbeki, proposed spending through investment, a balanced budget and a sound economic environment that was business-friendly, consistent with the requirements of international finance and the incentives required for foreign direct investment.²³

What then extols a re-emergence of the rhetoric of nationalisation given the two decades of macro-economic liberal policy? Acquiring popular support on the basis of audience perception becomes a key tool for the literalist reading of Julius Malema. The pathos is to a document birthed in an historical struggle, ethos is the appeal of the Youth League leader to his intention to follow the words of struggle leaders and pathos is achieved in the appeal to unjust economic conditions still present amongst the poor in the country.

Left-wing academic Patrick Bond's explanation of the reality of a failure to follow the literalist reading of the Freedom Charter, regardless of disputed methodology and conclusions, does represent an understanding of what may allow for popular appeal of a socialist objective in the post society of South Africa.

"To promote a peaceful transition, the agreement negotiated between the racist white regime and the ANC allowed whites to keep the best land, the mines, manufacturing plants, and financial institutions. There were only two basic paths that the ANC could follow. One was to mobilise the people and all their enthusiasm, energy, and hard work, use a larger share of the economic surplus (through state-directed investments and higher taxes), and stop the flow of capital abroad, including the repayment of illegitimate apartheid-era debt. The other was to adopt a neoliberal capitalist path, with a small reform here or there, while posturing as if social democracy was on the horizon".²⁴

²³ Asghar Adelzadeh, "From the RDP to GEAR: the gradual embracing of neoliberalism in economic policy", *Transformation* 31 (1996), in Gumede, *Thabo Mbeki and the battle for the soul of the ANC*, 72.

²⁴ Patrick Bond, *Unsustainable South Africa: environment, development and social Protest* (London: Merlin Press, 2002).

Original intent

In the view of the ANC Youth League therefore, the economic trajectory formed part of the negotiation and necessary compromises required for a temporary period in order to gain the peaceful transfer of powers.

Julius Malema tells an audience at the Mining for Change convention last year that “those of who oppose nationalisation of mines, are in actual fact opposing what Nelson Mandela, Walter Sisulu, Govan Mbeki and many others were imprisoned for”.²⁵ While Nelson Mandela’s rhetorical moment emerges as the basis for a non-nationalisation agenda, Malema draws on the logos of history²⁶ and the ethos of struggle²⁷ emotion to drive home his point, the belief that nationalisation is an economic end that cannot be legitimately opposed.²⁸

“Those who oppose mines nationalisation in the ANC are opposing what O.R. Tambo, Robert Resha, Patrick Maoloa were exiled for. They are opposing what Chris Hani was killed for. Chris Hani was killed because he was not ready to sacrifice the Freedom Charter, and we will never betray him.”²⁹

The relationship however between the actual post-democracy framework, GEAR and South Africa’s economic failings does not merit the failure of economic liberalism necessarily the official opposition points out, given that micro-economic reforms to stimulate new businesses that drive economic growth were absent.³⁰

But the rhetorical device which remains central to advancing Malema’s objective is powerful. If Palmer could write that modern states commemorate the dead as Pericles did in order to maintain their own sur-

²⁵ Julius Malema, speech delivered on 7 September 2010, Sandton Convention Centre: <http://www.ancyl.org.za/show.php?id=5579>, accessed April 2011.

²⁶ The Manifesto of the SACP, 1921: <http://www.sacp.org.za/main.php?include=docs/history/1921/manifesto21.html>: accessed April 2011.

²⁷ By Malema’s message, the persuasiveness of the nationalisation proposals rest on the moral credibility of its proponents, namely those figures recognised as integral to the legacy of the fight against apartheid.

²⁸ Julius Malema, speech delivered on 7 September 2010, Sandton Convention Centre: <http://www.ancyl.org.za/show.php?id=5579>, accessed April 2011.

²⁹ Julius Malema, speech delivered on 7 September 2010, Sandton Convention Centre: <http://www.ancyl.org.za/show.php?id=5579>, accessed April 2011.

³⁰ Tim Harris, Democratic Alliance (DA) shadow minister of trade and industry’s statement, 15 September 2010: <http://www.polity.org.za/article/da-statement-by-tim-harris-democratic-alliance-shadow-minister-of-trade-and-industry-on-cosatus-growth-path-15092010-2010-09-15>: accessed, April 2011.

vival,³¹ it is clear that actors who want to advance a particular version of the state undertake the same exercise.

The problem ultimately facing the ANC discourse was the need to meet the expectations of socialism with the necessary economic measures to ensure the country's successful transition into the global economy. Regardless of the outcomes relating to these economic matters is the perception of the traditional ANC left who were required to understand fiscally conservative macroeconomic policies as a necessary measure to achieve the normative goals of socialist discourse. Evidently the case of the ANC Youth League is that not all have successfully integrated the new understanding.

The ongoing battle that emerges within the ANC, in the instances of individuals like Malema, sees principal references to the Freedom Charter as a fundamentally literal document and not as a statement of normative ends which it becomes under the post-1994 ANC leadership. This literalist reading brings a core element of the socialist leaning pre-1994 narrative to the fore against the pushing of a post society trajectory.

According to Jeremy Cronin of the SACP, the basis for Malema's argument rests on the inspiring clause in the Freedom Charter: "The people shall share in the country's wealth!" It asserts that: "The national wealth of our country, the heritage of all South Africans, shall be restored to the people; the mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole..."³²

Bond cites the decisions by the ANC during negotiations: to drop "nationalisation" formally from ANC rhetoric, to repay the \$25 billion of inherited apartheid-era foreign debt and to grant the central bank formal independence in an interim constitution.³³

Conclusion

Essentially the term "nationalisation" is a contested term, and is absent or present based on the outcomes sought in the clear sense with which Kenneth Burke describes "New Rhetoric". Since argumentation aims at securing the adherence of those to whom it is addressed, it is — in its entity — relative to the audience to be addressed.³⁴ In each instance we observe competing versions of the Freedom Charter wholly dependent on the desired speech acts demanded by the audience.

In a similar vein Chaim Perelman and Lucie Olbrechts-Tyteca draw

³¹ Kathryn Palmer, "Trauma and the memory of politics", *Rhetoric & Public Affairs* 8, 3 (2005): 516–519.

³² Jeremy Cronin, "Should we nationalise the mines?", *Umsenbenzi Online* (November 18 2009): <http://www.moneyweb.co.za/mw/view/mw/en/page295025?oid=331647&sn=2009+Detail>: accessed, April 2011.

³³ Patrick Bond, in Klein, *The shock doctrine*.

³⁴ Kenneth Burke, *A rhetoric of motives* (San Francisco Berkeley: University of California Press, 1962)

partially for their theory of argumentation on the two concepts: universal and particular audiences.

While every argument is directed to a specific individual or group, it is the agency of the orator that determines what information and what approaches will result the largest degree of adherence, according to an ideal audience. Perelman and Olbrechts-Tyteca offer something of an understanding towards how particular audiences are addressed with universal concepts.³⁵

Thus, as in the case of particular audiences, the universal audience is not fixed or absolute but is dependent on the orator, the content and goals of the argument, and the specific audience to whom the argument is addressed. Based on these considerations, “facts” and “reasonableness” are determined by the orator and thus help to constitute the universal audience that, in turn, shapes the orator’s approach.

It is due to this that the economics principles, which refute the claimed outcomes of the nationalisation process consistently gain traction in audiences where economic process is either ignored or misunderstood.

Overall facts and reasonableness in the case of the literalists and normativists take universal terms, like the “Freedom Charter”, “struggle” and “liberation” and contextualise the meaning specific to the meaning desired. Thus, when the term occurs in a different context, either before or after the speech is given, it is understood in the context of the meaning given to it in the particular speech.

Perelman and Olbrechts-Tyteca argue that all argumentation must proceed from a point of agreement; contentious matters in particular cannot be introduced until sufficient agreement on prior or related issues has already been established. There are two divisions on the basis for agreement: the first covers with facts, truths, and presumptions; the second encompasses values and hierarchies.

The basis for agreement for the blueprint to South Africa’s liberation remains the Freedom Charter. The first basis for agreement is disputed: was the Freedom Charter a policy proposal document or one addressing policy objectives.

Like the battle over the interpretation of scripture that existed between the fundamentalist and the progressive at the turn of the 19th century, the issue will be fought out through rhetorical acts so long as the conflict between widely accepted market economic principles globally, and the notion of economic justice locally, remain unreconciled.

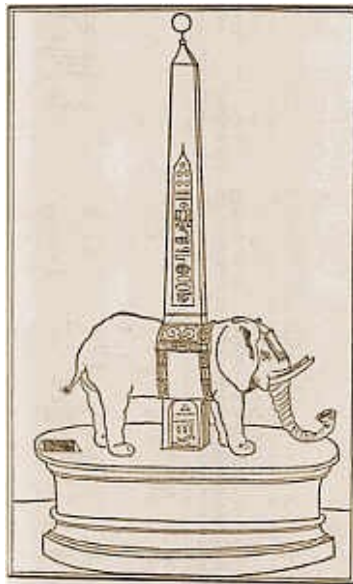
University of Cape Town

³⁵ Chaim Perelman and Lucie Olbrechts-Tyteca, *New Rhetoric: a treatise on argumentation*, John Wilkinson and Purcell Weaver, trans. (Notre Dame, IL: University of Notre Dame Press, 1991).

The Elephant and the Obelisk

About the Special Series of the African Yearbook of Rhetoric

In the fantastical imagination Europe holds of Africa the Elephant and the Obelisk have an enduring presence. During the Renaissance their images lent an African presence to the culture of emblems, not much different in purpose and means from the modern obsession with branding logos supposed to encapsulate a corporation's ethics beyond selling goods. In rhetoric (of which emblems were the visual analogue) the Elephant spoke to the virtue of memory and the prudential value attached to formulating forward-looking arguments heeding past lessons. The Obelisk, not unlike Neptune's trident, emblematised the penetration of wit – a point driven home by its engraved hieroglyphs. Memory and intelligence, prudence and projection, sure footedness and quick sharpness – the Elephant carrying the Obelisk on its back told a telling tale about the distanced virtue European high culture, at the very time of Portuguese descobrimentos, attributed to a continent, Africa which had always been part of it, in reality or in imagination. Africa has always afforded Western minds an occasion to reflect.



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