

A Terrible Beauty: Reimagining Human Rights¹

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“Even now they have not found the
mouth with which to tell of their suffering.”

Chinua Achebe, *Things Fall Apart*²

Introduction

In the new millennium, all the world's a market—a complex, globalized network of economic, social, and cultural interdependence. Yet the millennial promise of a global household (*oikoumenē*) remains elusive. From Syria to Sudan, the recurrence of intrastate ethnic strife and regional instability has riven our global village. Still, life's unnatural lottery condemns millions to poverty and hunger. And even here we prove ourselves Babel's worthy children, differing not only as to what we say is just or unjust, but as to the very meaning of our differences. Will we speak of rights, and if so, which rights? Or is such talk mere rhetorical nonsense—“nonsense on stilts” as Bentham famously put it?³

Such “nonsense,” though, remains a stubborn inheritance. Indeed, I will argue this evening that we make sense of rights precisely as rhetoric, i.e., speech aiming “at persuasion and conviction.”⁴ For human rights, I believe, are best conceived as neither the grand, metanarrative

of the “generalized other,” nor a culturally specific narrative of the “postmodern, liberal bourgeoisie.” As in the South African Truth Commission, rights rather appear as a narrative grammar, a “mouth to tell of suffering” in victims’ testimony. And might it not be a token of enduring western *hubris* that we fail to perceive their originality? For far from being a mere stepchild of Enlightenment rationalism, the notion of rights “lives on and transforms itself” in the passionate remembrance of those who suffer and endure.⁵

This evening, I will offer a reconstructive interpretation of rights in victims’ testimony in Rwanda, the TRC, and kindred translations, illumining the novelty of such use against our inherited theoretical background. For their testimony belies a simple opposition of the politics of individual rights in regnant liberal theory and the politics of the common good in narrative tradition—rival rhetorics that leave little place for a narrative of rights.⁶ As the depth grammar of testimony, rather, rights do not so much displace our native tongues, as let us speak, in Edward Said’s words, of what has been “silenced or rendered unpronounceable.”⁷

Here, then, is the first, indispensable role of rights in testimony: in the words of Baba Sikewepere, blinded and tortured in Cape Town, “coming here and telling you the story.” In anamnestic solidarity with history’s victims, rights reveal what is silenced: history, in Walter Benjamin’s words, as remembrance. But hearing the story demands more: that memory speak in what *we* do, in redeeming the *cri de coeur* never again. As testimony in the TRC is woven into collective memory, the critical (deconstructive) role of rights becomes a clearing for new stories to be told (the constructive role). And still, there is the fitting measure of retribution and reparation, redress for victims (the reconstructive role). Such a threefold hermeneutic of rights

may well seem odd, if not perverse to a western ear, accustomed to the “strident language of rights” dividing “mine” and “thine”—but it is far from being rhetorical nonsense.

Part I: Redeeming the Silence

When sufferings become unendurable the cries are no longer
heard. The cries, too, fall like rain in summer.⁸

-Bertolt Brecht

The killings began on the evening of Easter Wednesday, April 6, 1994, and continued for three months. By the end, over 800,000 Tutsi as well as Hutu opposing the genocide were massacred. Between the second week of April and the third week of May, it is estimated that the daily rate of killing was at least five times that of the Nazi death camps. Three quarters of the Rwandese Tutsi population fell victim to the genocide; the elderly, children, the infirm, none were spared; nor was there haven. The churches, formerly offering sanctuary, were the first places to be attacked.⁹ In their environs, “more Rwandese citizens died...than anywhere else.”¹⁰

The horror was unmitigated, but not inexplicable; for the killing was due less to atavistic enmity than a racist mythology, nurtured in the colonial period and abetted by Belgian and later French *Realpolitik*.¹¹ Although favoring elite interests, the totalizing myth of Hutu supremacy divested the imagined “other” of moral standing so that the massacres by the militia (*Interahamwe*) seemed banal. In a perverse inversion of Emmanuel Levinas’s dictum, neighbor

refused to see the neighbor's face upon which was inscribed the command: "Thou shalt not kill."¹²

So too, members of the Security Council refused to acknowledge the Rwandan killings as genocide, lest they incur legal obligations under the Genocide Convention to which they were signatories.¹³ At the behest of the U.S., United Nations (UNIMIR) peacekeeping troops in Rwanda were summarily withdrawn.¹⁴ "The western world appeared concerned only for the fate of its own nationals."¹⁵ In the words of the President of Rwanda, Paul Kagame, "All these powerful nations regarded 1 million lives as valueless, as another statistic and could be dispensed with."¹⁶

Theirs, after all, is a familiar litany. "*Shoah*", "genocide", "apartheid," "ethnic cleansing. Over half a century of solemn declarations has not spared us further atrocity. Walter Benjamin's *Angelus Novus*, the "angel of history" still presides over "wreckage upon wreckage." Yet "the suffering and passion of the world"--is never given *tout court*. Whether we see these cruelest months as morally tragic or merely an unimportant failure of global politics depends upon evoking what is effaced, bringing to word the transgressed command. For only then does history become remembrance of victims, "anamnestic solidarity" in Benjamin's words, where rights become a mouth to tell of suffering: their first, critical or deconstructive hermeneutical role.¹⁷ In testimony, rights elucidate what the dominant powers have "silenced or rendered unpronounceable."¹⁸

Hannah Arendt thus writes: to "describe the concentration camps *sine ira* [without outrage] is not to be 'objective' but to condone them."¹⁹ Similar sentiments are voiced in the

International Panel commissioned by the Organization of African Unity (OAU) to investigate the Rwandan genocide:

Our experiences in Rwanda—the witnesses to whom we listened and the memorial sites we visited—often left us emotionally drained.... The nature of these events demands a human, intensely personal response... Readers have a right to expect us to be objective and to root our observations and conclusions in the facts of the case and we have striven rigorously to do so. But they must not expect us to be dispassionate.²⁰

In the wake of the *Shoah*, the developing *corpus juris* of international human rights' law provides the rudimentary rhetoric of such a response. We speak “where language halts”²¹ of atrocities and crimes against humanity. The term “genocide,” itself of modern coinage, is such an evaluative description, invoking a national, racial, or religious groups' natural right to exist.²² Such law, of course, remains comparatively weak and the powers of enforcement often wanting, as the unfolding tragedy of the Democratic Republic of Congo or Sudan amply attests. And yet the rhetoric of rights remains a lingua franca, giving voice to what Adolfo Pérez Esquivel describes as our “internationalized conscience” in the testimony of victims.²³

So it is, truth commissions, war crimes tribunals, the testimony of international and indigenous NGO's, and indigenous modes of reconciliation, e.g., *gacaca* in Rwanda, provide a narrative documentation of rights' abuse—the rupture, estrangement, and social anomie—apart from which talk of *re*-conciliation remains otiose. In the cries of victims—in their “*J'accuse*”—what one Rwandese survivor called “the fire inside” finds voice. Before “so much death, so much grief, so many families wiped out,” rights' talk loses the formally abstract, individualistic patina it has acquired in western liberal theory.²⁴ Here rights recall the horror of the *Shoah*, the “barbarous

acts” which, says the Universal Declaration of Human Rights, “outraged the conscience of [hu]mankind.” And yet, Arendt’s *ira* is never simply given. Indeed, acts of genocide or mass atrocity are barbarous *because* they deny the “first word of the face... ‘Thou shalt not kill’.” Like torture, such acts reduce the victim to a state where, in Elaine Scarry’s words, “the created world of thought and feeling, all the psychological and mental content that constitutes both one’s self and one’s world, and that gives rise to and in turn is made possible by language, ceases to exist.” To be reduced to “cries and screams,” to be denied even the mark of Cain’s humanity, this is the “unmaking” of the victims’ world, the effacing of memory.²⁵

Such unmaking, of course, may be the burden of longstanding oppression as much as torture.²⁶ Archbishop Desmond Tutu, Chair of the TRC, speaks eloquently of the consequences of apartheid’s heritage in Southern Africa,

where blacks have had their noses rubbed in the dust by white racism, depersonalizing them to the extent that they have—blasphemy of blasphemies—come to doubt the reality of their own personhood and humanity. They have often come to believe that the denigration of their humanity by those who oppress them is the truth about themselves.²⁷

Apartheid, says Tutu, “systematically stripped Coloureds, Indians and especially blacks of their rights and denuded their humanity.”²⁸ The “system conspired to undermine your sense of worth,” treating “us as if we were things. We had a struggle song, ‘*Senzenina? --Isono sethu bubumnyama*’ (‘What have we done?—Our sin is that we are black’.)”²⁹

Against such blasphemy, victims’ testimony becomes a mouth to tell of suffering. The South African Truth and Reconciliation Commission was charged by the “Promotion of National Unity and Reconciliation Act of 1995” to promote “unity and reconciliation by providing for the

investigation and full disclosure of gross violations of human rights committed in the past.” Pragmatic considerations, to be sure, impinged upon the practicable mandate of transitional justice, restricting the juridical or “quasi-juridical” critique of apartheid to “gross violations of human rights,” occurring between March 1, 1960 and May 10, 1994. Of the three Committees of the Commission, the first to begin hearings was, fittingly, the Human Rights Violations Committee, which focused primarily upon the victims of apartheid. Through two years of the public testimony, the Committee sought to establish victims’ identity and ultimate fate, as well as those responsible for the atrocities.³⁰ Neither was a victor’s justice meted out, for despite considerable opposition, members of the ruling party (the National Party) who suffered rights’ violations at the hands of PAC (Pan African Congress) or ANC (African National Congress) cadres were invited to testify as well.³¹ “Principles of the Geneva Convention” were applied “equally to both the former state and the liberation movements.”³²

In the TRC, “our nation,” writes Tutu, “sought to rehabilitate and affirm the dignity and humanity of those who were cruelly silenced for so long, turned into anonymous, marginalised victims.”³³ Here, testimony evokes what was systemically effaced. “Now through the Truth and Reconciliation Commission,” writes Tutu, victims “would be empowered to tell their stories, allowed to remember and in this public recounting their individuality and inalienable humanity would be acknowledged.”³⁴ Lukas Baba Sikwepere, blinded in a brutal attack by police in Cape Town and later tortured, testifies:

I feel what—what has brought my sight back, my eyesight back is to come back here and tell the story. But I feel what has been making we sick all the time is the fact that I

couldn't tell my story. But now I—it feels like I got my sight back by coming here and telling you the story.³⁵

Telling the story is, at once, part of Baba Sikwepere's story, what is woven into collective memory.³⁶ And so too the converse; in Jean Baudrillard's words, "forgetting the extermination is part of the extermination itself."³⁷

In East London, Nomonde Calata, wife of Fort Calata, a member of the "Cradock Four," testified:³⁸

During the time when the [*Eastern Province*] *Herald* was being delivered, I looked at the headlines. And one of my children said: "mother, look here, the car belonging to my father is burnt." At that moment I was trembling because I was afraid of what might have happened to my husband... Nyami [Goniwe, widow of another of the Cradock Four] was always supportive, I was still twenty at the time and I couldn't handle this. So I was taken to Nyami's place and when I got there Nyami was crying terribly...

"At this point in her evidence," says Tutu, "Mrs. Calata broke down, uttering a piercing wail which in many ways was the defining sound that characterized the Truth and Reconciliation Commission—as a place where people could come to cry, to open their hearts, to expose the anguish that had remained locked up for so long, unacknowledged, ignored and denied."³⁹

Recounting the testimony of Mrs. Calata, the Afrikaner journalist, Antjie Krog, writes, "The academics say pain destroys language and this brings about an immediate reversion to a pre-linguistic state—and to witness that cry was to witness the destruction of language... was to realize that to remember the past of this country is to be thrown back into a time before language. And to get that memory, to fix it in words, to capture it with the precise image, is

to be present at the birth of language itself. But more practically, this particular memory at last captured in words can no longer haunt you, push you around, bewilder you, because you have taken control of it—you can move it wherever you want to. So maybe this is what the Commission is all about—finding words for that cry of Nomonde Calata.⁴⁰

No word, our course, redeems the unspeakable. “When an act of violence or an offense has been committed,” says Primo Levi, “it is forever irreparable.”⁴¹ But in victims’ bearing witness, the breach, the rupture, no longer appears as mere wretchedness. It acquires the quality of tragedy: at once general, when as in genocide or apartheid, the victims are legion, but always, ineluctably particular: that cry of Nomonde Calata. Haltingly, in the telling of victims’ stories, in narrating the gross violations of human rights suffered, we speak the transgressed command: history as remembrance.⁴²

Baba Sikwepere’s testimony shows that he *is* a victim of apartheid, not a terrorist or criminal as depicted in apartheid media. And so for countless victims like Baba Sikwepere and Nomonda Calata, rights became a “pedagogy of seeing” or imagining evil.⁴³ As Pumla Gobodo-Madikizela, a psychologist serving on the Human Rights Committee observes, the narrative testimony of victims affirms: “you are right, you were damaged, it was wrong.”⁴⁴ Our descriptions of the killings—and of the “psychic subhumanization” preceding them⁴⁵—thus not only express their enormity but elicit our outrage.⁴⁶ [S]ilence,” writes the legal theorist, Martha Minow, is thus “an unacceptable offense, a shocking implication that the perpetrators in fact succeeded.”

Part Two: Anamnestic Solidarity

In Part One of my talk this evening, I argued our rights do not descend from Kant's empyrean. Nor are they of merely local and ethnocentric provenance, merely one of innumerable local narratives or *petits recits*.⁴⁷ For the rhetoric of basic human rights in victims' testimony rightly demands our outrage, Arendt's *ira*. So rights become a pedagogy of seeing or imagining evil. Getting the memory right, fixing it in words, we saw, is the first hermeneutic use of rights in anamnestic solidarity--finding words for Nomonde Calata's cry. History, Benjamin reminds us, is not an exact science, exhausted by materialist explanation, but remembrance. "[T]he slain," objects Max Horkheimer, "are really slain," and the "injustice, the horror, the sufferings of the past...irreparable." But it is the very irrevocability of the "injustice, the horror, the sufferings of the past" that *we* remember in the TRC. The *disaparecidos* appear, what the dominant powers have silenced is pronounced; and pace Horkheimer, this critical interpretation (bringing to word the transgressed command) is already an exercise of anamnestic solidarity. Forgetting the extermination, conversely, is part of the extermination.

But how does memory speak? For Horkheimer, the slain cannot claim us; their rights claims pass with the interests or benefits that funded them. "What happened to those human beings who perished does not have a part in the future." And yet, it is not the pastness of the past that speaks in memory, but its presence. Rights "get that memory,...fix it in words," and the words command. For Arendt's moral outrage is not "added" to brute, empirical descriptions of the camps, but is the very condition of our seeing or interpreting them aright. The pastness of the past, then, does not claim us; nor is remembering what the Universal Declaration of Human Rights calls "barbarous acts which have outraged the conscience" of humanity merely useful, e.g., to forestall future genocide. Rather the logic of remembrance (*anamnesis*) is self-implicating: *we*

cannot get the memory right *sine ira*. Our history bears the mark of Cain, and so we say, as we must, “never again,” again and again.

We return, then, to narrative. For memory encompasses, not merely the slain, but those, like Nomonde Calata, who cherish their memory; and no less, victims like Baba Sikwepere, who suffer and endure. Torture, atrocity, rape; these too, as Levi reminds us, are “forever irreparable”; *this* is memory’s burden.⁴⁸ To think of rights hermeneutically, then, is to extend anamnestic solidarity to all of history’s victims—and no less, to remember the Molochs, the systemic distortions that make victims necessary. And still, we must say more. For the effaced appear in memory as command—the grammar of *anamnesis* binding us, here and now.

The narrative disclosure of gross violations of human rights committed in the past is thus Janus-faced. The critical, deconstructive role of rights in disclosing the “injustice, the horror, the sufferings of the past” sets the stage for the work of narrative construction,⁴⁹ forging a shared or collective memory. In the aftermath of the Pinochet regime in Chile, José Zalaquett recalls that while members of the truth commission failed to agree on a common narrative history of the coup, all concurred in denouncing “the human rights violations committed by the military regime.”⁵⁰ Such a measure of narrative truth⁵¹ transcending merely local and ethnocentric mores is a *sine qua non* of subsequent reconciliation, since

society cannot simply black out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably, the void would be filled with lies or with conflicting, confusing versions of the past. A nation’s unity depends on a shared identity, which in turn depends largely on a shared memory. The truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring.⁵²

Zalaquett's wisdom was reflected in the central place accorded victims' testimony in the TRC. The telling of stories is, to be sure, no panacea; many stories remained untold in the TRC, nor is the "disclosedness" of truth tantamount to reconciliation (although it is an integral element of it).⁵³ Still, when TRC submitted its 5 volume report on October 29, 1998, the years of anguished testimony had forged a remarkable narrative linking the stories of over 23,000 victims like Lukas Baba Sikwepere and Nomonde Calata into what Charles Villa-Vicencio describes as "the greater story that unites."⁵⁴ Displayed here, I believe, is the dual hermeneutical role of rights in fostering a passionate critique of supremacist narrative, be it of apartheid or Hutu Power, and of constructing a "shared memory."⁵⁵ In victims' testimony, the TRC revealed the systemic distortions and evasions of apartheid; no mitigating redescription of apartheid would henceforth serve.⁵⁶ But the disclosure of atrocity is a clearing for new stories to be told—in Minow's words, "a new national narrative," privileging victims, as we shall see, but just so, resisting closure.⁵⁷

In the "uniquely public testimony" of the TRC, memory speaks.⁵⁸ Testifying of being tortured at the age of sixteen says Mzykisi Mdidimba has "taken it off my heart":

When I have told stories of my life before, afterward I am crying, crying, crying, and felt it was not finished. This time, I know what they've done to me will be among these people and all over the country. I have some sort of crying, but also joy inside.⁵⁹

What Wole Soyinka calls "the burden of memory" is borne in such testimony.⁶⁰ Wounded memory⁶¹—"trauma's *lived* memory,"⁶² in Gobodo-Madikizela's words—speaks "among these people and all over the country."

And it is thus rights' rhetoric fixes the memory in words; for in narrating genocide or apartheid, rights reveal the complex, causal nexus, letting us, in Auden's words, to "unearth the

whole offence.”⁶³ To remember the Rwandan genocide or apartheid is to comprehend the constellation of their causes, the preceding acts of which they are the denouement, i.e., the systemic denial of the victims’ mutually implicative claim-rights and the impunity accorded their executioners.⁶⁴ Such comprehension of the systemic causes of evil—such remembrance—imposes a primordial responsibility for the victim which we may parse in terms of the duties correlative to basic rights. And these cognate duties comprise not only forbearance, as in philosophical liberalism, but structural protection against further deprivation, and fitting provision of the ethical substance of rights.⁶⁵ Typically, such institutional embodiment will entail appropriate constitutional provisions in (re)establishing the rule of law and civic deliberation (restorative justice).⁶⁶ Yet perhaps no less significant are traditional forms of mediation such as “*gacaca*” in Rwanda, or other analogous practices of restorative justice in civil society.⁶⁷

In either event, the shared memory of victims’ testimony must be inscribed in a greater story “conducive to human rights and democratic processes.”⁶⁸ The “real reparation we want,” says Albie Sachs, “lies with the constitution, the vote, with dignity, land, jobs and education.”⁶⁹ In establishing the TRC, the “National Unity and Reconciliation Act” of the Interim Constitution looked to “a future founded on the recognition of human rights.” And in a characteristically African inflection of rights, Tutu links final success of the TRC’s “narrative project”⁷⁰ to fitting redress of the vast economic “disparities between the rich, mainly the whites, and the poor, mainly the blacks.” For “[t]he huge gap between the haves and the have-nots, which was largely created and maintained by racism and apartheid, poses the greatest threat to reconciliation and stability in our country.”⁷¹

What I have called the disclosive or hermeneutical function of rights appears, then, not only in the deconstructive critique of systematic distortion, but in the constructive “irruption of the poor in history,” in Gustavo Gutierrez’ telling phrase, i.e., their construction as historical subjects, subjects of narration:

Our time bears the imprint of the new presence of those who in fact used to be “absent” from our society.... By “absent” I mean: of little or no importance, and without the opportunity to give expression themselves to their suffering, their comradeships, their plans, their hopes.⁷²

It is this irruption that the TRC documents in the testimony of Lucas Baba Sikwepere, Nomonde Calata and the myriad of those deemed ““nonpersons’...who are not considered to be human beings with full rights.”⁷³ We remember the effaced; those denied voice, speak. And so it is, in our discursive rendering of the common good, we speak of a primordial responsibility for victims. Our moral entitlement to equal respect or consideration justifies preferential treatment for those whose basic rights are most threatened or denied—in Camus’ phrase, our taking “the victim’s side.”⁷⁴ For if equal respect does not imply identical treatment, but recognition of the concrete other, so one may distinguish legitimately between indiscriminate regard for moral persons and discriminate response to their differing situations.⁷⁵ Aquinas’s observation that a servant who is ill merits greater attention than a son who is not, pertains, a fortiori, to equals: the fulfillment of equal basic rights, in materially dissimilar conditions, justifies a discriminate response.⁷⁶

Now such a discriminate response is expressed in the graduated moral urgency of differing human rights, i.e. the lexical priority of agents’ basic rights to security, liberty, and welfare over

other, less exigent claims, e.g. property rights; and in the differing material specification of duties presumed for the same human rights.⁷⁷ A regime of rights may thus embody a legislative or juridical preference for the least favored in society, as in the South African Constitution, e.g., poor women and their families, and differential material entitlements corresponding to the differing interpersonal prerequisites of agency, e.g. the greater nutritional needs of pregnant women.⁷⁸

If, moreover, we believe all equally worthy of being represented, then the claims of those denied such recognition, often through systemic suppression of their basic rights, become (and remain) morally imperious.⁷⁹ Seeing the victims' point of view, e.g., Baba Sikwepere's epistemic or hermeneutical privilege, emerges as a touchstone of the legitimacy of our prevailing institutional arrangements; only thus can we offer an equitable assessment of our legal enactments, juridical decisions, economic policies, etc. For at issue is not merely a fair, consensual arrangement of inequalities, e.g. Rawls's difference principle, but the fairness or impartiality of the consensus itself, i.e. persons' equitable representation in their common social institutions.⁸⁰

Consensus may well be illusory, conversely, if agents' moral powers are repressed in passive acquiescence in servitude, or suppressed in systematically denying their point of view. The epistemic or hermeneutical privilege of the most vulnerable rests, then, not in canonizing a particular point of view, but rather in revealing the partiality of such illusory or coerced consensus, e.g., the systematic distortions of apartheid. Merely including the vulnerable—and here we must always think of women—in existing institutional arrangements, or ameliorating their economic status, will not suffice. For only if the rights of the most vulnerable, including a fortiori

their participatory rights as narrative agents are duly recognized can we arrive at true (valid) judgments of fairness in the design and implementation of policy⁸¹—hence their properly epistemic privilege.⁸²

The common good itself thus bids us ask, in the spirit of *ubuntu*: in light of the wreckage, in Benjamin’s words, to which every civilization is heir, who are the most vulnerable in our midst? What policies will *best* protect their basic rights, all things considered? How can those whose basic rights are systemically imperiled be restored to full and equal citizenship? The answers, of course, are never given simply, or once for all. Indeed, a consequentially sensitive account of rights in realizing the common good (the *telos* or finality of embodying a rights regime), invariably admits of degree. In this respect, the common good (of a well-formed narrative) remains a regulative ideal, more or less realized in any given polity: the restorative imperative runs throughout our public reasoning.

But just so, our well-formed narratives, precisely in schematizing rights, comprise a family of language-games, which, as such, are not rigidly limited but open-textured.⁸³ For rights are not a moral Esperanto displacing our native tongues—the differing rhetorics (values, ideals, etc.) of our comprehensive conceptions of the common good.⁸⁴ Albie Sachs speaks of “building national unity and encouraging the development of a common patriotism, while fully recognizing the linguistic and cultural diversity of the country.”⁸⁵ And it is recognizing this family resemblance in diverse linguistic and cultural traditions that fosters national unity, i.e., a limited, political common good. We may say, then: (a) Reasoned political speech—Aristotle’s rhetoric—depends on our native tongues (grammar without language is empty); yet precisely *as* reasoned (b), political speech exhibits a common narrative *telos* (language without grammar is blind).

As we argued, a narrative is well-formed precisely inasmuch as it exhibits the deep grammar of rights. Indeed, the very notion of a well-formed narrative becomes a critical type or schema in identifying what Jürgen Habermas terms “systematic distortions” of our civic discourse, e.g., the effacing of the other.⁸⁶ Rights talk, we may say, is thus less simply or even primarily talk about rights, than talk—reasoned speech—rights make possible. For if rights bring to word the transgressed command, enjoining a primordial responsibility for the victim, so they disclose the victim’s truth—what Judge Ismael Mahomed of the TRC named the “truth of wounded memories.”⁸⁷ What Lucas Baba Sikwepere says is, in part, his saying, the disclosedness (*aleitheia*) of what Tutu calls his “God-given personhood and humanity.” As narrative grammar, basic rights, temper what we say (rights as side-constraints⁸⁸), even as they function constitutively in our saying, i.e., in preserving and protecting our moral self-knowledge *as narrating agents*. Grammar never simply constrains our practical speech or rhetoric; for it is not finally one thing to speak and another to speak grammatically. To deny Baba Sikwepere’s or Nomonde Calata’s telling their story, or the kindred conditions of their telling it, conversely, betrays the common good of discourse in our varied narrative and legal traditions—a narrative project which, as the Holocaust historian Saul Friedlander reminds us, must always resist the temptations of closure.⁸⁹

Part Three: Moral Repair

But what of such wounded memories? For as we noted above, although the victims are legion, suffering is always, ineluctably particular. What is owed the victims? What debts are borne by perpetrators? Before turning to this final question, let me summarize my argument thus

far. As we have seen, in victims' testimony, the abstract, individualist tenor of liberal rights' theory gives way to an internal, deconstructive critique, e.g., of apartheid narrative. Effective remembrance rests in the disclosure of systemic rights' violations (the critical, or deconstructive role of rights); but no less, in our erecting appropriate institutional guarantees against their recurrence (the constructive role of rights). In anamnestic solidarity, the faces of the *desaparecidos* must appear; the systemic violation of their rights be redressed. Indeed, the third element of social reconciliation, of appropriate redress for victims, presumes both the discovery of truth and a restitution (or establishment) of the rule of law.

For to speak of social reconciliation, e.g., through a general amnesty, while effacing the victim, or while abetting further victimization, is to fall prey to the semantic hubris Jeremiah decried, "falsely saying, 'peace, peace', when there is no peace" (Jer. 6:14). As the Rwandan theologian, Augustin Karekezi, S.J. observes,

In the light of all that happened, it is clear why the survivors and victims of this genocide express moral indignation at calls for reconciliation *which ignore the issue of justice*. Some even claim that focusing on truth and justice will only serve to open old wounds and make reconciliation impossible. Such a position ignores the fact that the wounds will bleed for years. It is not by our looking in the other direction that the victims will be healed. Those who talk of a 'general amnesty' speak from the privileged position of neutral outsiders who ignore the reality of those who must live with the consequences of what has been done to them--above all, the widows and orphans.⁹⁰

Although subject itself to criticism, the conditional amnesty process overseen by the Amnesty Committee of the TRC required that those applying for amnesty confess their complicity

in gross human rights' violations. In the amnesty hearings, perhaps for the first time, victims would learn the fate of loved ones—how a spouse was tortured, where a son was buried. Such public admission of guilt, in concert with the discovery of truth and the institution of the rule of law, belies the generation of any counter-narrative that would tacitly legitimate the evasions and systemic distortions of apartheid.⁹¹ “No one in South Africa,” says Tutu, “would ever again be able to say, ‘I did not know’ and hope to be believed.”⁹² In a similar vein, international tribunals, e.g., in Arusha or the Hague, or adaptations of traditional forms of mediation, e.g., *gacaca* in Rwanda, serve to interrupt the culture of impunity, of killing without consequence, that culminates in further violation.⁹³

Finally, then, redress of evil must, in so far as feasible, honor not only the legitimate claims of retributive justice, but likewise victims' claims to restitution and reparation. For just as those most vulnerable deserve protection in the design of society's basic institutions, so systemic failures of forbearance or protection in the denial of basic rights warrant reparation, restitution, rescue, etc. The Reparations and Rehabilitation Committee of the TRC, for instance, despite severe limitations, recognized the specific entitlements of victims in the name of just recompense, and not mere, indiscriminate aid. Innocent suffering, of course, imposes its own obligations; but suffering due to the denial of rights must itself be parsed in terms of rights, lest the specificity of offense be merely ignored or suppressed. The critical role of human rights in discovery of truth and the constructive role of rights in establishing the rule of law, thus culminate in the reconstructive role of specifying ancillary rights and correlative duties of redress.

And it is just this narrative embodiment or schematization of both *general and special* rights that lets us speak of narrative truth. For as the hearings of the TRC revealed, the world is

not tidily arranged into victims and perpetrators. Under torture, victims betrayed comrades; complicity in atrocity was abetted by fear of reprisal. Bystanders are not for that reason innocent; indeed, “unearthing the whole offense” displays a range of culpability. Yet if the critical hermeneutic of rights permits us to identify, *pro tanto*, victim and perpetrator, so the constructive hermeneutic of rights precludes our essentializing either victim or perpetrator. Under the rubrics of rights, the narrative (legal) construction of identities remains fluid.⁹⁴ As the writer Graham Greene once observed: “a writer writes about the victims, and the victims change.” Victims can become executioners; some have. We must count the supremacist essentializing of victimhood among the precursors of genocide in both Rwanda and Bosnia.⁹⁵

Merely to remember, then, is no stay against future atrocity—history has taught us that. But to remember morally is to recognize the command of the face, even of one’s enemy. And so, under the rubrics of rights, we read history, in Benjamin’s words, as “the history of the suffering or passion of the world.”⁹⁶ The universality envisioned in such reading is modest—not “bourgeois civil rights” as the “standard maximalist morality” of the West, but the ethical substance of our *ira*, the grammar of our dissent.⁹⁷ For the concrete universality of schematizing rights finds expression in irreducibly plural narratives, and in the voices, often suppressed in *les gran récits*, of victims weaving narratives anew. Such weaving, we have seen, is perforce incomplete—the passion of the world, alas, is never spent; but neither, then, is their passionate remembrance.

And is just this solidarity, given in the narrative schematization of rights, we saw, that provides for the family resemblance of well-formed narratives. For inscribed within our narration and rendered in accordance with our diverse cultural wisdom,⁹⁸ the grammar of rights allows for a limited rapprochement of our discrete cultural narratives, Xhosa, Zulu, Afrikaner, et al. Even our

disagreements regarding narrative history and appropriate legal or juridical redress are thus framed against an anterior consensus—in Zalaquett’s words, “a shared memory.” And so too, official, public apologies, to paraphrase Minow, both “reflect and help to constitute” a shared memory; for such apologies are, in part, performative locutions, i.e., they (re)interpret the past; reaffirm the rule of law (“community norms” as a “moral baseline”); and, implicitly, bind the future behavior of those in whose name the apology occurs. In this latter respect, apologies serve as promissory notes of restorative justice, redeemable in both general, institutional safeguards against the offense ever recurring, and specific acts of restitution or reparation.⁹⁹ In the redress of evil, apologies enact our recognition and remembrance of evil; and lack authenticity, where and to the degree these performances are wanting.¹⁰⁰

Even the most authentic of apologies, however, does not pay the “price of pain.”¹⁰¹ “This inside me...fights my tongue,” says one witness in the Human Rights Committee. “It is...unshareable. It destroys...words”—even in speaking.¹⁰² Perhaps it must be so, this talk of rights where language halts. Our shared memories are fragile; they seldom go all the way down. Indeed, the narrative meaning of a given apology, like that of any institutionalized response such as the TRC, remains open-textured, depending, in part, upon the history of their consequences (what Gadamer calls *Wirkungsgeschichte*).¹⁰³ And yet where no such moral membrane exists, no common moral remembrance or reparation, we seem fated to an endless *agon*: “[t]he habit-forming pain, [m]ismanagement and grief: We must suffer them all again.”¹⁰⁴

A Concluding Theological Postscript

Rights, I have argued, are not a *mélange* of discrete, normative claims of sovereign selves, abstracted from the ensemble of social relations, as in Marx's critique of classical liberalism. Rather, basic rights and correlative duties hang together grammatically, configuring a coherent rhetorical practice of anamnestic solidarity. Rights, that is, function critically or deconstructively in revealing the truth of wounded memory and constructively in weaving of such memories a "greater story that unites." Finally, the deconstructive and constructive uses of rights underwrite a reconstructive politics of redress for victims, e.g., legal restitution, reparation, apology, etc. And yet, there is, invariably a moral remainder, legitimate claims that cannot be legitimately (legally) adjudicated.

Wole Soyinka's eloquent plea for "evidence of mitigation—or remorse" was not justiciable in the TRC's amnesty hearings; and yet the ritualized character of the hearings orchestrated a social drama in which such demands were made, and perhaps, honored. Though forgiveness fell beyond the purview of the judges, I recall one mother saying to the killer of her son, who begged in tears, "I can never forgive you, for what you have done," and yet another, immediately following, saying "It is my Christian duty to forgive you." In the former case, the legal provision of amnesty implied the institutional recognition of the victim's *right* to forgive—or, a fortiori, to withhold forgiveness. But the latter case, raises a further question, for what shall we say of such a Christian "duty"? The dictates of morality may reveal the command of the face, our bringing to word the transgressed command. Yet such recognition does not entail forgiveness, nor does the rule of law provide for the love of enemies. How, then, shall we understand the "surplus" of religious meaning?¹⁰⁵ And here, I will speak merely of my own Christian tradition, recognizing the richness of other systems of belief.

In the midst of this disenchanted world, replete with genocide, apartheid, and ethnic cleansing—these “tokens” of modernity—might it not be that our talk of reconciliation becomes, in Levinas’s words, a form of “prophetism” and hence of “revelation?”¹⁰⁶ Yet how, in the face of such tragedy, is one to speak of godly things? The churches must walk humbly here, for their martyrs’ heroism does not absolve them from complicity with the martyr-makers in Rwanda or abetting the systemic distortions of apartheid.¹⁰⁷ Here, too, the victims raise the perennial question of theodicy, a question which resolves itself less as a metaphysical conundrum, than a psalmic lament. For the psalms of lament give voice to the *morally* tragic character of suffering. Evil is *imagined* (“How long, Lord, shall the wicked, how long shall the wicked glory...They crush your people, Lord, torment your very own” [Ps. 94: 3,5]), but goodness *remembered*--one might even say proleptically remembered (“Happy those whom you guide, Lord, whom you teach by your instruction...You, Lord, will not forsake your people, nor abandon your very own. Judgment shall again be just and all the upright of heart will follow it” [Ps. 94: 12, 14-15]).¹⁰⁸ Unlike Mother Courage’s silence, the lament invokes narrative, and thus, implicitly, the restoration of the narrator--and not infrequently, a retribution to be visited upon one’s enemies (“The Lord... will turn back their evil upon them and destroy them for their wickedness. Surely the Lord our God will destroy them” [Ps. 94: 22-23]).

Interpreted thus, the lament psalms encode the threefold hermeneutical uses of rights: the imagination, remembrance, and redress of evil, albeit in a distinctively religious key. Such reconciliation, to be sure, does not depend upon religious belief in the sense of strict logical implication. Yet the general backing of rights, revealed in the exhibition of respect, may admit of a distinctively religious *justification*, e.g., our creation in the *imago dei*. In her response to Simon

Wiesenthal's The Sunflower, Cynthia Ozick writes, "The Commandment against idols is above all a Commandment against victimization, and in behalf of pity. Moloch springs up wherever the Second commandment is silenced. In the absence of the Second Commandment, the hunt for victims begins."¹⁰⁹ Distinctive religious attitudes and beliefs may thus figure in an *ultimate* justification of rights, even as religious narrative sublates rights' rhetoric in *interpreting* genocide or apartheid. Christianly considered, for instance, rights become markers on the "way" of disciples of Jesus, the Crucified (here, too, we observe the hermeneutic function of rights).

Christian ethics begins, then, not with formal abstraction from the artifice of society, but with seeing, in the faces of the crucified people, the Crucified *imago dei*—tragedy redeemed in tragedy (Mk. 15: 39).¹¹⁰ And just as rights' rhetoric marks the path of discipleship, so Christian narrative tempers the disciple's interpretation and application of rights. In interpreting rights rhetorically, as a "pedagogy of seeing" or imagining evil,¹¹¹ the victim's face is restored to us as an icon of the Crucified, in Paul's eucharistic imagery, our "recognizing the body of Christ" (1 Cor. 11: 29). Remembrance of Christ crucified (*anamnēsis*) thus reconfigures local narratives, illuminating the *moral* tragedy of genocide or apartheid. The Christian *must* remember, because in that remembrance, i.e., in "seeing and having compassion," she herself is revealed, i.e., proven true, as disciple (Lk. 10: 25-37). And here, too, the surplus of Christian meaning is revealed; for if the Christian "justices," so in the fullness of *agapē*, justice bears the mark of love: we remember, if only to forgive.

Our rights' rhetoric, incorporated in Christian narrative, thus illumines "what disciples do" in seeking reconciliation. Authentic reconciliation, as Karekezi argues, presumes a primordial responsibility to the victims, i.e., a recognition of the moral tragedy of genocide or apartheid, and

systemic provision against their recurrence. Yet while neither ceding nor derogating their rights, victims may still, when fitting, forgo their claims (or their full satisfaction) in memory of Jesus who “reconciled us with God” (Rom. 5:10). Such *forgiveness*, as a form of self-sacrificial *agapē*, transcends, even as it presupposes, the exacting rhetoric of rights. For forgiveness, cannot be less than just; there is finally no “teleological suspension of the ethical.” Forgiving cannot then reinscribe victimhood. The Tutsi mother or mother of Soweto who forgives her child’s executioner, acts in utter gratuity. Although morally, she too must recognize the divine command upon her enemy’s face: “Thou shalt not kill,” still the dictates of *morality* do not entail the further command: “Thou shalt love thy enemy.” Here the “Thou” uttered is utterly particular, utterance divine. Only she can forgive and her forgiveness is unexacted: the executioner has no moral claim to her forgiveness, nor can the legacy of suffering deprive the victim of what the jurist Albie Sachs, now a judge on the new South African Constitutional Court, terms her “right to forgive.”¹¹² And yet what is *morally* supererogatory may be mandated by our distinctive religious narratives: as the mother said to her son’s executioner, “it is my Christian duty to forgive you.”

Perhaps the final irony is that in the wake of the moral tragedy of apartheid or genocide, the very prospect of attaining a *just* reconciliation may, indeed, depend upon the morally supererogatory, e.g., victims’ willingness to forgive and sup at the one table. Forgiveness as a miracle of grace, exemplified, for instance, not only by Nelson Mandela or Desmond Tutu, but by countless victims of atrocity, may figure not only in the end, but at the beginning of the arduous process of social reconciliation.¹¹³ Imagining, remembering, redressing the cries that “fall like rain in summer”: these, too, tell of hope in a future with forgiveness,¹¹⁴ the grace, the terrible beauty, of imagining otherwise.

¹“William Butler Yeats, Easter 1916.”

²Chinua Achebe, Things Fall Apart (New York: Ballantine Books, 1959), 162. Achebe’s title is drawn from William Butler Yeats’s poem, “The Second Coming.”

³Jeremy Bentham, Anarchical Fallacies, in Works, vol. 2 (Edinburgh: William Tait, 1843), 523.

⁴Chaim Perelman, The Realm of Rhetoric, trans. William Kluback [Notre Dame: University of Notre Dame, 1982], 5, cf. 17-18. Perelman’s definition of rhetoric encompasses Aristotelian dialectic.

⁵See Jacques Derrida, “*Des Tours de Babel*,” in Joseph F. Graham, ed. Difference in Translation (Ithaca: Cornell University Press, 1985), 188. Commenting on Walter Benjamin’s, “The Task of the Translator,” Derrida writes, “The translation will truly be a moment in the growth of the original, which will complete itself *in* enlarging itself,” 188.

⁶See Michael Sandel, “Introduction,” in Liberalism and Its Critics, ed. Michael Sandel (New York: New York University Press, 1984), 4, 6, 10.

⁷Edward W. Said, “Nationalism, Human Rights, and Interpretation,” Raritan 12:3 (Winter, 1993): 26-51, at 45-6. 45-6.

⁸Bertolt Brecht, “When evil-doing comes like falling rain,” trans. John Willett, in Bertolt Brecht Poems 1913-1956, trans. (New York: Methuen, 1976), 247. Cf. Fergal Keane, Season of Blood: A Rwandan Journey (London: Penguin Books, 1995).

⁹See Gérard Prunier, The Rwanda Crisis: History of a Genocide (New York: Columbia University Press, 1995), 237-68; Africa Rights, Rwanda: Death, Despair and Defiance, rev. ed. (London: Africa Rights, 1995); Human Rights Watch, Leave None to Tell The Story (New York: Human Rights Watch, 1999), 1-30. Cf. Philip Gourevitch, We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda (New York: Farrar Straus and Giroux: 1998); Samantha Power, A Problem from Hell: America and the Age of Genocide (New York: Basic Books, 2002), 337.

¹⁰Africa Rights, Rwanda: Death, Despair and Defiance, 865.

¹¹Alain Destexhe observes, “Archaic political divisions were progressively transformed into racial ideologies and repeated outbreaks of violence resulting from the colonial heritage which was absorbed by local elites who then brought it into the political arena. The present generation has internalised the ethnological colonial model.” (Rwanda and Genocide in the Twentieth Century, trans. Alison Marschner [New York: New York University Press, 1995], 47). Cf. Mahmood Mamdani, When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda (Princeton, N.J.: Princeton University Press, 2001), 34-39, 41-102; United Nations Criminal Tribunal for Rwanda (ICTR), “The Prosecutor versus Jean-Paul Akayesu,” Case No. ICTR-96-4-T; “Historical Context of the Events in Rwanda in 1994,” pp. 22-27 of 133;

¹²See Emmanuel Levinas, Ethics and Infinity, trans. Richard A. Cohen (Pittsburgh: Duquesne University Press, 1985), 89. “The first word of the face is the ‘Thou shalt not kill’. It is an order. There is a commandment in the appearance of the face...”

¹³In September, 1998, General Roméo Dallaire, former Commander of the UNAMIR forces deployed in Rwanda, confessed: “I haven’t even started my real mourning of the apathy and the absolute detachment of the international community, and particularly of the Western world, from the plight of Rwandans. Because, fundamentally, to be very candid and soldierly, who the hell cared about Rwanda. I mean, face it. Essentially, how many people really still remember the

genocide in Rwanda...How much is really being done to solve the Rwandan problem? Who is grieving for Rwanda and really living it and living with the consequences?" Cited in Philip Gourevitch, We Wish to Inform You That Tomorrow We Will Be Killed with Our Families: Stories from Rwanda (New York: Farrar Straus and Giroux: 1998), pp. 168-69.

¹⁴As Prunier concludes, "the symbolic impact of the UN withdrawal was...disastrous. The message to the killers was that the international community did not care and that they could go on with their deadly business without fear of intervention or even disapproval." (The Rwanda Crisis, 275-76.)

¹⁵Alain Destexhe, Rwanda and Genocide, 48. "Within a few days, French and Belgian troops had evacuated almost every white person from Rwanda....With very rare exceptions, the UN agencies, the embassies and non-governmental agencies did not evacuate their local personnel."

¹⁶Paul Kagame, cited in Emily Wax and Nancy Trejos, "Ten Years Later, Rwanda Mourns," *Washington Post* (8 April, 2004), A1, 22. In the aftermath of the debacle in Somalia and just prior to the Rwandan crisis, President Clinton signed a new presidential decision directive. In accordance with its provisions, the US blocked the adoption of any firm response by the UN, until, as Destexhe observes, "it had ensured that there was no risk of any real American commitment." UN soldiers were forbidden to use force in any attempt to curtail the massacres. (Destexhe, Rwanda and Genocide, 50.)

¹⁷ Hermeneutics is the art of interpretation, applied here to intentional action and prescriptive judgments.

¹⁸Edward W. Said, "Nationalism, Human Rights, and Interpretation," Raritan 12:3 (Winter, 1993): 26-51, at 45-6. 45-6.

¹⁹Hannah Arendt, "A Reply," The Review of Politics 15 (Jan. 1953): 79.

²⁰"Introduction," to the International Panel of Eminent Personalities, Rwanda: The Preventable Genocide (OAU: 2000), par. 7.

²¹Rainer Maria Rilke, "On Music," in Selected Poems of Rainer Maria Rilke, trans. Robert Bly (New York: Harper and Row, 1981), 169.

²²Raphaël Lemkin coined the term "genocide" in Axis Rule in Occupied Europe (Washington: Carnegie Endowment for International Peace, 1944).

²³Preamble, Universal Declaration of Human Rights, U.N.G.A Res. 217A (III), 3(1)U.N. GAOR Res. 71, U.N. Doc. A/810 (1948).

²⁴Testimony of a Rwandese survivor, as cited in Africa Rights, Rwanda: Death, Despair, Defiance (London, 1994), 735.

²⁵Eileen Scarry, The Body in Pain: The Making and Unmaking of the World (New York: Oxford University Press, 1985), 30. Cf. David Hollenbach, "A Communitarian Reconstruction of Human Rights: Contributions from Catholic Tradition," in R. Bruce Douglass and David Hollenbach, eds., Catholicism and Liberalism: Contributions to American Public Philosophy (Cambridge: Cambridge University Press, 1994), 127-50.

²⁶Pumla Gobodo-Madikizela speaks of the "effacing of pain," citing Scarry. A Human Being Died That Night: A South African Woman Confronts the Legacy of Apartheid (Boston: Houghton Mifflin, 2003), 128.

²⁷Desmond Tutu, "The Theology of Liberation in Africa," in African Theology en Route, ed. Kofi Appiah-Kubi and Sergio Torres, Papers from the Pan-African Conference of Third World

Theologians, December 17-23, 1977, Accra, Ghana (Maryknoll, New York: Orbis Books, 1979), 163.

²⁸Desmond Mpilo Tutu, No Future without Forgiveness (London, Rider, 1999), 20.

²⁹Ibid., 13, 17.

³⁰See Pumla Gobodo-Madikileza, A Human Being Died That Night: A South African Woman Confronts the Legacy of Apartheid (Boston: Houghton Mifflin: 2003). The Commission was charged to “establish as complete a picture as possible—including the antecedents, circumstances, factors and context of [gross human rights] violations as well as the causes, motives and perspectives of persons responsible.” Section 3(1)(a), Promotion of National unity and Reconciliation Act, no. 34, 1995.

³¹Cf. Kader Asmal, Louise Asmal, Ronald Suresh Roberts, Reconciliation through Truth: A Reckoning of Apartheid’s Criminal Governance (Cape Town and Johannesburg: David Philip, 1996), 12-27.

³²Charles Villa-Vicencio and William Verwoerd, “Constructing a Report: Writing up the ‘Truth’,” in Robert Rotberg and Dennis Thompson, eds. Truth v. Justice: The Morality of Truth Commissions (Princeton, New Jersey: Princeton University Press, 2000), 279-94, at 287. Cf. Final Report (Cape Town 29, Oct. 1998), IV, sections 60-81.

³³Tutu, No Future without Forgiveness, 32-33.

³⁴Ibid.

³⁵Testimony of Lukas Baba Sikwepere, at Human Rights’ Commission hearing in Heideveld, Cape Town; as reported in Antjie Krog, Country of My Skull (Random House: Johannesburg, 1998), 31; cf. South African Truth and Reconciliation Commission, vol. 5, chap. 9, par. 9.

³⁶Charles Villa-Vicencio writes: “Scream as loud as you want; no one will hear you,” torture victims in apartheid jails were often told by tormentors who were confident that knowledge of the crimes would never go beyond the cell walls. The defeat of the apartheid regime offers the opportunity for the suppressed anguish of these victims to be heard. ‘Now there is a chance for the whole world to hear the victims scream’, Marlene Bosset of the Cape Town-based Trauma Centre for Victims of Violence and Torture told The South African conference on Truth and Reconciliation organized by the Justice in Transition Project.” (“Telling One Another Stories,” in The Reconciliation of Peoples: Challenge to the Churches, ed. Gregory Baum and Harold Wells [Maryknoll, New York: Orbis Books, 1997], 37-8. Villa-Vicencio cites Marlene Bosset in Democracy in Action, vol. 8, no 5 [31 August 1994], 16.) Villa-Vicencio led the Research Department of the TRC.

³⁷Jean Baudrillard quoted in James E. Young, The Texture of Memory: Holocaust Memorials and Meaning (New Haven, Conn.: Yale University Press, 1993), 1; cf. Minow, Between Vengeance and Forgiveness, 118.

³⁸Fort Calata was a member of the “Cradock Four” who, together with Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhluali, was abducted and murdered by the state police in June, 1985. Their “horribly mutilated bodies” were discovered a week later, yet the full story, including the perpetrators’ identities, was revealed only in the Commission’s hearings. See Tutu, No Future without Forgiveness, 98.

³⁹See Tutu, No Future without Forgiveness, 114.

⁴⁰Krog, Country of My Skull, 42-3. Krog served as a journalist reporting on the hearings of the TRC.

⁴¹Levi, The Symposium on Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness*, 191.

⁴²Wallace Stevens, "The Poems of Our Climate," *The Palm at the End of the Mind* (New York: Random House, 1972), 158.

⁴³Jean-Marc Éla, "Christianity and Liberation in Africa," in *Paths of African Theology*, p. 143 (emphasis in original); cf. Laurenti Magesa, "Christ the Liberator and Africa Today," in *Faces of Jesus in Africa*, ed. Robert J. Schreier (Orbis: Maryknoll, New York, 1991), 151-63.

⁴⁴Pumla Gobodo-Madikizela, as quoted in Minow, *Between Vengeance and Forgiveness*, 61.

⁴⁵Ali A. Mazuri argues that "violations of human rights are preceded by the process of psychic subhumanization." "Human Rights and the Moving Frontier of World Culture," in Diemer Alwin, *Philosophical Foundations of Human Rights* (Paris: UNESCO, 1986), 243.

⁴⁶In du Toit's words, "In the particular circumstances of transitional justice in postapartheid South Africa, the conception of truth as acknowledgment embodied in the victims' hearings of the TRC thus represented a political choice for the priority of restoring the civic and human dignity of the victims of gross human rights violations." ("The Moral Foundations of the South African TRC, 134.)

⁴⁷.See Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. G. Bennington and B. Massouri (Minneapolis, Minn.: University of Minnesota Press, 1984), 27.

⁴⁸Levi, The Symposium on Simon Wiesenthal, *The Sunflower: On the Possibilities and Limits of Forgiveness*, 191.

⁴⁹Thus the Promotion of National Unity and Reconciliation Act, no. 34, of 1995, charged the TRC to contribute to the building of "a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful coexistence and development opportunities for all South Africans, irrespective of colour, race, belief or sex." See Villa-Vicencio and Verwoerd, "Constructing a Report," 280.

⁵⁰José Zalaquett, "Introduction to the English Edition" of the *Report of the Chilean National Commission of Truth and Reconciliation* (Notre Dame, Indiana: University of Notre Dame Press), xxiv. Zalaquett is a member of the International Commission of Jurists and a former chair of Amnesty International's Executive Committee.

⁵¹As André du Toit observes, "The relevant sense of truth is of a more holistic *narrative truth*—that involved in the overall framing of the events and experiences that together make up the victim's own 'story'." "The Moral Foundations of the South African TRC: Truth as Acknowledgment and Justice as Recognition," in *Truth v. Justice*, 122-40, at 136. Cf. Alex Boraine, "Truth and Reconciliation in South Africa: The Third Way," in *Truth v. Justice*, 141-57, at 152.

⁵²José Zalaquett, "Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations," *Hastings Law Journal* 43 (August 1992):1433.

⁵³See Gadamer, *Truth and Method*, 482-85. Minow notes that in response to the relative absence of women's testimony regarding their own suffering, the commissioners "created hearings specifically focused on women's own experiences." She concludes, "The women who testify, indeed everyone who testifies, render vivid and palpable the human faces of suffering and

survival.” Between Vengeance and Forgiveness, 84. Cf. Tutu, No Future without Forgiveness, 184-89

⁵⁴Charles Villa-Vicencio, “Telling One Another Stories: Toward a Theology of Reconciliation,” in Gregory Baum and Harold Wells, eds., The Reconciliation of Peoples: Challenge to the Churches (Maryknoll, New York: Orbis Books, 1997), 34.

⁵⁵Cf. Kader Asmal, Louise Asmal, Ronald Suresh Roberts, Reconciliation through Truth: A Reckoning of Apartheid’s Criminal Governance (Cape Town and Johannesburg: David Philip, 1996), 11. In the “National Unity and Reconciliation Act” of the Interim Constitution, establishing the TRC, “a future founded on the recognition of human rights” requires “reconciliation between the people of south Africa and the reconstruction of society.” Reconstructing a civic narrative, as we shall see, remains a necessary, if insufficient condition of legal/ethical reconciliation.

⁵⁶Cf. Asmal, et al. “It is simply shortsighted, not canny *realpolitik*, to ignore or suppress the moral distinctions between the battle to preserve apartheid and the battle to abolish it. South Africa cannot afford this brand of playground relativism, so what might seem obvious needs meticulous re-emphasis: Apartheid was evil. It was a crime against humanity.” *Ibid.*, 7.

⁵⁷Minow, Between Vengeance and Forgiveness, 78.

⁵⁸Wilhelm Verwoerd, “Continuing the Discussion: Reflections from Within the Truth and Reconciliation Commission,” Current Writings 8.2 (1996): 66-85, at 70.

⁵⁹Tina Rosenberg, “A Reporter at Large: Recovering from Apartheid,” New Yorker (18 November 1996), 92.

⁶⁰Wole Soyinka, The Burden of Memory, The Muse of Forgiveness (New York: Oxford University Press, 1999).

⁶¹ See Judge Ismail Mahomed of the TRC, “Constitutional Court of South Africa, Case no. CCT 117/96 (25 July 1996), Azanian Peoples Organization (AZAPO) and others vs President of the Republic of Spouth Africa and others”; as cited in Tutu, No Future without Forgiveness, 29. Judge Mahomed was then deputy president of the Constitutional Court. Gobodo-Madikizela observes that the “narratives of trauma....are not simply about facts. They are primarily about the impact of those facts on victims’ lives and about the painful continuities created by the violence in their lives...The lived experience of traumatic memory becomes a touchstone for reality...” A Human Being Died That Night, 86, 90.

⁶²Gobodo-Madikizela, A Human Being Died That Night, 90.

⁶³W. H. Auden, “September 1, 1939,” in The Collected Poetry of W. H. Auden (New York: Random House, 1945), 57.

⁶⁴See Shriver, An Ethic for Enemies: Forgiveness in Politics, 63-72.

⁶⁵Cf. Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy, second edition (Princeton, New Jersey: Princeton University Press, 1996), 35-64; Alan Gewirth, The Community of Rights (Chicago: University of Chicago Press, 1996), 31-70.

⁶⁶Mark Osiel thus speaks of “liberal” or “discursive social solidarity,” in deliberative, democratic polities. See Mark Osiel, Mass Atrocity, Collective Memory, and the Law (New Brunswick, New Jersey: 1997), 17. Cf. David A Crocker, “Truth Commissions, Transitional Justice, and Civil Society,” in Truth v. Justice, 99-121.

⁶⁷See the International Panel of Eminent Personalities, Rwanda: The Preventable Genocide, “Executive Summary,” par. 51; chap. 24, “Recommendations,” par. 9. *Gacaca* are “lower-level

tribunals that attempt to blend traditional and contemporary mechanisms to expedite the justice process in a way that promotes reconciliation.” Cf. Eric Stover and Harvey M. Weinstein, eds. My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity (Cambridge: Cambridge University Press, 2004).

⁶⁸.Minow, Between Vengeance and Forgiveness, 57.

⁶⁹.Albie Sachs, “Human Rights: Good or Bad for South Africa,” Harvard Law School Human Rights Program, 21 Jan. 1998, as quoted in Minow, Between Vengeance and Forgiveness, 132.

⁷⁰.Minow, Between Vengeance and Forgiveness, 60.

⁷¹.Tutu, No Future without Forgiveness, 221. Gobodo-Madikizela writes in a similar vein, “True social transformation—and healing of victims—will come about only if the issues of economic justice and the myriad problems that post-apartheid South Africa faces are addressed.” A Human Being Died That Night, 126.

⁷².Gustavo Guitérrez, A Theology of Liberation: 15th Anniversary Edition, trans. Sister Caridad Inda and John Eagleson (Maryknoll, New York: Orbis Books, 1988), xx.

⁷³.*Ibid.*, xxix.

⁷⁴.Camus, The Plague, 230. In the present context, the term “victim” is an evaluative moral description referring to those suffering deprivation of their basic rights; as such, it is reducible neither to class membership nor to a particular psychological state. I have developed this analysis in “No Amnesty for Sorrow: The Privilege of the Poor in Christian Social Ethics,” Theological Studies 55:4 (December 1994): 638-56.

⁷⁵.See Gene Outka, Agape (New Haven: Yale University, 1972) 20. Cf. Ronald Dworkin, Taking Rights Seriously, 227.

⁷⁶.Thomas Aquinas, Summae Theologiae II-II, Ques. 31, art. 2.

⁷⁷.Cf. Sollicitudo rei socialis, nos. 42-43; Cf. the Medellín and Puebla Conference Documents of the Latin American Episcopal Conference.

⁷⁸.See Jean Drèze and Amartya Sen, Hunger and Public Action (Oxford: Clarendon, 1989), 37-42.

⁷⁹.Rawls, “Fairness to Goodness,” 539.

⁸⁰.Cf. Shue, Basic Rights, 71.

⁸¹.Such narrative constructivism corresponds to what Rawls terms “imperfect procedural justice” where “there is an independent criterion for the correct outcome” (respect for the basic rights of the poor), even if no impeccable decision procedure ensures their satisfaction. Rawls, A Theory of Justice, 86.

⁸²See Stephen Pope, “Justice and Peace: Reintegration and Reconciliation of Returning Displaced Persons in Post-Conflict Situations.” For an analysis of the role of basic human rights in social reconciliation, see my “Imagining Otherwise: The Ethics of Social Reconciliation,” in The Journal of the Society of Christian Ethics, 2002.

⁸³.Wittgenstein, Philosophical Investigations, pt. 1, pars. 68, 179.

⁸⁴.See Walzer, Thick and Thin, 7, 4.

⁸⁵.Albie Sachs, “Preparing Ourselves for Freedom,” in Spring is Rebellious, 19-29, at 29.

⁸⁶.See Habermas, “The Hermeneutic Claim to Universality,” 190-203. Cf. Ralph Ellison’s eloquent depiction of our “national tendency to deny the common humanity shared by my character and those who might happen to read of his experience,” in Invisible Man (New York: Random House, 1992), xxvi.

⁸⁷.Ismael Mahomed, as cited in Tutu, No Future without Forgiveness, 33.

⁸⁸Nozick, Anarchy, State, and Utopia, 28-33.

⁸⁹Saul Friedlander, "Trauma, Memory, and Transference," in Holocaust Remembrance: The Shapes of Memory, ed. Geoffrey H. Hartman (Oxford: Blackwell, 1994), 252, 261.

⁹⁰Augustin Karekezi, "In Memory of the Victims of the Genocide in Rwanda," Address presented in Kigali, Rwanda, 12 April 1995 (mimeograph), 5.

⁹¹See Charles Villa-Vicencio, "Truth and Reconciliation: In Tension and Unity," Occasional Paper (Johannesburg: Truth and Reconciliation Commission, 1998), 2.

⁹²Tutu, No Future without Forgiveness, 91.

⁹³See the International Panel of Eminent Personalities, Rwanda: The Preventable Genocide, "Executive Summary," par. 51; chap. 24, "Recommendations," par.9. *Gacaca* are "lower-level tribunals that attempt to blend traditional and contemporary mechanisms to expedite the justice process in a way that promotes reconciliation." Cf. Urusaro Alice Karekezi, Alphonse Nshimiyimana, and Beth Mutamba, "Localizing justice: gacaca courts in post-genocide Rwanda," in My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity, ed. Eric Stover and Marvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 69-84.

⁹⁴See Gobodo-Madikezela, A Human Being Died That Night, n. 4, 171-72.

⁹⁵See Michael Sells, A Bridge Betrayed: Religion and Genocide in Bosnia (Berkeley: University of California Press, 1996).

⁹⁶Benjamin, Origin of German Tragic Drama, 166.

⁹⁷Walzer, Thick and Thin, 46.

⁹⁸Cf. Soyinka, The Burden of Memory, The Muse of Forgiveness, 3-92 passim.

⁹⁹For the role of aesthetic commemoration, see John W. de Gruchy, Christianity, Art and Transformation: Theological Aesthetics in the Struggle for Justice (Cambridge: Cambridge University Press, 2001), 171-212.

¹⁰⁰The performative efficacy of apology depends, in turn, upon the standing, respectively, of the one apologizing and those to whom apology is due. See Nicholas Tavuchis, Mea Culpa: A Sociology of Apology and Reconciliation (Stanford, California: Stanford University Press, 1991).

¹⁰¹Primo Levi, The Symposium on Simon Wiesenthal, The Sunflower: On the Possibilities and Limits of Forgiveness rev. ed. (New York: Schocken Books, 1998), 191.

102.Krog, Country of My Skull, 26.

¹⁰³Gadamer, Truth and Method, 300-307.

¹⁰⁴Auden, "September 1, 1939, 57-58.

¹⁰⁵See, inter alia, Robert J. Schreiter, Reconciliation: Mission and Ministry in a Changing Social Order (Maryknoll, New York: Orbis Books, 1992); idem., The Ministry of Reconciliation: Spirituality and Strategies (Maryknoll, New York: Orbis Books, 1998); L. Gregory Jones, Embodying Forgiveness: A Theological Analysis (Grand Rapids, Michigan: Eerdmans Publishing Company, 1995); Michael Battle, Reconciliation: The Ubuntu Theology of Desmond Tutu (Cleveland, Ohio: Pilgrim Press, 1997); John W. De Gruchy, Reconciliation: Restoring Justice (Minneapolis: Fortress, Press, 2002); Russell Daye, Political Forgiveness: Lessons from South Africa Maryknoll, New York: Orbis Books, 2004); William Bole, Drew Christiansen, and Robert T. Hennemeyer, Forgiveness in International Politics: An Alternative Road to Peace (Washington, D.C.: U.S. Conference of Catholic Bishops, 2004).

¹⁰⁶Levinas, Ethics and Infinity, p. 113. For Levinas, “the Infinite comes in the signifyingness of the face. The face signifies the Infinite” (105).

¹⁰⁷Cf. Jean-Pierre Karegeye and Faustin Rutembesa, eds., L’Eglise Catholique à l’épreuve du génocide (Montreal-Butare: Africana-Presses Universitaires du Rwanda, 2000); John W. de Gruchy, “The Dialectic of Reconciliation: Church and the Transition to Democracy in South Africa,” in The Reconciliation of Peoples, 16-29.

¹⁰⁸John Endres observes that the “language of lament bespeaks a bond, a personal relationship between the one who prays and the God of the covenant. Such language rests on faith, relies on memories--both personal and communal--of a God hearing the cry of the oppressed, of the lamenter, of the lowly...and God answering that cry.” “Cry Out to God in Our Need: Psalms of Lament,” The Way Supplement 87 (Autumn 1996): 34-44, at 41. Cf. Walter Brueggemann, “From Hurt to Joy, From Death to Life,” Interpretation 28 (1974), 3-19; Claus Westermann, “The Role of the Lament in the Theology of the Old Testament,” Interpretation 28 (1974): 20-38; Walter Brueggemann, Interpretation 31 (1977): 263-75.

¹⁰⁹Cynthia Ozick, “Notes Toward a Meditation on ‘Forgiveness’” in Wiesenthal, The Sunflower, 214.

¹¹⁰Third General Conference of the Latin American Bishops, “Evangelization in Latin America’s Present and Future,” thus speaks of recognizing “the suffering features of Christ the Lord” in “the very concrete faces” of victims. Puebla and Beyond: Documentation and Commentary, trans. John Drury (Orbis: Maryknoll, New York 1979), no. 31, p. 128.

¹¹¹Jean-Marc Éla, “Christianity and Liberation in Africa,” in Paths of African Theology, p. 143 (emphasis in original); cf. Laurenti Magesa, “Christ the Liberator and Africa Today,” in Faces of Jesus in Africa, ed. Robert J. Schreier (Orbis: Maryknoll, New York, 1991), 151-63.

¹¹²Albie Sachs, “Reparations—Political and Psychological Considerations,” Psychoanalytic Psychotherapy in South Africa 16, 25 (Summer, 1993): 2.

¹¹³Hannah Arendt writes that forgiving “is the only reaction which does not merely re-act but acts anew and unexpectedly, unconditioned by the act which provoked it and therefore freeing from its consequences both the one who forgives and the one who is forgiven.” The Human Condition (Chicago: Chicago University Press, 1958), p. 241.

¹¹⁴In Tutu’s words, “God want to show that there is life after conflict and repression—that because of forgiveness, there is a future.” No Future without Forgiveness, 230.