

The Partisan's Violence, Law and Apartheid:  
The Assassination of Matthew Goniwe and the Cradock Four

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## ABSTRACT

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This dissertation is a study of an instance of political violence that took place during 1985 in the Eastern Cape province of South Africa, but which had a wider resonance across the country. It involved the killing of four prominent anti-apartheid activists, known as the Cradock Four, by a state security death squad. It is an instance of political violence that allows us to ask ontological questions about the relationship between law, rights and violence; colonial violence and the Cold War, as well as questions about the epistemologies that surround violence in relation to questions of justice. Revisiting this violence, as mediated through the Truth and Reconciliation Commission, this study asks: how does this violence relate to the law itself, since apartheid was after all explicit in its claim to being the product of a legal regime? It argues that we need to think about how this violence against the Cradock Four, committed by a 'death squad'—and therefore orphaned through denial by both law and an official political narrative—related to the constitution of a South African political community, a political community we also have to remind ourselves, which had a colonial genealogy.

To answer these questions I have traced the figures of Matthew Goniwe and his political comrades in two ways. The first half of the dissertation is a study of how they are fashioned in legal discourse – over time mainly as victims of human rights abuses through the Truth and Reconciliation Commission. The second half of the dissertation is a study of their constitution in political discourse, where they become

transformed from activists to absolute enemies of the state. In my discussion of this latter transformation, I trace and wish to recover what has become a subaltern narrative: thinking about these activists as instantiations of the forms of what I have called 'the natives revolt', and therefore apartheid's concrete enemy: they are reluctant urban native subjects; neither properly rural and neither properly urban. It is this subject which I argue, finally disrupts the colonial ambitions of apartheid.

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## **Acknowledgements**

I have realized that the good fortune of a protracted period of being a student and of study, first at the University of the Western Cape in South Africa, and then later at Columbia, has not been that I have found answers to questions that I might have arrived at these institutions with. Rather it has been that I have had the privilege of being able to read and be in the company of a few individuals who have taught me that the question precedes the answer, and that the formulation of a worthy question is a far more challenging proposition than finding the answer to an inconsequential question.

I would not be the first to note that in the solitary process of writing we find ourselves conducting internal dialogues with a few people who come to be our primary interlocutors, whose thoughts, and reactions we find ourselves thinking in relation to. Whilst I spent time away from New York City and Columbia University, conducting fieldwork and writing in far away South Africa, the intimate proximity of these interlocutors remained constant. Foremost among them is my dissertation advisor, Mahmood Mamdani. The encounter with Mahmood in Cape Town, and his work, before he took up a Chair at Columbia, fundamentally altered the lenses through which I view South Africa and view the African continent from the vantage point of South Africa. He has altered, by his own example rather than prescription, my notion of what scholarly work might look like. From him I have had the illuminating insight of seeing writing produced that is aware of its location but is not circumscribed by that location. I have also learnt from his ethical disposition the imperative to write about the social worlds we traverse as critical beings, but also as accountable beings.

This dissertation is largely written in relation to questions that Mahmood laid open and made possible to ask through in his own writing. I am deeply indebted to him for his unconditional and unquestioning support throughout.

Two other interlocutors who's imaginary questions and even raised eye brows often hovered in my mind's eye when formulating an idea or a sentence, are my dissertation committee members David Scott and Partha Chatterjee. I wish to thank both for their patience and for their generosity of being, and for sharing their thoughts in the seminar room and outside. I have had the good fortune, but I confess, also the quite daunting proposition, of writing with such careful and nuanced readers in mind. It was from David in particular that I learnt to think more about 'the question', and to always ask, 'what might be the upshot?!' At Columbia I was also fortunate enough to have had the quietly unstinting encouragement and support of Nicholas Dirks, and Brinkley Messick, both of whom as Chair's of the Department, were equally generous with making resources available at crucial moments that enabled the commencement and completion of the dissertation.

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Much of this dissertation is based on archival research made possible by a generous pre-dissertation fieldwork grant from the Wenner-Gren Foundation for Anthropological Research. My travel to South Africa, to visit research sites, and to be able to 'go home' periodically, was also enabled by a Sheldon Scheps Travel Grant from Columbia University.

For those who know what archival work entails, it will not be news that an archive is not a straightforward proposition. A novice like myself had to learn this the hard way, and had to learn that without the clarifying presence of a guide, one could easily enter the labyrinth and come out empty handed. I was shown paths I would not otherwise have seen by librarians and archivists whom I hold in high esteem. At the South African History Archive Sam Jacobs was an eager and efficient guide. At Cullen Library at the University of Witwatersand it was Michelle Pickover whom seem to be able to make things appear from nowhere. I am deeply thankful to the archivists of the Documentation Center of the Department of Defence Archives, Pretoria. And at Cory Library and Rhodes University, Victor Gacuna further entrenched my respect and debt to those who manage the records of the Goniwe Trial. I am also thankful to Bavusile Brown Maaba, then with the Disa Project, UKZN, who shared valuable information with me from the archives on covert agencies of the apartheid government.

One of the salutary aspects of immersing oneself in a scholarly community is that scholarly relations can often translate into friendships, and that institutions can become places where we not only find an office, a computer, or a library, but that we also find community. I have found community with a number of institutions over the



course of this project, all of whom have enabled, and shaped the work and left their imprint on me as a person in one way or another.

My first forays into the questions that I have written about started at the University of the Western Cape. In the Department of Political Studies at University of the Western I benefited from the guidance and discussions with Willem van Vuuren, the late Siphon Maseko, Thiven Reddy, Chris Tapscott, Cheryl Hendricks, Bettina von Lieres, Mark Hoskins, Keith Gottschalk, and Joellen Pretorius. A special note of thanks must go to the persistence of Pieter Le Roux. At UWC, it was in the seminars of the History Department and Center for Humanities Research that I also benefited both from deep friendships, encouragement, and more critical expectations! The fertile space created by Premesh Lalu has been crucial to sustaining a lively debate on the ‘presents of the past’, and recurrent ‘deaths’. It has been quite formative to me to have as a community Ciraj Rassool, Leslie Witz, Patricia Hayes, Michael Neocosmos, Heidi Grunebaum, Paulo Israel, Annachiara Forte, Jade Gibson, Brian Raftopolous, Riedwaan Moosage and Lameez Lalkhen.

When I mentioned in casual conversation that I needed a quiet place to write, it was Harry Garuba, director of the Center for African Studies at the University of Cape Town, who warmly and instantly offered me a little perch on the hill, as Visiting Research Fellow at the Centre. I was also able to benefit whilst there from discussions with Lungisile Ntsebeza, and I am deeply appreciative of the thoughts and experiences he shared with me about the Eastern Cape, and memories of Mathew Goniwe. To Harry, and Lilian Jacobs I am very thankful for those quiet moments.

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A consequence of writing has been that one is often not available, and that it makes one realize that it is a foundation of friendship and family that support and love is unconditional. Mcebisi and Dorothy Ndletyana were family when I visited Johannesburg on archival research trips, and spending time in their home in the evenings with little Sabata compensated many days for the disturbing emotions that a foray into the archives of South Africa's violent past would recall. Unconditional too has been the support of friends who must have wondered at times whether I was actually writing: Shekesh Sirkar, Thiven Reddy, Saliem Patel, Benny Bunsee, and Pascale Montadert have been forgiving of silences and effusive in support.

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My parents and siblings, Florence Pillay, Nathan Pillay, Arvind Vasson, Anita Vasson, and Direshnie Pillay have perhaps been the most enduring, unquestioning

and generous supporters of my ‘odd’ choices in life, and of this endeavour, despite their wonderings about what it all might all have been about at certain times. They are the epitome of unconditional love.

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In as much as we can start with a question who’s answer we can not anticipate, I have also had the good fortune of forging bonds that have been transformative in unexpected ways. Ruchi Chaturvedi has been an fountain of affection, and an indispensable guide and support through the last stages of writing. She is also an insightful, and incisive editor that has spared readers from my tendency for the unending sentence! If the process of writing is solitary, then I am fortunate that the outcome is not.

Suren Pillay

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## **Introduction**

### **Chapter One**

#### ***The Cradock Four: Between Memories of Violence on the Right and Wrong Side of History***

##### **I**

I am not quite sure when Mathew Goniwe slipped into my consciousness. In 1985, I was thirteen years old and attending Rylands High School in Athlone where I had grown up. It was an Indian group area, and the school was classified as an ‘Indian School,’ and fell under the administration of the House of Delegates, the separate administrative and legislative parliamentary chamber introduced under the 1983 tricameral parliamentary reforms of the Apartheid government. 1985 was also a year that South Africa was under a State of Emergency. A national school boycott had started in 1985, and whilst one part of South Africa lived a ‘normal’ existence, another was in open and violent revolt, and the object of state repression authorized under the State of Emergency.

That year had started quietly, with the prospect of my second, year in high school. In July a State of Emergency was declared in 36 districts of the country. There had been a boycott of classes by 30,000 students in the Eastern Cape and Transvaal. They were the responsibility of the Department of Education and Culture that had been deputed to administer and educate students classified as black African. Within days of the declaration of the State of Emergency, solidarity action took place in Cape Town. By

the end of July students in the greater Western Cape area formed an organization, and at the end of that month the school boycott had spread to black schools in Cape Town.

We organized mass rallies, we traveled in busloads to other schools, we picketed and we held marches. At every step there was an incredibly violent police response that provoked even more support for student resistance. At that stage the student resistance was largely peaceful even though symbols of state administration had become targets. By the end of October, the State of Emergency was extended to Cape Town and the army came to occupy our neighbourhood. Any attempt at gathering as a group quickly brought a police or army vehicle. As one teacher noted in relation to one such incident,

Half an hour later, two Casspirs arrived containing about fifteen heavily armed policemen. This resulted in the students becoming extremely agitated. They armed themselves with planks from the back of their desks, tied hankies around their faces for the teargas and got ready, naively, to defend themselves.<sup>1</sup>

At the time there were three schools in the Western Cape that were classified as ‘Indian’ schools: Rylands, Cravenby and Pelican Park, the latter being the most recent creation. I have not given sufficient thought the question, but of all the three, only Rylands, and the community of Rylands really actively got involved in ‘the struggle.’ This is not to say that ‘activists’ were not present communities of Cravenby, or Pelican, nor is it to say that everyone in Rylands was one. For reasons that I also am not entirely sure of, I was drawn to a student protest meeting called one afternoon

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<sup>1</sup> Quoted in ‘Inside Boycotts- A teachers story’, *Deduct*, UCT Education Faculty, October, 1985

after a walk-out of class rooms was declared by a group of older students. Most of my friends in my class, actually all of them, decided to go home. I went to the meeting, and student ‘leaders,’ addressed us on a topic that I can’t recall. However I do recall feeling that it was the right thing to do to become actively involved, that there was a just cause. It seemed self-evident. From then on I attended many meetings.

The school ‘Prefect’ system of monitoring was rejected in favour of democratically elected Student Representative Councils and each class elected a class representative. By that time, normal schooling had been suspended; students now ran the school against the wishes of most parents and teachers. It was decided that the boycott of classes was not a boycott of education or school. We ran what was called ‘Alternative Education’ classes, awareness programmes, and actively pursued knowledge that was not given to us in the formal racialized curriculum of the apartheid education curriculum. Our slogan was ‘Each One Teach One.’ As one newspaper editorial at the time noted: “They are very frustrated and very angry. In a critical moment of our history, these passionate, dedicated immature, politically untutored students have taken over. Now they are getting their political education weekly”.<sup>2</sup>

At the time I was not really aware of the national landscape of resistance politics, organizations or ideological positioning. In our area the figure of Dullah Omar loomed large as a political influence. ‘Uncle Dullah’ or Com D, as he was affectionately known, was an unassuming, quiet man of extraordinary presence, and it was at the library in his house on Mable Road that I first saw many works banned in South Africa. For that matter it was probably the first time I had seen a personal

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<sup>2</sup> *City Press*, 20 April, 1986, quoted in Linda Chisholm’s (1986) ‘From Revolt to a Search for Alternatives’, *Work in Progress*, No. 42, p15

library as such, and the allure of a space in which one is surrounded by books has not left me. As an advocate Comrade Dullah could have in his legal, even though restricted possession, the collected works of Marx, Lenin and Trotsky – writers and writing otherwise banned in the country. As a lawyer he represented many victims of political repression including Nelson Mandela, and had regular contact with him. Dullah Omar was also in detention for long periods at the time for his activities in the newly launched United Democratic Front, which was established in 1983 as a broad front of organizations, from civic, to youth, to religious organizations.

I had joined the Thornhill Youth Congress where some younger, mostly teachers at the time, activists, had contacts with students and recruited us. There was also the older Thornhill Residents Organisation, of which Dullah Omar was chair, and through these meetings I was introduced to a world of ideas, ethics, and ideological orientations that have fundamentally shaped the way I look at the world. In post-apartheid South Africa, many who shaped my own political and ethical convictions have undergone remarkable transformations. However I could not have anticipated that change back then.

In retrospect, because I was the only person in my class at that time who really showed an active interest in the political activities, my classmates probably thought it expedient to elect me as the class representative. This trend followed its course when I was elected Deputy, and then later Chairperson of the SRC. My memory of the time is neither detailed nor chronological. We spent a large amount of time trying to construct an image of South Africa that we felt was being denied us, by seeking out the prohibited histories, and by circulating information and reports that were not to be

found in the muzzled press. The press was especially forbidden from reporting events going on in black townships or police actions under the State of Emergency. As many who reflect on the period have noted, it seemed that the outside world could watch daily events South Africa much more easily. But unlike, for instance, the Iranian activists who recently turned to mobile phones, the internet or 'twitter' to spread word about their emergent political movement, back then we had to resort to all manner of methods to spread information and circulate news.

Repressive actions, killings, detentions and torture of comrades and activists, and of students, became campaigns against which to mobilize and rally around. In our area one such event that has become known as the 'Trojan Horse shootings' took place in October 1985 on Thornton Road. A group of policemen had concealed themselves in a cargo container on the back of a delivery truck belonging to the South African Railways, and driven down a street known to be crowded with thousands of students who had congregated there to protest on a daily basis. Government vehicles had become targets and so this was a deliberate provocation, particularly since vehicles belonging to the SAR were a deep and very conspicuous egg-yolk yellow. As the truck slowly traveled down the road, stones were hurled at it; in turn, policemen popped out and opened fire with live ammunition, killing three students whose names can still roll off my tongue without thought because we repeated them so often in rallies, in memorials in our pamphlets, as we sought to draw attention to the injustice of the apartheid government and its policies.

Death in political struggle takes the dead person away from the intimacy of a family as victims of the violence of the police and the army are transformed into martyrs of a



just struggle, “their blood nourishing the tree of freedom” . Mamphela Ramphele has written about ‘political widowhood’ in a similar vein:

To be widowed: the loss one’s partner, husband, lover, friend, interlocutor due to the irreversibility of death. Unlike divorce, to be widowed is to mark a lack of choice, an almost prematureness to the inevitableness of separation. But ‘political widowhood’? At what point does death, this wretched violence of loss, become the concern of ‘politics’ I now ask myself?

We were accumulating martyrs to commemorate and to recall these deaths and the stories of repression. These stories took us out of the confines of our relatively middle class and comfortable existence in Rylands, and to the furthest corners of the country: to townships whose names we would have rarely encountered otherwise. Solidarity with the death of an activist allowed us to transcend the ethnic and racial identities imposed by apartheid, and no one was allowed to be an African, coloured, Indian or white person. The project of non-racialism adopted by the UDF proclaimed all of us South Africans, following the injunction of the Freedom Charter of 1955, that South Africa “belonged to all who live in it, Black or White”. Going beyond the Freedom Charters’ recognition of race, the UDF aligned movement I was drawn into, dissolved us all into ‘comrades’ – a corporatized identity of solidarity that brooked no differences along racial, ethnic, religious or gendered lines. We would not note or speak of these state sanctioned forms of differences. Hence a detained comrade, or a comrade killed, evoked in us a sense of solidarity, a humanizing gesture that allowed us, to ‘imagine’ forms of community that we had not imagined before. A student

killed, shot or arrested who may have been a bystander or a curious onlooker became a 'comrade'.

There were other ideological and organizational forms of resistance to apartheid, some aligned to the Black Consciousness movement and Azapo, the PAC, or the New Unity Movement or the National Forum and Neville Alexander's Cape Action League. As I recall it, these were not really discussed except to be dismissed for the error of their beliefs and futility of their organizational ways. It is only much later that I came to understand and learn about these differences, get a fuller picture of the violence between the UDF and Azapo, the '*Zim-zims*' and the '*Warara's*', in other parts of the country, and come to appreciate some of the beliefs behind them. But it was in the context of the Emergency, of youthful student organizing of alternative education programmes, of rallies and funerals, that Mathew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli entered into my roll call of names, and that I came to learn about the city of Cradock.

Goniwe's name had been circulating as a key protagonist in a small activist legend. Indeed, many people often spoke of the Eastern Cape and him in the same breadth. My earliest recollection of their deaths is associated with the poster that circulated to mark the killings on June 27 1985. The poster, perhaps anticipating a later personal interest in photography, was remarkable for me because of the image that adorned it. A black and white photograph (that I discovered later was taken by the Rhodes university historian Julian Cobbing) was captured from a kneeling position with a wide-angle lens that elongated Goniwe's lanky frame, and gave his raised arm and fist an added power. The deep black and white hues heightened the impenetrable tint of

the sun reflected in Goniwe's eyeglasses, as he looked up but also hid his eyes from the sun with his fist raised into the cloudy sky. To his right is a priest in full robes since the picture was taken at a funeral.

Goniwe was probably going through the regularized set of slogans that preceded any political speech by an activist, of saying 'Amandla' (Power), to which the crowd would respond 'Ngawethu' (to the People). Although a ritual that would be repeated by every speaker on a platform, successively and repetitively in every meeting, it never lost its evocativeness, its subversive character. Different leaders became known for bringing their own trademark nuance to how they would say 'Amandla', some giving it an ark that raised and fell slowly, some like the charismatic youth leader, the now late Peter Mokaba, rendered it in a chopped staccato cadence. And so, he gave it the tone of a military command, which no doubt added to the militant persona Mokaba had come to establish for himself, along with his particular style of leading the toyi-toyi, as he implored us to "Roar, Young Lions, Roar!"

Looking at Goniwe's image then, I can imagine one arm moving out of the frozen frame and completing its full sweep skywards, his words echoing back to him from the crowd, the songs, and the smell of the time, the feeling of defiance that accompanied the mere act of having a gathering of people, let alone being allowed to speak. It was an exuberant precariousness – a fragile moment as the police could teargas or pump rubber bullets and lead pellets from shotguns and bring it to an end very quickly. Yet there was somehow a sense of an indestructible energy, the same energy that was received by another South Africa as a destructive energy that could not be contained, but that had to be contained.

Goniwe, Fort Calata, Sparrow Mkhonto and Sicelu Mhlawuli had set out from Cradock to a meeting in Port Elizabeth and returned in Goniwe's white Honda Ballade on June 27. Mathew Goniwe was a school teacher in Cradock who had risen to local prominence as a founding member of the Cradock Residents Association (CRADORA) and as a tireless organizer for the United Democratic Front, a national umbrella organization of anti-apartheid organizations informally affiliated to the banned and exiled African National Congress. Goniwe, Calata and Mkhonto left Port Elizabeth for a meeting with fellow UDF activists, aware that they were taking a perilous journey. Mhlauli it turned out was on a school break and along for the ride. All had been victims of state repression, detentions and banning orders before. Around noon the following day, June 28, their bodies were found in a *veld* near the picturesque Algoa Bay coastline, badly burned and mutilated, and separated from each other over a small expanse of Blue Water Bay just along the St George's Strand Holiday Resort. The car had also been burnt. It was found some distance away just off the R102 national road. The registration number plates had been removed, and replaced with a different set, one of which seemed to have been inadvertently left behind and spared by the fire that had gutted the car.

Leaders of the movement, in my eyes as a thirteen year old at the time, were extraordinary people. I could only want to emulate them in their actions, words and lives. When we had to organize meetings to mark the death or detention of a leader, of a comrade, the moment was filled with anger, but also a certain detachment from the person. The dead person was subsumed in the wider narrative of an unjust act, what it would mean for the rest of us, in the need to go on, and in the need to be defiant rather

than defeated. In that space, as leaders of revolutionary struggles, political movements and armies well know, contemplating death as loss cannot be encouraged.

Why were Mathew Goniwe, Sparrow Mkhonto, Fort Calata and Sicelo Mhlawuli killed? I could ask this question about countless others. At the time however we did not pause to ask such questions. It was a dangerous question for us partly because we had not grasped the meaning of mortality and partly because the answer seemed self-evident. By then I had read Lenin who wrote that you have to crack an egg to make an omelette, marveled at Trotsky's ability to move from writing about poetry to mobilizing the Red Army into a ruthlessly formidable force, and accepted the inevitability that Marx oracled – that the old order would give way to the new, but not without the necessity of overcoming its violently terminal convulsions. I found evidence that backed up these insights in the world around me where a system of power and privilege was being threatened, but was also defending itself with force. It seemed self-evident too, that the only way to change the system was through the barrel of a gun, through violence since power, conceived of as we did then, would not cede power without a fight.

And this reminds me of the second slogan of the student movement: 'Action, comrades, Action!' At our school we called them 'the A-team', the action team. Their faces were always covered when they went out to stone or petrol bomb a police or army vehicle. And we had a regional network of action committees. By 1986 the army had been permanently installed in our areas and there was an abundance of targets and battles to plan, as successfully blocking off a road for a few hours became a huge cause for celebration in our world. For a few hours it was a liberated zone.

The physical perimeters of the school became borders whose integrity had to be protected, and protection required preparedness and weapons, and new kinds of knowledge. The historian Colin Bundy, who has written one of the most widely authoritative articles on the student protests in Cape Town during this period, observed that,

There were thousands in Cape Town who learned the practical science of making a petrol bomb, the street sociology of taunting armed soldiers, the pavement politics of pamphlet distribution and slogan painting, the geography of safe houses and escape routes, and the grammar and dialectics of under-cover operations.<sup>3</sup>

Bundy's analysis of the student uprising, utilizing the framework of a political economy approach, situated the protest within a Molotov cocktail of structural determinations which lent the moment an inevitableness: a population explosion, a massive increase in black students in the school system, an inadequate schooling infrastructure, and a dire shortage of jobs to absorb youth who have completed schooling or university. Stir in an overproduction of intellectuals and this must explode in a country as structurally clogged in class and racial terms. "At its heart," Bundy observed, "is a crisis of capital accumulation" (1987: 13).

This may be have been the case. However I do not think that Bundy's analysis grasps many aspects of the moment – the sensibilities that were put into play – that can illuminate the particular paths to social change chartered, as it were, in the event of history. And since my interest here is to reflect on the violence that saturated this moment, I want to turn from modes of production to the meter of poetry, and to the

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<sup>3</sup> Colin Bundy (1987) Street Sociology and Pavement Politics: Aspects of Youth and Student Resistance in Cape Town, 1985, *Journal of Southern African Studies*, vol. 13, No. 3

last two stanzas of a poem written in 1987 by Keith Gottschalk, a political scientist and activist in Cape Town that captures something of the sensibilities and practices that that I am getting at:

They walk through the furnace, they measure  
distance by army roadblocks,

And time by section twenty-nine.

Their names: comrade organizer

Comrade delegate

Comrade rank and file

Their address: a suitcase

Between here and there,

A secret cell

And the catacombs of silence.

Their meals: tension and cigarettes

Their personal lives: the interstices of  
committees and agenda.

Their lovemaking: under matters arising

Their destiny: death – and our liberation.

Note the twinning of death and liberation, as conditions of possibility for each other.

As the slogan of the South African Youth Congress, formed in 1987, was to put it,

“Freedom or Death, Victory is Certain!” A sympathetic newspaper reported,

Every block, every school, has an ‘action squad’, coordinating action,  
providing direction, helping build petrol bombs and seeking material for

barricades...Children who have not yet reached puberty tell you ‘I wish I had a hand grenade’; teenagers talk of AK 47’s, RPG-7’s, and bazookas’.<sup>4</sup>

Rummaging through my collection of material from that time I find a magazine titled *The Dawn* (1986) produced by students at a neighbouring school containing their poems. One, written by a young student, Premesh Lalu, now a Professor of History at the University of the Western Cape, titled ‘In Memory of....’

The shots clattered  
 The comrades ran,  
 The mothers screamed,  
 Some children cried,  
 Others through (sic) stones  
 Some shouted ‘Aman...dla!

Then there was silence.  
 Everybody stopped,  
 Turned & looked around  
 Astounded, a mother knelt;  
 At her knees  
 Lay a child  
 The pride and joy of a mother  
 Dead, Dead.  
 When one is killed;  
 Another 1000 will rise.

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<sup>4</sup> *Weekly Mail*, 8-14 November, 1985.



In the script of a play, typewritten, developed by a student grouping I was part of, a trinity of sorts, battles it out between Good and Evil. A young student, an encouraging devil and the chorus as conscience constitute the trinity. The student has finished school for the day and is faced with a dilemma: whether to go to a political meeting he was invited to or just enjoy himself lounging about at home. The chorus acts as the confused student's conscience, recalling the names of students killed by the government, and anti-apartheid activists sentenced to death while the devil goads him on to a life of youthful indulgence, encouraging him to put his leisurely needs first rather than take life too seriously. The play ends, predictably of course, with the student merging with the chorus, declaring to the devil:

Go away, keep quiet! I know what I am going to do. I am going to attend that meeting this afternoon. And yes, I am young! And I'm proud to be one of the fearless young lions who have dedicated their lives towards establishing a South Africa free of racism and capitalism.

June 16 1976 became an event of immense importance for students to commemorate. It was an instructive reminder of the necessity of sacrifice, of the ethical burden young people carried based on the idea that their blood, the blood of the students shot in 1976, was not spilt in vain. An often quoted slogan was a saying by Amilcar Cabral, the Guinea-Bissauan anti-colonial leader, that the youth were the flowers of the struggle. A pamphlet issued by the Athlone Student Action Committee (ASAC) on June 16 1987 declared boldly at the end, '*Youth must not only be the flowers but TRUE SOLDIERS OF OUR STRUGGLE*'.

Another pamphlet is of a church service held to commemorate June 16, since overt political meetings were banned, cultural and religious activities became nominally legal ways of organizing. The hymns to be sung include ‘O Young and Fearless Prophet’, ‘We shall overcome’, and ‘Onward Christian Soldiers’, with those memorable lines ‘Onwards Christian soldiers, marching as to war, with the Cross of Jesus going on before. At the sign of triumph Satans ghost doth flee; and then Christian soldiers, on to victory’.

Skipping the country to become a guerilla fighter was the ultimate sacrifice you could make as we saw it. It was widely aspired to, but few of us summoned the courage to progress from stones, petrol bombs and militarist posturing to taking ‘to the bush’, as it was called. At the end of the day, for most of us boys, I suspect that our mother’s cooking and the girl we had a crush on proved more captivating. Others who did so, and who were captured or lost their lives were our heroes. To ‘go to the bush’ was to step beyond the pale into a social death where no laws or community could protect you and thus the pinnacle of bravery and selflessness. Not that this was only confined to boys. In an interview one of the leaders of the United Democratic Front, who went on to become a senior figure in the ANC, Cheryl Carolus describes the genesis of her own political awareness,

I was quite young in fact. I was around 13 or 14 years old....In the same year, it must have been 1970 or ’71, I bought my first political book- *Leila’s Hijack War*. You know, Leila Khaled! I had this incredible romantic adoration for her, the picture with her Arab *doekie* (scarf) and

the machine gun...[laughing]. I think some people were very disturbed about it! I was in standard six then.<sup>5</sup>

A political activist who was inside the country and was not a member of the armed resistance could still seek recourse to the truncated provisions of the Emergency laws. South Africa was not a signatory to the Geneva conventions. That left someone considered an armed combatant in a precarious zone of non-existence that I explore later in this work. That said, people would and were going to die. All of us, in very different scales and proportions, were putting our lives on the line when we decided to become activists. This narrative, normalized in 'struggle', thus prevented me from posing the question of why certain people were killed. It did not seem a difficult question to answer because it also implied that we would also have to do some killing of our own, made right by the name of a just cause. The slogan of our youth movement triumphantly declared, "Freedom or Death, Victory is Certain!"

However I do not regard this narrative as self-evident any more. Furthermore, I don't accept without reservation that violence is an integral option necessary for radical political change. From the overwhelming coincidence of violence and political change, the empirical evidence of modernity might indeed suggest a naturalized relationship between the two. At the same time, I believe that we need to always ask questions about the particular conditions and histories that summon violence from potentiality to actuality and bring it into existence. When we begin to reflect on and think of violence as something to pause about, to think about, to doubt and be skeptical of as a form of instrumental reason made sharp, we often have to sit with the

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<sup>5</sup> *Youth Express*: Grassroots publications. n.d

evidence of its existence. We have to open ourselves to its materiality, to the tangible results of its labour, and above all, most visibly, to the body.

I am aware that the violence of which we speak here, this violence performed on the body, compels us today for particular reasons that a different kind of violence does not. That is to say, a normalized violence, a structural violence that exercises itself upon the 'human condition' in less tangible physical ways, like the slow pangs of hunger, the terror of poverty, the shame of being poor or the racialization of crime, remain more structurally enduring and more challenging as forms violence to make the object of popular outrage. The violence on the bodies we are talking about here occupies for us for very distinct imperatives, which have to do with the production of a certain modernist subjectivity. Thus, Michel Foucault's *Discipline and Punish* (1979) intentionally opens with that famously gruesome episode:

On 2 March 1757 Damiens the regicide was condemned 'to make the *amende honorable* before the main door of the Church of Paris', where he was to be 'taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds...then in the said cart, to the Place De Greve, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire.... Finally he was quartered.... This last operation was very long, because the horses used were not accustomed to drawing; consequently,

instead of four, six were needed, and when that did not suffice, they were forced, in order to cut off the wretch's thighs, to sever the sinews and hack the joints.... (1979: 3).

No doubt Foucault sought to startle a certain sensibility we now take as doxa. But it's not only the violence that is meant to unsettle us. Foucault's point is also that this event is administered by an official religio-legal apparatus that sanctions it, and that the event takes place in a public setting with spectators cheering the violence on. Foucault's interest is not to show the horror of torture, but with the relationship between sovereign power and the forms of punishment it administers, and to trace how this relationship shifts over time:

One no longer touched the body, or at least as little as possible, and then only to reach something other than the body itself...Physical pain, the pain of the body itself, is no longer the constituent element of the penalty. From being an art of unbearable sensations punishment has become an economy of suspended rights (1979: 11).

This is not to suggest that new forms of disciplinary power do away with torture or the infliction of pain. As Talal Asad astutely points out in his reading of this argument, torture is now linked to policing and has entered the realm of secrecy and scandal. In Asad's words,

Modern torture linked to policing is typically secret partly because inflicting physical pain on a prisoner is considered "uncivilized" and therefore illegal.... My argument here is that "torture" as now used in the law is a form of cruelty that liberal societies do not approve of. That's the

main reason why modern authorities typically generate a rhetoric of public denial.<sup>6</sup>

When the secret becomes public knowledge, rather than generating the spectacle that Foucault describes above, it is more likely to provoke a ‘scandal’. It is this aspect of violence questioned and interrogated, which can be compelling in its own way and bring out within us the need to hold onto, to make visible, the traces of the work of violence, to collect, to catalogue, to not wash away the blood at the scene, but to preserve it. This is the impulse to think, to hold on to the effects of the work of violence in order to work against violence – to mirror the work of violence back onto itself – and, to turn its work into a dossier of evidence against it. It is the archival material of indictment. In the recalling, in the rehearsing, there is the repetition of the moment of violence in order to turn the work of violence back against itself, a form of doubling, like a mechanical reproduction, first time as necessary, but second time as horror. This seems to me the modernist seesaw, as we shift between necessity and horror or, between necessity and terror. The horror lies in realizing how terror appeared necessary and the necessity with which it exercised itself upon certain bodies producing certain practices and actions at certain moments of time.

I have come therefore to the question of Why. And I am aware that I also have come to the question of why ask the question ‘why’? What is this ‘why’ of violence’s work as performed on the bodies of Goniwe, Mhkonto, Calata, Mhlawuli, mutilated and mangled? Why the need to ask why? The self evidence of a narrative, of resistance and repression, of a cycle of repetition, is no longer sufficient. And in that deficiency the space has opened up for questions to emerge. But then there is the looking back.

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<sup>6</sup> Asad, T (2003) *Formations of the Secular: Christianity, Islam, Modernity*, California: Stanford University Press, pp104-105

What will become of us if we look back? Of course it surely matters who is looking back, and whether it is from the vantage point of a sense of victory or a sense of loss. The loss of life in victory, and the loss of life in defeat distinguish the calculus of looking back. The looking back might also be a dangerous thing to do if we are to look forward.

## II

*Hence, the body seems to be political insofar as it always demonstrates as a last resort, the evidence of power*  
**Didier Fassin (2005: 597)**

My questions therefore revolve more around the Why, not so much, ‘Who?’ Yet we remain haunted, so to speak, by the question of ‘who,’ and it is a question I wish to address by reframing our understanding of what is at stake in the way in which we ask this question from the vantage point of justice. When the student movements and civic associations marked the death of the Cradock Four in mass rallies and commemorations in 1986, the question was not why they were killed. It was the question of who killed them? This was the injustice and it was the question that justice sought an answer to. The injustice was that those who did the killing were not possessed of the ‘right’ to kill them. Yet, when the question was asked, ‘who killed the Cradock Four?’, the answer was in some ways already known. The answer was that the apartheid state killed them. This was common knowledge, for who else it would profit from such an action? There was also of course the benefit a rival political organization might derive from their deaths. But our answer to the question was clear: it was the state.

When the three young students were shot in Thornton Rd in the Trojan Horse incident, it was done in full view of witnesses. It was ‘public violence’, so to speak. Yet even then this would have been denied by the state, if it had not been for the presence of a television camera that brought it to the attention that very evening on news reports outside South Africa. The question of ‘who’, even when I say we ‘knew’ it was the state, requires us to think about the connection between the state and the bodies of Mathew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlauli.

### III

*There is thus reason to reopen the coffin,  
and remind ourselves of what apartheid looks like in the flesh*  
**JM Coetzee**<sup>7</sup>

Where the deaths of the Cradock are concerned, the question of who killed them has in a way been answered. It is then perhaps best to establish this narrative, with a rendition of what happened on the night of June 27 1985, and the early hours of the morning of the 28<sup>th</sup> June. In presenting the ‘account’ of events, as narrated by the policemen involved, I am weary of attending to the deaths of the Cradock Four in a manner which borders on an ethically dubious detailing of gruesomeness. Yet I believe it is necessary to briefly recount that narrative about the killings that emerged after two inquests and commissions of inquiry, which provides details sought by certain forms of justice.

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<sup>7</sup> Coetzee, JM (1991) ‘The Mind of Apartheid: Geoffrey Cronje (1907-)', *Social Dynamics*, vol. 17, no. 1, p1



Seven members of the Eastern Cape branch of the South African Security Branch applied for amnesty for the killing of the Cradock Four at the Truth and Reconciliation Commission hearings in 1998.<sup>8</sup> They were Eric Taylor, Gerhardus Lotz, Nicolas van Rensburg, Harold Snyman, Johan Martin “Sakkie” van Zyl, Hermanus Du Plessis and Eugene de Kock. The latter was already serving multiple life sentences for other convictions and his testimony was ultimately deemed most credible. The others were not considered as forthcoming, and amnesty was denied yet no criminal charges have been filed. The decision of the amnesty committee, mandated amongst other things, to find ‘political motive’, is a discussion that I take up later. I do not claim to present this version as ‘the truth’; it is however a ‘legal truth’ whose status, imperatives and implications I discuss in the following chapter. What I am about to present is a synopsis of manner in which the killings happened, and who ultimately conducted them as established in the amnesty hearings. But I save for later parts of the narrative that establish the context of the killings as well as what is described in legal prosecutorial discourse as ‘motive’.

In his testimony, Colonel Snyman testified that that all ‘normal’ processes available to them to curtail the activities of the Cradock Four had not met with the desired results. At a security briefing held in Cradock on the February 14 1985, the challenges that the Cradock Four presented were discussed. Goniwe and his fellow activists’ resistance was hampering the state’s attempts to ‘reform’ Black Local Authorities through a process of co-optation of local leaders. In attendance at the February 14 meeting was the Minister of Law and Order, Louis Le Grange, Commissioner of Police, General Johan Coetzee, the Minister of Co-operation and Development,

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<sup>8</sup> TRC Amnesty Committee Decision, AC/99/0350, 1999

Barend Du Plessis, the Divisional Commissioner of the Eastern Cape, Brigadier C. A Swart, and a number of other security police officials. The Minister of Law and Order described the Eastern Cape as the 'eye of the storm', emphasizing a total onslaught against South Africa as part of a communist expansionist war.

Colonel Snyman was told that he had to do something about the activists. Snyman gave permission for the "four people... to be urgently neutralized". General Nick van Rensburg, along with Major Du Plessis and Captain Van Zyl were tasked with planning the operation. It was Van Rensburg's idea to propose a simulated robbery or alternatively, to present the deaths as part of the rivalry between the United Democratic Front and the Azanian Peoples Organisation (AZAPO). Lieutenant Eric Taylor and Sergeant Lotz were also included in the team. From the phone tap on Goniwe's house, it was known that he would be attending a meeting at the house of fellow UDF activist Derek Swartz, in Port Elizabeth. Supplied with petrol and a set of false number plates, and two additional security police officers, Sergeant Faku and Glen Mgoduka, the security police team traveled in two cars towards the Olifants Hoek Pass. Around 11.00pm they spotted Mathew Goniwe's white Honda Ballade driving in the direction of Cradock and followed the car. At a suitably quiet section of the route Taylor and Lotz overtook Goniwe's car and signaled for it to pull off the road. The four occupants were ordered out of the vehicle and handcuffed.

The number plates of Goniwe's car were removed and the set that the policemen had brought along was attached. The four men were divided between the two cars with Sparrow Mkhonto and Sicelo Mhlauli traveling with Van Zyl; Fort Calata and Mathew Goniwe traveled in Goniwe's vehicle along with Taylor and Lotz. All cars

then drove in the direction of the St George's Beach resort area where they took a gravel road into the bushes. Lotz and van Zyl then drove Goniwe's car a little further away, doused the vehicle with petrol and set it alight. They then returned to Taylor who was waiting with Goniwe and Calata.

Van Zyl meanwhile drove away with Sparrow Mkonto whom he planned to kill by stabbing him after knocking him unconscious. According to Van Zyl, on route in the vehicle, Mkonto managed to grab him from behind with the intention of trying to strangle him. Van Zyl reached for a gun hidden under the car seat and fired at Mkonto. He pulled the car off the road, and fired an additional shot into Mkonto's head to make sure that he had killed him. Leaving Mkonto's body in the veld he drove back to collect the other policemen, Faku and Mgoduka along with a police informant, Shepherd Sakati, and they returned to the body. Faku then proceeded to stab the body, after which they poured petrol over it and set the corpse alight. Van Zyl and his three colleagues then drove back to the meeting point where Taylor and Lotz were. Faku, Mgoduka and Van Zyl then transported Mhlauli about a kilometer away after which Faku hit him unconscious and the other two black policemen stabbed him. A similar procedure was carried out with Mathew Goniwe. The handcuffs were removed from the remaining bodies and they were set alight.

#### IV

#### *Writing Violence*

For the activist invested in resisting domination, the politico-ethical stakes in political violence are self-evident. This dissertation's opening lines, a declaration of a

disposition, a kind of confession perhaps, record the activist's normalized conception of violence and its rightness when it is enacted 'on the right side of history'. In disciplinary forms of knowledge, like anthropology, thinking and writing about the phenomenological forms of political violence present a more troubling ethical proposition. The 'scandalous' practices we speak of here have been the subject of anthropological research especially after 1960. This is not to say anthropologists of an earlier era were concerned with violence. But in the past, their sights were focused on non-state groups or non-modern forms of statehood. The intrigues of succession, the tribulations of 'tribal warfare' and the cycles of blood feuds animated those ethnographers. Violence, colonialism, and the modern state drift into focus much later, notably after the First World War. Hercules Read (1919) gave his presidential address to the Royal Anthropological Society on the anthropology of war. And then again towards the end of the Second World War, Bronislaw Malinowski (1941) addressed himself to violence and war.

Later Ruth Benedict (1959) and others would follow. Anthropologists could, argued Malinowski, demonstrate with credibility that war was not part of a 'natural order', nor did it spring from an instinctual need, as some of their colleagues held. War between modern states and their citizens was especially exceptional in the so-called natural order. Linda Green has noted that state terror itself did not until recently, "capture the anthropological imagination" (Green 1995: 107). And, as Carole Nagengast (1994: 112) argues, often it became a focus only after anthropologists had been 'in the field' and had to confront acts of violence practiced upon their research subjects that they re-oriented their concerns. The initial impulse of anthropological works on state terror was therefore to "write against terror". Orin Starn noted that it

offered a way for anthropologists to “contribute to struggles for equality and justice” (1994: 1). Green (1995), Beatriz Manz (1995), and Nancy Scheper-Hughes (1992) have also put forward the view that writing about state terror was a way for anthropologists to “show who they cast their lot with”, and to turn their writings into “acts of resistance and solidarity”.

The anthropologist, working at the field site, in touch with the “micro-level” of the experience of violence, could act as a witness, could record, could give voice to, those suppressed, marginalized and victimized. Coming as it did during what has been called the ‘self-reflexive turn’ in anthropology, in the wake of the collection titled ‘*Writing Culture*’ by James Clifford and George Marcus, some saw taking an openly ethical position alongside victims of violence as a way to give what was an increasingly questionable disciplinary past a more palatable future. As Edmund Gordon was to passionately implore his colleagues:

As more of us reach intellectual maturity, we find the contradictions of existence within a colonized discipline harder to bear.... To be an anthropology, which no longer serves the interests of the oppressors it must be one which actively serves those of the oppressed. We must make a decolonized anthropology positively the ‘anthropology of liberation’ (1991:153 ).

This is not to suggest that all anthropologists who wrote on political violence or state terror shared Gordon’s vision or his intellectual anxiety, or his sense of complicity. But it does seem to me that a flourishing of work on state violence stepped into a discursive space opened up by the debates within anthropology about its association with colonial practices, an issue that had been raised for discussion in the early 1970s

by Asad (1974) and others. The works also coincided with what seemed to be a proliferation of practices labeled as state terror that had indeed begun to grow significantly between the late 1960's to early 1990's. The height of the Cold War conflict, the support for covert operations instantiated by the 1954 overthrow of the Arbenz government in Guatemala, and perhaps reaching its apex during the Reagan era of support and training in 'counter-terrorism', and 'counterinsurgency' meant that anthropologists increasingly found themselves confronting state terror as it intruded into their field sites in Asia, Africa and Latin America. This was evident in Latin American countries like Guatemala, where Robert Carmack (1988) produced an edited volume that looked specifically at state terror. Contributions to this collection recounted experiences of the effects of violence systematically carried out on Mayan communities, with some of the contributors themselves later becoming victims of state violence.

While World War II was still running its course, Bronislaw Malinowski observed that anthropology's contribution to the study of war "insists on the cultural context of war" (1941: 542). War carries with it a "total character", that he noted with dismay, "... transforms every single cultural activity within a belligerent nation. It is enough to look at statistics of mobilization in man-power, in activity, and in public opinion to realize that at present it has become possible to transform some hundred million human beings into one big war machine" (1941: 545).

For Malinowski, war was an aberration that emerged from aggression; its effect was to paralyze culture. "Never," he opined, "has the exercise of culture become so completely paralyzed. This means, in terms of individual psychology, that any

differential initiative, any formation of independent critical judgment, any building-up of public opinion through discussion, controversy and agreement, has been replaced by the passive acceptance of dictated truths” (1941: 547). For Malinowski then, certain forms of culture were reflected with acts of being a person, or a citizen. Absence of those activities and dispositions such as independence of mind was a sure sign of the absence of culture. And war, a total relation, a ‘machine’, had the capacity to enter into every mind and every relationship, freezing those it touched as it took hold of them.

One of the most influential contemporary anthropologists working on terror, and explicitly ‘writing against terror’, is Michael Taussig. Both Malinowski and Taussig see in war a totalization of relations, a ‘machine’. In its zones of operation or, as Taussig calls it, in its “space of death” war attaches itself to the sensory capacities of every person. Taussig has introduced into the lexicon of anthropologists working on political violence and terror the idea of a “culture of fear” (1987, 1992). This notion has framed a number of subsequent studies (Corradi, 1987; Fagen, 1985; Freeman, 1992; Green, 1994, Perelli, 1994; Sluka, 1996 & 2000; Villaveces-Izquierdo, 1997). Taussig too stumbled into the subject of terror as it played out amongst the Putumayo Indians of South West Colombia in the 1970’s.

For Taussig there was a disjuncture between the economic interests of landowners, the state, and the local communities who made up the peasants and workers on farms and the kinds of violence meted out. In the history of the encounter between extractive colonialism, the plantation economy and the people of the Putumayo he found narrations of violence which were marked by ‘excess’, that is to say, killing and

brutality beyond any utilitarian function or proportion. Stated bluntly, why, for example, would landowners massacre Indians when there was a shortage of labour? In keeping with Malinowski's observation that what anthropology could bring to the study of war were its cultural contexts, Taussig also seeks to study the culture of violence. For Malinowski however war signaled a paralysis *of* forms of culture; for Taussig terror signaled a paralysis *in* culture. And whereas the conceptual space in which Malinowski intervenes had structured the terms of the debate as between essentialist (although he might not have used that word) and constructivist determinations of the violence of 'man', Taussig's conceptual space is prefigured within a set of debates about 'interests' and 'ideology', given the influence of political-economy inflected studies at the time.

There were two related epistemic concerns for Taussig. Academic studies armed with 'reason' were problematic because they went in search of reason and produced analyses that sought to insert reason into violence, most often as the product of material interests, and were therefore confounded by what was found. In Taussig's own words, "the reality at stake here makes a mockery of understanding and derides rationality...." Rather one should seek to unravel "cultural logics of meaning-structures of feeling- whose basis lies in a symbolic world and not in one of rational in the name of...civilization" (1992: 164). An edifice of representations in which terror is mediated through narration thus sustains this totalized space of death where a culture of terror operates. In his words,

Step by step, terror and torture became the form of life...an organized culture with its systematized rules, imagery and procedures, and meanings involved in spectacles and rituals that sustained the precarious solidarity



of the rubber company employees as well as beating out through the body of the tortured some sort of canonical truth about civilization and business (1992:164).

This is an almost compelling narrative. In this narrative, violence is the product of mutual fantasy about the capacities and actions of the other. It is about the production of the Other as a fantastical entity capable of incredible acts of violence, and in a fit of nervousness acts of pre-emptive violence are necessary in order to preserve yourself and those with whom you share a collective identity - in this case the settlers. Being afraid beyond proportion to the 'real', is what the culture of fear engenders. It is simultaneously connected to real practices and out of touch with it, as it spins beyond the real into wild stories, jungle stories, travel stories, folk lore, and so on that take on a generative existence of their own. A culture of fear operates within what now becomes a space of death, not a site of inertness but a site of production and transformation. The space of the encounter produces, and is the site of the circulation and consumption of stories with brutal effects where meaning is made. Taussig's account gives a materiality to consciousness by giving it autonomy as a site and realm which can produce things in and of it. It has an imminent productive capacity.

The challenge therefore for ethically minded scholars and activists working to change relations in the space of death, itself an interpretive conceptual mechanism made material by discourse, cannot simply be to render the fantasy as fantasy since this is to miss the power of the fantasy. The challenge is find a way to produce a counter fantasy, a counter memory, in order to engender a counter practice. By objectifying fear as a construction that puts into motion its own logics of action, of killing and so on, Taussig denaturalizes it and turns its truths into myths while holding on to the

power of myths as not the opposite of truth, but a truth-effect. And one is therefore able to show it for something else and offer something different in the space that it occupies. One can fill that space with a counter-memory.<sup>9</sup>

Taussig is of course not alone in making a strong case for the symbolic analysis of acts of violence within cultural spaces. James Dingley and Michael Kirk-Smith, for example, have argued cogently for the analysis of interpretation in acts of terror. For them, terror acts are simultaneously acts of blood sacrifice, “whereby acts of violence link with religion and with mans collective being” (2003:102). They share Taussig’s concern that you cannot grasp violence as a means-end fashion rationalization. For them one needs to take into account beliefs and the place of certain acts within symbolic systems of meaning. As they say, “we suggest that positing a rational and causal ‘means-end’ calculation may not be sufficient explanation for all terrorist acts by themselves. An understanding of how terrorists think on a subjective and culturally determined level is also required....” (2002: 3). And in an important work on the Argentine ‘dirty war’, Marcelo Suarez-Orozco (1987, 1992) was to take on the task of, as he put it, of “giving voice to the voiceless”<sup>10</sup> by developing a way in which to think about the ‘grammar’ of terror. In his words,

Each time an agent discharges an electrical current through the body of an infant in front of his/her parents, or through the penis or vagina of ‘subversives’ in front of their children, a perverse polysemantic ritual is

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<sup>9</sup> Drawing on the work of James Scott and Vincente Rafael, Jane Margold (1999) argues that there is insufficient ‘agency’ displayed by the dominated in Taussig’s model. It seems to me that he does seek some form of ‘agency’, but differently conceived than Margold’s. I do not necessarily share her critique, which is based on a highly interpretive disjuncture between domination, action and consciousness, which operates in the same theoretical universe as Taussig’s, about which I express my reservations later. Secondly this line of thought coincides with Martin Sokefeld’s (1999) criticism that anthropology tends to ontologically see the West in terms of individuals and the Rest as ‘groups’. He argues that anthropologists should emphasise the ‘self’ in the Others too, since the Self as agent is universal. This view seems to me to take one conception of the self, a particularly modern autonomous self, as the Universal conception of self without problematizing nor historicizing it.

<sup>10</sup> For a critique of the assumptions of history making in this gesture see Talal Asad (1993) *Genealogies of Religion*, pp 9-14.

enacted. These rituals can be explored as meaningful ‘texts’ telling a horror story about our times. Our task here is to decode messages, both hidden and overt, in the historical rediscovery of torture in the Argentine chambers of death (1987: 227).

This work is a useful example of what can be seen as a body of anthropological work which takes violence in both its material and symbolic manifestations, and ‘reads’ it textually in order to explore its hermeneutical dimensions (see in particular Feldman, 1991; Daniel 1996). The work of the anthropologist, as Clifford Geertz had so influentially stated, was after all ‘interpretive’. Productive forays of subsequent writers into literary, linguistic, semiotic (Valentine Daniels work on Sri Lanka, or Veena Das in India, 1987 & 1990) and psychoanalytic theories, from Freud to Lacan (as in the case of Allen Feldman’s 1991 work on terror and ‘embodied transcripts’ in Northern Ireland), while often in disagreement with Geertz, continued and continue to pose questions in a space it, could be argued, that Geertz had whittled open earlier.

One such writer, Michael Gilson, draws on Geertz’s famous analysis of the Balinese cockfight to make a case for anthropological fieldwork that allows us to see that “a specific and highly bounded arena of violent play can be taken as a condensed frame and ‘text’ in which are revealed, to *the trained reader*, otherwise elusive cultural and social patternings” (2002:109). He goes on to suggest that

[s]ocieties have elaborate practices, codes, rules and representations of violence. On closer examination, however, these cultural practices may turn out to have less visible and far more ambiguous links to the realities of social life than people themselves say. *Anthropologists look for the cracks in the social surfaces*, those breaks in meaning and inconsistencies

in accounts and practices. Points of conflict and violence may signal such crucial fault lines (Gilsenan, 2002:103) (my emphasis).

Three observations stand out: Firstly, violence is considered a signifying practice. Acts of violence are embedded in economies of meaning as objects of consumption and production. Secondly, these meanings circulate within a bounded zone- ‘culture’, and the space of death.<sup>11</sup> Thirdly, the role of the anthropologist is to stand in a particular relation to his or her object of knowledge – to stand in relation to a set of practices in which a group of people, collectivities or particular individuals or institutions are involved – and to bring into relief the ‘meaning’ of those practices since those meanings are not necessarily visible or available to those involved.

Indeed, those involved are believed to have interpreted those practices in particular ways in order to make ‘sense’ of them, as in a Freudian relationship to trauma, where it is made coherent to the self through acts of narration and where subjectivity as a repository of ‘truth’ is untrustworthy. That is to say, anthropologists are the ‘trained readers’ who are equipped (through academic certification) to ‘read’ or ‘decode’ and pick up the ‘cracks’, the slippages, the disjunctures and dissonances in representations of the experience and practices of violence that informants are in a relationship with. Anthropologists impute or process collected individual, and collective experiences (as oral, visual, performative and textual) while standing in an objective, yet as in the case of some, ‘committed’ relation, to a set of subjective experiences.

How the act of representing, and thereby transforming, what the victims of violence experience through the discourse of the anthropologist can be interpreted as “giving

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<sup>11</sup> ‘Culture’ is used here as in Clifford and Marcus (1986): it is textual, with heterogeneous internal contestations over hegemonic meanings.

voice to the voiceless” is not exactly clear. On the one hand there is an objectivist stance toward the object of analysis, while on the other hand there is a desire to channel subjective experience or experiences so that experience can be mobilised to make an ethical claim on a particular sensibility. That is to say, in this case, on the sensibility of humanism or a human rights discourse. One gesture places the scholar in a skeptical position to the local discourse-as-signifier and the other gesture appears to want to take the experience as something to be communicated unmediated. Both separate the act of violence from its meaning. The act is ethically reprehensible but the meaning is to be determined by the trained expert. In fact, it may be that only the scholar can determine both the ‘act’ and the meaning of the act. Since it is of course possible to envisage occasions where the anthropologist identifies an act as wrong within a particular discourse, and where the ‘victim’ might not, but it is the anthropologist who also then gives it an eligible meaning. So both the ‘act’, which is identified as such, and the meaning it signifies can both come into view depending on the scholars conception of what constitutes an ‘act’, of illegitimate violence for example.

My point is not to doubt the ethical saliency of drawing attention to these acts, nor to question motives, nor to diminish the undesirable ethical character of the practices that these encounters are confronted with. But it is, it seems to me, worthwhile to draw attention to the unquestioned role of the scholar in this encounter, particularly in the cases where this new role for the anthropologist – as committed, and emancipatory coincided with and is glossed as an opportunity to redeem the disciplinary future of anthropology where it was viewed as historically and questionably entangled with domination by bringing into its concerns new subjects.

The role of the anthropologist, even when self-consciously trying to ‘do the right thing’, has implications for the way in which the subject appears and is connected to the object that comes into view, as Pierre Bourdieu (1990) was to insist in his critique of objectivism and subjectivism (1990). And as Talal Asad observed in his discussion of anthropology and ideology, “anthropological texts construct for a whole society, or even a group within it, a total, integrated semantic system, which defines for that society what its essential identity is” (1979: 615). In this case, the culture becomes ‘a culture of fear’ or ‘terror’. A discipline’s impulse to ‘do the right thing’ can then run the risk of tripping over its own assumptions in its haste to be an agent of history.

In my view this has a certain bearing on epistemic concerns broached by Taussig, and I think raises questions about whether he is able to find a way to think between the ‘interstices’ of the real and the magical, and the implications of this gesture for the ethical project he seeks to undertake. Where one seeks to give the order of representation autonomy, one develops a conception of ‘consciousness’ as the site of intervention. This implies bringing attention to a disjunctive relationship between sign and signifier in order to effect a disruption of what appears as, in Saussurean terms, a ‘motivated’, or stable relationship between sign and signifier, in order to open the space for different, more benign, or more progressive significations to circulate in the play of meanings.

The Cartesian split Taussig seeks to avoid is still at work in what is supposed to be, in his case, a refusal of both a cultural relativism and a search for reason – that is to say, operating in the ‘epistemic murk’. Reason sneaks its way back in via the split between mind (representation in terror) and body (violence) and the rationalist-ethical

programme, which suggests that changing peoples ideas will change their behaviour. Behaviour is therefore still a cognitive act – an act of cognition, which responds to representations. But of course this is already a representation. That is to say, it is an epistemic representation: the representation of the scholars discourse and the way in which that discourse constructs the subject without recognizing how that subject comes into view with and in relation to specific objects of knowledge.

Anthropology has made the study of state terror and unauthorized forms of violence an object of its study relatively recently. This moment broadly coincides with an important self-reflexive space that has been opened up by a number of compelling critiques. For some anthropologists the study of state terror offers an opportunity to redeem the anthropological project through a repositioning of its task in relation to power. That is to say, where anthropology might have been seen as the ‘handmaiden’ of colonialism, it could now, given its predilection for locality and ‘being-on-ground’, uniquely offer itself as a ‘voice for the voiceless’. It is not quite clear what anthropology’s role – if there was a singularity to it— was in relation to colonialism. It might not have been as benign as some think, or as complicit, and maybe even more differentiated. But as Talal Asad has pointed out, there is a quite different kind of self-reflexiveness that should accompany anthropologies of the present. And that has to do with the anthropologists’ discourse and its relation to the kinds of objects it enquires into. It is not just a matter of the contiguity of knowledge to power or powerlessness, of a relationship to the dominated or the victims, but also of the saturation of knowledge production itself by relations of power. It is a matter of entering into a relationship of translation that through self-reflexivity opens us all to self-questioning

as much as the objects of knowledge are questioned about their naturalized practices and ways of doing things.

### *South Africa: Writing Violence*

#### IV

In the South African writing on political violence there are four broad ways in which the assassinations and the violence that I have described above, carried out by those who worked for the security agencies of the South African government, is being written about. I deal with three of them briefly here, and the fourth in the following chapter. The first is a genre of investigative journalistic works. In these accounts of the violence perpetrated a distinction is made between a violence, which is graspable or reasonable, in contrast to acts of violence that can only be described as 'evil.' Indeed, the most prominent and pioneering of these accounts, written by an intrepid South African journalist of Afrikaner descent, Jacques Pauw (1991), makes a distinction between a kind of violence that can be made sense of and another kind which is only explainable through the pathologizing of the executioner- of the death squad killer as evil.

In Pauw's work we are taken through the details of operations and the skirmishes inside and outside the covert police unit, known colloquially as 'Vlakplaas', after the farm where the unit was headquartered. The violence is brought to us in the uncomfortable detail, which produces 'scandal'. Victims were not only killed but also 'excessively' mutilated even after they were medically 'dead'. Pauw struggles to make sense of the excessiveness of the violence. Wrestling with the excessiveness of



this violence is a problem that can also be found in the work of Antjie Krog, a poet and journalist, also of Afrikaner descent, who reported on the proceedings of the TRC and authored '*Country of My Skull*' (1998) that was subsequently turned into a motion picture. In one of the cases she narrates, a group of white policemen are to testify before the amnesty committee about the death of a former black policeman and his wife who were killed in their home. Each policeman will tell a different story, particularly as it pertains to the killing of the wife. Her death we are told was an unnecessary death, an excessive death, for which a 'political motive' could not readily be found: "When the amnesty hearing begins", remembers Krog, "I go sit in a bench close to them, to look for signs --their hands, their fingernails, in their eyes, on their lips--signs that these are the faces of killers, of the Other. For future reference: the face of evil' (1998: 14). For Krog, grappling to make the violence in their forthcoming testimonies intelligible, this violence is the product of evil, and she searches for clues to its presence, here to be read off the physiological bodies of the perpetrators. The excess of violence is evil because, as Humphrey argues in relation to "atrocities", it "exceeds cultural discourses of law and morality which manage the circulation of everyday violence" (2002: 3).

This medicalization of evil, as a pathological condition, is at the core of the work by Pumla Gobodo-Madikizela's (2003). A former commissioner of the Truth and Reconciliation Commission and clinical psychologist, Gobodo-Madikizela spent many hours interviewing the Vlakplaas commander, Eugene De Kock in prison, in order to get at how "monsters are produced in a political system" (2003: 16). She reflects movingly that,

I saw De Kock in my tortured mind's eye in his most vicious state- as *prime evil*. These images were too difficult to take in, too much to comprehend, even if I could imagine them. I had to remind myself that if it was that difficult for me, how much worse it must have been for the people who had faced evil directly and had been destroyed because of it. Here I was, reaching out with my human hand to touch the physical body that had made evil happen (2003: 38).

Drawing the connection between medicalization and evil, she writes that, The distance between evil and sickness is not that great. The evil component of crimes against humanity is the moral failing. The sickness aspect is the defect in perspective, the distortion in mental processing that precedes the evil and is intensified by it (2003: 58).

For Gobodo-Madikizela, 'evil' connotes a condition where particular acts become possible, and to an ability to commit those acts without having a 'conscience' bear upon those who commit these acts. This is the pathological dimension. The recognition of the categorical claims of 'human' is naturalized in this view. It takes as its foundation ethical boundaries concerning the integrity of what we know as the modern rights bearing subject of political discourse.<sup>12</sup> This operates within a consent/domination binary and presupposes an ethically prior condition of humanity in which human beings are naturally predisposed against being 'dominant.'

Such interpretations of humanity are anchored in ideas about various dispositions and foundational sensibilities outraged by injustice. A sensibility that is not so outraged

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<sup>12</sup> This is a widespread foundational assumption from which many studies of state violence proceed. The naturalization of the assumption often leads them focus on extra-judicial forms of violence as problematic while ignoring its relationship to 'authorized' forms of state violence (Mamdani, 2004). See Talal Asad (2003) for a useful problematization of this assumption as it pertains to the category of the 'human' in human rights discourse, and in relation to torture.

and does not recognize this ethical claim takes the subject across the threshold into ‘evil’, since evil is the capacity to violate the sovereign and ethical boundaries of personhood beyond reasonableness. That excess of violence, the ability to not just take life, but mutilate the body, to do so without remorse or ‘feeling’, is for Gobodo-Madikizela, intelligible if we translate the metaphysical ‘evil’, into a modern medicalized discourse of ‘illness’: evil is sickness.

An illustrative example of the second approach is to be found in the chapter on perpetrators contained in the TRC report. Its attempt is to paint a more intricate picture of those identified as perpetrators. Concerned as it was with ‘gross violations of human rights’, the report also wrestles to “explain why and how these violations transpired”. It notes that it is “essential to examine the perpetrators as multi-dimensional and rounded individuals rather than simply characterizing them as purveyors of horrendous acts”.<sup>13</sup> In the TRC framing ‘perpetrators of gross violations of human rights’ are divided into three categories: 1) those who defended apartheid directly, as in state personnel, 2) those who fought against apartheid and used methods which were seen to be a gross violation of human rights and 3) violence perpetrated between those organizations who were resisting apartheid.

There is another body of South African literature that also deals specifically with illegal state violence, and the institutionalization of covert agencies, and which constitutes the hegemonic narration of this violence in the 1980’s. Most of these are studies were produced before the TRC hearings began in 1994, and sited in the TRC’s own construction of the recent apartheid past. These works map the institutional

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<sup>13</sup> TRC Report, vol 5, chapter 7, p 259

forms of the apartheid state as a progression towards militarization. In some instances it was work done with considerable risk to the authors.<sup>14</sup>

This literature explains the turn to exceptional violence in the 1980s by the increased influence of the military over democratic and accountable civilian rule (Seegers, 1996; Chidester 1991; Grundy 1986; Swilling 1990; Cock & Nathan 1989; Selfe 1998). Heuristically, 'militarism' acts in these studies like the bureaucracy in tension with the citizen as Hannah Arendt described it: "Bureaucracy is always a government of experts, of an 'experienced minority' which has to resist as well as it knows how the constant pressure from the 'inexperienced majority'" (1973: 214). The literature makes the point that it was the military, rather than the civilians who had the most influence over policy making. The State Security Council was in effect, 'a government within a government'. Like Ivan Evans's (1997) work on the Native Affairs Department (NAD) in the 1950's, in which he argues the NAD became a 'state within a state', there is a tendency in this literature to allow the technology of rule to explain its rationale.

In this literature 'military', and 'civilian' are counterposed normatively, and each is naturalized as transcendental and distinct modes of governing, regardless of the historical particularity and social specificity of the forms and modes they take in different conditions. Secondly, the normative salience of 'civilian' is asserted in relation to 'military.' In a related argument the rise of the military is accounted for by the fact that the former Minister of Defence became the Prime Minister in 1978, bringing with him a Cold War discourse to mask their racialized interests (Pottinger 1988; Hamann 2001; Roherty 1992). The belief in a communist threat was, this

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<sup>14</sup> The anthropologist David Webster (1988) who was researching state strategy and death squads, was assassinated by a police covert unit.

literature professes, ‘ideological’, in the pejorative sense that it masked a set of real interests, and therefore was a strategically invoked (Gottschalk 2000; Van Vuuren & Liebenberg 1998; Lawrence 1990).

The engagement with the communist threat is therefore seen as a strategic rhetorical deployment of a global Cold War discourse by the South African state which, according to these scholars, re-positioned South Africa in the geo-political ‘West’ in order to maintain its local aims: a racialized and ethnicized order of privilege.<sup>15</sup> In this literature, Van Vuuren and Liebenberg’s is the most elaborated attempt to focus analytically on the ideological dimension of the apartheid state in the 1980’s. It makes displacement of the ‘real’ its mode of explanation.<sup>16</sup> I am weary of following this way of thinking for the same reasons which make ‘false consciousness’ a problematic way in which to think about social phenomena.<sup>17</sup> Furthermore, such explanations either psychologize the motives of individual agents (as with Krog and Gobodo-Madikizela), or expect us to be able to find the ‘real’ motives.

As Mahmood Mamdani has forcefully argued in his critique of the TRC, understanding apartheid in the post-apartheid era has become a matter of proving and disproving individual responsibility for individualized suffering, (Mamdani, 2001b).

One could argue that ‘apartheid’ and ‘violence’ were in fact separated by the TRC.

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<sup>15</sup> There is an ambiguity here which Michel-Rolph Trouillot calls constructivism’s dilemma: ‘[t]o state that a particular narrative legitimates particular policies is to refer implicitly to a ‘true’ account of these policies through time, an account which itself can take the form of a counter narrative...It is to admit that as ambiguous and contingent as it is, the boundary between what happened and that which is said to have happened is necessary. It is not that some societies distinguish between fiction and history and others do not. Rather, the difference is in the range of narratives that specific collectivities must put to their own tests of historical credibility because of the stakes involved in these narratives’ (1995, pp 13-14).

<sup>16</sup> There are two important recent edited volumes in exceptions to this thinking about the Cold War in Southern Africa, Sue Onslow (2009) and Peter Vale and Gary Baine’s (2008) *Beyond the Border: New Perspectives on Southern Africa’s Late Cold War Conflicts*, Pretoria: Unisa Press

<sup>17</sup> See Bourdieu (1980)

Where Apartheid in a certain historical moment was a term that contained within itself the word violence, making a separation tautological, in the post-apartheid era this separation has produced complicated effects. Apartheid has been seen as a set of gross violations of Human Rights, rendering the latter liable and the former opaque, and in the process normalizing one kind of violence while pathologizing another. We have therefore been moved to study the bodies, search their remains for traces of the state that might have been left at the scene of the violence. This is the forensic work performed in the production of a counter-narrative to the state. We have been looking for the state on the body, for its fingerprints and its presence. We want to place it at the scene at that very time at that very place. Where was the state at that time? Did it have an alibi? Death as a result of political violence in South Africa under apartheid has produced 'who' questions that simultaneously had readymade answers. A popular answer is then sought to be turned into a legal certainty. The work of human rights organizations, victims support groups and 'progressive' lawyers working on political deaths focuses on the need for evidence. Evidence that is undeniable and made visible provokes at best an official inquest and a commission of inquiry, but also today, a potential criminal prosecution of those who did not apply for amnesty, or were not granted amnesty.

The Goniwe killings were considered in an inquest hearing, two commissions of enquiry and featured as a prominent case at the TRC. The question 'who did it' drove one element of the TRC as part of a political settlement. A political settlement would have to answer the 'who' question for one side of a conflict, while at the same time set the other party at ease by reducing the repercussions of admission. In other words, it transformed justice into truth rather than punishment. The relationship between

amnesty and truth-telling in the Truth and Reconciliation Commission's mandate has been to answer the who question in its specificity by asking for confessions, which would perform the transaction between legal guilt and moral absolution. At the end of this process we have been asked to think of the Cradock Four's killings as the result of the actions of seven individuals who violated the human rights of four individuals.

As I yet again consider this instance of violence, a larger question poses itself: Can thinking about this violence unsettle certain narratives about apartheid? The TRC has encouraged us to think that most questions about apartheid have been answered. But how, for example, if we accept Mahmood Mamdani's criticism, did apartheid shift at the TRC from being understood as a 'crime against humanity' to being understood as a cumulative and calculable number of 'gross violations of human rights'?

If we wish to think beyond the individualizing move that the TRC makes, we would need to reconsider this violence in relation to apartheid. We will need to think about how this violence relates to the law itself since apartheid was a legal regime. And we would need to think about how this violence— orphaned by both law and the official political narrative—relates to the constitution of political community in a society with a colonial genealogy. Pursuing these questions in the chapters ahead, I trace then the figures of Matthew Goniwe and his comrades as they are fashioned in legal discourse on the one hand – as victims of human rights abuses, and as they are constituted in political discourse on the other – transformed from activists leading a community in a revolt to enemies of the state.

## Chapter Two

### Mediations of Pain and Suffering and the Production of Apartheids' Victim

*No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as 'inalienable' those human rights which are enjoyed only by citizens of the most prosperous and civilized countries, and the situation of the rightless themselves*

**Hannah Arendt (1973: 278)**

What has been the social, legal and political *life after death* of the Cradock Four?

When Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlauli were killed there was a deliberate attempt to erase not only the identity of the perpetrators, but also of the victims. The security apparatus of the apartheid state knew full well that deaths of activists gave life to resistance, through funerals that would become mass gatherings acting like coals in an inferno of anti-apartheid sentiment, and infuse life into anti-apartheid organizations often wilting under the weight of repression. In death and as victims of state violence, the Cradock Four have continued to come to life as symbolic representations that reside both in a time- as markers of late apartheid and the State of Emergency of the 1980's—as well in ways that transcend the time of the event—as shapers of how justice would have to be imagined in a post-apartheid South Africa. In this chapter I seek to explore how the Cradock Four have come into being, and symbolically mobilized into life, within juridical discourses on pain, suffering and



justice which, in complex and cumulative ways, index the contours of a national political imaginary of justice in post-apartheid South Africa.

Living, vital and alive, Matthew Goniwe and his comrades were by 1985 ‘enemies of the state’, later inaugurated into new identities in death: they became ‘victims’ of state violence, now counted among those who have come to stand in for the wrong of apartheid. This transformation, a material one from biological life to biological death, was also a transformation in identity at epistemic, ontological and juridical levels. Such a transformation occurred discursively as death was translated into the realms of the political, security, legal apparatuses and logics. These in turn produced varied subjects with differing social imperatives leading to different juridico-political consequences. The enemy, I will later show, is a political-military and corporatized identity, while the ‘victim’, framed within the human rights discourse, tends toward individualization. The understanding of the killing of the Cradock Four as ‘victims’ rather than ‘enemies’ has had substantive implications for the way in which we have come to understand the possibilities and forms of legal and political justice in post-apartheid South Africa.

In her study of sexual and criminal violence in post-apartheid South Africa, the anthropologist Rosalind C. Morris detects what she has called a ‘legal fetish’ amongst poor black communities. Morris notes that “[I]legal rhetoric suffuses everyday discourse in rural and urban areas, inflecting everyday idioms in many languages with the lexicons of legal procedure—and not infrequently, the clichés of American television courtroom melodramas. Such language often appears fetishistic, with legal

terms acquiring a near magical aura” (2006: 61). Morris’s synchronic analysis picks up on an important observation: that ‘legalism’, a certain awareness and recourse to law as a strategic domain of engagement, pervades certain ways of talking about ‘crime’. She accounts for this legal fetishism through the globalization of American television and a discursive language put in motion in and through the TRC hearings, particularly those for amnesty.

I find this to be an inadequate account for ‘legalism’ for two reasons. Whilst the popularity, particularly amongst poorer communities, of day-time American courtroom dramas, is indeed part of the story, it seems to me the case is overstated, along with the assumed discursively popular imprint the TRC exercises on the wider society. This attribution of a disproportionate purchase of the TRC’s discourse on the realm of the popular is due in part, I would suggest, to the failure to situate her argument historically.<sup>18</sup> It seems to me that that what she describes as a legal fetish to describe the purchase of legal discourse springs not so much from a way in which to speak about ‘crime’, but rather as a way in which to speak about, contain and right a ‘wrong’. Viewed this way, the pervasiveness of a certain recourse to legal discourse in relation to ‘crime’ should be seen as a way of speaking about what ‘crime’ signifies, both from the vantage point of communities who suffer higher levels of subjection and susceptibility to criminal victimization, and at the same time, in which higher levels of actual and potential ‘perpetrators’ might also be found. For most victims of crime, law is both a mechanism and an authorized discourse for speaking about righting the wrong which victimhood is coterminous with. I suggest ‘authorised’, because this can co-exist with other popular and legally ‘illegitimate’

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<sup>18</sup> Rosalind C. Morris (2006) ‘The Mute and the Unspeakable: Political Subjectivity, Violent Crime and the “Sexual Thing” in a South African Mining Community’, in Comaroff, J and Comaroff J. eds. *Law and Disorder in the Postcolony*, Chicago: University of Chicago Press

mechanisms to right a wrong of crime, such as witchcraft or ‘informal justice’, meted out by *sangomas*, vigilante groups, taxi drivers or private security structures. This is not confined to victims only. For perpetrators, ‘law’ could be a mode of seeking justice too, used in order to prove one’s innocence, for being absolved of guilt, or for freeing oneself from prison. Both ‘victims’ and ‘perpetrators’ therefore engage the law as a mechanism for righting a wrong.

What I would hold onto from Morris’s argument is this pervasiveness of what I would describe as a will-to-familiarity with legal procedure. This desire to know legal procedure I will argue is not inaugurated in the postapartheid era, nor is it inaugurated through the globalized circulation of day-time court room drama television series. Rather, it is a rationality that emerges from, and in relation to the apartheid state’s coming into being, its repressive implementation from the 1950’s onwards in particular, and the hegemonic and rights-based responses to this repression. The pervasiveness of a ‘legal fetish’ can therefore be located in an antecedent rationality that took recourse to law and invoked ‘rights,’ particularly ‘human rights’ and attendant notions of justice especially in the latter years of the anti-apartheid struggle.

I contend that the will-to-familiarity with legal procedure and the ‘legal fetish’ Morris describes are linked by a legal and particularly human rights discourse that made its way into the apartheid victims’ imaginary; victimhood came to be inhabited as a human rights violation and apartheid became homologous to a human rights ‘wrong’. The question of ‘justice’ was therefore articulated as central to the actions and concerns of human rights lawyers more generally, and in the particularity of South Africa’s recent past. Justice for a brave coterie of mostly white human rights lawyers,

who had challenged the apartheid state within the legal parameters it set out, would have to have its day, so to speak, in court. The victims of apartheid had been victims of injustice, and this would have to be remedied in a 'just' and 'democratic' post-apartheid South Africa if the wrong of apartheid as a 'crime against humanity' was to be undone.

One of the vigorous concerns of the Truth and Reconciliation Commission was to address itself to this question of justice, yet it would have to do so without jeopardizing a political compromise. The South African sociologist Deborah Posel has posed this as the challenge of and for the act of 'truth telling' in Truth Commissions.<sup>19</sup> In her study on the forms and implications of 'truth', as produced in the TRC, Posel notes that Truth Commissions produce particular kinds of victims. "Being declared, and claiming the status of, a victim is also a positioning in contemporary political fields of rights and entitlements, obligations and responsibilities (Posel, 2008, p123)." 'Truth Commissions', she goes on, "then, are occasions wherein negative commemoration can route its discourses and ethical imperatives into the politics of fledgling democracies seeking to come to terms with recent histories of intensely violent and divisive conflict" (ibid).

Posel footnotes a controversy around the interpretation of the mandate by the Commission of the South African TRC, and its decision to focus on 'gross violations

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<sup>19</sup> Posel, D (2008) 'History as Confession, the Case of the South African Truth and Reconciliation Commission', *Public Culture*, vol.20, no. 1; Leigh Payne has also taken up the concern with the 'confessional mode' in a comparative study of state violence and truth commissions in Argentina, Chile, Brazil and South Africa. Her comparison of the 'state violence' of apartheid with three dictatorial military regimes in South America is ontologically flawed however, since it equates apartheid with its 'exceptional' violence, that of its death squads. Cf. Leigh Payne (2008) *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of Violence*, Durham: Duke University Press.

of human rights’, but she pursues no further the implications of this for the labour of ‘Truth’ that she identifies in the mandate of TRC: ‘its rights, entitlements, obligations and responsibilities’. Instead she shifts focus to the role of the ‘confessional’ mode in the hearings themselves, as individual victims and perpetrators narrated their stories in exchange for amnesty.

I would like to hold on to this notion of the TRC producing a particular ‘Truth’, which carries a moral-political burden, where ‘Truth’ is less about a metaphysical clarity but is rather an authoritative discourse (Asad 1979) – the product of contestation, sets of institutions and apparatuses, and discursive formations saturated with power relations<sup>20</sup>. The ‘Truth’ of the TRC therefore provides an account of the past, a narrative meant to provide a function for various expectations especially those of building a common political community out of a violent past; such a community would deliver justice for wrongs of that past. The ‘Truth’ of such a narrative is seen to have a life giving potential (*potenza*), the possibility of a birth, but also the fear of a miscarriage. That truth, could therefore shed light or cast a shadow, bring into existence, or diminish in potential, the possibilities of what justice might look like in a post-apartheid society.

In one of the most challenging critiques of the South African Truth and Reconciliation Commission, Mahmood Mamdani has argued that the interpretation of the mandate of the TRC by the Commission has had substantive implications for shaping the forms

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<sup>20</sup> This formulation of the problem derives from Michel Foucault’s essay ‘Truth and Power’ in Foucault, M (1977) *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, New York: Pantheon Books

justice – of ethics and obligations – operative in the post-apartheid present<sup>21</sup>. He argues that the question of the injustice of apartheid was recast in a manner that might have brought into existence a form of justice not adequate to the righting of the wrongs of apartheid. Redefined by the TRC, apartheid’s injustice and the suffering of its victims, highlighted by human rights lawyers, became rather truncated, reshaping and restraining the forms and possibilities of imagining political justice in post-apartheid South Africa. Mamdani argues that it did so in three ways. Firstly,

The TRC *individualized* the victims of apartheid. Though it acknowledged apartheid as a “crime against humanity” which targeted entire communities for ethnic and racial policing and cleansing, the Commission majority was reluctant to go beyond the formal acknowledgement... Where entire communities were victims of gross violations of rights, the Commission acknowledged only individual victims. If the “crime against humanity” involved a targeting of entire communities for racial and ethnic cleansing and policing, individualizing the victim obliterated this particular—many would argue *central*—characteristic of apartheid. Limiting the definition of harm and remedy to individuals center-staged political activists as victims of apartheid, as indeed happened at the victims’ hearings (Mamdani 2002: 33-4).

Secondly, in the emphasis on individual suffering the TRC obscured the corporate nature of victims by “obscuring the victimization of communities....”

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<sup>21</sup> A less convincing critique of the TRC, as ‘an elite settlement’, can be found in Richard A. Wilson’s (2001) *The Politics of Truth and Reconciliation in South African. Legitimizing the Post-Apartheid State*. Cambridge: Cambridge University Press; for an attempt to draw attention to the collective rather than individual nature of apartheid injustice, from an economic perspective, see Sampie Terreblanche (2000) ‘Dealing with Systematic injustice’, in Villa-Vicencio, C & Verwoed, W. eds. *Looking Back, Reaching Forward, Reflections on the Truth and Reconciliation Commission of South Africa*, Cape Town: University of Cape Town Press.

.... The TRC was unable to highlight the bifurcated nature of apartheid as a form of power that governed natives differently from non-natives. If the apartheid state spoke the language of *rights* to the white population, it disaggregated the native population into tribal groups—each to be administered under a separate set of laws—in the name of enforcing *custom*... The TRC's failure lay in focusing exclusively on the "civil" regime and in totally ignoring the "customary" regime.<sup>22</sup>

And thirdly, while the TRC might have intended in its mandate to avoid impunity, in effect it "extended impunity to most perpetrators of apartheid. In the absence of a full acknowledgement of victims of apartheid, there could not be a complete identification of its perpetrators" (Mamdani 2002:33-4).

This argument suggests that 'injustice,' 'crime' and 'violation' are conditions that we could argue had come to reside metonymically inside the word 'apartheid'. That to speak 'apartheid', and to name it as such was also simultaneously to name a crime against humanity, a fundamental injustice, and an internationally recognized crime. To enunciate 'apartheid' was therefore to simultaneously enunciate a violation and violence, making it superfluous to supplement additional adjectives to its enunciation: one did not have to say 'apartheid is wrong' or 'apartheid' is 'injustice', or 'apartheid'

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<sup>22</sup> It is a common short hand to describe apartheid by reference to racial classification and discrimination. It is therefore worth recalling that the Population Registration Act, No. 30 of 1950, makes an explicit distinction between race and ethnicity in the legal identification of residents within the territory of South Africa. Section 5(1) notes that 'Every person whose name is included in the register shall be classified by the Director as a white person, a coloured person or a native, as the case may be, and every coloured person and every native whose name is so included shall be classified by the Director according to the ethnic or other group to which he belongs. Section 7(1) notes that 'There shall, in respect of every person whose is included in the register, *other than native*, be included in the register the following particulars and no other particulars...' and it then lists a series of categories including age, sex, date of birth and so on. Section 7(2) in a separate subsection sets out the provisions for those defined as 'natives': 'There shall be in respect of every native whose name is included in the register, be included the following particulars...' and it then sets out a similar list, with a few additions: it adds 'his citizenship, or nationality, *the ethnic or other group and the tribe to which he belongs.*' (emphasis added) (Brookes 1968:19-20).

is a 'crime'. To articulate 'apartheid' was to simultaneously invoke, to bring into being in the very articulation, a composite wrong that had come to be part of the sign, as the semiotician Ferdinand Saussure would argue, 'motivated' into the very form and fiber of the sign itself (Saussure 1988). Yet, in the TRC's operationalization of its mandate, it undid this, discursively disaggregating apartheid and 'violence', apartheid and 'injustice', and apartheid and 'crime'. Apartheid now stood as an empty signifier shorn of its historically produced implicit and categorical meaning, and rendered available for reassembly. It would allow for choices to be made about what 'wrongs' or injustices to attach to it, and which forms could be placed in a homologous relationship to each other now not quite inside the word, but alongside and next to it, and requiring their own separate enunciation if they were to be recognized.

In other words, apartheid and its significations were pulled apart in order to be reconstituted within the realm of the political, as meaning to be unmade and remade. In the process, apartheid itself, now rendered empty, gave way to that which was placed as supplement to it: the violence that was used to defend its existence rather than the violence that resided in its very being 'thought'. As Mamdani notes "After mapping the nature of apartheid in three eloquent but summary pages, 'the mandate' section of the Report dismissed it in a single sentence as background to its real work. It is this systematic and all pervading character of apartheid that provides the background for the present investigation. Reduced to 'context' or 'the background' to gross human rights violations, apartheid was effectively written out of the report of the TRC" (Mamdani 2002: 38).



In effect then, the TRC took as the focus of its mandate not apartheid as a ‘policy’, but rather the conflicts that emanated from the *implementation* of the policies, from the ‘excess’ of policy rather than policy itself, what Hannah Arendt referred to as ‘persecution by law’ (Arendt 1963: 268). The conflicts between hegemonic desires and resistant practices produced actions and reactions which were categorized as ‘gross violations of human rights’ by those implementing and defending the policies of apartheid, and also, the TRC decided, by those resisting the implementation of these policies. In effect then, it considered the violations in the actions between *state agents* and *activists*, as Mamdani notes, “Although there was debate within the Commission about the interpretation of the mandate, it was agreed upon that the Act which established the TRC prescribed that:

[t]he Objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past-

- a. establishing as complete a picture as possible of the causes, nature and extent of gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding meetings;...’ (TRC 1998 vol. 1, p55 para 31 cited in Mamdani 2002: 39).

The TRC went on to note that

... “gross violations of human rights” means the violation of human rights through- (a) the killing, abduction, torture or severe ill-treatment of any

person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered by any person acting with a political motive' (TRC 1998 vol. 1, p60, para 42 cited in Mamdani 2002: 39).

Within this agreed upon definition the Commission would have to further refine its definitions. One of these would be how to define 'severe ill-treatment'. As the Commission report notes 'the ordinary meaning of "severe ill treatment" suggests that all those whose rights had been violated during the conflicts of the past were covered by this definition, and fell therefore, within the mandate of the Commission. This view was expressed in the submissions of a number of organizations and groups representing, for example, victims of forced removals and Bantu education. While taking these submissions very seriously, the Commission resolved that the mandate was to give attention to human rights violations committed as specific acts, resulting from severe physical and/or mental injury, in the course of past conflict' (TRC 1998 vol. 1, p64 para 54 cited in Mamdani 2002: 39). These specific violations were further refined. As Mamdani describes it, the 'Commission majority made three further distinctions- between "bodily integrity rights' and "subsistence rights", between individual and group rights, and finally between political and non-political motivations behind each violation—and ruled that only politically motivated violations of bodily integrity (but not subsistence) rights of individuals (but not groups) fell within its legislative purview' (Mamdani 2002: 39).

I have for the purposes of this chapter, reproduced a snapshot of the argument Mamdani makes. The argument itself is more extended and rigorous in its elaboration. I have found his overall critique of the interpretation of the mandate of the TRC by the Commission, and the resultant limitations it placed on how we understand apartheid-- as gross violations of human rights pertaining to bodily integrity-- and the implications it has for justice claims we can make in relation to apartheid in post-apartheid South Africa, a compelling challenge. The question that it raises, and which Mamdani is less forthcoming on in his critique, is one about how we might account for the decisions of the Commission to interpret its mandate in the way that it did? Why in the end the focus on 'gross violations of human rights' as individualized, and why the privileging of bodily integrity over other forms of severe ill-treatment, like forced removals, pass laws, and deliberate economic underdevelopment which affected millions more than the 22,000 people eventually identified as 'victims of apartheid'?

I want to suggest that a consideration of the case of the legal life after death of the Cradock Four- the first case heard by the TRC- might illuminate this question. I think that we may find a context for the decisions that the Commission of the TRC made in a certain genealogy of suffering and 'severe ill treatment' in South Africa's recent past, and how ill treatment and suffering was mediated. We may of course take pain and suffering to be purely individually experienced somatic bodily conditions, but pain and suffering experienced by groups are also socially mediated through institutions, languages and paradigmatically in modern societies, through law<sup>□</sup>. It is

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in this mediation of pain and suffering through law, that we may find the contours which have shaped a hegemonic conception of framing pain and suffering, which I want to suggest, established a legacy which exercised itself in various ways, into the life of the TRC, and the production of the ‘victim’ of apartheid wrongs, as an individual victim of gross violations of human rights.

It seems to me that ‘Human Rights’ has emerged as the hegemonic discourse of that language which seeks to speak pain and suffering from a counter-hegemonic discourse of ‘resistance’ and ‘agency’. The valence of ‘Human Rights’ is central to the framing of the South African constitution that contains what it calls its ‘Chapter Nine’ institutions, which have institutionalized Human Rights through statutory bodies such as a Human Rights Commission, a Gender Commission, and a number of others, all centrally focused on the ‘protection of human rights’.<sup>24</sup> A public holiday, previously commemorated as marking a police massacre of 69 black South Africans by the South African Police in the township of Sharpeville in 1961, is now commemorated as ‘Human Rights Day’ in South Africa. How then has ‘Human Rights’ become the dominant discourse for framing ‘injustice’, pain and suffering within the realm of the political? What happens in the post-apartheid present when we understand apartheid’s past as a series of episodic and individualized ‘human rights’ violations that occur after 1960? In other words, we might ask ‘what do human rights do’?<sup>25</sup>

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<sup>24</sup> See ‘Chapter Nine’ of the *Constitution of the Republic of South Africa, Act 108 1996*.

<sup>25</sup> I am drawing, for the framing of the question in this way, on Talal Asad’s discussion ‘Redeeming the “Human” through Human Rights’, in (2003) *Formations of the Secular, Christianity, Islam and Modernity*, Stanford: Stanford University Press. Hannah Arendt (1968) importantly raised the question of “human rights” as I note below. There is also a growing body of work in various disciplines, from Anthropology to Political Science, that are critically considering “human rights”, humanitarianism, and the political dimensions of their invocation as the language of redemption and progressive politics, particularly after the Cold War and Bandung imaginaries have imploded. See David Kennedy (2004) *The Dark Side of Virtue, Reassessing International Humanitarianism*, New

It is important that I register at the outset that this is not the casting of easy aspersions or judgements on individuals or their motives. It is rather, a consideration of what we might think of as the complex ways in which historical conjunctures and confluences, geographies and imaginaries, knowledge and ethics, come together to produce certain effects. These are more often than not unintended consequences. And they carry with them sometimes when we look at them from afar, the narrative and emotive effect of historical actors and subjectivities inhabiting a drama where multiples narratives might be produced – the narrative of triumphalism in the way that national liberation movements that consider a past, re-order and repackage ‘the nations’ historiography; or, it might take on the narrative form of a tragedy<sup>26</sup> so that some might mobilize it in the service of a critique of a present.

Mahmood Mamdani’s criticism of the TRC is premised on an understanding of the apartheid state as a technology of colonial rule, a form of power that bifurcates political rule in order to create a realm of citizens and a realm subjects, a process that resides in the one hundred years and more prior to 1960. It is a view that places at the

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Jersey: Princeton University Press; Makau Mutua (2002) *Human Rights: A Political and Cultural Critique*, Philadelphia: Pennsylvania University Press; Wendy Brown (2004) ‘Human Rights and the Politics of Fatalism’, *South Atlantic Quarterly*, 103: 2/3 Ellen Messer (1993) ‘Anthropology and Human Rights’, *Annual Review of Anthropology*, no. 22; Etienne Balibar (2004) "Is a Philosophy Of. Human Rights Possible," in *South Atlantic Quaterly* 2/3, Spring 20; Jacques Ranciere (2004) "Who is the Subject of Human Rights," in *South Atlantic Quaterly* 2/3, Spring ; Slavoj Zizek, ‘Against Human Rights’; Kate Schick (2006) ‘Beyond Rules: A Critique of the Liberal Human Rights Regime’, *International Relations*, vol. 20, no.3; Richard Wilson (2006) ‘Afterword to “Anthropology and Human Rights in a New Key”: the Social Life of Human Rights’, *American Anthropologist*, vol. 108, no. 1; Annelise Riles (2006) ‘Anthropology, Human Rights and Legal Knowledge: Culture in the Iron Cage’, *American Anthropologist*, vol. 108, no. 1; John Hagan & Ron Levi (2007) ‘Justiciability as Field Effect: When Sociology Meets Human Rights’, *Sociological Forum*, Vol. 22, no. 3;3;Rajagopal Balakrishnan (2003) *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press.

<sup>26</sup> The stylistic invocation of ‘tragedy’ as genre in the narrative structure of postcolonial criticism has been discussed with considerable nuance and insight by David Scott in his reflection on CLR James’ classic account of the Haitian Revolution. Cf Scott,D (2004) *Conscripts of Modernity: the Tragedy of Colonial Enlightenment*, Durham: Duke University Press.

center of apartheid the colonial legacy of citizenship, an identity mediated by Law: one could be a rights bearing individual or one could be a subject living under customary law. Understanding apartheid in this way makes the ‘native question’ a central focus of understanding the violence of apartheid and what it meant. Apartheid has also, I would suggest within a certain dominant counter-hegemonic discourse to state power, come to be seen as a disputatious contention over the right and access to ‘Human Rights.’

An account of the critique of apartheid that emerges, framed within a rights discourse, is crucial to an account of how the TRC came to interpret its mandate in the way that it did. This account requires a discussion of the valence and investment in law, and of the rise the figure of the ‘human rights lawyer’, as the mediating figure between the world of the (racialized) citizen and the (ethnicized) subject. It is to this discussion that I now turn.

### ***Apartheid and the Majesty of Law***

Delivering first Ernie Wentzel Memorial Lecture in 1987<sup>27</sup>, the senior South African advocate, Sydney Kentridge Q.C, dwelt at length in the opening of his talk on the ethics and ideological beliefs that the late Ernie Wentzel had come to stand for.

Wentzel, he noted, ‘held strong beliefs about the law and about the society in which

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<sup>27</sup> Kentridge, S (1987) ‘Law and Lawyers in a Changing Society’, *The First Ernie Wentzel Memorial Lecture*, Johannesburg: Center for Applied Legal Studies. Sidney Kentridge became a senior counsel in 1965 in South Africa, and was a defence lawyer in some of the most significant political trials, including the Treason Trial (1958-1961) and later represented the family of the late Black Conscious leader, Steven Bantu Biko, at the inquest into his death in police custody in 1977. Thereafter Kentridge practiced law as member of the English Bar, and was appointed Queens Counsel in 1984. He served as a Judge in Botswana and an acting Justice in the Constitutional Court of postapartheid South Africa. This biographical information taken from website of the Presidency of the Republic of South Africa on the occasion of a national order of merit to Kentridge for his role as an anti-apartheid lawyer: [http://www.thepresidency.gov.za/orders\\_list.asp?show=395](http://www.thepresidency.gov.za/orders_list.asp?show=395), accessed on 01/05/2010.

he practiced law...He detested racism, white or black, and he detested Fascism, whether of the left or the right. Above all', noted Kentridge, 'he believed in individual rights and individual choices'. Holding these beliefs, recalled Kentridge, would mean that it was 'inevitable' that Wentzel would become an 'opponent' of the government, and 'inevitable too, that in his profession he should be a forceful defender of the victims of government policies' (1987: 11). This inevitable conflict and oppositional stance would lead to a three month spell of detention without trial for the Advocate who opposed the laws of the government, during the 1960 State of Emergency.

In this next section I explore the relationship between law and apartheid as a relationship between a certain conception of law and a certain conception of politics as it emerges in and through the autobiography of human rights law and lawyers in South Africa. I am taking this autobiography to describe both a legal disposition as well as a subjectivity that unfolds in a certain kind of praxis. I am treating law as a discourse here, with its own modes of evidentiary practices, epistemological rules and ontologies which produces its own subject and objects, and which are to be thought in concrete time and space (Bourdieu 1987). I am therefore interested here in tracing the idiomatic features of human rights law in the context of apartheid South Africa, through its autobiographical narrative from the standpoint of its 'advocates', in the double meaning of that phrase.

There are three aspects of this narrative that I wish to elaborate on and underscore.

The first is to consider how those lawyers who held a view critical of the legal-philosophical injunctions of 'legal positivism' would relate to the law of apartheid as law, and the ethical-political consequences over whether to participate in this legal

framework or not. I believe that it is in a tradition of what has been called ‘courtroom activism’ that we can grasp the investment and disposition of lawyers like Nicholson and Bizos, and the methods and strategies that they deployed in the inquests amnesty hearing later on, of the Cradock Four. The second is to consider the normative understanding of ‘law’ that emerges here, in term of what was at stake in the upholding of one legal philosophical tradition of interpretation over another. Lastly, I wish to bring into relief the form of the political critique of apartheid that emerges from the legal critique, so to speak. In other words, to ask, how does a hegemonic conception of the ‘wrong’ of apartheid come into being? It is this critique, which I argue produces a certain form of political subject, and a certain mediation of pain and suffering as juridically determined by human rights law, producing a ‘legal victim’ (while the State, in contrast, produces a political enemy). A victim who resides in but outside the law, who is subject to law, but not entitled to law’s rights, and is therefore a *victim* of law’s incompleteness.

### ***Law’s Heritages: what does and should Law do?***

In this recounting of the life of Ernie Wentzel, a life held up as exemplary for its principled, unwavering and courageous defense of the law, Kentridge, who viewed himself no doubt as sympathetic and following in the vein of Wentzel’ example of what law should do and be, was upholding a certain normative conception of what it meant to be a lawyer. This was a question of deep deliberation amongst a minority of lawyers and judges in South Africa, articulated as: what would their ‘role’ be in such



a context?<sup>28</sup> As we saw, Wentzel was lauded for not being an ‘ideological figure’, he eschewed the political, whether of the right or the left. His vision of the law is neither of place nor time, neither partisan nor parochial, but is presented as universal, underpinned by the dictum of neither fear nor favour, committed only to itself and the imperatives imminent to this. Of course Wentzel, and Kentridge, were drawing on a particular sensibility here that is central to our understanding of the modern state, that derives from an understanding of law as, in its Kantian formulation, ‘the highest form of reason’. It is also an understanding of law as a civilizational marker that embodies within it rights that derive from a distinct but dialogical relationship between ‘natural rights’, and ‘positive law’, upon which social contract theory as the foundational ‘myth’ of the modern state rests. This is most starkly exemplified for example in key texts of Enlightenment thinkers like Thomas Hobbes’ in *Leviathan* [1651] (1986), and John Locke’s *Two Treatise of Government* [1689] (1993) as rationales for the emergence of the modern regime of sovereign law.<sup>29</sup> It is the writings of the latter in particular, that have come to be seen as canonical to the foundations of liberalism.

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<sup>28</sup> Cf Steytler, N.C (1987) ‘Criminal Justice and the Apartheid State’, in Rycroft, A.J, et al. *Race and the Law in South Africa*, Cape Town: Juta and Co; Adam, H (1988) ‘Engineering Compliance: The Management of Dissent in South Africa’, in Hund, J. ed. *Law and Justice in South Africa*, Johannesburg & Cape Town: Institute for Public. Interest Law and Research; Friederichs, D.O (1990) ‘Law in South Africa and the Legitimacy Crisis’, *International Journal of Comparative and Applied Criminal Justice*, vol. 14, no.2; Wacks, R (1984) ‘Judges and Injustice’, *South African Law Journal*, no. 101

<sup>29</sup> Thomas Hobbes and John Locke, as well as Jean Jacques Rousseau are taken to be amongst the most important Enlightenment theorists of a form of government based on the idea of natural rights, drawing on the earlier writings of Hugo Grotius (1583-1645) and Samuel von Pufendorf (1632-1694). Noting a distinction between different national conceptions of the natural rights concept, Waswo (1996), in his account of the American genealogy of the concept, as distinct from the British, argues that the early Puritans accepted that it was ‘natural’ that ‘men’ would seek liberty, but they also saw that it contained a threat. Writing in 1630, John Winthrop was to make a distinction between two forms of liberty. The first he described as natural and the second as ‘civic’ or ‘federal’: ‘The First is common to man with beast and other creatures..the exercise of this liberty makes men grow more and more evil and in time to be worse than brute beasts: *omnes sumus licentia detiores*. The other kind of liberty I call civil or federal; it may also be moral, in reference to the covenant between God and man, in the moral law...This liberty is the proper end and object of authority and cannot subsist without it’. (Waswo, R (1996) ‘The formation of Natural Law to Justify Colonialism 1539-1689, *New Literary History*, vol. 27, no. 4, pp743-749. See also Hussain, N (2003) *The Jurisprudence of Emergency: Colonialism and the Rule of Law*: Ann Arbor: University of Michigan Press.

This account of law and the modern state takes the autobiography of an evolutionary narrative at its face value for now, and brackets, to the extent that it is possible, the entanglements and complicated relationship between liberalism, colonialism and empire. What is crucial though is that the tension between the universal claims of liberalism and its particular, and now well documented, categorical exclusions, are central to the anxiety that motivates the human rights lawyers, particularly in the South African iteration of modernity. In a different context, Uday Singh Mehta (1999) has argued for a distinction between a notion of empire and colony that is worth bearing in mind. On the one hand we may refer to a history of imperial rule, which describes a practice and rationality that exterminates aboriginal populations<sup>30</sup>; at the same time, as Mehta argues, there is also a liberal notion of empire which is predicated on various assumptions of ‘tutelage’ and kinship. It is this notion of colonialism that seeks views the native population as the target of interventions to re-arrange cultures, and identities towards an image of progress and civilization. It is this latter teleological sensibility that I am concerned with here in relation to a view of law, more particularly in the attendant legal subject-citizen that arises from the political community founded on these social evolutionist liberal principles. In it resides a triumphalist and self-vindicating legal narrative that absorbs its paradoxes, contestations and violence over time. But as Mehta notes, the work of criticism is to render visible and think through the implications of these paradoxes and tensions: “The facts of political exclusion- of slaves, of women, and of those without sufficient property to exercise either suffrage or real political power- over the past three and a

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<sup>30</sup> An example of this invocation of Empire can be found in Sven Lindqvist’s (1992) *Exterminate the Brutes, One Man’s Odyssey into the Heart of Darkness and the Origins of European Genocide*, New York: the New Press

half centuries must be allowed to embarrass the universalistic claims of liberalism”  
 (Mehta, 1999: 76).<sup>31</sup>

It is something of this embarrassment that is evident in the discussion below – the embarrassment of lawyers committed to a notion of law as an aspect of the civilizational project – which itself assumes and seeks to cultivate a certain kind of political subject. However Afrikaner nationalist and its notions of the permanence of difference denied the possibility of this very project and subject. For Hobbes, as we know, the state of nature is one in which ‘men’ find themselves if not in war, then in the permanent *disposition* towards war, where the condition of ‘man’ is said to be ‘solitary, nasty, and brutish’. This violence lacks a legal-moral character since it is without a normative boundary for the subject to be within or to transgress. It is only with the arrival of an exterior and common law that such a character can be given to both the disposition and more particularly, the action, which now has a line over which to traverse, with consequences: ‘till they know not a law that forbids them: which till Lawes be made they cannot know; nor can any Law be made, till they have agreed upon the Person that shall make it’ (1986: 187).

The redeeming feature of human beings, in this schematic metaphysics of the shift from the ‘state of nature’ to political society, is the endowment of ‘reason’. Through the capacity to reason, two imminent ideas are revealed: the disposition towards a

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<sup>31</sup> The paradoxes between universal claims have been articulated in various forms. In the moment of imperialism, which exterminates the colonial subject, there are the famous debates on the right to *imperium* and *dominium* (Grovoqui, 1996, pp 17-25). For the latter paradoxes, see also Grovoqui, S (1996) *Sovereigns, Quasi Sovereigns and Africans: Race and Self-Determination in International Law*; Mommsen, W. J & De Moor, J. A. eds. (1992) *European Expansion and Law: The Encounter of European and Indigenous Law in 19<sup>th</sup> and 20<sup>th</sup> Century Africa and Asia*, Oxford: Berg; Ann Stoler, "Making Empire Respectable: the Politics of Race and Sexual Morality in 20th c. Colonial Cultures," *American Ethnologist* (16:4): 634-660; Ann Stoler, "Rethinking Colonial Categories: European Communities and the Boundaries of Rule," *Comparative Studies in Society and History* 31:1 (January 1989): 134-161

condition of ‘liberty’ is considered a natural right; secondly, the exercise of that liberty, understood in its negative sense as the ‘absence of external impediments’ undermines, through the insecurity that arises out of the equal right to wage private war, the first right (1986: 189). In other words, it negates the freedom to be free. This Right of Nature, *Jus Naturale* brings into being therefore a general state of insecurity, based on the exercise of private reason, leading to the condition of ‘man as nasty, short and brutish’. And it is from the private reason of liberty that law as obligation emerges. Law is therefore at odds with Natural rights, argued Hobbes, ‘like obligation is at odds with Liberty’. The distinction between *Jus* (Right) and *Law* (Obligation) is the basis of a form of sociality through which the ‘individual’ can protect and enjoy the rights that are put into question in the absence of a ‘common law’<sup>32</sup>. As Hobbes describes it:

‘That a man be willing when are so too, as farre forth, as for Peace, and defence himselfe he shall think it necessary to lay down his right to all things, and be contented with as much liberty against other men, as he would allow only against himself’. (Hobbes, 1986: 188-190). In this reworking of the Biblical injunction ‘doing unto others’, it is the self that is placed at the center of the ‘motivation’ for the transfer of absolute rights to the sovereign. Reasonable men would thus see that they

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<sup>32</sup> The Enlightenment formulation of a natural law tradition, out of which this conception of justice arises, draws on a number of historical precursors. In the genealogy of the concept in the West, it is to Aristotle that we most often turn, although there is some dispute about this. Cf. Charles H. McIlwain (1932) *The Growth of Political Thought in the West: From the Greeks to the End of the Middle Ages*, New York, pp. 114-15 Particularly, it is to Aristotle’s distinction between *distributive* and *corrective* justice, the latter arising from a pre-given sense of right, which lends itself to a historically transcendent conception of law and right in the *Nichomachean Ethics* and *Politics* and *Rhetoric*. Cf Leo Strauss’s (1987) *Natural Right and History*, Chicago: University of Chicago Press. Plato’s conception of natural law entered the mainstream of Western legal thought through the Aristotelian commentary on the *Republic* by the Andalusian Muslim polymath Ibn Rushd (Averroes), as well as through the writings of Thomas Aquinas. Cf. Corbin Henry (1993) *History of Islamic Philosophy, Translated by Liadain Sherrard, Philip Sherrard*, London; Kegan Paul, pp. 39.

had to give up some of their rights to everything and to protect themselves in order to live in Peace, not War. However, because men are governed by the ‘Passions’, they would revert to their natural ways if they saw advantage in a situation. Hence the need to not only agree by word, but also to agree by action to transfer their natural rights to an Authority, for: ‘Covenants, without the Sword, are but Words, and no strength to secure man at all’ (Hobbes, 1986: pp192, 201-202). This ‘covenant’, in the form of the ‘social contract’, is therefore to be protected by the threat of force, and mediates the relationship between the Authority, ‘the commonwealth’ or state, and the ‘citizen’ as the embodiment of rights and obligation, and allows for the distinction to be made between that which is legal and that which is illegal: ‘...whatever I lawfully Covenant, I cannot lawfully break’ Hobbes was to note. (1986: 198). The making of a covenant, the agreement to be governed in actions by a common Law therefore creates ‘obligations’, and creates ‘injustice’ as *Sin Jure* (1986: 191):

“And in this law of Nature, consisteth the Fountain and Originall of JUSTICE. For where no Covenant has preceded, there hath no Right been transferred, and every man has right to every thing; and consequently no action can be Unjust. But when a Covenant is made, the to break it is *Unjust*: And the definition of INJUSTICE, is no other than the not Performance of the Covenant. And whatsoever is not Unjust, is Just’ (Hobbes, 1986: 202).

Justice and injustice are therefore premised on the upholding of the laws of the covenant. More so, for Hobbes, as I have noted above, the basis of these laws of the covenant, if they are to not be mere ‘words’, must have behind them the capacity of force: “Therefore, before the names of Just, and Unjust can have place, there must be

some coercive Power, to compel men equally to the performance of their Covenants, by the terror [sic] of some punishment, greater benefit they expect by the breach of their covenant.” (Hobbes, 1986: 202). The very naming of justice itself is therefore, in this genealogy, premised on the existence of the creation of security through the ordering of violence, not as arbitrary, private and random, but as public, regularized and knowable, through law, and therefore, administered as the upholding of rights or the righting of wrongs, under the newly inaugurated name of “justice”.

Later, Locke, in the *Two Treatises of Government* [1689] (1993), was to take the social contract theory as the basis of government, further. Drawing on a more optimistic view of the state of nature, where violence was present in potential rather than manifestation, and in disagreement with Hobbes’s (and Robert Filmer’s) centralized common-wealth despot of the *Leviathan*, Locke argued that accepting a centralized all powerful sovereign ‘is to think that men are so foolish that they care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay think it safety, to be devoured by lions’ (1993: 53). As an alternative, Locke proposed a separation of powers within the commonwealth, with the Legislative and Executive functions bound by the rules upheld by the Judiciary. What Locke shared with Hobbes was the belief that the common-wealth, or government, was created not to protect its own interests, but through an imminent revelation of reasoned access to knowledge, which would allow for the exercise of pre-political natural rights, in his case, the right to life, to liberty and to property through a common law. These rights—to life, liberty and property, are God-given rights, and are knowable and

discernable to those with the capacity for reflection and reason<sup>33</sup>. Again, like Hobbes, it is reason—and therefore the assumption of the possession of the capacity to reason—that reveals the existence of natural rights, not dependent on time and space, but ‘writ in the hearts of all mankind’ (1993: 86)<sup>34</sup>. As he was to argue, drawing on Christianity, ‘God, who hath given the world to men in common, hath also given him reason to make use of it to the best advantage of life and convenience (1993: 127). There is an important caveat of course to note here: not all possess the capacity to reason. He *qualified* the statement, by remarking that whilst God had indeed given the ‘world to men in common’, this should not be taken to mean he meant for it to remain in common or uncultivated: ‘He gave it to the use of the industrious and rational, (and labour was to be his title to it) (1993: 131).

The conception of an independent judiciary, it is argued, arises from this conception of law, which creates a distinction between law and the realm of politics. Natural law, in its secularized version, makes claim to a set of rights against which the realm of the political give form, are judged by, and have to conform to. These are constituted as ‘fundamental’ rights, which judicial interpretation exercises sovereignty over. Whilst evident in Greece and the uncodified rules of the Roman Republic, in its modern form

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<sup>33</sup> In the genealogy of natural law, the Enlightenment interpretation is distinguished from the Medieval and Christian conception of *jus gentium* by the status of natural law in relation to obligation and compliance, which derives from a general acceptance, rather than a rule or force. This is taken up in modern law as “the general principles of law recognized by civilized nations” (see for example the *Statute of the International Court of Justice*, art. 38), from the Latin principle of *ius cogens erga omnes*, transl. “law that is compelling in relation to everyone”, or “higher law” or “fundamental human rights” cf. Hart, H.L.A (1994) *The Concept of Law*, 2<sup>nd</sup> ed. Oxford: Clarendon Press] but from ‘positive’ law. Aquinas argued that whilst the positive legal system ‘derived from natural law’, these only carry legal force as part of a posited system: *ex sola lege humana vigorem habent*: ST I-II, q.95.a3 cf. John Finnis (1980) *Natural Law and Natural Rights*, Oxford: Clarendon Press; Lon Fuller (1969) *The Morality of Law*, New Haven and London: Yale University Press.

<sup>34</sup> According to Carlyle this finds its way into Christian doctrine on natural law through Cicero, cf. A.J. Carlyle (1927) *A History of Medieval Political Theory in the West*, vol. 1, p. 83.

Locke and more particularly, the French philosopher Montesquieu, provide the intellectual authority for the idea of a separation of powers.<sup>35</sup>

Returning to Adv. Sidney Kentridge's inaugural address, he was lamenting the decline of this 'independent' role of the law in South Africa, and the erosion of what was seen to be an exemplary legacy of judicial independence in South Africa. In this lament Kentridge is bemoaning a shift in the social and political work that law does and could do. The coming to power of the Nationalist Party in 1948 marked this shift. Prior to that, he describes in celebratory terms how the Appellate Division, then presided over by a series of judges known for judicial independence, had challenged the constitutionality of government segregation policies, such as the removal of 'coloured' voters from the common roll in the Western Cape province, and the segregation of railway carriages and waiting rooms. He described too how the Supreme Court, had a 'high international reputation', and that this reputation was based in the fact that the courts provided 'a real protection to the individual against executive excess' (1987: 12).

Kentridge contrasted this role with the 'general decline' of what he describes as a historically exemplary role of the judiciary. In explaining this decline, he put the cause squarely with the election of the National Party: 'the first cause was the legislative policy of the government that came to power in 1948.'<sup>36</sup> It showed scant

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<sup>35</sup> Cf. Montesquieu, C [1777] (1989) *Spirit of the Laws*. Eds. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press; Althusser, L (1972) *Politics and History: Montesquieu, Rousseau, Marx*, UK: New Left Books; G. Balandier (1970) *Political Anthropology*, Random House, p 3; Shklar, J (1989). *Montesquieu*, Oxford and New York: Oxford University Press.

<sup>36</sup> The study of the 'decline of the rule of law' in South Africa was at that time a matter of domestic and international contention, first appearing on the agenda of the UN General Assembly in 1952. cf. International Commission of Jurists (1960) *South Africa and the Rule of Law*, Geneva; Brookes, E.H and Macaulay, J.B (1958) *Civil Liberty in South Africa*, Oxford University Press; Beinart, B (1962)



regard for the courts.... The change in the courts was also attributable to the spirit of the times. Looking back, one can see that by the early sixties, there was a general spirit of submission to the authority. The government was all powerful. Resistance seemed hopeless' (1987: 12). Kentridge noted how the cases that increasingly came before the court dealt during that period dealt with so-called 'victimless crimes', arising from the implementation of apartheid's discriminatory legislation, which focused on race:

In the period that I am talking about, and right through to the 1970's, there are numerous cases in the Law Reports about race; and the reported cases are of course only a fraction of those that were being heard. These were the cases under the Immorality Act, the Race Classification Act and the Group Areas Act.... Judges and more frequently, magistrates heard evidence about the racial antecedents of the accused persons or litigants before them, their history and their associations. The courts studied and recorded their physical appearance. One would find on the part of the judges and the magistrates concerned no discernable distaste for these processes, still less any conception that the laws they were applying were as abhorrent as the laws of slavery (1987: 13).

Kentridge's focused his subsequent comments on the increasingly pernicious effects of racialized segregation, and the willingness of the majority of judicial appointees to accept the political nature of the appointments, as well as the legislation they were implementing. Taken as an example of a sentiment, Kentridge's speech also describes a certain legal sensibility, and an argument within South African

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'The Rule of Law', *Acta Juridica*, no. 99; Mathews, A.S (1971) *Law, Order and Liberty in South Africa*, Johannesburg: Juta; Schreiner, O.D (1967) *The Contribution of English Law to South African Law, and the rule of Law in South Africa*, Stevens Press.

jurisprudence that emerged in opposition to the all encompassing legislative framework of the apartheid state from 1948 onwards, and from which the emergence of the recourse to human rights law in South Africa drew its vigor<sup>37</sup>.

In 1972 the Legal Commission of the Study Project on Christianity in Apartheid Society (Spro-Cas), released a report, titled '*Law, Justice and Society*'<sup>38</sup>. The report comprised a series of individually authored papers, described by the Commission's Secretary, John Dugard, as an attempt to 'create an awareness on the part of the legal profession and the lay public of the incompatibility of apartheid's legal order with the ethical principles upon which Western legal systems are based' (Randall, 1972: 2).

John Dugard has become one the most eminent South African scholars and advocates of human rights, with a growing international prominence<sup>39</sup>. Spro-Cas itself was a project that had its origins however not only in the legal fraternity, and was funded by the South African Council of Churches and the Christian Institute of South Africa.

The Spro-Cas Legal Commission's report converges two universalizing ethical domains: a Christian ethic, premised on the normative question of whether apartheid was consistent with being a Christian, and a secular legal ethic, premised on whether

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<sup>37</sup> It was also a debate presented as a case of the particularity of Afrikaner nationalism's understanding of law as moral communal values, contrasted with the more universalist and 'progressive' orientation of liberal English-speaking white South African's and the legal tradition they sought to protect. Cf Lewin, J (1963) *Politics and Law in South Africa*, London: Merlin Press

<sup>38</sup> Randall, P ed. (1972) *Law, Justice and Society: Report of the Legal Commission of the Study Project on Christianity in Apartheid Society*, Johannesburg: Spro-Cas Publication no. 9

<sup>39</sup> Besides his copious writing on apartheid and human rights law, Dugard has served as an ad hoc Judge on the International Court of Justice and as a Special Rapporteur for both the former United Nations Commission on Human Rights and the International Law Commission. More recently he has been, in the latter capacity, investigating human rights violations, as well as the colonial and apartheid features of the Israeli occupation of the Palestinian territories of the West Bank, and Gaza in particular. For his views on the apartheid features of Israeli occupation, a transcript of a lecture is accessible at <http://www.thejerusalemfund.org/ht/d/ContentDetails/i/5240> accessed 03/07/2010.

apartheid was consistent with the progressivist ideals of Western law<sup>40</sup>. The opening paragraph of the report gives a genealogy of South African common law, as derivative of a ‘blend of principles’. These derive from Roman-Dutch law, as well as principles of English common law. But it also notes that this law is ‘not merely a product of the legal genius of Rome and the Netherlands and the experience of English law: it is also the product of Judaeo-Christian philosophy, the legal manifestation of Western Christian civilization. The South African common law reflects the ethical values of Western society in its detailed body of laws and customs, promoting, through the instrument of the law, respect for the individual—his life, liberty, family and basic freedoms—and equality before the law.’(Randall, 1972: 3).

In this narrative of the location of the historical and cultural filiality of law, we are beginning to see the image of a certain conception of the role of law, its genealogy and its legal subject. In other words, it is a narrative of where the law that we value comes from, how it evolves, and where it places those who remain faithful to it, both ethically, but also within a geo-spatial imaginary. Its unstated premise is that this is a version of law that is in Africa but not of Africa. This is described as the ‘heritage’ that had to be defended (Randall, 1978: 3). At its normative core is a rights bearing individual, a familiar figure embodied in liberalism’s political subject. The Legal Commission report is concerned principally therefore with how the policies of the government’s legislation and its practices impacted on the universal enjoyment of these ‘Judeo-Christian’ values by individual citizens. Do all citizens enjoy their individual rights, are they free and equal, and do they have unfettered access to the

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<sup>40</sup> Whilst some might suggest an incompatibility between this secular and religious convergence, Alain Supiot (2007) has argued convincingly that these are historically entwined domains of a modern rationality.

law? This narrative of law embeds itself firmly therefore in a ‘Western’ genealogy and at the same time ascribes to this particularity a universal purchase.

### *Apartheid and Humanity*

There was of course a context within which this South African interpretation of law was unfolding, which situated the local legal context within an international order of legal norms and values from the ‘ethical principles’ that Dugard alluded to, would derive from. If the Judeo-Christian legacy spoke to one part of its historical foundations, it was in the modern language of international human rights law where its manifestation as a secular concern was articulated. International law during the time of the killing of the Cradock Four drew its force from a cachet of instruments that derived from customary international law, treaties and covenants, such as the *Universal Declaration of Human Rights*.<sup>41</sup> These treaties and covenants also included, amongst others, the *International Covenant on Civil and Political Rights* (1966), the *International Covenant on Economic, Social and Cultural Rights* (1966), as well as regional treaties like the *American Declaration of the Rights and Duties of Man*, and the *European Convention on the Protection of Human Rights and Fundamental Freedoms* (1950)<sup>42</sup>. Whilst it is commonly observed that the modern human rights legal regime is a post World War II phenomena, human rights law is premised on a

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<sup>41</sup> *Universal Declaration of Human Rights* (1948), adopted 10 December 1948, General Assembly Res. 217, UN Doc. A/810.

<sup>42</sup> *International Covenant on Civil and Political Rights*, opened for signature on 19 December 1966, and entered into force on 23 March 1976, General Assembly Res. 2200A, UN. DOC A/6136; *International Covenant on Economic, Social and Cultural Rights*, open for signature on 19 December 1966 and signed into force on 3 January 1976, General Assembly Res. 2200A, UN Doc A/6136; *American Declaration on the Rights and Duties of Man*, adopted 2 May 1948 by the Ninth Conference of the American States, Bogota, Colombia, Inter-American Commission on Human Rights, Handbook of Existing Rules Pertaining to Human Rights, O.A.S Doc.OEA/ Ser.L/V/II.50.doc 6; *European Convention for the Protection of Human Rights and Fundamental Freedoms*, signed 4 November 1950, entered into force 3 September 1953, 213, U.N.T.S 222.

notion of natural law and natural rights with a longer genealogy, including the *American Declaration of Independence* (1776) and the French *Declaration of the Rights of Man* (1789). From the vantage point of international law and custom the debate about the legal status of apartheid in relation to international law hinged on its practice of discrimination, particularly as it pertained to the question of race. In its ‘*Study of Apartheid and Racial Discrimination in South Africa*’, the UN Special Rapporteur referred in turn to the 1953 UN ‘*Report on the Racial Situation in South Africa*’<sup>43</sup>, which highlighted that the laws of South Africa violated the fundamental rights contained in international charters, particularly as they pertained to discriminatory practices.

The list of specific rights violated where indeed extensive:

The rule of non-discrimination; the right to take part in Government, freedom of peaceable assembly and association, freedom of opinion and expression, the right to nationality, the right to seek and enjoy another country’s asylum from persecution, freedom of religion, the right to marry and protection of family life, one’s country and return, the right to privacy, the right to personal freedom and security, freedom from slavery and servitude, freedom from inhumane and degrading punishment, the right to a fair trial, the right to an adequate standard of living, the right to rest and leisure, the right to social security, the right to education, the right to participation in cultural life, access to public facilities and accommodations, the right to a just order.<sup>44</sup>

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<sup>43</sup> Special Rapporteur for the Human Rights Commission (1967), ‘Study of Apartheid and Discrimination in Southern Africa, UN Doc, E/CN.4/ 949.

<sup>44</sup> Ibid.

It was on this basis that the organs of the United Nations declared, first in 1965, and in subsequent declarations, that apartheid was a ‘crime against humanity’.<sup>45</sup>

Significantly, there were four key pillars of apartheid that, taken together, constituted its crime against humanity<sup>46</sup>: *firstly*, it denied the majority of citizens the right to self-determination, *secondly*, it denied the majority the right to political participation, *thirdly* it sought to practice ‘denationalization’<sup>47</sup> through the homelands system, and *fourthly*, it put the policies of apartheid into practice through the use of force internally and to neighbouring states.<sup>48</sup>

The international seminar hosted by the United Nations Special Committee Against Apartheid, with the co-operation of the Federal Military Government of Nigeria, which issued the *Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle Against Apartheid*, devoted a considerable part of its report to the question of ‘denationalization’ and the status of the Bantustan system. It observed that the “Colonial nature of the South African regime...arises from the institution and operation of the apartheid system.’ It was a

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<sup>45</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid*, adopted 30 November 1973 and entered into force 18 July 1976, General Assembly Res. 3068, UN Doc. A/9030; ‘Apartheid’ (1974) *The International Comparative Law Quarterly*, vol. 23, no.2; Rubin, N (1974) Law, Race and Color in South Africa, *Journal of Opinion*, vol. 4, no.3. In its own report, the US Department of State later concurred that “[t]he practice of apartheid remains the basis for the organization of South African society. Apartheid institutionalizes political and economic control by the white minority. Discriminatory laws and practices are woven throughout the fabric of South African society” US Dept. of State (1983) *Country Report on Human Rights Practices*.

<sup>46</sup> There is a overlap between elements of these four pillars and the four principles of the Glen Grey Act, as described by Lord Lugard: ‘work, segregation in the reserves, individual property in land, and local self-government’ Lugard, F. D (1965) *The Dual Mandate in British Tropical Africa*, London: Frank Cass and Co. p327.

<sup>47</sup> ‘Denationalization’ was considered contrary to *jus cogens* and self-determination because “[d]enationalization on racial, ethnic and other related grounds is particularly notorious because of its close association with Nazi and fascist atrocities”, McDougal, M, Lasswell, H, Chen, L (1980) *Human Rights and World Public Order*, New Haven: Yale University, pp 906-907; Butcher, T.G (1986) ‘Legal Consequences for States of the Illegality of Apartheid’, *Human Rights Quarterly*, vol.8, no. 3.

<sup>48</sup> United Nations Centre Against Apartheid (1984) *Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle Against Apartheid*, seminar held in Lagos, Nigeria, 13-16 August, UN Doc. A/39/423-S/16709.

regime that based its rule ‘upon a policy of dispossession and the perpetuation of alien and colonial-type domination’, and that the “alleged tribal units are not ‘social entities possessing clear identity and their characteristics. They reflect rather the white view of African traditional culture rather than the reality.” It was also a regime, the Lagos Declaration noted, that “negates the legal personality of the great majority of its people on the ground that they are of indigenous origin, which deprives them of elementary rights and leaves them without citizenship....”<sup>49</sup>

There is an important divergence that comes into existence, which I wish to note at this point. The UN declaration on apartheid as a crime against humanity highlighted four aspects: denationalization, political participation, self-determination and lastly, force. Reinforcing this view of the crime that apartheid constituted, the *Declaration of the Seminar on the Legal Status of the Apartheid Regime and Other Legal Aspects of the Struggle Against Apartheid* emphasized the colonial nature of apartheid. It highlighted the centrality of the Bantustan system of homelands as a feature of the wrong of apartheid, through its discursive and materially forced and enforced convergence of cultural and political identities, in order to create a multiplicity of discrete self-governing entities. It argued that this dimension of apartheid denied the majority the right to citizenship and therefore the sovereign right to self-representation within a system of universal franchise. In other words, it emphasized sovereignty and its denial as the key foundational injustice. Force itself was considered as the consequence of the latter, as the result of the colonial policies were to be implemented. In contrast to this view, the South African human rights-derived critique of apartheid evolves to take a different view on the wrong of apartheid. In its

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<sup>49</sup> *ibid*

view takes ‘racial discrimination’ rather than self-determination and the right to sovereignty are the key feature. It comes to focus on force—its victims and its perpetrators—as the most visible wrong of apartheid.

In his authoritative account of the relationship between ‘*Human Rights and the South African Legal Order*’ (1978) a widely upheld text in the field,<sup>50</sup> John Dugard systematically elaborated the key arguments made in the Spro-Cas Commission Report with a view to assessing the practices of the legal regime of apartheid when evaluated against the values of human rights law.<sup>51</sup>

Dugard’s book is divided into five sections, with a focus on the following rights, taken as universal: the Freedom of Person, Freedom of Speech, Association and Assembly. Two other key chapters considered the Political Trial, and the Judiciary and Human Rights. As Dugard describes, it, the study “examines against the yardstick of the American Bill of Rights and modern human rights conventions those features of the South African legal order which have aroused domestic and international opposition (Dugard, 1978: xi-xii).” These features are evaluated as they affect the fundamental criteria of ‘individual liberty’, and in each of the sections noted above, Dugard meticulously documents how the everyday life of black South Africans shows evidence of not being able to individually enjoy the fundamental rights that are

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<sup>50</sup> The canonical importance of this book’s impact for human rights oriented lawyers in South Africa was noted by the University of Cape Town Professor of Law, Christina Murray. Its most salutary feature, she argued, was that it separated legal assessment from the realm of the political: “John Dugard’s landmark book... does not formally claim to be a history book but for many students it provided the first encounter with the history of law in its apartheid setting. It also triggered major studies on the record of the South African judiciary—which was much lauded for its independence from the apartheid government’ Murray, C (2003) ‘The Political and Social History of South African Law’, *The Journal of African History*, vol. 44. No. 1, pp165-166.

<sup>51</sup> Dugard had already by then published, amongst others, (1971) ‘The Judicial Process, Positivism and Civil Liberty’, *South African Law Journal*, no. 88; (1972) ‘The Legal Framework of Apartheid’, in *South African Dialogue: Contrasts in South African Thinking on Basic Race Issues*, Johannesburg: McGraw Hill; (1972) ‘Judges, Academics and Unjust Laws: The Van Niekerk Contempt Case’, *South African Law Journal*, no. 89



supposed to flow from individual liberty, like the right to free movement, or the right to free speech, or the right to free association. The legal matrix of apartheid impacted on life at every level of the public and the private, evidenced in the number of prosecutions that derive from racially derived offenses, and from the prosecution and persecution of organizations that question the legitimacy of apartheid's policies.

In both the *Spro-Cas Commission on Law*, as well as in Dugard's writing, the fundamental problem with apartheid was that it denied a group of people their full individual rights and liberties, and inflicted 'pain and suffering' on the basis of 'race'. It was this discrimination that undermined the value of law as a heritage of Western civilization. In his concluding plea for a new approach to law, Dugard emphasized two key elements that needed reform: discriminatory legislation needed to be revised, and a Bill of Rights needed to be introduced. These were necessary to rehabilitate the legitimacy of law in the eyes of those denied its freedoms and protections:

It is therefore small wonder that blacks do not share the admiration of the white South African for the majesty of South African law, the mysteries of the Roman-Dutch tradition, and the impartiality of the South African judiciary and administration.... If faith is to be restored in the South African legal system *while there is yet time*, sweeping changes will need to be made.... A new Constitution with a Bill of Rights to provide legal safeguards for individual liberty, anti-discrimination laws to educate an unenlightened and prejudiced people, and a concerned and courageous legal profession committed to the enforcement of human rights, are the very minimum requirements (Dugard, 1978: 402).

Writing as he was in the wake of a period of intense state repression, throughout the 1960s,<sup>52</sup> and in the immediate aftermath of the June 16 student uprisings of 1976, which had been violently repressed, Dugard was challenging his colleagues in the legal fraternity to reflect on their practices and the implications of accepting the status quo. Although he had, in the discourse of law, indicated in the foreword of the book that the intention was to ‘describe and not to judge’, he concluded with a judgment: ‘This passive, neutral attitude on the part of the lawyers as undoubtedly helped the Government’ (Dugard, 1978: 391). The question we may want to ask, is what was this complacency helping the government to do? It is clear that Dugard is worried that the complicity of judges, magistrates and prosecutors in carrying out apartheid’s law was helping the government to implement its policy, but its effect was to undermine the long term legitimacy amongst Africans. He was in effect calling attention to the condition of jeopardy that existed in the country, not only as it affected the victims of apartheid repression but, with more foreboding, as it threatened the ‘majesty’ of the Judeo-Christian tradition of jurisprudence on, I would add, the Southern-most tip of the African continent.

For legal scholars and practitioners like Dugard, Wentzel and Kentridge, the formulation of the South African legal system was seen as iteration of the most salutary aspects of the ‘Western tradition’. The disposition of the legal fraternity in particular has been shaped by the legal positivist tradition that drew on Roman-Dutch, and the dominant 19<sup>th</sup> Century English legal arguments derived from John Austin (1832; 1895) and Jeremy Bentham<sup>53</sup>. In seeking an explanation as to why and how

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<sup>52</sup> By this time the security legislation of the apartheid state was already firmly coming into being.

<sup>53</sup> Cf van Niekerk, B (1973) “The Warning Voice from Heidelberg—the Life and Thought of Gustav Radbruch”, *South African Law Journal*, no. 234; Sir John Wessels (1908) *History of the Roman-Dutch Law*, African Book Company: Grahamstown; Miller, D. C (1973) “South African Judges as Natural

most judges seemingly supported the discriminatory practices of the apartheid state, Dugard turned his criticism to the effects of this legal positivist tradition: “The positivist legal tradition of Austin and Dicey was exported to the Cape in the nineteenth century, along with institutions of British justice, and secured a firm foothold in South Africa” (Dugard 1978: 373).<sup>54</sup>

Legal positivism not only makes a clear distinction between the legislative function and the judicial function, but also views the latter as the statutory manifestation of policy made by the legislature. This notion is also described as the ‘command theory of law’. It describes law as distinct from the realm of morality and values: “Rigid adherence to the distinction between law as it is and law as it ought to be leads to a rejection of legal values—as opposed to legal rules—which results in the neglect of considerations of human dignity, freedom of speech, freedom of movement and assembly... (Dugard 1978: 374).”<sup>55</sup> Legal positivist thought of the Austinian or Benthamite variety sees law as strictly within the realm of rules made by humans, to be implemented by the commanding presence of the sovereign, and to be habitually obeyed by its subjects. Law is therefore separated from its moral or ethical

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Lawyers—a Roman-Dutch Basis?”, *South African Law Journal*, no. 86; Hahlo, H. R and Kahn, E (1960) *South Africa: The Development of its Laws and Constitution*, Cape Town: Juta and Co.

<sup>54</sup> Also see Hart, (1983) ‘Positivism and the Separation of Law and Morals’, in *Essays in Jurisprudence and Philosophy*, Oxford: Clarendon Press

<sup>55</sup> In the attempt to give some voice to collective and institutional complicity, the TRC invited the legal fraternity to make submissions. Of the few officials of the apartheid state that came forward, almost all objected to the nature of the enquiry on the very grounds of legal positivism, an argument the Commission, in its findings, rejected: “Much was made, particularly by some judges who made submissions, of their relative impotence in the face of the exercise of legislative power by a sovereign Parliament...it is not enough for South African lawyers to parade sovereignty of parliament as if that alone explained (and excused) their conduct” (TRC, Vol. 4, p105). In his submission to the Hearing, the former Attorney-General of the Transvaal, between 1983-1985, Klaus von Lieres und Wilkau, S. C, noted with indignation that: “Mr. Chairman, I am here today because I believe it needs to be said we owe a debt of gratitude to the many fine prosecutors, past and present, who discharged their prosecutorial task with integrity and courage and professionalism. I believe that they have been seriously maligned by unfounded generalized propaganda... We took our decisions to prosecute on facts and not on the basis of ideological convictions..” (un Wilkau, quoted in Dyzenhaus, (1988) *Truth, Reconciliation and the Apartheid Legal Order*, p120)

implications, and only shows fidelity to the law as written. As Austin put it: “The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation” (1832 Lecture V: 157).

The critics of legal positivism were well aware that that the policies of apartheid were legislated: “The apartheid order is a legal order. Fashioned by politicians, it has been applied by lawyers.” (Dugard 1978:393). Whilst Kentridge was bemoaning the decline of an independent judiciary as an event that accompanied the victory of the Afrikaner National Party in 1948, the dominant school of legal philosophy in the country prior to that had already accepted that the judiciary considered law as it was, rather than in the normative register of what it *ought* to be. The dominance of legal-positivism in South Africa can be traced to the influence of a tradition of British legal thought which drew on Austin and Bentham. It was brought to the Cape from 19<sup>th</sup> century England after it annexed the Cape in 1806, and soon displaced, as a legal philosophy, the Roman-Dutch natural law that had been dominant. By 1908 Sir John Wessels (1862-1936), later Chief Justice of the Appellate Division of the Supreme Court between 1932-1936, could declare, in his study of the history of the Roman-Dutch law tradition in South African that “(t)he whole theory of the Law of Nature is now so thoroughly exploded that is difficult for the modern student to imagine how the jurists of the former years ever came to attach such importance to the

abstraction—Natural Law.’<sup>56</sup> The positivist approach to law dominated legal education at the time, and advocates at the Cape were obliged to also be members of the United Kingdom Bar, or were to be Doctors of Law at either Oxford, Cambridge or Dublin<sup>57</sup>.

For Dugard, and others who held a different view of the role of law, those who carried out the law had a duty to not only carry out statute, but also to find ways in which to exercise an interpretative role, based on the commitment to the pre-political rights of the autonomous individual, and the rights of the citizen that had to be conflated in this case. The debate amongst lawyers who found themselves in objection to the racially discriminatory practices of the state, has been posited as one that hinges on whether there was an effective role to be played by engaging with apartheid’s law, to treating it as legitimate, or whether to engage with the law was to make one complicit in it, and to render that which was seen as illegitimate, legitimate.<sup>58</sup> The position of the former group, from which a generation of ‘anti-apartheid lawyers’ emerged, was to ‘engage’. Stephen Ellmann has described it as the ‘strategy of courtroom resistance’.<sup>59</sup> Also known as ‘anti-apartheid lawyering’, an assessment of

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<sup>56</sup> Wessels, J (1908) *History of the Roman-Dutch Law*, Grahamstown: African Book Company, pp291-293; One is reminded here of Bentham’s dismissal of “natural rights” variously as “simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts.” *Bentham, J [1843] (2010) ‘Anarchical Fallacies; Being an Examination of the Declarations of Rights Issued During the French Revolution’* in *The Works of Jeremy Bentham*, vol. 2, Online Library of Liberty [http://oll.libertyfund.org/index.php?option=com\\_staticxt&staticfile=show.php%3Ftitle=1921&Itemid=27](http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1921&Itemid=27) accessed 10/06/2010

<sup>57</sup> Although in 1858 local qualifications were made provision for. An important account remains Hahlo, H.R and Kahn, E (1960) *South Africa: The Development of its Laws and Constitution*, Cape Town: Juta and Co.

<sup>58</sup> Cf. Steyter, N.C (1987), “Criminal Justice and the Apartheid State”, in Rycroft, L.J, et al, eds. *Race and the Law in South Africa*, Cape Town: Juta; Wacks R (1987) “Judges and Injustice”, *South African Law Journal*, no. 101; Ellmann, S (1992) *In a Time of Trouble: Law and Liberty in South Africa’s State of Emergency*, Oxford: Clarendon Press.

<sup>59</sup> This was a debate that was confronted by the independent black trade union movement that emerged after 1973, known as the ‘recognition debate’. When the Wiehahn Commission of 1979 recommended the recognition of the legal status and right of African workers to unionise, the unions had to consider

this practice has been taken up by a number of legal scholars, most notably Steven Ellman (1995) David Dyzenhaus (1997), Richard Abel (1995) and Michael Lobban (1996).

As Ellman argues, adopting a strategy of ‘courtroom resistance’ meant that one had to except the legitimacy of apartheid’s laws in order to challenge their pernicious effects. The strategy was to “press the categories of South Africa legal argument to their limits but still remain within those categories” (Ellman 1995: 408).

Ellman notes that the apartheid state was aware that its claim to law entrenched it within a “community of Western nations”, and that this provided a “testament to their own civilization, in contrast to the barbarism they attributed to those whom they ruled; and as a gift to the subjects of apartheid, a gift which whites could reap with gratitude and respect” (Ellman, 1995: 408). Ellman’s concern was very much the concern of Dugard and others: would working within the rules of the apartheid system legitimate apartheid, but furthermore, would working within the rules of the system, deligitimate the salutary claims of law in the eyes of most black South Africans?

The alternative prospect would have been for white lawyers who opposed apartheid to refuse to participate in the legal system at all. Ellman concludes his own study by arguing that participation was to have beneficial effects. He does so by making a distinction between the legitimating effect of participation on the apartheid system as a whole, and the law itself as something distinctly different. The benefits of the possibility of the latter for him, outweigh the dilemmas presented by the former: “the

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the legitimating effects that registering and legalization would entail. Cf Friedman (1987), Baskin (1991)

possibility that anti-apartheid lawyering might have encouraged South Africans to see virtue in the ideals of fearless advocacy, independent judging, and the rule of law offered promise that these same ideals would be honored in post-apartheid South Africa” (Ellman 1995: 409).

In his study of secularism, the anthropologist Talal Asad (2003: 141-44) discusses a speech made by Malcolm X, advocating a shift away from ‘civil rights’ to human rights in order to better advance the cause of African Americans against racism and suffering in the United States. It is a speech worth quoting at length:

We need to expand the civil rights struggle to a higher level- to the level of human rights. Whenever you are in a civil rights struggle, whether you know it or not, you are confining yourself to the jurisdiction of Uncle Sam. No one from the outside can speak on your behalf as long your struggle is a civil rights struggle. Civil rights comes from within the domestic affairs of this country... You may wonder why all the atrocities that have been committed in Africa and in Hungary and in Latin America are brought before the UN, and the Negro problem is never brought to the UN.... They keep you wrapped up in civil rights. And you spend so much time barking up the civil rights tree and you don't even know there is a human rights tree on the same floor... Civil rights means you are asking Uncle Sam to treat you right. Human rights are your God-given rights.

Human rights are the rights that are recognized by all nations of this earth.

For Malcolm X, the route of civil rights constrained political possibilities, bound within the United States as a nation-state. As Asad notes, “he (Malcolm X) diagnoses

a profound crises of justice in race-based America and claims that it cannot be resolved by a purely domestic maneuver—that is, by a state’s formal extension of full citizenship to African Americans” (2003). In the case of African-Americans, the strategic decision to be made, for Malcolm X, was the question of how, as a group denied representation and participation, they could best articulate the demand for political representation as an excluded minority within a larger nation-state, where the Anglo-Saxon majority had access to these rights. In the South African case, the recourse to human rights, rather than civil rights, as Malcolm X argued for, was the terrain on which political demands were presaged within the country. What is worth considering also however is the difference. Apartheid’s four ‘wrongs’ as identified by the UN— denationalization, lack of political participation, lack of self-determination, and force— involved utilizing a colonial technology of rule, as Mahmood Mamdani (1996) has argued, which bifurcated citizenship and subjection, creating a world of racialized citizens and ethnicized subjects who would reside in homelands.<sup>60</sup>

This created a realm of citizens with access to the liberal democratic rights, and the legal heritage, which I have described above. And it created the category of ‘subject races’ with truncated rights but full obligations; alongside these were the subject ethnicities—the so-called African population. In its desire to implement three of the four pillars of apartheid as a crime against humanity, a large scale re-ordering of

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<sup>60</sup> It was of course Hannah Arendt who when discussing the fate European refugees, noted the paradox of ‘human rights’ - that they were rights that did not require membership of a political community in order to be *granted*, but they that did require membership of a political community to be ‘enjoyed’: they were therefore considered to be universally applicable but could only find expression through the particularity of a sovereign sphere to which one was considered a part of, or eligible to be a member of. Hannah Arendt (1968) ‘The perplexities of the Rights of Man’, in *The Origins of Totalitarianism*, pp. 290-301. For the French philosopher Jacques Ranciere, this paradox should not be considered as disabling, but rather as the space where we might think ‘the political’ in a way that is not overdetermined by the conceptual political architecture of sovereignty and law: “The very difference between man and citizen is not a sign or a disjunction proving that the rights are either void or tautological. It is the opening of an interval for political subjectivization” (2006: 6).



bodies and identities, of space and place, of cultural boundaries and political identities had to be implemented. For the apartheid state, and Afrikaner nationalist thought, humanity was only a multiplicity of particulars, which had to exist in various hierarchies, whereas for liberalism in South Africa, there was only a universal, which should be applicable to all. Of course, South African liberalism's singular universal was itself based on a conception of a hierarchy, and grounded in its own particularity—the Judeo-Christian tradition, and contained within it a liberal paternalism.<sup>61</sup>

The electoral victory of the Nationalist Party in 1948 brought to a colonial and segregationist history a refinement of the idea of what Partha Chatterjee has called 'the rule of colonial difference' - the permanence and radical otherness of the native which required a different path to self-improvement and development, via the structures of tradition and custom. In delivering the Rhodes Lectures at Oxford University in 1929,<sup>62</sup> fresh from a term as the Prime Minister of South Africa, Jan Smuts was to articulate this argument for permanent segregation to the assembled audience:

Nothing could be worse for Africa than the application of a policy, the object or tendency of which would be to destroy the basis of this African type, to de-Africanise the African and turn him into either a beast of the field or into a pseudo-European. And yet we have tried both alternatives in our dealings with the Africans.... If Africa has to be redeemed, if Africa has to make her own contribution to the world, if Africa is to take

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<sup>61</sup> The complications of political practice and philosophical abstraction are at the center of what Partha Chatterjee has called liberalism's 'conundrum': "To begin with, liberal political theory in its strict sense cannot recognize the validity of any collective rights...". Chatterjee, P (1999) 'Secularism and Toleration', in *The Partha Chatterjee Omnibus* (1999) New Delhi: Oxford University Press, p. 249.

<sup>62</sup> Smuts, J. C (1930) *Africa and Some World Problems*, Oxford: Clarendon Press

her rightful place among the continents, we shall have to proceed on different lines and evolve a policy which will not force her institutions into an alien European mould, but which will preserve her unity in her own past. That should be the new policy....<sup>63</sup>

The idea of a ‘white South Africa’, surrounded by ‘homelands’ for the various ‘tribes’, would require a violence of immense scale- the forced removals and relocations, the control and regulation of movement, the policing of boundaries; all of which, if the regime was to be a bastion of ‘Western civilization’, would be done through law. A series of laws were placed on the statute books, which had a three fold aim: to creation a nationally applied and imposed singular order of law which legally classified the population by race and ethnicity; to create the legal framework for two modes of political authority, one for natives and one for race groups; and to create the legal framework for the ethically and racially ordered provision of social life and social welfare- education, marriage, domicile, and health. It also had the aim of creating the imagination of possibilities that were racially and ethnically defined in relation to the cultivation of the self and labour: where one could live and work and the kind of labour that was allowed. The violence required to realize these aims would be made legal through the Suppression of Communism Act (1950), the

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<sup>63</sup> Smuts, J. C (1930) pp. 76-78. Smuts went on to laud the introduction of this bifurcated rule in South Africa by Cecil John Rhodes through the Glen Grey Act: “Rhodes’ African policy embodied two main ideas: white settlement to supply the steel framework, and the stimulus for an enduring civilization, and the indigenous native populations to express the specifically African character of the natives in their future development and civilization.” (Smuts, 1930: 78). The metaphor drawing on the metallurgical rigidity of steel to describe the architectural framework of European modernity in its encounter with Africa striking illuminates the impermeability between the bifurcated zones that Smuts, and Rhodes had in mind when speaking about ‘the European’ and ‘the African’. In the narrative around Smuts he is upheld by liberalism in South Africa because he changed his views on segregation, and supported the recommendations of the Fagan Commission in 1948, which recommended abandoning as impractical the continuation of racial segregation in urban areas and the control, or influx of Africans. This position was opposed by the Nationalist Party who defeated Smuts’s United Party narrowly in the poll that year. What is often not recalled in the lament of loss, and the celebration of Smuts as an anti-segregationist running on a liberal platform, was that the Fagan Commission recommended desegregation, but not political representation or universal franchise for Africans.

Population Registration Act (1950), the Group Areas Act (1950), Bantu Authorities Act (1951), the Bantu Education Act (1953), and at the end of that decade, the Promotion of Bantu Self Government Act (1959), a crowning piece of legislation.

At the interstices of this bifurcated zones of belonging and exclusion, where those who sort to make the case for the universal, from various foundational claims—religious, moral, ideological, political, ethical and legal. It was for this latter group in particular, that a recourse to human rights would appeal, since it could make visible, and bring into question the developmental claims of the Nationalist Party-led government after 1948 by demonstrating the systematic and widespread nature of the violations the implementation of these policies had on the individual *as a subject of suffering*, in other words, as a victim. The tension here for human rights lawyers is that modern legal rights rest on the metaphysically derived notion of a set of rights which are immanent and pre-political. These are translated in thought, through concepts and mythologies (and secularized) as the foundations of modern positive law. There is the law that is (sacred, divine, God-given) and there is the law that emerges from the labour of thought as the product of reason, the law that is not ‘natural’ but human—positive law. When human rights lawyers endeavour to critique the legality of the apartheid state and its laws, how would they pit one form of positive law against another? How do they find a universal foundation for positivism, which is not national? In other words, how does one universalize liberalisms’ political ontology? Dugard introduced this as ‘moral’ question, or a form of law that can take into account ‘values’—this is what he was getting at with the idea of protecting a ‘heritage’, not on metaphysical grounds, but as the cultural value of an inheritance to be protected: the majesty of law.

In another assessment, the South African legal scholar and activist Dennis Davis, a current judge in the Cape High Court, remembers this past along very similar lines (Davis and Le Roux 2009). In a volume of essays on the role of law under apartheid and in postapartheid South Africa, Davis and co-author Michelle Le Roux look at four key, and for a legal tradition he includes himself in, salutary moments, between 1950 through to 1991, where ‘courtroom activism’ or ‘lawfare’, challenged apartheid policy. The first was in the response to the removal of ‘Coloured’ voters from the Cape voters role in the 1950s, the second was the prominent Treason Trial of 1955 where the leadership of the African National Congress (ANC), and the South African Communist Party (SACP) were charged under criminal law for incitement; the third moment was to follow with the role of lawyers in relation to the question of residence and relocations as the so-called Influx Control laws were implemented, which included the Pass Laws, forced removals and denationalization; fourthly, argue Davis and Le Roux, was the role of human rights lawyers in the challenging of state atrocities and incarcerations without trial under the various States of Emergency, but particularly through the 1980’s (Davis and Le Roux 1989: 10-13).

For Davis and Le Roux, law is about ‘rights’, and they argue that the link between the presence of a Bill of Rights, the human rights orientation of the Constitution of postapartheid South Africa, and the focus on human rights at the TRC, have something to do with what they describe metaphorically as a ‘bridge’:

The bridge would assist in the journey which society undertook to travel away from arbitrary and brutal exercises of power to decisions, which could be subjected to debate, deliberation, public examination and above

all, justification. The constitutional bridge was to be created by bridge-builders who were fluent in the old legal traditions. The dominant conception of the common law and that of a universal body of truth inherited from the days of the Dutch occupation of the Cape.... All these legal rules and conduct from the traditions of which we speak. But it now becomes mixed with the new constitutional text and the interpretative moves of the courts in giving meaning to the new text. In this way, fresh legal material is manufactured which in turn, is employed in the construction of the legal bridge (2009: 7-8).

For Davis and Le Roux, as for Dugard, there is a contestation in law, but also an underlying continuity within the contestation, within a universal teleology- the bridge along which we move, linking the past with the present and the future. Law is here once more constituted as a universal (Western) 'tradition' and an 'inheritance'. In their chapter in the Spro-Cas Report on '*Difficulties facing Black South Africans in exercising their Legal Rights*', Lane and Williamson argued from the premise that '[i]t is a fundamental juristic proposition that a right has no meaning unless there is a remedy for its invasion...It is suggested that before it can be said that a person has effective remedies for enforcing his legal rights, whether against a fellow citizen or against authority'. In order for this enforcement of a legal right to come to fruition, they argued, 'he must enjoy:

1. Sufficient freedom of movement to enable him to seek assistance in the proper quarters and reach persons who have it in their power to assist him.
2. Unfettered access to professional and other advisers who are best able to act on his behalf, to espouse his cause and to provide the necessary professional assistance.

3. Ready access to the courts.’ (Randall, 192, p46).

Against these requirements, they gave an account of the numerous obstacles that faced an average urban black South African: the Pass Laws, Influx Controls, Group Areas restrictions, amongst a myriad of other Apartheid laws, to be able to get access to an urban center where most often legal representation was based. In addition, black lawyers and professional services were few and far between<sup>64</sup>, and legal aid an unrewarding vocation. This was just to describe the challenges of getting access to a lawyer. And then, as they describe it, “Once he reaches the courts, the problems of the black are not over”, as the litigant faces the challenge of unsympathetic magistrates and clerks, and language and translation complications, dependent on the availability of court interpreters. They concluded that, “it is manifest that the rights which are accorded them in law are in many instances not enforced or readily enforceable. Compared with their fellow white citizens, there are at a grave disadvantage” (Randall 1972: 447-49).<sup>65</sup>

It was in this context that the rise to hegemony in the mediation of pain and suffering of human rights law and the figure of the human rights lawyer must be located. In its institutional forms, a related mediating institution between the (white) lawyer-- the ‘bridge builder’-- and the (black) subject of apartheid is the ‘Advice Office’ or the Advice Bureau. An illuminating example of this is the formation and history of the non-governmental organization, the Black Sash, and the issues that it took up<sup>66</sup>. The

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<sup>64</sup> The first black owned law partnership was opened by Nelson Mandela and Oliver Tambo—the two key leaders of the African National Congress in the postwar period, in Johannesburg in 1952.

<sup>65</sup> From this realization the ‘Legal Advice Office’ was born. Funded by donor organizations, NGO’s and universities, the Advice Office was staffed by lawyers, volunteers and community workers, who sought to be the bridge between Africans in urban centers, and the legal rights they had access to, but could not access.

<sup>66</sup> BC 668 (B1.1), Manuscripts and Archives Department, University of Cape Town Libraries.

Black Sash, according to its own narrative, was formed by group of white suburban women over afternoon tea in 1955. They shared a concern for the fate of ‘constitutionalism’ in the country.<sup>67</sup> Reflecting on its formation, and five years of Nationalist Party rule, June Sinclair, the organizations President in 1960, remarked:

When the Black Sash was originally formed in 1955 to protest against the debauching of our Constitution by the Senate Act—and I say debauching deliberately because the assertion of the legality arising from the manipulation of an unfortunate loophole in the Constitution does violence to our intelligence—we little thought that in so short a time we would be called on to defend the fundamental human rights and dignities which been the prerogative of civilized peoples since the middle ages.<sup>68</sup>

She went on to note that, “the Black Sash is fully conversant, through the work in its Advice offices, with the implication of the laws which affect the urban African. The Native Urban Areas Act of 1945 is now surpassed by the horrors of the Bantu Laws Amendment Act. These laws have converted the African from a human being into a statistic, juggled with and pushed hither and thither by officials who are bound to carry out the letter of the law”.<sup>69</sup>

The disquiet with what was occurring in the country stemmed from a very similar worry that I have traced in the legal thinking of figures like Sydney Kentridge.<sup>70</sup> The

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<sup>67</sup> Black Sash (1995) *Golden Jubilee report, The Black Sash of South Africa* C. Michelman Oxford University Press, London.

<sup>68</sup> Black Sash (1964a) ‘South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair’, Pietermaritzburg 20 October 1964 B1.10/28, p2.

<sup>69</sup> Black Sash (1964a) ‘South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair’, Pietermaritzburg 20 October 1964 B1.10/28, p4.

<sup>70</sup> At the organization’s 1979 Congress a report was given on the *Human Rights in Law* conference held at the University of Cape Town in January of that year. The minute noted that Sydney Kentridge provided a summary of the discussion at the congress, and it was resolved by the meeting, on his recommendation, that a Bill of Rights should be promoted and propagated as the basis of a future government with immediate effect, and not ‘left to being some last ditch stand by whites’. This last

concern was about the fate of Africans as prospective citizens; at the same time, this concern also stemmed from the worry that a certain kind of civilizational filiation to the achievements of the West— which I am using to refer to as an accretion or placeholder of markers achieved through the evolution of its laws, viewed as a tradition and a heritage—was being thrown into question by apartheid rule. In Jean Sinclair's words,

Seven hundred and fifty years ago the Magna Carta laid down the basis on which Western civilized standards of justice have been founded...In sixteen years, with the help of a mass of statutory legislation this Government has plunged South Africa back into the social anarchy of the middle ages. They have abandoned centuries of political progress, have manipulated Christian doctrine to suit their own philosophies and have subverted the common law in the interests of sectional dogma.<sup>71</sup>

The Black Sash volunteers decided that besides the advocacy work and campaigning they would do against apartheid in the white community, they would also mediate and advise Africans on their rights under the legislation. This was to be done through provision of free paralegal advice by volunteers on matters related to working conditions, pensions, right to residency and so on; later they would focus on conditions of repression, and detention without trial as the overt repression of the state became more pronounced with the States of Emergency. The method of operation was to open a case-file for each person attended to, and to provide legal advice and

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comment is illuminating. Black Sash (1979) 'Minutes of National Conference held at Cape Town from 13 to 15 March 1979', Bconf/33

<sup>71</sup> Black Sash (1964a) 'South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair', Pietermaritzburg 20 October 1964 B1.10/28  
p5



assistance where possible to assist in finding legal justice for a wrong that those who came in to the Advice Office felt they were being subjected to.

Two years after the formation of the organisation in 1955, and in conjunction with the liberal-oriented *South African Institute of Race Relations*, they formed the first of their Advice Office's in the 'coloured' neighbourhood of Athlone on the Cape Flats. Subsequently Advice Offices were set up on the major urban centers around the country where the Black Sash had branches. In its report for 1973, the Athlone office reported that it had been in operation at that point for sixteen years, and in that year alone it had added another 'one thousand index cards' to its files. Each index card represented a case. The report recalled that the rationale for the establishment of paralegal assistance was that "each every African needs to understand his or her position vis a vis the provisions of Section 10 of the Bantu (Urban Areas) Act No. 25 of 1945." Whilst the Advice Office was established by white volunteers who would use their knowledge of the law and skills to press the case of Africans, the report writers noted that there was often also a reversal of roles—that Africans often had a well developed sense of the law and their rights, more so than the average white citizen: "Africans are generally better informed than their would-be helpers. 'They' know a good deal about the law and its two faces, back and white."<sup>72</sup>

In its report a common challenge facing many Africans in the Western Cape was the right to residence without a work permit, or issues domestic issues like pensions, or to do with residency of a husband and wife together. African men, as migrant labour, were not permitted to bring families to reside with them in urban centers Families

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<sup>72</sup> Black Sash (1973) 'Athlone Advice Office Annual Report to National Conference on 16 October 1973', B1.19/ 29.

were of course expected to reside in the 'homelands' or Tribal Authorities. There was a caveat in the Western Cape which came into existence in 1972 which allowed a wife to live in the same location as her husband if she had a job, but there was a cruel conditionality attached- the children from the marriage could not live with their parents, they would have to live in the ethnicized Tribal Authority. The work of the Advice Office reported that in each of the over hundred and twenty cases pertaining to this provision that they had looked at, it was the "husbands awareness of his residential rights that prompted the inquiry".<sup>73</sup> The Advice Office concluded that "the ordinary understanding of the ordinary citizens know that the law is forcing them to live extra-ordinary lives. People do not need to be told that family life is a normal human prerogative, that husbands, wives and children belong together, nor that a man who has worked until his body is almost worn out should not be cast back upon rural relatives without recompense".<sup>74</sup>

In its report for the same year, the Johannesburg branches of the Advice Office reported that 4505 people visited the office. They came for assistance with the right to residency and assistance for procuring Residential Permits, a necessary requirement under Section 10 (1) of the Urban Areas Act.<sup>75</sup> This process was adjudicated by a Bantu Affairs Commissioner would need evidence that the applicant had secured employment in order to enjoy residency rights, and many of the cases involved loss of employment, or the applicant being self-employed or unemployed and seeking to remain in an urban area to search for another job. This, together with housing,

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<sup>73</sup> Black Sash (1973) Athlone Advice Office Annual Report to National Conference on 16 October 1973, B1.19/29.

<sup>74</sup> Black Sash (1973) Athlone Advice Office Annual Report to National Conference on 16 October 1973, B1.19/29.

<sup>75</sup> Black Sash (1973) Johannesburg Advice Office Annual Report at National Conference on 15 October 1973, B1.19/29.

remained a staple of the reports through the 1960's and the early 1970's. The report broke down its cases along the following lines that year:

A N A L Y S I S.

<u>PROBLEM</u>	<u>NEW CASES</u>	<u>INQUIRIES</u>	<u>TOTALS</u>	<u>1971/72</u>
Ordered to leave the area	431	175	606	613
Issue of reference books	167	111	278	255
Housing problems	58	269	327	210
Foreigners	44	98	142	116
Work Permits	95	375	470	354
Residential Permits	306	308	614	361
Section 10 Qualifications	107	70	177	106
Ex Prisoners	12	24	36	49
Contract Problems	2	86	88	76
Miscellaneous	<u>23</u>	<u>339</u>	362	312
TOTALS	<u>1245</u>	<u>1855</u>		

**Source:** Johannesburg Advice Office Annual Report at National Conference on 15 October 1973, B1.19/29

Whilst assisting those arrested for various offenses stemming from segregationist and apartheid policies was a routine part of the work of the Advice Offices and the Black Sash, the repression of the state, as it confronted resistance from black South Africans in organized forms, via the rising independent trade union movement and popular community organizations, was to present the organization with a challenge. The year after the 1976 uprisings, which initiated with the Soweto schools revolt but quickly spread throughout the country, the Black Sash met in Johannesburg for the annual conference of 1977.<sup>76</sup> Whilst the organization had done advocacy work amongst white South Africans arguing for legal and policy reform, it had worked with black

<sup>76</sup> See Baruch Hirson's *Year of Fire, Year of Ash*.

South Africans within the law to press their cases within the juridical framework as it existed. The debate following the repression of June 1976, and following the formation of the Bureau of State Security (BOSS) successor, the Security Branch, and the beginnings of deaths of activists in detention, created a dilemma for some members of the Sash<sup>77</sup>: what stance should the Black Sash take in relation to the law, if apartheid was morally repugnant to their sensibilities of what the foundations of a legal order should be, but was itself legal?

The matter was raised by ‘Ms Franklin’ of the Natal Coast region: “The Sash” she lamented, “was founded to uphold the constitution but the irony is that there is very little to uphold... We can ask ourselves whether it is morally permissible for a small group to impose its brand of morality by Law.” She observed with consternation that “the security arm of the law has enormous powers and abuse of such power is seen in deaths of detainees, arbitrary arrests, etc. Our action has taken form of stands and handouts and has always been legal procedure but we must look and see how we can expose and oppose the activities of the Security Branch”. Pressing the case further, Ms. Franklin bluntly raised a serious dilemma which brought into question the stance the Black Sash had taken in relation to compliance and the law: “Laws which uphold apartheid do not demand our obedience or respect”.<sup>78</sup> In her summation of the discussion that followed, the organization’s President, Sheena Duncan, quickly brought the provocative questioning of the legitimacy of the law from the delegate of

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<sup>77</sup> The first death was that of Solwandle Looksmart Ngudle on 3 September 1963, the last under apartheid the apartheid era was that of Alfred Mabake Makaleng on 26 August 1988. During the 25 years of detention without trial, there have been 67 deaths in detention, an average of almost three each year. Only during 1970 and 1972 to 1975 were no deaths recorded, whilst peaks occurred in 1969 (7 deaths), 1976 (13), 1977 (13) and 1986 (4). These figures are cited at <http://www.sahistory.org.za/pages/library-resources/online%20books/crime-humanity/detention%20weapon.htm> accessed 25/08/10.

<sup>78</sup> Black Sash (1977) Draft Minutes of the National Conference held at Johannesburg on 15 to 17 March 1977, Bconf/31.

the Natal coastal region back into the legal fold: “Ms. Duncan”, the minute records, “pointed out that we may not discuss civil disobedience as Black Sash policy... We should be aware of the possibilities in testing the limits of the tolerance of the law... We must make sure that the application of the law is no wider than would be ruled by the Courts... and we should use due process of law to establish the peaceful and non-violent possibilities.”<sup>79</sup>

The matter was resolved in favour of Sheena Duncan’s view, but the issues that the organization would itself focus on increasingly was to shift more and more to the making visible, and the recording, of repression and suppression that arose from the violence of apartheid’s policies. By 1985 the Advice Office files still record that the attention to cases involving ‘documentation’ constituted the bulk of consultations in the large urban centers of the Western Cape and Johannesburg. These were consultations to do with the information necessary for the verification of requirements of urban residency under Influx Control laws. The Advice Offices were also consulted about disability and old-age pensions, housing and ‘domestic matters’. There was however also the issue of the effects of policing and repression that had become increasingly acute. In 1985 the Black Sash set up Crises Centers in conjunction with a number of NGOs’. It was in the Eastern Cape town of Port Elizabeth—under whose jurisdiction the town of Cradock where Mathew Goniwe was a resident—that the Crisis Center had to deal with such a large volume of cases that it felt compelled to hire full time staff, employing a director, and two assistants, as well as the regular compliment of at least three volunteers who ran the office each day from June 1985

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<sup>79</sup> Black Sash (1977) Draft Minutes of the National Conference held at Johannesburg on 15 to 17 March 1977, Bconf/31.

onwards.<sup>80</sup> Between June to September of 1985 the files show that there were 172 interviews with people who were victims of police action in one way or another—through detentions, assaults or deaths: “One man expressed the dilemma in which every township resident shared, notes Glenda Webster in her overview of the period, that ‘if you see the soldiers or the police you stand still, they beat you. If you run, they shoot.’”

By 1986 the Black Sash had also set up a group of volunteers who constituted a Court Monitoring Group. As the South African government placed greater restrictions on the extent to which the media could report on the actions of the South African Police and the South African Defence Force, the Sash felt that a direct monitoring of the cases that came before the courts would allow both an exercise of pressure through surveillance, as well as constitute a form of record keeping and knowledge, and contribute to the cataloguing of injustices.<sup>81</sup> The 1987 report noted that, “it is appalling to note the number of individuals who allege brutal violence on arrest, in Casspirs [an armoured vehicle used by the SAP and SADF], and in police cells—including incidents of torture. The assaults ranged from kicking and beating—with quirts, fists or rifles- to teargassing and close range-shooting” (In a few cases doctor’s certificates, photographs, and slides were offered in evidence).<sup>82</sup>

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<sup>80</sup> Webster, G (1986) ‘What the Advice Offices Reveal’, *The Black Sash*, vol. 29, no. 2 August.

<sup>81</sup> Black Sash (1987) Court Monitoring Report Presented at National Conference on 14 March 1987, B1.33/38; Black Sash (1988) Court Monitoring Report Presented at National Conference on 11 March 1988 discussing Legal rights, B1.33/38.

<sup>82</sup> Black Sash (1987) Court Monitoring Report Presented at National Conference on 14 March 1987, B1.33/38.

The relationship between the white female Black Sash volunteers, the almost all white lawyers, and the black South African's for whom they were the hope or possibility of legal justice mediated, is something that the court monitors themselves reflected on:

We have established very cordial relationships with attorneys and advocates involved in these cases, and have learned to admire their dedication in often trying circumstances. They in turn, have encouraged us. For us, as monitors, the court experience is disturbing and depressing. But it can be inspiring too...This is one of the few avenues available to us for contact across the colour divide—a place for possible bridge building. It has been made clear, again and again, that it has mattered to them to know that there are those who care and are concerned for them.<sup>83</sup>

The situation was to become more dire as the conditions in the country changed. In her Presidential Address of 1986, Sheena Duncan, reflected on a year with a somber opening:

The past year has been a year of mourning. We last met in Port Elizabeth in March 1985. Mathew Goniwe was there. Di Bishop presented a report about the visit she and Brian had made to Namibia. Molly Blackburn was there. Mathew is dead. Brian is dead. Molly is dead. We have wept for them as we weep for the hundreds of South Africans who have died since September 1984. The Institute of Race Relations estimates that 1158

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<sup>83</sup> Black Sash (1987) Court Monitoring Report Presented at National Conference on 14 March 1987, B1.33/38.

people were killed during those months. At least 4000 thousand people have been injured in the past 17 months.<sup>84</sup>

Just under ten years before, at the Congress of 1977, Sheena Duncan had firmly reminded delegates that the Black Sash would not discuss civil disobedience and that its policy was to utilize legal channels in order to alleviate the pain and suffering of apartheid's laws on the lives of black South Africans. Now, nine years later, the tone of her address had shifted dramatically: "There has been no change towards dismantling apartheid. Apartheid is the deliberately planned, coldly evil system designed for the subjection and the exclusion of the poor and the black majority in order to further the interests and preserve the power of the wealth and white minority. There has been no reform of apartheid". Departing from the position she had held before, Duncan sort solace in a legal hope no longer:

I believe that there is one small hope left in South Africa at the present time and that lies in those political movements and black communities who have withdrawn and are withdrawing their co-operation from the apartheid state. The withdrawal of co-operation entails civil disobedience. Civil Disobedience is not to be taken lightly but only in deep respect for the idea of law...Civil disobedience must not be entered into when the law can offer redress. It is a last resort. In South Africa the law does not offer redress for the many gross violations of civil liberties and human rights which are part of the laws of this country.<sup>85</sup>

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<sup>84</sup> Black Sash (1986) Opening Address by National President Sheena Duncan at National Conference held at Durban on 13 March 1986 B1.32/37.

<sup>85</sup> Black Sash (1986) Opening Address by National President Sheena Duncan at National Conference held at Durban on 13 March 1986 B1.32/37.



It was quite a shift, but this did not mean that the Black Sash would no longer seek recourse through the courts. Legal work would continue, and there was an intensification of the production of records, and evidence of state repression, and the dissemination of news, together with a greater identification and support for the work of black community organizations like United Democratic Front, which had come into existence in 1983, and of which Mathew Goniwe had been the key organizer in up until the time of his death in July 1985.

### ***Conclusion***

#### ***The Modes of Legal Accounting and Suffering***

At the Black Sash's 1964 Congress two resolutions were passed to both recruit more volunteers to the advice offices, but also to register in its publicity campaigns that the cases of Africans dealing with the effects of the migrant labour system affected millions and were part of the normal reality of day to day life. The first resolution passed noted that "in order that all members of the Black Sash should be better equipped to make the South African public aware of the devastating consequences of the Influx Control and Migratory Labour systems, every member of the Black sash should undertake to spend a morning in the Advice Offices and to bring at least one of her friends with her..."

The second recommendation, proposed by Mrs. Robb of the Western Cape and seconded by a Mrs. Cluver, was carried as follows:

That whenever Press or similar publicity is obtained for the Advice Office cases an attempt should always be made to have appended at the end :-

THIS IS NO 'HARD LUCK' EXCEPTION TO THE RULE. This case is typical of hundreds in the Advice Office files and of the South African situation. It is merely one more illustration of the fact that for millions of our compatriots, there is nowhere where they may live or work as a RIGHT in the land of their birth.<sup>86</sup>

In the first part of her speech of 1960, June Sinclair had focused on the harshest aspects of apartheid- the effect of apartheid's policies on the movement of Africans through the Pass Laws:

Thousands of Africans are 'endorsed out' of urban areas back to the tribal areas every month. Thousands of families are broken up and thousands of children are deprived of paternal care and discipline. Thousands are homeless, rootless and many are even stateless...Thousands of employers spend thousands of hours in pass offices in an endeavour to have their labour registered. Thousands of Africans spend thousands of hours standing in queues waiting for permits to seek work. Thousands of Africans travel thousands of miles to their homes in the country to await permission to travel back to town to take up the employment offered to them.<sup>87</sup>

She recalled in her address, spoken with eloquence and passion, that apartheid's victims were to be enumerated and measured in their thousands. The sense of the scale of the impact of the injustice of apartheid was vast. Towards the end of the talk

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<sup>86</sup> Black Sash (1964) 'Minutes of Black Sash Annual National Conference 20-23 October 1964', Pietermaritzburg, B1.10/28.

<sup>87</sup> Black Sash (1964a) 'South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair', Pietermaritzburg 20 October 1964 B1.10/28 p4.

that year she provided a summary ‘in a nutshell’ of the situation in the country in 1964. But the number of victims in this accounting is quite different in scale to the numbers invoked earlier on in the report, the shift now from thousands to much smaller figures: for example, the number of people banned (404), the number listed as Communists (435) , the number of people placed under twenty-four hour house arrest (13) , the number of people placed under ‘night arrest’ (24) , the number of people detained under the 90 day detention law (900), the number of political trials concluded (137), the number of people charged with receiving military training outside the country (126), the number charged with sabotage (260). And so on—the list goes on for two pages of her speech.<sup>88</sup>

This was a mode of accounting that was to continue over the years, and it was more pronounced by the late 1980’s when even the organization’s President came to despair about the utility of remaining obedient to the law. It is also a mode of accounting for the pain and suffering induced by apartheid that circulated more widely in the anti-apartheid movement both outside and inside the country. Pamphlets issued by various organizations, including the United Democratic Front, would routinely commence with a ‘State of the Nation’ section, where a list corresponding to the style and categories used above, would be listed, and the numbers of people affected enumerated. As the State of Emergency came into being in 1985, the additional significant category would be an accounting of people ‘detained without trial’ under the infamous “Section 29” of the Emergency Regulations, which allowed

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<sup>88</sup> Black Sash (1964a) ‘South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair’, Pietermaritzburg 20 October 1964 B1.10/28.

for renewable periods of 90 and 180 days of detention without access to legal representation or criminal charges, at the discretion of the Minister of Police.

I recall, when attending my first lecture at the University of the Western Cape as an undergraduate student of Political Studies, receiving a course syllabus, which I still have in my possession, which comprised of a reading list for the semester, to which was appended a ‘State of the Nation’ account, a list of Advice Offices in the greater Cape Town area, a section on ‘Knowing your rights under the Emergency Regulations’, and a note on how to respond in the event of being tear-gassed. This reflected the particular lecturer’s ethical-political stance, and a generally more activist stance that had been taken by that particular university, and not necessarily a more widespread academic practice at the time, but it was something entirely not out of the ordinary to do in the course of anti-apartheid mobilization.

In its more general sense, it is a mode of accounting which I suggest shifts between the abstract idea of apartheid’s thousands, if not millions of victims of pass laws and forced relocations, and discrimination—closer to the four wrongs identified with apartheid as a crime against humanity—and on the other hand, a narrower empirical sense of apartheid at the points where it concretely violates and fails to uphold the civilizational claims of universal law, as framed within a human rights discourse. From the vantage point of the latter, certain modes of evidentiary practices are put into play. These require very specific individualized wrongs to be witnessed, to be catalogued, to be marked on the body, to be narrated in order to provide verification.

If the TRC came to define apartheid quite incredulously as producing only 22,000 victims, then it is because the TRC's way of talking about the injustice of apartheid was the continuation, I hope to have shown, of a critique of apartheid forged through a human rights discourse. Characteristic of this discourse were certain ways documenting the violence of apartheid. Consequently, Black Sash and other organizations mobilized certain forms of knowledge in order to make claims within the *civil realm* of apartheid's bifurcated political structure. In this realm, 'racial discrimination' became the dominant marker of what apartheid was about. Race was seen in this rationality as the grounds upon which individuals were denied the universal by their place in the epidemiological taxonomy, and which condemned them to their particularity. They were thus excluded from liberalism's universal capaciousness. To correct this exclusion the modern political subject could make civil claims through law. More precisely, claims could be made through the mediating figures of law – those considered citizens with rights, on behalf of those considered non-legal, or precariously legal persons subjects lacking in rights. Over time, the one dimension of apartheid's bifurcated structure and the implications of its modes of power, repressions, injustices and possibilities that were put in play by the realm of the Traditional Authorities, customary law—the 'decentralized despotisms' as Mahmood Mamdani calls them— became the absent present of the figure of apartheid's victim, and of apartheid as a mode of power and subjection itself.

This mode of critique establishes then an idiom, and a style of evidentiary practice that requires not only a corporeal subject of suffering, but also an empirically verifiable corporeal agent of pain, a perpetrator, which a skillful lawyer could bring into the same orbit with the victim by linking the two in order to demonstrate culpability. It is

this genealogy of speaking about pain and suffering that comes to hegemony through its capacity to speak, as racial citizens, in a language and in a way that frames the wrong of apartheid—as racial discrimination—and which finds a global traction in and through a universalized liberal subject as its index.

### Chapter Three

#### The juridical life after death of the Cradock Four

*Some explanations of a crime are not explanations: they're part of the crime.*

*~Olavo de Cavarlho*

As I noted in Chapter One, two important questions were raised in the aftermath of the deaths of the Cradock Four: what happened, and who did it? The first question seeks to fill in the opacity of the event with narrative detail, it is a forensic question that seeks texture and detail: the why, the when, the where and the how. The second is a question about who was involved, a question of responsibility and blame and a question of culpability. Between the first and second questions are a number of mediating discourses. I have tried to show in the previous chapter that one discourse was the juridical framing of the wrong of this violence as a human rights violation. The wrong of apartheid exists, in this way of talking about it, as the unauthorized violation of bodily integrity. What happened could be ‘understood’, but it is a kind of understanding that instrumentalizes knowing in order to prove the commission of a ‘criminal act’ within the law. Knowledge of who did it, and the acknowledgement of who did it, would in a Kantian conception of legal imperative, require a prosecution.

I would like to make a distinction between different discourses of knowledge that are being invoked here – the knowledge of scholarship and criticism, that seeks an

understanding of particular events, processes and phenomena, and which may or may not be mobilized for specific ethical-political ends, and for either hegemonic or counter-hegemonic intentions, on the one hand. And ‘legal knowledge’ which, in legal formalism, views the juridical field as autonomous from the social field, and treats knowledge as ‘motive’, where motive is ‘a sort of causal power, a moving force which impels the agent toward his or her actions.’<sup>89</sup> During the inquest hearings, as well as the TRC Amnesty hearings, knowledge of ‘what had happened’ was produced. This knowledge was produced in a legal space, which we might describe as a ‘habitus’, drawing on the use Pierre Bourdieu has made of this concept, to refer to ‘a matrix of perceptions, appreciations, and actions.’<sup>90</sup> Knowledge that is produced within the habitus of law, when explaining the actions of ‘the perpetrator’, we might say tends to be transformed into the status of exculpation, where ‘to exculpate’ is to absolve the individual of culpability.

Law as discourse practiced within a certain habitus is invested with certain rules, produces certain kinds of knowledges, and puts into play certain kinds of dispositions and behavioural practices, established within what Bourdieu would call ‘structuring structures’<sup>91</sup>. Such knowledge directed towards ‘understanding’ what happened was

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<sup>89</sup> Kaufman (2003: 330). Whilst there is a debate in criminal jurisprudence about the issue, the orthodox and dominant position is for motive and crime to be distinct with the former not being seen as an ‘excuse’ for the latter, other than in certain specified instances, such as ‘insanity’ for example. Cf Eugene Milhizer (2004) ‘Justification and Excuse: What they were, what they are, and what they ought to be’, *St. Johns Law Review*, Summer; Bennett, J (1998) *The Act itself*, Oxford: Clarendon Press; Horder, J (2000) ‘On the Irrelevance of motive in Criminal Law’, in Horder, J. ed. *Oxford Essays in Jurisprudence*, New York: Oxford University Press.

<sup>90</sup> ‘Habitus’, which was used to describe the inscription of power and domination through somatic politics was earlier developed by Mauss in a famous essay on ‘*Techniques of the Body*’, and was invoked by Bourdieu to be able to theorize domination and hegemony outside a structure/ agency binary. Bourdieu (1977: 83); Bourdieu and Wacquant (1992:105).

<sup>91</sup> Bourdieu, Logic of Practice: ‘The law is a social field – set of objective and historical relations between positions of social actors who struggle for power or capital – in which participants struggle over the appropriation of the symbolic power that is implicit in legal texts. Thus, the law becomes a form *par excellence* of symbolic power – and of symbolic violence – given the possibilities possessed by its practitioners to create institutions and with them historical and political realities through a simple



brought forth, summoned, both by oral testimony as well as by the documents that were presented as ‘evidence’. Knowledge of what happened has therefore become simultaneously inscribed in legal discourse as a mode of gathering and relaying evidence. It has become knowledge that could implicate or absolve, as it did in the TRC hearings, where it took on the aura of ‘truth’.

In the aftermath of apartheid, there are two substantive texts that have focused on the killings of the Cradock Four. Both are written by lawyers. Christopher Nicholson, then an advocate has since become a senior judge in post-apartheid South Africa, and George Bizos is a longstanding senior lawyer of immense social standing as a ‘human rights lawyer’, derived from his record of defending high profile anti-apartheid activists, including Nelson Mandela in the 1950’s.<sup>92</sup> Both Nicholson and Bizos were involved with the inquest hearings that took place to investigate the deaths of Goniwe and his three comrades.

Nicholson produced a full length book, titled ‘*Permanent Removal: who killed the Cradock Four?*’ (2004), while Bizos devotes a substantive chapter to the Cradock Four in the monograph he has authored, titled ‘*No One to Blame? In Pursuit of Justice in South Africa*’ (1998). Bizos, Nicholson and a number of other lawyers who assisted them became directly involved in the case of the Cradock Four primarily through the statutory requirement in South African law for inquests into unnatural deaths.

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exercise of naming.’ Cf Villegas (2004: 62). As Villegas argues, “The law is, then, the exception whereas habitus is the rule” (Villegas 2004: 65).

<sup>92</sup> Bizos (2007)

It might be useful, as I suggest here, to think about the implications for how we understand the Cradock Four's killings, primarily mediated as they have been thus far, through the institutions, discourses and practices of law. What is at stake for these two lawyers, what prompted them to dwell on these killings, and to invest their time and energy in the production of texts of a popular nature that would circulate outside of the domain of law and lawyers? Both book titles are phrased to pose questions that hint at the stakes involved for the authors: the question on the one hand of responsibility ('who') and the question of accountability on the other ('blame'). These are two central questions of legal culpability when prosecuting a crime.<sup>93</sup> Yet in this case the two lawyers felt compelled to seek an alternative route, outside of the law, in order to address their questions about the preferred form of accountability that remained after the legal inquests as well as the quasi-judicial process involved in the Truth and Reconciliation's Amnesty. The questions therefore are more than legal questions. Or rather the questions seem to presuppose that their answers are responding to questions posed within the domain of law, but which remained to be answered outside of the domain of law. In my discussion of these texts I wish to foreground the meaning of 'justice' as it comes to be understood in juridical discourse at work here, in particular as it gets highlighted in Bizos's formulation of his motivations: 'the pursuit of justice in South Africa'.

Bizos's book, written a few years before Nicholson's, focuses on a selection of cases involving deaths at the hands of the Security apparatuses of the State. Death due to unnatural causes in apartheid South Africa required an inquest to establish, via a medical autopsy performed by a state authorized medical practitioner, what the cause

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<sup>93</sup> Sistare (1987) 'Agent Motives and the Criminal Law', *Social Theory and Practice*, 13 (30)

of death was. This could in turn, on the recommendation of the medical practitioners, establish the need for a criminal investigation to ascertain legal responsibility for a criminal act. The decision to prosecute an offender would be taken by the Minister of Justice, and not by an ‘independent’ legal authority, as is the case in certain constitutional democracies with separations of power. In other words, it was an explicitly political prerogative. In the South African case, this could mean a greater tendency toward proceeding with a prosecution for explicit political outcomes, or alternatively, not proceeding with a prosecution to prevent certain political outcomes, and their possible consequences.

The attempt by the killers of the Cradock Four to conceal both their own identities as well as that of their victims might not only have had the aim of denying the anti-apartheid movement a political opportunity to mobilize followers and memorialize martyrs, it also had a legal-political aim. The *South African Inquest Act* (1959) stipulates that

If the body of a person who has allegedly died from other than natural causes is available, it shall be examined by the district surgeon or another other medical practitioner, who may, if he deems it necessary for the purpose of ascertaining with greater certainty the cause of death, make or cause to be made an examination of any internal organ or any part or any of the contents of the body, or of any other substance or thing.<sup>94</sup>

The identification of the bodies of the Cradock Four, as bodies of ‘known persons’ would require, by statutory decree, that there be closer bio-medical and legal scrutiny,

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<sup>94</sup> Sect 3 (2) *Inquest Act 58 of the Republic of South Africa*, 1959.

with the potential for an investigation, a scenario the killers would have wanted to avoid. Section 5 (2) of the Inquest Act noted that

‘[i]f on the information submitted to him [the Public Prosecutor] in terms of subsection (1) it appears to the magistrate that a death has occurred and that such death was not due to natural causes he shall, subject to the directions of the Minister, take such steps as may be necessary to ensure that an inquest as to the circumstances and cause of death is held by a judicial officer....’<sup>95</sup>

The Cradock Four subsequently became the object of two official inquests, which I will hereafter refer to by the names of the presiding Magistrate of each: E. Zietsman (1989) and Neville De Beer (1994) respectively referred to as the Zietsman and De Beer Commissions.<sup>96</sup>

As a ‘human rights lawyer’, George Bizos’ case-load spans an illustrious career of more than four decades defending those adversely affected by Apartheid’s laws. The cases discussed in his writings are referred to in South Africa as ‘high profile cases’: among them the first political detainees who had died while formally in detention, like Looksmart Ngudle and Ahmed Timol in the 1960s’, the death in detention of the Black Consciousness movement leader Steve Biko, the death in detention of the trade unionist Neil Aggett in the 1970’s, and the inquests into the Cradock Four in the 1980’s. In the foreword to *No One to Blame* Sidney Kentridge, who’s prominence amongst a group of lawyers I have referred to in the previous chapter, notes that

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<sup>95</sup> Sect 5(2) Inquest Act 58 of the Republic of South Africa, 1959.

<sup>96</sup> Goniwe and others 1994(3) SA 877 (SECLD). I have read through the transcript of the inquests in the archive of the Cory Library, Rhodes University. For the purposes of my discussion here, focusing on the legal narrative from the vantage point of lawyers, I have relied mostly on the accounts as mediated through Bizos and Nicholson’s recollection of the proceedings.

(Bizos's) book is about a continuing search for truth – the truth about the deaths of the sixty or more people who died in the hands of the Security Police during the years of apartheid in South Africa. It is also about the repeated failure of the judicial officers to recognize that truth even when it was staring them in the face (Kentrige in Bizos 1998: vii).

Bizos himself explains that

Colleagues and friends who had heard me relate my disappointment with the exoneration of torturers by inquest magistrates have for years suggested that I should try and get it out of my system through writing. I have resisted the temptation partly because our profession has a conservative attitude towards publicity...Nadine Gordimer, and other writers, David and Marie Philip, colleagues...encouraged me. They won the day (Bizos 1998: viii).

Bizos had written the book after the TRC applications and the hearings for amnesty had taken place, but also prior to Judge Ronnie Pillay announced the decision of Amnesty Committee in December 1999, reinforcing the demands for and of 'Truth'. Bizos concludes the book with a projection: "The search for truth will continue. Why, how and by whose hand so many died in detention is not yet fully known. We owe it to their memory to keep the dockets on their deaths open in the hope that those who know will not take their secrets to the grave" (1998: 239).

### ***The De Beer Inquest***

*And the question of individual guilt or innocence, the act of meting out justice, to both the defendant and the victim, are the only things at stake in a criminal court.*  
**Hannah Arendt** (1963: 298).

The first inquest that investigated the deaths of the Cradock Four took place in February 1989, some three years after the deaths had occurred. An NGO, the *Legal Resources Center*, first engaged Arthur Chaskalson, who would go on to become the first President of post-apartheid South Africa's Constitutional Court, on behalf of the families. In turn, Chaskalson deputed his friend Bizos to run the case (Bizos 1998: 166). It was at this inquest that a 'factual' outline of the 'known' was established around the event of the killing: of who the victims were, where they were coming from, where they were going, and what the immediate context was. From the medical examiners report it was clear that death was by unnatural causes, and quite deliberate harm was done to the bodies. For Chaskalson and the legal team, the car registration number plate that had been found partially burnt out at the scene served as a key piece of evidence. The registration plate belonged to the car, but had been removed, and replaced with another set of registration plates, which belonged to another car that had since been put out of commission or 'scrapped'. It was this piece of evidence that allowed Chaskalson to convince Magistrate De Beer that there was more to the killings than a random robbery accompanied by murders. It suggested that a high degree of planning was involved, and that there was a deliberate attempt to destroy the identities of the bodies, as well as evidence which might link the car to the owner, in this case the white Honda Ballade that was registered to Matthew Goniwe.

Chaskalson and his team lacked any physical or direct evidence to implicate a specific group or set of individuals, particularly anyone associated directly with the State.

Their hope was that they could leave the Magistrate with a strongly argued conjecture about who had been involved that bordered on innuendo, a strategy which they hoped would lead the Judge to only one logical answer: that members of the agencies of the

State were involved in the killings. In Bizos' words, the judge asked, "Now then, what does the evidence then tell us about who might be the killers?" he asked. Bizos recounts his response in his book:

We know them to be a group sufficiently strong and well organized to stop the car, to overpower, to stop the car without doing it any damage, sufficiently strong and well organized to overpower the four deceased people and sufficiently strong and well organized with petrol, guns and weapons and with transport to move the bodies about and take them to different places.... It was a group of people sufficiently skilled to formulate a plan and to leave a false trail.... Now there must be a group of persons who were willing to drive around with dead bodies in the dark of night, to conceal and disfigure the bodies, to engage in this macabre and dangerous undertaking, to conceal the identity of their victims, and if it were, as I suggested it must be, a politically motivated murder, why would this be done? Why should people disappear? Who would want people not to be traced? It could be that there would be no inquest. It could be that there would be no funeral. It could be that there were no martyrs.... (Bizos 1998: 169-70).

This was the extent of the intimation that Chaskalson and Bizos could make: the circumstances surrounding the deaths, and the identities of the victims would suggest that the killings had a 'political motive', and that although there was a conflict underway between activists of the United Democratic Front and the Azanian Peoples Organisation (AZAPO), there was an insufficient presence of AZAPO in Cradock to given credence to this theory. The only other political beneficiary, with sufficient

means and motive would have to be governmental agencies. Magistrate de Beer did not however need to spend much time pondering the evidence, and was quick to return a judgment on the matter. He declared crisply that the “only finding I can make in this regard, which is also a finding to which all parties have agreed, is that their deaths were brought about by a person or persons or group of persons unknown” (De Beers Inquest cited in Bizos 1998: 171). As Bizos lamented about this judgement at the time: “Once more, no one was to blame.”

The question of who had killed the Cradock Four was to remain unanswered in legal terms until it again became a subject of national attention in the country in 1992 when a piece of evidence surfaced that seemed to link, quite incontrovertibly, the state to the bodies of the Cradock Four. A number of important developments took place between the conclusion of the De Beer inquest and the year 1992. These events started to reveal the presence of institutions popularly known as Death Squads within the security apparatus of the South African government. These ‘Death Squads’, as I have noted in Chapter One, were set up to operate in secret and carried out ‘extra-judicial killings’, illegal even under the suspended civil law provisions enabled by the State of Emergency. They attracted a considerable amount of attention, and had the potential for scandal, precisely because of their lack of legal sanction not only within the legal framework of the apartheid state but also under the State of Emergency provisions, which had suspended much of the legal code protecting expressive and associative rights of citizens.



### *The Zietsman Inquest*

Secrets began to unravel in earnest in October 1989. A former security policeman, Butana Alfred Nofomela, contemplating his scheduled execution the following day—the 20<sup>th</sup> October, calculated that he might be able to stave off the gallows by offering information on killings carried out by a unit of the South African Police that he was a part of. Nofomela was to be executed for the criminal murder of a farmer, and feeling abandoned by his superiors who had always assured him of his impunity, decided to make his revelations. When he made a last minute effort to secure his freedom through his superiors, an envoy was sent to tell that unfortunately he would have to “take the pain” (Laurence 1990: 7). He made his disclosure in an affidavit to a lawyer of the non-governmental organization, *Lawyers for Human Rights*. In the meanwhile, Nofomela’s commander, Coetzee, in the special unit “C1”, now known in popular discourse by the name of the farm where it was headquartered, *Vlakplaas*, [‘Flat Farm’], had been making similar revelations to a journalist of the dissident Afrikaner newspaper, *Die Vrye Weekblad* [The Free Weekly Magazine].

The national and international scandal provoked by the public nature of the revelations forced the Minister of Justice to set up a committee of two – comprising a provincial Attorney General and an army general—to investigate the allegations. Their report was handed to then President FW De Klerk, who released it only a year later. The McNally report, named after the attorney-general who authored it, concluded that neither Nofomela nor Coetzee’s allegations were credible. De Klerk accepted this finding and continued to resist calls from certain quarters for a judicial commission of inquiry. He would later accede, with the establishment of a

commission under Judge Louis Harms that was appointed to investigate allegations of irregularities within the South African Police and Defence Force with regards to political violence.<sup>97</sup> Harms' mandate was confined to investigating only cases within the borders of South Africa and prevented from issuing subpoenas that could compel potential witnesses to give evidence. Whilst the Harms Commission findings have been described as a 'farce' by Bizos and others, Judge Harms had found that a unit known by the Orwellian name of the '*Civil Co-operation Bureau*' had 'been involved in death squad activities' but, he concluded on the basis of his evidence that he "exonerated the police and the defense force from any wrong doing" (cited in Bizos 1998: 173).

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<sup>97</sup> Harms, L.T.C (1990) '*Commission of Inquiry into Certain Alleged Murders*', RP 109-90(A); RP 109-90 (E); S297/151 (A); S290/152(E); murders.

De Klerk recalled the chronology of his actions in his submission to the TRC on behalf of the National Party:

On 9 July 1990 the Government announced the final termination of the National Security Management System, and also drastically scaled down the role of the State Security Council. The management of covert operations was further reviewed after receipt of the report of the Harms Commission. I appointed a committee under chairmanship of Prof E Khan to advise on the desirability of all secret projects and to recommend on the phasing out, where possible, of such projects. Part of its brief was to advise me of the adequacy of existing control measures. I appointed a standing commission (The Goldstone Commission) to investigate incidents of public violence in November 1992 I appointed General Pierre Steyn to investigate allegations made to the Goldstone Commission with regard to activities of the Directorate of Covert Collection of Military Intelligence. These steps - and particularly the reports of the Goldstone Commission - were instrumental in uncovering many of the abuses that have now come before the Courts and the Truth and Reconciliation Commission. However, the Goldstone Commission consistently found that abuses had been committed by all sides in the conflict. I therefore submit that extensive steps, in keeping with what could reasonably be required under prevailing circumstances, were taken to prevent abuses and the gross violation of human rights. The inability since 1994 of the new Government to bring political violence in KwaZulu-Natal to an end serves as a good case study of the limitations on any Government to effectively deal with the type of violence which has plagued our country for so long.

The second inquest into the hearings of the Cradock Four came after the publication of a document that surfaced in 1992 in the anti-apartheid newspaper, *The New Nation*<sup>98</sup>. This document has subsequently become known as ‘the signal’ (*‘die sein’*), referring to a category of internal communication, namely a note that would be encrypted and circulated between different branches of the state bureaucracy and contained information considered and marked by various degrees of confidentiality, as either ‘Secret’ or ‘Top Secret’, various degrees of urgency, and various degrees of circulation. This particular signal had been sent by a Col. Lourens du Plessis, secretary of the Eastern Province Joint Management Center (JMC). It was sent on behalf of General Joffel van der Westhuizen who was chairman of the JMC, and was addressed to General Janse van Rensburg, who was chairman of the strategy branch of the Secretariat of the State Security Council. The signal was given to the media by the homeland leader of the Transkei, General Bantu Holomisa, who in turn had apparently received it from du Plessis.<sup>99</sup> An innocuous appearing, typically bureaucratically formatted page, with a ‘Top Secret’ [*Uiters Geheim*] stamp prominent on the top of the black and white-marked rows and columns, it was further marked as ‘Priority’ [*Prioriteit*], and the handwriting in Afrikaans refers to a conversation between Van Rensburg and Van Der Westhuizen, dated 7<sup>th</sup> June 1985, and then indicates

2. Names as follows [*Name as volg*]: Matthew Goniwe

Mbulelo Goniwe

Fort Calata

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<sup>98</sup> ‘Death Signal’ (1992) *New Nation*, 8-14 May

<sup>99</sup> Pauw, J (1991) *Into the Heart of the Whore*, Southern Book Publishers, Johannesburg

3. It is proposed that the abovementioned persons be permanently removed from society as a matter of urgency [*Dit word voorgestel dat bg. persone permanent uit die samelewing, as saak van dringeneid, verwyder word*]

4. Widespread reaction locally, as well as nationally should be expected given the importance of these persons, particularly the first named, for the enemy.... [*Wye reaksie kan plaaslik sowel as nasional verwag word agv belangrikheid van hierdie persone, veral eersgenaamde, vir die vyand....*]<sup>100</sup>

The Zietsman inquest, which started on 28 February 1993, forms the bulk of Bizos' own writings on the Cradock Four. That time around, he was the lead advocate representing the families. Furthermore, the inquest became a source of considerable information about the security logic of the apartheid state. The Zietsman inquest especially reveals contours of two contending rationalities in the state: the political and the legal. We see the attempt here by Bizos to bring these two contending rationalities to a head in order to tip the scale in favour of a legal imperative.

By the early 1990's classified state intelligence documents had begun leaking out of the South African state's security agencies. The Police and the Defence Force could no longer effectively stonewall inquiries into their actions through silence or through plausible denials. A small amount of textual and oral artifacts in the form of documents, reports and affidavits, which constituted legally accepted evidence, were

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<sup>100</sup> Cory Library, Rhodes University, Transcript of the Zietsman Inquest (1994) p84

forcing an opening up and providing insights into the shadowy rationalities and practices of state security. A growing lack of will and capacity to enforce a coherent and collective denial was especially evident when three separate legal teams appeared at the Zietsman Inquest to represent each of the state agencies who felt they had something to answer for: the South African Defence Force, the South African Police and the Department of National Intelligence. In the course of the inquest it became apparent that there was considerable intra-departmental animosity between the Defence Force and the South African Police, over competing mandates as well as competition over recognition for ‘rewards’ or avoidance of responsibility.

Like Chaskalson before him in the De Beer hearing, Bizos wanted to demonstrate the destructive presence of the state on the bodies of the Cradock Four. That is to say, he wanted to show that the South African government had killed the Cradock Four through personnel and agencies that were in its employ, and that this was done outside of the authorized forms of juridical execution administered through the death penalty. For Bizos the challenge appeared easier, given that they<sup>101</sup> had in their possession a document which seemed to be a clear instruction to ‘permanently remove from society’ three of the Cradock Four, what Bizos was to call the ‘smoking gun’ (1998: 174). If Bizos could show that the state had a reason to kill Goniwe and the others, and if he could generate a consensus that the signal was indeed ‘the smoking gun’, an instruction to kill, then the grey area of the actual persons who did the killing would become less of an obstacle to proving that the South African government was responsible for the deaths.

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<sup>101</sup> Whilst I refer to Bizos in the singular, I am aware that he points out at all times that he was assisted by a team of lawyers: Clive Plaskett, Nicollette Moodie and Mohamed Navsa.

To that extent, the Zietsman inquest was to shed light on how Matthew Goniwe was viewed by the state. I have in mind something like James Scott's phraseology, of 'seeing like a state' (1998) but I am not referring to a developmental optic here. Rather I am referring to the optic of the legal-state, the state that looks at the population also from the vantage point of 'law and order'. The inquest was therefore also useful because it gave a picture of a rather reclusive and much speculated upon aspect of the South African parliamentary democracy of the 1980s. In as much as this was a racialized and ethnicized State, it claimed for itself the mantle, like the state of Israel does in the Middle East, of being the only democracy in the Southern African region. What emerged in the Zietsman inquest was the degree to which being at 'war' was the driving rationality that had become centralized within the structures of governance, particularly after the former Defence Minister, P.W Botha, had become Prime Minister in 1978.<sup>102</sup> This rationality had created an institutional framework for waging a 'war against terror', and it was therefore simultaneously at war at home and abroad, whilst maintaining the features and rituals of a parliamentary democracy for white South Africa. The actual governance of the country was therefore less decided by the structures of parliament, and more and more determined, after 1983, by a centralized system which ran from the State President, to the State Security Council (SSC) and downwards via a National Security Management System (NSMS) which coordinated local and provincial governance through Joint Management Centers (JMC's). At each of these institutional levels, military, policing and 'biopolitical'

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<sup>102</sup> Much of the critical literature describes it as the 'militarization' of the state (cf Cock, Posel, Swilling). I describe it as a rationality of war, because I think that this more accurately describes how and why the state became structured as it did, for the waging of a war against multiple enemies. It was a war that was waged internally and externally, becoming the mandate of both policing and the military. Militarization seems to suggest that the military captured the state institutionally, from the civilians, which I think is an inaccurate description. Secondly, the condition and declaration of 'war' has different legal-political consequences, as I intend to show in Chapter Four.

functions were represented and integrated. It was a war very much understood in Cold War terms, with terrorists as local iterations of a global communist threat.

The implications of understanding the late apartheid years in South Africa, as a condition of civil and Cold wars, the relationship to the Cold War, and African nationalist claims for sovereignty, is a question I take up in a later chapter. For now, what I would like retain for the purposes of this discussion, without delving into too much depth about the operationalization of this ‘war on terror’, is that Bizos’ legal team emphasized this argument considerably and, to some extent, even pressed it upon the SADF and SAP legal teams at the inquest provoking responses from them. His opening sentence in the chapter on the Cradock Four in his book *‘No One to Blame’* notes that, “In the 1980s Matthew Goniwe was the apartheid regime’s enemy number one in the Eastern Cape” (1998: 163). Later he notes that,

It became clear during the second inquest that Goniwe had been such a problem for the security forces that they had considered him ‘the enemy’.

Van Rensburg testified that ‘The enemies in the counter-revolutionary war were all revolutionaries who were focused on overthrowing the state in an unconstitutional manner’ (Bizos 1998: 182).

With these words Bizos clarified how resistance to apartheid came to be viewed not as a political opposition but as actions of an enemy – an enemy who was also a military enemy and an enemy in war. Whereas one may dialogue with a political opposition, military enemies are mortal enemies, to be destroyed. In a war, as Hannah Arendt noted, a soldier cedes the right to life, that is the right to have the right to life (1968: 293-4).

To go back to the Zietsman inquest that became particularly focused on ‘the signal.’ Firstly, was the signal ‘authentic’, and secondly, what did it mean? The authenticity of the document itself was quickly verified through a number of witnesses who testified to that effect, particularly Jacobus Pretorius, a cryptographer for the South African Defence Force who was responsible for relaying and deciphering encoded signal messages. He testified that he was in charge of the encryption of all signals from the Eastern Cape Command of the SADF. The normal procedure required the cryptographer to destroy (shred or incinerate) the original signal that was the source of the encrypted signal usually after period of three months after it was produced. Pretorius conceded that he could not know how many copies the author of the signal might have made since he only required and handled the original. He testified that he recalled this particular signal as one that he had handled and had relayed because he had himself filled in certain parts of the form –parts such as the ‘Handling Instructions’ while also making a note of the kind of cryptographic system he would have used. He also verified that the handwriting style of the instructions as that of the author, Col. Lourens du Plessis, and recalled that ‘this report was written on 1985-06-07 at 14.30 and was handed over by me for encrypting. I encrypted it on the same day.’<sup>103</sup> In his affidavit the author of the signal, Col. Lourens du Plessis confirmed that Brigadier van der Westhuizen gave him an instruction to send the signal from the Eastern Cape JMC to General van Rensburg of the Secretariat of the State Security Council in Pretoria.<sup>104</sup> Brigadier van der Westhuizen himself was less forthcoming in his own affidavit, and declared a moment of amnesia: ‘I don’t remember the sign, if it

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<sup>103</sup> In his words, “This report was composed on 1985-06-07 at 14.30 and was handed to me on the same day for transmission. I sent the sign on the same day.’ [Hierdie berig was op 1985-06-07 om 14.30 opgestel en was dieselfde dag aan my oorhandig vir versending. Ek het dieselfde dag ook die berig versend’. Affidavit of Pretorius, 1992. J.H, Zietsman Inquest, Cory Library, p74.

<sup>104</sup> ‘Sworn Statement: Lourens du Plessis’, Transcript of the Zietsman Inquest, 1993, Vol. 21, p102



existed at all in the first place.’ [*Ek kan die sien, as dit wel ooit bestaan het, glad nie onthou nie*’].<sup>105</sup>

Van der Westhuizen noted that while his memory failed him concerning the particular signal, his memory of Mathew Goniwe was more vivid:

From about the middle of 1984 the unrest situation in the Eastern Province became so bad that anarchy reigned in certain parts of it. At that point the Eastern Province was the flashpoint of the revolutionary onslaught against the State. The names Matthew Goniwe and Fort Calata, which appear in the signal, are names that I can still remember. I remember that Matthew Goniwe was a schoolteacher in Cradock. I remember also that his name received attention because there was a plan to erect alternative structures in black areas, known as the “G” Plan. In the expression, the “G” refers to Goniwe. In other areas this plan was known as the “M” plan, which referred to Mandela. Goniwe played a very prominent role in the aforementioned revolutionary onslaught. He was one of the leaders of the UDF, and to the best of my knowledge, Cradock was the first area where alternative structures were implemented.

Furthermore he was one of the leaders of the militant youth movements of the Eastern Cape region, and because of that he received the prominent attention of the media, the security police, and the Dept. of Education and Training.

[*Vanaf ongeveer die middle 1984 het die onrussituasie in die Oostelike Provinsie sodanig versleg dat anargie in gedeeltes daarvan geheers het.*

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<sup>105</sup> ‘Sworn Statement: Christoffel Pierre van der Westhuizen’, Transcript of the Zietsman Inquest, 1993, vol 22, p108

*Op daardie stadium was die Oosterlike Provinsie die brandpunt van die rewolusionere aanslag teen die Staatsbestel..Die name “Matthew Goniwe” en “Fort Calata” wat in die sein genoem word, kan ek nog onthou. Ek onthou dat Matthew Goniwe (“Goniwe”) ‘n onderwyser op Cradock was. Ek onthou ook dat say naam erkenning gekry het omdat daar in die Oostelike Provinsie na die plan vir die daarstelling van die alternatiewe structure in swart woongebiede verwys is as die “G-Plan”. Die “G” in the uitdrukking “G-Plan” het verwys na Goniwe. In ander gebiede het die gonoemde plan as die “M-Plan” bekend gestaan, in welke geval die “M” na “Mandela” verwys het. Goniwe het ‘n baie prominente rol in the voormelde rewolusionere aanslag in die Oostelike Provinsie gespeel. Hy was een van die leiers van die United Democratic Front (“UDF”), en na die best van my wete was Cradock die eerste plek in the RSA waar voormelde alternatiewe structure geimplimenteer is. Verder was Goniwe die leier van die militante jeugsbewegings in die Oos-Kaap streek, en het ook as gevolg daarvan in die media sowel as by die Veiligheidspolisie en by die Deppartment van Onderwys en Opleiding prominensie geniet (ibid. 106-7).*

The meaning of the signal was less straightforward. The phrase seemed to be far more semiotically ambiguous than Bizos would have liked, as different witnesses testified that ‘permanently removed’ could refer to a range of options available to the state, including jail or detention. An Afrikaans-language expert was brought in. This writer of speeches for one of the army generals involved has since spoken about how she wrote a twenty-four page long report at the request of a SADF general she worked

for. In her testimony during the inquest she went on to argue that ‘permanently removed from society’ did not mean ‘killing’.<sup>106</sup> As for Col. Lourens du Plessis: he noted that whilst he authored the signal “I am quite sure that Brigadier van der Westhuizen never gave me the impression that he was proposing that any person was to be killed. If he had indeed done this, I would definitely have remembered.” [*Ek is egter baie seker daarvan dat Brigadier van der Westhuizen nooit teenoor my te kenne gegee het dat sy voorstel behels date enige persone doodgemaak moes word nie. Indien hy dit wel gedoen het, sou ek did baie beslis onthou het.*]<sup>107</sup>

The receiver of the signal, as named on the document was General van Rensburg. In his account he described the critical security situation in the Eastern Cape, and the central role of Goniwe in this. Nevertheless he denied that one of the options his colleagues and he considered involved killing Goniwe or other activists. He had however requested suggestions about what to do about Goniwe. In his words,

During this conversation a possible alternative was identified, namely that Mr. Goniwe as well as his militant lieutenants, be held indefinitely in terms of the security legislation, specifically Article 28 of the Internal Security Act (Act74 of 1982) until the explosive political situation had calmed down. An alternative was also the possible transfer of Mr. Goniwe to another city in the Republic to achieve the same goals. This would make it possible to hold the leader of the unrest situation for long periods of time. For all practical purposes, this would achieve the same results. For all intents and purposes this would permanently remove him from

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<sup>106</sup> The author is now a writer of popular Afrikaans language ghost stories. [http://www.litnet.co.za/cgi-bin/giga.cgi?cmd=print\\_article&news\\_id=65200&cause\\_id=1270](http://www.litnet.co.za/cgi-bin/giga.cgi?cmd=print_article&news_id=65200&cause_id=1270)

<sup>107</sup> ‘Sworn Statement: Lourens du Plessis’, Transcript of the Zietsman Inquest, Vol. 21, 1993, p104

community. This signal, according to me, definitely does not order anyone to be murdered, as implied in the article in the *New Nation*.

*[Tydens hierdie gesprek was 'n moontlike alternatief genoem, naamlike dat Mnr Goniwe asook sy ander militante luitenant, eerder ingevolge Veiligheidswetsgewing, een meer spesifiek Aartikel 28 van die Wet op Binnelandse Veiligheid (Wet 74 van 1982) vir 'n onbepaalde tyd aangehou moes word ten einde die plofbare situasie te ontlont. As alternatief was ook moontlikheid genoem dat Mnr Goniwe eerder verplaas kon word na 'n ander sentrum in die RSA, ten einde moontlik dieselfde gevolge te bereik...Dit sou die moontlikheid maak om van die leierfigure van die onrus vir lang tydperke aan te hou. Hulle sou dus vir alle praktiese doeleindes uit die gemeenskap verwyder word...Die sein bevel volgens my baie beslis nie aan dat enige persone vermoor moes word, soos wat nou klaarblyklik geimpliseer word in die New Nation nie.]*<sup>108</sup>

The signal had come from the South African Defence Force, not the South African Police. Bizos decided to focus on how the SADF viewed Goniwe and what the implications of this were. What the semantic debate revealed was that Matthew Goniwe was the object of the gaze of at least three state institutions, both at a provincial level, as well as nationally. His employer, the Dept. of Education (DET), the SADF, and the Security Police branch of the South African Police, had all placed him under surveillance, and each could assert a different potential implication of the phrase. Each suggested meaning reflected the particular concerns of the agencies and

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<sup>108</sup> 'Sworn Statement: Johannes Frederik Janse van Rensburg', Transcript of the Zietsman Inquest, 1993, vol 23, pp 112, 113, 116

their personnel at the time. Matthew Goniwe, as I will discuss later, had come to be seen as central to the anti-apartheid organizational activity of the United Democratic Front in the Eastern Cape. He was also a schoolteacher, and a school principal. He was therefore a challenge for the Dept. of Education, given that schools had become important sites of resistance at local and national levels to state policies. There had been a resurgence of political activities from 1976 onwards; these activities further intensified in the 1980's. The inquest heard about a debate that had ensued between the Dept. of Education, the SADF and the SAP about 'the Goniwe problem'. An ad-hoc committee was established to propose a resolution of the problem that would satisfy all three institutions. Chaired by Brig. Geldenhuys, the 'Geldenhuys commission' was set up on June 6, and had its first meeting the following day. That day, June 7, was also, incidentally, the very day that the signal calling for the 'permanent removal' of Goniwe and two others was authored.

The Geldenhuys Commission noted that the sticking point was a disagreement between the Dept. of Education and the Eastern Cape branch of the Security Police over the Goniwe's future as a teacher and principal. Eventually a consensus was reached and the Commission recommended a 'conditional re-instatement' that amounted to a 'restriction' of permitted activities (Bizos 1998: 198). This report was delivered as a memorandum by the Commissioner of Police, Gen. Johann Coetzee to the Minister of Law and Order on the 25<sup>th</sup> June 1985. Two days later however, on the 27<sup>th</sup> June 1985, seemingly at odds with the recommendations to the Minister of Law and Order by the Geldenhuys Report, Goniwe and the others were killed.

Bizos and his team faced conflicting narratives about what was to be done about the ‘Goniwe problem’- a signal calling for his permanent removal from society on the one hand, and a memorandum calling for his conditional re-instatement as a school principal or restriction on the other. The difference between these two recommendations were stark—a difference between life and death, and between illegal and legal punishment. The latter was of particular interest to human rights lawyers, since it meant the distinction between a legal act and a crime. Bizos was convinced that the Security Police had agreed to the Geldenhuys Commission recommendation’s as a ruse, because they had a parallel plan under way: “They (Geldenhuys Commission recommendations) seem to be void of substance, as if written for form’s sake by people who knew a solution was already at hand, as if they were trying to build an alibi into their own documents” (Bizos 1998: 188).

At this point during the trial, Bizos recalls that the attorney representing the SADF, Anton Mostert, invited him to his home and shared an important insight in confidence: he had evidence that it was the South African Police and not the SADF, his client, which had in fact carried out Goniwe’s murder. It was Mostert’s intention to introduce evidence into the hearing that would steer the judge towards the SAP, and therefore away from his client, the SADF (Bizos 1998: 197). Any remaining semblance of a coherent front between the SAP and the SADF as integrated units of the formidable and hitherto omnipotent security apparatus of the state had now come undone.

As he had said he would do, Mostert shifted focus from the SADF to the SAP by sharing his information with the Judge that at “this stage the indications are...that the

police, and particularly the Security Police, should be investigated and examined to determine the existence of any complicity in the murder of Goniwe and the others whose murders are the subject of the inquest (Bizos 1998: 197).” Mostert’s allegation was based on evidence he had acquired in the course of an investigation into what had become known as the Motherwell bombing.<sup>109</sup> Three black security policemen were blown up by a bomb planted in their car in 1989, near the Eastern Cape town of Motherwell. At the time the police declared that ANC ‘terrorists’ were responsible, and the ANC military wing, from its position in exile, had in fact taken responsibility for the killings. It turned out, according to Mostert, that the three were killed on the orders of a Security Police captain by the name of Gideon Niewoudt, to allay fears that they were going to reveal their role, and the role of the Security Police, in the killing of the Cradock Four four years earlier.

Mostert requested that the Judge call three members of the Eastern Cape branch of the Security Police: Niewoudt, Col. Eric Winter and Col. Harold Snyman, to testify.

Eric Winter had joined the Cradock branch of the Security Police in March 1985, transferred from the then South West Africa, where he had been a member of the infamous *Koevoet* police unit since 1980. A number of other members of *Koevoet* were transferred to Cradock during the same period (Bizos 1998: 200). Bizos was intent on highlighting the idea that Goniwe was considered an ‘enemy’, and he pursued this notion in his cross-examination of Winter as well. Fred Koni, a former member of the Cradock Security Police between 1978-1989, informed Bizos and his team that he had received instructions from Winter to heighten Goniwe’s surveillance in June 1985. Goniwe’s movements were already being monitored and his phone calls

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<sup>109</sup> Nine security policemen would later apply for, and were refused amnesty for the killings. Acc/99/0345

intercepted. Koni himself had monitored the phone calls, and reported the proposed visit to Port Elizabeth on 27<sup>th</sup> June to Winter, who then ‘made a phone call and left the office with two colleagues.’ As Bizos noted, “Koni did not see him until the next day. On that day, the 28<sup>th</sup> June 1985 he looked anxious and ordered Koni and his colleague Msoki to keep listening to Goniwe’s telephone and not to take breaks together” (1998: 201).

On the witness stand Winter was not obliging. Bizos noted that ‘Winter continued to try to distance himself from the murders, denying much knowledge of the UDF’. And in an interesting twist, it was now the lawyers for the SADF that were cross-examining the members of the Security Police in a hostile manner, trying to implicate the latter. During his questioning of Col. Winter, Adv. Mostert representing the SADF, questioned the amnesia of the Security Police, noting that Winter had answered that he ‘didn’t remember’ 135 times, 19 times said he ‘had no knowledge’, and answered evasively 83 times. Bizos was pleased however that that Winter did acknowledge that he considered Goniwe “ an enemy of the state because his activities were aimed at making the country ungovernable” (Bizos 1998: 203).

The next witness was Col. Snyman, who as noted in the previous chapter, had applied for amnesty for his involvement in the killings. This time it was the counsel for the person who had leaked the signal to the press, Col. Lourens du Plessis of the SADF, who was cross-examining the SAP Colonel about whether he consider Goniwe an enemy. The cross-examination went as follows:



“ ‘You have also accepted, if I understand your evidence correctly, that Mr Goniwe was busy fuelling the revolutionary climate in the country through his activities, correct?’

‘Correct, M’Lord.’

‘So you consider Mr Goniwe to be an enemy, correct?’

‘M’Lord, yes, in such a case, possibly.’

‘Not possibly. You considered Mr. Goniwe to be an enemy.’

‘I said in my testimony yesterday that he was considered to be of security interest due to his activities.’

‘Yes. I want to put it to you that your evidence of yesterday can’t be correct in light of what you have just testified.’

‘But you were talking about MK [Mkhonto we Size] members now.’

‘But you agreed with me and said that people who fuel the revolutionary climate make it easier for MK members to do their job, not so?’

‘Correct, M’Lord.’

‘So you accept that you saw Mr. Goniwe as an enemy.’

‘There was no information that he housed MK members.’

‘No, but there was information that he fuelled the revolutionary climate.’

‘He was definitely of security interest’.

‘He as an enemy, Colonel’.

‘He was of security interest, M’Lord.’

‘Why are you scared to say you saw him as an enemy?’

No answer

‘You don’t have an answer. Why are you scared to say you saw him as an enemy?’

‘Well, he acted against the state, that is clear.’

‘Why are you scared to say you saw Mr Goniwe as the enemy?’

‘I considered him to be of security interest and that is why we monitored him.’

‘Colonel you considered him to be the enemy. Why are you so scared, as you sit there in the witness box, to say so?’

No answer

‘Do you have an answer Colonel?’

‘He was a danger to the state, a threat.’

‘Colonel, do you have an answer to my question? Why are you so scared to say you considered Matthew Goniwe to be an enemy?’

‘He was considered to be dangerous to the state.’

‘Why are you scared- listen to my question- why are you scared to say that you saw Mr. Goniwe as an enemy?’

‘We considered him to be of security interest and dangerous to the state.’

‘Colonel, what are you trying to hide? You don’t want to use the word enemy?’

‘I am not hiding anything M’Lord’.

‘Now why don’t you say honestly that you considered Mr Goniwe to be an enemy?’

No answer.”

The judge then intervened:

‘Did you see him as an enemy?’

‘I saw him as a danger to the state M’Lord.’

‘That is not what asked. My question is, did you consider him to be an enemy of the state- yes or no?’

‘One could describe it like that, M’Lord.’

‘What is your answer?’

‘Yes.’

What does it mean to be an Enemy? It is quite clear that Harold Snyman had some sense of the implications of inhabiting that identity, of being an ‘enemy of the state’. It was only in his silence, and in the repeated recording in the transcript of this silence as a form of answer, as ‘*No Answer*’ that he could find refuge, until ultimately compelled to a different form of answer, a spoken one produced by the order of the Magistrate. He would neither want to answer whether he considered Goniwe an enemy nor answer why he would not answer, or what in the words of his interlocutors ‘scared’ him about it. Both the lawyers for the state institutions as well as Bizos’ team had accepted and given an account of a situation of war in which Goniwe had become a ‘legitimate’ target in a war on terror and communism. Yet both sides now faced the various implications of this argument. Human rights lawyers had been enticing the witnesses, through legal argument and cross-examination, to acquiesce to and confirm their theses; and the SADF and SAP lawyers had, through similar techniques of legal argument, trying to make sure their respective clients did not so acquiesce and confirm Bizos and his team’s assertion that Goniwe was a target in a war on terror and communism. The SADF and the SAP personnel could convincingly argue that they believed themselves to be at war; however the parliamentary-constitutional identity of apartheid South Africa implied that killing an individual without a formal judicial trial and sentencing process sanctioning the act made the

killing ‘illegal’ and therefore criminal. Legal imposition of the death penalty would have been the alternative, but that is not what happened here.

The Zietsman inquest ran from March 1993 to September 1993, producing a record of three and a half thousand pages. The inquest resumed for final arguments in February 1994 and the Judge delivered his finding on 28 May 1994. As Zietsman set out his finding he restated that his task was to follow the requirements of the Inquest Act, and to ascertain whether ‘the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.’ He went on to note that in line with the findings of the first inquest, the murders showed a high level of planning, and then declared that “the South African security forces, which included the police, the Security Police and the army, had the necessary ability and resources” necessary for such a level of planning. Discussing the SAP involvement, he noted that the evidence “raises a suspicion that Col. Snyman and Col. Winter knew that Matthew Goniwe and the others were to be murdered and that they could have taken part in the planning of the murders.” There was not however, Judge Zietsman argued, sufficient evidence to suggest a *prima facie* case. Regarding the signal sent by the SADF to the Secretariat of the State Security Council, he argued that the evidence suggested that the signal was intended to convey that Goniwe and the two others named in it, were to be killed. However, he noted that

The problem is that we do not know what happened to the signal after it had been received by Maj. Gen. van Rensburg.... Evidence to link the signal to the murders is lacking and the set-up of the National Security Management System does not in itself justify the assumption and

inferences that I have been urged to make... I am not able, on the evidence placed before me, to identify the murderer or murderers.<sup>110</sup>

Reflecting on the outcome of the inquest, Bizos noted that

[o]urs was a partial victory in that for the first time in South African legal history it had been found that the security forces were not above murder and that they were in fact responsible for the murder of Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlauli. But we were disappointed, if not surprised, that the judge had not gone beyond the strict letter of the law. No prosecutions would follow. No one would be held accountable. In the eyes of the law, no one was to blame (Bizos 1998: 240).

There are two points here I wish to underscore. Firstly, as Bizos notes, the Zietsman inquest found, for the first time in South African legal history, that the security apparatuses of the state were collectively responsible for murder. At the same time, the finding of collective responsibility remained, for him an inadequate finding.

Which brings me to my second observation: the ‘eyes of the law’, as Bizos puts it, need to see individuals rather than collectivities as ‘responsible’. If there were to be accountability for the fate of the Cradock Four, there would have to be individual perpetrators. The inquest considered the deaths of four individuals within the ambit of South African jurisprudence, and within the ambit of Criminal Law, it sought criminal liability that required a particular form of perpetrator.

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<sup>110</sup> Transcript of the Zietsman Inquest, Cory Library; Bizos (1998: 218-219).

Lets turn now to Christopher Nicholson's *Permanent Removal* (2004), written after the Amnesty Committee of the TRC had made a decision on the applications of the seven security policeman who had admitted a role in the killings of Cradock Four (which Bizos had also opposed on behalf of the families of the Cradock Four). By the time Nicholson had written his book, some of the questions that Bizos's posed, the questions of motive, of means and of responsibility, had been answered. But it was the question of individual responsibility that was also at stake in Nicholson's book; this time however the question of who should be held accountable was divided between those who carried out the deed, or those who authorized the deed. Given that the identities of those who carried out the deed were now known, Nicholson wanted a form of justice that held those who authorized the deed accountable. Nicholson sets out his reasons for writing the book and broader motives in the opening preface:

When twenty innocent men, women and children were gunned down by police on the 21<sup>st</sup> of March 1985 in Kwanobuhle, outside Uitenhage in the Eastern Cape, I was part of a team of lawyers who represented the families of these victims at the ensuing inquest held in Port Elizabeth. During the inquest I spent a lot of time with Molly Blackburn, of Black Sash, who was of immeasurable help—not only to the lawyers, but also to the families, whose lives had been devastated by the killings. It was in the first week of April 1985 that I met Matthew Goniwe and Fort Calata at Molly's house. In the short time that we spoke I was impressed by their immense integrity and courage. I was shaken and deeply saddened by the murders of Goniwe, Calata and their comrades Sparrow Mkonto and Sicelo Mhlauli, in June 1985, and was keen to find out who was responsible. The possibility of every fact being laid bare in the killing of

the Cradock Four was the spur that led to the writing of this book (2004: xv).

The activists' characters had left a deep impression on Nicholson as a lawyer. In Nicholson's view, the TRC hearings had brought to light sufficient evidence that showed how those in the highest office of executive authority in the Apartheid State had to have known of Goniwe's impending murder, authorized the actions, and were therefore responsible.

Nicholson's analysis is based on the information brought to light during the Amnesty hearing and in the exchanges and questioning of the Amnesty Committee. The amnesty process was set out in the Act that legislated the TRC into existence.<sup>111</sup> The Goniwe case was amongst one the prominent cases that featured in the more than 7, 000 applications for amnesty received by the Amnesty Committee, and as I have indicated before, it was the first case to be heard.<sup>112</sup> Amnesty could be granted to individuals who had committed acts considered 'gross violations of human rights' between 1960-1994. This was contingent on two requirements: that there be a 'full disclosure of all relevant facts', and secondly, that the act or acts be 'associated with a political objective'.<sup>113</sup> Defining what a political crime, and what a political objective was, proved a challenge for the Committee.<sup>114</sup> The Committee resolved its dilemma in practice by privileging a factor that it directly derived from the enabling legislation:

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<sup>111</sup> Promotion of National Unity and Reconciliation, Act 34 of 1995

<sup>112</sup> South African Truth and Reconciliation Commission, *Summary of Amnesty Decisions*, available at <http://www.truth.org.za/amntrans/index.htm>

<sup>113</sup> 20 (1) Promotion of National Unity and Reconciliation, Act 34 of 1995

<sup>114</sup> cf Raylene Keightley (1993), 'Political Offences and Indemnity in South Africa', *South African Journal of Human Rights*, no.9, pp 334-339; Ronald Slye (2000) 'Justice and Amnesty', in Villa-Vicencio and Verwoed, W. eds, *Looking Back, Reaching Forward: Reflections on Truth and Reconciliation in South Africa*; Anurima Bhargava (2002) 'Defining Political Crimes: A Case Study of the South African Truth and Reconciliation Commission', *Columbia Law Review*, Vol. 102, No. 5

Whether an act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organization, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter.<sup>115</sup>

By asking for the applicant to provide evidence of ‘orders’, and evidence which could demonstrate that acts were carried out ‘on behalf of’, or with ‘approval of’ another agent, the Committee was focusing on the *explicit* authorization of an act, and the capacity of the applicant to prove this and, in effect, negating any *implicit* conception of the authorization to act internal to the agent as person or institution.

As recalled above, toward the end of the second inquest, two conflicting narratives had emerged regarding the ‘fate’ of Matthew Goniwe. Was he to be reinstated in his position, with conditions, or was he to be ‘permanently removed from society’? These two narratives led the lawyers acting on behalf of the families to the view that in order to have a fuller understanding of what had happened to the Cradock Four, these two opposing narratives would have to be reconciled by the amnesty applicants. The testimony of Lieutenant Jaap van Jaarsveld, who worked in the State Security Council, as a secretary, was in Nicholson’s view, to shed much needed light on the matter, and put “the pieces of the puzzle” together (Nicholson 2004: 191-2).

Van Jaarsveld testified that sometime in the middle of 1984 he had received an order from Craig Williamson, then the Head of the South African Police’s Security Intelligence Unit, who was based in Pretoria. Williamson had asked Van Jaarsveld to “investigate whether it would be possible to take out Matthew Goniwe.” During his

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<sup>115</sup> 20 (3) Promotion of National Unity and Reconciliation, Act 34 of 1995



cross-examination Bizos requested clarity on that phrase. Van Jaarsveld was unambiguous in his understanding: “It meant to kill him.” He described a reconnaissance trip he had made to Cradock to meet with members of the Security Branch in Cradock and to visit Goniwe’s house:

Later that morning we went to Cradock. One of the members of the security branch, Sakkie van Zyl, accompanied us. He had come from Koevoet and I assumed he was a captain... A meeting was held at his offices where he showed their VIP room, that is, where all the tapping devices were monitored.... After that we went to Goniwe’s home in Henry Fouche’s motor vehicle. The road to the house was very bad, but the house itself looked very different to those in the environment. As I remember it, it was painted white. Mrs. Goniwe was at home when we arrived. We greeted her and walked through the house.... Fouche pointed to a double adaptor for the radio and told me that there was a tapping device inside it. After a while we left the house and went back to the Cradock Security Branch. From there we went back to Port Elizabeth (Nicholson 2004: 193).

On his return to Pretoria Van Jaarsveld contacted Craig Williamson and, as he said, ...recommended that Goniwe could not be taken out at his house because there were too many people in the vicinity and it would make the process problematic.... I recommended that he [Goniwe] be followed and taken out alongside the road somewhere (Nicholson 2004: 194).

At this point in the text Nicholson records that,

When the families of the Cradock Four heard Van Jaarsveld's words they whispered excitedly to one another... "*taken out alongside the road somewhere*"- this was the source of the plan to kill their husbands and fathers... The pieces of the puzzle were finally starting to fit (Nicholson 2004: 194).<sup>116</sup>

Another piece of the puzzle then appeared, apparently anonymously. As Nicholson tells it, during the hearings of the Amnesty committee, on a May morning in 1999, Bizos found a number of documents on his desk, and among the documents were minutes of a few State Security Council meetings. To digress slightly, when I began my research a few years ago on the construction of the enemy and state security in South Africa in the final years of apartheid, I visited the national archives in Pretoria where the minutes of the State Security Council are stored. I was told that the minutes between 1985-1990 had not been declassified, and that I would have to apply for the declassification of the documents through the Freedom of Information Act (PAIA). I duly filled in a form but received no further correspondence regarding my application. My follow-ups were also not successful. Shortly afterwards I decided to focus on a specific case with an archive that was 'publicly' available – the Cradock Four inquest and amnesty hearing transcripts- and I decided I did not require further access to these documents and did not pursue the matter further. No doubt, there are political and legal concerns for controlling access to these documents<sup>117</sup>. In any event, as it turns

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<sup>116</sup> The ways in which the families appear in the texts, both of Bizos and Nicholson, as motivation for the lawyers, is something I am noting at this point, and need to come back to, to reflect on further.

<sup>117</sup> See Kate Allan.ed (2009) *Paper Wars: Access to Information in South Africa*, Johannesburg: Wits University Press; The filmmaker David Forbes, seeking to make a documentary on the Cradock Four, encountered the same challenges. Forbes persisted, and in partnership with the South African History Archive, took the matter to court with success after a couple of years. David Forbes's documentary, "The Cradock Four", had its inaugural screening in South Africa, in August 2010. Forbes persisted, because as he noted, in his talk, and in email correspondence, getting access to the documents is a Constitutional right, and he is motivated by the desire to have questions answered that for him related to questions of culpability of individuals in the State that were involved. His questions and motivations are therefore quite similar to those of the lawyer's narrative I am describing above. My decision not to

out, George Bizos was supplied with copies of minutes of a few meetings relevant to the Goniwe case, which he made public at the Amnesty hearings and which now form part of the 'public' transcript.

One of these SSC meeting minutes revealed that two days before Van Jaarsveld had been given an instruction to 'take out' Goniwe, a SSC meeting had taken place in the cabinet room of the Hendrik Verwoed Building in Cape Town. It was chaired by the then State President, P.W Botha, and in attendance were the Ministers of Transport, Finance, Constitutional Development, Internal Affairs- represented by the future State President F.W de Klerk, the Minister of Foreign Affairs, Pik Botha, the Minister of Defence, Magnus Malan, the Minister of Law and Order, Louis Le Grange, and the Minister of Education and Training, Barend de Plessis, the Commissioner of Police and the Director-General of National Intelligence, and and a few other deputy ministers. Bizos drew attention to item 4 on the agenda, '*Unrest in Black Schools*', and read from the minute:

After an overview by General Groenewald, Minister du Plessis, at that time the Minister of Education and Training, raised the following points, point f. being 'In Cradock there are two ex-teachers who are acting as agitators. It would be good if they could be removed'.

There appeared no dissent and the minutes did not record that anyone spoke out against the proposal.... The minutes were marked "Top Secret" and a limited number of copies (52) were printed (Nicholson 2004: 198).

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take the matter further stems from the different nature of my concerns that are less about individual legal culpability and justice, and more about collective and political forms of justice.

The Mail and Guardian led that week with the headline ‘*The Top Nats who ordered Goniwe’s Death*’<sup>118</sup>, quoting from the SSC minutes, and declaring that

The top secret minutes from the meeting, which started at 10 a.m. on March 19 1984, provide strong proof that the former president and other NP politicians master-minded the state-sponsored assassinations that have so far been blamed solely on the underlings of the security forces (ibid.).

It also contained an account of Mungo Soggot’s telephonic interview with F.W de Klerk, by then residing in London, in which De Klerk recalled only that he remembered that Barend du Plessis had recommended ‘rerouting’ Goniwe and Calata to another school in another part of the country (ibid.). Later, Bizos released further minutes of SSC meetings.<sup>119</sup> These included a SSC meeting on the April 29 1985 at the Presidential residence Tuynhuys in Cape Town, where senior ministers, including F.W de Klerk were presented with a report by a Colonel Erasmus attributed the political instability in the Eastern Cape to UDF affiliates, and the following resolution was taken: “Certain covert operations have been initiated at JMC [Joint Management Center] level to identify and neutralize upcoming UDF leaders at the earliest opportunity (ibid.).

The Amnesty Committee heard the case of the seven policemen who had come forward and who admitted carrying out the action. The outcome need not occupy us here right now. For Nicholson, as I note above, sufficient information had come to light to connect the dots between the most senior political leaders of the country and the operatives who carried out the deed. Justice would also therefore be a question of who authorized the action. It is with the view that a criminal trial extraneous and

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<sup>118</sup> Soggot, M ‘Top Nats who ordered Goniwe’s death’ *Mail and Guardian*, 28 May-3 June 1999

<sup>119</sup> According to Nicholson, copies of these minutes were passed on to Bizos by John Daniel, a Professor of Political Science then working as a researcher for the TRC. Nicholson (2004: 210).

supplementary to the TRC might be a possibility under the then newly formed National Prosecuting Authority that Nicholson ended his book. He posed it as a question: “Will the families of Matthew Goniwe, Fort Calata, Sparrow Mkonto and Sicelo Mhlauli- as well as many others- ever know for certain who authorized the murders of their loved ones” (2004: 221)? He quotes the widow of Matthew Goniwe, Nyameka, speaking in April 2002:

We need to be told what the next move is going to be, especially after the impression we got was that there was going to be a prosecution. We knew that the old regime would never prosecute, but we were led to believe our new government would bring justice to the victims of apartheid. They promised us and they must deliver on this one (cited in Nicholson 2004: 229).

During the two inquest hearings we heard from the documentary information, and from the oral testimonies, that the security personnel considered Matthew Goniwe an ‘enemy’, and we heard why this was so, about the ‘flashpoint’ that the Eastern Cape province was seen to represent, the eye of a revolutionary storm. From the vantage point of the security personnel this was a condition of war. My interest here is how this knowledge can be useful in order to ‘understand’, to make ‘thinkable’ practices considered by some to be beyond the pale of understanding, as only the product of pathological aberration, or the product of metaphysical ‘evil’. From another perspective, perhaps what we might call a scholarly vantage point or the imperative of criticism, this kind of knowledge helps us understand the realm of the ‘political’ both as it is constituted and as it constitutes the ‘legal’. Yet, it is a knowledge also mobilized within the legal habitus in order to be negated at the moment of its coming to being, a flash that appears on the surface only to be instantly erased, since it is

knowledge as ‘evidence’. In the exchange between the security policeman who seeks to recognize and deny that Goniwe was seen as the ‘enemy’ this tension is brought out most acutely. The ‘enemy’ straddles two discursive registers in that moment- the enemy in war and politics and the enemy in law.

Bizos in the theater of the inquest, sort to coax the political enemy out into the open. He sort to coax the enemy out into the open – to expose it in the glare of law in order to finally deliver justice. What cannot quite acknowledge are the ways in which the enemy exists not in the form of a corporeal person, but as a heuristic device embedded in an epistemology, as a way of understanding, of ordering the social, and as an ontology of being. For, he too partakes in the conventional narrative, in the autobiography of law and the modern state according to which what is novel about the modern state is indeed universal law. This law is, Bizos believes, the negation of violence.<sup>120</sup> As I have recalled in the previous chapter, in the autobiography of the modern state, philosophy’s contract theory, from Hobbes, to Locke and Rousseau, describes for us a certain genealogy and a relationship to law, a state which replaces a socialized right to violence with the socialized obligation to Law. This is vital to its civilizational claims: A state which banishes violence from the realm of the social and the political and quarantines it to the barracks, where it is the prerogative of only the state, as Max Weber (1964) was to remind us, to monopolize the right to unleash this violence, and even then, we are told, under specific rules which can make violence legitimate. If violence is passion, then law is the reason that can transform and transfer violence from the realm of passion to the realm of rationality; law’s violence

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<sup>120</sup> Hobbes [1651] (1985), Locke [1689] (1993). This is a narrative I problematize in later chapters.

thus becomes legitimate. It is this rational violence that Charles Tilly (1990) would argue was constitutive of state formation in Europe.

This vivid and gory recompense, of the right to shed blood if ‘by man his blood be shed’ is the right that social contract theorists will tell us, leads to a general insecurity which requires a Common Law to be administered through what would become the monopoly on violence that Weber describes. This justification of a common law, as a ‘reasoned’ development that protects the right to liberty, to property and to life, has become a foundational text for the discourse of rights in modern liberal thought. Of course at the time, as Robert Williams has persuasively shown, this discourse figures the temporally coincidental subject of Western imperialism, ‘the native’, as either savage or property, and therefore as a subject ‘with whom one can have no society’, since with the native as savage there is no possibility of reason or rights, and with the native as property there can be no talk of rights, since property itself does not possess rights; rather it is men who possess rights *over* property.<sup>121</sup>

As it unfolds in the autobiographical narrative of the modern state, violence and law are positioned in the narrative of Western modernity’s progress, as antithetical. In the logic of this rationality, in the realm of the properly modern, violence and law should not be seen together.<sup>122</sup> This is not to suggest that violence is done away with.

“Covenants, without the sword,” Hobbes would declare, “are but words, and no strength to secure man at all” (Hobbes 223). The question then becomes when could

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<sup>121</sup> Williams (1990: 247-247). The political moment of this narrative of the modern state’s rationality is temporally co-existent and in a mutually constitutive and agonistic relationship to imperialism and colonial violence, especially after 1492, a point often elided in the salutary autobiographical version of the ‘modern states’ history. See also Aime Cesaire’s *Discourse on Colonialism*; Walter Mignolo (2000); Mahmood Mamdani (2005: 4-8).

<sup>122</sup>It is for this reason, we might say, that the executioners’ identity is often hidden during the administration of the death penalty. Even then, during the execution of a ‘legitimate’ violence in the name of the Law, the two cannot face each other unmediated by a veil, either symbolic or real.

the sword be wielded, and who could wield it? This would be the question inscribed into our current discourse on the legitimate display of sovereign power.

When Bizos in the legal domain of the inquest hearing, and as he brings violence to face law, it is violence which is expected to recoil as it senses itself in hostile territory. It is the security police officer who seeks refuge in silence, in the strategic deployment of evasiveness, in the recourse to ‘No Comment’. If the enemy in war and politics, following Clausewitz’s dictum, are *filial*<sup>123</sup>, the enemy in law is presented as an enemy *of* law. The human rights lawyer who thinks of human beings as ‘enemies’ within the law also turns the security policeman into an enemy of the law.

The practice of bringing into view, into the space of the inquest, a view of the world, as a world of enemies, puts into play a set of strategies, of back and forth, of revealing and concealing. What the human rights lawyer seeks to bring into view is not therefore knowledge-as-understanding, but rather knowledge as knowledge of ‘motive(s)’ underlying a crime. Motive is essential to that chain, which ties thought to action in a way that does not allow the one to escape from the other. It transforms understanding from that which is thinkable, as *potential* to that which is doable, or rather ‘has been done’- it is the juridical form of a postmortem. The killings *have been done*. We have evidence of this in the material form of mutilated bodies, verified by another order of knowledge: forensic science and the medical expertise contained in the coroners report. Bizos seeks to prove that the ‘motive’ is now clear: they – the four deceased – were the ‘enemy’.

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<sup>123</sup> ‘War is the continuation of political intercourse, carried on with other means’ Clausewitz *On War* p87



Knowing and doing, cognition and motion have been brought together in the criminalized act – killing as murder – with the criminalized agent/s. In other words, a victim and a perpetrator have been produced. At this point the victim is a victim of state violence and the perpetrator a perpetrator of murder. It is from within this frame, in the double sense of the word – ‘to be framed’ as an act of law, and to be framed as the boundary of what we see and what we do not see – that specific victims of state violence, like the Cradock Four, have been transformed post-apartheid, and come to stand in for the generalized ‘victims of apartheid’, and the specific perpetrator of murder has come to stand in for the generalized perpetrators of apartheid.<sup>124</sup>

By their own accounts, for both Bizos and Nicholson, the motive for writing monographs that deal with victims of state violence in South Africa, have to do with foregrounding what they perceive to be the demands of the widows, articulating their own familiarity with the inquests they were involved in accompanied by the feeling that ‘justice’ had not been done. Bizos speaks of law’s failure during the apartheid years and in Nicholson experienced TRC’s failure to prosecute in a post-apartheid South Africa. Bizos, during repeated inquest hearings, would argue that sufficient evidence was presented to judges to find the apartheid governments’ security police complicit and responsible for the Cradock Four murders. Yet this evidence was repeatedly overlooked in the findings of the presiding judges. His book is dedicated “To all for whom before and after their deaths justice was not only blind but also deaf and dumb”. In Nicholson’s case, it is a worry about the sacrifice of justice that he expresses when he asks

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<sup>124</sup> As an example of this way of thinking about the incomplete question of justice in South Africa, see Terry Bell and Dumisa Ntsebeza’s (2003). *Unfinished Business: South Africa, Apartheid and Truth*. London: Verso.

Did the negotiations that led to the new South Africa include and agreement that the masterminds of the murder would be immune from prosecution? Have these men refused to confess their deeds and shame in the certain knowledge that they will not be punished for their crimes but are free to take their pensions and disappear from public life (Nicholson 2004: 221)?

For both Bizos and Nicholson then, the imperatives of law, and legal justice, have been trumped by politics, both during apartheid and after apartheid. The failure to prosecute those who carried out the deeds, and those who ordered them, marks a failure in the eyes of the lawyers, and the eyes of widows like Nyameka Goniwe, to do 'justice' to the 'victims of apartheid'. Bizos had spent many years during the apartheid years working to bring to justice those who had been responsible for the deaths of political activists. For many who were part of the anti-apartheid movement the death of activists, from Biko, to the Pebco Three, to the Sharpeville Six, to Rick Turner signified certain questions. Questions of who did it. These were partly rhetorical questions, since as I said earlier, it was a question that many already had an answer to: it was the State. Yet it was a question requiring an answer: who where these anonymous individuals who seemed omnipresent and omnipotent, but who constituted 'the State', from the visible policeman in uniform, the security branch officer in civilian clothes, to the politicians, like P.W Botha or F.W de Klerk who denied any responsibility or role in the violence or the deaths and seemed to be able to act with impunity.

*Conclusion*

Like the previous chapter, in this one too I have discussed what I call the juridical life after death of the Cradock Four and our understanding of state violence. We have seen that ‘what we know’ about what happened to the Cradock Four, and ‘why it happened’ are thus far largely constituted by an archive produced in the space of a legal habitus. This legal habitus inflects that archive and our reading of it during a period of political transformation. Knowledge thus produced has been mobilized in order to provide ‘motive’ for the crime and implicate or acquit the subject(s) who apparently carried it out. Motive to commit a crime is therefore juxtaposed to exculpation – the freedom of the individual from culpability. But the policemen’s motives to kill the Cradock Four, as the human rights lawyers themselves discovered during their cross-examinations, were guided by the belief that these activists were the state’s enemy in a war. However criminal law is not equipped to judge policemen as state agents acting against enemies in a war; it can merely account for individuals – as individual perpetrators acting against individual victims – not as a collective or bearing corporatized identities of ‘the security police’ versus ‘the UDF’, but as seven individuals conspiring to kill four individuals, disembodied from history, geography and social identity. Bizo and Nicholson were faced with that inability of law to see beyond the individual, its inability to see state histories and political identities at work, to judge and deliver justice accordingly. At the same time, their own training and trained instincts had led them to regard such a ‘blind’ justice that could rise above specific histories and politics as law’s virtue. Now, in their minds, if only the state could realize law’s virtue and rise above politics to indict state and political personnel themselves – a hope that both Bizo and Nicholson continued to hold onto as they penned their respective tracts. The majesty of law would then be vindicated.

## Chapter Four

### The Partisan and the Political

*We know of no other means to imbue exhausted peoples, as strongly and surely as every great war does, with that raw energy of the battleground, that deep impersonal hatred, that murderous cold-bloodedness with a good conscience, that communal, organized ardor in destroying the enemy, that proud indifference to great losses, to one's own existence and to that of one's friends, that muted, earthquake like a convulsion of the soul....*

**Frederick Nietzsche** (1908: 8, 472).

*Here at last we have the perfect authentication of the idiot's view of history as one damn'd thing after another: rising-information-decision-order.*

**Ranajit Guha** (1988: 57)

Let us return then to the scene. The bodies of four black men found burnt and stabbed in a *veld* on the coast of Port Elizabeth known was Bluewaters Bay. The town of Cradock, which the four men were returning to when they were intercepted on a bend in the road in the darkness of night, is named after Sir John Cradock. It was established as a stronghold to secure the eastern area of the Cape Province after the infamous Fourth Frontier War of 1812.<sup>125</sup> Cradock had arrived in South Africa in September 1811, smarting from a period of controversial service in India. With swift resolve to succeed where his predecessor seemed to lack the will, and to rehabilitate his reputation perhaps, on Christmas day of 1811 he delegated Colonel John Graham to lead an amalgamated force of British troops. A number of settlers and the all-Khoi Cape Regiment reinforced the troops who went into the expanse of land along the

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<sup>125</sup> The Frontier Wars were a series of nine wars fought over one hundred years between 1779 to 1879, principally pitting the colonial settlers against Xhosa chieftaincies in what is now known as the Eastern Cape Province of South Africa.

Fish River known as the *Zuurveld* (a Dutch name which translates as “the Sour Field”). The campaign was brutal like no other. The aim was to expel every Xhosa person from the *Zuurveld*. The army attacked Xhosa men and women, torched villages, corn and other crops as well as laid claim to thousands of head of Xhosa-owned livestock. When the director of the London Missionary society travelled through the *Zuurveld* just a year later in 1813, he recorded in his notes that formerly the area “was strewed over with Kaffir villages, but now not a living soul is to be found. Universal stillness reigns” (MacLennan 1986: 125-6). The land had been cleared for settlement.

“My intention is now, Graham confided to a colleague “to attack the savages in a way which I confidently hope will leave a lasting impression on their memories, and show them our vast superiority in all situations.” He had given his army “orders to stay there so long as a Kaffir remains alive, and to bring off all their cattle, which when they choose to quit *our country* shall be restored to them [emphasis added]” (MacLennan 1986: 112). Graham was to later reflect in a letter to Lord Liverpool that “ I am very happy to add that in the course of this service there has not been shed more Kaffir blood than would be necessary to impress on the minds of these savages a proper degree of terror and respect” (cited in MacLennan 1986: 112).

Known as the Fourth Frontier War, it ended in 1812 when the colonial army drove Chief Ndlambe, along with a number of lesser Xhosa chiefs, and about 20,000 subjects, from the *Zuurveld* into the territory of his nephew, Chief Ngqika, to the east of the Fish River, and with whom he was to have a fractious relationship.<sup>126</sup> As a

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<sup>126</sup> An account of some of the tensions between the two can be found in a prose piece ‘*Idabi lama linde* (The Battle of Amalinde)’, by the famed Xhosa praise poet, and *imbongi yesizwe jikilele* (‘ poet of the

reward for John Graham's violent success, Sir Cradock named a small garrison camp after the leader of the successful military campaign, now known as 'Grahamstown'. Cradock also took the liberty of naming one of the new villages, which linked Grahamstown to a series of outposts who would guard against retaliatory Xhosa incursions, after himself. Xhosa warriors, it is said, continued to wage war sporadically against the colonial settlers for another fifty years, but the 1812 victory had been a turning point: 'the balance of power how shifted to the Whites'.<sup>127</sup>

Just over one hundred and fifty years later, we return in 1985 to the garrison town of Cradock to find violent armies roaming the landscape instilling 'a proper degree of terror'. In a moment of both repetition and difference, they were still seeking to resolve the problem that the colonial state had delegated to the military forces led by Graham. The problem was an old one: of a minority seeking to maintain their rule over a majority.<sup>128</sup> If the 1812 Fourth Frontier War is considered in the colonial archive's 'prose of counterinsurgency' to be a turning point in the settler assertion of territorial dominance, we heard from policemen who applied for amnesty for killing the Cradock Four that even in 1985 the area was regarded as 'strategic' in the cartography of war – as a space to be conquered and defended.

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nation'), S.E.K Mqkhayi. Cf Mqkhayi, S.E.K (2010) *Abantu Besizwe: Historical and Biographical Writings 1902-1944*, transl. Jeff Opland, Johannesburg: Wits University Press, p311

<sup>127</sup> Beck, R. B (2000) *The History of South Africa*, USA: Greenwood Publishers, p46. On the relationship between the Xhosa chiefs Ndlambe and Ngqika, and the narration of these events in relationship to an African nationalist historiography, see Premesh Lalu (2009) *The Deaths of Hintsa, Post Apartheid South Africa and the Shape of Recurring Pasts*, Cape Town: HSRC Press, pp 34-38

<sup>128</sup> There is an important distinction between the Fourth Frontier War of 1812 and the Total War of late apartheid. The former was a war, which sought to remove and expel and where necessary, exterminate the indigenous inhabitants – to push them out and beyond, to make way for a settlement of white Europeans. It had little interest in the minds of the indigenous or the desire to fundamentally refashion their ways of being, other than to instill 'respect' for domination through the use of terror and fear. Colonial administrative power did not seek to go where the London Missionary Society sought to go, that is, to across the lines of the frontier in order to reach into, and to conquer, to change, save or redeem the native soul through what Valentin Mudimbe has called 'theologies of salvation'. Rather it sought to maintain the frontier as a line of controlled crossing, while slowly and convulsively, pushing and widening the frontier, to claim more land for those inside it circle.

Cradock had by now also taken on the spatial organization of the apartheid city. It consisted of the formalized 'white' part of the town, and the black African township, founded in 1948, the year the Nationalist Party came to power. This area prescribed for black South Africans was named *Lingelihle*. In Xhosa, the word means "good beginning," once again revealing the perverse ironies that characterized practices of naming areas delineated for black residents in apartheid South Africa. Close to it is a residential area designated for 'coloureds,' known as Michausdal, situated just 250 kilometers outside of the main city of Port Elizabeth, 290 kilometers from East London, and about 230 kilometers from Bisho, the capital of the Ciskei Bantustan. Cradock, and its township, *Lingelihle*, was by this time not only a city that presented apartheid's planners with the problem of the urban African, it was also now in the 'eye of the revolution.'<sup>129</sup> According to security strategists, the very fate and future of South Africa as they envisaged it, would be decided in the battles fought there in the mid 1980's.

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<sup>129</sup> This was the phrase that emerged in the surveillance documents that considered Mathew Goniwe as the author of the 'G-Plan', as a reincarnation of the 'M-Plan', (M for Mandela), which outlined a strategy of armed insurrection, and the basis of treason charges brought against the ANC leadership at the 1955 Treason Trial. The prosecution presented a document titled Operation Mayibuye, a five paged typed document outlining a plan for armed insurrection, combining small external forces and internal recruits: "Our target" declared the ambitious plan, "is that on arrival the external force should find at least 7 000 men in the four main areas ready to join the guerella (sic) army in the initial onslaught. These will be as follows:- a) Eastern Cape-Transkei 2 000; b) Natal- Zululand; c) North Western Transvaal 2 000; d) North Western Cape 1 000." Operation Mayibuye, Part 1, A D 18441 / A/ Vol. 2, SAHA, p4. Goniwe was therefore considered to be conducting a political project of a similarly treasonous nature, even though, in contrast to Mandela's case, there are no overt links between him and armed insurrection. The township of *Lingelihle* remains not atypical, in biopolitical terms, of African urban townships in South Africa's poorest province, the Eastern Cape. In a 2003 household 'needs assessment' survey conducted in the area, commissioned by the postapartheid Eastern Cape provincial government, *Lingelihle* had a population count of 14 346 people. It had a female population of 54%. Only 40% of residents had any high school training, and almost 20% had no schooling at all. 13.5% had potential income, of which 5.3% came from pensions and special medical grants. Even more dire, only 5.1% of residents had fulltime employment, and 31% identified themselves as unemployed. Potgieter, F.E, et al (2003) *Report on Socio-Economic Needs Analysis in Lingelihle, Cradock*, Port Elizabeth: Health and Development Research Institute University of Port Elizabeth

In his submission to the Truth and Reconciliation Commission, the ‘superspy’, and senior figure in South African intelligence, Major Craig Williamson,<sup>130</sup> explained to the commission that,

The South African security forces gave very little cognizance to the political motivation of the South African liberation movements, beyond regarding them as part and parcel of the Soviet onslaught against the ‘civilized/free/democratic Western world.... My security force colleagues and I did not see the liberation movements and their members as fellow citizens of our society. We regarded them as an alien enemy.’<sup>131</sup>

Williamson went on to speculate that because ‘the enemy’ was ‘alien’, it was easier for members of the security personnel of the state to bring their violence to bear on the bodies of those they established as priority ‘targets.’<sup>132</sup> Counterinsurgency reads

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<sup>130</sup> Williamson had secretly joined the intelligence services in 1971, and infiltrated the white anti-apartheid student movement. He eventually went into ‘exile’, and co-ordinated the Inter-University Exchange Fund from Geneva in Switzerland, which supported African students who were studying in Europe, including the East Bloc, where many exiles went for training and schooling. From that position he secured high-level access to the leadership of the ANC in exile, as well as of the European anti-apartheid movements. Williamson applied for amnesty, for amongst other actions, co-ordinating the assassination of exiled South African journalist and scholar Ruth First, who was also the wife of Joe Slovo, the General-Secretary of the Communist Party and head of the ANC’s military wing, *Umkhonto We Sizwe* (“The Spear of the Nation”). At the time of her death in a parcel bomb explosion in 1982, First worked at the the Center for African Studies at Eduardo Mondlane University in Mozambique. Williamson’s celebration in intelligence circles as a ‘superspy’ was however preceded in the 1950’s by Gerard Ludi, ‘Agent Q-018’. Ludi is considered to be the first agent who had infiltrated ANC and Communist Party circles, and was instrumental in producing the evidence upon which the prosecution of the high-ranking Communist Party leader of Afrikaner descent, the attorney Bram Fischer, was based. Ludi later wrote an illuminating, if aggrandized account, of his cloak and dagger Cold War experience as an intelligence spy and member of the Communist Party, and observations from his trip as a delegate to the World Peace Congress in Moscow in 1960. Cf. Gerard Ludi (1969) *Operation Q-018*, Pretoria: Nasionale Boek Handel; see also Vermaak, C (1966) *Braam Fischer, The Man with Two Faces*, Johannesburg: A.P.B Publisher; for a sympathetic biography of Fischer, see Martin Meredith (2002) *Fischer’s Choice: A life of Bram Fischer*, Cape Town: Jonathan Ball

<sup>131</sup> Craig Williamson (1997) Aspects of the State Counter-Revolutionary Warfare Principles and Strategy: Republic of South Africa in the 1980’s. *Submission to the Truth and Reconciliation Commission*, 19 October, pp1-9; Department of Military Intelligence n.d Geheim: SAKP, Overt en Kovert Strukture 1062D/ 29, A 2991/ A6 SAHA Cullen, Wits University

<sup>132</sup> I. F Stone (1968) *In Time of Torment*, New York: Vintage, pp 173-174; That this view was not entirely without more complexity was revealed in the admission by John F. Kennedy to the Portuguese Prime Minister Franco Nogueira in 1962: “It is evident from what happened to the former French, Belgian and British territories in Africa that these pressures stemmed from the basic desires of the populations and were not due to any external agency.” Quoted in Shubin, V (2008) *The Hot Cold War, The USSR in Africa*, Natal: UKZN Press and London: Pluto Press, p4



events as signs of a foreign intervention rather than a locally articulated source of discontent, recalls I. F Stone, in his study of Pentagon intelligence reports on the South Vietnamese insurgency:

One feels that these writers are like men watching a dance from outside through heavy plate glass windows. They see the motions but they can't hear the music. They put mechanical gestures down on paper with pedantic fidelity. But what rarely comes through to them are the injured... the misery, the rankling slights, the hatred, the devotion, the inspiration, the desperation. So they do not really understand what leads men to...take to the bush and live gun in hand like a hunted animal; to challenge overwhelming military odds rather than acquiesce any longer in humiliation, injustice or poverty.

Returning to Williamson's testimony to the TRC, it becomes apparent that one part of his political rationality derives from a certain kind of pedagogy – from a science of war with its own experts and episteme; another part derives from a hermeneutics of the colonial subject as enemy, which mediates the sensory, affective and ontological dissonance that Stone was wondering about above. The ways in which we articulate the relationship between these two parts is crucial to the ways in which we think about the political, and the killing of Mathew Goniwe and the Cradock Four<sup>133</sup>.

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<sup>133</sup> An undated anti-communist pamphlet collected in a second book store in Cape Town outlines a theory of this dissonance through novel reading of the concept of the dialectic, issued by the "Austrialian League of Rights": "According the Communist philosophy of dialectical materialism, anything which advances Communism is therefore true...Most of those who attempt to deal with Communism make the major mistake of overlooking that the fully-conditioned communist is a completely different type of human being. He thinks different to all other human beings. Rational discussion is impossible with an individual who not only believes that under certain circumstances murder is necessary, but that is 'scientifically' justified.... Western man faces something he has never before had to face in his struggle against those who challenged his civilization. The Communist is not going to be halted by appeals to reason. He, in fact, cannot be reached through the thought processes of Western man.... Those who want to defeat Communism must therefore face the truth, that Communism poses two clear-cut alternatives: the non-Communist must either be victorious or be

In his study of violence, memory and the Truth Commission in South Africa, the anthropologist Allen Feldman problematized the question of how we remembered apartheid in the TRC, and how this authorized form of memorialization relates to the broader elements of a ‘social memory’. Feldman argues that the desire to know, a desire that the TRC would address through the ‘talking’ that it facilitated, arose from a number of structural features in the economy of knowledge under apartheid rule, particularly during the years of the State of Emergency in the 1980’s:

Apartheid-era South Africa was characterized by structural forgetfulness and fragmentation of public recollection which was, and still is, an institutionally manipulated effect, emanating from (1) the secret knowledge systems of the state and from once-clandestine oppositional political organizations; (2) the apartheid culture of deniability that extended from the upper echelons of apartheid’s ruling organs—government, armed forces, police services and intelligence services—to the everyday class, racial and geographic insularity of most white South Africans; (3) the ghettoisation of social knowledge imposed on communities of colour by apartheid’s geographical sequestration, a race-based inequitable education system, the cultural decimation of violently urbanized rural populations; and (4) media censorship and knowledge fragmentation.... (2002: 236).

Mediating and nourishing this deficiency in not-knowing produced by this four-fold economy of knowledge, Feldman is concerned with how the violence of apartheid is narrated in the amnesty hearings of the TRC, to produce an ‘ideology of excuse.’ He

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defeated.” Eric D. Butler, n.d “Dialectics”: Communist Instrument for World Conquest”, The Australian League of Rights, pp2-3

is particularly concerned with the erasure of the social nature of systematic racism, which was normalized, but was attributed to the aberration of ‘bad apples,’ who were said to have committed the gross violations of human rights in an unauthorized and maverick manner. For Feldman, the amnesty requirement, of having to prove a ‘political motivation,’ allows for the instrumentalization of violence; if one could show an ‘acceptable’ motive, then the act of violence was legitimized as political.

He is however not convinced by this equivalence between political beliefs and violence posited in the TRC hearings and describes the ways in which they are indeed incommensurate. Feldman argues that an element of the narrative becomes oblique in the process of setting up such equivalences as this “perspective obscures any clear understanding of institutionalized racism.” Feldman hones in on the testimony of one set of applicants, a group of policemen who applied for amnesty for the killing of three young UDF activists, also from the Cradock area. In particular he dwells on the matter-of-fact manner in which the policemen describe how they killed the activists, and then set their bodies alight, and had to wait through the night while the bodies smoldered to anonymous grey ash. While they waited, the policemen *braaied* (barbecued), on the river bank, and drank brandy. Through an extended, and somewhat gratuitous to my mind, discussion of the possible semiotic connections between the convivial act of *braaing* (a popular South African past time, and said to have originated with the frontier practices of white Afrikaner South Africans), Feldman argues that there is a racialized violence within which the other forms of violence circulate; these other forms of violence exceed the instrumentalized violence that the political motive describes. This excess, for him, resides in a different register

of meaning: a ‘demonic economy’<sup>134</sup> of racism that strips the black body of all ethical claims, since *braaing*, he argues, is ‘part of a political culture of white male dominance’.

I don’t necessarily share Feldman’s view that Afrikaner males have a cultural cartel on the *braai*, since I think it is far more ambiguous in its contemporary circulation as a leisure activity amongst South Africans. But that minor observational infraction aside, his juxtaposition of the exceptional and the ordinary, and the registering of the one domain as the condition of possibility of the other, is a useful insight. It allows us to problematize the displacement of ‘responsibility’ from a socialized to an individualized and pathologized agent. My concern however is not at this point with these synchronic dualisms, but rather with the discursive ordering of authenticity Feldman seems to invoke, suggesting there is one register of discourse that is foundational and more pristine than another.

In his reading of the amnesty applications, Feldman is uncomfortable with the ways in which the perpetrators explain their actions. In his words:

Members of the former regimes security forces frequently cite anti-communism as a justifying motive for human rights abuses.... The imagined communist onslaught with its explicit anti-capitalist associations was the dream form through which the rupture in apartheid’s symbolic economy was imagined and projected onto black bodies by securocrats. It is now all the more curious—and downright offensive to

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<sup>134</sup> As he describes his intention: “I refer to the incorporation of everyday life practices, objects and associations into the extraordinary scenes of violence and terror and which conversely refracts the increasing penetration of a culture of terror into the quotidian”(2002: 244)

any human rights paradigm—that this fantasy served as the basis of indemnification in amnesty hearings (2002: 250).

Since Feldman is suspicious of attempts to give the kind of violence described at the TRC hearings an instrumentality, or a rationality, he relocates it to a different discursive order: namely the realm of ‘fetish’, ‘mythography’, and fantasy, where ‘structural nostalgia for their superior class and racial positions haunted the security personnel’s reenactments of *braai* violence. Feldman thus sees their violence as a form of historical desire, magic and fantasy that found expression in disfigurement and pain, and which rechanneled the violated and consumed black body as ‘a renewed productive fuel for state power’ (2002: 250.). It is at this point that I worry about the invocation of a Freudian conception of channeling and displacement in the suppression and expression of desire in relation to the kind of violence Feldman seeks to write about.

As I have noted in Chapter One, there is a genre of writing on the violence of apartheid’s state agents that questions claims that the violence was carried out as part of an anti-communist effort being waged in South Africa. Feldman is similarly critical of the reference to anti-communism—seen as a fantasy that, according to him, displaces the racism directed at the ‘black body’ on to a discourse invoked to ‘justify’ it. It seems however that in the displacement of one ‘explanation’, as ‘fantasy’, Feldman inadvertently holds on to another as ‘real.’ This so-called real explanation attributes apartheid and its violence(s) to race and racism as categories of understanding in and of themselves, ignoring ways in which such racism is itself a product of the historical violence of colonialism. In a later chapter I have alluded to how a reading of apartheid’s violence through a political economy lens performed a

similar maneuver. Where it differed was in the ways in which it deemed 'race' as the fantastical justification for another form of the real – the economic and extractive imperative of capital and class. The challenge it seems to me is not to find the originary, or to privilege a foundational claim to the real, but to locate these various invocations within historical time. These invocations of a 'real' and explanations so grounded may be seen as shifting and accumulative modes of comprehending, ordering and classifying the world that apartheid, as a shifting signifier, sought to bring into existence.

I am also unsatisfied by the arguments that dismiss the narrative of anti-communism as 'fantasy' or 'ideology', or a postfacto rationalization.<sup>135</sup> If anti-communism is a claim that conceals more truthful motivating forces such as 'race' and 'class,' then we might ask how is it that race and class come to be seen as foundational referents for violence? If Feldman, for example, believes that the recourse to the fantasy of anti-communism is a projection that springs from a racial way of thinking about the world, which sees black bodies as available for violence and torture, is 'blackness' self-explanatory as a target of violence or a condition of dehumanization? Or would we have to show the conditions under which blackness comes to occupy this category of non-being? In other words, 'race' cannot be assumed to be a free-floating signifier, but might rather have to be given a signifiatory meaning within certain regimes of truth.

Historical studies of colonial violence, and racism, for example, have shown how, from within various discourses—sometimes biological and scientific, and sometimes

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<sup>135</sup>For a shared concern with this approach, in a study of memory and Malaysian narratives of the Cold War after the Cold War, see Kee Howe Yong (2007) 'Divergent Interpretations of Communism and Currents of Duplicity in Post-Cold War Sarawak', *Critique of Anthropology*, vol. 27, no. 63.

cultural and sometimes theological—the black body comes to be considered ‘political’ as such, in time and space. However, I would like to also suggest that the reduction of racism to the epidemiology of the black body is a move Feldman makes too hastily. I have argued in the previous chapter, following Mahmood Mamdani and we might add Frantz Fanon and Albert Memmi, that the crucial distinction in this particular African context is not between black and white as transcendental abstractions of colour-coded racism. Instead we need to see black and white as translations of the divisions between settlers and natives that also underlie the differences between citizen and subject.<sup>136</sup>

Seen from that vantage point of divisions between settlers and natives, and citizen and subjects, the question of racism poses a different set of questions. We have to pay attention to the ways in which native life in the colonial world was classified, re-ordered and arranged. The question of racism then gets tied to the question of the colonial subject as a *subject in formation*, as a figure at once historical and political. In this question, resides another – about the relationship between the apartheid subject generated in the colonial world and the modern state of the Cold War era. Rather than dismiss the discourse of anti-communism, I perceive it as a discourse that belongs to the modern rationalities of the political, to the colonial violence of the settler and the native, and to the world of late apartheid that demands attention as apartheid’s violence is memorialized.

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<sup>136</sup> The kind of historicized discussion of ‘race’ I have in mind can be found in Arendt (1973) *The Origins of Totalitarianism*. In *Society Must be Defended* Foucault asks “What in fact is racism?”, and links it to a conception of biopolitics: “It is primarily a way of introducing a break in the domain of life that is under power’s control: the break between what must live and what must die.” (2003:255). “Racism” he continues, “first develops with colonization, or in other words, with colonizing genocide.” (2003: 257); Rao and Pierce (2001: 162) make the point that the ‘colonial career of corporeal discipline was neither static nor untroubled. Racial difference proved elusive, contradictory and fragile’. Cf. Anupama Rao and Steven Pierce (2001) ‘Discipline and the Other Body: Correction, Corporeality and Colonial Rule, *Interventions*, vol. 3, no. 2

*In Search of the Enemy (i): Encounters with the Archives of Counterinsurgency*

*State secrets are not necessarily secreted truths about the state but promises of it.  
State secrets make up a basic feature of the archive, the reason d'etre of state  
institutions charged with producing foundational fictions of concealment and access  
embodied in content as well as form.*

**Anne Laura Stoler (2002: 99)**

In Chapter Three I recalled a moment of legal interrogation during the Zietsman inquest into the killing of the Cradock Four. At that moment, Col. Lourens Du Plessis of the SADF was cross-examining the SAP Colonel Harold Snyman about whether he considered Mathew Goniwe an ‘enemy.’ You will recall that the Colonel was prepared, at that time, before his amnesty application, to inform the inquiry that Mathew Goniwe was a threat to the state, but he refused to be drawn on the question of whether Mathew Goniwe was an ‘enemy’. He had good reason to tread carefully there, since the Colonel was well versed in the implications of naming someone as an enemy. One might say that he was carefully attempting to negotiate law’s aporia that, as Walter Benjamin reminds us, it is a scandal to bring out from the shadows the sword that is ever present to secure the law when its foundations are called into question.

The Schweickerdt Building at no. 20 Visagie Street in Pretoria, the administrative capital of South Africa, is in a part of the downtown and on a street that you would ordinarily walk by with a disinterested glance. On the surface of a patch of the dark red face-brick wall, the lettering D.O.D in adhesive tape marked its identity in an ad-hoc and amateurish way. The building’s façade deceptively suggested that it was an



unimportant one. But that was hardly the case for this is where that archive of the Department of Defence, also known as its ‘Documentation Center’ was housed. I was there to understand how the state viewed ‘the enemy.’ When I first visited there in 2007, the first of three visits, I had an appointment with the archivist with whom I had been in touch with via email to enquire about the extent of the records that were maintained, and shared with him the broad outlines of my project—my interest in how ‘enemy’ came to be, and how figures like Mathew Goniwe and the Cradock Four became the enemy. I shared with him that I thought that these questions might be answered in and through the archives, like the ones he was administering, and he encouraged me to make the journey from Cape Town to Pretoria, but repeated a caution I had encountered from others.

This is a narrative repeated by a number of accounts of the political transition<sup>137</sup>, including the final report of the TRC, that a vast quantity, many tons in fact, of documents were hastily incinerated in the steel-smelting furnace of the South African iron and steel parastatal *ISKOR* in the twilight moments of the government of South Africa’s last white President, F.W De Klerk. How and in what way were the documents potentially incriminating, and for who, are questions we can only speculate about. My query about the nature of the documents that *were* available, and the extent to which they might have been preserved was mindful of this.

It turned out that the building on Visagie Street had a vast archive of material that had not been destroyed, and that the former apartheid military maintained a meticulous record keeping system. It also meant that the documents that remained in that archive

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<sup>137</sup> See Terry Bell and Dumisa Ntsebeza’s (2003) *Unfinished Business: South Africa, Apartheid and the Truth*

were not regarded as legally compromising of members of the previous government. In other words, while the documents spared from the furnaces might deal with the administration of violence to secure apartheid rule, they were considered as documents free from the legal anxiety of guilt and culpability that could implicate their authors in a post-apartheid South Africa seeking justice, or perhaps more pertinently for them, seeking revenge.

Under the *Promotion of Access to Information Act, 2000* (Act No 2 of 2000), the post-apartheid government had committed itself to the right of citizens to access information. I have also indicated in the previous chapter that this right is not automatic. It is and remains a contested one. The PAIA Act does however provide a framework within which this contestation is measured against the constitutional imperatives of the new state.

The process of accessing documents involved understanding that military intelligence security documents had not been ‘declassified’, but the list of files had been declassified. The distinction was important. One could read through the file lists, but you would then have to make request to read the file itself. At this point a member of the South African National Defence Force would read through the documents in the folder and decide whether to declassify the documents or not. If the documents were to be declassified the researcher would be able to read them. As is typical, the declassified documents bore the red stamp indicating “DECLASSIFIED”, a set of markers all made overly familiar and almost unreal through film images of the intrigues of state secrets, and one looks at them with the feeling that they might be props which render the real a facsimile or fake. The researcher would also have to

pay for each page that the military official read, and one could not tell from the file how many pages might be in it. Gaining access to what was once the interior world of a labyrinth marked “TOP SECRET”, which gave rise through its reticence to fantastical myths about the workings of the state, was in stark contrast to the ordinariness of the record keeping that one finds there now.

The military officials who read through the requested files seemed to be of the ‘old order’. They would also make routine checks in a friendly, or sometimes stern manner to make sure that the materials being read in the reading room bore the red-inked “DECLASSIFIED” stamp. It was as if they did not entirely trust that the archivist would not share still “classified” files with the researchers. The other readers and people who requested files from the Documentation Center, as I discovered during that first week I spent there, were all white retirees, and pensioners mostly looking into matters to do with the Second World War. Almost all were popular or ‘amateur historians’; one was working on the history of small arms in the army, another on a history of aviation disasters suffered by the air force in the 1950’s.

As someone not versed in the organization of the military nor its divisions, I quickly learnt that this was an incredibly bureaucratically systematic organization, and that it kept its records almost entirely in Afrikaans. This linguistic preference changed at some point in the 1980’s when records would be kept either in Afrikaans or English, alternating every two weeks. The extent of the documentation appeared to be vast.

There was simply no way to know the relevance of a file from its title.<sup>138</sup> There were many tantalizing listings which referenced files titled “*The Strategy of the Revolution by Gen. A. Fraser*” (1965), to “*Soldiers Manual and Solidarity—the Marxist doctrine is omnipotent because its True*” (1964), to the Mi/STRAT/1/17 file of “*a strategy for the continued existence of the white population in the Republic of South Africa as a nation*” (1986)<sup>139</sup>. This archive is but one of a few that contains the files and documentation of the South African state during the apartheid years.

As I read through the files, I realized that one has to continually ask oneself: is this the archive of apartheid’s violence? Or, is it the archive of apartheid *as* violence? The larger question of what the wrong of apartheid was also, I realized, one that I was trying to answer in this dissertation. That large question can perhaps be folded into this question of what the archive of apartheid’s violence might be. The ways in which apartheid is memorialized will be conditioned by what we regard as apartheid’s archive, how we read this archive and how we relate to this archive. These are questions that we have to ask ourselves as we enter into the fragments, the holdings, the deposits scattered all over that make up the archive. As might be

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<sup>138</sup> In an inadvertent way, the right to access this information is truncated by the organization of the archive and by procedures required to access the material. This may account for the slowness of work coming to fruition based on these archives. A recent example is Sasha Polakow-Suransky (2010) *The Unspoken Alliance: Israel’s Secret Relationship with Apartheid South Africa*, New York: Pantheon, on South Africa’s nuclear programme and its relationship with Israel; there is also the earlier journalistic work by James Sanders (2006) *Apartheid’s Friends: The Rise and Fall of South Africa’s Secret Service*, UK: John Murray. Both accounts seek to show complicity and draw on the archive as ‘evidence’ of a moral-ethical failure on the part of those governments who collaborated with the apartheid regime during the period when sanctions, divestment and isolation had become more widespread, turning South Africa into a pariah state internationally.

<sup>139</sup> ‘n strategie vir die voortbestaan van die wit bevolking in the RSA as ‘n nasie’, 95 MI/STRAT/17

expected, in this *becoming* postapartheid moment the question of the archive is one of considerable reflection and debate<sup>140</sup>.

In a volume following the Johannesburg conference on Jacques Derrida's essay, '*Archive Fever*,' which was presented by the eminent philosopher himself, the literary historian Bhekisizwe Peterson argued that, "the problem of access seems to stalk the archives." For Peterson, this familiar question often agitatedly posed by postcolonial nationalist critics, the question of access refers both to the ways in which archives have included, but also how they have excluded. He was particularly interested in the question of absences and silences: "The experiences and insights of Africans, women, workers and other communities were generally ignored or criminalized, at times even banned and destroyed" (2002: 31). This conception of the archive suggests an incomplete repository – a form of the nation's foundational self-image constantly fought over – defined as modular and yet having its own character, and a coming to be through its own singularity, or signature. The archive is the nation writ-large in this reading, and as such, must guide and procure in its holdings the full diversity of voices and subjectivities that constitute the nation.<sup>141</sup>

This conception of the archive as something to which we must add, looks very much to the future and draws its curatorial vision from a conception of a past based on exclusion. The archive is something to be filled in and expanded. There is a set of

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<sup>140</sup> cf Antoinette Burton, ed. *Archive Stories: Facts, Fictions and the Writing of History*, Durham: Duke University Press; Razia Saleh (2002) 'The South African History Archive', *Innovation*, no.4; Verne Harris (1994) 'Redefining archives in South Africa: public archives and society in Transition 1990-1996', *Archivaria*, no. 42; Verne Harris (1996) 'Transforming discourse and legislation: a perspective on South Africa's new National Archives Act', *ARCARM Newsletter*, no. 18;

<sup>141</sup> Cf Hayden White (1987) *The Content of the Form: Narrative Discourse and Historical Representation*, Baltimore: Johns Hopkins Press, p12

questions that however might need to precede Peterson's suggestion. These are questions about the archive as an inheritance with which we have to engage. This is the facing, the turning to – a material engagement with what exists. In the case of the military archive, it is to arrive in search of answers to questions of and about the enemy, and to open oneself to those artifacts that have survived the fires. And it is also to become aware of the archive as a set of indexes and codes that are sometimes opaque, and about the archive as a set of ontological categories, and an episteme. It is with these anxieties in mind, that I entered into the archive, mindful that I was neither seeking to implicate individuals who may have committed 'gross violations of human rights,' nor was I necessarily seeking to 'expose' complicity with the apartheid state by revealing the extensive levels of military co-operations between apartheid South Africa and Taiwan, Uruguay, Chile, and Israel, or the intelligence agencies of the United States or Britain, to name a few of the many countries whose names appear with regularity in the lists. I was however looking for something else, more like a mode and a mood than complicity – something that presents itself with an epistemological claim about the certainty of science, a calculus of risk that presents the phenomenological world in a language of intelligibility, causality and predictability.<sup>142</sup> At the same time, I was looking for apartheid's affects, its desire to bring together and the fears that led it to make its subjects apart.

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<sup>142</sup> Ian Hacking (1996) *The Taming of Chance*, UK: Cambridge University Press, and (2006) *The Emergence of Probability: A Philosophical Study of Early Ideas about Probability, Induction and Statistical Inference*, UK: Cambridge University Press

The anthropologist Anna Laura Stoler argues that since anthropology made its ‘historical turn,’<sup>143</sup> the colonial archive has become an object not simply to be viewed extractively but also as an ethnographic site. She writes,

We are only now critically reflecting on the making of documents and how we choose to use them, of archives not as knowledge retrieval but knowledge production, as monuments of states, as well as sites of state ethnography...it signals a more sustained engagement with those archives as cultural artifacts of fact production, of taxonomies in the making, and of disparate notions of what make up colonial authority.<sup>144</sup>

Stoler makes the useful distinction between an engagement with the colonial archive that seeks to “read against the grain,” and her own project to “read along the grain.” The first speaks to the early gestures of social history’s engagement with the colonial archive, which sought to read the archive for the agency of the native, for the categories through which the colonial subject is framed, but in which the colonial subject comes to ‘turn things upside down’. This approach to reading the archive

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<sup>143</sup> cf. Nicholas Dirks ed. (1992) *Colonialism and Culture*, Ann Arbor: University of Michigan  
Frederick Cooper and Anne Stoler. Eds. (1997) *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Berkeley: University of California

<sup>144</sup> Anna Laura Stoler (2002) ‘Colonial Archives and the Arts of Governance: On the Content in the Form’, in Hamilton, C. et al. *Reconfiguring the Archive*, Cape Town: David Philip p85. This essay rehearses an argument she makes more elaborately in (2008) **Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense**, *New Jersey: Princeton University Press*; Michel Foucault (1972) *The Archaeology of Knowledge and the Discourse on Language*, New York: Harper; E. E Evans-Pritchard (1951) ‘Social Anthropology: past and present, the Marett lecture, 1950’, in *Social Anthropology and other Essays*, New York: Free Press; Nicholas Dirks. et al. eds (1994) *Culture, Power, History*, Princeton: Princeton University Press; MacDonald, T. ed (1996) *The Historic Turn in the Human Sciences*, Ann Arbor: Univ. of Michigan Press; Richard G. Fox(1991) ‘For a nearly new culture history’, in *Recapturing Anthropology: Working in the Present*, Santa Fe: School of American Research Press; Michel De Certeau (1985) *The Writing of History*, New York: Columbia University Press; Carlo Ginzburg (1989) *Clues, Myths and the Historical Method*, Baltimore: Johns Hopkins University Press

seeks to subvert the colonial archive's authority as the record of domination in order to reveal the traces of a counter-hegemonic sensibility,

Stoler argues that we might not only want to read the archive 'against the grain', but perhaps also 'along the grain', for its "regularities, for its logic of recall, for its densities, and distributions, for its consistencies of misinformation, omission and mistake." Her debt to Michel Foucault's view of power as not simply repressive, but as productive, is acknowledged and evident. I have found this a useful way to proceed into the archive of counterinsurgency, to think about the archive as a productive site, as a site where we might glimpse the formation of a political subject, and an account of the enemy.

### *In Search of the Enemy (ii)*

*To free my soul I had to reject from the human race the jackals of South Africa, refusing to share with them the same humanity. I could destroy them with my hatred if I could deface them, erase the definition from their faces, so that I saw, not individuals, but faceless masks; it is difficult to savage human beings, one has to dehumanize them before exterminating them, like some people drown cats or poison rats, or the soldier who goes to war against the black peril, the yellow menace, the Communist threat.*

**Bloke Modisane** (1963: 77)

Now that the enemy is increasingly out in the open, so to speak, we have to ask ourselves: who was an enemy of the state, how did one become an enemy of the state? What deontological implications follow from becoming an enemy of the State? And what did it mean to be an enemy of the State in South Africa in 1985? If we are to arrive at something of an answer with which to be able think the violence that



unfolded in the dark bushes of Bluewaters Bay on that night of 26 July 1985, then one would have to, it seems to me, confront how we think the political.

In his thoughtful reflection on the question in relation to the identity of ‘Jew’ and ‘Arab’ in European philosophical discourse, Gil Anidjar observes that the discussion of the enemy often elides into discussions of war, but that the enemy as an ontological category possesses an excess that cannot only be explained in and by the identities set in motion by the practices of war.<sup>145</sup> It is perhaps Carl Schmitt who has most influentially (and for some, controversially) dislodged the enemy from the battlefields of war and located modern conceptions of the enemy as the constitutive binary that founds the political *as community*. According to Schmitt (Giorgio Agamben has recently developed these ideas further), the political community reserves for itself the right to go to war while securing the political as the domain of the normal, as the condition of possibility for law, and to claim a purchase on conduct through the juridical discourse of rights and obligations.

In an essay written in 1927 Schmitt elaborated on his conception of the political as an autonomous domain; he described it as irreducible and not commensurate to other discrete conceptual taxonomies of the social. The ways in which Schmitt poses the question is deceptively simple: if questions of morality are defined by the distinction between good and evil, the economy by profit and unprofitability, and aesthetics by a distinction between beautiful and ugly, then what distinction would define ‘the

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<sup>145</sup> Anidjar, G (2003) *The Jew, the Arab, A History of the Enemy*, New Jersey: Stanford University Press, pxxiii; See for example, James Aho (1994) *This Thing of Darkness: Towards a Sociology of the Enemy*, Seattle: University of Washington Press; for an example of a view of the enemy as ‘the other’, cf. Vilho Harle (2000) *The Enemy with a Thousand Faces: The Tradition of the Other in Western Political Thought and History*, Westport, CT: Praeger. Harle, whilst drawing on Schmitt, seems not to historicise the distinction between morality and politics, and the moment when morality *may become* politicized.

political'? Is "there a special distinction which can serve as the simple criteria of the political....?"<sup>146</sup>

Schmitt distilled the answer to this question in a now familiar way: "The specific political distinction to which political actions and motives can be reduced is that between friend and enemy" (1996: 26). The enemy has an existential mode of being: permanent, and "something different and alien" (1996: 27). It was an instantiation of an antithetical identity unique to the political as such. And while the enemy is the 'stranger', the enemy is not and could not be an individual.<sup>147</sup> The enemy has a collective identity: It "exists only when, at the least potentially, one fighting collectivity of people confronts a similar collectivity." It is therefore a corporatized identity, neither singular nor private: "The enemy is solely the public enemy.... The enemy is *hostis*, not *inimicus*..." (1996: 28). While making the distinction between war, and politics (as the domain of the enemy), Schmitt argued that although "[w]ar has its own grammar (i. e. special military-technical laws), ... politics remains the brain. It does not have its own logic. This can only be derived from the friend-enemy concept...." (1996: 34).

The domain of the political, defined by the friend-enemy distinction as a public demarcation, is the central author therefore of a range of technologies, practices, and conceptions of rights and obligations premised on the possibility of the norm.

According to Schmitt,

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<sup>146</sup> Carl Schmitt (1996) *The Concept of the Political*, transl. by George Schwab, Chicago: Chicago University Press, p26; Samuel Weber (1992) 'Taking Exception to Decision: Walter Benjamin and Carl Schmitt', *Diacritics*, Vol. 22, No. 3/4, Commemorating Walter Benjamin; Horst Bredekamp, Melissa Thorson Hause, Jackson Bond (1994) 'From Walter Benjamin to Carl Schmitt, via Thomas Hobbes', *Critical Inquiry*, Vol. 25, No. 2

<sup>147</sup> For a view of the enemy as derivative of our individualized projections, see Arthur Gladstone's (1959) essay, 'The Conception of the Enemy', *The Journal of Conflict Resolution*, Vol. 3, No. 2

The state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing of the lives of men. The *jus belli*<sup>148</sup> contains such a disposition. It implies a double possibility: the right to demand from its own members the readiness to die and unhesitatingly to kill enemies... To create tranquility, security and order and thereby establish the normal situation is the prerequisite for legal norms to be valid. Every norm presupposes a normal situation... Every state provides, therefore, some kind of formula for the declaration of an internal enemy (1996: 46).

In the manuscript of one of his lectures conducted during the years 1977-1978, and compiled in the volume *Security, Territory, Population* (2007), Michel Foucault makes a fleeting reference—the only one in his work—to Carl Schmitt. Foucault had during the course of that year been sketching the outline of his thoughts on the shift from disciplinary power to what he would describe as ‘biopower’, and which would famously lead him to the argument that the modern state is characterized by the ‘governmentalization’ of the state. The notion of governmentality has of course been widely taken up, as a way in which to understand modern rationalities of power, the shifts in the ‘reason of state,’ and the novel formulation of the target of modern power’s application: the coming into being of a ‘population.’<sup>149</sup> The shift is captured in the illuminating observation that the modern state’s relationship to the sovereign

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<sup>148</sup> *jus belli* “was an area of law which dealt not just with philosophical topics of international law (i.e. “Who has the authority to declare a just war?”), but also the practical issues of mustering and disciplining an army.” Cf Richard Wolin (1990) ‘Carl Schmitt, Political Existentialism, and the Total State’, *Theory and Society*, Vol. 19, No. 4

<sup>149</sup> For a sense of the wide ranging influence of the concept, see the edited volume by Graham Burchell (1991) *The Foucault Effect: Studies in Governmentality*, Chicago: University of Chicago Press; see also Mitchell Dean (1999) *Governmentality: Power and Rule in Modern Society*, UK: Sage

power's right over matters of life and death, shifts from 'the right to *take life* to the right to *make live*.'<sup>150</sup>

In a sketchy fragment from Foucault's manuscripts of that year, which appear at the end of the collated volume of lectures on *Security, Territory and Population*, a brief observation on 'politics' is perhaps useful to bear in mind in tandem to Schmitt.

Foucault observes, in reference perhaps to the overdetermining effects of thinking of governmentality as 'a singular generality', that there is often in this understanding, a conception of the political as omnipresent: "every thing is political." This phrase, he remarks, has been given two meanings:

Politics is defined by the whole sphere of state intervention. To say that everything is political amounts to saying that directly or indirectly, the state is everywhere.

--Politics is defined by the omnipresence of a struggle between two adversaries.... This other definition is that of K. (sic) Schmitt. The theory of the comrade.

In short, two formulations: everything is political by the nature of things; everything can be politicized, everything may become political. Politics is no more or no less than that which is born with resistance to governmentality, the first uprising, the first confrontation (2007: 390).

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<sup>150</sup> As Foucault observes in *Society Must be Defended* (2003), "The presence of 'death' becomes the war- a biomedical war against the permanent presence of death, not as a moment like an epidemic, but permanently there, and public health is permanently at war with Death." p244; Hindness, B (2001) 'The Liberal Government of Unfreedom, *Alternatives*, vol. 26; Mitchell Dean has elaborated on Foucault's conception of Governmentality in a number of publications. Cf. Dean (2004) 'Four Theses on the Powers of Life and Death', *Contretemps* 5, December. He summarises these as follows: 1. Right of death is ancient, but the power over life is quite new, and 'has brought the most devastating consequences.' 2. It is in the combination, rather than succession or addition of modern powers over life, with the ancient right to death, that is important. 3. The connection between the powers of life and death are constitutive of the 'sacred character of the political community'; 4. Biopolitics captures life in its naked form (zoe or bare life), and makes it a matter of political life.'

In that barest slither of a fragment, Foucault distinguished between the permanent, existential demarcation of the political (Schmitt), and the specificity of its being brought into being, *as possibility*: ‘everything *can be* politicized,’ and everything ‘*may*’ become political. His is the formulation of the adversarial constitution of the political as a potential, and a potential that is born of what he calls ‘counter-conduct’, the ‘resistance’ to the imperatives of governmentalization.

In this formulation of politics, with resonances of Schmitt, Foucault was developing his conception of the political through the use of ‘war’ as a way in which to think about the production of a certain kind of subject, where the political was defined by relations of war. It was also a critique of a legal narrative that positions law as the opposite of violence and war. In his lectures of 1975-1976 Foucault had reformulated the question of sovereignty and the political subject by reframing the relation between law and violence. “Law,” he observed, “is not pacification, for beneath the law, war continues to rage in all the mechanisms of power, even in the most regular. War is the motor behind institutions and order” (1997: 50). In a phrase that recalls Schmitt, Foucault argued for the privileging of ‘war’ as the optic through which to read the political: “A battlefield runs through the whole of society, continuously and permanently, and it is this battlefield that puts as all on one side or the other. There is no such thing as a neutral subject. We are all inevitably someone else’s adversary” (1997: 51). Foucault then suggestively encourages us to reverse Clausewitz’s in formulation: “So: Politics is the continuation of war by other means” (1997: 48).

When we retrieve the violence against the Cradock Four from the discourse of law, it calls for thinking about war and the enemy shorn of its juridical aporia. It is a question that in turn unravels into the question of the political. It seems to me then that we need to think of these moments of violence in relation to questions of war and the political. To think about the kinds of subjects they put into play, and the kinds of practices authorized by a political rationality. It is then to consider the event of this killing from within a history of war and the South African colony, as a landscape to be negotiated, as a political community to be fashioned, and with friends to secure and enemies to defeat. And in a manner that is mindful that this violence has a ‘worldliness’ to it, both in its colonial and Cold War articulations. In many ways, we are involved here in the careful negotiation of a “landscape of treason”, as Margret Boveri, writing about postwar Germany, evocatively described in her accounting for the “abysmal confusion” that arises when all boundaries of the legitimate and the illegitimate become “hopelessly blurred” (1961: 56).

***Everywhere is War: Partisans and the Political***

*Addressing the State Security Council on the 18<sup>th</sup> July, President Botha declared that ‘the brain’ behind the unrest in South Africa was now in the country, and that it had to be found and destroyed.*

**Daniels (2009: 50).**

In his opening address to a *Conference on National Security* in Pretoria in 1978, Prof. Charles Nieuwoudt, warmly and enthusiastically welcomed the foreign experts to the university campus of the white Afrikaner dominated Pretoria University. He declared:

We are happy to have been able to get a group of such well-known speakers who have prepared papers on their respective topics. Our overseas speakers are acknowledged experts in their respective fields. Prof. Erickson from Edinburgh University is a world expert on Soviet Military Organisation and Policy. Professor Schwartz from the Armed Forces in Germany is an expert on European Defence and he as recently begun to take an interest the South Atlantic.... Colonels Katz and Barber are experienced military men who have gained their insights into psychological warfare in various military campaigns in the US Army.<sup>151</sup>

Prof. Niewoudt had in his midst a range of ‘experts’ who were versed in what it meant to protect the ‘the West,’ being themselves from the West. At this particular moment, the West was not foreign, nor a place in the distant faraway. In many ways white South Africa thinks itself as seamlessly part of the West. And so, in the Cold War planning that involved Europe, North America and the NATO alliance, the South African state thought of itself too, as an important upholder and defender of European civilization’s achievements on the southern tip of Africa. This truth was reinforced when Ronald Reagan came to power in the United States and emphasized, with the help of a map, on a television broadcast that the strategic position of the South African sea-route, straddling the Indian and Atlantic oceans, was too important to concede to the Soviet Union and their communist allies.<sup>152</sup>

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<sup>151</sup> Michael H.H Louw. Ed (1978) *National Security, A Modern Approach, Papers Presented to the Symposium on National Security held at Pretoria, 31 March-April 1977*, Pretoria: Institute for Strategic Studies.

<sup>152</sup> In an early strategy paper on the geo-political importance of the Cape sea route, an SADF General had anticipated this moment: “We are like certain shares on the stock market. There was a time when nobody wanted us. A time will come when everybody will bid for us.”Hiemstra, R. C Gen. (1970) *The Strategic Significance of South Africa*, Cape Town: Tafelberg, p15

In what ways was the Cold War translated into notions of the political as it was constituted in South Africa? How did Matthew Goniwe and his three comrades who were campaigning against a mixture of local socio-economic grievances like high rents, poor schooling conditions and the absence of local political representation in the Cradock township of Lingelihle, come to be perceived as key instances of a transcendental global public enemy? Framed within a political rationality defined by the modern expression of colonial imperatives on the one hand, and the Cold War on the other, they ended up, I argue, occupying that zone of 'bare life', where exceptional violence may be, and was brought to bear on them in its most brutal forms.

In an important reflection on the Cold War and the kind of violence it authorized, the Pakistani political scientist Eqbal Ahmad noted the dissonance between the way in which occupying forces understood what and who they were at war with, and the animating concerns, demands and objectives of those who were waging resistance against occupation. Focusing on the Vietnam war, which he campaigned against actively, Ahmad illuminated the distinctiveness of the American approach that rested on a much larger mobilization of arms, troops and weaponry as the solution to the problems of the Cold War era. For the Americans in the early part of the war, victory or failure, observes Ahmad, was a "technical question".<sup>153</sup>

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<sup>153</sup> As he remarked, "It is amazing that, in a democracy, there were no serious public or parliamentary questioning of the consequences of an army considering another country a laboratory.... It is even more amazing that six years and at least four million casualties later, General Westmoreland could publicly declare in a civilized country that Vietnam had in fact been a valuable laboratory for testing new weapons and techniques..." Bengelsdorf, C. et al (2006) *Eqbal Ahmad: Selected Writings*, New York: Columbia University Press, pp48-49



Ahmad also discusses at length the French experience of counterinsurgency as recalls the history of occupation that preceded American involvement. According to Ahmad,

French theorists were notorious for describing all ‘insurgencies’ as Communism. In their view, Algeria’s FLN was a puppet alternately of Moscow, Peking and Cairo, just as their American colleagues view the North Vietnam and or China...A logical extension of the conspiratorial theory is the belief, held with particular tenacity by counterrevolutionary army officers, that any revolutionary movement is inspired, directed and controlled from abroad.... (2006: 50-52).

This view, which was also explained by Craig Williamson at the outset of this chapter, dominated South African conceptions of counterinsurgency. As I have noted in previous chapters, when we think the violence of South Africa in the 1980s it is often understood from the vantage point of two schools of thought. The first is the narrative of sovereignty: of the relationship between law, rights and race. It is the narrative that I have traced in Chapters Two and Three. It is the narrative that situates the violence in relation to a universal law of human rights. In this narrative politics is the enemy of law. Its field of application and its targets are determined by the tension between the universal, progressivist evolution of a civilization claim, which transcends time and space, and the particularity of the political, which roots itself in a sovereign sphere of nation tethered to state, and which denies the universal on the basis of race. In this narrative ‘law’ is both a ‘heritage and culture’ but must simultaneously belong and apply to all. Its radical and disruptive claim is to apply ‘*equally to all,*’ but its agonism is that it can only do so by normalizing itself and constantly renewing the erasure of the foundational violence that underlies it.

The second narrative wherein we can locate this violence is in a more specific discourse on the ‘militarization of the state’ and the society, which dominates South African disciplinary knowledge in Political Science and Sociological studies on the question.<sup>154</sup> It is a body of work that draws on the rights-based juridical approach I have described above in order to develop a critique of the re-organisation of the state after 1978. In this narrative, the late apartheid state is constructed around ideologically derived imperatives of security, and the enemy is fantastically and strategically constructed around the simulated figure of “the communist.” The structure of the state is understood from the vantage point of militarization and terror, where terrorist, revolutionary and revolutionary onslaught are both its watchwords and its campaign slogans.<sup>155</sup> This critical literature on the state was produced under difficult conditions of political repression, with limited scholarly access to the kind of information that access to State archives now might make possible. That said, the descriptive elements of its account of the formulation of a policy focused on the idea, articulated most forcefully by President P. W Botha that South Africa faced with a

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<sup>154</sup> I have cited examples of this literature in a previous chapter, but see for example, Richard Leonard’s (1983) *South Africa at War*, Craighall: A.D Donker; or the influential edited volume by Jacklyn Cock and Laurie Nathan (1989) *War and Society: the Militarization of South African Society*, Cape Town: David Philip; this latter work was produced by scholars broadly considered anti-apartheid in orientation. Re-reading it today I am struck by the fact that there was not a single black South African contributing author in the twenty four chapters in the volume. Almost every other South African study on militarization of the state was authored by white South African scholars too. My point is not to question the ethics of representation or inclusion/exclusion in this instance, but rather to wonder about how the critique of state reform, understood as a problem of ‘militarization’ might derive from this historical particularity? That it springs from those who were South Africa’s citizens rather than subjects, reinforces Ahmad’s observation above, that states involved in counterinsurgency are subject to criticism in a liberal democracy from citizens, and therefore seek to reorganize the institutions of state in order to make executive power more autonomous from legislative accountability. The reorganization of the South African state after 1978, the ascendance of the State Security Council’s influence, and the diminished role of the white parliament is certainly an instance of this phenomena. The literature on the militarization of the state by white scholars can therefore also be read as the critique of the state’s citizens seeking to restore the equilibrium of legislative and executive power that defines the liberal democratic state. The question this raises is, to what extent does this critique, which becomes hegemonic through the confluence of knowledge, race, power and social capital, sublimate the substantive forms that a possible critique from the vantage point of apartheid’s subaltern subjects might make? And what might be the political consequences of this sublimation of a subaltern critique for the postapartheid present?

<sup>155</sup> For a illuminating study of the discourse of terror and the Cold War as it was deployed in Argentina under military rule, see Feitlowitz’s *The Lexicon of Terror*

‘total onslaught’ required a ‘Total Strategy,’ are descriptively insightful and illuminating. At the same times, even as this literature tries to account for state policies reflected in Botha’s formulation, it fails to get away from normative understandings of the political and the state. In other words, it fails to see how violence is not separate but deeply entwined with the political and the state. It therefore locates its strength in its descriptive capacity, its observation of the ‘militarization’ of the society, and in its critique, which takes for granted a certain conception of a liberal political community. In its critique it disaggregates the violence of the state from the juridical realm of citizenship and rights, insisting on the possibility of the separation between the two.

There are two elements of this literature that are problematic. The first is that it tends toward individualizing responsibility, embodying the actions of the state in the militarist genealogy of a former State President, and those who come with him from the SADF into the offices of civil-political power after 1978.<sup>156</sup> This obscures the fact that, unlike the military dictatorships of Latin American, for example, white South African society went to the polls at regular intervals throughout the 1980’s, maintaining the ritualistic elements of parliamentary democracy. State policy was therefore not formulated simply at the whim of a militarized executive that enjoyed centralized power. It was also conditioned by perceptions of what the white voting public might endorse, and it was sensitive to the problem of their shifting allegiances, from one party to another. What the studies at the time reveal is an overwhelming support amongst the civilian white public for the apartheid state’s reliance on the

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<sup>156</sup> For example, in his explanation of the ‘Total Strategy’ as a policy framework adopted by the South Africa state, Richard Leonard commences the chapter with a detailed account of the individual biographies of two people: P.W Botha and General Magnus Malan; Leonard (1983) *South Africa at War*, pp98-99

military and its counterinsurgency practices, rather than a worry about the effects of militarization that is expressed in this literature.

A quick glance at aspects of the history of white voting patterns, and public opinion may be sufficient to register this point. White South African party politics after 1948 was largely split along three lines: 1) A center-right position which was the majoritarian position held by the National Party (NP) (which only won the popular vote outright in 1958).<sup>157</sup> 2) Further right were various parties that over the years came to represent Afrikaaner conservatism in the parliament, and which became stronger as the center became more reformist in the 1980's. 3) Finally to the left were the various incarnations of the minority 'liberal' parties whose supporters were mostly English speaking whites. Although they had evolved out of the liberal paternalism of the United Party that had supported segregationist policies before 1948, by the mid 1980s, these parties, like the Progressive Federal Parties, were explicitly opposed to segregation.

Looking at the voting patterns in elections underscores the point that we cannot usefully think of the apartheid state as an institutional bureaucratic assemblage implementing policies widely divergent from white social and political attitudes. I am mindful that it cannot be said that voting for the National Party was an explicit vote in support of apartheid, just as much as voting for a minority liberal party, the like the Progressive Federal Party (PFP) was an indication of an explicit rejection of apartheid. However the trends do allow us to make associative remarks along those lines. In 1976, the year of the Soweto uprisings for example, the support for the

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<sup>157</sup> White South African electoral politics was based on a constituency-based system, which meant that a part could win the majority of parliamentary seats without necessarily garnering the absolute numerical majority

ruling party was at its peak, with 67% of votes going to the National Party, whilst at the same time support for the conservative parties, the *Herstigste Nasionale Party* (HNP), and the Conservative Party (CP) also expanded. In the general election of 1981 the National Party took 58% of the vote, whilst the liberal Progressive Federal Party took 19% of the vote. In the 1987 election the National Party support declined to 53% but so did that of the liberal PFP (dropping to 14%), whilst the Conservative Party enjoyed 27% of electoral support in that year (Van Rooyen 1994: 117-138). These results reveal a growth in pro-apartheid sentiment amongst white South Africans in the 1980's, rather than a decline.

More interestingly perhaps for our purposes, are a series of public opinion surveys conducted by Human Sciences Research Council (HSRC) from the late 1970's through to the late 1980s. Amongst other questions, these surveys were designed to track opinion about the state's reform programme that was being implemented alongside the repression of the urban African revolt. In 1984, the year before the killing of the Cradock Four, the survey asked "urban white South Africans" whether they continued to support the "seven fundamental structures" of apartheid. These were defined as the "separate voters roll, the black homelands, separate public amenities, separate schools for whites, the Group Areas Act, the Immorality Act, and the Mixed Marriages Act". The survey results showed an average of more than 60% support for all the seven features of apartheid. Support for a racially segregated voters roll resonated most (78.6%), with continued support for 'Black homelands' a close second (75.7%). When the survey results were further disaggregated between Afrikaans-speaking whites and English-speaking whites, it showed that 92% of Afrikaners supported a separate voter's roll, and 90% supported the 'Black

Homeland' policy, whilst English-speaker's registered 65% support for the former and 60% support for the latter (Hofmeyer 1990: 37). In other words, an average of 70% of white South Africans in 1984 still supported the idea that black South Africans should be denationalized!

Another set of surveys conducted between 1977-1988 by the HSRC asked white voters annually about their attitudes toward repressive acts by the government (Hofmeyer 1990: 38). Given that the HSRC is a state-funded research council, and that it conducted much of its research on behalf of, or in relation to the research needs of the state, the concern with how the state was perceived is itself an indication that the government under P. W Botha conducted its violence mindful of its electoral support.

In October 1977 the government had banned a number of organizations as well as a number of newspapers, and placed restrictions on the media. When asked their opinion on these repressive acts that year, 20% of the white respondents said they disagreed, but 68% expressed support for the governments' actions. In 1983, when South African counterinsurgency forces attacked 'terrorist' targets in the suburbs of Maputo in neighbouring Mozambique, killing mainly civilians, 9% of white South Africans said they did not approve, 2% were undecided, but 89% said that this was the right thing to do. The following year, in 1984 an unequivocal 90% of the white respondents said they felt that the government was handling "terrorism" correctly, and in the same survey that year 80% of white South African's said that they felt that the government was either under-spending or spending sufficiently on defence armaments. It was only a small minority that indicated that they were worried about

the growing expenditure on defence. And in November of 1988, when the HSRC survey asked white South Africans whether the government should take stronger action against “the ANC and its fellow travelers” [allied organizations like the UDF], 85% of respondents said they agreed (Hofmeyr 1998: 38). My point in short is therefore that the literature on the militarization of the state obscures this wide-ranging political and popular support amongst most white South Africans for the aims of apartheid, and the repressive actions the South African state was resorting to defend the gains of civilization on the southern-most tip of Africa.<sup>158</sup>

The second weakness of this literature is that it is unable to provide a conceptual-historical account of the ‘conspiratorial’ sensibility that it so perceptively describes. The conspiratorial view is unable to comprehend national liberation movements, and their will-to-sovereignty as other than instantiations of subversive ventriloquisms. As I. F. Stone observes, they are always already gazed upon from behind the metaphorical glass window so that what they say and mean is never really heard.

In his study of counterinsurgency Eqbal Ahmad made the important observation that “in order to overcome the checks of parliamentary institutions and public opinion, a government involved in counterinsurgency seeks ways to reduce its accountability to representative bodies....” (2006:62). Ahmad’s study importantly draws attention to the specificity of counterinsurgency as a doctrine applied during the Cold War and its relationship to the history of colonial occupation as Europe and the United States found themselves entwined in the national liberation struggles in South East Asia, Africa and Latin America. Whilst Ahmad’s detailed account of the key elements of

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<sup>158</sup> The ways in which popular opinion and the executive of the state come to shape each other, is course a more complex question, which I am setting aside for now.

insurgency warfare provides a rich sense of the ways in which this unfolded in Vietnam and Algeria in particular, he too was less forthcoming on the genealogy of its conceptual and historical foundations. Can we write a history of concepts and the political rationality that underlie counterinsurgency without reducing its apparatuses and effects to militarization?

***Total War: The Partisan as the Paradigmatic Figure of the Political***

*They must declare their opponents to be totally criminal and inhuman, to be a total non-value. Otherwise, they are nothing more than criminals and brutes. The logic of value and non-value reaches its full destructive consequence, and creates ever newer, and ever deeper discriminations, criminalisations and devaluations, until all non-valuable life has been destroyed*

**Carl Schmitt (2007: 94).**

In 1962, Carl Schmitt was invited to present two lectures in Pamplona in Spain.<sup>159</sup> While Schmitt urged that these lectures be read as an ‘intermediate commentary on the Concept of the Political,’ they provide us with a useful set of philosophical reflections on the forms of war that military strategists in the post World War II world began to speak of as wars of insurgency and counterinsurgency. Furthermore, they enable us to comprehend these specific forms of violence as parts of a normative conception of the political. I have read Schmitt’s reflections as a diagnostic rather than a prescriptive theory of enmity, since it is this question that concerns Schmitt most: the distinctive existential forms that enmity takes as part of the foundational

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<sup>159</sup> These have been published as ‘*The Theory of the Partisan*’ (2007) New York: Telos. According to Jan-Werner Muller, Schmitt’s engagement with the question of the partisan emerged in dialogue with the German journalist Rolf Schroers who had authored a monograph on the question as a contribution to political anthropology. Published two years prior to Schmitt’s essays, Schroers prefaces his own work by acknowledging the influence of Schmitt in the formation of his argument. Cf. Werner-Muller, J (2003) **A Dangerous Mind: Carl Schmitt in Post-War European Thought**, New Haven: Yale University Press; cf Schmitt (2007), p18 fn. 25



violence of modernity.<sup>160</sup> And that distinctive form of this violence, suggests Schmitt, can be found in the figure of the partisan, and in particular in the post WWII world, in the concrete figure of ‘the guerilla.’

There are four key elements that constitute the character of the modern partisan: irregularity, mobility, intensity of political commitment, and a telluric (or territorial) attachment. In the first instance, argues Schmitt, the partisan fights ‘irregularly’ (and not by the laws of war codified between European states at the Congress of Vienna).<sup>161</sup> Secondly, the partisan is not constrained by the bureaucratic cumbersomeness of the rules that weigh down the movements of a regular army and makes it sluggish. Thirdly, the partisan is distinguished from the criminal by a commitment to political community – a public rather than private gain animates it. And lastly, the partisan’s telluric commitment grounds the partisan in space – the partisan defends or seeks to claim territory.

In his historical genealogy, it is the Spanish guerilla war of 1808 against the ‘first modern regular army’—that of Napoleon—that marks the partisan as a figure that comes up against the novelty of a regular conscript army (2007: 4). Shortly thereafter in 1809, an attempt is made to emulate this model in the Austro-Hungarian resistance

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<sup>160</sup> Those who accuse Schmitt of pessimistic realism, might note that Schmitt ends the lectures by making a hopeful argument for the recovery of politics from the technicism of liberalism. He argues for the recognition of the political against the depoliticizing effect of the assertion of international legal values as a *nomos* of the earth. The non-recognition of the political, he argues, creates the conditions for absolute enemies to arise [we could say like the generic universal ‘enemies invoked the contemporary political discourse of the ‘war on terror’, with its universal protagonists: ‘enemies of freedom’, enemies of democracy, enemies of human rights, or enemies of civilization’]. He argues that the way out of this cycle maybe to recognize the concrete forms of real enmity since it is the “denial of real enmity that paves the way for the destructive work of absolute enmity”. It is at this point, he suggests that the “theory of the partisan flows into the question of the concept of the political, into the question of the real enemy and of a new *nomos* of the earth.”, pp94-95

<sup>161</sup> cf Gunther Rothenberg (2004) ‘The Age of Napoleon’, in Michael Howard, et al. (1994) *The Laws of War, Constraints on Warfare in the Western World*, New Haven: Yale University Press, pp86-97

to Napoleon. As a restorative reaction, the Congress of Vienna (1814-1815) establishes, amongst other agreements, a set of rules of war that distinguish between conditions of war and peace, combatants and non-combatants and the enemy and the criminal. It also codified who could legitimately wage war. Wars were to be fought between states, through regular armies and between sovereign bearers of ‘the right to war,’ *jus belli*.<sup>162</sup> In this context, up until, and during the WWII the regular fighter was normalized as the fighter who conducted war between legitimate sovereign entities, in a regularized and accepted organization form, organized along and in identified and regularized national armies.

The figure of the partisan was, in this context, both a marginal and an illegitimate figure of war. This way of conducting war is referred to by Schmitt as ‘bracketed’, since it is supposed to be contained within a set of legal prescriptions:

Fundamentally, war remains *bracketed* and the partisan stands outside of this bracketing. The fact that he now stands outside this bracketing now becomes a matter of his essence and his existence. The modern partisan expects neither law nor mercy from the enemy. He has moved away from the conventional enmity of controlled and bracketed war, and into the realm of another, real enmity, which intensifies, through terror and counter-terror until it ends in extermination (2007: 11).

But Schmitt argues that whilst the partisan was rendered an illegitimate figure in the waging of war in Europe—which should now only happen between sovereign states, the partisan as the object of study, and its forms of war, remained a matter to be

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<sup>162</sup> Zamoyski, Adam (2007). *Rites of Peace; the Fall of Napoleon and the Congress of Vienna*. New York: Harper Collins

theorized and practiced by Europe in its colonial wars: “Colonial war still remains within the purview of the military science of European nations such as England, France, and Spain.”<sup>163</sup> It is after 1927 that partisan warfare becomes widely invoked as a mode of conducting warfare, starting with the Chinese resistance to Japanese occupation between 1932-1945. During WWII, Russia, Poland, the Balkans, France, Albania, Greece were sites of partisan warfare. And after WWII, argues Schmitt, there is its spectacular practice by Ho Chi-minh in Vietnam and in the theorization of the practice by General Vo Nguyen Giap, based on lessons learnt while resisting the French colonial army.

This trajectory of practice continued in Malaya, Philippines, Algeria and in the Cuban revolution, given theoretical form again by Che Guevara. A lesson, notes Schmitt, that comes to repeat itself amongst those who find themselves on one side of the war against the partisans, is the very order that Napoleon issues to General Lefevre on September 12 1813, that “fighting the partisan anywhere, one must fight like the partisan” (2007: 13).<sup>164</sup>

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<sup>163</sup> *ibid.* For example, in colonial Africa the British campaign against the Mahdist mobilization in Sudan led by Muhammad Ahmad in the late 19<sup>th</sup> century comes to mind; one of the three key lessons of this experience for the British, argues Mamdani, is that native resistance could not simply be “extinguished by force but would have to be co-opted through strategy.” Mamdani, M (2009) *Saviours and Survivors: Darfur, Politics and the War on Terror*, Cape Town: HSRC Press, p153; as a form of pedagogical knowledge about the partisan in the colonial encounter, T. E Lawrence’s (1991) *Seven Pillars of Wisdom: A Victory*, also comes to mind. Written in 1922, it has found new relevance as a key text being studied by the United States military in the ‘War on Terror’. The journalist Alisdair Soussi reported recently that it “has found a modern role as part of the American tactics in Iraq and Afghanistan. For example, U.S. General David Petraeus recently devised a counterinsurgency doctrine, drawing on the writings of Lawrence. At the U.S. Army Command and General Staff College in Fort Leavenworth, Kansas, Lawrence is even on the syllabus.”

<http://www.worldpress.org/Mideast/3563.cfm> accessed 10 October 2010;

Schmitt does note that the Russian army remained concerned, in Europe with partisan war as it fought ‘the Asiatic mountain peoples’.

<sup>164</sup> This insight is articulated in Hans von Dach’s famous (1958) manual for the Swiss Army, *Total War: Everyman’s Guide to Guerilla Warfare*, New York: Paladin Press. Schmitt also refers to this text (2007: 13).

Schmitt's critique of liberalism draws insight from his argument that precisely because the partisan exists outside of law, and is the instantiation of the exception, it cannot be normalized within law. The partisan, *and* those who fight the partisan just 'like the partisan fights', disrupt the normative and evolutionist claims of international law, since the partisan smudges the lines between legal and illegal. According to Schmitt, "As regards contemporary partisans, the antithetical pairs of the regular-irregular and the legal-illegal usually become blurred and interchangeable" (2007: 16).<sup>165</sup> The partisan could therefore be thought of, argued Schmitt, as a paradigmatic 'political' figure: it fights for the life of the community, unconstrained by military bureaucracy, and the partisan stands for the exception that can never be normalized precisely because of the existential *gravitas* of the struggle: "All this teaches that a normative regulation of the problem of the partisan is juridically impossible, unless one wants to risk juridical formulations that do not catch the concrete status of affairs and remain mired in generic and contingent value-judgments" (2007: 35).

Dislodging the partisan and the friend/ enemy distinction from the abstract realm of legal and normalizing values, and transferring it to the *concreteness* of an adversarial existence, Schmitt returns us to the question of the realm of the properly political and thus makes politics itself possible. Schmitt makes an additional distinction that is crucial for a reading of the kinds of violence that the Cold War puts into play, and the pedagogy of counterinsurgency: a distinction between the real enemy and the absolute enemy. Marking as a turning point Lenin's theorization of the role of the partisan in the revolutionary struggle for international socialism, Schmitt argues that Lenin grasps the totalizing nature of the partisan as a *political* figure in the first instance. In Schmitt's words,

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<sup>165</sup> Schmitt argues that these tend to be thought of as "compromise norms", the "narrow bridge over the abyss," Schmitt (2007) *Theory of the Partisan*, p32

What Lenin was able to learn from Clausewitz, and what he learned painstakingly, was not only the famous formula of war as the continuation of politics. It was further recognition that the distinction between friend and enemy in the age of revolution is primary, and that it determines war as well as politics (2007: 51).

Lenin's grasp of the partisan's strategic importance for the revolutionary movement and his emphasis on the fusion of the partisan and the political, shifts our understanding from that of the real enemy to that of the absolute enemy. "It is possible", argues Schmitt, to derive from a study of Lenin's notes, "a new theory of absolute war and absolute enmity that has determined the age of revolutionary war and the methods of modern cold war" (2007: 51). Whereas the partisan had been a military tactic in its previous incarnations, for example in the Spanish resistance to Napoleon's army, the partisan in Lenin's articulation, fights a "war of absolute enmity which knows no bracketing." The absolute concrete enemy that Lenin identifies is the class enemy, the figure of the bourgeois, and of class struggle who now fights an irregular war against the "whole political and social order." In this tactical shift, the "language and conceptual world of bracketed war and prescribed enmity no longer were any match for absolute enmity." The absolute enemy is therefore a total enemy against which one fights a total war, which requires the existential negation of the enemy.

Schmitt argues later that the greatest contemporary theoretician of this form of war was Mao Tse Tung. Mao elaborated on the matter in *Problems of Strategy in Guerilla War in Japan*. Written in 1938, this tract was based on reflections of the defeat of

Cheng Kai-shek, the Japanese and the Kuomintang.<sup>166</sup> In the formulation of the challenge, Mao, argues Schmitt, was able to find the strategic point between the universal—the absolute global enemy lacking territorial space—and the concrete forms of enmity with a telluric dimension: “racial enmity against the white, colonial exploiter; class enmity against the capitalist bourgeoisie; national enmity against the Japanese intruder....” (2007: 59). In this historical genealogy of both a practice and an accumulation of knowledge as pedagogy, Schmitt traces its movement from Russia to China and its spread as a form of the political in its anti-colonial and anti-imperialist articulations. It is also, in a mirroring effect, the form of a pedagogical knowledge that becomes known as ‘counterinsurgency’—i.e. the waging of war against the partisan through the methods used by partisan, if we are to heed Napoleons’ advice. It is in South East Asia, and in North Africa that European military strategists, particularly through the French encounter with insurgencies in ‘Indo-China’, return to Europe with some ominous and important lessons. Schmitt notes, “From their experiences, they (the Europeans) developed a doctrine of psychological, subversive, and insurrectional warfare,” which produced a voluminous literature of expertise.<sup>167</sup>

It is no wonder then that besides the Americans, who could offer fresh lessons from Vietnam, and the British who were involved in Malaya and Rhodesia, it was the French theorists of counterinsurgency—with a long history of partisan warfare in Asia and Africa<sup>168</sup> who were most influential as the South African government formulated

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<sup>166</sup> Schmitt (2007) *Theory of the Partisan*, pp53-54; Cf. Mao Tse Tung (1965) *Selected Works of Mao Tse Tung*, vol. II, Peking: Foreign Languages Press, pp 79-112

<sup>167</sup> *ibid*, pp61-62; Schmitt cites examples of this literature, which I refer to but have not read since I am not proficient in French: Raymond Aron (1962) *Paix et Guerre entre les Nations*, Paris: Callman Levy; Luis Garcia Arias (1959) *Etudes des Phenomenes de la Guerre psychologique des Ecole Militaire d'Administration de Montpellier*, Paris: Arthuad

<sup>168</sup> This experience, and its effects, was the subject of Gillo Pontecorvo’s remarkably vivid 1965 film, *the Battle of Algiers*. cf. Edward Said (2000) "The Quest for Gillo Pontecorvo". *Reflections on Exile and Other Essays*. Harvard University Press, pp. 282–292

its own counterinsurgency strategy in the 1970's and 1980's. It is from this pedagogical encounter that a "Total Onslaught" was conceived, and a "Total Strategy" formulated. Such a strategy required redistribution of state powers and a refashioning of the relationship between various institutions of state since the partisan and the war of the partisans could not be normalized within the juridical order. If the partisan was to be normalized and juridically circumscribed, a rupture in the juridical order itself was required. Such a rupture ultimately expressed itself in the State of Emergency.

### ***Bringing War Home***

*The territory of the Republic of South Africa was declared an operational area for the South African Defence Force*

**General Magnus Malan**<sup>169</sup>

In the South African Defence Force's (SADF) second submission to the TRC, it described how the rapidly altering political conditions on the African continent affected its thinking about 'security' in the late 1960s. 'Winds of change' were sweeping across Africa; Ghana, Tanzania and Zambia, led by a postcolonial leadership sympathetic to the sovereign claims of liberation movements in South Africa, gained independence. It was at this time that the strategic experts of the SADF decided that it was necessary to initiate a study programme of 'revolutionary warfare'<sup>170</sup>.

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<sup>169</sup> "Statement of General Magnus Malan to the South African Truth and Reconciliation Commission", 7 April 1997, [www.doj.gov.za/trc/pr/1997/p970430a.htm](http://www.doj.gov.za/trc/pr/1997/p970430a.htm); McCarthy, S (1993) 'The Relationship between the Academic Community and the Intelligence Communities in a Post Apartheid South Africa', *South African Defence Review*, No. 13

<sup>170</sup> South African Defence Force Nodal Point (1996b) *Additional Submission with regard to the Former SADF: Cape Town: Submission to the Truth and Reconciliation Commission; South African Defence*

This programme of study was divided into two streams. The first was theoretical; it consisted of a reading programme of key theorists of war and counterinsurgency. The second was more specific and took up case studies of countries whose experience could be drawn upon.<sup>171</sup> The military strategists read the works of von Clausewitz, as well as counterinsurgency strategists J.J McCuen,<sup>172</sup> Robert Thompson<sup>173</sup> and the French army's General Andre Beaufre,<sup>174</sup> the latter a veteran of the French anti-colonial war in Algeria. They also read the works of Che Guevara and Mao Tse Tung to understand the strategy and tactics of guerilla war from the vantage point of its advocates. The case studies looked closely at insurgences in Malaysia and Kenya (focusing on the suppression of the Mau Mau revolt), which were read as success stories, and Algeria, China and Vietnam, which were read as failures, for lessons about strategic errors to avoid.<sup>175</sup>

In the SADF the figure most associated with formulating this policy at the time was Lt. General C. A. 'Pops' Fraser. During his time in France as a military attaché in the

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Force Nodal Point (1996a) *SA Defence Force Involvement in the Internal Security Situation in the Republic of South Africa*, Cape Town: Submission to the Truth and Reconciliation Commission; The articulation of South Africa's position in relation to the Southern Hemisphere more broadly can be found in the papers presented to a 1973 symposium, 'Suid Afrika en die Suidelike Halfrond' [South Africa and the Southern Hemisphere], held at Potchefstroom University, and hosted by the Center for International Politics. Sentrum vir Internasionale Politiek (1973) *Suid Afrika en die Suiderlike Halfrond: Referate Gelewer by die Geleentheid van die Sesde Simposium oor the Internasionale Politiek 25 Augustus 1972*, Pretoria: SIP

<sup>171</sup> Visser, D (2002) 'The South African Military Academy's Educational Offerings and the National Threat Perceptions', *South African Historical Journal*, no. 46

<sup>172</sup> McCuen, J. J (1966) *The Art of Counter-Revolutionary Warfare: the Strategy of Counterinsurgency*, London: Faber and Faber

<sup>173</sup> Thompson, R (1996) *Defeating Communist Insurgency: the Lessons of Malaya and Vietnam*, New York: Praeger

<sup>174</sup> Beaufre, A (1963) *An Introduction to Strategy*, London: Faber and Faber

<sup>175</sup> Visser, D (2002) 'The South African Military Academy's Educational Offerings and the National Threat Perceptions' *South African Historical Journal*, no. 46

Visser, W (1994) *The Production of the Literature on the 'Red Peril' and Total Onslaught in Twentieth Century South Africa*; Walker, W Gen. (1978) *The Bear at the Back Door: The Soviet Threat to the West's Lifeline in Africa*, Sandton: Valiant Publishers



early 1960's Fraser met Beaufre. He was soon converted to Beaufre views of the West's problems and how they could be countered. Beaufre was then the Director of the French Institute for Security Studies. Fraser returned to South Africa and brought Beaufre's lessons with him. In 1965 Fraser became the Chief of the Army, and in that role formulated his own reflections on the challenges of security, titled *Lessons Drawn from Past Revolutionary Wars* (1966).<sup>176</sup> In the preface Fraser thanks Beaufre for the wisdom of his ideas.

It is said that one of Fraser's most enthusiastic South African students in the Army was P.W Botha, who would later become the Minister of Defence, Prime Minister, and then State President during the 1980's.<sup>177</sup> As I have pointed out, in the literature on the militarization of the South African state in the late 1970's, it is the figure of P.W Botha that stares out at one, with his sternly wagging finger. He was after all the singular authorial figure who inscribed the Cold War binary into state the logic of the state and defined the state's friends and enemies during this period. South Africa, Botha quickly declared upon ascendancy to executive power, would play an active role in 'a global struggle against the forces of communism.'<sup>178</sup>

I don't want to simply reinforce Botha's role in formulation of state policy of the time, but I want to emphasize that Botha did not just conjure notions such as Total War and a Total Strategy in solipsistic isolation. Rather these terms of battle pertain to the conceptual and historical position of the partisan in the realm of the political. They

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<sup>176</sup> Fraser, A.C (1966) *Lessons from Past Revolutionary Wars*, Pretoria: Dept. of Defence

<sup>177</sup> Daniel, John (2009) "Racism, the Cold War and South Africa's Regional Security Strategy 1948-1990," in Sue Onslow (ed.) *Cold War in Southern Africa: white power, black liberation*. London: Routledge, p. 38

<sup>178</sup> SADF (1996a) p4

come into being through the extraterritoriality of the enemy conceived of in absolute terms: the enemy is everywhere, and therefore must be fought everywhere.

With Botha's appointment as the Chief of the Army, Fraser's, and via him Beaufre's, ideas were widely circulated in the SADF. New courses on counterinsurgency training were introduced and Beaufre's *An Introduction to Strategy* (1963) became compulsory reading material in the new curriculum.<sup>179</sup> Beaufre's ideas were also presented in a series of lectures held in 1968 at the SADF Headquarters by two academics, Prof. Deon Fourie and Benjamin Cockram. General Magnus Malan, who became Botha's ally, Minister of Defence and the head of the SADF, also attended these lectures. Between 1968-1974 Beaufre himself met Fraser on a number of occasions, one of these being when P. W Botha hosted him in South Africa as a guest lecturer at the War College.<sup>180</sup>

A key effect of this engagement with counterinsurgency theorists was South Africa's shift to a pre-emptive, regionally outward strategy of direct and proxy engagements in the region. This involved deployments of South African police units to northern Namibia in July 1966 to counter the South West African Peoples Organisation's (SWAPO) influence there as SWAPO had decided to send armed cadres into Namibia to wage guerilla warfare. It also involved sending South African police units into Southern Rhodesia to fight against Zimbabwean liberation movement forces that were

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<sup>179</sup> Vale, P & Baines, G eds. (2008) *Beyond the Border: New Perspectives on Southern Africa's Late Cold War Conflicts*, Pretoria: Unisa Press; Visser, D (2002) 'The South African Military Academy's Educational Offerings and the National Threat Perceptions.' Venter, A. J (1969) *The Terror Fighters: A Profile of Guerilla Warfare in Southern Africa*, Cape Town: Purnell; Venter, H (1981) *Terrorisme*, Pretoria: HAUM; Woodward, C (1983) *Understanding Revolution in South Africa*, Cape Town: Juta and Co.

<sup>180</sup> Chris Alden (1996) *Apartheid's Last Stand: the Rise and fall of the South African Security State*, London: Macmillan, pp44-45

being assisted by detachments of ANC guerillas during the Wankie and Sepolilo campaigns.<sup>181</sup> And it also resulted in the South African police's offer of support to the Portuguese armed forces in their war with guerillas of the Angolan and Mozambican liberation movements.<sup>182</sup>

By the mid-1970's, there was a proliferation of publications and university, policy and 'security studies' conferences that were being organized in South Africa with or in conjunction with the South African Defence Force.<sup>183</sup> Very soon all South African

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<sup>181</sup> ANC guerillas, aligned in Zimbabwe to ZAPU, were part of what was known as the Luthuli attachment, led by Chris Hani, who later became the Chief of Staff of *Umkhonto we Sizwe*, and General Secretary of the South African Communist Party. Charismatic and revered by many, Hani was considered the second most popular ANC figure (after Mandela) upon his return from exile. He was assassinated in 1993 while the political negotiations were underway. Those arrested for the assassination, a Polish immigrant with strong anti-communist views, working with a white right wing political figure and his wife, are currently serving life-term prison sentences. For a journalistic biography, see Janet Smith and Beurdegard Tromp (2009) *Hani: A Life to Short*, Cape Town: Jonathan Ball

<sup>182</sup> SADF 1996a, p6. This is also the period where counterinsurgency as a mode of fighting proxy wars became regularized as a practice. In his biography, the former head of the SADF Special Forces Unit, Colonel Jan Breytenbach (the brother of the poet and former anti-apartheid political prisoner Breyten Breytenbach), describes how Prime Minister John Vorster asked him to train a force of about 100 men as a potential contra-style unit, to destabilize the Zambian presidency of Kenneth Kaunda, who was accommodating the ANC in Lusaka. This was happening at the same time that Vorster was advocating 'détente' with neighbouring states in an effort to split the growing regional postcolonial opposition to apartheid, and cultivate friendly diplomatic relations with Malawi and the Ivory Coast in particular. Cf Jan Breytenbach (1997) *Eden's Exiles: One Soldier's Fight for Paradise*, Cape Town: Quilliere; In 1979 Brigadier Cornelius van Niekerk was appointed to head up the Department of Military Intelligence's Directorate of Special Tasks (DST), which was mandated to support the Mozambican National Resistance (RENAMO), and UNITA, led by Jonas Savimbi, in Angola, as proxy forces. Hanlon, J (1988) *Beggar Thy Neighbour*, London: James Currey; Minter, W (1994) *Apartheid's Contras: An inquiry into the Roots of war in Angola and Mozambique*, London: Zed Books

<sup>183</sup> Parallel to this was the popular literature that circulated and apocalyptic literature that warned of the evil perils of communism and the Russian agenda for global dominance. Much of this literature emanated from various Church-related groupings both in South Africa and in the United States and Europe. For example, Pike, H (1985) *A History of Communism in South Africa*, Germiston: Christian Mission International of South Africa; Stallard Foundation (1986) *The Accelerating Revolution in South Africa, A top priority report for all South Africans*, Cape Town: Postma Publications; Greig, I & Soref, H (1965) *The Puppeteers: An examination of those organizations and bodies concerned with the Elimination of the White Man in Africa*, London: Tandem Books; Grim, F (1974) *The Attempted Rape of South Africa*, Kempton Park: Heart Publishers; Greig, I (1977) *The Communist Challenge to Africa*, Pretoria: South African Freedom Foundation, F (1975) *Revolution by Stealth*, Monument Park: Association for the Preservation of Moral Norms in South Africa; I have collected a number of examples of this material in charity book shops over the last few years, particularly those run by the Cape Flats Distress Association (CAFDA), which raises money for its charity work through funds raised from its two second-hand book stores, in the white suburbs of Claremont and Sea Point. Their wide ranging stock derives from donations from private citizens. These fragments of private libraries that entered into the second-hand market from the mid-90's onwards, gives one an anecdotal but

war colleges and training programmes were offering courses in the theories and practices of counter-revolutionary warfare, and universities were offering postgraduate courses in security and strategic studies.<sup>184</sup>

As Craig Williamson described the framing paradigm of this education to the TRC:

.... The central tenet of all we learned was that the Soviet Union was central to our security problems...that the co-existence of the Soviet Union and imperialist states was unthinkable. One or other must triumph in the end. And before that end comes, a series of frightful collisions between the Soviet Republic and the bourgeois states will be inevitable.<sup>185</sup>

The ‘carnation revolution’ on April 24 1974 in Portugal had profound effects on the Southern African region. The overthrow of the fascist Salazar regime by a faction of the Portuguese army led to the end of the counterinsurgency wars in its colonies, and to the independence of Mozambique and Angola. From the vantage point of insurgency and counterinsurgency in the Southern African region, there were two immediate implications: For the liberation movements in Southern Africa, and their respective armed wings, it meant increased prospects that ANC (*Umkhonto we Sizwe*), SWAPO (*Peoples Liberation Army of Namibia*), ZANLA (*Zimbabwean African National Liberation Army*) and ZAPU (*Zimbabwean Peoples Revolutionary Army*) guerillas would encounter less hostility in countries with governments that were now sympathetic to them. For the counter-insurgents, the South African government, and

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illuminating glimpse into how some white South Africans were making the political conflict and resistance to apartheid underway in the country, legible and intelligible.

<sup>184</sup> Daniel, J (2009) p40

<sup>185</sup> Wiliamson, C (1997), p2; Dept. of Defence archive reports elaborate this view: HVS/201/1 Oorsig van die Onkonvensionele Bedreiging teen die RSA 1969-10-31; HS OPS/303/5 Totale Nasionale Strategie Direktiewe wat van toepassing is op die onder houde met die weermagdele, 16/17 Oct 1978 / 10-16-1978 to 10-17-1978.

the government of Ian Smith in Southern Rhodesia in particular, it meant that the cherished ‘buffer zone’, or ‘*cordon sanitaire*’, as it was known in strategic security thinking, had just been erased. As Peter Vale was to note at the time, the *cordon sanitaire* provided the South African government with “the cushioning effect of the presence of colonial governments in South Africa until 1975...seen from the outside, this *cordon sanitaire* enhanced the stability of the white-minority regimes and, by extrapolation magnified the stability of South Africa itself.”<sup>186</sup>

What was ominous from the South African government’s standpoint was the ascendancy of movements such as the Popular Movement for the Liberation of Angola (MPLA), the Liberation Front of Mozambique (FRELIMO) to state power in Angola and Mozambique respectively. Both the movements had explicit Marxist ideological orientations as well as Soviet backing.<sup>187</sup> These events were also significant in the larger Cold War battle that was taking place since the end of the World War II.<sup>188</sup> They were a sign that anticolonial nationalist political aspirations and movements had become subsumed in complex ways within the larger strategic visions of the nuclear superpowers and within the polarized world of the ‘East’ v/s ‘West’ dichotomy between the Soviet Union and the United States. Transformed into absolute enemies, local movements were viewed as proxies – allies or enemies—and the use of proxy forces became a pattern of conducting a very hot Cold War, most markedly at the time in South East Asia. As is well known, this war was further

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<sup>186</sup> Peter Vale (1984) ‘The Botha Doctrine’, in South African Research Services, ed. *South African Review 2*, Johannesburg: Raven Press, p191.

<sup>187</sup> Shubin (2009) presents a fascinating historical account based on the declassified archives of official state documents of the period in Piero Gleijeses (2002) *Conflicting Missions: Havana, Washington, and Africa, 1959-1976*, North Carolina: University of North Carolina Press.

<sup>188</sup> In the case of Ian Smith’s regime in Southern Rhodesia, there was also the prospect of Chinese involvement since the ZIPRA guerrillas were backed by China. The Chinese government also supported the training of the cadres of the *Azanian Peoples Liberation Army (APLA)*, the armed wing of the other major South African nationalist movement in exile, the Pan African Congress (PAC).

escalated after Reagan's accession to power, and the cultivation of Islamist movements as counter-insurgent proxies in Afghanistan in particular. During this period, as Mahmood Mamdani argues, the 'center of gravity of the Cold War had shifted to Southern Africa'.

Within the South African state, the 1974 coup in Portugal gave impetus to those who were advocating a far more interventionist and pre-emptive form of counterinsurgency based on the insights derived from their French counterparts, and at the urging of sections of the US State Department.<sup>189</sup> Up until then Prime Minister Vorster had utilized the South African Police as the institution through which to conduct the counterinsurgency war under the direction of his long-standing political confidant, Hendrick van den Bergh, who had created the Bureau of State Security (BOSS).<sup>190</sup> In October of 1974, swayed by Botha's argument that the events in Angola and Mozambique be located within the logic of the Cold War, and accepting the increasingly shared doxa in security thinking about the importance of counterinsurgency as strategy,<sup>191</sup> Vorster authorized Botha to actively support the *Front for the National Liberation of Angola* (FNLA), and *Union for the Total Independence of Angola* (UNITA).<sup>192</sup>

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<sup>189</sup> A declassified report acknowledged that, "The US has been heavily involved in the current civil war in Angola. The CIA informed the Committee that since January 1975 it had expended over \$31 million in military hardware, transportation and costs and cash payments.... The beneficiaries of US aid are two of the three contesting factions, the National Front for the Independence of Angola (FNLA) and the National Union for the Total Independence of Angola (UNITA)...." Extracts from the Presidentially Censored House Report on the CIA, January 19 1976', in A El-Khawas, M. A & Cohen, B (1976) *National Security Study Memorandum 39: The Secret Kissinger Study of Southern Africa*, Westport, Connecticut: Lawrence Hill and Company, p183.

<sup>190</sup> The complex relationship between Vorster and Van Den Bergh, and the conspiratorial and illegal actions of BOSS has been fictionalized in a novel by a former security police officer, Alan D. Elsdon (2009) *The Tall Assassin: The Darkest Political Murders of the Old South Africa*, Johannesburg: Umuzi.

<sup>191</sup> For example, D.O.D n.d Die Bedreiging teen die RSA met die spesifieke verwysing na Sowjet beplanning en die rol wat die SA en die kommunistiese party van Suid Afrika speel.

<sup>192</sup> Ibid; Deon Geldenhuys (1984) *The Diplomacy of Isolation: South African Foreign Policy Making*, New York: St. Martins Press

The intervention in Angola also came at the urging of the US Secretary of State, Henry Kissinger, and was encouraged by the CIA, after the power sharing ‘Alvor Agreement’, between the major parties in Angola, had failed to hold. It took dramatic proportions when a secret full scale troop incursion to install UNITA, by the South African Defence Force, was approved by Vorster in August 1975. This move had however been opposed as unstrategic by Van Den Bergh and BOSS.<sup>193</sup> The invasion of Angola, virtually unknown in South Africa itself, lasted eight months, and was terminated only when it became public and potentially embarrassing to the United States government. In an interview with a journalist in 2000, P. W Botha described the objectives of ‘Operation Savannah’ and the reasons for its official termination:

The CIA had an informal agreement with us that the US would mine the harbour of Luanda and we would take Luanda with the help of Savimbi... Viljoen [Chief of the SADF, Gen. Constand Viljoen], and Col. Jan Breytenbach made use of certain parts of the army with the help of the Air Force to clear the southeastern parts of Angola from communist infiltration... at the very last moment, when our troops were near Luanda, I received a phone call from our Ambassador in the US telling me that the US Congress had laid restrictions on President Ford<sup>194</sup> not to assist Angola and we decided to withdraw.

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<sup>193</sup> Annette Seegers (1996) *The Military and the Making of Modern South Africa*, London: IB Tauris, p210

<sup>194</sup> Botha was referring here to *Executive Order 11905*, signed into law by Gerald Ford in February 1976. The Order came in the wake of two congressional commissions into covert operations, and was an attempt to reform and restrict the use of covert operations and forbid the use of political assassinations as a tactic in official US government counterinsurgency operations. Cf. Christopher Andrew (1995) *For the Presidents Eye's Only*: New York: Harper Perennial, p419; Section 5 (g) reads “*Prohibition of Assassination*. No employee of the United States Government shall engage in, or conspire to engage in, political assassination”

<http://www.ford.utexas.edu/library/speeches/760110e.htm> accessed 10 October 2010. This created the need for greater use of proxy forces, and the cultivation of groupings in the strategic interests of the

As Schirmer relates it, later in the interview, Botha recalled that when he next met Kissinger some time thereafter in Pretoria in 1976, Kissinger acknowledged to Botha, ‘I owe you an apology,’ to which Botha replied ‘yes, you do, you left me in the lurch’<sup>195</sup>.

Beside the realization that its weapons needed major upgrading, there were two crucial and portentous lessons the SADF learnt in the Angolan invasion and the fall-out from it: Its leadership realized that it needed to work more systematically through proxy forces rather than take the risk of sending its own conventional ground troops into action. This was both politically risky, as well as proving to be a cumbersome enterprise and increased their visibility and detection, creating greater possibilities for public scandal.<sup>196</sup> It decided that the use of small counterinsurgency units, which could operate with great mobility and discretion, would be crucial in its ‘battle with communism’ in the Southern African region.

It was the SADF’s moment of turning more systematically to ‘fighting the partisan like the partisan fights’, and led to the formation two key counterinsurgency units.

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US, such as the Mujahideen in Afghanistan, and UNITA in Angola, and the Contra’s in Nicaragua, revealed in the details of the Iran-Contra scandal. Cf. Chalmers Johnson’s (2004) *Blowback, Second Edition: The Costs and Consequences of American Empire*, USA: Holt Paperbacks, p288.

<sup>195</sup> Schirmer, Jennifer (2000) *Transcript of an interview with P.W Botha*, Wilderness, 15 September.

<sup>196</sup> The secret nature of the incursion meant that the regular troops that were used were forbidden from communicating their whereabouts or their activities to their families or friends at the time. Those that suffered injury or death were accounted for through non-specific or fictitious narratives issued by the SADF. Talked about as ‘going to the Border’, the memoir as a genre through which to narrate the individual autobiographical experiences of former white army conscripts who partook in these and other military operations of the SADF, has become prolific activity: Holt, C (2004) *At They Call We did not Falter: A Frontline Account of the 1988 Angolan War, as seen through the eyes of a conscripted soldier*, Cape Town: Zebra Press; Piet Nortje (2003) *32 Battalion: The Inside Story of South Africa’s Elite Fighting Unit*, Johannesburg: Zebra; Gear, S (2002) *Wishing Us Away; Challenges Facing ex-combatants in the ‘new’ South Africa*, Braamfontein: Center for the Study of Violence and Reconciliation.



The first unit was created under the command of the SADF, named the Special Battalion 32 (the so-called Buffalo Unit), which integrated about 1800 Portuguese-speaking former members of the FNLA with SADF commanding officers. This unit at its peak numbered around 9000 personnel, including mercenaries from Britain, America, Australia and Portugal. Under its founding Commander, Lt. Col. Jan Breytenbach, its first major sphere of operation was in South West Africa. The 32 Battalion operated alongside a companion unit, the 31 Battalion, or 'Bushman Battalion,' made up of San trackers, who were often recruited to the unit through coercion.<sup>197</sup> Its reputation became legendary in security circles, and it was considered a considerable achievement to be conscripted to become a member of 32 Battalion.

The second unit put into operation was the South West African Police- Counter Insurgency Unit, SWAPOL-COIN, or 'Koevoet' [Crowbar], as it is more popularly known. Formed in 1978, Koevoet was formed under Colonel Hans Dreyer, who later became a Major General in the South African Police. It modeled itself on the Rhodesian Selous Scouts, and many of its recruits had gained battle experience in Southern Rhodesia. They were now also trained in the theories and practices of counterinsurgency that had become the focus of South African security strategy. At its peak the unit numbered just over a thousand members, with about 300 white South African officers, and the remainder recruited from local Ovambo communities, many of whom were highly skilled trackers. Koevoet's ability to track Swapo guerillas on foot became a hallmark of the unit's capabilities.<sup>198</sup>

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<sup>197</sup> SADF (1996b), p8; DOD: MI/STRAT/ 1/4 Die Terrorisbedreiging teen die RSA en SWA- Huidige stand en verwagte uitbreiding Sep 74- Sep 74.

<sup>198</sup> Peter Stiff (2000) *The Covert War: Koevoet Operations in Namibia 1979-1989*, Galago Publishing Pty Ltd, 2000. Turner, John W. (1998). *Continent Ablaze: The Insurgency Wars in Africa 1960 to the Present*. Johannesburg: Jonathan Ball, pp 127-168

The way these two units are memorialized by those who fought in them is revealing of the kind of violence that was normalized and rewarded. The first account I quote below, is from a newspaper report of an '*All for Nothing Reunion Party*' held just outside Cape Town in 2000, organized by former members of the unit. I retrieved this report from a website dedicated to the history, achievements, and fate of Koevoet, regularly updated by a group of its former members. The report of the reunion recalls practices of the unit that the regular rules of modern conventional warfare might consider inappropriate (like 'cutting off opponents' ears'), and is not entirely flattering in that sense. The article is however displayed on the website without critical commentary that might deem it a misrepresentation of what happened. In fact it is part of a section that describes the "proud history" of the unit. The second account I quote immediately thereafter, is by a former member of the SADF's 32 Battalion, Piet Nortje, who has written an entirely hagiographic account of his fellow 'Buffalo Soldiers.'

In her report of the Koevoet reunion of 2000, the journalist Emsie Ferreira describes the evening, not without a certain amount of irony and pathos:

South Africa's former Koevoet (Crowbar) fighters gathered near Cape Town recently to reminisce about their glory days as the apartheid regime's most efficient killers of terrorists and to help each other cope with being outcasts now. The specialised police unit sometimes celebrated by slashing off the ears off its victims and stringing them into necklaces. Officers used to drag bodies behind their vehicles to instill fear. 'We did good work. We were described by many an international journalist as the best anti-terrorist unit in the world,' Brigadier Isak van der Merwe, the former second-in-command of Koevoet, told AFP as 180

of his men holed up at a holiday resort near the rural town of Paarl outside Cape Town last weekend. Koevoet earned its reputation killing members of the South West African People's Organisation (Swapo) in neighbouring South West Africa before that territory became independent as Namibia in 1989. The unit numbered only 300 South Africans, backed by co-opted native Namibians, but managed to kill more than 10 times as many members of Swapo. The statistics are proudly emblazoned on the labels of wine bottles emptied at the reunion -- 3861 Swapo were killed compared with 153 Koevoet members who died in action.<sup>199</sup>

Now let us immediately turn to the effusive account of the South African Defence Force's counterinsurgency unit, 32 Battalion by Piet Nortje:

Every war has at least one—a unit so different, so daring that it becomes the stuff of which legends are made and heroes are born. Amongst the South African forces fighting in Angola from 1975 to 1989, that unit was 32 Battalion. Founded in the utmost secrecy from the vanquished remnants of a foreign rebel movement, undefeated in 12 years of front-line battle, feared by enemies that included both conventional Cuban armies and Namibian guerilla fighters, the Buffalo Soldiers became the South African army's [sic] best combat unit since World War II, with no fewer than 13 members winning the highest decoration for bravery under fire... a consistently high kill ratio had become a trade mark of the unit, and the troops were justifiably proud of the skills they had acquired....

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<sup>199</sup> <http://koevoet.webklik.nl/page/the-story> accessed October 2 2010

It is not without poignant if not tragic significance that the exceptional violence narrated and celebrated above, formulated in the discourse of the partisan, and commemorated by those who pioneered South Africa's foray into counterinsurgency, originated as a practice in South West Africa/Namibia. There is after all already a terrible story of exceptional violence that resides in that region, which precedes the more contemporary South African story. Administered as a German colony from 1884, the territory of South West Africa was the site of the first genocide of the 20<sup>th</sup> century: the extermination of the Herero and Nama peoples between 1904-1907.<sup>200</sup> As a precursor, it was also the place of the pioneering of a total form of war in the region, at the massacre of Hoornkop in 1893.

The leading Nazi figure, Herman Goring's father had been the first German governor of the South West African territory, but was transferred to Haiti when he failed to bring the region's ethnic groupings and clans under German control and 'protection.' Goring was replaced in 1889 by Curt von Francois, who had been working as a mercenary in the Belgian Congo, where he had earned a reputation for ruthlessness in dealing with 'the natives,' on behalf of the Belgian colonial army. Although instructed by the German Chancellor Otto von Bismarck to avoid open conflict with the locals, von Francois set about his mandate with the sensibility he had learnt in the

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<sup>200</sup> In a recent study of this genocide, Olusoga and Erichsen argue that in a prelude to the larger genocide, in 1905 on Shark Island, a small island off the coast of the town Luderitz off the South West African coast, the 'death camp' as a form of military apparatus was invented when in an experiment three thousand five hundred Africans "were systematically liquidated" by German colonial administrators. To this day, according to accounts from divers, "Shark Island is surrounded by a ring of human bones and rusted steel manacles. The human beings who were made to wear those chains and whose remains lie beneath the waves have been almost erased from Namibian and world-history.... The Herero, Witbooi Nama, Bethannie Nama—mean nothing to most people outside of Namibia". Olusoga, David and Erichsen, Casper W. (2010). *The Kaiser's Holocaust. Germany's Forgotten Genocide and the Colonial Roots of Nazism*. UK: Faber and Faber, p11 also Lindqvist, S (1997) *"Exterminate All the Brutes": One Man's Odyssey into the Heart of Darkness and the Origins of European Genocide*, New York: The New Press

service of King Leopold. It was he who is said to have invoked the violence of the partisan against the largest clan of the Nama, led by the now legendary figure of Hendrik Witbooi, a local Nama clan leader who had consistently refused to sign a treaty subjecting his clan to control of German colonial administration.

In the darkness of night, on the 12<sup>th</sup> April 1893, von Francois set off with a small party of soldiers for the mountain valley of Hoornkop, where Hendrik Witbooi and his followers were camped just 100km's outside of Windhoek. Von Francois had come to the conclusion that Witbooi could not be outsmarted diplomatically, nor could he defeat his clan in regular open battle, since Witbooi's soldiers outnumbered the colonial forces, were skilled horsemen, and experts in their agile ability to traverse the harsh landscape. It was then that Von Francois decided "to surround the tribe as they slept and exterminate them."

Hendrik Witbooi and his men were camped apart from the main camp of the clan when Von Francois's soldiers were given the order to open fire. They witnessed with shock and astonishment across the valley as the soldiers first fired, then strafed the survivors with bayonets and set fire to tents with the occupants inside. It was not that the Witbooi clan was going to be at war with Von Francis that was surprising. After some months of threats, Hendrik Witbooi had anticipated a war, and had encamped to the mountains for tactical reasons to prepare for it. He had also separated the men from the women, in anticipation that if there was to be a battle, it would unfold in the 'regular way'<sup>201</sup> between the armed men on both sides, sparing the women and

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<sup>201</sup> Although at war with the German state as a colonial occupier, Witbooi was known to treat only the German colonial army as the enemy, and not German travelers, traders or farmers, whom he would give assurances of safety to as they traveled through land under his control. This further deprived von Francis of a pretext to go to war against the Witbooi Nama. As one German farmer described his

children. What shocked Witbooi and his men, besides the surprise nature of the attack that left them scrambling and unable to respond adequately, was that the women and children in the camp were deliberately targeted.

This set the Hoornkop massacre apart as unprecedented as a form of colonial violence in the region, and marked a turning point for the German colonial state. A little less than a century later just as this was to be the place of, this region also became the site of a turning point in the South African state's practices of war. It was here that South Africa's first counterinsurgency units were given free reign to practice violence without the constraints of law. This region on the west coast of Southern Africa also contained the only deep water port in the region, at Walvis Bay. The port was annexed by the British in 1878 and became part of the Union of South Africa in 1910. In the aftermath of the Hoornkop massacre, Hendrik Witbooi, educated in missionary schools, and considering himself a Christian, petitioned the support of the British magistrate at Walvis Bay in a letter, in which he implored Magistrate John Cleverly to relay the message to European powers, with the hope that they would, after the Berlin Conference, call the German government to account for their actions. Witbooi wrote,

Please let these miserable and frightful events be quickly known to all the great people in England and Germany. I cannot think that such a war as the Germans have now made is done by such a mighty and civilized people—is it a straight forward or usual way of making war?

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experience, in the aftermath of the Hoornkop massacre: “Witbooi new full well that we were Germans with whom he was at war and that he might have captured the 500 oxen without a shot being fired; but we, for our part, knew just as well that Hendrik would keep his word whatever happened, and we were not disappointed.” Olusoga, David and Erichsen, Casper W. (2010). *The Kaiser's Holocaust. Germany's Forgotten Genocide and the Colonial Roots of Nazism*. UK: Faber and Faber, p77

Cleverly's response captured well the distinction Schmitt made about the disjuncture between the regular forms of war that had come to characterize Europe and the contrast with the manner in which colonial wars were conducted: "I cannot understand" Cleverly remarked in his letter to Witbooi a few days later, "how there could have been a killing of women and children such as you tell me of. European nations do not make war in that way."<sup>202</sup>

After World War I, the entire region was put under the administration of the League of Nations and declared a mandate territory, with South Africa responsible for administration. The Mandate was to be transferred to the United Nations after 1945, but the South African government objected and refused to relinquish administrative control, despite a number of international resolutions calling for its handover. In some moments, South African government's actions were also condoned by international legal rulings.<sup>203</sup> Nevertheless the government did not proclaim South West Africa an official province of the Republic of South Africa. The territory was left in a legally indeterminate zone, subject to South African administrative fiat, but without access to its legal codes.

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<sup>202</sup> The quotes in this section are from Olusoga, David and Erichsen, Casper W. (2010). *The Kaiser's Holocaust. Germany's Forgotten Genocide and the Colonial Roots of Nazism*. UK: Faber and Faber, pp 64-65, 76

<sup>203</sup> In 1950 the matter was brought to the International Court of Justice (ICJ) for the first time. The ICJ ruled that South Africa was not obligated to hand over the territory to the UN, but had to fulfill its mandate obligations set out by the League of Nations in 1915. In 1960 the governments of Ethiopia and Liberia brought the case formally to the ICJ again, arguing that South Africa was not fulfilling its mandate obligations. The ICJ dismissed the case on the grounds that Ethiopia and Liberia were not eligible parties to bring the matter to the court. Cf. Elizabeth Landis (1964) 'South West Africa in the International Court of Justice', *African Affairs*, vo. 11. No. 4; United Nations Security Council Resolution No. 435 (1978) was the last major resolution, establishing the grounds for a ceasefire agreement and UN administered elections under a transitional UN peace keeping force, which South Africa agreed to in 1988, and elections marking Namibian political independence eventually occurred in 1989.

It was therefore the ‘ideal’ political space, partly resembling a zone of bare life, where the South African government could allow its newly formed counterinsurgency units, first 32 Battalion and later Koevoet, to act with impunity against ‘terrorists,’ without having to worry too much about scandal, or about national or international law. The territory was, as the government claimed, within the scope of its policing mandate even though this was in violation of certain aspects of its international legal obligations. South West Africa/ Namibia was also beyond the purview of South Africa’s white citizens, and official reports of what was happening there were severely circumscribed. These nonetheless circulated as stories about ‘the border’ akin to the narratives that Vietnam War veterans told about their experiences. From 1977 onwards, all white males over the age of 17 had to perform regular annual period of military duty in addition to the two-year period of conscription as adults. This meant that white males had periodic forays into ‘the bush’ or the ‘the border’ and then returned to their ‘normal’ lives, where they were not supposed to speak about the kinds of experiences in these zones of exception which they were often party or witness to.<sup>204</sup>

In September 1978 P.W Botha replaced John Vorster as South Africa’s Prime Minister. Botha quickly disbanded the Bureau of State Security, and elevated his fellow enthusiast of the French counterinsurgency theorist Beaufre, General Magnus

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<sup>204</sup> Patricia Hayes and Ian Liebenberg have recently compiled a visual archive of this period (2010) *Bush of Ghosts: Photographs of daily life and combat, on both sides of the South African Defence Force bush war in the 1970s against Swapo and Cuban forces in Angola*, Johannesburg: Umuzi Press and Karen Batley has compiled a volume of poetry written by former soldiers of the SADF who fought on ‘the border’, in Angola, (2007) *A Secret Burden, Memories of the Border War by South African Soldiers who fought in it*, Cape Town: Jonathan Ball; a mixture of poetry and short prose pieces, all the contributors to this volume speak of doubt, regret and trauma, and the bewilderment of having fought for a patriotic cause that they might not have shared an investment in; this is in stark contrast to another proliferating form of memorialization of these experiences, the celebratory recollections born of solidarity, and which are increasingly to be found in the form of web communities, which are also often critical of the political settlement, and the postapartheid government. Eg. [www.32battalion.net/](http://www.32battalion.net/)



Malan, to the position of Chief of the SADF. Malan was tasked with formulating the 1979 *White Paper on Defence*.<sup>205</sup> As part of its production, two conferences were organized: the first at Fort Klapperkop in Pretoria, and the second at the naval base of Simonstown in Cape Town. The Fort Klapperkop meeting started with an acknowledgement of two strategic challenges that faced South Africa. The first was the likelihood that the Ian Smith regime in Rhodesia would be unable to continue much longer. The second was the implications for South Africa of the ANC's study tour of Vietnam, led by its President, Oliver Tambo. During this visit the ANC delegates met with a number of leading South Vietnamese military strategists, among them the famed General Vo Nguyen Giap, and the delegates gathered at Fort Klapperkop were worried about lessons they would have learnt there for conducting an armed insurgency in the country.

The retired former US marine, Colonel William Barber, in his address to the meeting, articulated a view we are now very familiar with, and did so by framing the challenge for the delegates present as that of one that was shared amongst friends against a mutual enemy. He said,

In support of wars of national liberation, the Soviets instigate, assist and encourage acts of terrorism... The Soviets and their partners have become very skilled at the export of terrorism... Your experience in Angola, and ours in Vietnam, provide recent examples of this aspect, and also

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<sup>205</sup> DOD: SF/504/1/15 Jan 1979 Defence White Paper; HSP/ Dapa/ 504/1/1 16 Jan 1979 Defence White Paper; HS OPS/ 518/20/2 13 Nov 1978 Witskrif oor verdiging; LMH/ 518/20/2 19 December 1978 White Paper on Defence; C Army/D Plan/ 518/20/2 4 Jan 1979 Defence White Paper; VSH/518/20/2 5 Jan 1979 White Paper on Defence 1979; GG/518/20/2 9 Jan 1979 Defence White Paper 1979

demonstrate the difficulties and frustrations in countering Marxist sponsored wars of liberation.<sup>206</sup>

In 1977 P.W Botha had also been active in formulating the precursor to the 1979 White Paper.<sup>207</sup> Therein he argued that the Soviet Union was orchestrating revolutions in the Southern African region and that South Africa was facing a ‘Total Onslaught’. To counter the Total Onslaught, Botha argued for a similarly all encompassing response, a ‘Total Strategy.’ Botha drew on two central insights that Beaufre had developed in his manual on counterinsurgency planning. Firstly, that only 20 percent of a counter-revolutionary strategy should be rely on military planning, and secondly that 80 percent would have to based on ‘political elements,’ and that this would take the form of a process of political reforms.<sup>208</sup> These ideas were incorporated into the 1979 White Paper, and given an institutional form, the National Security Management System (NSMS: see **Figure A** below). The plan envisaged moving the State Security Council to the center stage of executive decision making, unlike its marginalized role where it had only met once after its formation in 1972 during the Vorster years. The State Security Council comprised of high ranking military officers, police and intelligence, and a small group of Cabinet members—the State President, the Ministers of Foreign Affairs, Defence, Justice and Police. The State Security for the second time in 1979, and then at “least 20 times per annum for the next ten years.”<sup>209</sup>

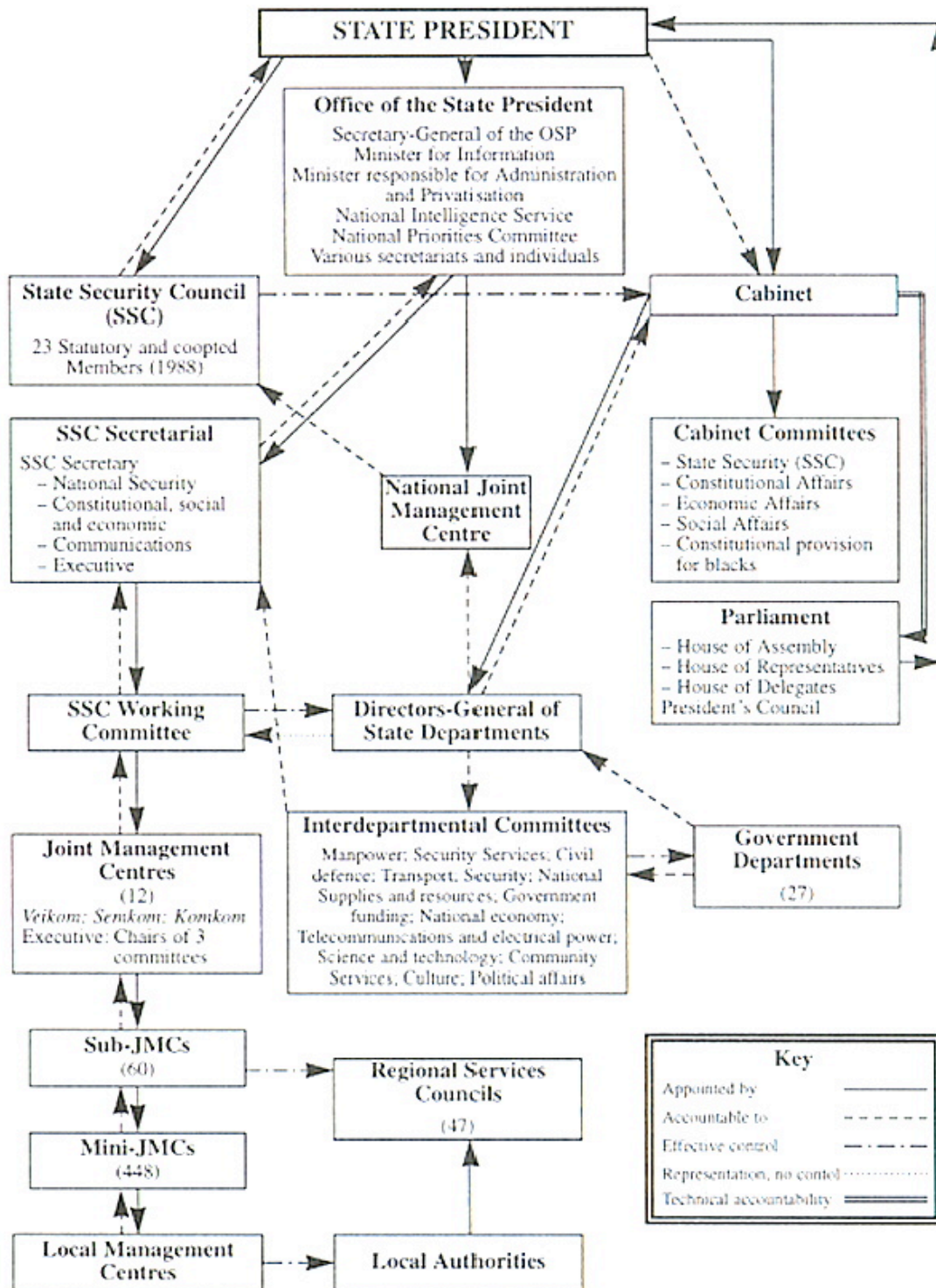
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<sup>206</sup> Colonel William Barber (1977) ‘National Security Policy’, in Louw, H. H (1977) *National Security: A Modern Approach- papers presented at the symposium on National Security*, Pretoria: University of Pretoria, p50

<sup>207</sup> Republic of South Africa (1977) *White Paper on Defence and Armaments*, Pretoria: Government Printers

<sup>208</sup> *ibid*, p7

<sup>209</sup> Alden (1996); Daniels (2009), p45.



**Figure A:** Structure of the National Security Management System (NSMS).

Source: The O' Malley Archives:

<http://www.nelsonmandela.org/omalley/index.php/site/q/03lv01538/04lv01828/05lv01993/06lv02004.html>

The State Security Council was supposed to be a committee of the Cabinet, which would make recommendations to Cabinet. However it became clear that the powers on paper were exceeded by its influence in practice; between 1979-1988 the cabinet never overrode a 'recommendation' of the SSC. The SSC quickly grew into a network that expanded across the country, with its own secretariat, thirteen inter-departmental committees and eleven regional management committees with nearly 500 district and local committees.<sup>210</sup> The global context by the end of the 1970's, particularly the election of Margaret Thatcher in the UK, and Ronald Reagan in the USA, provided an ideological consensus that favoured the counterinsurgency planning which was unfolding in Southern Africa.<sup>211</sup> This consensus provided the green light for a more pre-emptive military strategy on the part of the Botha led government, with bolder forays into the Southern African region by its security personnel.

In Craig Williamson's account of the period, he recalls that the political leadership at this point told the counterinsurgency agents 'to take the gloves off.' McCuen's manual on the *Art of Counterrevolutionary Warfare*, by then the established textbook in the military, advocated the use of a 'fight fire with fire' approach, by using the methods and tactics of guerilla warfare against the guerillas.<sup>212</sup> The object was to assert South Africa's political, military and economic dominance in the region, and to destroy the liberation movements wherever they may be. The period took a heavy toll

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<sup>210</sup> *ibid*

<sup>211</sup> For a discursive study of Reagan's penchant to view the world in the binary of good versus evil, see Rogin, M (1987) *Ronald Reagan The Movie and Other Episodes in Political Demonology*, California: University of California Press

<sup>212</sup> Che Guevara, in his thoughts on guerilla warfare, made a distinction between 'terror' and guerilla warfare, advocating the latter, but criticising the former. Guevara argued that guerilla fighters need the active support of the population if they were to swim 'like fish in water'. Terror would only alienate the population from the guerilla. Che Guevara (2005) *Reminiscences of the Cuban Revolutionary War*, New York: Ocean Press. This distinction between the tactics of guerilla warfare and 'terror' seemed however not to be heeded by those practicing counterinsurgency.

on South Africa's neighbouring states.<sup>213</sup> By 1985, the counterinsurgency strategy was in its fulcrum. The South African government had now armed, and cultivated relationships with local surrogate groups in Mozambique, Lesotho, Zimbabwe, and Zambia. It had organized specific units within the security forces who could cross borders and carry out political assassinations, abductions and torture. It was actively targeting the infrastructure, the personnel, and the facilities of the liberation movements. These attacks on neighboring states eventually forced President Samora Machel from Mozambique to sign a non-aggression pact, the Nkomati Accord, which meant that the ANC could no longer operate military access routes through Mozambique enroute to South Africa. All neighbouring states, except Botswana and Zimbabwe, had signed non-aggression pacts with the Pretoria government by 1986.

### *Conclusion*

In previous chapters, I have discussed the legal narrative of culpability and recorded the immediate events surrounding the death of the Cradock Four as police officers accused of the Cradock Four's murder recounted them to the TRC. In that discussion I also described how Mathew Goniwe and others were considered enemies of the state. This put them on the radar of both surveillance and the state's counterinsurgency agencies. In the previous section I have also established the context within which the South African state turned to counterinsurgency, to address a 'total war,' and established its early counterinsurgency agencies in the military and the police. These agencies in turn participated in acts of exceptional violence across the borders of the

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<sup>213</sup> An empirical of assessment of the violence, translated as direct lives lost, indirect mortality, and economic and infrastructural damage to the Southern African region, can be found in Phyllis Johnson and David Martin's (1989) *Apartheid Terrorism, the Report on the Devastation of the Frontline States for the Common Wealth Committee of Foreign Ministers*, London: James Currey; Minter, W (1994) *Apartheid's Contras: An inquiry into the Roots of war in Angola and Mozambique*, London: Zed Books

country. It was there that questions of legality and illegality were set aside as the political rationale of friends and enemies was forcefully revealed as the calculus of political being.

The key members of that group of seven police officers who applied for amnesty for killing the Cradock Four had, we must bear in mind, learnt their theory and cultivated their practice of counterinsurgency as members of Koevoet in South West Africa. They were transferred in the mid-1980s to internal counterinsurgency units or to regional security branches where they were tasked with eliminating the ‘enemy’ inside the country as part of the counterinsurgency offensive, which was now also turning inward. Johan van Zyl told the amnesty committee that he had acquired combat experience in the former Rhodesia, Namibia, Mozambique and Angola. He was transferred to Port Elizabeth from the Koevoet unit in Ovamboland in early 1985. Another amnesty applicant in the case, the former Koevoet officer Major Eric Winter, was also transferred to the Eastern Cape at that time and, based on his success in South West Africa, was promoted to commander of the Security Police in Cradock. Eugene De Kock, who had played a support role in the Cradock killings, in his capacity as the commander of the internal counterinsurgency South African Police unit C1 better known as *Vlakplaas*, was a founding member of Koevoet in 1978. By the time he left South West Africa in 1983 to take up command of the C1 unit, De Kock commanded his own unit of soldiers within Koevoet, that according to his own claims, “boasted the highest kill rate of all the Koevoet units.”<sup>214</sup>

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<sup>214</sup> Eugene de Kock (1998) *A Long Nights Damage, Working for the Apartheid State*, Johannesburg: Contra, p87; In private ceremonies, De Kock was awarded medals of honour by the Minister of Police, Louis Le Grange for his ‘achievements’ in Koevoet, as well as for his role in the bombing of the ANC offices in London in 1983.

I conclude this chapter by summarizing the relationship between the political and law, as Eugene De Kock articulated it. In his words,

To us in the security forces it became clear from very early on that the suppression of resistance would not be possible in terms of the existing legislation. We were forced to rely more and more on acts of terror... I knew that [President] P.W Botha had used his powers to protect soldiers against prosecution. This also served to reinforce our belief that we could operate above the law and could 'take out' enemies of the state without risking punishment (1998: 98).

De Kock, like the others, had learnt in Namibia that the regularity of being was to be secured through the war of the partisan, the war of the irregular. It was a political rationality that they had not invented. Its genealogy preceded the police officers who devised the plan to kill Matthew Goniwe and his comrades. It was one element of the answer to the natives revolt, a technique for the instillation of a proper degree of terror that was part of a pedagogy of counterinsurgency that had accumulated over time, forged in Congo, the experiments of Shark Island, the mountains of Hoornkop, the desert of the Namib, the Frontier Wars in the Eastern Cape, and the bushveld of Southern Rhodesia. It was a technology of violence, but its rationality was to be found in a larger foundational violence, in the realm of the properly political.

## Chapter Five

### **Apartheid's Predicament: The Native as Insurgent**

*[I]f our policy is taken to its logical conclusion as far as the black people are concerned, there will not be one black man with South African citizenship...[e]very black man in South Africa will eventually be accommodated in some independent new state in this honorable way and there will no longer be a moral obligation on this Parliament to accommodate these people politically.*<sup>215</sup> **Dr. Connie Mulder**, Minister of Bantu Administration and Development 1978

Mathew Goniwe and his comrades, within the pedagogy of counter-insurgency, had become enemies of the state. They were also political subjects that occupied a zone of existence that troubled the coming into being of apartheid. They were apartheid's urban subjects, a form of the political subject that apartheid would seek, in its most ambitious moments, to erase as a category of being. Tracing the transformation of the figure of the urban African, and the urban revolt, into the absolute enemy, requires that we locate the genealogy of this figure within apartheid's discursive and institutional violence: the merger of territoriality and political identity in the course of the late 19<sup>th</sup> and 20<sup>th</sup> century.

An understanding of apartheid's wrong after the TRC, as a question of human rights violations, which we have discussed in a previous chapter, displaced the hegemony

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<sup>215</sup> Connie Mulder, Minister of Bantu Administration and Development *House of Assembly Debates* (1978) vol.72, 7 February, col. 579



that had been occupied for a number of decades by the so-called ‘Race -Class’ debate as the conceptual grounds for the critique of apartheid. The Race-Class debate was another displacement, I have argued, of the anxiety that is central to apartheid as a form of colonial governmentality, and the questions of citizenship, subjection and violence that attend this anxiety.<sup>216</sup> The violence of the partisan then—of insurgency and counter-insurgency—must be understood in relation to this properly political dilemma.

In a pioneering revisionist Marxist critique of liberal South African historiography, the former treason trialist and exiled scholar Harold Wolpe opened his study with an observation on the relationship between race and ethnicity in South Africa:

The social definition of groups in South Africa is imposed and maintained in all the spheres of the social formation and is embedded in the legal, political ideological and economic institutional order. Given this conception, no distinction is made between ‘race’ and ‘ethnicity’ for the purposes of this book, except where this may be required by the context.

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Combining the dominant sociological debates at that time on the articulation of modes of production, supplemented by historical archival material, Wolpe argued that the Bantustan system of ethnicized homelands were created as a reserve system

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<sup>216</sup> Pillay, S (2009) “Translating ‘South Africa’: Race, Colonialism and challenges of critical thought after apartheid”, in Vale, P and Jacklin, H. eds., *Re-Imagining the Social in South Africa: Critique and Post-Apartheid Knowledge*, UKZN Press

<sup>217</sup> Wolpe (1972) *Capitalism and Cheap Labour Power: From Segregation to Apartheid*, p3

for the supply of cheap labour to the mining industry, and therefore reflected the dominant interests of mining capital.

The distinction that Wolpe erased between race and ethnicity was some years later to be the very distinction that Mahmood Mamdani described as the central feature of the colonial logic of apartheid rule: its distinction between racial citizens and ethnic subjects (1996). It was this bifurcation between racial citizen and ethnic subject, argued Mamdani, that made apartheid a form of colonial rule, and therefore not exceptional to the African and colonial experience.

In a recent study of an earlier act of colonial violence in the Eastern Cape-- the mutilation and beheading of the Xhosa king Hintsa, by British colonial forces in 1835— the historian Premesh Lalu has asked pertinent questions about the nationalist narrations of violence in the post-apartheid present.<sup>218</sup> Revisiting the dominance in South African historiography of the debate about Race and Class, Lalu notes that in the early settler liberal historiography on South Africa, '[c]olonialism appears as an *absent cause* in the later development of capitalist relations of exchange, extraction and production. In South Africa, the history of colonialism as a specific technology of power, as opposed to the basis of a later economic development, was perhaps prematurely terminated ..."<sup>219</sup> The disarticulation of race and colonialism, and its articulation to the processes of capital accumulation, defined the problem with 'apartheid' as racial-capitalism. "In some respects" notes Lalu, the critique of the forms of capitalist accumulation has obscured- and perhaps rendered inconsequential- the critique of colonialism as a

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<sup>218</sup> Lalu, P (2009) *The Deaths of Hintsa: Post apartheid South Africa and the shape of recurring Past*, Cape Town: HSRC Press

<sup>219</sup> Lalu (2009) p103

condition of power in its own right. In South African historiography, the critique of colonialism assumed a secondary status, as a form of articulation of colonial hegemony generally surrendered to the larger conclusions of a racially defined system of capitalist accumulation.<sup>220</sup>

This epistemic gesture also has the effect of removing certain social processes and political rationalities from scholarly as well as ethical-political scrutiny. Framed within the “problem-space” of domination and resistance, its articulation of an emancipatory project derived from a critique of the totalizing narrative of capital accumulation, the author of modern World History. In other words, the critique of apartheid became the critique of the universalized, and absolute class enemy; apartheid was the secondary manifestation of the extractive rationality of capital accumulation.

More generally, Africa’s place in World History is of course a question with a long genealogy of dispute. It was Herodotus who is said to have alluded to the geography of monstrosity. And Hegel who dismissed the possibility of History in Africa: ‘At this point we leave Africa, not to mention it again. For it is no historical part of the World; it has no movement or development to exhibit’ (Hegel, 1991, p99). Africa was therefore not constituted as an agent of historical change, nor a place considered the source of knowledge that would be considered Historical. Africa, in its semiotic form, is a sign which makes various appearances and disappearances in the story of ‘world-history’. The conception of ‘South Africa’, as it appears in this narrative, also undergoes various transformations. One is the conceptual-historical dislocation of

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<sup>220</sup> Lalu (2009) p104

South Africa from the African narrative of colonialism, and its insertion into a Eurocentric narrative of capitalism.

Walter D. Mignolo (2002) argues that in the postcolonial period, in countries which experienced forms of colonial rule,

the colonial difference was not considered in its epistemic dimension. The foundation of knowledge that was and still is offered by the history of Western civilization in its complex and wide range of possibilities, provided a conceptualization (from the right and the left) and remained within the language frame of modernity and Western civilization (Mignolo, 2002, p64).

The question for Mignolo is partly an existential one that derives from the philosophy of Being and Time, in its Eurocentric formulation, and the different relationship of Being and Place, which marks the colonial emergence of subjectivity as different: ‘coloniality of being cannot be a continuation of the former...but must be, rather, a relocation of the thinking and a critical awareness of the geopolitics of knowledge production’ (2002, pp66-67).

Similarly, in his reflections on postcolonial African historiography, the Congolese historian, Jacques Depelchin (2005) addressed the specificity of the colonial experience through the use of the concept of ‘silences’. These operate at multiple levels from the somatic to the epistemic to the mundane: ‘the things left unsaid’. African history, he argues, has been configured between the syndromes of ‘discovery’ and ‘abolition’. On the one hand, the possibility of an African history is denied, and

on the other hand when an African ‘history’ is discovered, those who take responsibility are like the abolitionists who take responsibility for the ending of the slave trade: they silence the victims in the discussion of justice. The insertion of Africa into the world-system, argues Depelchin, should be approached with caution if we are to write African history out of the narratives it has been determined by: ‘The adoption of the model is so complete that it overwhelms from the start the specificity of African history as compared to European history’ (Depelchin, 2005, p93).

I have flagged briefly the contention about the nature of apartheid’s wrong in the Race-Class debate because I wish to bring to the fore the discursive erasure in that debate of an aspect of apartheid’s biography: its colonial genealogy. It is in the colonial genealogy of apartheid that a certain kind of political subject – the urban or ‘detrribalized native’ - is produced which ultimately becomes a significant cause of anxiety for the apartheid state. The claims that would emanate from this subject—the claims for citizenship— could not be recognized without bringing apartheid itself to its eventual institutional crisis and termination. The revolt of the urban African subject then was the revolt of the concrete enemy of apartheid, translated within the pedagogy of counter-insurgency into the figure of absolute enemy.

### ***Squeezing the Native out of the Urban***

On the 17<sup>th</sup> March 1985, with the assistance of the Eastern Cape Advice Office of the Black Sash, two men made an impassioned plea to the Minister of Co-operation and Development. Writing on behalf of the resettled Glenmore community who were relocated from South Africa to the ‘independent’ homeland of the Ciskei, Mr. Botlani

and Mr. Peters implored the Minister to allow the community to return to South Africa. The tone of the letter was polite, but it described vividly their anguish as they struggled to adjust to life under the Native Authority's coercive powers, including the punishments they were suffering under customary law, for having 'Westernised' ways:<sup>221</sup>

We are requesting a place to live because we are not happy here.... We are not happy here because of the things that are being done to us... Please take us out of this hole; we are burning... The township people were pushed around at gun-point by the Ciskei police. We were made to pay R30. 00 fines for having table knives and forks. We sleep on our knees for we have no rights like people in other places... The South African government does not want us. We are a people without citizenship and without rights.

The most striking forms of injustice suffered by the victims of apartheid occur well before the 1960 cut-off date of the TRC and are forms of injustice that emerge from the colonial genealogy of apartheid: its attempts to legalize and stratify citizenship, to spatially re-order race, ethnicity and territory, setting off mass dislocations, terror and violence on a scale that accounts to millions of victims. As Mamdani observed,

[w]hat gave apartheid its particularly cruel twist was its attempt to artificially deurbanize a growing urban African population. This required the introduction of administratively driven justice and fused power in African townships; the experience can be summarized in two words,

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<sup>221</sup> Rhodes University Cory Library, MS 18 848/21 'Botlani and Peter to Minister of Co-operation and Development 17 March 1985'

forced removals, which must chill a black South African spine even today.<sup>222</sup>

One of the most pernicious and consequential legal tenets of modern apartheid before 1960 was enshrined in the Native Land Act of 1913. The Native (Black) Land Act circumscribed African legal ownership of land initially to seven percent, later extended to thirteen percent of the country<sup>223</sup>. It was to be accompanied in 1923 by the Native (Black) Urban Areas Act. Both pieces of legislation were designed to enact on a national scale a technology of rule already implemented in pockets in the provinces. As South Africa shifted from a collection of territorially administered colonial units, to a Union (1910) and later a Republic (1961) these practices were homogenized. The Glen Grey Act (1894) for example, in Natal, drew on the legacy of indirect rule that had been pioneered by British Imperial rule in other parts of the world. The Native Land Act would have the aim of removing millions of ‘native’ South Africans from the urban realm to the rural where they would be subjects of customary law. It marked the shift, as Partha Chatterjee argues in relation to the 1857 Indian mutiny, from the civilizational claims of Empire to the pragmatics of the ‘rule of colonial difference’.<sup>224</sup> From now on, the ‘native’ would not be an object of assimilation, but rather embedded in a permanence of ‘otherness’.

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<sup>222</sup> Mamdani (1996) *Citizen and Subject*, p29

<sup>223</sup> The Native (Black) Urban Areas Act No 21 made each local authority responsible for the black residents in its area. ‘Native advisory boards’ regulated influx control and removed ‘surplus’ people, i.e. those who were not employed in the area. The country was divided into prescribed (urban) and non-prescribed areas, movement between the two strictly controlled (Horrell, 1978) pp2-3. This Act was consolidated by the 1945 Black (Urban Areas) Consolidation Act. It was repealed by the Blacks (Urban Areas) Consolidation Act No 25 of 1945

<sup>224</sup> Chatterjee (1999) ‘Rule of Colonial Difference’, *The Partha Chatterjee Omnibus*

### *Indirect Rule and the Creation of the Bantu*

In 1964 Govan Mbeki, the Eastern Cape intellectual, political prisoner and senior ANC leader, set out the challenge for the South African state with remarkable clarity:

The problem was plain—apartheid had to find a new way to administer Africans, because the pressure for more rights was growing too strong a challenge...The traditional system in South Africa had been one of direct rule: White government officials sat over Chiefs. Everyone knew that the Commissioner was the boss. Yet now the White government official has become too visible and accessible a target for anti-government action.

The need was clearly to devise a system under which the Africans appeared to be managing their own affairs. This, too, of course, was nothing new. Indirect rule had been carefully evolved by Lord Lugard for the British colonies in Africa; Nigeria and the former Gold Coast had been governed this way, but the Nationalists had taught their followers to regard British policy as their constant and implacable enemy, so that the British system of indirect rule could not be directly copied.

The Nationalists', Mbeki went on to note,

'set to work to evolve a variation. It turned out to be a hybrid of direct and indirect rule. It was given the grand name of self-development'. The 'Native Commissioner' was now "rechristened a Bantu Commissioner, in vogue with



the term 'Bantu', which the Nationalists insisted should replace the more compromising word 'Native'.<sup>225</sup>

Mbeki noted two important points: firstly, that the formulation of apartheid was not peculiar to South Africa, but had a pedigree in colonial practice elsewhere in the colonial and African world; secondly, he was mindful too that it had a specific iteration-- it had to be reformulated in relation to the specific historical conditions, taking on the historical burdens and tensions within settler colonialism in South Africa. That apartheid was an iteration of indirect rule, was as I pointed out in the previous section, also an important observation made most recently by Mamdani (1996).

It was a shift that left a segment of the native population in a dire state of anxiety: the early beneficiaries of civilizational benevolence, schooled in Missionary promises of 'equality for all civilized men', given the franchise in the Cape based on meeting civilizational claims, and eager to enhance their claim to the status of civilized men among men on the stage of world history. This segment of the African population felt with foreboding anxiety the promises made to them were quickly disappearing, and that their modernist futures shaped in opposition to rural 'backwardness', was at stake. They were in a state of 'betwixt and between' but without the movement of liminality (Von Gennepe<sup>226</sup>) They had invested their futures in the self-fashioning of

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<sup>225</sup> Mbeki [1964] (1984), pp37-38. Govan Mbeki was a founder member of the armed wing of the ANC, Umkhonto we Sizwe (MK), arrested and sentenced in 1964 along with Mandela, to life imprisonment. He was among the first of the senior ANC political leaders released, from the Robben Island penitentiary in 1989.

<sup>226</sup> Arnold von Gennepe (1960) *The Rites of Passage*, London: Routledge

civilized men and were now confronted with the violence of the rule of colonial difference.

This anxiety is evident in the writings of one of the most eloquent African intellectual and political figures of the period, Solomon (Sol) T. Plaatjie (1876-1932), particularly in his most well known collection of essays on the condition of native life<sup>227</sup>. In current nationalist discourse, Plaatjie and his generation have become subsumed in the pantheon of African nationalism's patriarchs<sup>228</sup>, yet his writings prefigure the sovereign claims of anti-colonial nationalism. What we find is a petition to belonging—the quest to become a citizen of the Empire. This moment is an important one, I will suggest, because it marks the breath of ambition of the bureaucratic violence of apartheid rule and sets the stage for the forms of political subjectivities that were to emerge in response to the consequences of this violence in later decades. The Native urban dweller as a reluctant rural subject, resistant to that identity, but also denied legal personhood and therefore citizenship, and seeks recourse to rights on the plane of the universal, ie, to have the right to 'the rights of man', and the right to possess and claim human rights, as defined by Empire.

Solomon Tshekiso Plaatjie, although appended with a surname of Dutch provenance, was of Baralong origin, born in the Boshof District of the Orange Free State in 1876. He grew up in a German Mission station in the town of Pniel, in the Northern Cape, where he had received his primary education. From there he moved to the diamond-mining town of Kimberly, employed as a letter carrier for the Post Office. During his spare time he engaged in study, and was fluent in six African languages as well as

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<sup>227</sup> Sol Plaatjie [1916] (2007) *Native Life in South Africa*, Pinetown: Picador Africa

<sup>228</sup> See Mcebisi Ndletyana. ed. (2008) *African Intellectuals in the 19<sup>th</sup> and early 20<sup>th</sup> Century in South Africa*, Cape Town: HSRC Press

three European languages: English, Dutch and German. This linguistic dexterity enabled him to later move to the town of Mafeking, where he took a job as a translator in a local magistrates court. During the South African war, or Anglo-Boer war (1899-1902), the town of Mafeking was placed under siege, and Plaatjie emerge as a journalist and war correspondent. These experiences were described in a collection of articles that have become known as the '*The Mafeking Diary: A Black Man's View of a White Man's War*' (1973)<sup>229</sup>.

While in Kimberly, Plaatjie became of the most active members of an organization called the South African Improvements Society, formed in 1895. The aims of the organization were twofold: firstly, "to cultivate the use of the English language, which is foreign to Africans; secondly, to help each other by fair and reasonable criticism in readings, English composition, etc, etc."<sup>230</sup> During this time he had also cultivated a deep interest in the writings of Shakespeare, and became a play-write himself, with performances of his works staged at the Kimberley Theater.

Two years after arriving in Mafeking, Plaatjie left his translator position in the Cape civil service to become the editor of an English/Setswana newspaper, *Koranta ea Bechoana*, the Bechuana Gazette. It was financed by a local Barolong Chief, Silas Molema. Under Plaatjie it rose to some prominence, illuminating issues that affected African social and political life, but the paper was financially unstable, and forced to close by 1910. Plaatjie moved on to a new role as editor of the *Tsala ea Bechoana*, 'Friend of the Bechuana', which was later renamed *Tsala ea Batho*, 'Friend of the People'. During this time Plaatjie had also become a founder member of the South

<sup>229</sup> Plaatjie, S (1973) *Mafeking Diary: A Black Man's view of a White Man's War*, ed. By Comaroff, J, with Willan, B and Reed, A. Cambridge: Meridor Books

<sup>230</sup> Editors introduction to Plaatjie (1973) *Mafeking Diary*, p7

African Native National Congress, the forerunner to the African National Congress, and in 1912 was elected as its first General Secretary<sup>231</sup>.

Plaatjie set out in *Native Life* to produce presciently the ‘narrative of a melancholy situation’ (2007, p15). It is worth pondering on the invocation of the notion of melancholy. It speaks to a disappointment, a gentle sadness, rather than an anger or indignation. And yet, in its muted and mediated ways, all these emotions are present in the text, including a feeling of betrayal. The reason for this melancholy is alluded to in Brian Willan’s forward to the book: ‘It was written in a period where great hope was placed in the due processes of law, in the patient representation of grievances through reasoned statement, debate, appeal and petition’ (2007, p1). *Native Life* was Plaatjie’s ‘reasoned’ appeal to British readers to bear witness to injustice and suffering, through a journalistic description of the social effects that the 1913 Land Act was having on black South Africans. Motivated to object, Plaatjie and members of the South African National National Congress embarked on a petitionary delegation to England, to draw attention to the ‘removal of the “civilized” native from the scheduled areas’ (2007, p69). It was an anxiety based on the realization that the future of Native life in South Africa imagined by the enactment of the 1913 Land Act was to be the negation of the very biographical subject that had been produced by colonialism’s civilizing mission. It would be the negation of Plaatjie and others.

The eviction of black South Africans from land and the denial of land tenure in ‘scheduled areas’, would lead, Plaatjie noted, to ‘the complete arrest of native progress’ (2007, p58). He declared sharply that it was a ‘law of extermination’ (2007,

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<sup>231</sup> The biographical notes are taken from Brian Willan’s introduction to the Picador Africa edition of Plaatjie’s *Native Life in South Africa* [1916] (2007), pp1-14

p66). This ‘extermination’ would transform (and bifurcate ) black South Africans into ‘serfs’ on the one hand, and ‘fugitives’ and ‘refugees’ on the other (2007, pp78-79, 112). Plaatjie’s writing documents a pathos that spreads across the country, as he speaks to peasants and share croppers, urban intellectuals and politicians, and hears stories of evictions and insecurity, of homelessness and disposition, of defiance and opposition, and here and there of futile and tragic local solidarities between ‘well meaning’ white farmers and their now illegal tenants . The delegation and petitions of the South African Native National Congress appealed in writing and in person, to the civilizing proclamations of the British Empire. It was to pit Empire against Union, the universal versus the particular in the hope that the latter, both through reason and might, would prevail over parochialism and provincialism. Increasingly aware that the Union of South Africa could legally enact limits to citizenship on a national terrain, Plaatjie and his fellow delegates lodged their appeal on the stage of world history, on the universalist claims of Empire. If it was a ‘melancholic narrative’, it was because of the realization amongst the educated elite of Africans that Empire was politely abandoning them to a republican and therefore national fate. They were destined to become subjects of apartheid, not the promised civilized citizens of the Commonwealth’s South Africa, for which they had been cultivating themselves.

In a bid to seek recourse outside the nation-state, Plaatjie and his colleagues set off in delegations to petition Empire almost around the same time that Hendrik Witbooi was also relying on the sensibilities of those who were the bearers of progress and civilization to account for the Hoornkop massacre in South West Africa. Although, drawing on David Scott’s illuminating reflection on the Carribean modern, Plaatjie

and the SANNC were among colonial modernity's most committed 'conscripts',<sup>232</sup>. They were also to be among its most tragic conscripts. Reading their letters and petitions today one is struck by the vigour of their faith in Enlightenment's promises, by the energy of their enthusiasm, imbued the zeal of a new convert who has seen the light. One is also struck by the gradual coming to the surface of their fears as well: the anxiety that they would be recast as that which they have self-fashioned themselves against: the 'rural', 'backward' native, 'the heathen who lives in darkness'.

### *Squeezing the Native out of the Urban II*

*"If I were to wake up one morning and find my self a Black man, the only major difference would be geographical."*

**Prime Minister B. J Vorster,**

**1973**<sup>233</sup>

In an article published in the newspaper *Liberation* in 1959, Nelson Mandela rehearsed his objection to the then draft *Promotion of Bantu Self Government Bill*, a concern articulated in the language that Plaatjie had drawn on many years earlier. "It will be seen", argued Mandela,

that the African people are asked to pay a high price for this so-called 'self-government' in the Reserves. Urban Africans- the workers, businessmen, and professional men and women, who are the pride of our people in the stubborn and victorious march towards modernization and

<sup>232</sup> David Scott (2004) *Conscripts of Modernity: The Tragedy of Colonial Enlightenment*, Durham: Duke University Press

<sup>233</sup> *The Star*, Johannesburg, 3 April 1973

progress—are to be treated as outcasts, not even ‘settlers’ like Dr.

Verwoed<sup>234</sup>.

Mandela bannered his article with two epithets that contrasted two alternative visions of political community in South Africa. The first epithet was the opening quote from the *Freedom Charter*, a document that had been adopted by a large gathering organized by various nationalist and trade union organizations aligned with the African National Congress at Kliptown in 1955, known subsequently as the Congress of the People. The resolution that Mandela quoted stated that “South Africa belongs to all who live in it, black and white’. The second epithet was a quote from Dr. W. M Eiselen, an anthropologist by training, and the then Secretary of the Department of Bantu Administration and Development: “All the Bantu have their permanent homes in the Reserves and their entry into other areas and into the urban areas is merely of a temporary nature and for economic reasons. In other words, they are admitted as work-seekers, not as settlers”<sup>235</sup>.

In those contrasting epithets Mandela was not only pitting an increasingly powerful African nationalist political movement against one of the dominant ideologues of the apartheid State at the time. He was also setting out the political trajectory of two distinct visions of political community in South Africa, and posing the question of who would ‘belong’ to the nation-state? Who had a ‘right’ to belong, and on what basis? Faced with the prospect of creeping pincers of the state’s intention to implement indirect rule across the country, this was a foreboding question to pose.<sup>236</sup>

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<sup>234</sup> Mandela, N (1990) *The Struggle is my Life*, New York: Pathfinder Press, p125

<sup>235</sup> Eiselen quoted in Mandela (1990) p122

<sup>236</sup> In his critique of the empty land thesis, Mandela’s contemporary and fellow senior ANC leader, Govan Mbeki, sort to both subvert and at the same time resist the recourse to an argument of

Belonging to the nation has often been positioned as a ‘universal’ and chronologically replicated desire, the repository of which is the citizen that often has to transcend more time bound, particularist identities<sup>237</sup>. In Africa this has been counterposed as the ‘nation’ *versus* the ‘tribe’ within modernization theories<sup>238</sup>. The modern South African ‘nation’ was racialized and ethnicized. This bifurcated identity was naturalized through discursive shifts in the status of Africans, transformed from ‘Native’ to ‘Bantu’.

The condition of possibility of republican ‘South Africa’ relied on a conception of belonging which simultaneously included and excluded. Some claims to belonging, to land in particular, would be naturalized at the same time that other’s were denaturalized. The process through which this came into being relied on the hegemony of particular historical narratives, articulated by sections of the Afrikaner intelligentsia, like anthropologists, historians, and sometimes clergy.

The production of a stable settler subject- as a cultural, legal and political subject-was not only based on the invocation of a vision of the future, but also of a vision of the past. Addressing a campaign meeting in 1962, the Minister of Finance, Dr. Donges, explained that it was the past, and not the actions of human beings that determined the political order: “It is history that has drawn the boundaries not the government,

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citizenship tied to historical claims to priority: “The White man’s claim to rights of first occupancy are false” argued Mbeki, “But true or false, they are plainly irrelevant. It is the existing distribution of the population that should decide South Africa’s future—and present.” (1984)[1964], p17

<sup>237</sup> This view is most recently associated with Benedict Anderson (1983). For an insightful critique see Partha Chatterjee (1986, pp 19-20) *Nationalist Thought and the Colonial World*, United Nations University Press and (1993, pp4-6) *The Nation and Its Fragments: Colonial and Post-Colonial Histories*, Princeton University Press, New Jersey

<sup>238</sup> See for example Becker (1974)



for the Bantu Homelands are the area [sic] which the Non-White originally occupied. Therefore they have no moral claim to more land.”<sup>239</sup>

The production of a hegemonic and coherent settler narrative which would naturalize settler communities, was not something that emerged from the pristine intellectual endeavor of those who saw themselves as an ‘Afrikaner intelligentsia’. It was a historical narrative that drew on previous histories of conquest. In this case it drew on a body of historiography produced by intellectuals associated with the British empire in particular. The trope that threads these moments together is the migratory thesis.

The most influential body of historical scholarship drawn upon at the time was that of George McCall Theal. A Canadian by birth, Theal had produced a monumental eleven volume ‘*History of South Africa*’ (1964). As a government official, he had arrived in South Africa in the 1870’s during the last years of the Frontier Wars, which he referred to as the ‘British Kaffrarian Wars’. Theal served briefly as mayor of the small Eastern Cape town of Alice during the Xhosa resistance wars, where he was confronted with claims against the right of settlers to land. In 1880 he argued for the creation of, and was eventually installed in, the grandiose titled position of ‘*Keeper of the Government Archives*’ - a position which gave him privileged access to the colonial archive, which he was to draw on prolifically, eventually leading to his appointment in 1891 to the position of ‘*Colonial Historiographer*’.

In the preface to one of his monographs Theal opined that “[i]n reality this country was not the Bantu’s originally any more than it was the white man’s, because the

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<sup>239</sup> Quoted in Mbeki (1984) [1964], p16

Bantus were immigrants...most of their ancestors migrated to South Africa in comparatively recent times”. He would go on to note that, “we must prove to these people that we were no more intruders than they were, and that they enjoyed now as much as they were entitled to”. The writing of History was thus of paramount importance for Theal. It was to be a modernist logocentric history that was distrustful of orality, reliant on an archival authority derived from textual sources produced by early traders, travelers, missionaries and European and Arab chroniclers. In a more sanguine statement of his central thesis about ‘the Bantu’, Theal noted that

their ancestors had come down from the north less than four centuries ago...Near its center they met, and then a struggle ensued as to who could go further. Bear in mind that it was not an attempt of white men to take possession of land owned by black men, it was an effort on both sides to get as much unoccupied land as possible.<sup>240</sup>

Theal’s own work, as well as the scholarship produced under his direction, was of consequence to British settlement in South Africa. His official position as Colonial Historiographer was to make his work one of the authoritative references to be consulted in disputes about land and belonging faced by colonial officers<sup>241</sup>. As ‘expert witness’, Theal’s History, imbued with unquestionable historicity, provided the authoritative narrative against which a local population’s oral testimonies were reduced to ‘noise’ in the ears of Justice- a ‘monolingualism of the Other’<sup>242</sup>.

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<sup>240</sup> Quoted in Van Onselen, (1988, p40).

<sup>241</sup> Cf Van Onselen (1988, pp42-44) for an elaborated discussion of Theal’s legacy in South African historiography.

<sup>242</sup> Derrida (1998, p41)

As a whole it is a body of work marked by two overriding themes. The first is that migration was represented by settlement in *waves*, a constant ebb and flows. These waves were further marked by a temporal dimension- later waves would follow earlier ones and where these met, they resulted in a *conflict*. This would be its second major theme, in which the stronger would prevail. In the first volume of his eleven volume magnum opus, titled ‘*Ethnography and Condition of South Africa before A.D 1505*’ (1910), Theal anthropomorphized his wave theory by proclaiming ‘Bushmen’ as the original inhabitants of the southern most part of Africa <sup>243</sup>.

Bushmen were driven to the mountains of Cape Town and the arid deserts of the Kalahari by a wave of Hottentot (Khoikhoi) migration, a group of people with North African origins<sup>244</sup>. These groups are further displaced by “the Dark Skinned People Termed by the Europeans as Bantu”<sup>245</sup>, “the band of immigrants” who “conquered a section of the earlier inhabitants, and incorporated its girls, possibly some of its boys also, but destroyed all others. Then after a time it separated into two more tribes, each of which pursued a distinct career of conquest...”<sup>246</sup>. The recent immigrants did not descend “as one great horde”, but arrived in different periods: “there was a constant swirl of barbarians, plundering, destroying and replacing one another...one clan was constantly pillaging another, so that discord and strife were perpetual”<sup>247</sup>.

In settler historiography the image is one of constant warfare naturalizing the right of might. In contrast, for Africans, this history is recalled differently: ordered within a narrative of state formation and disruption, known by the Nguni term *Difiqane*, and

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<sup>243</sup> Theal (1910 [1964], p 49), also, Theal (1902.p19)

<sup>244</sup> Theal (1910, p80)

<sup>245</sup> *ibid* p143

<sup>246</sup> *ibid*, p144

<sup>247</sup> *ibid*, p190

in Sotho languages as *Mfecane*. Whereas African historical narratives describe conflicts between political authorities, in colonial historiography, “there was no paramount power over all, every chief who was strong enough to hold his own being absolutely independent of every other.”

The meeting of the European settler wave with the immigrant settlement flowing from the North required an overarching power over all- the Leviathan of the colonial administration was, as Kipling put it, the “white man’s burden”. It was no wonder then that the *Voortrekker* leader Hendrik Potgieter would later share with Adam Kok, the Griqua leader, the comment that “[w]e are emigrants together with you...who together dwell in the same strange land and we desire to be regarded as neither more- nor-less than your fellow emigrants, inhabitants of the country, enjoying the same privileges as you”<sup>248</sup>.

Where ‘the Bantu’ are referenced they are for the most part almost always also referred to as ‘immigrants’, leaving us with no doubt as to their non-indigeneity.

Another work of interest, produced under the guidance and editorial hand of Theal, is George Stow’s posthumously published ‘*The Native Races of South Africa*’, subtitled ‘*A History of the Intrusion of the Hottentots and Bantu into the Hunting Grounds of the Bushmen, the Aborigines of this country*’ (1910). Theal had developed the ‘intrusion’ theory to dispel the writings of some missionary chroniclers, who were drawing on African oral histories. Stow observed with some consternation that

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<sup>248</sup> Etherington (1995) p45

the simple fact that certain tribes were found occupying some given tract of country at the time of the missionaries arrival was of itself, without further question, deemed irrefragable proof that these particular natives must have been the rightful owners from time immemorial. The white nations were looked upon, and spoken of, as the only intruders into the ancient domains of the '*poor natives*'<sup>249</sup>

What stands out in this for our purposes is the Darwinian connection between time, migration, and entitlement so clearly underlying Theal and Stow's work<sup>250</sup>. As well as a claim to belonging naturalized through historical memory. White settlers, in this historical narrative, were no less 'settlers' than Blacks were. Wars of conquest were thus transformed into mutually credible claims of belonging to be decided by legality of 'the right of might'<sup>251</sup>.

By privileging migration, common arrival, and strength, this historical narrative was also a narrative about the absence of a history. It drew on history to prove that neither had a historical claim. This history was therefore also inadvertently telling a story about 'the settler' - a story which made settler claims to land, based on conquest, equally, if not more valid. European settlers, in this account, were merely the latest of a ceaseless history of waves. Military superiority or inferiority of those that preceded,

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<sup>249</sup> Stow, (1905) [1964], ppviii-ix

<sup>250</sup> For a discussion on the epistemic link between Darwin, race theories and colonial genocide see Saul Dubow's (1994) *Scientific Racism in Modern South Africa*, UK: Cambridge University Press; also Sven Lindquist's *Exterminate the Brutes* (1996) pp 101-109.

<sup>251</sup> It is not my concern here to prove the facticity or otherwise of the historical claims discussed. There is a body of work, both historical and archaeological, which suggests that the land had been settled for thousands of years before Theal suggested. Cf Cornevin (1980) for a refutation of what she calls the 'myths' of apartheid, and Maylam (1986) for a particularly well researched account of the South African iron age.

or arrived at the same time, was a valid basis on which belonging and ownership could be decided.

### ***Empty Land, Migration and Divine Mission***

The idea of two migrations- a 'Bantu' movement south and a European movement north, was one that featured prominently in much of the work produced by those working towards the realization of, a particular hegemonic Afrikaner political project and subjectivity. If the Native Question was never posed as the Settler Question by members of the British colonial intelligentsia, it *was* posed by those who saw themselves as Afrikaner nationalists. Afrikaner nationalists set their claim to belonging apart from the English- to some extent the major part of their 'constitutive outside' in formative moments. The idea of the British as '*Uitlanders*', as foreigners, was to render an Afrikaner identity no longer a settler one, but rather as native one. The settler question, for Afrikaner nationalists of the 1930's and 1940's was resolved through the articulation of two broad arguments within Afrikaner nationalist thought- the one was a general claim which I have outlined above: all had equal claim to the land since all arrived at more or less the same time and therefore an no prior claim<sup>252</sup>. This argument had an intellectual lineage that was not confined to Afrikaner nationalist thought, but drew on English colonial thought as well. The second broad argument was undergirded by the essentializing of Afrikaner self-identity and belonging in Africa as one pre-ordained by divine will and intervention. But this was

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<sup>252</sup> See Van Jaarsveld (1981) '*Wie en Wat is die Afrikaner*', Tafelberg, Cape Town, 1981

to be reworked and compounded. For one, it came to be framed more explicitly within the discourse of ‘race’.

As part of a series of works released under the series title ‘The Second Trek’ (*Die Tweede Trek Reeks*), the geneticist G. Eloff published his ‘*Race and Racial Mixing*’ (1942). Eloff, in this work, draws on the historiography of Theal, particularly the idea of a mutual arrival, but tells the story slightly differently, emphasizing the racialization of migrations. It was a theory of racialization influenced by the Hamitic hypothesis. In particular, it was influenced by what Edith Saunders (1969) described as the *modernist* version of the Hamitic hypothesis- marked by the Napoleonic expedition into Africa. Prior to Napoleon’s expedition, the idea of Africans as the Canaanites condemned to servanthood by Noah (as in *Genesis, Chapter Five*, of the First Testament), held sway. Following the Napoleonic ‘discovery’ of the Egyptian signs of ‘civilization’, a gradual process of de-Africanizing Egyptians took place at the same time that these artifacts were to be accounted for by a European-Asiatic influence. The well-known racial ‘evidence’ were the Berbers in North Africa, and of course the Tutsi in Central Africa<sup>253</sup>.

This version of the Hamitic hypothesis conflated language and origin- a shared linguistic identity came to signify a common racial origin. Racial identities could in effect be read off linguistic ones<sup>254</sup>. Furthermore, this version of the Hamitic hypothesis racialized the distinction between pastoralists and agriculturalists: ‘Because Hamites discovered in Africa south of the Sahara were described as pastoralists...pastoralism and its attributes became endowed with the aura of

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<sup>253</sup> For analyses of the intersections of memory, identity and colonial law in relation to the Hutu and Tutsi, see Malkki (1995) and Mamdani (2001).

<sup>254</sup> Saunders (1969) p528

superiority of culture, giving the Hamite a third dimension: a cultural identity'.<sup>255</sup> The post-Napoleonic version separated those living on the African continent, between the 'indigenous' and those of Hamitic descent, as coming from elsewhere. After colonial settlement, Hamitic, as Caucasian was refined, making hierarchical distinctions within it. Contemporary settlers could therefore act paternalistically toward the historically Hamitic descendents.

Racializing the migrations described by Theal<sup>256</sup> more explicitly, Eloff invoked the 'Bushmen' of Southern Africa- the Khoi and San, as *Hamitic* descendants originating in North Africa. For the geneticist Eloff, the "existing races of mankind" could be divided into three broad "stocks" (*afstammelinge*). These were "Yellow, Black and White", all descendents of either Shem, Japhet, or Ham."<sup>257</sup> Drawing on the Hamitic argument, Eloff continued to develop the distinction between those indigenous and those less indigenous, as the basis of belonging.

Whilst it may not be coincidental that Eloff's account so strongly privileges the Biblical tale, Andre du Toit (1994) has cautioned that the notion of Afrikaner divine origin as "a chosen people"<sup>258</sup> cannot be read as an uninterrupted linear concept in Afrikaner religious, and particular neo-Calvinist thought. It should be understood as

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<sup>255</sup> Saunders (1969, p530)

<sup>256</sup> As I have indicated, Theal argued that 'Bushmen' were of North African origin. Although the argument about racial migration and civilizing influence of Caucasians is also to be found in Theal, it is less explicit. Writing at that time he is less concerned with the Verwoerdian concern for the 'separation of the races', and is more concerned with conquest and domination. Theal's history is replete with non-pejorative accounts of 'mixing', and is produced in the context when colonial belonging was still argued for as a civilizing project.

<sup>258</sup> A view described by J. M Coetzee (1988, p95): "...the Afrikaner has his type in the Israelite, tender of flocks, seeker after a promised national homeland, member of an elect race (volk) set apart from the tribes of the idolatrous, living by simple and not-to-be-questioned commandments, afflicted by an inscrutable Godhead with trials to test his faith and fitness for election".



an idea traced in relation to various sections of the (competing) Afrikaner intelligentsias and clergy, with a meaning intimately derived from the politics of a particular moment. It is also to be traced to the the influence of late 18<sup>th</sup> and 19<sup>th</sup> century immigrants from the Netherlands, who brought with them the neo-Calvinist inspired ideas of Groen van Prinsterer and Abraham Kuyper: “the Kuyperians among them explicitly set out to transfer to the South African context both the neo-Calvinist philosophy of the ‘sovereignty in its own sphere’ (*soweriniteit in eie kring*) , and a strategy of “strength through isolation””<sup>259</sup>.

A later generation of students returned to South Africa from Holland and Germany and brought with them adapted forms of Kuyperian ideas, as well as Fichtean inspired notions of the organic nature of *volkhood*. The confluence of religiosity and nationalist discourse, by no means a unique one in the making of nationalist thought generally, provided the context for privileging belonging by drawing on three genealogies: the Old Testament, a version of the Hamitic hypothesis, and Kuyperian prescriptions about the foundations of community identity<sup>260</sup>. The political leader D. F. Malan eloquently articulated this confluence, observing that

God wills the differenc of nationality and nationality. And this is His will, since God has a distinctive destination and a distinct calling for each people...I cannot escape the impression that God has willed our national existence. And He has willed that because He has a distinct calling for our people with its own national character<sup>261</sup>

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<sup>259</sup> Du Toit, (1994), p126.

<sup>260</sup> Cf Dubow (1992) pp 218-220

<sup>261</sup> Ibid, p139

The National Party leader Nico Diederichs, on the campaign trail in 1936, roused the audience by pointing out that “the nation has a calling to fulfill and a task to carry out”<sup>262</sup>. That calling, and that task would be articulated by those closest to the hegemonic factions of Afrikaner political and religious thought. The idea of “sovereignty in ones own sphere”, the difference of nations, and the idea of a *divine right* to belong, to be ‘native’, were powerful elements of the discursive world-view out of which developed what came to be known as Apartheid.

### ***From Native to Bantu***

*Since the notion of citizen overlaps with nationality, the colonized, being excluded from the vote, is not simply consigned to the fringes of the nation, but is virtually a stranger in his/her own home*<sup>263</sup>.

**Achille**

### **Mbembe**

The Nationalist Party victory in 1948, and the vision of apartheid that came into existence consolidated, amongst other things, a way of dealing with the Settler/Native distinction. The settler was recast as ‘belonging’ and the native came to be recast as ‘foreign’. The Native Question has broadly been answered in three ways. Firstly by decimation, as experienced by the San and Khoi encountered by the early free burghers as they trekked north from the Cape out of the shadow of British rule. Secondly, it could be resolved through assimilation, as with the various Christianization and civilization projects, largely associated with particular periods of

<sup>262</sup> ‘the nation has a calling to fulfill and a task to carry out’. (‘die nasie het ‘n roeping om te vervul en ‘n taak om uit te voer’.) Quoted in Van Jaarsveld (1981), p81

<sup>263</sup> Achille Mbembe (2001) *On the Postcolony*, California: Stanford University Press, p35

British colonial rule, particularly in the Cape and Natal provinces. And thirdly, it could be resolved through difference and segregation. All three answers were applied in South Africa, sometimes at the same time in different parts of the country. Each built upon, rather than replaced the other. The result is a heterogeneous, and sometimes contradictory set of arguments which has *as effect*, white rule. Each provided a different rationale of rule and a different mode of administration over those ruled. However after World War II there is a shift towards coherency. State consolidation under Afrikaner nationalist rule confronted ‘the Native Question’, and confronted the challenge of working out a comprehensive and single answer to be implemented systematically across the territorial breadth of South Africa- in other words, confronting the challenge of synchronizing the ‘time of the nation’<sup>264</sup>.

The South African Native Affairs Commission (SANAC) 1903-1905, had established that “the word ‘Native’ shall be taken to mean an aboriginal inhabitant of Africa, south of the Equator, and to include half-castes and their descendants by Natives”<sup>265</sup>. The report of this commission was to establish a series of recommendations which would in various ways establish the broad elements of state segregationist policy with regards to the “Native Question”. It recommended ‘Native Reserves’ based on ‘ancestral lands held by their forefathers’<sup>266</sup> At the same Christianization, the value of hard labour, and government of Natives through Tribal administration were put before the government as answers to the Native Question.<sup>267</sup> . Here we glimpse a moment of the simultaneity and contradictory co-existence of rationales of domination. The SANAC invocation of ancestral lands overlaps temporally with

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<sup>264</sup> I am alluding here to Benedict Anderson’s (1983) reference to the relationship between ‘homogenous empty time’ and the imagined community of the nation.

<sup>265</sup> Ashforth, (1990,p33)

<sup>266</sup> *ibid*, p35 [416]

<sup>267</sup> For a critique of ‘ancestral lands’ see Ashforth (1990, pp35-36).

Theal's writings which discount the valence of 'presence' as right to ownership. This Janus-faced moment contains two political rationalities: an answer to the Native Question which looks toward the *future* of state formation and citizenship, whilst the other looks toward the *past* and the moment of conquest.

The 1913 Land Act, the Black Administration Act of 1927, and the Native Trust and Land Act of 1936 were a trio of legal enactments of some of the recommendations of the SANAC report. A total of 13% of the land would be designated for Natives, governed by the Governor General who would act as 'Supreme Chief'. The designation of Native was not only a descriptive one, but also a legal one: to be classified as Native was to have spatially circumscribed implications in relation to movement, and particularly with regards to land ownership, employment opportunities, and land tenure practices. Parts of the Union, like the Cape, still gave a certain amount of franchise rights to those Natives who could pass various 'civilizational' criteria. Assimilationist practices therefore still continued, but, with the proposed 'Herzog Bills' of 1936, these would be revoked<sup>268</sup>.

Between the 1920's and the 1940's a series of developments, relating both to urbanization trends of Africans, as well a growing African nationalist movement spurred on by the looming threat of the Herzog Bills, led by 1950 to the establishment of a commission to re-examine the Native Question. This '*Commission for the Socio-Economic Development of the Bantu Areas within the Union of South Africa*', or the 'Tomlinson Commission' was to mark a key shift and consolidation of

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<sup>268</sup> When Herzog came to power in 1924 he set about introducing four Bills which were introduced to parliament in 1936. Amongst other things, the Bills dealt with the removal of Africans from the common voter's role in the Cape province and Natal and the elaboration of a national uniformly different form of black representation.

elements of previous policies which would be drawn together under the term ‘apartheid’.

The Tomlinson Commissions terms of reference were “to conduct an exhaustive enquiry into and to report on a comprehensive scheme for the rehabilitation of the Native Areas with a view to developing within them a social structure in keeping with the culture of the Native and based on effective socio-economic planning”<sup>269</sup>. The eighteen volume report addressed the effects of ineffective segregation and urban black settlement, both intended and unintended, noting that “a gradual process of overlapping has taken place, for whereas at one time only a few Bantu were to be found on the roads with old motor cars, there were now many in possession of such vehicles.”. It went on:

“(vii) Where at first, the European only knew the Bantu as labourers and tenants on the farm, as unskilled workers in the mining industry and as messengers and domestic servants, he now beholds the Bantu mason wielding his trowel, the Bantu teacher in front of his class, the Bantu doctor visiting his patients and the Bantu newspaper editor at his desk...The European is confronted with an inescapable choice...the time has arrived for choosing between the maintenance of separate identities and the process of coalescence, between the traditional South African and the Neo-Western way of life”<sup>270</sup>.

‘Coalescence’ and ‘overlapping’, the report concluded, could not be allowed: “Either the challenge must be accepted or the inevitable consequences of the integration of

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<sup>269</sup> Houghton, 1956, p1

<sup>270</sup> Kuper, 1988, p37-38

the Bantu and the European populations groups into a common society must be endured”<sup>271</sup>. What were the ‘consequences’ which the report ominously hinted at? It noted that “the ultimate result-though it may take some time to materialize- is complete racial assimilation, leading to the creation, out of the original communities, of a new biological entity”<sup>272</sup>. The Tomlinson report reflected a series of tropes that pervaded sections of the academy and state connected intellectual inquiry about South African life at the time. These themes, particularly, ‘culture contact’, was prominent in anthropological discussions, and could be found in both broad traditions of South African anthropological work- the social anthropologists<sup>273</sup> and those who worked within what came to be known as the *Volkekunde* tradition. It was their conception of racial characteristics and cultural identity that was particularly illuminating.

The report had been written largely by intellectuals aligned with the Afrikaner nationalist movement. Three of the eleven commission members were *Volkekundigers*, anthropologists who took the Romanticist-inspired ‘*volk*’ as their ontological unit of analysis. I want to read the report within the context of shifts within the Afrikaner intellectual thinking about the nature of belonging, and its relationship to race, religion and citizenship.

The report concluded strongly in support of segregation, rather than ‘coalescence’ or ‘overlapping’. Afrikaner anthropologists were to play a more significant role at this

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<sup>271</sup> Houghton, 1956, p59

<sup>272</sup> *ibid*, p12

<sup>273</sup> The social anthropological tradition, closely linked to British social anthropology, was mostly structural-functionalist in early orientation- the first Chair at the University of Cape Town was held by Radcliffe-Browne in 1921. A number of students had studied under Malinowski, who himself wrote “*The Dynamics of Culture Change*” (1945) after a visit to Africa in 1934. He also edited a collection of works by his students, “*Methods of Study of Culture Contact in Africa*” (1938). Cf Hammond-Tooke (1997) and Sally Falk-Moore (1994, pp 29-73).

point- both in terms of offering a scientific language for the rejection of racialized segregationist tendencies, as well providing an alternative language in which segregation again become a self-evident ‘solution’. The requirements of governing a modern state, of conceiving Bantu ‘administration’ as a scientific activity, meant that ‘disciplinary expertise’ was brought to bear on matters. Academics, like anthropologists, therefore became more prominent after 1948. They spoke from positions of secular authority within institutions of modernity, like ‘national universities’. The student newspaper of the Afrikaans National Student Union put the matter as follows:

“ The Liberalistic and negrophilistic sections of our country’s intelligentsia is much better organized, and in many cases better equipped than the Afrikaner to propagate their viewpoint of racial equality which can only result in eventual racial integration. It is necessary for the Afrikaner intelligentsia to scientifically formulate the Boers’ point of view about non-white groups”<sup>274</sup>.

This statement illuminates a sentiment within the Afrikaner nationalist movement, increasingly associated with the state, that articulates segregationist policy within a rationality grounded in ‘disinterested’ ways of knowing. A shift in my view from sovereign power and what Giorgio Agamben (1998) calls ‘bare life’ to the conceptualization of the ‘native’ as a bio-political subject of (colonial) governmentality<sup>275</sup>. At this point the most significant anthropological figure that emerges is W.W.M Eiselen, who was appointed to the post of Secretary of Native Affairs under Verwoerd, and under whose institutional auspices the Tomlinson Commission worked. Eiselen was the son of a German missionary and had studied at

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<sup>274</sup> Quoted in Gordon (1991), p83

<sup>275</sup> Foucault (1994)

the Hamburg Colonial Institute in Germany. He took up the first professorship of Ethnology at the University of Stellenbosch in Cape Town in 1932, the same year Verwoerd was appointed a professor of Sociology there. In 1929 he had delivered a lecture titled 'The Native Question', in which he queried the scientific basis for claims of racial superiority. The problem, suggested Eiselen, was that the Reserve system was not being adequately implemented and that this was leading to an erosion of 'traditional culture'<sup>276</sup>.

In his influential report on Bantu Education, produced for the National Party in 1948, Eiselen noted the adverse effects of labour migration and urbanization, 'These phenomena give rise to two schools of thought: firstly, those who believe that Bantu culture is inferior and must gradually disappear, and secondly those who believe that while the old traditional Bantu cultures cannot cope with modern conditions, nevertheless they contain in themselves the seeds from which can develop a modern Bantu culture fully able to satisfy the aspirations of the Bantu and to deal with the conditions of the modern world'<sup>277</sup>. Segregation was thus given a paternalist tenor. It was not just a matter of separation, but also *development-* toward a different modernity. It was not just about fixing the 'native' in 'tradition' as 'subjects' through customary law, but also a process of *modernizing* tradition, and therefore also a re-negotiation of what it meant to be a 'subject'. It offered the possibility of a modern way of being 'Bantu' - and a modern form of belonging-*ie*, in a Bantu state. And it was to place difference within parallel but differentially calibrated temporal spheres of belonging- sites from which eligibility for citizenship would be adjudicated

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<sup>276</sup> Kuper, p40

<sup>277</sup> *ibid* p41



The policy of creating clearly demarcated Bantu Authorities recruited anthropologists who would advise on the cultural borders of the Authorities and identify the ‘correct’ chiefs to lead them, particularly amongst groups like the Mfengu in Transkei and Ciskei, and the Tsonga in Transvaal. The latter lacked, in their view, the necessary degree of centralized political authority required in the vision of rule imagined by Bantu Authorities. A lack of extended field trips meant that the anthropologists who worked “on the ground” in these matters lacked local ‘contacts’ and informants<sup>278</sup>, but their recommendations were given credibility, speaking from the subject position of the *Volkekundiger* – the ‘expert’ on Bantu life.

One of Eiselen’s brightest students was Pieter Coertze, who later became *Professor of Ethnology* at the University of Pretoria; for twenty years he was considered the most influential figure amongst those who aligned themselves with *Volkekunde*- both amongst the anthropologists at the Afrikaner universities, as well as by those who taught at tertiary educational institutions set up for African students within the ‘homelands’.

Coertze claims to have developed the idea of ‘Ethnos Theory’, which he defined in the following way:

‘By Nature man is also a social being and cannot survive by living alone. As ants and bees, for example have their existence in natural, organic social entities, nests and hives respectively, so has man his existence in culturally determined, organic social entities, ie, ethnies, (sing. Ethnos), whose structures and existential activities are culturally determined. Such units

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<sup>278</sup> Hammond-Tooke(1997) p117

cannot be organized but originate organically as the outcome of the combined actions of the forces controlling and determining human existence. Ontologically speaking, human existence is an existence within the framework of various ethnical units, each having a separate corporal existence. This is man's normal existence, he cannot survive and lead a happy life in any other way<sup>279</sup>.

For Eloff race was the determinant, but for Coertze 'ethnos' and culture, was central. The affinities with strands of German Romanticist thought and Herder in particular, are evident. Coertze's conception of ethnography also drew on aspects of American cultural relativist theory and the work of Franz Boas<sup>280</sup>, but avoided the more structural-functionalist approaches dominant in the British academy at the time. Coertze was also a member of the *Broederbond*<sup>281</sup>, and a believer in the chosenness of Afrikaners as a 'volk':

I am' he noted with appropriate gravitas, 'the heir and bearer of Afrikaner traditions for which heavy sacrifices have been made. I am pledged to my ancestors and to the future Great Afrikaner People that I must never be false in my friendship or to the Christian principles and the national ideals which form the foundations of the Afrikanervolk<sup>282</sup>.

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<sup>279</sup> Coertze, P.J, 'Volkekunde', *Etnologie*, 1, 1.

<sup>280</sup> Hammond-Tooke (1997, p132) notes that although Volkekunde may have drawn on Boas, 'it parts company from anything Boas might have taught... There was a clear break between Volkekunde and its American roots'.

<sup>281</sup> The Broederbond (Brotherhood/Union) was a secret organization of influential Afrikaner males set up in 1918. It included intellectuals, businessmen, and politicians. Between 1948 – 1990 all Prime Ministers, and Presidents of South Africa were members of the organisation.

<sup>282</sup> Eloff, JF and Coertze, RD (1972) pp2-3

In order to realize the identity of the Afrikanervolk, the nation self-evidently needed a state. The ethnos of South Africa, in theory, would thus be predominantly Afrikaner. In actual terms there always was an accommodation with the white English 'ethnos' within the 'nation' of South Africa. This accommodation could be tolerated since both shared a common racial origin. Other 'ethnies' however, would have their own homelands. The intellectual world-view of ethnos and its relationship to the political leadership of the Afrikaner 'nation' was not exactly hand in glove. The theories of the Afrikaner intelligentsia, like those of the Coertzes at the University of Pretoria, would sometimes meet with reluctant acceptance or benign neglect by the political leadership. They also had to contend with the economic imperatives and structural constraints of governance and had to mediate between a range of different interests, both within the country, and internationally, as representatives of a sovereign state within the juridical framework of international state system.

Coertze. and Eieselen before him, had advocated apartheid's most ambitious desire: a complete removal of black South Africans and an end to reliance on African labour. This never took place on the scale imagined of course, and the violence it occasioned is something we are concerned with here<sup>283</sup>. Nonetheless, it is quite clear that the intellectual grounds was a powerful scientific discourse, infusing various policies

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<sup>283</sup> Verwoerd, as Minister of Native Affairs, shared this view: 'Considerable extension of the area set aside was accordingly envisaged on the assumption that the Native reserves would have to be the homes of the great majority of the then four million Bantu. There they were to live and develop a Bantu way of life, and thence they would come as migrant labourers (chiefly to the mines) to the European areas' (Verwoerd, 'Native Policy of the Union of South Africa, Pretoria: State information Office of the Union of South Africa, 1952). As Ivan Evans notes- even though he tends to overstate Verwoerd's role in my view:

'Verwoerd's position was that his department was not obliged 'to consult' with Africans since they were merely 'guest workers in South Africa', (1997, p94). With the beginning of government reforms in 1983 many volkekundes anthropologists left the National Party and joined more rightwing movements. The governing National Party 'betrayed' the Afrikaner people when it entered into negotiations with representatives of the anti-apartheid movements, in their view, and many are currently involved in a campaign for an 'Afrikaner homeland', within post-apartheid South Africa. Cf Van Rooyen (1995) and Vestergaard (2001).

which were implemented, some more successful than others. Coertze, more than any other anthropologist set the intellectual itinerary for successive generations of students at Afrikaner universities, where his book, the *Introduction to General Ethnology*<sup>284</sup> was the foundation text. Ethnology entered into the emerging 'white' national imaginary becoming a subject at government primary and high schools for Afrikaners and many a 'popular expert' on Bantu life could be found<sup>285</sup>.

Cultures, around the world, for P. J Coertze, fell into two categories- 'free cultures', and 'bound' cultures. In the former, individuals tend toward a greater degree of independence in their actions in relation to the culture they are born into. The latter refers to 'primitive cultures', and these are largely endogamous, resulting in limited change over time<sup>286</sup>. South Africa was a situation where a number of closed *ethnies* were in contact with an open one. The closed ones were numerically dominant and the higher civilization could only preserved itself by being *apart* from the others: through apartheid. Coertze's son, R. D, later confidently proclaimed: "[t]his goal which we have formulated [apartheid]...is beyond any academic criticism...in our judgment there can be no reason why anthropologists cannot co-operate enthusiastically in the achievement of this ideal'.<sup>287</sup>

What is clear is that Ethnos, as an idea through which the idea of *volk* is conceived, relied on a pre-political conception of cultural community which discursively rendered visible groups in two broad ways in government documentation- Whiteness

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<sup>284</sup> Coertze, P. J (1973. a)

<sup>285</sup> see Becker (1974) for an example of this kind of 'popular ethnology', which is largely descriptive and thematically laments the effects of urbanization on the hitherto static 'traditional African way of life of the Bantu'.

<sup>286</sup> Coertze, P. J (1968) p22

<sup>287</sup> Coertze, R. D (1968), p11

was split into a British ethnos and an Afrikaner ethnos (who were also a chosen people). And those classified as Native became Bantu. Bantu was further refracted into two broad groups, based on linguistic communities. The first was Nguni, which comprised of Zulu, Ndebele, Xhosa and Swazi. The second was Sotho, which comprised of South Sotho, North Sotho, Tswana, Venda and Tsonga peoples. Here again, linguistic communities were being mapped into cultural communities. And cultural communities would evolve into political boundaries. The broad category of 'Native' was refracted into a number of different Bantu 'tribes' around which territorial and political boundaries would be circumscribed.

The discursive shift was now almost complete- Settlers had become Natives, and Natives now belonged, but they belonged *elsewhere*- they were to become foreigners. If the boundaries of cultural communities were also to be the boundaries of political community then membership of differing cultural communities meant belonging to different political communities. South Africa was conceived of as a white 'Nation, made up of the Afrikaner volk, and the English speaking whites of European descent. To be tribally defined made one racially an outsider, and ethnically a member of a different political community-a 'homeland'.

The Tomlinson Commission best exemplifies the discursive shift I am referring to. Firstly, there is shift in naming. No longer do we find reference to Natives as the primary way in which to speak about the African population, but rather to 'Bantu'. This shift has been attributed partly to Eieselen, who had argued that because "we refuse as government and People to recognize Bantu culture, because we measure the

native with the measure of European culture, we [were] albeit, unconsciously, apostles of assimilation'<sup>288</sup>.

In the discussion on land tenure in the report, the historical association of Bantu with land is not told as one of migration, but rather as a diachronic one of eternal settlement, disrupted only by an increase in population leading to a shortage of game for hunting, and secondly to 'the coming of the whiteman' who required labour. African men drawn into towns to perform such labour thus neglected their 'traditional roles' as 'warriors, hunters, and stockowners'<sup>289</sup>. The Tomlinson reports's developmentalist tenor was posed in terms of the development of the Bantu in accordance with a way of life suited 'to them'. All African labour in 'European areas'-essentially the sign for 'South Africa'- becomes 'migrant'<sup>290</sup>.

For the historian Theal, 'belonging' was a connection to settlement, of being able to make an historical claim through demonstration of the physical presence of being. Conquest, for Theal, involves incorporation, and incorporation involves mixing, cross-linguistic and cross-'tribal'. For ethnos theorists and government documentation inspired by it, 'belonging' is an 'ethnic' question, less concerned with the question of conquest and more concerned with policing the boundaries of belonging and difference: cultural 'organic' boundaries rather than physical spatial boundaries. The physical spatial boundaries would *follow* as an administrative need that had become both 'rational', as a scientific way of governing, and historico-organically logical. As the Tomlinson report noted :

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<sup>288</sup> Eiselen quoted in Evans (1996), p229

<sup>289</sup> Houghton (1956) p25

<sup>290</sup> cf Ashforth (1988) p172

The present geographical dispersion of the Bantu Areas will make socio-economic development difficult, unless coherent nuclear spots are established within which communal bonds can be developed.

Consequently the Commission suggests that long-term policy should be directed to the systematic expansion of seven main blocks around the *logico-historical* centers of the groups mentioned above: Tswanaland, Vendaland, Pediland, Swaziland, Zululand, Xhosaland, and Sotholand, in each of which, in terms of the Bantu Authorities Act, the Bantu themselves will exercise administrative functions to an ever increasing extents<sup>291</sup> (My italics).

Yet the form that these administrative units would take, and the degree of 'independence' they would have was the subject of wide-ranging and serious disputes within the government and amongst intellectuals associated with bodies like the South African Bureau of Racial Affairs (SABRA)<sup>292</sup>. Furthermore, the costs of implementing the recommendations of the Tomlinson report alarmed government officials.

However much it could not be fully implemented, due partly to the pragmatics of political life at the time, it was not benign. The dramatic wave of forced removals of the 1960's were very much the attempt to get rid of 'black spots' which dotted the otherwise white map of 'European areas'. The Surplus Peoples Project (1984) estimated that between 1960-1982 more than 3.5 million Africans at been forced to

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<sup>291</sup> Houghton (1955) p 55

<sup>292</sup> For a useful discussion of these debates see Evans (1997), pp 234-239

relocate from their land or homes.<sup>293</sup> More than half of the targets of forced removals were urban Africans, or ‘de-tribalized Bantu’, as Verwoerd preferred to call them, who had attempted to settle in towns, many of whom were survivors of the African peasantry squeezed off their land in the 1930’s.

In the end, all who were part of this biopolitical population, now racialized and ethnicized, ‘belonged’, but both together and apart. The political question for pastoral power was: how do we live ‘harmoniously’ and ‘peacefully together’, but ‘separate’ and apart, that is, in apartheid. It was this challenge that those who governed towns like Cradock in the Eastern Cape faced as they wrestled with the Native Question. And that those who were governed-- the African residents of these towns, like Matthew Goniwe— faced as an existential violence born of the ‘Native Question’. The figure of the urban African remained a constantly awkward and insurgent dweller in the town, disrupting the vision of apartheid as a bifurcated state in the making. And through their revolts, they also represented its potential unmaking.

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<sup>293</sup> Surplus Peoples Project (1984) *Khayelitsha: New Home, Old Story*, Cape Town, p8



## Chapter Six

### *From Victims to Enemies*

*“The rebels ripped the veil off the face of the colonial power and, for the first time, it was visible in its true form: a modern regime of power destined never to fulfill its normalizing mission because the premise of its power was the preservation of the alienness of the ruling group.”*

**Partha Chatterjee**<sup>294</sup>

In the focus on the overtly repressive nature of the covert aspects of counter-insurgency, and the absolute enemy as its target, and the scandalous violence that compels our attention, there is a tendency to lose sight of the centrality of the concrete political objectives of the apartheid state—the bringing into being of a society premised on bifurcated citizenship where the question of who a citizen and who a foreigner was, would be decided by the legally enforced social taxonomies of race and ethnicity. And to lose sight of the popular support that this vision enjoyed amongst white South Africans, as well as the popular support that existed for the forceful implementation and defense of that idea. In its most ambitious rendering, the apartheid objective was to naturalize a settler minority while denationalizing a native majority, reconstituting the boundaries and borders of the political. Between 1976 and 1981 four ‘independent’ homeland states came into existence, Transkei, Bophuthatswana, Venda and Ciskei, commonly referred as the TBVC states.

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<sup>294</sup> Partha Chatterjee, (1999) ‘The Nation and Its Fragments’, *The Partha Chatterjee Omnibus*, New Delhi: Oxford University Press, p18

The question of who would and could belong, and how they would belong to ‘South Africa’—the ‘national question’—had its origins in a colonial problematic, and the answers and challenges to it were hardly singular or uncontested, amongst both those who governed and those who were governed. In its most coherent moments however, the concrete enemy for the apartheid state is the figure that increasingly disrupts the neat binary between a racialized citizen and an ethnic subject—the concrete enemy is the urban African population who were either urban by location ( Mamdani’s ‘rural in the urban’), or urban by aspiration (the ‘detrribalized native’). It was this category of the population who presented apartheid’s planners with their most vexing conundrum, which they had sort to resolve legally and spatially, through a mixture of coercion and reforms. They tried forcefully removing and resettling African communities. And they tried regulating movement by enforcing a strict system of Influx Control through the Pass Law system, which accounts on the largest scale for the criminalization of the African population between 1948 and 1986.

Despite concerns about South African exceptionalism as a discourse that sets South Africa apart from the colonial history of the African continent, and that situates it as part of the West, there was an important phenomena that did set South Africa apart from much of the continent, with respect to the social basis as well as the spatial topography of resistance to domination: “unlike most African countries, the center of gravity of popular struggle was in the townships and not against Native Authorities in the countryside. The depth of resistance in South Africa was rooted in urban-based worker and student resistance, not in the peasant revolt in the countryside”.<sup>295</sup>

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<sup>295</sup> Mamdani (1996) *Citizen and Subject*, p29

This difference was not lost on those charged with formulating a strategy to contain native revolt whilst at the same time finding a solution to the national question.

Colonel ‘Pops’ Fraser, the key counter-insurgency theorist of the SADF in the early 1970’s was at pains to point out that whilst force was necessary as part of a strategy, it would have to be a minor part of the overall strategic process and one weapon in the arsenal used to support the realization of a political objective. In his reflections on counter-insurgency and the challenges for white South Africa, Colonel Fraser warned that there “is always a temptation to let the military direct the entire process but this must be resisted by all means. Giving the soldier authority over the civilian would contradict the major characteristics of this type of war, i.e, that it is a political war”.<sup>296</sup>

By the end of the 1960’s the key African nationalist movements—the ANC and the PAC were banned (October 1960) and become movements in exile. The Communist Party had already been banned in 1950. The leadership of the ANC’s newly founded military wing were either in exile, as in the case of Harold Wolpe and Joe Slovo, or in prison serving life long prison sentences, as in the case of Nelson Mandela, Walter Sisulu, Ahmed Kathrada and Govan Mbeki. So too were key figures of the Pan Africanist Congress, like Smangaliso Robert Sobukwe<sup>297</sup>. Although these repressive actions had thrown organized African resistance to apartheid into disarray, there was still cause for concern by State. Three key events rankled the more forward looking

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<sup>296</sup> Fraser, n.d ‘Lessons from Past Revolutionary Wars’, p21 D. O. D archive

<sup>297</sup> The treason trail was formally known as “*the State vs Nelson Mandela, Walter Sisulu, Dennis Goldberg, Govan Mbeki, Ahmed Mohamed Kathrada, Lionel Bernstein and Raymond Mahlaba (sic)*” charged with “being members of an association of persons within the purview of Section 381 (7) of Act. No. 56 of 1955, as amended, known as the High Command, the National Liberation Movement, the National Executive Committee of the National Liberation Movement and the Umkonto we Sizwe (The Spear of the Nation),”, alleging that they “conspired to commit... wrongful and willful acts of sabotage, preparatory to and in facilitation of, guerilla warfare in the Republic of South Africa, coupled with an armed invasion of, and a violent revolution in, the said Republic...” AD 1844/ A vol. 1, Cullen Library, Historical Papers, Wits University; De Villiers, H.H.W (1964) *Rivonia, Operation Mayibuye: A Review of the Rivonia Trial*, Johannesburg: Afrikaanse Pers Boekhandel

political leadership in the National Party. What to do about them increasingly divided supporters within the party along factional lines. The fault line was between the complacency of then Prime Minister Vorster, and the sentiments of his incumbent, the Defence Minister, P. W Botha.

Two of the three foreboding events that divided the white ruling elite originated internally, not surprisingly, from within the urban African population. The first arose from the sentiments on the factory floors of the cities that congealed into a dramatic movement of African workers in the mining and manufacturing sectors of the economy. The manufacturing boom of the late 1960's had given rise to the need for more African labour in the cities. Worker advice offices had sprung up too, like the Advice Offices of the Black Sash, many started by young white student groups, excluded from and unable to find space for political expression in the Black Consciousness Movement. They turned to organizing workers around shop floor issues, finding a focus on 'class' to be a way to circumnavigate the exclusion that a turn to Blackness as an identity of resistance implied for them. There was an effervescence in the growth of union organizing. A wave of strikes occurred, starting in Durban in 1973, but quickly making a national imprint<sup>298</sup>. The strikes were led by a nascent independent black trade union movement that, although bitterly divided over ideological and strategic questions, did not confine itself to workplace grievances only. It also asserted a leadership role in "community struggles."<sup>299</sup> Many of these workers lived in urban townships, informal settlements, and hostels and began to

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<sup>298</sup> cf. Sakhela Buhlungu. ed. (2006) *Trade Unions and Democracy, Cosatu Worker's Political Attitudes in South Africa*, Cape Town: HSRC Press; Steven Friedman (1987) *Building Tomorrow Today*, Johannesburg: Ravan Press; Jeremy Baskin (1991) *Striking Back: A History of Cosatu*, London: Verso

<sup>299</sup> The divide split the movement leadership between those known as 'workerists', who maintained that the movement confine itself to workplace issues, and the 'populists', who sought to forge 'political unions', which would be the organizational locus of community-based African urban resistance.

provide the formative leadership of new popular political grassroots formations which replaced those decimated by the repression and bannings of the 1960's<sup>300</sup>.

I am truncating the historical formation of these movements here, and obscuring along the way what was a deeply fractious and fateful relationship between the residents of the urban townships themselves and the hostel-dwellers who moved between the rural and the urban areas. This would later give rise to, between the mid-1980s to mid-1990's, one of the violent political conflicts in South Africa's recent past, which spread across Johannesburg's Vaal region, as well as in Natal, pitting the supporters of the Zulu-dominated Inkatha movement against those who aligned with the 'comrades', the supporters of United Democratic Front (UDF). Although the state's counter-insurgency units became deeply involved in fermenting this conflict through support and training of various factions, as proxy forces within the country, and by actively encouraging suspicion and distrust, they were not, contrary to most critical studies at the time on the 'third force', the originators of the conflict<sup>301</sup>. Rather, as Mamdani has argued in a penetrating assessment of this violence, the history of the figure of the migrant labourer within the bifurcated zones of political authority is crucial to understanding why the violence took the form that it did. It was shaped primarily by the forms of domination, the discourses of revolt and the political identities that were fashioned in relation to it.<sup>302</sup>

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<sup>300</sup> Baskin (1991) Friedman (1987)

<sup>301</sup> For example, see Matthew Krentz (1990) *Unofficial War: inside the conflict in Pietermaritzburg*. Cape Town & Johannesburg: David Philip; Stephen Ellis (1998) The Historical Significance of South Africa's Third Force, *Journal of Southern African Studies*, vol. 24, no. 2

<sup>302</sup> Mamdani, M (1996) 'The Rural in the Urban', in *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, New Jersey: Princeton University Press, pp 218-284; In an earlier study Doug Hindson (1987) had noted that the process of urbanization had created a chasm between settled and migrant Africans, although he focused on this as a form of differentiated labour re-production rather than on the social and political consequences that attended the process: "Influx controls, job allocation and housing policies, and the municipal tax and expenditure system were consciously manipulated", he noted, "by local authorities to improve the economic welfare of settled urban

The second internal event that deeply disturbed sections of the political ruling elite was the 1976 student uprising. It had started in Soweto but too spread across the country, initially focused on opposition to Afrikaans as the language of instruction prescribed for use in state schools. It soon extended to the disparities in the allocation of resources between African schools and their white, 'coloured' and Indian counterparts. The dominant organizational and ideological form of resistance inside the country was the Black Consciousness movement, which cohered around the insights of Steve Biko. Invoking a sovereign black political subject, the student uprising and the Black Consciousness movement made citizen-like claims that required recognition and responsibility for black South Africans as full citizens of the South African state rather than as urban interlopers. This was at a moment when the apartheid state still imagined that the long term biopolitical responsibility for the urban African population—education, healthcare, and welfare—would eventually fall under the administrative responsibility of a Bantustan government of one kind or another. In a clumsy precursor to the more systematically planned use of political assassinations, within a year Steve Biko was killed while being interrogated in police custody, and the Black Consciousness movement was banned.

The third major worry, as I have already discussed, was the chastising experience of the failed incursion into Angola in 1975. This took the hubristic glow off the political leadership's reliance on the military brass's capabilities at that time.

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dwellers relative to temporary migrants. The effect of these measures was to promote a process of stratification within the urban African population." Hindson (1987), pp406-407

To address the challenges posed by the urban-based and urbanizing African population, two commissions of inquiry were initiated; the Wiehahn Commission, which would look into the question of what to do about the newly formed black trade unions, which were not recognized under law at the time; and the Riekert Commission<sup>303</sup>, which would consider the fate of urban African workers. By this time there was a creeping realization amongst some sections of the ruling elite that politically cleansing white South Africa of its urban African population, and turning every African into a migrant labourer who was a foreigner, might just be an unrealistic prospect.<sup>304</sup> If a minority was going to maintain its rule over a majority, new techniques of subverting native sovereign claims, and new technologies of rule might be required.

The Total Strategy is not reducible to the *militarization* of the state. It was first and foremost a panoply of political interventions pressed in the service of a political project, which would be secured through a counter-insurgency strategy. The Total Strategy would take into account the key recommendations of the Wiehahn and Riekert Commissions. Particularly it would translate into law the recommendations for the recognition of black trade unions, and the acceptance of a certain kind of legality for urban Africans as workers residing 'in South Africa'. The Total Strategy sort to reconfigure the relationship of apartheid to urban Africans but with the

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<sup>303</sup> Chaired by Dr. P. J Riekert, formally known as the (1979) *Commission of Inquiry into Legislation Affecting the Utilization of Manpower*.

<sup>304</sup> For example, a survey conducted by the state-funded Human Sciences Research Council (HSRC) at the time, found that in the case of North Ndebeles, only 5.5% lived in the ethnically designated 'own area,' [meaning Bantustan] whilst 54.9% lived in 'white South Africa' [meaning South Africa], and 39.6% lived in other Bantustans; Swazi-speakers were divided as follows: 78.3% in 'white area', and 14.5% in 'own area'; Zulu-speakers registered 40.5% in 'white area', and 58.4% in 'own area'; quoted in Simkins, C (1981) 'The Distribution of the African Population of South Africa by Age, Sex and Region Type 1960, 1970, and 1980, SALDRU Working Paper no. 32, University of Cape Town; see also Smit, P (1983) 'Die Sosio-Ekonomiese en Politieke Posisie van die Stedelike Swart Bevolking', unpublished paper presented to the annual congress of the South African Sociology Association.

continued aim of maintaining its three core elements: the Bantustan system, influx control and the exclusion of Africans from national political representation- in other words, a *colonial rationality* seeking denationalization of the native population remained its guiding ethos. As David Scott has presciently reminded us:

the formation of colonial modernity would have to appear as a discontinuity in the organization of colonial rule characterized by the emergence of a distinctive political rationality— a colonial governmentality—in which power comes to be directed at the destruction and reconstruction of colonial space so as to produce not so much extractive-effects on colonial bodies as governing-effects on colonial conduct.<sup>305</sup>

If Beaufre was an important influence in the turn to insurgency, the institutional reform process was influenced by the advice of the American political scientist, Samuel P. Huntington's theory of citizenship based on group-rights decentralized through consociational forms of democracy<sup>306</sup>. The constitutional reform process gave urban black South Africans local forms of political representation, and 'coloureds' and Indians diminished forms of political representation at a national level

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<sup>305</sup> David Scott (1999) *Refashioning Futures: Criticism After Postcoloniality*, New Jersey: Princeton University Press

<sup>306</sup> Huntington's affinity for the apartheid state was not without its consequences for him. In an obituary for the late author, Lee Jones recalls that Huntington's "nomination for membership of America's National Academy of Sciences was also rejected in 1986, following a determined campaign by Yale mathematician Serge Lang. Lang exposed Huntington's use of a pseudo-scientific 'frustration index' in 'Political Order' to argue that apartheid South Africa was a 'satisfied society'". Lee Jones (2009) 'In Memoriam: Samuel P. Huntington', *The Oxonian Review*, Issue 8. No. 1, 29 January; cf. also Swilling, M. 'State Power in the 1980's', in Cock, J & Nathan, L (1989) *War and Society*, Cape Town: David Philip, p138; A controversial Cold War figure, more recently associated with official US policy-making, through the theory of a 'clash of civilizations', Huntington has proffered influential formulations of the absolute enemy, most recently as Islamic in the post 9/11 US 'War on Terror'. For a critique of Huntington's culturally essentialist rendering of the primary faultlines of humanity after the Cold War, see Edward Said (2002) 'The Clash of Civilizations: on Samuel Huntington', in *Reflections on Exile and Other Essays*, Cambridge: Harvard University Press



in a 'Tri-Cameral' parliament<sup>307</sup>. The new constitution took effect on 3 September 1984, enacted by the Republic of South Africa Constitution Act 110 of 1983. Elections for 'coloured' representatives were held on 22 August 1984 for a designated House of Representatives, and elections for Indians on 28 August 1984 in a designated House of Delegates. A 'coloured' and Indian minister joined the cabinet. A new President's Council was constituted involving whites, 'coloureds' and Indians. The control and administration of Black affairs remained vested in the State President.

This created an enormously differentiated bureaucracy, disproportionate one might say from an efficiency-minded public administrators point of view, for a country with a total population of just over thirty five million people. As the liberal politician and critic of the National Party, Frederick van Zyl Slabbert enumerated with incredulous alarm at the time:

By 1985 the political system had given birth to thirteen houses of Parliament or legislative assemblies, as well as the President's Council with quasi-legislative functions. There are three legislative chambers in the Central Parliament, six legislative assemblies in what are termed the "nonindependent black states," and four legislative assemblies in the "independent states." Occupying seats in these fourteen bodies are 1,270 members, consisting of 308 members of the three houses of the Central Parliament; 60 members of the President's Council, 501 members of the

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<sup>307</sup>Between 1982 to 1984 the three so-called Koornhof bills (after the Minister) were introduced. Two were eventually passed, one was not. They were the Black Local Authorities Act 102 of 1982, the Black Communities Development Act 4 of 1984 and the Orderly Movement and Settlement of Black Persons Bill. 'Historical Background to Apartheid Laws' n.d Unpublished Mimeograph, AK 2117-L2, Cullen Library, Wits Historical Papers, p27

legislative assemblies of the non-independent black states, and 401 members of the legislative assemblies of the independent black states of Transkei, Bophuthatswana, Venda, and Ciskei. Of the 1,270 persons, 121 are ministers of government (approximately one out of ten), and in addition, there are at least 21 deputy ministers. Each of the legislative organs has government departmental structures which, by August 1986, had spawned 151 government departments in South Africa. These departments included 18 departments of health and welfare; 14 departments of education; 14 departments of finance and budget; 14 departments of agriculture and forestry; 12 departments of works and housing; 13 departments of urban affairs or local government; 9 departments of economic affairs or trade and industry, as well as 5 departments of foreign affairs, transport, posts and telegraphs, labor and man-power, law and order, defense or national security; 3 departments of justice, 1 department of mineral and energy affairs, 1 department of environmental affairs and tourism. Finally, these 140 departments were responsible to eleven presidents, prime ministers, or chief ministers in South Africa.<sup>308</sup>

An important and transparent aim of this reform was to split the potential for a cohesive black solidarity. The institutional fragmentation displaced the possibility of majoritarianism as the grounds for democratic political community. And by creating a black middle class elite of 'urban insiders' it could also fragment blackness as a singular unity in resistance to a common target. In order to implement this latter

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<sup>308</sup> Frederick van Zyl Slabbert (1987) 'The Dynamics of Reform and Revolt in Current South Africa', *The Tanner Lectures on Human Values*, Delivered at Brasenose College, Oxford University October 27 and 29 and November 5 1987, p214

strategy the policy of Influx Control, the Riekert Commission suggested, needed to be regulated more intensely. A new law was proposed, the *Orderly Movement and Settlement of Black Persons Bill of 1982*<sup>309</sup>.

The municipal ‘urban rights’ for Africans, recommended by the Riekert Commission reforms, were translated into semi-autonomous municipal institutions in the form of Black Local Authorities (BLA’s). These would have powers to build communal public infrastructure, allocate housing, and authorize trade sites<sup>310</sup>. The BLA’s were a key component of this reform process. It was the primary technology designed to contain and domesticate discontent through the co-option of a layer of local Africans as councillors. The councillors would rule over the urban African population at local government level. As the Constitutional Guidelines advised, the “principle of maximum devolution of power and decentralization of administration at local government level, and of minimum administrative control over local authorities” was sort.<sup>311</sup> Black South Africans would ‘govern themselves’ through Black Local Authorities, whilst ‘coloureds’ and Indians, confined to specific racialized areas, would also govern their ‘own affairs’, through local Management Committees (MC’s). Some of the functions of Administrative Boards, which had previously governed urban African life, would now be transferred to the BLA’s.

The 1983 Constitution replicated a softer version of the bifurcated state within official South Africa (*sans* homelands) by distinguishing between ‘own affairs’ and ‘general affairs’. Black South Africans were now governed and had ‘representation’ in

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<sup>309</sup> Hindson, D (1987) *Pass Controls and the Urban African Proletariat*, Johannesburg: Ravan Press

<sup>310</sup> This was introduced into parliament as the Black Local Government Bill in 1980. The bill was passed into law in 1982 as the Black Local Authorities Act

<sup>311</sup> Republic of South Africa (1982) *Constitutional Guidelines*, Pretoria: Government Printers, p8

provincial administrations, regulated by the Black Local Authorities Act and the Black Communities Development Act 4 of 1984. The exception remained that those who were already resident of homelands would remain regulated by existing Native Authorities via the legislation of their respective Bantustans<sup>312</sup>. Dr P. J Riekert, who was charged with making recommendations on the fate of Africans ‘outside the Bantustans’, did not fudge the issue of why the reforms were undertaken. He explained to a journalist that the pragmatic purpose of the BLA’s were to “defuse pent-up frustration and grievances against the administration from Pretoria.”<sup>313</sup> At the core of state reform then, was the desire to maintain minority dominance through containing a growing urban revolt.

Importantly, and with significant consequences for the counter-insurgent aims underpinning the hopes of the state, the regulation of black life under this reformed local government system could not distinguish and demarcate the residential life of black South Africans along ethnic lines *within* South Africa, as it did in the homelands. Urban African townships were a heterogeneous mix (this is not to say that socially there were not ethnicized spatial enclaves within townships decided on by Africans themselves). The state had to contend now with a spatial mode of control in its regulation of life in African townships. It had to govern native life through the corporatized identity of blackness, rather than its preferred taxonomic classification of Africans as multiple ethnicities, as it did under customary law stipulations in Native Authorities. This forced it to shift slightly from its imaginary of the bifurcated vision of apartheid, divided between racial citizens and ethnic subjects, and a country of

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<sup>312</sup> Craythorn, G. L (1986) *Municipal Administration: the Handbook*, 6<sup>th</sup> Edition, Cape Town: Juta and Co. p3

<sup>313</sup> *Rand Daily Mail* (1983) 29 September ; quoted in Jeremy Grest and Heather Hughes (1984) ‘State Strategy and Popular Response at the Local Level’, in South African Research Service. Ed. *South African Review II*, Johannesburg, Ravan Press, p46

multiple minorities. It had to also therefore find an alternative mode of regulation and control, of law and order, if it could not hope to govern urban African life through the ‘decentralized despotism’ of the Chief. It was conceding the legitimate the right of Africans to be resident in ‘white South Africa’, rather than enforcing their status as temporary sojourners, and therefore permanent potential criminals for being merely present in an urban setting.

There were two key problems that this process of reform confronted from the outset. The first was that the reforms denied Africans political representation at a national level, whilst at a national level it truncated the forms of political representation it offered apartheid’s ‘subject races’—‘coloureds’ and Indians. It was therefore immediately burdened by a crisis of legitimacy amongst those active in campaigning against apartheid and became a target for resistance.

The second flaw in the reform process derived from the funding formula to procure a revenue to support the Black Local Authorities (BLA’s). The fiscal burden for funding the promises and responsibilities of the new BLA’s—housing, health services and infrastructure for urban African townships—would have to be procured from the tax-base of these very communities. This was to have disastrous consequences for the success of the BLA’s, and in fact rather than contain a revolt, it contributed to it, quickly becoming a concrete target for mobilization. As two prominent development economists noted,

privatisation' of housing and other forms of township collective

consumption required that these councils be able to take on the financing

and regulation role that the central state had previously applied. This required a major expansion of the local revenue base, occasioning severe rises in rents, rates and township service charges.<sup>314</sup>

Two movements of protest congealed into an urban revolt that spread across South Africa's black townships. Focused nationally on the lack of legitimacy of the constitutional reforms, and locally on the rise in the cost of rents and services, the largest of these movements of resistance took the organizational form of the United Democratic Front (UDF), founded in 1983. The UDF drew together more than four hundred local and national organizations, from youth to civic, to religious communities, and aligned itself with the 'Freedom Charter', the document adopted by the ANC in 1955 containing its guiding principles for a future South Africa. This adoption of the Freedom Charter by the UDF signaled its affinity for the policies of the banned ANC<sup>315</sup>.

Despite the State's attempt to isolate its leadership through detentions, the UDF's capacity to organize and the grievances it foregrounded found widespread resonance amongst many urban township dwellers. It also found many able organizers, from amongst the large amounts of unemployed youth and students. In the end the poll for the elections of the new Tri-Cameral parliament in 1983 turned out to be low, averaging participation levels of between 10-23% percent across the country. At the

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<sup>314</sup> Mike Morris & Vishnu Padayachee (1988) 'State Reform Policy in South Africa', *Transformation*, no. 7, p8

<sup>315</sup> cf. Seekings, J (2000) *UDF: A History of the United Democratic Front 1983-1991*, Cape Town: New Africa Books; Von Kessel, I (2000) *Beyond Our Wildest Dreams: The United Democratic Front and the Transformation of South Africa*: USA: University of Virginia Press; Houston, G (1999) *The National Liberation Struggle in South Africa: A Case Study of the United Democratic Front 1983-1987*, UK: Ashgate

local level, the cornerstone of the States' reform plan—the Black Local Authorities were in a crisis, as the co-opted councilors became the most visible targets of resistance, violence and boycotts by civic and youth movements in the townships. The political scientist Mark Swilling studied the state of local government reforms over three years, and found the project floundering:

Thirty four [BLA's] were introduced in 1983 and one hundred and four were due to be established by 1984; by April 1985, there were only three still functioning. In addition, between September 1984 and July 1985 two hundred and forty black officials resigned from local government bodies because of their lack of legitimacy, and three hundred and sixty black policemen were forced to flee the townships to avoid attacks on their person and property. This has left many townships ungovernable.<sup>316</sup>

The demands of the UDF focused on a demand for citizenship on one hand, and on the other, a biopolitical demand for the right to care and welfare for the population. There is another view that I have been tracing the contours of, and that is a view that reads events as signs on a “landscape of treason” that are given a life form by an exterior animating energy. From this perspective, the resistance to the state's reforms resided in the invisible mind of an enemy which was absolute. This invisible enemy manifested itself in the claims for sovereign representation which adorned the banners, the songs and the slogans of those organising against the Black Local Authority. This was a view of the world from within the pedagogy of counter-

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<sup>316</sup> Mark Swilling (1985) 'Urban Social Movements Under Apartheid', *Cahiers d' Etudes Africaines*, vol 99, xx-3, p365

insurgency. It was a view of the world that we glimpse in the declassified, formerly secret documents that are now open in their limited forms to perusal and scrutiny.

There are a copious amount of reports on the UDF and its affiliates in the archives of the Defence Force, Military Intelligence and in the files of the Security Branch, as well as the archive of the State Security Council<sup>317</sup>. When they consider the organization in its entirety, these intelligence security reports largely repeat a certain format; they describe the UDF firstly by its organizational form; secondly by what it stood for (to be read through its filiations and affiliations); thirdly they drew a connection between its stated objectives, its modes of organising, and the absolute enemy against which a war was being waged. Viewed through counter-insurgency's grid of intelligibility, the UDF as sign and symbol was transformed into a insurrectionary object, and a target of war.

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<sup>317</sup> For example: Department of Military Intelligence SADF (1985) Secret: Spesial Veiligheidsorsig 3 September 1985: Die United Democratic Front (UDF) as Instrument vir die Rewolusionere Alliansie om die Kongress Beweging te Laat Herleef en Mass Aksies met die Gewapende Stryd te Kombineer, AG 2961/ A 8, E3 SAHA Cullen, Wits University; DOD: Department of Military Intelligence (1986) Konsepstudiestuk: "Bevryde" Gebiede en Alternatiewe Strukture vir Bespreking 1 April 1986, A 62981/ E42; Department of Military Intelligence (1987) Secret: Voortgesette Optreded Teen Radikale Organisasies en Aktiviste, A 6289/ E42 SAHA, Cullen Library Wits; Department of Military Intelligence (1987) Geheim: Rewolusionere Aanslag, Vooruitskouing van 1987, A 62961/ E1; South African Police (1985) Geheim: Die Bestryding van die Rewolusionere Aanslag op die Arbeidsterrein en die Bestryding van Terrorisme A62981/ E 42 SAHA Cullen; Nationale Intelligensiediens (1985) Geheim: Spesiale Inligtingswaardering A 62961/ E1; Nationale Intelligensiediens (1985) Geheim: Nasionale Inligtingsprioriteite, A 62961/ E1; Nationale Intelligensiediens (1988) Top Secret: General Perspective on the South African Situation 1988, A 62961 E1; South African Police (1988) Top Secret: Notule: Trewits Vergadering Port Elizabeth, AG 6289/ E 8; Department of Defence SADF n.d Die Nuwe Opdrag van die KIK aan TREWITS, Die Doel Van TREWITS, A 6289/ E42 SAHA, Cullen Library Wits; Department of Defence n. d Top Secret: Teenrewolusionere Inligtingstaakspan (TREWITS), A 62961/ E2; Secretary of the State Security Council (1986) Top Secret: Special Situation Report: Betekenisafbakening Van die Verskynsels 'Revolusie', 'Rewolusionere Oor-log', en Ander Verwante Konsepte met Spesifieke Verwysing na Korrekte Terminologiese Gerbruik, Aanhangsel A: AB 2961/ E3



One such declassified intelligence report reads as follows:

The UDF is in effect a revolutionary front organization which consists of +-12 000 subordinate organizations affiliated to the UDF. It is estimated that about 1.5 million people are affiliated to the UDF....The UDF functions in effect, as the ANC's internal wing and uses the Freedom Charter as the basis of its political mobilization process in support of the SACP/ANC. The aim of the UDF is to politicize and organize the masses of the RSA from the local to the national level, in order to overthrow the existing system of government, by united mass resistance actions. The organized masses serve as the source of recruits of the ANC's mass "Peoples Army". The UDF has the ability to plan, co-ordinate and conduct revolutionary actions from local to national level against every component of the state's power base....

Between that paragraph and the next one, in large bold black type-face a quote was inserted :

**"V. I Lenin: The Communists...must create a duplicate illegal apparatus everywhere that, at the decisive moment can help the Party perform its duty towards the Revolution."**

The report then reverts to the regular type-face, and proceeds to explain the link between the ANC, the Communist Party and the UDF. The ANC works through a number of strategies, key amongst being, the recruitment of "suitable local leaders" who are

trained to establish a variety of front and support organizations at local level. The most important organization is the local Residents Civic Association to which locally established and organized youth, scholars, womens, church, workers and other organizations are affiliated. These organizations are used to further politicizing and organizing of the population and nearly every aspect of daily life....In the event of the above being achieved the neighbourhood will become a revolutionary 'liberated' area and revolutionary authority structures will be used to govern the neighbourhood.<sup>318</sup>

The insertion by the intelligence agent of the quote by Lenin into the report on the UDF has the obvious function of interpreting the organisation for its readers. It renders the UDF's demands for representation, and its practices of creating popular forms of democratic rule, chimerical manifestations of the real. What the organization says, and what it does can only confirm and conform to what the counter-insurgency agent has been trained to look for. It now becomes the illegal 'duplicate' structure; a tangible and surface manifestation of Lenin's prescription. Reading the surveillance reports on Matthew Goniwe one reads how he, as a UDF leader, and skilled activist, confirms what the intelligence agents of the State already believe to be the real motives behind his actions. They watch and listen to him

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<sup>318</sup> South African Defence Force (1985) *Revolutionary Warfare against the RSA*, Pretoria: SA Army Headquarters, pp 30-31; Department of Military Intelligence (1985) Spesial Veiligheidsorsig 3 September 1985: Die United Democratic Front (UDF) as Instrument vir die Rewolusionere Alliansie om die Kongress Beweging te Laat Herleef en Mass Aksies met die Gewapende Stryd te Kombineer, AG 2961/ A 8, E3 SAHA Cullen, Wits University; Department of Military Intelligence (1987) Voortgesette Optreded Teen Radikale Organisasies en Aktiviste, A 6289/ E42 SAHA, Cullen Library Wits; Secretary of the State Security Council (1985) Kortemyn-Strategies vir die Herstel en Handhawing van Wet en Orde in die Onrusgeteisterde Gekleurde Woonbuurtes 30 Mei, A. B 2961/ E3 SAHA Cullen, Wits University

helping youth movements organize themselves, as he forms and leads a powerful civic association, and as he builds alternative popular democratic structures.

Any activist in South Africa under the surveillance of the South African Security Branch was allocated a file number. Mathew Goniwe's file number was S4/ 43620. On the 25<sup>th</sup> May an intelligence report by Lieutenant Roeland to the Pretoria office on the activities (*bedrywighede*) of Mathew Goniwe reported that he had addressed a meeting on Saturday of 18<sup>th</sup> May in the Eastern Cape Town of Hanover. At this meeting he congratulated a group of young people, telling them that 'the youth are doing good work by establishing their own organizations'. He reminded the students that schools were important sites to organize, and according to the report, admonished them: "schools should not be burnt down".<sup>319</sup>

A secret report on the situation in Lingelihle issued under the letter-head of the National Security Management System (NSMS) dated 3 February 1985, and authored by the Cradock Joint Management System, expressed a concern that the newly formed Cradock Residents Association (CRADORA) had decided, under Goniwe's leadership, to organize a large national meeting to mark a "significant event". Invitations were issued by CRADORA to all the United Democratic Front regions across the country, requesting that they send delegates. The agent writing the report commented that "thousands of blacks from all over South Africa were expected to arrive."<sup>320</sup>

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<sup>319</sup> S.W.D nr. 12 91985), *Bedrywighede: Mathew Goniwe (S4/ 43620) 85-05-23*, A22.1523, Cullen Library, Wits University

<sup>320</sup> "Duisende swartes vanoor die hele SA sou op-gedaad het." National Security Management System (1985) *Onrus Situatie in Lingelihle Swart Woonbuurt te Cradock*, A2215.20EXH, Cullen Library, Wits University

On the 31 January 1985, three days before the scheduled meeting, a banning order was issued by the Police under the Internal Security Act no. 74 of 1982. In response Matthew Goniwe retained a lawyer and lodged an appeal with the High Court of Grahamstown to set aside the banning order. His request was dismissed by the Judge. The security police were well aware of the purpose of the meeting and why they did not want it to go ahead. It was called by Goniwe to celebrate, in the company of activists from around the country, the resignation of the entire Lingelihle Town Council. The council had resigned after concerted pressure from the leaders of CRADORA over many months. The intention of the meeting, in the view of the security police, was to encourage the invited delegates from around the country to emulate the organizational success that CRADORA had achieved by de-legitimizing its Black Local Authority.

The significance of the meeting Goniwe was organising troubled them indeed: it was the first mass resignation of an entire Black Local Authority council in the country. The intelligence report remarked with consternation on the growing reputation of Matthew Goniwe in the civic organization CRADORA. It also reminded its readers that a decision had already been taken about Goniwe's fate, and communicated to the Department of Education and Training, and this needed to be implemented as a matter of urgency. The Joint Management Council was "adamant that MATTHEW GONIWE and FORT CALATA MUST NOT be re-appointed to a teaching post. This decision" it emphasized, "must be communicated as a matter of urgency before they can begin to re-organise."<sup>321</sup>

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<sup>321</sup> "benut en dit onomwonde aan MATTHEW GONIWE en FORT CALATA moet stel dat hulle NIE weer in the onderwyspos aangestel sal word nie. Hierdie besluit moet so spoedig moontlik bekend gemaak voordat hulle met herorganisasie kan begin...National Security Management System (1985)

In another secret report from the South African Police's security branch submitted by Lieutenant Colonel Botha, an informer described how Matthew Goniwe and two others visited the town of Hofmeyr on the 24<sup>th</sup> May 1985. The file summary description referred as follows: "Mathews [sic] Goniwe S4/43680: Establishment of Organisations: Northern Cape Area."<sup>322</sup> In a supplementary commentary on the informers report, Lieutenant Colonel Botha added his own conclusive observations:

"5.1 It is clear to me that Mathews Goniwe (sic) is the founder as well as the organizer of all these organizations in the towns of this operational area;  
5.2. It also appears that Goniwe is busy organizing the youth in this unrest area on a large scale."<sup>323</sup>

The State's view of what the UDF—a view I have described as properly political, drawing on Schmitt—was derived from reports from intelligence officers who in turn drew on a range of sources: informers accounts, documents produced by the organization itself, electronic listening devices such as phone-taps, studies by other counter-insurgency analysts, and an education in counter-insurgency. Together these discursively formed an understanding of a 'threat perception' in the "operational area"<sup>324</sup>. Reports were relayed from the intelligence operatives to the political

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*Onrus Situasië in Lingelihle Swart Woonbuurt te Cradock*, A2215.20EXH, Cullen Library, Wits University

<sup>322</sup> "Mathews [sic] Goniwe S4/43680: Stigting van organisasies: Noord Oos Kaap Gebied"

"5.1 Dit is vir my duidelik that Mathews [sic] Goniwe die stigter sowel as die organiseerder is van al die organisasies in dorpe van die takgebied.

5.2 Dit will ook verkom of Goniwe op 'n groot skaal besig is om die jeug te aktiveer vir die die onrus in die gebied"

<sup>323</sup> SAPS (1985) Veiligheidsverslag MG.4/v/3 v.10 1986-06-21, A 2.2.15.103, South African History Archive, Cullen Library, Wits University

<sup>324</sup> MI/205/10 Doelstellings, doelwitte, temas en persepsies van vyandelike propaganda teen die RSA—die militere bedreiging teen die RSA 1986/87 Boekjaar 1988-01-25; 93 MI/205/10; Militere

leadership via the military or the police and were presented for discussion to the various members of the National Security Management System (NSMS). In turn the reports were tabled at the State Security Council. A vast amount of information flowed vertically and horizontally between the different levels of the Joint Management Centers, as ‘threats’ were debated and discussed in the technical discourse of counter-insurgency.

The threat assessment gave an account of potential and existing ‘problems’, along with recommendations for solutions. These solutions exist in the minutes of meetings, in the whispers, the nods and the winks in a corridor, or a conversation over a drink or social gathering. The solutions are also found in the ‘signals’ which describe, as we now know, how the solution to a problem would be to ‘permanently remove’ certain individuals from the society. It is in these problem-answer formulations of counter-insurgency that those who pursue juridical justice in the form of individual culpability seek tangible evidence of acknowledgment, of ‘the order’ or the ‘instruction’.

The affective purchase of being in a mediated proximity to this killing—an illegal killing—derives from the pronounced and intimate material form that the archive of counter-insurgency takes. It is embodied in a cast of individuals- those watching, listening, talking, waiting, and then acting. And those being watched and acted upon, in the most violent and brutal ways.

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bedreiging teen die RSA Verslagjaar 1987/1988 vol. 1 1986 Oct 31; MI/205/10 Die militere bedreiging teen die RSA 1985/1986 verslagjaar samevatting deel 1 vol I deel II Deel VI; 101/102 Militere bedreiging teen die RSA vol 1 en II 1987

This turns us all into voyeurs of a moment of suffering within a story with deeply tragic dimensions. We take on the elevated vantage point of reading this archive as we observe a cast characters moving towards a fate we see on the horizon, but that remains obscure to those being watched by the watchers. And in the glance we cast over these events that have now passed into the realm of historical time, they still remain immune to time, since we cannot exercise any agency to alter the course of events on the night when the white Honda left Port Elizabeth, or intervene and agree with Matthew Goniwe's comrade, Derrick Swartz, when he recalls suggesting that they rather spend the night at his place and drive home to Lingelihle in the safe haven of day light the next day. They were all well aware by then that state secrets are performed in the dark.

Yet we have to remind ourselves that those who were watching Matthew Goniwe, were not watching him because he was an individual. By that time he had evolved into a form that transcended the concrete figure of the individual. He had become a symptomatic figure of the political, along with Sparrow Mkhonto, Sicelo Mhlauli and Fort Calata, an absolute enemy. Symptomatic of the absolute enemy, but importantly not *the* absolute enemy, for they were its chimerical double. As activists they were under surveillance because they were leaders of a civic organization that was affiliated to the United Democratic Front. And the UDF had aligned itself to the ANC which in turn was seen as an externally driven proxy of the absolute enemy. By the time the agents of counter-insurgency, those veterans of Koevoet and the 'war on the border', pulled Matthew Goniwe's car over at the side of the road in June 1985, the four activists had become figures inhabiting a plan—recall the intelligence report

on the UDF as a front for a revolutionary onslaught within counter-insurgency's grid of intelligibility: local leaders recruited, youth movements mobilized, state institutions undermined, and liberated zones formed. And at the center of it all, the success of the plan, or its failure, hinged on the recurrent figure of Matthew Goniwe, who had now officially come to be known not only by the file name S4/ 43620, but also as "The Goniwe Problem", tabled as such at the highest institutional form of executive power, the State Security Council. It was here that decisions could be made not only about who could be made to live—the biopolitical prerogative of modern power, but also decisions about who could be made to die—the sovereign prerogative of colonial governmentality.



## *Epilogue*

I started this inquiry with a reflection on the relationship between violence and radical social change during which I rehearsed elements of my own biographical formation in the anti-apartheid student movement in South Africa in the mid-1980's. This coincided more or less with the killing of the Cradock Four and the proclamation the very next day of a nation-wide State of Emergency, on the 28 June 1985. It was one of the first campaigns I recall becoming involved in, which was also an education in the organizing skills, political acumen and resilience that existed in communities like Lingelihle that was brutally cut short.

In the midst of extensive state repression, it came as a surprise to many of us when President F. W de Klerk announced the unbanning of the ANC, the Communist Party, the Pan-Africanist Congress, and the intention to release Nelson Mandela at the beginning of 1990. Less known internally at the time in the rank and file of the anti-apartheid movement was the extent to which secret talks were underway between sections of the ANC leadership in exile, the government and Mandela in prison<sup>325</sup>. As well as the extent to which the collapse of the Soviet Union, and the political settlement of the wars in Angola and Namibia, involving the United States and Cuba as well, would impact on the South African political ruling elite's resolve to hold on to dominance in South Africa.

With the announcement that negotiations were imminent, deep and intense ideological divisions were momentarily set aside to celebrate, even if skeptically. Debates

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<sup>325</sup> O'Malley, P (2007) *Shades of Difference: Mac Maharaj and the Struggle for South Africa*, UK: Viking

quickly followed however. What would the prospect of a negotiated political settlement, rather than an outright political victory or defeat, mean for the creation of a 'just society' after apartheid?

By that time the anti-apartheid movement had become one of the largest social movements in the world. Apartheid had already been declared a 'Crime against Humanity' at the United Nations. The events and images that were coming out of South Africa gave international television screens and newspapers vivid portrayals of the brutality of the South African security forces, and moving accounts of the immense restrictions that truncated freedoms considered as rights. Internally too, a strong movement had emerged. Focused on constitutional and local government reforms, it had also chosen human rights violations as the discourse through which to mobilize disaffection.

The campaign to know who had killed the Cradock Four, and to hold accountable those responsible for the killing, became one of the most visible and important campaigns, along with others involving the mysterious deaths of activists. In these campaigns the question of responsibility was central, and the prospect that the settlement would produce answers to the question of who exactly was responsible was uppermost in the minds of many of us who had been part of them.

I have argued that the pain and suffering induced by apartheid was mediated at the TRC through a hegemonic discourse of human rights law. It is a universalizing language which argues that apartheid denied the majority of its citizens access to a sovereign political community, and performs their exclusion on the basis of race. It

was an articulation of the critique of apartheid that resonated internally as well externally, in a world where racial discrimination had become an increasingly normalized wrong.

Since the 1950's this critique had mobilized activists in the country, and also gave rise to a coterie of progressive white citizens who mediated the pain and suffering of apartheid's black subjects through the courts. Providing advice, pressing for changes and the relaxation of discriminatory legislation, these critics also raised difficult questions in the racially exclusive parliamentary system. There was a minority critique of apartheid that drew on what the esteemed South African human rights scholar John Dugard, called the 'majesty of law'. It pitted universal law against apartheid's own legal claims. Explicitly locating itself in a genealogy of law which is celebrated as an achievement of 'Judeo-Christian civilization', this critique of apartheid considered the legalization of apartheid as a danger not only to apartheid's black subjects, but also to the security and future legacy of Western law on the southern-most tip of the African continent.

The case of the Cradock Four was the first case to be heard by the Truth and Reconciliation's amnesty committee. The subject of two previous inquests, it offered the prospect of gaining an intimate understanding how exactly they were 'permanently removed from society' and who did it. The question of why they were killed seemed less compelling at the time, since the answer to this question seemed self-evident. And yet when we revisit this question we become aware that it is worth thinking not only about how the state had come to constitute Matthew Goniwe as a

political enemy, but how the resistance movement constituted him as a victim. And how that understanding had come to be a taken-for-granted way of thinking about the injustices of apartheid itself. In other words, it prompts us to think about how the anti-apartheid movement had come to accept that the deaths of political activists were primarily to be thought of as ‘gross violations of human rights’.

It is an often lauded observation that the post-apartheid constitution is one of the most democratic and forward looking constitutions in the world. Underpinned by a Bill of Rights, it contains a series of statutory institutions focused on the protection of human rights. The constitution itself was authored by the most senior and widely respected South African human-rights lawyers, many of whom were centrally involved in human rights oriented litigation during the 1970s and 1980s. The depth of experience in South Africa of human rights violations had given South Africa’s new constitutional drafters the conviction that a postapartheid society would have to build a corrective ethos to undo this history.

In a view that diverges strongly from the rather self-congratulatory disposition of the human rights legal narrative that characterizes scholarship on the issue in South Africa, the legal historian Martin Chanock has made a cutting observation about the status afforded this legal discourse in the post-apartheid constitution:

As it had been nearly a century earlier, South Africa was colonized in the 1990’s by a new kind of internationally sanctioned state: this time not the ‘Westminster system’ but the ‘Constitutional State’. A form of political liberalism that had notably failed over the whole history of the South

African state to attract significant support from any segment of the population, found its philosophy entrenched at the heart of the new constitution. The constitution inflated the role of law, and the political power of judges, in an attempt to remedy the faults of the previous state's version of the 'rule of law (Chanock 2001: 513).<sup>326</sup>

What Chanock describes as "colonization" by the constitutional state, could perhaps be accounted for by the hegemony of human rights as a way to talk about the wrong of apartheid. If the injustice of apartheid was the violation of human rights on a large scale in the past, then justice in the future would be thought of as the commitment to the elevation and protection of human rights in the present.

Understood as such, I realized that the reason that we are not encouraged to dwell much on an understanding of apartheid's exceptional violence, and what makes it thinkable, is that a human rights claim on it made further thought redundant if not questionable. Juridical formulations of the problem take as an ideal-type a universal abstraction, with clearly demarcated boundaries and borders that transcend time and space. A human rights violation is decided upon by a range of taxonomic categories, and measured through a range of visible and verifiable somatic effects. In as much as the TRC sought to consider a political motive for violence, it ultimately individualized this violence, and found itself returning to a criminological adjudication of violence, requiring an individual perpetrator and an individual victim.

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<sup>326</sup> Chanock, M (2001) *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice*, United Kingdom: Cambridge University Press

Political violence thought of as simply a rights violation is less interested in how we might account for a wrong. Further knowledge of, for example, the history or the context of an act or event is discouraged, and may even be construed as the production of a narrative of exculpation designed to provide a justificatory post-facto rationale for a wrong.

The first challenge has been to recover the violence from the legal discourse of right, from this self-evident categorical register. This has meant recovering the violence from the overdetermining ontology of juridical discourse, and from the universal abstraction that underpins it. Dislodging the violence from this universal abstraction, we can now begin to think about its specificity. And dislodged from thinking about the violence as an individuated act and a human rights violation, we can also begin to think about it once more as an instance of *political* violence.

No sooner however that we dislodge the subject of violence from the universal abstraction of legal norms – as the universal victim-- to insert it into the political, do we find ourselves moored to another universal. This time it is that of the absolute enemy: of the communist as terrorist. In this view of the world, Matthew Goniwe and his comrades became treasonous figures. They were manifestations of the exterior designs of ‘global communism’ and its plans to destroy all that was good, right and civilized in South Africa. From this vantage point, this society at the southern-most tip of Africa needed to defend itself by any means necessary from those who were proxy forces desiring its destruction and reconstruction in the image of the antithesis of Western civilization: “Like the Greeks at Salamis who did the impossible in defeating the Persian horde, South Africans”, argued an anti-communist publication

on the Cold War, “may be the decisive people at an equally critical juncture in the history of Western civilization.”<sup>327</sup>

There is a curious and troubling sense in which this formulation above, written by a right wing anti-communist author, shares an epistemic affinity with the critique of apartheid articulated by the liberal left in South Africa. In terms that could easily supplement the view above, desiring to protect the achievements of Western civilization in an African country, the critic of apartheid Jean Sinclair was to lament in her Presidential Address to the annual general meeting of the Black Sash in 1964:

Seven hundred and fifty years ago the Magna Carta laid down the basis on which Western civilized standards of justice have been founded...In sixteen years, with the help of a mass of statutory legislation this Government has plunged South Africa back into the social anarchy of the middle ages. They have abandoned centuries of political progress, have manipulated Christian doctrine to suit their own philosophies and have subverted the common law in the interests of sectional dogma.<sup>328</sup>

Both formulations assert universal abstractions and absolute enemies, contesting a purchase on South Africa’s future as a political community. On the one hand, a universal abstraction of the majesty of law, and the progressive civil-legal legacy it seeks to protect from a ‘return it to the dark ages’. And on the other hand, in the first narrative, South Africa must be saved in the universal struggle of good versus evil,

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<sup>327</sup> Anthony Harrigan (1965) *Defence Against Total Attack*, Pretoria: Nasionale Boek Handel

<sup>328</sup> Black Sash (1964a) ‘South Africa in Crisis, Opening Address by National President of Black Sash, Jean Sinclair’, Pietermaritzburg 20 October 1964 B1.10/28  
p5

where at stake too is a choice between chaos and anarchy. In both sets of universals, I argue it is the colonial specificity of the 'natives revolt' that struggles to emerge, and that remains a subaltern discourse.

Apartheid as the assemblage of performative acts and technologies of rule which seeks to construct and fashion the native-as-subject, to rule with colonial ambitions—has in the end become discursively sublimated. This narrative then – of the concrete enemy—can only be understood from the vantage point of the formation of native subjects.

It is the political predicament presented by the urban African subject, embodied in the revolt led by Matthew Goniwe in townships like Lingelihle, that disrupted the realization of a neat binary between citizen and subject, and ultimately lead to the unraveling of apartheid's colonial ambitions: its will to denationalization. From this vantage point, the genealogy of the violence against the Cradock Four targets a concrete enemy, the figure that brings to crisis apartheid's state formation and state reform. In its particular forms, this predicament emerges in the concrete political conflicts between those who govern and those who are governed. We are talking then about the governmentalization of apartheid, of a political war rather than a military war, fought on the terrain of the partisan in repetition and difference to the partisan wars that we have recalled in its colonial pasts.

The war in the 1980's was also a different kind of war. It was a war that marked the end of one war and an attempt to forge the terms of another. It was the war fought in the last convulsions of a defeat. As the realization that the frontier lines of a racialized



South Africa and an ethnicized constellation of neighbouring native political communities was an idea that kept coming apart as soon as it came together. Fighting against an absolute enemy—the communist, in turn sublimated a concrete enemy—the figure of the urban native, neither properly citizen nor properly subject.

The repeal of the Influx Control laws in 1986, almost exactly a year after the killing of the Cradock Four, marked the formal end to the hope of apartheid as a bifurcated state and the initiation of the secret attempts to renegotiate the terms of minority domination over the majority, a renegotiation of the central political question in South Africa's history which defined its battle lines: the settler- native relationship.

Ultimately not a question to be understood in the brutality of the political violence, but in the colonial genealogy of the political objectives that underwrote it: a vision of political community that would seek to resolve the question of the native and the settler by dissolving both the native and the settler in order to violently rebirth them: as the citizen and the subject.

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