Document generated on 04/19/2024 8:49 p.m.

Criminologie

Mobilizing Victimization
The Construction of a Victim-Centred Approach in the South African Truth and Reconciliation Commission

Stéphane Leman-Langlois

Volume 33, Number 1, Spring 2000

La victimologie : quelques enjeux

URI: https://id.erudit.org/iderudit/004732ar
DOI: https://doi.org/10.7202/004732ar

See table of contents

Publisher(s)

Les Presses de l'Université de Montréal

ISSN

0316-0041 (print)
1492-1367 (digital)

Explore this journal

Cite this article

Leman-Langlois, S. (2000). Mobilizing Victimization: The Construction of a Victim-Centred Approach in the South African Truth and Reconciliation Commission. *Criminologie*, *33*(1), 145–165. https://doi.org/10.7202/004732ar

Article abstract

The "Truth and Reconciliation" commission (TRC) was implemented following the first democratic elections in South Africa in order to bring to light the brutality of the apartheid regime, to offer individual amnesty to persons responsible, and to compensate victims. From the outset, an important aspect of its emergent legitimizing discourse concerned the role and the needs of victims of brutality - whether victims of the former authoritarian government or of the liberation movements - within a rhetoric of "national reconciliation". The TRC's definition was to correspond to a notion of criminal justice that excluded any response of direct punishment or compensation: the proposed amnesty would relieve of responsibility all those to whom it applied.This context gave rise to a highly specific discourse concerning victims of "past conflicts", a discourse created within a precise range of nuances that were designed to make the TRC conceptually compatible with its public image, and vice versa. In evidence was the gradual construction of a language that allowed the Commission to be described in positive terms of satisfying needs, of respect for a greater, more honest and more universal ethical basis than that of retribution, of successful national reconciliation, etc. The propagation and effectiveness of this language were indispensable considering the concurrent dominant discourse about criminal justice in general, which maintained a hard line with regard to crime and which resulted in practice in an uncontrolled inflation of the penal population (two blocks away from the Commission's headquarters, parliament considered such solutions as corporal punishment, the establishment of prisons in abandoned mines, etc.) According to the Commission's discourse, victims identified two common fundamental outcomes of their victimization: their need for financial assistance, and their desire to know the truth. This desire for truth was manifested in two forms: first, the need to know the truth concerning the matter itself, for example, the disappearance of loved ones, and secondly, the restoration of individual dignity through an official and public acknowledgment of their victimization. Whether these outcomes in fact corresponded to the reality experienced by victims themselves tends to be a question of secondary importance, since the organization of the Commission's discourse allowed perfect integration of their testimonies, their attitude, and even their actual participation. This integrative power is to a great extent the result of the characteristic form both of testimonies made to the Commission and of statements concerning the participation by and satisfaction of its members: that is, the narrative form. Because of the great capacity of personal biographies to communicate the experience of injustice and of reparation compatible with the daily experiences of the general public, from these narratives may be drawn a normative language almost beyond reproach. Furthermore, each of the narratives, without exception extremely emotionally moving, included the Commission's role in the implicit or explicit denouement of victimization. The Commission's logic is further reinforced thereby, as it appears to be extracted from the actual experience of the persons who participated. In relating their narratives, victims provided the Commission with the necessary material to persuade other victims to participate in the process, to justify itself to the population of South Africa, and to meet its mandate of restoring dignity to victims. Such circularity is a natural element of all discourse, since it contains in its terms of reference the construction of its context, its subjects, its problems and its solutions. The Commission thus met its mission, primarily through a readjustment of its concepts and language but also by a concrete modification of social reality - if such a modification were possible, and possible to observe outside of the language used in its description. From the outset, "dignity" was very apparent not as an objective personal condition but as the outcome of a specific symbolic reality. Whether or not victims felt better following their visit to the Commission, or after the publication of its report, would have no effect on the general availability of a discourse of restored dignity to describe South African reality. On the contrary, the success of this enormous and costly institution, with its mission of rewriting the history of apartheid, could not fail to transform the social representation of its victims.

Tous droits réservés © Les Presses de l'Université de Montréal, 2000

This document is protected by copyright law. Use of the services of Érudit (including reproduction) is subject to its terms and conditions, which can be viewed online.

https://apropos.erudit.org/en/users/policy-on-use/

érudit

This article is disseminated and preserved by Érudit.

Érudit is a non-profit inter-university consortium of the Université de Montréal, Université Laval, and the Université du Québec à Montréal. Its mission is to promote and disseminate research.

https://www.erudit.org/en/

Mobilizing Victimization

The Construction of a Victim-Centred Approach in the South African Truth and Reconciliation Commission[1]

Stéphane Leman-Langlois
PhD. Student
University of Toronto • Canada
s.leman@sympatico.ca

RÉSUMÉ • La Commission « vérité et réconciliation » (CVR), instituée à la suite des premières élections démocratiques en Afrique du Sud, avait pour but de faire la lumière sur la brutalité qui avait accompagné le régime de l'apartheid, d'accorder une amnistie individuelle aux responsables et d'offrir compensation aux victimes. Dès le départ, une importante facette du discours émergeant pour appuyer la Commission concerna le rôle et les besoins des victimes de brutalité – qu'il s'agisse des victimes du gouvernement autoritaire d'alors ou de celles des mouvements de libération – à l'intérieur d'une rhétorique de « réconciliation nationale ». Le tout devait donc s'articuler autour d'une notion de justice criminelle excluant tout réflexe de punition ou même de compensation directe : l'amnistie en question devait libérer de toute responsabilité ceux qui l'obtiendraient.

Ce contexte donna lieu à un discours bien spécifique sur les victimes des « conflits du passé », discours fait d'un ensemble précis de nuances visant à rendre la CVR conceptuellement compatible avec son « public cible » et vice-versa. On peut y voir la lente construction d'un langage permettant de décrire la Commission en termes positifs de satisfaction de besoins, de respect d'une éthique plus importante, plus vraie ou plus universelle que celle de la rétribution, de succès dans la réconciliation nationale, etc. La propagation et l'efficacité de ce langage étaient d'autant plus indispensables que, au même moment, le discours dominant sur la justice criminelle en général maintenait la ligne dure face au crime et donnait lieu à une inflation pénale pratiquement hors de

1. Research for this paper was conducted with the help of a grant from the *Fonds pour la formation de chercheurs et l'aide à la recherche* (FCAR) of the Government of Québec. I also want to thank Tony Doob, Clifford Shearing and Mariana Valverde, as well as the two anonymous reviewers, for their very helpful comments on earlier versions of the text.

contrôle (à deux rues du siège de la CVR on discutait au Parlement de châtiment corporel, de prisons dans des mines abandonnées, etc.).

Dans le discours de la CVR les victimes se reconnaissent à deux caractéristiques fondamentales causées par leur victimisation : leur besoin d'aide financière et leur désir de vérité. Ce désir prend deux formes : d'un côté le besoin de connaître la vérité au sujet, par exemple, de la disparition de proches et, de l'autre, le besoin qu'une reconnaissance officielle et publique du fait qu'une victimisation a bien eu lieu vienne restaurer la dignité des individus. La question de la conformité ou non de ces caractéristiques avec la réalité des victimes elles-mêmes tend à être secondaire parce que l'organisation du discours permet une parfaite intégration de leur témoignage, de leur attitude et du fait même de leur participation.

Ce pouvoir d'intégration provient en large partie de caractéristiques propres à la forme que prennent à la fois les témoignages à la CVR et les constats de participation et de satisfaction faits par ses membres, c'est-à-dire la forme narrative. Grâce à la grande capacité des histoires de vie à communiquer une expérience d'injustice et de redressement compatible avec l'expérience quotidienne du public en général, l'institution qui parvient à les récupérer peut en tirer un langage normatif pratiquement indiscutable. Ici, de plus, il s'agit invariablement d'histoires extrêmement émouvantes qui incluent toutes la CVR comme dénouement implicite ou explicite. La logique de la CVR en est d'autant plus renforcée, puisqu'elle semble ainsi extraite de l'expérience même des gens.

En racontant leurs histoires, les victimes offrent à l'institution le matériel qui sert à la fois à convaincre d'autres victimes de participer au projet, à se justifier auprès de la population et enfin à remplir sa mission de restauration de la dignité des victimes. Cette circularité est propre à tout discours puisqu'il contient dans ses termes de référence des constructions à la fois de contexte, de sujets, de problèmes et de solutions. La Commission remplit donc sa mission davantage par un réajustement de concepts et de langage que par une modification concrète de la réalité sociale – pour autant qu'une telle modification soit même possible, et qu'il soit possible de l'observer à l'extérieur du langage utilisé pour la désigner : par exemple, « dignité » était bien évidemment non pas un état objectif de la personne mais le fruit d'une réalité symbolique particulière. Que les victimes se soient, ou non, senties mieux après leur visite à la CVR ou à la publication de son rapport n'allait avoir aucun effet sur la disponibilité générale d'un discours de dignité restaurée pour décrire la réalité sud-africaine. Par contre, le succès d'une énorme et coûteuse institution qui eut pour mission de réécrire l'histoire de l'apartheid ne peut que transformer la représentation sociale des victimes.

ABSTRACT • The "Truth and Reconciliation" commission (TRC) was implemented following the first democratic elections in South Africa in order to bring to light the brutality of the apartheid regime, to offer individual amnesty to persons responsible, and to compensate victims. From the outset, an important aspect of its emergent legitimizing discourse concerned the role and the needs of victims of brutality – whether victims of the former authoritarian government or of the liberation movements – within a rhetoric of "national reconciliation". The TRC's definition was to correspond to a notion of criminal justice that excluded any response of direct punishment or compensation: the proposed amnesty would relieve of responsibility all those to whom it applied.

This context gave rise to a highly specific discourse concerning victims of "past conflicts", a discourse created within a precise range of nuances that were designed to make the TRC conceptually compatible with its public image, and vice versa. In evidence was the gradual construction of a language that allowed the Commission to be described in positive terms of satisfying needs, of respect for a greater, more honest and more universal ethical basis than that of retribution, of successful national reconciliation, etc. The propagation and effectiveness of this language were indispensable considering the concurrent dominant discourse about criminal justice in general, which maintained a hard line with regard to crime and which resulted in practice in an uncontrolled inflation of the penal population (two blocks away from the Commission's headquarters, parliament considered such solutions as corporal punishment, the establishment of prisons in abandoned mines, etc.)

According to the Commission's discourse, victims identified two common fundamental outcomes of their victimization: their need for financial assistance, and their desire to know the truth. This desire for truth was manifested in two forms: first, the need to know the truth concerning the matter itself, for example, the disappearance of loved ones, and secondly, the restoration of individual dignity through an official and public acknowledgment of their victimization. Whether these outcomes in fact corresponded to the reality experienced by victims themselves tends to be a question of secondary importance, since the organization of the Commission's discourse allowed perfect integration of their testimonies, their attitude, and even their actual participation.

This integrative power is to a great extent the result of the characteristic form both of testimonies made to the Commission and of statements concerning the participation by and satisfaction of its members: that is, the narrative form. Because of the great capacity of personal biographies to communicate the experience of injustice and of reparation compatible with the daily experiences of the general public, from these narratives may be drawn a normative language almost beyond reproach. Furthermore, each of the narratives, without exception extremely emotionally moving, included the Commission's role in the implicit or explicit denouement of victimization. The Commission's logic is further reinforced thereby, as it appears to be extracted from the actual experience of the persons who participated.

In relating their narratives, victims provided the Commission with the necessary material to persuade other victims to participate in the process, to justify itself to the population of South Africa, and to meet its mandate of restoring dignity to victims. Such circularity is a natural element of all discourse, since it contains in its terms of reference the construction of its context, its subjects, its problems and its solutions. The Commission thus met its mission, primarily through a readjustment of its concepts and language but also by a concrete modification of social reality – if such a modification were possible, and possible to observe outside of the language used in its description. From the outset, "dignity" was very apparent not as an objective personal condition but as the outcome of a specific symbolic reality. Whether or not victims felt better following their visit to the Commission, or after the publication of its report, would have no effect on the general availability of a discourse of restored dignity to describe South African reality. On the contrary, the success of this enormous and costly institution, with its mission of rewriting the history of apartheid, could not fail to transform the social representation of its victims.

RESUMEN • La Comisión "Verdad y Reconciliación" (CVR), creada luego de las primeras elecciones democráticas en Sudáfrica, tenía entre sus objetivos sacar a la luz pública la brutalidad que había caracterizado al régimen del *apartheid*, acordar una amnistía individual a los responsables y ofrecer compensaciones a las víctimas. Desde sus inicios, un aspecto importante del discurso surgido en apoyo a la Comisión, se refería al papel jugado por las víctimas de la brutalidad y a sus necesidades – ya se tratase de las víctimas del gobierno autoritario de entonces o de aquellas de los movimientos de liberación – dentro de una retórica de "reconciliación nacional". Todo tenia que articularse en torno a una noción de justicia penal que excluyera cualquier reflejo de castigo e incluso de compensación directa: la amnistía en cuestión tenia que descargar de toda responsabilidad a aquéllos que la obtuvieren.

Este contexto dio lugar a un discurso muy concreto sobre las víctimas de "los conflictos del pasado", discurso elaborado sobre una serie de matices dirigidos a reflejar la compatibilidad conceptual de la CVR con su público ya "puesto en la mira" y viceversa. Puede verse allí la lenta elaboración de un lenguaje que permite describir a la Comisión en términos positivos en cuanto a la satisfacción de necesidades, de respeto hacia una ética más sustancial, más genuina o más universal que la de una simple retribución, o del éxito en la reconciliación nacional, etc. La propagación y la eficacia de este lenguaje eran indispensables, sobre todo cuando al mismo tiempo el discurso general sobre la justicia penal mantenía una linea dura frente al crimen, dando lugar a una inflación penal que prácticamente escapaba a todo control (a escasas dos cuadras de la sede de la CVR se discutía en el Parlamento sobre el castigo corporal, sobre las prisiones en las minas abandonadas, etc.). En el discurso de la CVR se podía reconocer a las víctimas en atención a dos características fundamentales producidas por su victimización: su necesidad de ayuda económica y su anhelo por la verdad. Este anhelo habrá de asumir dos formas: por una parte, la necesidad en el indivíduo por conocer la verdad, por ejemplo, sobre la desaparición de sus seres queridos; y, por otra, el hecho de que el reconocimiento oficial y público de que ocurrió realmente una victimización permitiera restablecer la dignidad personal. La cuestión de la conformidad o inconformidad de estas características con la realidad de las propias víctimas pasa a ser secundario desde el momento en que la organización del discurso posibilita una integración perfecta de su testimonio, de su actitud y del hecho mismo de su participación. Este poder de integración surge en gran parte de las propias formas que asumen al unísono los testimonios aportados a la CVR, así como las actas de participación y de satisfacción elaboradas por sus miembros, es decir a través de la forma narrativa. La institución que logra recuperar las historias vividas puede llegar a construir, a partir de ellas, un lenguaje correctivo practicamente indiscutible, gracias a la capacidad de comunicacíon de las experiencias vividas en cuanto a la injusticia, junto con su corrección posterior y su compatibiliad con la experiencia diaria del público en general. Además, nos hallamos aquí en presencia de historias extremadamente impactantes para que puedan ser obviadas dentro de las conclusiones explícitas o implícitas de cualquier CVR. La lógica de la CVR se verá reforzada aún más, puesto que ella parece fundarse en la experiencia misma de las gentes.

Al contar sus respectivas historias, las víctimas suministrarán a la institución el material que servirá a la vez para convencer a otras víctimas a que participen en el proyecto, a justificarse frente a la población y finalmente a cumplir su misión de

devolverle la dignidad a quienes fueron victimizados. Tal circularidad es propia de este género de discurso, ya que él contiene en sus términos de referencia diversas construcciones al mismo tiempo: de contextos, sujetos, problemas y soluciones. De este modo, la Comisión cumple su finalidad mucho más a través de un reajuste de conceptos y de lenguaje que mediante una modificación completa de la realidad social – suponiendo de que tal modificación haya sido posible, y además posible de observar al exterior del lenguaje utilizado para designarla –, ya que desde un comienzo "dignidad" significaba, por supuesto, no un estado objetivo de la persona, sino el producto de una realidad simbólica particular. El que las víctimas se hayan o no sentido mejor luego de su visita a la CVR o después de la publicación del informe de ésta, no habría de producir efecto alguno sobre la disponibilidad general de un discurso de la dignidad restaurada para describir la realidad sudafricana. En cambio, el éxito de una enorme y costosa institución que tuvo por misión la reescritura del *apartheid*, no pudo sino transformar la representación social de sus víctimas.

Introduction

Though its responsibility to grant amnesty to qualifying perpetrators has been its most controversial and most talked about function, for a variety of reasons the TRC's supporting discourse gave victims the centre stage usually reserved to wrongdoers in conventional justice processes. The most important of these reasons was precisely the need to defuse accusations of failing to meet conventional retributive goals.

The new victim-centred institution, one would expect, might have placed a substantial amount of power in the hands of victims. According to the final Report of the Commission:

> the Commission's quest for truth should be viewed as a contribution to a much longer-term goal and vision. Its purpose in attempting to uncover the past had nothing to do with vengeance; it had to do, rather, with helping victims to become more visible and more valuable citizens through the public recognition and official acknowledgement of their experiences (South African Truth and Reconciliation Commission, 1998: Vol 1, Ch 5, par. 1).

There was an explicit displacement of the measure of the project's success, away from retribution and towards the victims' participation and expected benefits. One might then have expected that the final evaluation of the TRC's success or failure would rest largely on victim satisfaction and would be easily measurable in terms of compensation. But within an organized system of concepts such as "dignity," "acknowledgment," "long term vision" and with the help of the mechanisms analysed below, victims' individual, direct evaluations of satisfaction with the

process were for the most part made redundant in the matter of the accomplishments of the Commission, replaced by a discourse of benefits to idealized, generalized victims as well as the whole nation.

By looking at how victims are "mobilized" I want to study how stories of victims were integrated into the TRC discourse. In other words, how the TRC discourse was built in conjunction with the central concept of victimization – how it managed to organize the individual experiences of victims into a conceptual system. This paper explores the construction of an institutional discourse through the use of victims' stories. It does so by looking at two main aspects: first, how victims[2] were *made*, recreated, as the essential human characters of the TRC narrative of reconciliation and truth; second, how victimization stories then became morality plays, illustrations of the TRC justice model. My debt to Foucault (1972; 1975; 1984) and his analytical toolbox will be obvious, especially in making sense of the way knowledge creates the social. This process of creation is at work here on both the institution and the victims as its subjects, and the way the TRC represented itself as created to benefit the victims disguised or hid – and therefore further intensified – extreme victim redefining power. This power was never strictly speaking an imposition, a burden on powerless victims: victims were *called upon* to be willing participants in the process, it was a "positive" power of seduction, recruitment, in which victims were invited to realize that their logical benefit lied in participation.

The TRC was created in July 1995 under the "Promotion of National Unity and Reconciliation Act," started sitting in December 1995 and published its final Report in December 1998. According to the Act, it was to "establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights [had] occurred and to make the findings known in order to prevent a repetition of such acts in the future." The 1993 interim Constitution had ended the political oppression of South Africa's black majority, and it contained a clause stipulating that amnesty be granted for crimes of the

2. Before going further it may be helpful to clarify my use of the word "victim" in this paper. It has been the subject of much controversy, and the TRC has been no exception, of course. Many suggest the use of "survivor" when referring to persons against whom a crime has been committed. In TRC debates, the possibility of a "dead survivor" was actually raised with a complete eradication of the word "victim," and this is only one of the dead-ends this type of redefinition can lead to. In this paper a victim is simply someone on who hurtful treatment was inflicted against their will and power to prevent or stop it.

past while allowing for a case-by-case evaluation of applicants. The exact meaning of this, as well as the possible methods for achieving it, were the source of much debate in the National Assembly and the TRC was presented as the result of various concessions from all sides.

The institution consisted in three separate Committees: the Amnesty Committee (AC) evaluated amnesty applications and is still at work, more than a year after the publication of the "final" Report. The Human Rights Violations Committee (HRC) gathered victims' testimonies and held "institutional hearings" where major groups (the judiciary, the media, health professionals, etc.) were invited to give presentations about their activities during the apartheid years. The Reparations and Rehabilitation Committee (RRC) made recommendations to the government on how to compensate victims of past brutality.

The analysis in this article is based in part on a number of interviews conducted in South Africa in the second half of 1997. I interviewed politicians, TRC members and staff, prominent thinkers and non-governmental organizations staff. But the main sources include numerous documents gathered at the National Library, in the media and at the TRC offices in Cape Town. Especially revealing were the parliamentary debates as well as the oral and written submissions made to the joint Assembly-Senate justice committee which held hearings on the proposed TRC bill in early 1995. The decisions of the three TRC committees, along with transcripts of hearings or notes taken during hearings, and of course the Interim Report and the Final Report of the Commission were also useful. Finally, many documents were provided by the main political parties.

Redefining the Victim

The TRC project revolved around a slightly adjusted concept of victim, one often found in "restorative justice" models. Victims acquired a set of characteristics that for now could be summed up as 1) in need of direct help and 2) primarily concerned with truth, in the form of the official, public acknowledgement of a truth they already hold, or in the discovery of an important, peace-inducing truth expected to complete their mourning process – the fate of a disappeared family member, for instance. These two characteristics, normally found at the periphery of conventional, retribution-focussed criminal justice, became centrally important in this discourse. The TRC established and maintained these truths about

victims in two main ways: first, by holding as self-evident that such is the nature of victims, and second by describing and explaining its concrete practices with the appropriate, corresponding language.

Victims in Need of Compensation

The Reparations and Rehabilitation Committee has made some simple yet very significant recommendations to the government about proper compensation for the victims of the apartheid era – but is not itself responsible for collecting or distributing damages. Recommendations include symbolic actions such as building historical monuments and giving victims proper burials, as well as community improvements such as building new clinics and schools in destitute areas. But the most ambitious measure proposed (and probably the final test of the RRC's work) concerns the victims of "gross human rights violations," meaning victims of torture and relatives of the dead and disappeared. They are to receive the equivalent of the average South African household income for six years (21700 R, and up to 23000 R, or 5800 $). But this money (about 3 billion rands in total) does not yet exist, and there are as of now no clear plans on how to collect it – or whom to collect it from. Only a portion of it has been allocated by the Department of Finance so far (600 million). But far from detracting from the TRC project's ability to prove itself, this added difficulty was used to demonstrate the importance and legitimacy of compensation.

The TRC produced a newsletter, titled *Truth Talk,* about its work with victims and its relationships with victim-support non-governmental organizations. In one issue RRC member Mary Burton recalls a typical conversation with a victim, under the self-explanatory title "Why Haven't You Done Something About My Statement, and Where's My Money:"

> I am very angry. I came here a whole year ago to make my statement, and I have heard nothing from you. I thought you were going to help me with all the problems I have, but you have done nothing at all. My son was tortured and killed, and I have to bring up his orphaned children. My wife is sad and depressed all the time. When I telephone the TRC from the rural area where I live, I get told to be patient, so now I've come all the way to town to see you (Nov. 1997: 7).

The promise of help in this short paragraph is accompanied by many other elements meant to fit in the TRC image: it has reached to rural communities, therefore, has been very thorough in its efforts to talk to victims; it is very busy, having done all this work, and still at it a year

later; finally, if it can't address the actual needs it promised to alleviate, it is because it is not within its direct power to do so. People should then direct their frustration at the government. For instance, Hlengiwe Mkhize, Chair of the RRC, would say "the government's silence on reparation was distressing" when asked about "bad times" in the RRC's work (*Truth Talk*, July 1998: 6). This is a simple story meant to illustrate, allegorically in this case, the simple needs of ordinary folks who have been victimized by the violence in South Africa. The absence of names and the generic quality of the victimization further convey the universality of the case. It takes for granted the victim's need – in this case, demand – for money from the TRC/government. It allows the teller of the story to ignore the question of whether this father would need help if his son had been killed in a car accident, or in a common crime not covered by the TRC mandate. Also, four pages earlier:

> [...] four out of every ten people who made statements to the TRC asked for money to improve the quality of their lives. Nine out of ten asked for services which they could pay for if money is made available, such as education, medical care and housing (*Truth Talk*, Nov. 1997: 2).

Even among options predetermined by the RRC only four out of ten victims ask for money, and it becomes a clear majority only after the proper reinterpretation.

It is not particularly revealing, in itself, to point to unavoidable contradictions in the wealth of written documents that emerged from the TRC, from countless contributors. Still, these contradictions, recriminations or skepticism show that a number of definitive ideas about victims has already been set. Even *dissatisfaction* with reparations can be a powerful way to reinforce discourse about material needs. And of course material needs also happen to find strong illustration in reality: most poor South Africans need services whether they have to pay for them or not, and whether they have been victimized by state agents or not. Some of the victims who gave statements can no longer be reached at the address they left because their lives are spent moving from shack to shack in shantytowns. So the TRC discourse easily situates the Commission inside a bulletproof conceptual bubble: of course victims need help, and the indisputability of this fact is a very powerful way to make retribution seem secondary at best. The victim's nature and the mission of the TRC can be made to fit perfectly through the use of such unquestionable truths, even though this need for help in South Africa is by no means specific to victims of gross human rights violations: but

whoever has been left out must blame apartheid, the government, capitalism, but hardly the Commission.

Not that the contrast with the conventional justice system (civil, but especially criminal) was lost on victims: in *Truth Talk* of November 1996, five victims are interviewed, none mentions reparations, all express doubts about amnesty but note that testifying was a great relief. It may be surprising to see the TRC being so candid about victims' doubts, but the fact is that its institutional discourse could easily defuse these doubts. It portrayed the situation as a confrontation of two opposite sides with separate specific needs or demands: amnesty for perpetrators, compensation for victims and a shared desire of relief through truth-telling – which also happens to procure a benefit for the nation at large in the form of "national reconciliation" and the production of a historical record that reflects the truth as lived by the citizens of South Africa. The widespread argument that the process would be inordinately one-sided if victims were content without reparation and that it would then be unjust, a failure, not only under a retributive but under a putative *distributive* standard clearly shows an attempt to fundamentally transform criminal justice. As Justice Minister Omar said at the drafting of the Bill in 1994, "we recognized that we could not forgive perpetrators unless we tried to restore the honour and dignity of the victims and gave effect to reparation" (Boraine and Levy, 1995: 132). The TRC's main argument at this level is to show that whatever victims might have got out of a conventional criminal trial approach ("justice," "closure" instead of amnesty being granted to their aggressor), they can *get* more, and better from participating in the TRC project (see South African Truth and Reconciliation Commission, 1998: 1, 5, par. 94).

This is referred to as "restorative justice," and is said to challenge "the tendency to equate justice with retribution" (South African Truth and Reconciliation Commission, 1998: 1, 5, par. 54). In fact in any conventional criminal justice system retribution is far more than a tendency, or an "equation" to justice; it is the very *definition* of criminal justice and removing retribution from the centre of what victims are traditionally given as "justice" was at the same time fundamental to the project's success and particularly difficult. But one powerful way to recast the discourse of justice was to mobilize apartheid era-victimization as a fundamental issue and to produce a clear and indisputable image of its nature as a set of key needs. This was made more difficult because the conventional justice system still ran in the background, never far: it was

in fact even *part* of the TRC logic as the "stick" meant to convince potential defendants that amnesty-for-truth was their best option, that without amnesty they could be prosecuted under a retributive justice model.[3] So the new logic was always understood as exclusive to the TRC, there never was any serious talk of adapting restorative justice ideals to the current judicial system in South Africa. In fact, that system is now under extreme penal inflation, in contradiction with the TRC approach. There was no sudden generalized epiphany that victims' *real* needs were not those traditionally recognized by criminal justice, or that they should now supercede all other concerns. The necessity of establishing separate foundations of legitimacy for the TRC project was only stronger, and this was the context that gave rise to this peculiar new discourse of "victim-centredness," reserved to victims of "gross human rights violations" because these crimes were successfully defined as uniquely "need-producing."

Victims in Need of Truth, Acknowledgement and Closure

Another benefit to victims was offered through the commodification of "truth." Truth was said to bring vindication, inner peace and to help conclude the victims' mourning process; the TRC's motto, plastered all over the walls at hearings' venues, was "truth: the road to reconciliation."

The TRC adopted a different, non-confrontational method of gathering victims' stories, especially through its second Committee, the Human Rights Committee, which endeavoured to give a voice to victims throughout the country as providers of historical information rather than witnesses of crimes. Victims were asked to fill out a form and to give details of their experiences, and some of them were asked to testify in person before the Committee, with television cameras present. While all forms and claims, and there were about 21000 of them, were to be separately verified by an investigatory body, the victims' public testimonies in front of the Committee were heard without any requirement for substantiation and all questioning was kept mildly inquisitive rather than confrontational.[4] Despite the victim-friendliness, according

3. The existence of civil liability was also described as another "stick" to convince applicants to testify. However, the cut-off date for applying for amnesty, December 1997, fell more than three years after the historical limit of the TRC's mandate (April 1994). Three years is the limit of liability in civil matters in South Africa.

4. For instance, South Africa Truth and Reconciliation Commission, 1996: sec. 3: "the TRC is committed to a 'victim-friendly' approach to all people who appear before it. This has

to the latest count some 1500 victims have been officially rejected for various reasons. "Negative findings" include "those out of mandate, those not considered to be political and those with insufficient information to make such a finding" (TRC press releases, 9.12.99). A further 5000 other statements have also been rejected but still await final audit, so the final number of official victims could be 14500 instead of 21000: the goal was not only to provide information to the HRC, but also to provide public, official *acknowledgement* of the victimization.

> After the first hearing in East London, Matthew Goniwe's brother came to me and said: "we have told our story many, many times already. But this is the first time that after telling it, it is as if a huge weight has been lifted form our shoulders" (from Chairperson Tutu's Press Club speech, Oct. 1997).

This is what in this discourse could be referred to as the *truth-holding* victim, the dignified bearer of a piece of South African history to be incorporated into the record of the past. The main rationale was not that their stories were not known, or secret, although sometimes they were; rather, it was that making them public knowledge was said to restore the victim's dignity. This applied regardless of whether the story met judicial (or other) standards of truth or not, and more importantly whether the victim actually *felt* dignified or not: officially restored dignity comes primarily from membership in the truth-holding group and the public discourse created to describe it.

Inside amnesty hearings things were quite different; there the TRC (specifically, the Amnesty Committee) still took a traditional adversarial form towards both amnesty applicants and victims/witnesses, who were cross-examined, and their evidence was compared to other accounts and physical evidence gathered by the investigative unit and the applicant's representatives. The objective was to uncover the truth under a conventional legal framework, meaning by comparing *versions* of an event, including the one submitted by the victim. Minister of Justice Omar, who is responsible in large part for the creation of the TRC, expressed it this way before the Senate vote on the act: "our courts of law seek to arrive at the truth. They examine the evidence and then make a finding

---

resulted in non-adversarial questioning of witnesses in HRC hearings." This has prompted some alleged perpetrators to seek (and in some cases obtain) gag orders against victims, under the argument that false accusations could be made without corroboration or cross-examination.

of what the truth is. It is in that context that we are speaking about the truth" (Sen. Hansard, June 1995: 2256. See South Africa, 1994-1996).

"Amnesty," as granted by the AC, means both civil and criminal indemnity for those guilty of "gross human rights violations" (torture, murder)[5] committed in furtherance of a political goal, and within the structure of a recognizable political group. In exchange, applicants were asked to be completely candid and give details of their actions, including the names of accomplices when applicable; one specific objective was to uncover entirely new information about a dead victim's last moments for example, where they were buried, etc. for relatives who wanted to know.

> Witness after witness at the Human Rights Violations Committee hearings have emphasised their deep fundamental need to know the truth surrounding the loss of their loved one. [...] In other words knowing the details and circumstances of the human rights violation is in itself part of the healing process (Deputy Chairperson Boraine, 1996, not paginated).

Truth became a valuable – and rare – exchange currency: and taken together the demands were in some cases problematic for applicants, as amnesty was to be granted only if the actions described were "proportional" to the political goals pursued. Any new information then raised the possibility that the accumulation of details could take the narrative of events over the line of proportionality and thus amnesty might be refused. So needless to say applicants were generally reluctant to offer any new information beyond what was already suspected.

Victims were usually present at hearings, sometimes represented by a lawyer, sometimes not; they were allowed to ask the applicants questions at a designated stage and to make a statement at the closing of the hearing. In this situation victims were truth-*seekers* rather than truth-*holders*: "I recall so vividly how at one of our hearings a mother cried out plaintively, 'please can't you bring back even just a bone of my child so

5. On occasion it will grant amnesty for lesser offenses as well, usually without a formal hearing. These are usually in relation to illegal weapons charges and the like, but sometimes more controversial. For instance, Chairperson Archbishop Tutu's own son Trevor was indemnified for having delayed a plane with a bomb threat. Critics screamed favoritism, even though Tutu is not part of the Amnesty Committee and has no say whatsoever in its decisions. Another example is the series of amnesties given to 37 ANC members under the vague heading of plausibly having, by speeches, actions and in some cases mere existence, legitimized abusive actions for some followers. The TRC itself (while the critics were having a field day) contested these amnesties in open court on the basis that they did not mention clearly specific actions and they were reversed by a judge. The Amnesty Committee will have to evaluate them afresh.

that I can bury him.' This is something we have been able to do for some families and thereby enabled them to experience closure" (Chairperson Tutu, South African Truth and Reconciliation Commission, 1998: 1, 5, par. 30). In this role the victim requests from the TRC that truth be extracted from wrongdoers reluctant to give it up, against their desire to save face, to close ranks, to maintain a presumably false proportionality. The TRC is made indispensable.

Yet sometimes it will be said to have failed: speaking of police officers' denials and court gag orders, the sister of a victim said, "it's our lawyers against their lawyers. I thought it would be a case of simply listening to the truth, the whole truth. But what have we got here – men who come to tell the truth armed with expensive lawyers?" (*The Sunday Times*, 28.09.97: 4). Disappointment in the TRC process and its very technical requirements at this level was easily blamed on lawyers and their zealous following of the letter of the act, and the TRC could side with victims against excessive legal manoeuvring:

> the Commission has been plagued by court cases brought by alleged perpetrators who demand that they too be given reasonable notice [...] These court actions are serving to enhance the credibility of the Commission because people are saying, "they must know something if they are so keen to stop the Commission" (Tutu, Introduction to the June 1996 Interim Report of the TRC. See South African Truth and Reconciliation Commission, 1996).

Like the need for reparation, the need for truth is not imagined or made-up by the TRC in the sense that nothing like it existed before. Still it is a "creation" because the specifics of the concepts, the mentalities and the practices have been adjusted, nuanced, amplified, and in this case allowed the construction of the victim without the conventional need for revenge, punishment, and other such forms of very different "closure." "Restoring the victims' dignity" could then happen through public disclosure of truth rather than punishment of the wrongdoers. As was the case for reparations, this is not strictly speaking an imposition on the victims: they may still find some direct, tangible benefit in participation. Undoubtedly, their possible courses of action have been modified – they cannot sue or file a criminal complaint against an indemnified person – but at the same time they have not been reduced to a single, inescapable, obligatory course of action. Their reinvention and mobilization has been done through the positive power of recruitment: participation in the TRC was not mandatory; unlike some perpe-

trators, victims were not subjected to subpoenas. Rather, the discourse offered a set of identities that might be appealing – as well as TRC-compatible – and built its institutional narrative around them.

Table 1 sums up the aspects discussed in this first section. As we leave the role of individuals in the Commission, it is important to bear in mind that the images listed above are not descriptions of actual persons or groups of persons, but rather of ideal types of ordinary people as they took part in the TRC process. Individual victims were called to participate as such, and as a result can be seen to adopt an identity compatible with the TRC. And once they do, they reinforce the discourse whether they approve of it or not.

Victims' Stories as Lay Theories of Justice

The main assumption of this paper has been that victims are not, to use ethnomethodological language, "cultural idiots" (Coulon, 1987): they have at their disposal the necessary tools to understand their actions and the situation that exists in the TRC. It follows then that TRC agents, not cultural idiots either, know that victims understand what is happening, and their recruitment strategy will reflect this: it will not be simple-mindedly manipulative or coercive, it will offer something to trade, be it something intangible and materially selfless such as the "health" of the country. In turn, both the stories and the active participation in the process – the story-telling – became symbols of the TRC success, part and parcel of the TRC discourse. Looking at this process through a Foucaultian lens

TABLE 1

Representations of victims in the three TRC Committees

Committee	image of victim	function of victim	main benefit to victim
Amnesty Committee	truth-seeker	to testify to their version of events	closure, peace of mind through discovery of the truth
Human Rights Violations Committee	truth-holder	to tell the story of their victimization	acknowledgement through public recognition
Reparations and Rehabilitation Committee	in need of help	none	financial and other help

circumvented questions of how "free" or "manipulated" or "determined" both the TRC's agents and its subjects (in this case, the victims) had to be for the project to be successful. Simply, they shared an ability to make use of the intellectual tools provided by a discourse about that portion of reality and the practices put in place in accordance to it, thus creating a new reality at the same time voluntarily and unwittingly.

We may now add that narratives of victimization and need provided additional power to the work of the TRC supporters in articulating its discourse. There was more than an interesting compatibility of function between the TRC discourse and victims' narratives; to a large extent the narratives fulfilled the functions of discourse in everyday practice (Clegg, 1993, makes a similar point). The TRC continuously cemented its legitimacy by emphasizing its conformity with victims' needs, and part of this effort involved the demonstration that the process was more fundamentally just or right than all others, and in particular better suited to the situation than the conventional standard of criminal justice institutions. This was done through the narratives of victimization and the narratives of participation, transforming victims into integral parts of the institution's justice discourse (Richardson, 1990; Ewick and Silbey, 1998); they were more than examples, they quickly formed the framework of the institutional narrative.

What I want to propose is a form of relation between discourse and narratives similar to that which Geertz (1973) sees between the cockfight and Balinese culture. Geertz concludes that the Balinese enjoy cockfights not because of the gambling, since they are so frequent, and the odds are such that exchanges of money invariably even out over a short time. They do not participate to gain some social advantage either, partly for the same reasons, partly because losses and gains are not considered to be an indication of social status. Rather, the cockfight provides the living substance of existing social ties and hierarchies through intense dramatization. Rooting for, and betting on a side is a concrete manifestation of social allegiances: through the pain of defeat or the triumph of victory relations of kin are transformed from static, "theoretical," abstract concepts (e.g. "my cousin") to emotional, fundamental and deeply significant realities; the Balinese, through the cockfight, acquire an emotional stake in this facet of their culture. I suggest that is what we hope to accomplish when, instead of talking about "justice," "reparations," "victimization" and "dignity" we tell the story of such things as they were lived and felt by our fellow citizens.

One side benefit of this addition of narrative is that discourse doesn't have to be understood as the self-regulating regularization system that Habermas (1994) decries; he admits that Foucault circumvented the problem by moving from a theory of knowledge to one of power (or power/knowledge), where actual practices of domination serve as a basis for discourses, which in turn articulate the logic of the practices. But Habermas is still unsatisfied: to him, practices of power do not account very well for the punctuated stability of thought systems. I submit that discourse can be thought of as regulated, in part, by the rules of narrative logic in a symbiotic relation.

While discourse shows constant fluctuations and discontinuities, the overall effect is still one of consistent order (Veyne, 1978), mainly because discourse allocates the power to reject incompatible claims as untrue, unfit, un-knowledgeable (Foucault, 1972; Sheridan, 1980). The resulting order acquires the illusory quality of necessity as it hides its own contingent nature by constituting itself as "going without saying," in a process resembling what ethnomethodologists have introduced with the notion of "gloss:" that the "accountable" world is constructed by individuals precisely as non-constructed, true, essentially functional and rule-based.

We can avoid ethnomethodology's structuralist explanation for this by simply saying that rules and necessities we see in reality are the discursive rules used to describe it, and that they appear as emanating from objective reality only because people routinely collapse the "account" with "reality" in a single category. The reason why these rules are so strongly felt is that in everyday situations the creative power of discourse is conveyed through the familiar form of narrative. If individuals think reality with the intellectual tools provided by a specific discourse, it is mostly and most vividly in the form of narrative logic and with the content of stories that are both emotionally significant and loosely tied to empirical reality. As discourse is embedded in practices (Dreyfus and Rabinow, 1982: 199) narrative is embedded in practitioners: it creates an anthropocentric reality. As I pointed out before, this is compatible with subjects' awareness of the ongoing construction of goals and practices, the way in which they are made to "fit" logically together and the way they transform reality. What eludes spontaneous awareness however is the frightfully chaotic contingency and arbitrariness of the process of fit and the fragility of the result. Instead, all is made to appear as given, natural, universal or inevitable.

TRC commissioner Mary Burton, during a 1994 conference about the feasibility of a truth commission, retold the story of a Uruguayan victim:

> [...] there was a priest who spoke about his experience in Uruguay and about the need for healing. He told of a woman he had counselled after the disappearance of her child. She had said to him: "Father, I am ready to forgive, but I need to know whom to forgive and for what" (Boraine *et al.*, 1997: 121).

The quote within a quote is actually presented as somewhat of an after-the-fact leitmotiv for the conference, on the jacket of the resulting book edited by Deputy Chairperson Boraine (and multiple times inside; Boraine, *et al.*, 1997). This quote has a story within a story, that of the healer and the truth-seeker; it has the figure of the priest as symbol for forgiveness, help, non-political impartiality, wisdom, etc.; the story of the "disappeared child" is sufficiently generic to apply to a majority of victims; the fact that this takes place in Uruguay demonstrates the universality of the victim's condition, and by implication the universality of the foundations of the TRC project; knowing the truth is directly equated with "healing", an intrinsically positive moral floating signifier; "healing" also conveys the idea of the tragic unavoidableness of diseases, accidents, unfortunate circumstances, thus lowering the intensity of individual responsibility (useful since those responsible are given amnesty). It also ultimately implies the impossibility to truly repair the core damage, remaining scars, etc., thus glorifying simple amelioration (or at least lowering expectations). And after such luminous stories, which seem to crystallise the victim's identity so perfectly, any discourse about victims becomes an exegesis of a few paradigmatic narratives. The problem with that, of course, is precisely that stories are not paradigmatic. They are individual. By taking them as paradigmatic one erases contingency, disqualifies the non-conform and universalizes a specific version of truth. In that sense, narrative is simply the spoken, explicit, emotionally significant, "material" version of discourse, and leads to the same mechanisms of domination.

Conclusion: a Self-fulfilling Mission

The efforts to understand victims and convince them of the advantages of participation in the TRC are closely intertwined; "understanding" victims is actually offering a substance to the common sense of fairness, respect, dignity. The offered model is a cooperative production by

which victims accept –or appear to accept – to "understand themselves". Other models exist as well, where victims are different; others have yet to be imagined. I expect them to function in the same way, by articulating a "common knowledge" about victims that includes an outside, an abstract set of principles, and an inside, a set of narratives about lived experiences.

The evocative power of narratives becomes so strong for both TRC agents and the victims they are trying to recruit that they come to replace logical analysis. The back of the book by Boraine *et al.* (1997) has the already quoted line, in large typeface on the back cover: "Father, I'm ready to forgive but I need to know whom to forgive and for what." It is then followed, in smaller typeface, by the question: "How will South Africa deal with the perpetrators of serious human rights violations during the apartheid era?" The connexion is at the same time cryptic and obvious. In a way, the quote holds the answer, as the TRC motto: "Truth: the road to reconciliation." South Africa will deal with perpetrators by finding who they are and extracting the truth from them. In another way, there is clearly no logical link between the technical question and the poetic, allegorical quote.

The practice of living, as conveyed through narratives about reality and the teller's place in it, exists at the meeting of many discourses: some contradictory, some complementary, some unrelated. Discourse helps formulate narrative accounts of reality through the production of the intellectual tools needed to interpret and formulate experiences. Conversely, paradigmatic experiences convey discursive models by simplifying them, integrating elements, and glossing over the gaps in the conceptual fabric. More importantly, they inject emotion and deep meaning into cultural canons. In many ways this makes "restoring victims' dignity" a self-fulfilling mission: building a language of dignity is building dignity. The only remaining question is whether this particular attempt will eventually become – and remain – a dominant discourse or not.

References

BORAINE, A. 1996. *Justice in Cataclysm: Criminal Tribunals in the Wake of Mass Violence*, speech given in Brussels, 20 July 1996.

BORAINE, A. and LEVY, J. 1995. *The Healing of a Nation?* Cape Town, Justice in Transition.

BORAINE, A., LEVY, J. and SCHEFFER, R. 1997. *Dealing with the Past: Truth and Reconciliation in South Africa*, Cape Town: IDASA.

CLEGG, S. 1993. "Narrative, Power and Social Theory", p. 15-45 in *Narrative and Social Control*, D. Mumby (ed.). London: Sage.

COULON, A. 1987. *L'Ethnométhodologie*, Paris: PUF, 1993.

DREYFUS, H. and RABINOW, P. 1982. *Michel Foucault: Beyond Structuralism and Hermeneutics*, Chicago: University of Chicago Press.

EWICK, P. and SILBEY, S. 1998. *The Common Place of Law: Stories from Everyday Life*, Chicago: University of Chicago Press.

FOUCAULT, M. 1972. "The Discourse on Language", p. 215-237, *The Archaeology of Knowledge*, New York: Pantheon, 1982.

FOUCAULT, M. 1975. *Surveiller et punir*, Paris: Gallimard, 1993.

FOUCAULT, M. 1984. "Politics, Polemics and Problematization: an Interview", p. 381-390 in *The Foucault Reader*, P. Rabinow (ed.). New York: Pantheon.

GEERTZ, C. 1973. *The Interpretation of Cultures*, New York: Basic Books.

HABERMAS, J. 1994. "Some Questions Concerning the Theory of Power", p. 79-107 in *Critique and Power: Recasting the Foucault-Habermas Debate* , Kelly (ed.). Cambridge: MIT Press.

RICHARDSON, L. 1990. "Narrative and Sociology", *Journal of Contemporary Ethnology* 19 (1): 116-135.

SHERIDAN, A. 1980. *Michel Foucault: The Will to Truth*, New-York: Routledge.

South Africa 1990. *Commission of Inquiry into Certain Alleged Murders* (Harms Commission), manuscript.

South Africa 1992, 1993, 1994. *Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation* (Goldstone Commission), manuscript.

South Africa 1994-1996. Debates of the National Assembly (Hansard); Interpellations, Questions and Replies of the National Assembly (Hansard); Debates of the Senate (Hansard); Interpellations, Questions and Replies of the Senate (Hansard).

South Africa 1995a. Portfolio Committee on Justice: written and oral submissions by *Amnesty International, National Association of Democratic Lawyers, the Methodist Church of South Africa, Black Sash, South African Defense Force, South African Police, Freedom Front, André duToit, Alex Boraine, Lawyers for Human Rights, KwaZulu-Natal NGO Forum, Mayibuye Centre, Centre for the Study of Violence and Reconciliation, World Conference on Religion and Peace, the Attorney General Adv. F. Kahn.*

South Africa 1995b. *South Africa Yearbook: 1995,* Pretoria, Directorate: South African Communications Service.

South African Truth and Reconciliation Commission 1995-1999. *Press releases, official statements, amnesty decisions, amnesty hearings transcripts, Human Rights Committee transcripts, special workshop transcripts.*

South African Truth and Reconciliation Commission 1996. *Interim Report,* July 1996.

South African Truth and Reconciliation Commission 1996-1997. Written and oral submissions to the TRC by the *National Party, Pan Africanist Congress, African National Congress, Freedom Front, South African Defense Force, South African Police, Umkhonto weSiswe, National Council of Churches, Inkatha Freedom Party.*

South African Truth and Reconciliation Commission 1998. *The Report of the Truth and Reconciliation Commission* (paper edition), Cape Town: Juta Books. Also, website (www.struth.org.za) and CD-ROM editions.

The Sunday Times 28.09.1997: 4; *Mother Collapses as Cops Tell of Murder.*

VEYNE, P. 1978. "Foucault révolutionne l'histoire", p. 201-242 in *Comment on écrit l'histoire*, Paris : Seuil.