

Speaking Truth to Reconciliation: Political Transition, Recovery, and the Work of Time

Layers of Betrayal

Over ten years passed between the disappearance of Charity Kondile's son, Sizwe, and her learning what had befallen him. One day she opened up a newspaper reporting on testimony at a commission put together to investigate a counterinsurgency unit of the South African police. In the report she discovered that her son had been apprehended, tortured to the point of having a brain hemorrhage, given poison—which didn't work—then transported to a remote farm and shot, and finally burnt in a fire. In her testimony before South Africa's Truth and Reconciliation Commission, she said:

Well, Dirk Coetzee goes on further to say that when he died, they put his body on a pile of wood with a tyre near the Komatipoort River at night, where it took them nine hours to burn his body. Dirk Coetzee further states that twice they were burning his body, the flesh was smelling good, and they were having beers at the time. So it was like a [barbecue] to them.¹

Her testimony also addressed how the lives of her family had been transformed by their loss: Sizwe's sister suffering from depressive psychosis; a brother so depressed he could not take care of himself; a child left fatherless; and Mrs. Kondile herself, the mother who, instead of being supported by the surrounding community, was treated like a traitor when her son disappeared, because his comrades too quickly assumed he had betrayed his cause. Mrs. Kondile's case shows how complex the layers of betrayal, suspicion, and harm can be in a political struggle. A story will rarely be limited to a tale of good guys versus bad guys. Her anger and sadness were caused by not only the police who killed her son and the government that authorized that killing but also members of her community who believed that he was a traitor and by officials of the government and of community organizations who had not apologized for treating her family unjustly.

It is a dynamic story of loss. Mrs. Kondile did not only lose a son. She lost the sense that she could expect that she and her loved ones would be protected from harm. She also lost the security of living in a community where she could trust that, if she were harmed, she would be helped and her harms recompensed. She lost a world, and so she lost some of the conditions necessary for coherent self-formation.

If we do not take the time to understand that loss, we will not know how that world and that self might be rebuilt. In such conditions, justice will not be seen to be done. Justice, when we think of it as a response to wrongdoing, is engaged in the

diachronic work of redressing a past for the sake of a future that isn't fully determined by past harms—it aims to help us view the past differently. In the past few decades we have seen an explosion of revisionary practices such as transitional justice, political reconciliation, and discourses of forgiveness and restoration. Also in that time, we have seen innumerable law journal and other scholarly articles, as well as newspaper reports, claim that these processes are healing or cathartic for survivors. Many of those assertions were authored anecdotally or hopefully, without the support of empirical data. I do not state that as an accusation, because such data largely did not exist. Empirical studies did not exist because interest in these forms of justice is relatively new, and because the experiences of witnesses have rarely been important to larger political debates.² There now are some studies—using data from South Africa, Sierra Leone, Rwanda, and the former Yugoslavia—suggesting that testifying in institutional settings may be healing for some.³ But there is as much evidence that testifying can reawaken trauma or a sense of injustice rather than help victims find closure.⁴ For instance, one study showed that, in Rwanda, *gacaca* witnesses suffer from much higher levels of depression and post-traumatic stress disorder—up to 40 percent higher—than do nonwitnesses.⁵

The reasons for this are complex and cannot be folded into a neat theory. Thus my aim in this essay is not to offer a full-coverage theory of reconciliation but to show how the implicit liberalism backing most ideas about transition and reconciliation cannot accomplish the goals that those institutions and ideas pursue. Something more is needed. That “something” also will be impossible to contain in a neat theory, given how diverse the sites and histories of human violence are. And so I will begin by focusing on the barest of universalities: that human beings are vulnerable creatures whose selves are formed in relation to others and the surrounding world. What kind of being is a human being such that revision and recovery are possible? What conditions would allow such a being to experience the present moment in such a way that the future is not imprisoned in the past—what sets the present moment free? These questions inevitably bear on law, politics, and human autonomy, but they also range beyond what those things can accomplish, and thus we must look beyond liberal assumptions about autonomy and the rule of law to answer them well.

A Qualification

It should be admitted up front that reconciliation might not be the goal of a community in transition from conflict to peace or cessation of violence. It may be, for reasons widely apparent, that there can be no reconciliation with the enemy. As Michel Feher puts it, “In 1945, everyone would agree, the issue was not to reconcile the Nazis with their enemies and victims but to make reconciliation with Germany incumbent on its rejection of Nazism.”⁶ Reconciliation may also be impossible because of cultural attitudes and histories. As a memorandum of the United Nations High Commissioner for Refugees notes,

In Rwanda . . . the attitude of the government in the years that followed the genocide was to insist on the need for justice. The word “reconciliation” was taboo for those who had survived the genocide, and was never publicly used . . .

In Kosovo, the very word “reconciliation” is so charged for the Albanian community, that it is simply not used.⁷

Finally, no one can dictate to another person or group what can or ought to be forgiven—hence the ambivalence that will always remain in some part of any “officially” reconciling population. We edge up against the real limits of reconciliation most often when reconciliation is conceived as forgiveness and forgiveness is linked to amnesty or amnesia with regard to the past. Even if it weren’t too much to ask of anyone recovering from violence, trauma, and loss, amnesia would be impossible.

What is possible and desirable in each case will vary. Pertinent factors include the history of the institutions and the society; the prospects for community-building; distribution of minority and majority groups, victims, and perpetrators; the involvement of international institutions and NGOs; the amount of time passed since violence; how many were involved in the conflict; whether it was one-sided or there was fighting on all sides; whether the governing power is new or composed of members of an old regime; and so on. These things all affect what is possible, and they vary from site to site.⁸

The differences in how Spain, Poland, Chile, Argentina, and South Africa handled their transitions speaks to this. To draw the differences with broad and therefore reductive strokes: Spain and Poland chose the clean-slate method, drawing a “thick line” between past and present, with the hope that everyone could start anew in conditions of political freedom; Chile pursued the route of disclosure of truth and public apology. Dominant reasoning assumed that it wasn’t possible in Chile to prosecute everyone who had done wrong under Pinochet, in part because the military still had a lot of power, and the evidence was hidden. But on the other hand, Chile couldn’t just wipe the slate clean, because the larger society could not live with letting torturers and oppressors go without punishment. Argentina tried to wipe the slate clean but then came under pressure from citizens to act otherwise. South Africa chose amnesty and truth over criminal trials and punishment. None of these choices has produced unqualified success. All of them have been revisited, some of them many times (as I will discuss later), in response to the people’s need to see justice done and to how perceptions of the “doneness” of justice transform over time.

Take, for instance, the experience, over time, of Jean Améry, a Holocaust survivor. In 1945 Améry felt at one with the world because the world was collectively horrified at what had befallen him. In 1965 he felt as if the magnitude of the loss imposed on him had not been truly marked by the German people. He felt that way for a number of reasons: lack of accountability for those who participated in the brutalities, the impatient attitudes of younger generations of Germans tired of hearing about the crimes of their fathers, and even the silence of his fellow camp survivors.⁹ There are layers of betrayal here, too, as in the Kondile case. Many of the layers in Améry’s case lack discernible perpetrators, which points us to a wider responsibility for the success of reconciliation.

Narratives of recovery and reconciliation may reinscribe oppression by declaring problems solved or by settling on one official story that silences certain flows of history that form the lifeblood of some remaining survivors. Negative or unjust possibilities

append every positive aspiration of conciliative efforts. And we cannot predict with certainty how present-day decisions and compromises will weather the passing of time. Therefore, every argument about reconciliation between persons, groups, and polities recovering from conflict must include serious qualification of assertions approaching universality.

Transitional Justice and the Limits of Universality

We are all vulnerable creatures prey to physical and psychological wounding. We respond to others despite ourselves because of how we are formed, conscious of the world around us. We all need food, shelter, protection, and probably community, love, and help when we are in trouble. How those things look will vary from place to place and person to person; move much beyond this list and universality begins to give way to difference.

For those and other reasons, transitional justice, a diverse set of practices aimed at making the development of democratic governance possible, is relentlessly contextual, operating in widely variant sociohistorical, economic, and cultural conditions. And yet we may still hazard some generalizations: it aims to deal with a past for the sake of creating a present moment that makes a more just future possible. And it is widely believed that to achieve such a future, creating stable institutions governed by the rule of law should be a main goal.

Within these modest but important shared goals there is much room for disagreement. Arguments often rage over whether trials are preferable to truth commissions for dealing with the past, whether amnesty rather than criminal accountability should be sought for some past violators for the sake of political stability, or whether the past should be incorporated into the present moment or symbolically separated from it. These are important choices, linked to the context and history of a community or nation. But concern for institution-building may obscure another source of truth about justice and reconciliation: the people who will accept or refuse those institutions. That truth bears on whether justice will be seen to be done. So, stepping to the side of the choices among truth commissions, trials, criminal accountability, amnesty, principle, and compromise, I will ask about the selves who undergo and in some cases recover from political violence and oppression, for the sake of thinking carefully about the political and institutional conditions that make reconciliation's success more or less likely.

It is clear that there is no unified answer to the question about selves, recovery, and violence. The same occurrence of violence will traumatize some and not others. The same set of reparative measures will reassure some and revictimize others. We all have different strengths and weaknesses, triggers and indifferences. Some of that will be determined by our social and cultural surroundings, but even if we account for those differences, the uniqueness of each human being guarantees that no amount of fieldwork, theorizing, or data-gathering will allow us to predict with certainty how a human being will react to violence and cope with its legacy.

Given all that, how might transitional justice or reconciliatory work create a present moment that redresses a past violation so that the future is set free from past harm? How might oppressed, unjustly treated, or traumatized selves recover (or

acquire for the first time) the ability to take on the present moment freely—to experience the present moment as free? And what does it mean to take on the present moment freely? Depends on whom you ask.

If you ask someone who is attached to the idea of the rule of law, then all you need in order to take on the present moment freely is the rule of law enforced by fair and transparent institutions. We do need to be careful about making blanket statements about revisionary practices, liberalism, or the rule of law, as these all have diverse meanings and operate in widely variant conditions. And yet there are commonalities. Michel Feher gives us a good version of the “tenets of liberal theory” as they bear on theories of political reconciliation:

(1) that instituting a democratic regime amounts to substituting the rule of law for the reign of force; (2) that upholding the rule of law amounts to making every citizen accountable for his or her actions; and (3) that implementing the principle of individual accountability amounts to securing that no group of citizens will either benefit from the privilege of impunity or be held collectively responsible on the basis of their identity.¹⁰

In that telling of the story, the strength of an institution governed by the rule of law is that in replacing force with law, we rid politics of two problems: if everyone is free and equal, then no one is oppressed and everyone is responsible for his or her freely undertaken actions. You might say that transitional justice is a mixed-heritage descendant of liberalism, always hoping that formal equality is a utopia.

And perhaps utopia is precisely what that is. When we place our faith in the power of the rule of law to govern fairly and to facilitate the production of subjects who obey law because law keeps them safe and fairly treated, we assume something about the subjects who are there to be “produced.” We assume that they are capable of trusting that law can keep them safe and treat them justly, and thus we credit them with having a Kantian ability to reason about a kingdom of ends. Of course, the great majority of human beings do have that ability (regardless of whether they have read or even heard of Kant), and creating stable institutions governed by the rule of law is one way to produce conditions under which that ability will be rewarded. Assuming the subject’s autonomy, as liberal theories of the rule of law do, corresponds with a just aspiration to respect human dignity by acknowledging that we are capable of freedom.

But even the most autonomy-loving liberal theories know deep down that the human subject is more complicated than the story about autonomous persons capable of consenting to political conditions, as evidenced by the circularity involved in social-contract accounts of the subject’s production. Put briefly, the social contract assumes that in order for there to be good and stable legal/political institutions, there must first be free subjects willing to obey. At the same time, the same theories assume that, in order for there to be free subjects willing to obey, there first have to be good and stable legal/political institutions in place. For the liberal philosopher John Rawls, this surfaces in the tension between the “basic structure” and the “natural duty of justice.”¹¹ This circular account is not the vicious circle of a flawed logic but rather an admission, even if tacit, that subject formation is fluid and multidirectional.

Autonomy is not an essence but is rather created over time by the interaction of human beings with the practices and institutions that both form human beings and are formed by human beings. This idealized point should carry some weight in the non-ideal world of transitional justice.

One can set up the rule of law and enforce it, train judges to be impartial, and make the procedures and institutions open and known to all. That is a worthy goal. But it does not suffice to set up legal institutions guided by the rule of law and then inform everyone that the institutions are just, especially in a society recovering from a period of mass violence. Reasoned argument on its own is not likely to persuade someone who has experienced persecution—especially persecution that was ignored or even authorized by law—that the rule of law will keep individuals safe from persecution, even if institutions guided by the rule of law *are* an individual's best hope of attaining equal justice.

Nor can one make democracy happen by enforcing new rules. Liberal institutions do not work when they rely too heavily on enforcement. (A form of law that functions only by getting itself forcefully enforced is called tyranny or worse.) As such, equal freedom and equal justice require more than fair and just institutions. Subjects who want justice not only for themselves but for all, who trust that there are others who desire the same and that institutions will work to reward those expectations—this is, in part, what Mrs. Kondile lost—must be there first, or very soon after, if liberal institutions are to succeed. As the *IDEA Handbook on Reconciliation after Violent Conflict* puts it,

This is not simply a moral argument about doing the right thing, even though reconciliation can contain strong moral elements . . . It is much more than that. Put bluntly, good democratic politics—even the best politics—only work when relationships between the various actors are positive enough to permit basic trust, respect and cooperation. Bad relationships—those still built on distrust, suspicion, fear, accusation, even ignorance—will effectively and eventually destroy any political system based on respect for human rights and democratic structures.¹²

The case of Mrs. Kondile makes clear that in every scene of reconciliation there is a complicated series of bad relationships. The rule of law on its own can't change them, and unless they can be transformed, the rule of law is not sufficient to get the job of reconciliation done. Without reconciliation, transitional justice may falter. As such, a minimal solidarity prior to or beyond politics is required. Thus, in order to get at what makes successful transition or reconciliation possible, we must also ask about the human subject, about its self and its relationship to others and the world.

The Persecuted Subject

Does liberalism's tacit admission of the fluidity of subject formation in autonomous beings take us far enough? I think not. The picture of human relations offered here leaves out legacies of harm always present in a scene of reconciliation (and, I would add, everywhere else). The circular account in which the subject makes the institution and the institution makes the subject works well in a place where we imagine conditions to be genial for the free and equal forming of institution and subjects (a place

such as Rawls's original position, Kant's noumenal realm, or Rousseau's oak tree, where small bands of like-minded peasants meet to agree that they agree on the values of governance, and no one is suffering from trauma or other legacies of injustice).¹³ But imagine such a circle landing, much like Dorothy's house in *The Wizard of Oz*, in a scene of political transition. Where are the subjects who are ready to trust that law will treat them fairly and well, who for that reason "give the law to themselves" and practice it freely? Who will build the fair and neutral legal institution, relying on what set of values? Who will be its judges, its lawyers, its clerks and jailers? And what will this legal institution do with the traumas and abuses carried by those who come to it—not only witnesses giving testimony but likely also the judges, lawyers, clerks, and jailers? How will autonomy measure up against traumatic events that "overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning"?¹⁴

I think the philosopher Emmanuel Levinas can help here. He describes the human self as compound, made up of parts we might call self, ego, and "me," all residing in a bodily frame that is vulnerable and undeniably affected by others. He theorizes that subjectivity is subjection to other human beings: the subject is a hostage, persecuted by the other, bearing infinite responsibility and owed nothing in return—an alarming set of assertions. Instead of describing an always-already autonomous being that is by definition free to make decisions on right and value unaffected by others, Levinas gives us a subject formed in heteronomy and responsive to the misfortunes of others long before freedom is possible. His intent is not to deny our freedom but to draw attention to the vulnerability that defines us as embodied beings and thus bears on what freedom can be for us.

Here is roughly how self-formation "works" for Levinas: the "me" part of the self senses the demand of an other, responds despite itself, and thus is pressed by a responsibility it never chose.¹⁵ And so it tries to escape. It flees into itself to evade the demands of responsibility. But when the "me" retreats into the self, it finds the ego there already having taken up residence. That movement of the "me" into the self interrupts the sovereignty that the ego formerly thought it possessed. Note that this self-revelation occurs in interior space but is put in motion by what is not-me—"the other"—and thus I am "ego" and "me" and "other," all at once, deep within myself. The ego will still insist on its existential solitude and will operate as if it were perfectly autonomous, owing nothing it didn't choose to owe. But the "me" will continuously interrupt the ego's assertion of independence, because it will keep trying to flee the demands placed on it by the presence of others, and all of this transpires fairly constantly in waves of affectivity wrought by human sense.

What does this description of the human self get for us? If the self is defined as exposed, vulnerable, and formed in part in relation to others, then it makes more sense that others would have the power to harm the self in deep and lasting ways. It also does justice to the depth of the attachments we form, since vulnerability is not only a negative asset: it may open us to abuse, oppression, and death, but it also makes possible friendship, solidarity, and love. Autonomy has that vulnerability as its back-drop.

The self given to us by liberalism would define its relation to others in terms of its

autonomy: others are out there, and I choose to interact with them from within the protected site of my self. Levinas describes the encounter otherwise, arguing that the presence of others

signifies not the disclosure of a given and its reception, but the exposure of me to the other, prior to every decision. There is a claim laid on the same by the other in the core of myself, the extreme tension of the command exercised by the other in me over me, a traumatic hold of the other on the same, which does not give the same the time to await the other.¹⁶

It isn't that I find myself at the start fully self-sufficient and capable of deciding for or against solidarity with others. Rather, others have already laid claim on me, called me to respond to them before I had time to choose to be affected. Self-formation is like a trauma striking against a self that would be autonomous. That may give us a richer sense of what it means to be a human being in general, but it also speaks directly to the sense of self inhabited by survivors of violence, who may find it more difficult to give themselves the useful fiction of autonomy. As Judith Herman puts it, "Traumatic events destroy the victim's fundamental assumptions about the safety of the world, the positive value of the self, and the meaningful order of creation."¹⁷ A trauma survivor's sense of the self's independence has been interrupted by violence. That sense is part of what should be restored by transitional justice or practices of reconciliation. But just as law cannot tell us whether or not we should obey law, autonomy cannot instruct us in how to restore it wherever it has been lost or never gained in the first place. Because of the way trauma affects us as embodied creatures, the body and mind may hold on to loss, sometimes despite the will of the individual, and thus traumatic memories may recur even in times free from violence. That will matter when political reconciliation proceeds against the backdrop of a widely traumatized population.

That I am exposed to others, vulnerable to violence and to love, means that I cannot so easily "move on" from past loss. My losses haunt me, and they may resurface despite myself even when I have willed to reconcile with those who have harmed me. Trauma haunts reconciliation. But that does not render this a hopeless story. This exposedness also means that time and other human beings might make it easier *or* more difficult for the past to be past. Here the passivity of the subject, rather than resonating only as a loss of autonomy, opens up a future, because of how relationships between human beings transpire. I may be able to find myself sovereign and unchanged in relation to objects in the world (there's a chair: I encounter it and nothing about me changes). But the encounter with other human beings is different. My relations with others do change me, for better and for worse, and I can't say that the movement of that change necessarily accords with my desires or the reasoned choices I make.

I can't say that in part because of how time works. Time passes. A chair is a chair over time, and so with chairs, $A = A$. But I cannot be certain that $A = A$ with regard to my self and others in time. Imagine that across a span of moments I encounter another human being, and she affects me—maybe with kindness, maybe with cruelty. We could call the moments before and after this event Jill1 and Jill2. In the interval

of time between Jill1 and Jill2, I have been affected by something other than me, and it has made an impact on what I am. Perhaps something has changed, such that I am not certain that I am precisely the same Jill who would have allowed me to say $A = A$ or $Jill = Jill$. Maybe I thought I embraced a restorative ethic of forgiveness. But when I faced your lack of remorse, something changed. Or maybe I once thought I could never live in peace alongside you. But then I came to understand something of your own loss. Or I saw that you genuinely wished you had never harmed me. Or maybe a set of government policies lifted me out of a life of daily deprivation. Perhaps now I have begun to think I can live alongside you, whether or not I can forgive. The other opens up a dimension of the future that I would not achieve on my own. My point: this reading of the subject gives us a sense of why revision is possible for a human being and also why it is difficult. The narrative of the autonomous liberal subject, on its own, does not.

Hearing

For Levinas, communication proceeds not only by language but in bodily signs. We give off meanings and receive them from others all the time, whether we will it or not. A significant amount of meaning is carried and transferred in this way. Communication may and often does contain a specific content, which the speaker intends the audience to receive and understand. But communication has a prior phenomenology. Just as a sensation of heat, flavor, or odor is not primarily cognition of those things but an undergoing of a sensation, communication is, prior to its instrumental use for sending a message, a form of responsiveness to other human beings.¹⁸ It exists because there are others, to whom we respond. Some of our responses are reasoned and willed; others—many of the primary ones—are not. That will matter in a scene of reconciliation when wounds, difference, and history complicate what is said with the impossibility of overcoming what is still feared, felt, and mourned.

An example. Mrs. Kondile had the opportunity to testify at the amnesty hearing for Dirk Coetzee, the man who headed the “task force” that tortured and killed her son. She refused to do so, sending a representative to make this statement in her stead:

You have said that you would like to meet Mrs. Kondile and look her in the eye. It is an honor she feels you do not deserve. And that if you were really remorseful, you wouldn't apply for amnesty, but in fact stand trial for what you did.¹⁹

We can't know why Mrs. Kondile made this choice, but we can guess that she saw no profit in facing a man who tortured and mutilated her son. By refusing to face him she also decreased the risk that her presence at the hearing would be understood, against her will, as embodying a willingness to participate in a ritual of forgiveness. In an interview Mrs. Kondile gave later, she made clear what she wished to communicate: “It is easy for Mandela and Tutu to forgive . . . they lead vindicated lives. In my life, nothing, not a single thing, has changed since my son was burnt by barbarians . . . nothing. Therefore I cannot forgive.”²⁰ We might say that Mrs. Kondile communicated more by not speaking to Coetzee than she would have if she had faced him. She also made clear that current political and institutional conditions did not make reconciliation possible for her.

Human beings do not possess equal power to ignore or suppress attempts at communication. Some truths get heard more loudly than others, due to power, institutional procedures, receptiveness of audience, and widely varying factors beyond the control of any one speaker. But there is something other than power at stake in what is risky in the attempt. Levinas reminds us that “to require that a communication be sure of being heard is to confuse communication and knowledge, to efface the difference, to fail to recognize the signifyingness of the-one-for-the-other in me.”²¹ He means that communication is not a simple transfer of meaning from point A in me to point B in another person or a larger audience. It is part of the work of subject formation, in which I am me but am also other than me, creating meanings, receiving messages from others, and always at risk of misunderstanding or being misunderstood. Part of what it means to be formed by others is to be subjected to regimes of meaning that are at times beyond our power to choose or control. It’s not that autonomy is meaningless here, but that it misses the point.

Consider the example of Yazir Henry, who also testified before South Africa’s Truth and Reconciliation Commission (TRC). He had been tortured and forced to admit the location of where a comrade was hiding. That friend was then killed. Henry lived for years in a prison of his own guilt, too ashamed to speak of what had happened to him and unable to resume living a normal life. He wanted the TRC to give him a space where he could testify not only to the truth of his betrayal but to his own victimization: that at the age of seventeen he was put in the impossible position of choosing between the life of his mother and family and that of his friend. Instead his testimony took on a life of its own: Antjie Krog told an edited version in her book *Country of My Skull*; various newspapers took up the story and molded it to the narrative form of crime and political forgiveness; and his name appeared in the TRC Final Report in conjunction with the case of his dead friend, making his guilt official rather than helping to lift its weight.²² As a result, his testimony put him in more danger: “In the two and a half years since occupying that space, I have survived one attempt on my life and I have been accosted and humiliated several times in public for reasons relating to my entering the space provided by the TRC.”²³ Henry experienced in a deadly way the risks of communication. His experience also offers us another view into the layers of betrayal operating in any scene of reconciliation. He had approached the TRC with the hope that the burden of his personal devastation would be lifted, and that the TRC would do justice to the impossible position he was put in by his role in a political struggle, only to discover that “the TRC had neither the time nor the logistical capacity to honour or protect the space it gave me in which to bare my soul and tell my story.”²⁴

Some testimony is heard, understood, or misunderstood, and then it enters a public realm, where it will have multiple meanings, many of them beyond the control of their author. But there are also forms of testimony about violence that struggle with the boundaries of what can be spoken. They are closer to the meanings we give off without speech:

This inside me . . . fights my tongue. It is . . . unshareable. It destroys . . . words. Before he was blown up, they cut off his hands so he could not be fingerprinted . . . So how do I say this?—this terrible . . . I want his hands back.²⁵

How can a grieving person explain in official testimony, in everyday language, that she or he wants the hands back of someone cherished, because these hands are all that is left of the embodied presence of this cherished person? This is not declarative speech in any ordinary sense. But it *is* testimony. Both Yazir Henry and the person who requests a return of the only physical trace of her loved one, mangled as it is, are persons who will feel included or excluded, will accept or refuse to honor a transitional institution. Their lives have been cut open by loss such that they might not easily inhabit the sense the autonomous subject has, that others are out there and “I” choose to interact with them from within the protected site of my self. Transitional justice and political reconciliation both must reckon with what is at the same time combustible and inescapable about survivors of violence: they may dwell in their harms far past what reason or autonomy can rescue on its own, not because they “can’t get over it,” but because of what violence and injustice can do to human beings. That point has ethical import both for those who have been harmed and for those who have not but who wish to encourage reconciliation or a smooth transition to democracy. Changing how we think about self-formation as it bears on recovery or reconciliation will help here.

Responsibility

If we change how we think about how we come to be selves, we might also change how we think about what we owe to others, even others who are our enemies. Krog writes, “Is truth that closely related to identity? It must be. What you believe to be true depends on who you believe yourself to be.”²⁶ I have argued elsewhere that the first response put forth by the autonomous subject described by liberal political theory, when faced with a responsibility beyond conditions to which she would consent, would likely be: “How did I ever come to owe this?”²⁷ She’ll want to know what makes this responsibility legitimate, how it came to fall on her, and by what right she has been asked to take it up. In other words, all of her questions will be animated by legal reasoning, because the subject of liberal political theory is only responsible for what she has done or intended. Of course those questions are important—and some of them can be easily answered in a scene of reconciliation, by recourse to histories of blame. But not every scene of reconciliation is peopled by actors who fall easily into clearly distinguishable categories of victim and persecutor. There will be bystanders and beneficiaries, those who benefited from injustice without taking active part in it. Histories are complex and intertwined, full of attack and counterattack, intermediary positions, wins, losses, and draws. But even if we know who is victim and who is perpetrator, can we capture all of what needs to be conveyed in the reasoning prescribed by legal proceedings? The very existence of truth commissions and other alternatives to legal responses to violence suggests that we cannot. And so it might matter (as I have argued elsewhere) that if a similar question of responsibility is posed to a Levinasian subject, still free but aware of the vulnerability of herself *and* others in a world we have to share, her response might be (instead of: “How did I ever come to owe this?”) something more like: “What does justice—or mere peaceful cohabitation—require?” or even: “What does it require of me?”²⁸ The difference matters—and it is a difference we should not consign too readily to the realm of

idealism in a world where the most entrenched injustices cannot be answered solely by recourse to reliance on legitimately owed legalized duties. No one will be reconciled in a world where every legal duty is dispatched, and nothing more.

We do not often find Levinasian strands in the theories of liberal political subjectivity from which we inherit our ideas about rights, justice, and the rule of law, and which for the most part, in turn, inspire the hopes and procedures of transitional justice and post-conflict reconciliation. It is of course dangerous, if not utterly objectionable, to suggest that any person beyond one's own self ought to forgive or reconcile, because forgiveness and reconciliation are movements that must be made freely. Subjection has its limits. And yet the sense that we do respond to the needs of others prior to any capacity for self-affirmation of the ego may be precisely what needs to be recovered or uncovered in the wake of political violence and estrangement if there is to be hope of something we might call reconciliation. Absent such a renewed idea of the subject, all we have are the truths of capitalism and/or democracy: human relationships based on commerce, with or without open hostility, a chest of drawers lined with assumptions about reciprocity and consent to any conditions in which responsibility might be born(e), and filled with autonomous sovereign subjects who share space with others because all agree (or would have agreed, had they been given a chance) that such an arrangement is preferable to the insecurity resulting from a lack of agreement.²⁹

Such a narrative grants to us community based in personal security and measured reciprocity. That is not nothing, especially to those who have lived without it. But it does not reckon with the uncertainty recommenced in every scene of communication, nor with the ways in which old traumas may resurface regardless of what is willed in the freedom of reasoned volition, and how those resurfacings will be communicated to others in ways intended and unintended, causing ripples and informing relationships.

Two moments with a newspaper may illustrate this point: (1) Mrs. Kondile, waking up one day to a story about an investigation and discovering graphic details about the torture and murder of her son ten years earlier; and (2) Jean Améry, twenty years after he was released from Bergen-Belsen, reading a letter to the editor from a young German who writes that his generation is "sick and tired of hearing again and again that our fathers killed six million Jews."³⁰

Two Truths

Transitional justice aims to create a certain kind of present moment, one that does justice to a past that requires redress while opening up a future that isn't fully determined by past harms. Accordingly, among its many duties, a prominent one is coming up with a good accounting of the truth. But what is "the truth" in a scene of reconciliation?

Truth emerges at multiple sites, simultaneously. Sometimes A and not-A are true at the same time. The "truth" of this often surfaces obliquely in scholarly writing about reconciliation and truth-seeking mechanisms. I'll offer some examples. Donna Pankhurst writes, "Contrasting, if not actually contradictory understandings of justice and reconciliation, and their relationship to each other and to peace currently operate,

even in the same settings.”³¹ Rustom Bharucha adds, “While the history that replaces ‘historical truth’ for ‘subjectivity’ is flawed, the omniscient, objective, fact-bound history that seems to ‘write itself’ in Roland Barthes’s words, is also flawed in its own right.”³² Martha Minow notes the disjunction as well: “Justice may call for truth but also demands accountability. And the institutions for securing accountability—notably, trial courts—may impede or ignore truth.”³³ Pankhurst adds, “The ambition to create a single, complete, common truth from all possible accounts is rarely hoped for, let alone achieved.”³⁴ And Robert Meister points out, “The Lincolnian ‘survivor story’ is inherently a better way of coping with the guilt of perpetrators than of doing justice to the victims, and . . . justice to victims may be more effectively achieved in other ways.”³⁵ Citations such as these proliferate. In scenes of longstanding injustice, truth is a fluid thing. However, these notions of truth are also challenged by views of truth as a form of certainty. For instance, Michael Ignatieff asserts, “Either the siege at Sarajevo was a deliberate attempt to terrorize and subvert the elected government of an internationally recognized state or it was a legitimate preemptive defense of the Serbs’ homeland from Muslim attack. It cannot be both.”³⁶ Surely that statement is true. Its assertion helps to restrict the number of falsehoods that might be taken for true in the Balkans. But it also seems somehow too simple if viewed through the lens of the work required to reconcile post-violence. It is not that we ought to conciliate genocidal regimes; rather, the simplicity of Ignatieff’s statement gives us a forensic truth with no regard for the personal or narrative truths that often underlie mass violence and which also may play a role in recovery from violence as well as prevention of further violence.

Factual or forensic truth is “defined as a form of scientifically ‘corroborated evidence,’ drawn on ‘accurate information through reliable procedures,’ framed within a ‘social scientist methodology of research’” and so on.³⁷ That is legalism’s truth for good reason: fair proceedings must rely on verifiable evidence gathered using agreed-upon procedures, or the basis of fairness in a court setting is lost. And yet, in a legal proceeding, other truths are lost when survivors’ stories, directed by questions posed by court officials, are limited to the facts of the case. It is widely believed that truth commissions improve the lot of witnesses by allowing a wider range of stories to be told, in a setting less constrained by procedures designed to promote a fair trial for defendants. And yet truth commissions do tend to focus on factual or forensic truth over personal or narrative truth, even when their professed aims include getting the truth out by hearing victims’ stories. Thus the South African TRC, in its final report, hoped that victim testimony offered “healing potential” for the victims but also worried about the “veracity” of the stories told, since the stories of witnesses and survivors are not always verifiable: either there is no person or evidence left to corroborate the truth, or the content of the truth is not factual or forensic.³⁸

Levinas points out that philosophers tend to think that truth consists of intelligibility, an “exhibition of being,” the revelation of something that exists and is verifiably true. But, he adds, when philosophers stop there, they fail to ask *what shows itself* in truth and *who looks*.³⁹ Those questions place truth in its embodied context. Rustom Bharucha, writing about the relation between truth, reconciliation, and storytelling, echoes this emplacement of truth in the body, asserting that “there is no one Truth.

Rather, there are many possible truths—mutable, fluid, and above all, deviant—that have to be constantly *produced* from the guts, the bodies and voices of actors.”⁴⁰ The fluidity of truth is also what is at stake in Antjie Krog’s assessment of what truth could and could not do for South Africa:

It is asking too much that everyone should believe the Truth Commission’s version of the truth. Or that people should be set free by this truth, should be healed and reconciled. But perhaps these narratives alone are enough to justify the existence of the truth commission. Because of these narratives, people no longer can indulge in their separate dynasties of denial.⁴¹

(This has by now become dogma about what the TRC accomplished: “narrowing the range of permissible lies,” as IDEA’s *Reconciliation after Violent Conflict* puts it.⁴²) Establishing truth after atrocity is important. The telling of stories in the TRC proceedings did open up a history of violence that had been silenced by official forms of truth backed by racist power. And yet there are other tasks at hand in the work of reconciliation. There is only so much that the revelation of a truth can do, especially when its being heard does not necessarily render it universally persuasive; when revealing it does not automatically heal the victim or reconcile her with her persecutor; when the persecutor may not apologize or may be officially pardoned for acting on “political motives” (for instance, Dirk Coetzee was granted amnesty by the TRC on August 4, 1997);⁴³ when some truths are privileged in a climate where reconciliation is sought over continuing resistance and anger (as when commissioners of the TRC encouraged forgiveness and discouraged even justified resentment, prompting one woman to say, “The oppression was bad, but what is much worse, what makes me even angrier is that they are trying to dictate my forgiveness”);⁴⁴ and when factors other than truth may be more effective at encouraging reconciliation in a particular setting—for instance, an end to threats of violence, reparation programs, attention to structural inequalities and basic material needs, or even the passage of time.⁴⁵

Forensic truth cannot, on its own, deliver to us the full story of Mrs. Kondile’s loss; it is the kind of truth for which *who looks* and *what shows itself* in truth does not matter. Intelligibility is the subject of philosophy, as it is of social science and politics. But none of these is made only of factual or forensic truth.

Conclusion: Permanent Reconciliation

South Africa, for various context-specific reasons, after decades of violently oppressive and racist law and policy, chose the route of a truth commission rather than criminal trials. Most parties agreed that it was the only way to move forward without a lot of bloodshed and an extended civil war between a black majority and a white minority that still possessed considerable political, economic, and military power. Nelson Mandela and Archbishop Desmond Tutu were able to call on existing values within Christianity and the African tradition of *ubuntu* to support a policy of forgiveness in order to rebuild community—or to build it anew where it never before existed. But the hope of the long-term success of the TRC was premised on its promise not only to bring out the truth of what happened but to offer meaningful social change for all and specific reparations for those most egregiously affected by past abuses. The failure

of the post-Apartheid government—due to decisions taken under the weight of combined economic and political constraints—to offer meaningful change or reparations has left South Africa in a tenuous position. As Yazir Henry describes it,

Legal and political apartheid has gone but social, economic and psychological apartheid remains and will for a long time to come . . . Not only do we live with serious post-war trauma, we carry this condition in a context of continued social and economic oppression.⁴⁶

What if a self, trying earnestly to recover from a trauma, still faces a life that, every day, is full of a form of neglect that mimics the oppression supposedly left behind? How does that self trust in a better future promised by the rule of law? What would make such trust possible?

In Argentina, the military granted itself amnesty before handing over power to Raul Alfonsín. Alfonsín overturned the self-amnesty law, trials were held, and nine heads of the military junta were convicted in 1985. The military rebelled, so in 1986 and 1987 Alfonsín passed laws restricting further prosecutions. In 1989–90, Alfonsín's successor Carlos Menem pardoned those who had been convicted but also passed laws authorizing reparations for those who had been detained by the military. In June 2005, under pressure from an organized public campaign, Argentina's congress overturned the law that had restricted the prosecutions of the military. Reconciliation of past with present has never been a settled matter in Argentina.⁴⁷ Transitional justice has taken many turns. Interaction between time, harm, and recovery such as this leads David Backer, who has studied attitudes toward the TRC in South Africa over time, to conclude that “transitional justice issues in postconflict settings often entail processes that will and should unfold over an extended period of time—a decade, if not considerably longer.”⁴⁸

The self, in Levinas's description, recurs. It reaches out toward the other but is not capable of escaping its embodied site. Nonetheless, when self returns to self, having encountered the other, the scene looks different. The other human being has placed the self in question, and the self is no longer able to remain at home alone with its imperialism. This is not a story of something that once happened but a figure for what happens every moment.

It happens at every moment, but it happens below the level of consciousness. Anyone can refuse to acknowledge the other, can dehumanize, oppress, persecute, or murder the other. But no one inhabits a world such that she escapes her bodily site and evades being affected by others. This is why violence has such a hold on us. We are vulnerable by definition. There are countless ways—just and unjust—of not taking responsibility for all others or some others: desensitization to others and to violence, racism and bigotry, reasoned limitation on responsibility, contracts and rules of behavior. But the self is not a monad. It is changed by circumstances, and circumstances are peopled by others. That is why “most reconciliations are fragile, partial, and in constant need of renewal.”⁴⁹ Human beings live each new moment, traversing time, facing other human beings—and time and other human beings change things. But it is this very feature of human beings, that they traverse time and are vulnerable to others, each of us a self changed by circumstances and not precisely identical to

itself over time, that makes reconciliation possible, because subject formation is reconciliation of self with self and other. What is needed is permanent reconciliation.

We could start with the simple idea that compromises made for the sake of political transition will at some point become compromises built into a system of justice. And then what? Change will be desired. That change might awaken old or introduce new divisions, but not changing might do so as well. Donna Pankhurst describes how a population that has lived without meaningful rights for a long time may react positively to “rather limited improvements,” but over time this will surely change because of new relationships and expectations formed in the somewhat improved situation of justice. She adds that accepting a minimalist conception of the rule of law in the short term likely means desiring a maximalist conception in the longer term, which will require change, which may upset order, and so on.⁵⁰ And she concludes,

In the longer term, competing conceptions of justice re-emerge. For protagonists the need for social justice and/or historic redress becomes a greater priority. For the international donor community conceptions of justice come to include political freedoms (particularly as expressed through structures of multiparty democracy); an effective and independent judiciary; and respect by the government for human rights.⁵¹

And surely the people subject to governance will also have competing ideas about the hierarchy of values expressed by democratic institutions. Those ideas will come to them in communication with others, whether by rational discourse or the way human beings give off meanings prior to speech. There can be no one-time settlement of claims such that the future is set free from the past.

Contemporary South Africa is a case in point. It is still largely a divided society: one part success story consisting of a stable political system, honest courts, and a growing economy; and the flipside of that success, plagued by impoverishment of 45 percent of the country, a 40 percent unemployment rate, and a Gini coefficient (a statistical measure of inequality) of 0.6 that marks it, alongside Brazil, as “the most unequal society in the world.”⁵² Continuing inequality, along with a failure of the government to live up to promises attached to the compromise measure that offered amnesty in exchange for truth at the initial moment of transition, has led to a sharp decline in approval of amnesty, decreased acceptance of its necessity, and more demands for accountability.

In studies conducted by Backer, 91 percent of respondents in 2002–3 accepted amnesty as a necessary compromise. By 2008 approval numbers had dropped to 20.4 percent.⁵³ Backer argues that this change in attitude shows us at least two things: (1) a high rate of acceptance does not necessarily mean a high rate of satisfaction—especially when it involves enormous compromise—and so we should be mindful of what is promised and what is delivered; and (2) what a government does in the wake of an initial compromise, and how its decisions affect the lives of people over time, will determine how stable the settlement is. The original high rate of approval was, Backer suggests, attached to reluctant acceptance of political realities paired with expectations that the government would live up to its promises to prosecute those who did not

receive amnesty, make meaningful economic changes, and compensate victims with reparations.

In the period of time between surveys, reparations were made only grudgingly (with South Africa's president Thabo Mbeki arguing that the liberation struggle was not fought for money) and at lower levels than promised.⁵⁴ Also during that time, the National Prosecuting Authority policies around prosecution were modified, allowing enough discretion in prosecuting cases that many thought it amounted to a second amnesty, this time without hearings. All of that may have led to widespread perception that promises were not being kept. That is why Backer concludes about transitional justice in general that

the immediate consequences of any measure do not necessarily represent a durable status quo. Instead, these outcomes are contingent, subject to ongoing scrutiny and reassessment by interested stakeholders and therefore vulnerable in the event of altered conditions, including the introduction of new policies and the lack of follow-through on existing policies.⁵⁵

Backer reaches a conclusion similar to my philosophical one by relying on empirical data gathered over time. South Africa's TRC may be the most celebrated instance of a truth commission, one that revolutionized the form, changing its mission from one of truth-seeking or investigation to one of truth-telling or performance. But we are still in the midst of a historical arc in which the success of the TRC is undecidable. Current attitudes may "lead to a revisiting of the amnesty and become an impetus for criminal prosecutions."⁵⁶ This point fits well with Pankhurst's reminder that, even though in the wake of violence many people will in the short term accept a minimalist version of justice, "in the longer term, competing conceptions of justice re-emerge."

Robert Meister puts it clearly in the context of his analysis of the Warren-era Supreme Court's attention to racism in the United States: "They seemed to be saying that we can never recover from our past unless we believe ourselves to be in permanent recovery—that we are never in greater danger of reviving racism than when we believe ourselves to have overcome it."⁵⁷ And so he calls for something like a "permanent reconstruction . . . to shed light on the logic of post-traumatic justice, as something distinct from both revolutionary justice or ahistorical liberalism."⁵⁸ Ahistorical liberalism might think setting up equal justice governed by fair institutions and the rule of law is enough. Revolutionary justice might use violence to secure peace. But post-traumatic justice must constantly mark the continuing presence of the past, to guard against the resurgence of violence where there could be peaceful cohabitation. Just as the past history of slavery in the United States might augment the harm of racial discrimination in the present (Meister's point), asking a group of persons who think themselves beyond caste to play out caste roles in a theater workshop in India might reveal caste differentiations—and harms—lurking beneath professions of secularism;⁵⁹ in turn, the failure of a government to live up to promises may make approval for a compromise drop from 91 percent to 20.4 percent in a matter of years, as it did in Cape Town, South Africa; and accusing Serbs of unjustly invading Kosovo will awaken centuries-old but sometimes still vibrant anger over a piece of land lost in 1389 (even when the accusation is just). Any of these things might happen between persons trying

to live alongside one another. The point of the analogy is not to draw an equivalence between them or judge whether each possibility should or should not come to pass, but to mark how the past is alive in different ways and to varying degrees for different groups and individuals. Such a relation to the past is a deeply felt, embodied experience, “where remembering and reliving are indistinguishable,” at times even for those who never lived that past.⁶⁰ We can make no meaningful pronouncements about what it means to reconcile or tell the truth if we do not take note of this.

It is important that timely trials be held and that truth commissions project timelines for collecting testimony, publish results, and offer recommendations, so that something may be seen to be happening. After all, justice is not done until it is seen to be done. But if memories of violence return—as they likely will—then one can never finally project a timeline for the achievement of reconciliation. As the South African satirist Pieter-Dirk Uys remarks, “Remember, the future is certain. It is the past that’s unpredictable.”⁶¹ Reconciliation can never be finished, and as it continues it will likely be punctuated by disturbing ruptures, unexpected truths, and new problems necessitating new attention to the work of reconciling. Minimal solidarity, sometimes more than that, may be achieved after violence, not because a fair and impartial institution assumes the equality of autonomous monads but because human beings are vulnerable to and formed by others. Institutions may help or hinder in that solidarity’s formation—and the rule of law can be a big help here—but solidarity is also anarchic: it may come from elsewhere. It may even refuse to honor the work done by a transitional institution.

So what makes a revisionary practice work? How can survivors of violence and unjust treatment rediscover (or exercise for the first time) the capacity to take on the present moment freely? I am currently writing a book about that, but here is the short answer: survivors want the harms they have undergone to be heard, and the wrongness of them affirmed in a lasting way not only by the perpetrators but by the surrounding society. They seek the help of others to reassure themselves that they are living in a world with others, one in which they will be protected when they are under threat. They seek meaningful human rights. I’m not sure that any human institution has yet figured out how to deliver that. It seems to me that a Levinasian understanding of the kind of being a human being is will sooner get us meaningful human rights than will the liberal subject’s insulated autonomy. The Levinasian understanding will get us those meaningful human rights in two ways: (1) by helping us develop more robust understandings of what is lost by human beings who have been violently abused; and (2) by making clear to us—in a way liberalism cannot—that if we are content to derive our duties only from conditions to which we would consent, we may as well give up on human rights as an aspiration. No one will be reconciled, and many will be left unprotected, in a world where everyone dispatches every legitimate legal duty and nothing more.

Liberalism’s “happy ending” hinges on formal equality and finds us consenting to conditions everyone would wish to bear. But transitional justice and political reconciliation seriously hinder the will to believe that those conditions are forthcoming. And so it may be time to view the path to happy endings differently. Perhaps we get there not by accepting duty only for what we did and intended but by taking up a form of

responsibility that transcends legality's concern with blame and acknowledges the wide array of harms and relationships in which we are implicated as responsive creatures trying to share a world. Such a statement resonates as idealism, but it is actually relentlessly practical. The liberal rule-of-law story about consent and formal equality is not, on its own, going to get us meaningful human rights. It is time to start working with what may do better.

NOTES

I thank Sam Moyn for his comments on an earlier draft of this essay. His questions helped me clarify its intent and improve its argument. Any remaining errors are solely mine.

1. Transcript of testimony of Charity Kondile, South African Truth and Reconciliation Commission, Human Rights Violations, Case ECo021/96, East London, April 17, 1996.
2. Eric Stover develops this point in *The Witnesses: War Crimes and the Promise of Justice in the Hague* (Philadelphia: University of Pennsylvania Press, 2005).
3. On South Africa, see Debra Kaminer, Dan J. Stein, Irene Mbanga, and Nompumelelo Zungu-Dirwayi, "The Truth and Reconciliation Commission in South Africa: Relation to Psychiatric Status and Forgiveness among Survivors of Human Rights Abuses," *British Journal of Psychiatry* 178 (April 2001): 373–77. On Sierra Leone, see Rebecca Horn, Simon Charters, and Saleem Vahidy, "Testifying in an International War Crimes Tribunal: The Experience of the Special Court for Sierra Leone," *International Journal of Transitional Justice* 3, no. 1 (2009): 135–49. On the former Yugoslavia, see Donna Arzt, "Views on the Ground: The Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone," *Annals of the American Academy of Political and Social Sciences* 603, no. 1 (2006): 226–39.
4. See Stover, *Witnesses*; David Backer, "Watching a Bargain Unravel? A Panel Study of Victims' Attitudes about Transitional Justice in Cape Town, South Africa," *International Journal of Transitional Justice* 4, no. 3 (2010): 444; Jaime O'Connell, "Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?" *Harvard International Law Journal* 46 (Summer 2005): 295; Derek Summerfield, "Effects of War: Moral Knowledge, Revenge, Reconciliation, and Medicalized Concepts of 'Recovery,'" *British Medical Journal* 324, no. 7372 (2002): 1105–7.
5. Karen Brounéus, "The Trauma of Truth Telling: Effects of Witnessing in the Rwandan Gacaca Courts on Psychological Health," *Journal of Conflict Resolution* 54, no. 3 (2010): 408–31 at 421.
6. Michel Feher, "Terms of Reconciliation," in *Human Rights in Political Transitions: Gettysburg to Bosnia*, ed. Carla Hesse and Robert Post (New York: Zone Books, 1999), 331.
7. Quoted in David Bloomfield, Teresa Barnes, and Luc Huyse, eds., *Reconciliation after Violent Conflict: A Handbook* (IDEA International, 2005), 25.
8. For a general survey of these themes, see Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), chap. 6.
9. See Jean Améry, "Resentments," in *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and its Realities* (Bloomington, Ind.: Indiana University Press, 2009), 62–81.
10. Feher, "Terms of Reconciliation," 325.
11. Rawls writes both that "even though the principles of natural duty are derived from a contractarian point of view, they do not presuppose an act of consent, express or tacit, or indeed any voluntary act, in order to apply" and "if the basic structure is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do what is required of him." Natural

duty is unchosen, is always already there on some level, and we know this, per Rawls, because it would be hard to imagine wanting to live in a society that did not recognize that duty. But natural duty also relies on there being a “basic structure” empowered to secure the workings of justice that natural duty makes possible. So the natural duty of justice makes the basic structure possible—because it is first, unchosen, and because people who don’t feel natural duty might not care about basic structures in the first place—but the basic structure also makes natural duty possible, or at least more likely that it will be practiced: a virtuous circle in which the institution makes the subject and the subject makes the institution. See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), 99, 294. Bonnie Honig and others call this “the paradox of politics” (and Honig tends to call it a “vicious circle” rather than a virtuous one, though she describes the paradox as productive of possibility). See, for instance, Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton, N.J.: Princeton University Press, 2009).

12. Bloomfield et al., eds., *Reconciliation after Violent Conflict*, 168.

13. In *The Social Contract*, Rousseau calls “the happiest people in the world bands of peasants regulating the affairs of state under an oak tree . . . A state governed thus needs very few laws, and whenever there is a need to promulgate new ones, that need is universally seen. The first man to propose such a law is only giving voice to what everyone already feels.” Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin, 1948), 149.

14. Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* (New York: Basic Books, 1997), 33.

15. This description is similar to the one I developed in my essay “The Rule of Law and Its Shadow: Ambivalence, Procedure, and the Justice beyond Legality,” *Law, Culture and the Humanities* 3, no. 2 (2007): 325–42, which I then refined in “Productive Ambivalence: Levinasian Subjectivity, Justice, and the Rule of Law,” in *Essays on Levinas and Law: A Mosaic*, ed. Desmond Manderson (Basingstoke: Palgrave Macmillan, 2009), 76–92.

16. Emmanuel Levinas, *Otherwise Than Being or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1998), 141.

17. Herman, *Trauma and Recovery*, 51.

18. See, for instance, Levinas, *Otherwise Than Being*, 42ff.

19. Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (New York: Three Rivers Press, 2000), 80.

20. *Ibid.*, 142.

21. Levinas, *Otherwise Than Being*, 167.

22. See Krog, *Country of My Skull*, 70–73; 96; Yazir Henry, “Reconciling Reconciliation: A Personal and Public Journey of Testifying before the South African TRC,” in *Political Transition: Politics and Cultures*, ed. Paul Gready (London: Pluto Press, 2003).

23. Yazir Henry, “Where Healing Begins,” in *Looking Back Reaching Forward: Reflections on the Truth and Reconciliation Commission of South Africa*, ed. Charles Villa-Vicencio and Wilhelm Verwoerd (Cape Town: University of Cape Town Press, 2000), 169.

24. *Ibid.*

25. Krog, *Country of My Skull*, 39.

26. *Ibid.*, 125.

27. See Jill Stauffer, “How Much Does That Weigh? Levinas and the Possibility of Human Rights,” *MonoKL* 4, nos. 8–9 (2011): 493–506.

28. *Ibid.*

29. “Would have agreed, given the chance” is the implicit argument of theories of the social contract, where conditions are just when they can be defined by willed consent.
30. Kondile transcript; Améry, “Resentments,” 75.
31. Donna Pankhurst, “Issues of Justice and Reconciliation in Complex Political Emergencies: Conceptualising Reconciliation, Justice and Peace,” *Third World Quarterly* 20, no. 1 (1999): 240.
32. Rustom Bharucha, “Between Truth and Reconciliation: Experiments in Theatre and Public Culture,” *Economic and Political Weekly* 36, no. 39 (2001): 3770.
33. Minow, *Between Vengeance and Forgiveness*, 9.
34. Pankhurst, “Issues of Justice and Reconciliation,” 241.
35. Robert Meister, “Forgiving and Forgetting: Lincoln and the Politics of National Recovery,” in Hesse and Post, eds., *Human Rights in Political Transitions*, 146.
36. Michael Ignatieff quoted in Minow, *Between Vengeance and Forgiveness*, 62.
37. Bharucha, “Between Truth and Reconciliation,” 3764.
38. TRC Report 1998, 112. Cited in Bharucha, “Between Truth and Reconciliation,” 3764.
39. Levinas, *Otherwise Than Being*, 23.
40. Bharucha, “Between Truth and Reconciliation,” 3763.
41. Krog, *Country of My Skull*, 113.
42. Bloomfield et al., eds., *Reconciliation after Violent Conflict*, 141.
43. According to the rules of the South African TRC, perpetrators of human rights violations may be granted amnesty only if they have made full disclosure, and only if their acts can be shown to have a political objective. Political objective means being (1) a member or supporter of publicly known political organization or liberation movement, in furtherance of political struggle; (2) an employee of the state or member of the security forces, in furtherance of political struggle; or (3) an employee of the state or member of the security forces, within the scope of his or her duties. Amnesty cannot be granted if human rights violations were committed for personal gain or out of personal malice. For Coetzee’s amnesty, see the press release of the South African government, <http://www.info.gov.za/speeches/1997/0805ow13297.htm> (last accessed September 16, 2012).
44. Apartheid survivor Kalu is quoted in Thomas Brudholm, *Resentment’s Virtue: Jean Améry and the Refusal to Forgive* (Philadelphia: Temple University Press, 2008), 37.
45. See, for instance, Bloomfield et al., eds., *Reconciliation after Violent Conflict*, 122.
46. Henry, “Reconciling Reconciliation,” 236.
47. See Carlos Acuna and Catalina Smulovitz, “Guarding the Guardians in Argentina: Some Lessons about the Risks and Benefits of Empowering the Courts,” in *Transitional Justice and the Rule of Law in New Democracies*, ed. A. James McAdams (Notre Dame, Ind.: University of Notre Dame Press, 1997), 93–122; Mark J. Osiel, “Making Public Memory, Publicly,” in Hesse and Post, eds., *Human Rights in Political Transitions*, 217–62.
48. Backer, “Watching a Bargain Unravel?” 444.
49. Bharucha, “Between Truth and Reconciliation,” 3766.
50. Pankhurst, “Issues of Justice and Reconciliation,” 243.
51. *Ibid.*, 244.
52. Jeffrey Herbst, “Mbeki’s South Africa,” *Foreign Affairs* 84, no. 6 (2005): 99.
53. Backer, “Watching a Bargain Unravel?” 453–54. His studies are limited to Cape Town, but in a field in which there is very little systematic empirical evidence of the success of truth commissions over time, the results he discusses begin to offer a richer picture of how justice “ages” in post-conflict settings.

54. Ibid., 447.
55. Ibid., 456.
56. Ibid., 445.
57. Meister, "Forgiving and Forgetting," 152.
58. Ibid., 152.
59. Bharucha notes this discovery in "Between Truth and Reconciliation," 3766.
60. Meister, "Forgiving and Forgetting," 152.
61. Cited in Minow, *Between Vengeance and Forgiveness*, 86.