

# The quietude of transitional justice: Five rhetorical questions

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## 1 Dealing with a criminal past

What are we talking about? For a day, a virtual eternity in the governing “news cycle”, the left-leaning international media buzzes with commentary regarding the South African government’s decision to parole Eugene de Kock.<sup>1</sup> For those familiar with South Africa’s history and its transition to non-racial democracy, de Kock requires no introduction. An Afrikaner who “distinguished” himself in the apartheid government’s “border wars”, he is best and widely known as the leader of an apartheid death squad that took its name from the farm outside of Pretoria where it was headquartered – Vlakplaas. Operating from the mid-1980s into the early 1990s, de Kock’s Vlakplaas unit kidnapped, tortured, and murdered scores (the precise number remains unknown) of anti-apartheid activists, many of whom were members of the ANC’s Umkhonto we Sizwe (MK).

Arrested for some 89 different crimes and sentenced in 1996 to over 200 years in prison, de Kock was branded “Prime Evil”, a nickname that has led to more than a few comparisons to Eichmann and which set him out as a symbol of apartheid’s crime against humanity. He was also a star of the South African Truth and Reconciliation Commission’s (TRC) amnesty process, at least in the sense that he was one of the few members of the old government’s security regime who seemed to embrace the TRC’s call to come forward and detail the nature and extent of apartheid-era human rights violations. From prison, de Kock thus launched myriad amnesty applications and gave testimony to the Commission regarding his actions and the operations undertaken by the Vlakplaas unit. To the satisfaction of some and the horror of others, he consistently maintained that the leaders of the apartheid state, including Presidents PW Botha and FW de Klerk, were aware of the unit’s existence and activities. In the end, the TRC’s Amnesty Committee granted amnesty to de Kock for all but two applications, finding in the latter that while he had made a “full disclosure” regarding the murder of several individuals, the crimes were not “politically motivated” acts and thus fell outside the established criteria for amnesty.<sup>2</sup> With this judgment, de Kock was returned to prison for “ordinary” murder. For the rest, as he received amnesty

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<sup>1</sup> The decision is announced on 30 January 2015, just a few days after commemorations of the 70<sup>th</sup> anniversary of the liberation of Auschwitz. The proximity of the two events passes without reflection or commentary on their (non)relation.

<sup>2</sup> News24 Archive: <http://www.news24.com/SouthAfrica/Politics/De-Kock-denied-amnesty-20010517>. The archive of amnesty hearing transcripts and decisions by the TRC’s Amnesty Committee can be found on the TRC’s archived website: <http://www.justice.gov.za/trc/amntrans/index.htm>. Also see Erik Doxtader and Philippe-Joseph Salazar, *Truth and reconciliation in South Africa – The fundamental documents* (Cape Town: David Philip, 2007).

(not a pardon) for the vast majority of his applications, de Kock's "acts and omissions" were deemed "not to have taken place".<sup>3</sup>

Provoked by the news of de Kock's parole, the international media manages to capture almost none of this history. The coverage unfolds over the course of a day in which I am away from South Africa, driving across the American southwest, a landscape defined by the semi-industrial poverty (including the casinos) that attends life on Native American reservations and tribal land. Reading over a lunch break, it is clear that the New York Times has failed to grasp the difference between an amnesty and a pardon.<sup>4</sup> Back in the car, I listen to broadcasts on BBC, CNN, and National Public Radio, all of whom are quick to report that Desmond Tutu, the former Archbishop who chaired the TRC, has blessed de Kock's parole and that the Ministry of Justice has defended the decision on the grounds of "nation-building" and reconciliation.<sup>5</sup>

Over the course of several hours, in which various experts are mobilised and forums convened, what proves most interesting is an absence – at no point in the discussion and quasi-debate over de Kock's parole is the word "amnesty" uttered. Not once. The concept seemingly does not exist. At the very least, it is unspeakable. With this omission, the entirety of de Kock's record is put on trial – and in isolation; the relative justification for the parole unfolds as if amnesty did not occur and without concern for De Kock's claim that the existence of Vlakplaas was known at the highest levels.<sup>6</sup> In a single stroke, a criminal past is cast in a way that erases any legal distinction at the same time that is contained by law. In part, this means that for commentator after commentator, the idea of reconciliation functions only as a pretense, a gateway from guilt to arguments about the possibility of forgiveness and contrition, neither of which were a condition for amnesty, but which serve to support various moral-legal claims about the demands of justice and what is necessary to reconstruct the conditions of collective life and restore rule of law. Wound around all of this, sealing the logic, is an expressed consensus that it is counterproductive to question the concepts that ground and enable the debate. Again and again, such theoretical reflection is derided as unhelpful "abstraction". For those that applaud the parole and those who oppose it, the controlling law that underwrites their respective positions is the law, a law whose rule defies question in the name of securing a restorative or retributive justice.

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<sup>3</sup> This is the explicit language of the TRC's authorizing legislation. In some detail, I have traced and considered the development and terms of this legislation, see Erik Doxtader, *With faith in the works of words: The beginnings of reconciliation in South Africa* (Cape Town/Lansing: David Philip/Michigan State University Press, 2009). Elsewhere, I have taken up the controversial terms and justification for amnesty in South Africa, see Erik Doxtader, "Easy to forget or never (again) hard to remember? History, memory and the 'publicity' of amnesty," in Charles Villa-Vicencio and Erik Doxtader (eds.), *The provocations of amnesty: Memory, justice and impunity* (Cape Town: David Phillip, 2003): 121-155.

<sup>4</sup> <http://www.nytimes.com/2015/01/31/world/africa/eugene-de-kock-south-african-death-squad-leader-is-granted-parole.html?src=xps>.

<sup>5</sup> <http://www.tutu.org.za/archbishop-tutu-welcomes-eugene-de-kocks-release>;

<http://www.rdm.co.za/politics/2015/01/30/why-i-freed-eugene-de-kock-and-not-clive-derby-lewis>.

<sup>6</sup> There is nothing surprising about this glaring omission given the way in which standing accounts of transitional justice go to significant lengths to formally and informally ban the use of amnesty.

The de Kock case, including the parole, is instructive for the way in which it suggests that the criminal past is that which refuses to pass into the past. Evident in the way that de Kock is figured and indeed reduced to a symbol, the abiding presence of such criminality cannot be divorced from the function of law; it is a claim to its transgression and a standing cause to invoke its power of redress, a rule of law that may in fact legitimise itself by invoking the criminal past in order to conceal the way in which this past follows from what Hannah Arendt called “legal violence”, a violence that may be exposed only as the law takes exception to itself and opens the question of its rule – as a question. Put in a slightly different way, the memory of the criminal past may often depend on the law’s invitation to forget the way in which this past is implicated in a rule of law whose self-constitution can be recalled only as the law is led to forget the self-proclaimed necessity of its own expression. And put differently still, it is not always a straightforward thing to differentiate individual, collective or systemic histories of criminality and it is not always easy to differentiate these from the criminality of history that is frequently supported if not underwritten by law. In this light, the idea (the concept?) of the criminal past constitutes a tight and complex knot, a (triple) problem of how to best grasp its presence, redress, and source. Perhaps more than any other, this problem marks the exigence of transitional justice and its concern that deeply-divided societies find a way to “deal with the past” and move forward. As it is well-expressed and reflected in the thin coverage of de Kock parole, this interest often begins by begging the question at hand, the question of what it means to speak in the name of “coming to terms”.

## 2 Dissoi-Logoi

### WHAT TO SAY FIRST?

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In the name of transition, the voices of dissent reach a critical mass. Grievances are announced. Offences are documented. Calls for more or less radical change find a larger audience. The tradition-clinging claims of governing institutions fall on increasingly deaf ears. Visions of change are articulated by leaders who claim to speak on behalf of the public. The case for the new and the case for the old coalesce into a *stasis*, a moment of decision, a moment in which no single language suffices. Those who sense that something must give begin to talk about talk, to discuss the possibility

*The critical dissonance of transition is the threat of noise that relieves the name of its referent. Grievance blurs with counter-grievance, their meaning thrown open as the announced traditions that differentiate acceptable and unacceptable behavior are called into fundamental question. Institutions react with emergency decrees that fracture the public and silence its voice. Conflict escalates, until violence and language fold into one another. Announced positions harden into absolute principles that have nothing to give. The cost of stepping over the party line let alone attempting to speak with the enemy is*

of interaction between those who have long contended that they have nothing in common. Tentative exchange yields signs of good faith and a basis to negotiate a language with which to turn announced rationales for violence into productive forms of disagreement. Visions of a new dispensation are presented and debated. Constitutive words are crafted, debated, and revised.

A transition is announced. Its declared promise of the future is interrupted by the assertion of the past. There is untold suffering. The truth has (yet) to be told. The silence is deafening. And it threatens a return to the violence that forecloses the future. Calls for “coming to terms” with the past thus appear and gather momentum. An architecture for giving accounts and breaking silence is advocated and negotiated. It is time for a trial of words. The voice of wounded bodies must be restored and the damaged body politic must be healed, with and through the pronouncement of legal judgments, open-ended dialogue, and the performance of understanding, all of which sit atop inquiry which allows for a declaration of the facts and the formation of consensus about history, a consensus that opens space for the emergence of symbols that memorialise and represent. Juridical and executive institutions issue indictments and deploy “campaigns of persuasion” to mobilise public interest and to convince perpetrators and collaborators to disclose if not confess their acts and omissions.

Into various forums, victims are called to give testimony and articulate statements about their experiences. They are asked questions that open space for expression and guide its direction. Narratives are offered, sometimes easily, sometimes with sobs that echo across the gallery and which are noted (“witness

*treason. Good faith is a function of silence, the discipline to stand pat and stay the course in the face of the other side’s treacherous gestures and hollow words. Endless promises of incremental reform legitimize the violence and deter dangerous talk of the new. If and when it arrives, the decisive break is a turn that sets language’s constitutive power against itself.*

*A transition begins, equally a fracture of continuity and the emergence of form. Between the opening of an abyss and the appearance of an ideal, the old and the new swirl, combining in ways that defy the rules of predictability. Telling the truth rests on the fantasy that lattices of time and space are not bending in ways that unhinge the given meaning of history and culture. With the damage not yet (un)done, the aura of violence leaves language beyond and beside itself such that the call to come to terms presupposes ground that remains to be created. The silences are overwhelming and an open secret, the disclosure of which marks a threat to young institutions with democratic aspirations. The law’s announced and standing precedents are suspect. Too many words are an unbearable trial. Old vocabularies of power remain, a scaffolding that provokes opposition as much as it supports consensus about the need to move forward in a different way. If they say anything at all, the criminals who sustained the old regime shrug off their indictments as so much hypocrisy and plead guilty on the grounds of socialisation.*

*Some of their victims appear and give words that are then cited for their paradigmatic iterability, a precedent that lacks the force of context. Others, caught between the pressures of contributing to a new nation and a wish to remain with their thoughts, offer words with more than a bit of reserve. Others still are not asked to speak. The narratives appear in a scene both*

pauses”) in transcriptions that are often translated, circulated, and claimed to underpin the formation of a shared history that renders expression of plausible deniability implausible and (re)constructs the ground rules – the common sense – of collective life. The words bring catharsis. Rage is relinquished in exchange for recognition, a recognizing expression that marks the return of dignity, a sense of standing and the beginning of reparation. The deliberative fabric of citizenship is restored. The capacity to appear in public life is returned. Exclusion and factioning are supplanted with gestures that build trust and allow old conflicts to be transformed into productive disagreements, the aim of which is to build a path from past to future, an archive and a discourse that promises to transform legacies of deep division into an abiding unity in difference.

*controlled from the top and held to be evidence that “everyone is damaged”. The claim that all stories need to be heard sits with arguments about the ongoing effects of subjugation, the violent subjection of human beings to the point where they can neither be seen nor heard, a bare life that possesses no recognizable vocabulary and no standing to speak. The claimed healing value of public discourse collides with the contention that publicity is corrupted and that the meaning of collective life has been disappeared. Narratives do not reach audiences and defy translation across cultures divided by deep distrust. The archive provokes debate if not outright division over its constitutive exclusions and how it fails to recognize the reparative “value” of so many wounds.*

### 3 This is (not) a language game

For there would be no truth without that word-hoarding [thesaurisation], which is not only what deposits and keeps hold of the truth, but also that without which a project of truth and the idea of an infinite task would be unimaginable.<sup>7</sup>

In how many ways are words at work? Perhaps the truth is that the promise of transitional justice abides in the potential of (its) language. This idea is as obvious as it is enigmatic. To begin, take a moment for a thought experiment: subtract language from any of the standing theories, accounts, and recipes for transitional justice. What remains when victims cannot testify and perpetrators can neither confess nor hear their indictment, when there is no chance for citizens to articulate, discuss, or contest the meaning of history, when individuals, communities, and institutions cannot debate the meaning or articulate the need for retribution, reparation, or reconciliation, when there are no announced judgments from courts or no final reports from truth commissions?

Transitional justice does very little without words. Its work not only entails but demands various and variable *forms* of expression: institutional, public, and legal

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<sup>7</sup> Jacques Derrida, *Edmund Husserl's Origin of geometry: An introduction*, (trans.) John P. Leavey, (Lincoln, NE: University of Nebraska Press, 1989).

argumentation; negotiation, debate, and controversy; dialogue, discussion, and persuasion; individual and collective narration; interpretation and translation – across battle lines, communities, and cultures; literary (re)presentation and aesthetic performance. While this list can and likely does need to be extended, the more pressing point is that transitional justice is a function of expression. At times operating as a discourse, it takes form with(in) language and appears through modes of address that define its aims, enable its practices, and justify its value. When heard “on the ground”, a common place instantiated through a commonplace, the call for transitional justice frequently places a premium on the ability of individuals to find their voice, tell (their) truth, and come to terms. This is not straightforward work. Whether conciliatory, restorative, or retributive, the coming of terms whereby it is possible to come to terms presupposes the ability of citizens and institutions to construct and advance extended arguments that articulate the necessity of talk and codify its rules.

In the name of transitional justice, words about words matter. Indeed, the ongoing (and somewhat overdrawn) controversy over whether the centre stage of transitional justice belongs to trials or truth commissions is a question about who must speak, what they might say, and how particular modes of speech alter the conditions of individual and collective life. It is a mistake, however, to view this question only in instrumental terms, as a call to find and fit means of expression to a set of pre-given ends. If transitional justice is in fact addressed to transition, if it is addressed to an undefined if not undefinable moment that exceeds or defies “ordinary” justice, its work proceeds through speech acts that disclose its goals, compose its goods, and instantiate its values. This is to say that the experience of transition is an experience of loosening (and losing) taken for granted meaning. It is the experience of an opening, a space in which the ends, modes, and methods of (inter)action are thrown open to question. In the midst of transition, to borrow from Wittgenstein, the call of transitional justice stands before the problem that “Because skill at playing the game is no longer enough the question that keeps coming up is: can this game be played at all now and what would be the right game to play?”<sup>8</sup> In the words that enable and enact transitional justice, the ends and means of expression blur. The evident necessity of speech proceeds without clear let alone stable grounds. Playing the language game requires setting the very language of the game into play. And, as the game throws us back to the question of its rules, as the given rules that codify the appropriate goals and proper methods of transitional justice are seen to beg the question of their invention, meaning, and power, its theory and practice (now undifferentiated and mutually constitutive) take shape in a rhetorical economy, a contingent field of expression and exchange in which it is tasked to speak as if it knows what it is talking about at the same time that it troubles and relinquishes (its) taken for granted language.

This dynamic explains precisely why it is important to begin in two places at once. The question of beginning (again, and often in the name of “never again”) that drives transitional justice is a question of what to do with words that are altogether necessary and altogether outside the control of common understanding, convention,

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<sup>8</sup> Ludwig Wittgenstein, *Culture and value*, (Chicago: University of Chicago Press, 1984): 27e.

tradition. Confronting this problem is surely awkward, often anxious, and sometimes terrifying – precisely, as it entails thinking the dispossession of that which counts as a certain possession: language. Without a doubt, it is far more comfortable to remain above the fray that appears when the problem of beginning can no longer be severed from a question of origin, the question of how we (be)come by the way of words that we cannot claim to possess, the question of the violence that abides in the decision to simply assert the language which may only emerge *through* the work of transitional justice. It would be far easier to assume otherwise, to assume that language remains – intact, at the ready, and meaningful. And, it is just such an assumption that tends to define contemporary theoretical and practical accounts of transitional justice. Again and again, the word remains a given – a ground that can be taken for granted and a mechanism of expression that is thought to merit little theoretical reflection.

If transitional justice does very little without words, it has yet done very little with the question of (its) words. In no small part, this means that the announced logic of transitional justice tends to be a logic of transitional *justice*, an assumption that the language of justice remains – without question – in the midst of transition, a moral foundation, an end that simultaneously underwrites and directs expression. Evident in the way that dominant accounts of transitional justice stress the priority and integrity of rule of law, this vision of talk that requires no talk about talk may secure the moral at the cost of ethical life.<sup>9</sup> It betrays that what remains largely un-thought is the possibility that transitional justice is a practice that takes place *through* words and an event that takes place *in* the word. As a professed *responsibility* to alleviate suffering and cultivate a culture of human rights, transitional justice may turn on an ability to constitute and enable an ethics of *response-ability* in the midst of inhumane violence, a capacity to reply to what remains unspeakable. Its demand for *accountability*, a disclosure of truth and a reckoning with evil, may then turn on the creation of *account-ability*, the ground (rule) which secures the power to make a definitive (sovereign) claim. Promising the restoration of dignity and the emergence of democratic action, its call for *recognition* may turn on the discovery of *recognize-ability*, a turn from the language of recognition to the recognition of language as such, a struggle to grasp how the laws that govern the relation between individual and collective life take shape only as the standing word – the word with standing – is dispossessed in the name of recollecting and reconstituting its necessity.

#### 4 The appearance of last words

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<sup>9</sup> The pervasive and rarely questioned priority of the “rule of law” as the guiding principle of transitional justice is readily evident in its theoretical and policy literature. For an account of this presumption and its rhetorical cost, 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 Alexander Hirsch (ed.), *Theorising post-conflict reconciliation: Agonism, restitution & repair* (New York: Routledge, 2011): 27-64.

Poetic language takes place in such a way that its advent always already escapes both toward the future and toward the past... The word, taking place in time, comes about in such a way that its advent necessarily remains unsaid in that which is said.<sup>10</sup>

What of all this obvious chatter? People do speak, thank you very much—enough with this didactic nonsense! These so-called “rhetorical questions” are simply a distraction, a theoretical luxury. It is time to actually get some work done. After all, for goodness (or god’s) sake, people are suffering!

This impatience is the norm. It is understandable, at least insofar as it conveys the modernist faculty of expression that Cheikh Anta Diop saw as a mechanism for the colonial attempt to erase language as a question. Thus before rushing off to do the good on the ground, an impulse that usually overwhelms *kairos* with distraction, it is instructive to consider that just a few months before it declared in no uncertain terms that the promise of transitional justice demands a “standard language”, a common vocabulary and grammar that might tame its unruly “multiplicity of definitions and meanings”, the United Nations hosted a lecture in which its members gathered to hear Chinua Achebe and Paul Muldoon reflect on “the use of language in war and peace”.<sup>11</sup> It is worth wondering after the connection between the proclamation and the lecture, and, more precisely, whether the UN’s “definitive” statement of (its) transitional justice policy is nothing less than evidence that the renowned Nigerian author and the wild-haired Irish poet went largely unheard.

The lecture is a remarkable scene. Muldoon steals the show, with a sonnet sequence, a set of lines entitled “The old country”. Words of a place in time. Nowhere in particular and perhaps then everywhere at once, this place is the found object of transitional justice – and its founding object. In time, it appears to us through its collusion, a network of tacit agreements and implicit (mis)understandings:

Every runnel was a Rubicon  
where every ditch was a last ditch.  
Every man was a “grand wee mon”  
whose every pitch was another sales pitch

now every boat was a burned boat.  
Every cap was a cap in hand.  
Every coat a trailed coat.  
Every band a gallant band

across a broken bridge  
and broken ridge after broken ridge  
where you couldn’t beat a stick with a big stick.

Every straight road was a straight up speed trap.  
Every decision was a snap.

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<sup>10</sup> Giorgio Agamben, *Language and death*, (trans.) Karen Pinkus with Michael Hardt (Minneapolis: University of Minnesota Press, 1991).

<sup>11</sup> Report of the Secretary General, “The rule of law and transitional justice in conflict and post-conflict societies”, United Nations, Security Council, 23 August 2004 (S/2004/616). The Achebe-Muldoon forum is available on streaming video: <http://www.un.org/webcast/sg/lectureseries.htm>.

Every cut was a cut to the quick.<sup>12</sup>

And so it goes, verse upon verse, a play that leads Kofi Annan to squirm and sets the UN's translators to giggle. What is taking place here? What sense can be made of this apparent non-sense? The lesson is serious, according to Muldoon. In part and whole, the sonnet is "mimetic of the tedium it is describing", a demonstration of the cliché's ubiquity, a disclosure of the homonymic rituals and taken for granted platitudes that coalesce and collude to form ordinary language. Its lines testify to what happens when the word is appropriated as a simple tool, an instrument that relieves us of the need to think about language, the way in which human beings stand before it. As Muldoon puts it, the sonnet is a call to "be humble before language rather than going into any circumstance with a sense of what the appropriate thing to say might be, to go into it with a spirit of humility".

That this is the wrong thing to say while standing before UN delegates is precisely the point. The fluency borne of standardised expression marks a path of self-certainty, a road littered with dead bodies. The difference between peace and war, the difference that transition is called to negotiate, hovers around the "fine line" between the instrumental fictions that enable human beings to take (their) place with language and the "genuine barbarities" that take place when being human requires forgetting that we make far less with language than it makes with us. These barbarities prove telling. They betray that the question of *poiesis* is not a question of how to fashion and fix a new language. It is a question of discerning a responsibility, a response-ability in which giving an account begins by recognizing language, a concession that we do not necessarily know what takes place in the taken for granted word. The call to "be humble before language" is a calling, a humble and perhaps even humiliating act of giving away the word in the name of hearing its question.

What then of the refrain, "Actions speak louder than words". So be it, for a moment. Consider what is *done* in the decision – or is it simply a curiously recurring accident? – to punctuate much of the transitional justice "literature" with the words of the poets and the playwrights. Milan Kundera cannot be quoted enough, although rarely in context. Celan and Brecht's laments are repeated again and again. Vaclav Havel's samizdat truth is held up as a beacon, as Ariel Dorfman's deep sadness and subtle sense of absurdity is heard to pronounce a warning. Antjie Krog's poetic account of the South African Truth and Reconciliation Commission, perhaps the only existing book on the Commission that matters, is mined for its life-giving turn of phrase.

These appeals are not rhetorical flourishes. Their appearance is less a matter of calculation than a telling exigence, an experience that unfolds as transitional justice confronts the limits of given words. The poets appear when "proper" words afford nothing meaningful to say and when standardized language is understood – too late – as a source and form of violence. Their invocation thus betrays a moment of exhaustion and a hope for inspiration, the return of breath and its voice. In the literature of transitional justice, this means that the poet functions as secular cover for

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<sup>12</sup> Muldoon reading at the UN forum includes this transcribed sequence. The full work can be found in Paul Muldoon, *Horse latitudes*, (London: Farrar, Straus and Giroux, 2006).

the unasked question of the word, an angelic figure who has experienced the “poverty of words”, who grapples with the unspeakable that abides in what is said, who struggles to show hospitality in the face of a most difficult gift – language. The difficulty, of course, is that this turn to the poetic may well beg the question and does so precisely as it fails to reflect on Adorno’s now infamous claim: “To write poetry after Auschwitz is barbaric. And this corrodes even the knowledge of why it has become impossible to write poetry today”.<sup>13</sup> For the moment, the point is not that this dictum is necessarily or timelessly true, but that the theory and practice of transitional justice has yet to think it in any serious way; it has yet to reflect on the condition of the poetic – the “how” of its creativity and its potential as something more (and less) than a kind of sheer magic, as something other than an invocation if not “drive toward the unspeakable”, a forgetting of that which is not present – to make it present – that amounts to the “fury of one who must talk himself out of what everyone knows, before he can then talk others out of it as well”.<sup>14</sup> In the fold and logic of transitional justice, the invocation of the poets is a manifestation of panic, a deep-seated if not unspeakable fear of being at a loss for precisely that which transitional justice is called to create.

## 5 The unspeakable sound of the aftermath

There is a question and yet no doubt; there is a question, but no desire for an answer; there is a question, and nothing that can be said, but just this nothing, to say.<sup>15</sup>

There is no document of culture which is not at the same time a document of barbarism.<sup>16</sup>

What cannot (not) be said? The question amounts to an imperative, or more precisely, it is heard to express an imperative, the precise duty for which the poets are mobilised: the silence is intolerable – it must be broken. Marginal voices call for a hearing. Untold stories need narration. Experience demands expression. History requires articulation. The gap between what people think and what they say must be closed. The empty forms that sustain illegitimate power must be challenged and replaced with meaningful content. Announced and internalized systems of censorship have to be replaced with vibrant debate that can occur only as citizens re-inhabit and re-animate public space. Lost languages need to be recovered and recuperated. Everyone must begin to listen – again.

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<sup>13</sup> Theodor Adorno, “Cultural criticism and society”, in *Prisms*, (trans.) Samuel Weber and Shierry Weber Nicholson, (Cambridge: MIT Press, 1967): 34.

<sup>14</sup> Theodor Adorno, “Education after Auschwitz”, 2. Online at: <http://josswinn.org/wp-content/uploads/2014/12/AdornoEducation.pdf>; Theodor Adorno, “The Meaning of Working through the Past”, in *Critical Models* (New York: Columbia University Press, 2005), 92. Looking broadly, it is remarkable that Adorno’s claim is difficult if not impossible to find in the mainstream literature on transitional justice, an absence that speaks rather loudly to the narrow confines of its theoretical perspective.

<sup>15</sup> Maurice Blanchot, *The writing of the disaster*, (trans.) Ann Smock (Lincoln, NE: University of Nebraska Press, 1995).

<sup>16</sup> Walter Benjamin, “On the concept of history”, in *Walter Benjamin: Selected Writings, 4.*, (eds.) Howard Eiland and Michael Jennings, (Cambridge: Harvard UP, 2003).

All of this is held out as a matter of necessity, an imperative that defines the impulse and aim of transitional justice. In Priscilla Hayner's unsophisticated but popular account, the possibility of change rests on whether countries are able to "lift the lid of silence and denial" and "effectively unsilence" banned and taboo subjects. Transition founders if it fails to break the "conspiracy of silence" that perpetuates political violence, enforces deep division, and thwarts justice. The lynch-pin to the case is Hayner's contention that "psychologists universally confirm" the value of talk's restorative power.<sup>17</sup> With silence figured as pathology, the word's virtue and necessity can be denied only at the cost of denialism. In the aftermath, speech must be freed. It must be free. Against the desire for impunity that legitimises silence, the past must be disclosed and debated. In wake of human rights violations that mark and enforce silence, deliberation must become the norm.<sup>18</sup> Transformative justice, as Wendy Lambourne puts it, requires a "model of two-way communication, participatory or cogenerative dialogue, which supports collaborative decision-making, civil society participation and local ownership".<sup>19</sup> All of this, in Pierre Hazan's view, amounts to a "new *doxa*", a widespread and increasingly institutionalised presumption that transition hinges on a turn from "silence to speech" which counters "a potential return(s) to barbarity".<sup>20</sup> The word must be brought to bear and it must prevail. So goes the mantra, an appeal to the power of language that remains a fantasy precisely as it assumes that the word stands at the ready, a servant to all those who would employ it.

Setting aside the obvious possibility that some forms of quietude are a precondition of expression and that writs against silence may amount to forced confession, the pressing problem is how transitional justice pronounces a moral-political call to speech that rests on an unspoken assumption of language. This assumption is both a naïve preconception and an act of appropriation. In the aftermath, it is assumed that language is available, intact, and trusted. In the name of transition, the word is to be taken, as if it is ready-made and ready to serve, as if it is simply waiting in the wings, at the command of any and all who seek to vanish and vanquish silence from the stage. In the theatre of transitional justice, this restorative magic becomes a shell game precisely as it forgets its own claim that dehumanisation strips being of language. The result is a shell game – the word is here, now it's over there; but wait it's gone over here and wait now it's back. The game is a cheat, an undue appropriation of the word that plausibly denies the need for inquiry into how language is (dis)appearing. In the architecture of transitional justice, the game

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<sup>17</sup> Priscilla Hayner, *Unspeakable truths: Facing the challenges of truth commissions* (London: Taylor & Francis, 2003), 25. Here and in many other accounts, the case rests on a single work: Shoshana Felman and Dori Laub, *Testimony: Crises of witnessing in literature, psychoanalysis and history*, (London: Routledge, 1992).

<sup>18</sup> For one view of this position, see Amy Gutmann and Dennis Thompson, "The moral foundations of truth commissions", in Robert Rotberg and Dennis Thompson (eds.), *Truth vs. justice: The morality of truth commissions* (Princeton: Princeton University Press, 2000): 22-44.

<sup>19</sup> Wendy Lambourne, "Outreach, inreach and civil society participation in transitional justice", in Nicola Palmer, Phil Clark, Danielle Granville, et al (eds.), *Critical perspectives in transitional justice* (Cambridge, UK: Intersentia, 2012): 258.

<sup>20</sup> Pierre Hazan, *Judging war, judging history: Behind truth and reconciliation*, (Palo Alto: Stanford University Press, 2010): 40.

becomes self-confounding if not dangerous precisely as it fails to account for how the violence to which it is addressed unfolds through a calculated language that amounts to an attack on the possibility of language itself.

Beyond silence as the “absence of speech”, an absence that does not necessarily function to preclude speech, Peter Haidu turns to a 1943 address by Heinrich Himmler to demonstrate how the leader of the SS composed a silence that was “both the negation of speech and a production of meaning”.<sup>21</sup> With horrifying subtlety, Himmler’s “speech of silence” coalesces into a discourse that “breaks” language – it constitutes “active subjects” who are called to silently carry out their “scared orders”, an extermination of those who have been desubjectified, precisely to the extent that they have been stripped of their voice such that they can be declared “subhuman” and thus eligible for elimination. There is nothing to say precisely as expression is mobilised and set against its own power. There is nothing to say precisely because this discourse attacks the given terms of language. With a form that is “not anything that is readily dismissible as pure alterity”, it “deploys the linguistic structures from the most exalted reaches of human poetry and spirituality” and draws from “the ordinary furnishings of our institutional, intellectual, and aesthetic lives” such that a “language of responsibility” becomes the basis of an extermination that denies and endeavors to negate the response-ability of language.<sup>22</sup>

What remains is the question of the unspeakable. What cannot (not) be said in the aftermath? This question is a fault-line – choose a side on which to stand or fall into the abyss.<sup>23</sup> For Haidu, as the “process of extermination” to some extent “resulted from the language of silence on which Himmler insisted and which he and Hitler practiced”, the unspeakable is a discursive construction. It was “argued by Himmler”. It constituted a discourse, one that developed from a genealogy of value in which we are implicated.<sup>24</sup> In this light, Haidu contends, the question of the unspeakable constitutes a call for inquiry into the “sequential linkage between the speech of silence and the Event”, an inquiry that neither permits the erasure of “the narrative that history performs with the silences of its agents upon the bodies of its victims” nor endeavors to “redeem the dead by asserting their death possessed and inherent redemptive significance”.<sup>25</sup> Both within and beyond the problem of the Shoah’s uniqueness, its (in)comprehensibility and its (in)comparability, the appeal for words that might support, enact, and secure transitional justice is potentially unjustifiable, an argument for speaking that can neither account for its own words nor give an account of what violence and atrocity have done *to* language *with* language, the ways in which violence renders language to its purpose and the ways in which this erases, distorts, and short-circuits (its) expression. In this light, Haidu’s account has heuristic value precisely as it suggests that the aftermath, the beginning of transition, is a

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<sup>21</sup> Peter Haidu, “The dialectics of unspeakability: Language, silence and the narratives of desubjectification”, in Saul Friedlander (ed.), *Probing the limits of representation* (Cambridge: Harvard University Press, 1992): 278.

<sup>22</sup> Haidu, “Dialectics”, 292.

<sup>23</sup> For one example of this deep fault line see J.M. Bernstein, “Bare life, bearing witness: Auschwitz and the pornography of horror”, *Parallax* 10, 1, (2004): 2-16

<sup>24</sup> Haidu, “Dialectics”, 294.

<sup>25</sup> Haidu, “Dialectics”, 294, 296.

moment in which the assumption of language in the name of breaking silence begs the question at hand precisely as there may be no ready-made language to assume. What's more, as George Steiner has put it, such an assumption may mimic the logic that it seeks to oppose to the extent that it conceives language as little more than a machine:

The world of Auschwitz lies outside speech as it lies outside reason. To speak of the *unspeakable* is to risk the survivance of language as creator and bearer of humane, rational truth. Words that are saturated with lies or atrocity do not easily resume life.<sup>26</sup>

In the midst of the dehumanisation that defines the aftermath, the word does not stand at the ready, a tool that can pry open the past or turn the levers of transformation. Who can speak? Who is eligible to speak? What does and does not admit to words? The opening of transition holds a question of language, a question of language as such – its condition, its ability to be claimed, its ability to support the (ex)change that it has potentially served to corrupt. A great deal of concern has been shown for whether and how individual victims of atrocity can best reach toward language and bear witness. This work, undertaken primarily within the registers of psychoanalysis, is altogether important even as it may not be close to enough, at least insofar as the promise of transitional justice is hinged to a “coming to terms” that promises to transform the terrain of communal, public, cultural, and national life. Recalling Adorno once more, the task at hand may begin only in a concession, an admission that language constitutes a “hollow space”, a space unduly and prematurely filled in the rush for normalcy with words that lack for referents, with struggle slogans that no longer reflect the times, with sentiments of a general mood that simply (re)inscribe official taboos, with historical discourses that distort the concept of factuality, with commonplaces that conceal their corruption.<sup>27</sup> The task is made all the more difficult by the desire for action, a “cult of action” that races to redress the wounds “on the ground” without pausing to consider that this ground is precisely what remains in question.

All together: a profound and deep double bind, though it may in fact be triple. In confronting the dehumanisation that echoes from the criminal past, transitional justice struggles to (re)turn language, the very thing that has for so long defined the meaning of what it means to be human, a capacity to speak which, when assumed – attributed and taken for granted – renders language into an instrument, a tool that amounts to both the degradation of language itself and the possibility of violence that turns the human condition against itself. The need for language and its relinquishment must then be thought in the same breath, a moment in which the losses inflicted by the word turned violent touch the terror of being without words. And in all of this, the third thread of the bind, the onset of transition set out in the name of justice amounts to a struggle to reconcile (a concept that is not and cannot be a synonym for forgiveness) the tension between the presumption that talk is so much dangerous

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<sup>26</sup> George Steiner, “K”, in *Language and silence: Essays on language, literature, and the inhuman* (New Haven: Yale University Press, 1998): 123. For a contrasting view, see Naomi Mandel, *Against the unspeakable: Complicity, the holocaust, and slavery in America*, (Richmond: University of Virginia Press, 2007).

<sup>27</sup> Adorno, “Working through the past”, 91-95.

(in)action and the call of a rhetorical creativity that exceeds the rule of (its) law. For now, in the midst of transition given to dealing with the criminal past, it will not do to proclaim the necessity of speech while refusing to reflect on the creative potential of talk about the potential of talk. Such a gesture is not simply disingenuous. It is a form of thought riddled with the echo of barbarism.

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