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THE STAGING OF THE HIDDEN: INTERROGATING AN AMBIVALENT RESPONSE TO A CRIME AGAINST HUMANITY

Andrea Durbach

Abstract: In December 2018, a former member of a white supremacist group and perpetrator of a violent crime, Stefaans Coetzee participated in a panel discussion at a reconciliation conference in South Africa. In 1996, Coetzee was a key executioner of a bombing which killed four people and injured 67. After pleading guilty, Coetzee was sentenced to 40 years in jail and 20 years later, he was released on parole. Thirty years earlier, 25 black South Africans were convicted of the "necklace" murder of a black policeman. Fourteen of the 25 were sentenced to death. On appeal, a majority of the murder convictions were overturned and all the death sentences commuted.

Drawing on these two cases, this essay explores contrasting responses to engaging with perpetrators of political violence through the lens of implication. It examines the shifting boundaries of legitimacy in the realm of political crime and analyses the underlying influences and imperatives of accountability for crimes against humanity committed under apartheid and in a nascent post-conflict state.

Keywords: state violence; apartheid; resistance; political crime; reconciliation

Introduction

In 2018, I participated in a conference at Stellenbosch University in South Africa that explored the themes of recognition, reparation and reconciliation, 20 years after the South African Truth and Reconciliation Commission (SATRC) had concluded its hearings and presented the government with its final report.[1] The conference, one of a series convened by South African scholar, Professor Pumla Gobodo-Madikizela,[2] was initiated to mark the contribution of the SATRC as apartheid South Africa moved towards a non-racial democracy. It brought together South African and international scholars and practitioners across a variety of disciplines to discuss appropriate responses to the legacies of historical wounding and asked "[w]hat strategies might quell the haunting repercussions of genocide, slavery, colonial oppression, and mass violence that play out in the lives of affected individuals and groups from both sides of these acts?" Importantly, the conference called on its participants to engage with a

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question that is core to this essay, namely, "[i]n what ways might these strategies complicate our understanding of the roles of 'victim' and 'perpetrator'?"[3]

One of my roles at the conference was to moderate a conversation with a perpetrator of a violent crime, Stefaans Coetzee. A former member of a white supremacist group, Coetzee had participated in a bombing in 1996, which killed four people and injured 67. After pleading guilty, Coetzee was sentenced to 40 years in jail and almost 20 years later, he was released on parole.

This essay began as an analysis of my staged encounter with Coetzee against the backdrop of the key objectives underlying the Stellenbosch conference. As I wrote my analysis and wrestled with an underlying discomfort, I realized I had to begin the exploration of the layers of our peculiar interaction in December 2018 many years earlier, when as a lawyer under apartheid I confronted the complex and ambiguous boundaries of state violence. More acutely, my work during this period[4] predominantly took the form of representation of those repressed and harmed by the executioners of apartheid and summonsed to defend against their fraudulent claims. Perhaps the most significant of these claims was a case against 25 black defendants charged with the murder of a black policeman in a riot situation in 1985. Four years later, 14 of the 25 were sentenced to death. To make sense of my initially contemptuous response to the prospect of engaging with the perpetrator of a post-apartheid crime against humanity accordingly entailed my going back and recreating the scenes from a criminal trial in which I had had a part some 30 years earlier.

I grew up in a country where the taking of life was routinely justified as serving the desperate needs of an illegitimate state that was built upon a grotesque belief in racial superiority. Central to the foundations of apartheid South Africa was a racist ideology that sought biblical justification for excluding the majority of South African citizens from the layers of life and the riches it offered – based entirely on the colour of their skin. As legitimate resistance to this cruel and inhuman regime grew over decades, so did the brutal response by the state and its agents who invoked unconscionable measures to punish and silence those who dared to oppose an illegal, ruthless regime.

Against this backdrop, I came to the practice of law in South Africa, working primarily with victims of apartheid who were subject to acts of deep inhumanity and terror. I entered the world of law with a certain degree of reticence and resistance, given that law was a primary instrument that shored up apartheid rule. Perhaps in my inexperienced, naïve way, I took on the legal mantle enraged by the layers of injustice that propped up white privilege and inspired by those who had worked within the clanging tensions of a pernicious system. And so I became a deliberate participant within it, using the law as a shield to defend apartheid opponents and as a sword to carve cracks in its fortress, hoping in some small way to make life bearable for those on whom the law bore harshly.

Like many manifestations of long-term state violence, the violence executed under apartheid was both abhorrent and mundane. In order to somehow live within the contours of the pervasive presence of state violence, we resisted and adjusted to its unpredictability. We were frequent bystanders to the enactment of violence by its agents and opponents who locked in vicious battle, and gripped by fear and resignation, we often sank into the inertia of powerlessness generated by a reign of terror. Violence was executed through and against the law: condoned in the interests of national security and the maintenance of baseless power, and invoked and relied upon by beaten down warriors who opposed its source. Inevitably, violence became our currency and for many South Africans with negligible channels for voicing discontent, it was the language of communication.

Through the application of two case studies, this essay seeks to map the function of violence in entrenching political power, and simultaneously assembling strategies of resistance. It concludes with an exploration of the desperate hold of apartheid violence despite the collapse of the system that spawned its rationale. This longitudinal analysis of these frames of violence is conducted through two acts of extreme violence: the first, a depiction of the violence of apartheid at the peak of its decline; the second, a portrayal of the distortions that leached into the post-apartheid demos, distortions bred via decades of brutality disrupted after decades by teetering pledges to aspirational notions of truth and reconciliation.

The first study, a death penalty trial, covers the period 1985–91, a period that saw the intensification of the struggle against apartheid and the state's ruthless resistance before self-preservation drove apartheid's demise. The second study, an examination of responses to a post-apartheid bombing, covers the years 1996–7 and 2015–18 – the first period immediately following South Africa's transition to the "rainbow nation",[5] and the second, 20 years later, marking or perhaps containing, the impact of a violent past on South Africa's contemporary democracy. These are both case studies in which I participated to varying degrees and so my analysis is both political and personal, tracing and examining my own ambivalent responses to state and political violence – the recognition and resistance, the rejection and justification.

The violence of apartheid and the trial of the Upington 25

I left South Africa to live in Australia 30 years ago, after working on a notorious death penalty case, known as the "Upington 25".[6] Until this case in the mid-1980s, my legal practice had primarily entailed representing victims and opponents of apartheid, workers, students, journalists, members of the clergy and detainees. My clients were often broken and bloodied, subject to the cruel madness of solitary confinement, torture and threats of death. I witnessed the beating of women with babes on their backs by sneering thugs in blue, women desperate to be with their

husbands in urban areas which prohibited their communal shelter; I encountered the bursting discharge of rabid dogs and lethal gas on peaceful gatherings of picketers and protestors, the dragging of student activists by their tearing hair, the locked-away, bruised children in detention who had dared to fling stones at armoured tanks and yellow casspirs,[7] the firing of bullets into the backs of fleeing workers striking for living conditions and decent pay. And one Friday morning in May 1989, I sat before a judge watching him go through the motions as he sentenced 14 of my clients to death in less than 15 minutes, coldly pronouncing "to hang by your neck until you are dead", as if fulfilling the highest honour of his calling.

The 14 condemned were part of a group of 25 black South Africans – who became known as the Upington 25 – charged with and convicted of the murder of a black policeman, Lucas Sethwala, during a riot in a conservative, white enclave in the north-west region of South Africa (*S v Kenneth Pinkie Khumalo*, 1988). During apartheid, a murder conviction carried a mandatory death sentence unless the defence could demonstrate the existence of extenuating circumstances that might persuade the court to impose alternatives to the death penalty.[8] Our representation of the 25 was to mount the case for extenuation after their initial lawyer withdrew from the case.

The story of the Upington 25 was the tale of a trial that had been "replicated throughout (apartheid) South Africa's legal history, the only difference perhaps being the scale of convictions and the sentences of death" (Durbach 2015: 349). Twenty-five black people were charged with the murder of a black policeman. Of the 25 people charged, five were not initially arrested as suspects but were random fill-ins at an identification parade – these five young men were subsequently charged with and convicted of murder (Durbach 1999: 36). After two years, 150 witnesses, over 10,000 pages of court transcript, the 25 accused, including the five fill-ins, were convicted of Sethwala's murder by one judge and one assessor,[9] South Africa having no jury system[10] (the second assessor died during the trial) (Durbach 2015: 349).

Most of the 25 convicted were not found to have physically participated in the killing of the policeman. However, all 25 were found to have thrown stones at his house, sufficient conduct, the judge concluded, from which to infer that the crowd had a shared purpose to drive the policeman from his home so that he might be killed. Evidently applying the doctrine of common purpose, the court determined that this collective intention to kill could be "imputed to each individual accused" (Durbach 2015: 349). Eighteen months later, after mounting and presenting an exhaustive case on extenuation, 14 of our 25 clients were sentenced to death, including "a couple in their late sixties with ten children: Gideon Madlongwane, a railway worker for 40 years, and Evelina de Bruin, who had worked as a domestic worker for white families most of her life. Illiterate, arthritic and suffering ischemic heart disease", Evelina became the only woman on death row at the

time (Durbach 2015: 350). And four months later, the barrister for the 25, Anton Lubowski, my close friend and colleague, was assassinated in front of his home in Windhoek, Namibia. At the first inquest into Lubowski's death held in 1994, Namibian Supreme Court Judge Harold Levy concluded that former Irish mercenary and contract killer, Donald Acheson had shot Lubowski (Beresford 1994) at the direction of South African state agents who belonged to the notorious South African Defence Force Civil Cooperation Bureau (Pauw 1991: 131–72).

In addition to the undisguised displays of racism by the judge at first instance, the Honourable Jan Basson, the accused experienced cruel and inhumane treatment throughout the trial on extenuation, largely at the hands of the police. Xoliswa Dube, accused number 16, was driven at high speed in the back of a police van to a hospital suffering from acute appendicitis. Immediately post-surgery, she was manacled to her hospital bed lest she attempt an escape from her heavily guarded hospital room (Durbach 1999: 96, 111–12). In an attempt to explain his erratic behaviour and possibly reduce the likelihood of the imposition of the death penalty, we arranged for accused number 20, Xolile Yona to be sent to Cape Town, almost 900 kilometres south of Upington, for a psychiatric assessment that might have elicited some extenuating factors. I subsequently uncovered the unbearable facts that during his journey to Cape Town in a police van and again overnight in a cell, my client, Xolile, had been tortured, administered electric shocks and forced to eat faeces (Durbach 1999: 75–7).

The night before the 14 death sentences were proclaimed, friends and families of the accused, while walking home singing hymns after a vigil for the 25, were beaten and whipped by police and bitten by dogs. The following morning, they "entered the dock to hear their fate, their fear and horror amplified upon seeing their families, many with bandaged heads, dog bites, and welts" (Durbach 1999: 162–3; Durbach 2015: 351). And while visiting my 14 clients on death row at Pretoria Central maximum security prison, where they were detained for two years pending their appeal, they revealed to me that in exchange for certain prison "privileges" they were required to wash "the soiled hoods of executed prisoners in preparation for a next round of hangings" (Durbach 1999: 185). In a further reminder of the proximity of death, I would meet with my clients in a room which exhibited "a large scale with sliding weights . . . [and] a neck-measuring device, pre-execution apparatus clearly on display for our benefit" (Durbach 1999: 185).

In an interview I conducted with former judge of the South African Constitutional Court, Justice Albie Sachs in Johannesburg in 2007, he spoke of South Africa's "history of humiliation, racism, authoritarianism" and how these elements might have combined in some way to justify or explain the magnitude of death sentences handed down in the case of the Upington 25. "There was a sense," said Justice Sachs, "that somehow you can't be a real state unless you kill your own citizens." He continued:

> *That became the ultimate symbol of the sovereignty of the power of the state – that it assumed to itself the right to kill its own, not in warfare, not in self-defence, but as a symbolic gesture to show that certain human beings don't deserve to exist. The state's deliberate and cold-blooded taking of life, the whipping of juveniles which was done through the courts, the absence of fair trials, detention without trial, torture and murder, the exclusion from society and denial of dignity, were part and parcel of the state's rule, sometimes legally supported, sometimes done clandestinely, but with the support of the highest in authority and often, the backing of the law.*[11]

While the violence towards my clients was persistent and extreme, it was impossible to disregard the brutal killing of black policeman, Lucas Sethwala, the victim of my clients' alleged conduct. A friend of some of the accused, Sethwala was violently "hit over the head with his own rifle, felled, soaked with petrol, and set alight" (Durbach 2015: 358). At the Amnesty hearings of the SATRC in 1999 conducted almost a decade after the 14 death sentences had been commuted on appeal (*S v Khumalo*, 1991), a key accused in the Upington trial, Justice Bekebeke, spoke of Sethwala's almost inevitable fate. Present at the hearings was Sethwala's mother. While not opposing Bekebeke's amnesty application, she asked him whether his action was "a revenge attack propelled against the police" (SATRC Bekebeke Amnesty Hearing, 1999). Bekebeke responded with impassive clarity:

> *We ha[d] friends in the police services. I was playing soccer with a number of police in my soccer team, Paballelo Chiefs. My father's best friend is a police man. . . . So it was not per se that we are anti the police. We have to have policemen. But those who were against our aspirations as black people, those are definitely our enemies.* (SATRC Bekebeke Amnesty Hearing, 1999)

Justice Bekebeke's testimony before the SATRC Amnesty Hearings acutely reflected the insidious impact of South Africa's "history of humiliation, racism, authoritarianism" to which Justice Sachs had referred. It was this history of "the enduring systemic and systematic harm generated by the institutions and agents of apartheid, and the simmering and explosive responses to the layers of oppression" (Durbach 2015: 359) that lay just below the surface of South Africa's fledgling democracy as international observers declared the nation's first non-racial election that would end formal apartheid, "free and fair."

Twenty-five years into the making of a new democracy following the historic 1994 elections, as the multiple challenges of post-apartheid transformation were revealed, the grip on the values and principles underlying South Africa's ambitious transition has become unavoidably and increasingly tenuous. Caught in between

the resolution of the legacies of a repressive past and the aspirations of a democratic future is the mammoth task of guaranteeing the interruption, and ultimately the cessation, of apartheid practices to allow the reconstruction and development of a viable society. The case of the Worcester bombing two years into democracy in 1996 was a clear manifestation of how the layers of violence under apartheid would seep into the blueprint of the new South Africa, an unforgiving reminder of the battle-lines that would long contaminate the manifesto of transformation.

Confronting the past as the present: the unfinished business of ceded state power

In June 1996, the South African Truth and Reconciliation Commission (SATRC), which had travelled around the country to ensure community engagement across the nation, held a hearing in the town of Worcester, near Cape Town. Many of those who participated in the hearing were drawn from Zwelethemba, a predominantly black township attached to the town. Zwelethemba had been a place of "high resistance to the apartheid state" and numbers of people from this community had been "detained, tortured, shot or violently beaten" (Skinner 2000: 99). Post-apartheid, the racism and hostility that had long been the day-to-day experience of communities such as Zwelethemba remained undiminished and some of those involved in the political movements claimed that they were "blacklisted from employment by mostly white employers because of their political history" (Skinner 2000: 99).

On Christmas Eve in 1996, two years after the inconceivable 1994 South African elections lifted the country towards a non-racial democracy, two pipe bombs exploded in the Zwelethemba community shopping centre, killing four people (including two children) and injuring 67 others. A few weeks after the bombing, 19-year-old Stefaans Coetzee telephoned the police "from his hideout on a farm . . . and claimed responsibility for his part in the atrocity" (Fuller 2010). Coetzee's childhood had been unsettled: "he was born to a careless mother and drunken father" and moved between his estranged parents, spending time in an orphanage and in "welfare homes". In his mid-teens, he fell in with the leader of a white supremacist sect, "Israel Visie" (Israel Vision) who perhaps offered Coetzee some stability and the inadvertent opportunity to develop or hone a clear allegiance to the organization's racist ideology. It was under the eye of this paternal figure, that Coetzee learned "how to build and plant bombs" (Potgieter 2012), so demonstrating his "excellent military skills" (Fuller 2010). In an interview in 2009, Coetzee explained that his confession to the police about his complicity in the bombing was prompted by hearing a news report "that children [had been] among the dead" (Fuller 2010).

Four perpetrators with a racist agenda – members of an extreme right-wing organization, pleaded guilty and were sentenced to lengthy terms of imprisonment in Pretoria Central Prison. Their guilty plea, slightly amplified by a stated desire to "destroy the new democratic order" (Maregele 2013), was no doubt an agreed strategy to keep their violent methods and the manufacture of their devices concealed. Coetzee was sentenced to a 40-year jail term. He was initially held in the Helderstroom Maximum Security Prison in Western Cape Province and then transferred to Pretoria Central Prison, where the Upington 14 had spent two years on death row. In the early years of his prison term, Coetzee remained loyal to the sect that had groomed him, "[rising] up the ranks of the national groups' pseudo-military structures" (Fuller 2010). Despite this recognition, he was nonetheless vulnerable prey in an overcrowded prison: "I was 19 years old and white. Everyone wanted to rape me" (Fuller 2010).

Pretoria Central Prison in the late 1990s was a different institution to the coercive apartheid state establishment that housed the Upington 14 a decade earlier. In keeping with the principles underlying post-apartheid transformation, at least during the initial stages of political transition, "healing, rather than punishment, was a vital theme of the democratization process" (Gordon 2007: 58) and central to ideas on prison reform. Soon after Coetzee was transferred to Pretoria Central Prison, "he took classes on anger management and restorative justice" and requested the prison authorities "to allow him to apologize to the people and families he had hurt" (Fuller 2010). Perhaps sensing that this overture might be premature, the prison advised Coetzee against this approach. However, some years later, in 2009, Coetzee's persistence paid off and with the endorsement of his prison social worker and minister, and facilitated by the Khulumani Victims Support Group,[12] a group of community members affected by the Zwelethemba bombing travelled to Pretoria Central to meet with Coetzee as part of the prison's victim–offender dialogues programme.

Towards the end of the meeting, one of the group, Harris Sibeko, the husband of the deputy mayor of Zwelethemba at the time of the 1996 bombing, clearly moved by the discussion, suggested that the term "military operative" rather than "murderer" might better describe Coetzee's role in the bombing (Fuller 2010). As a black man, devastated by the harm inflicted on his community by Coetzee and his gang, Harris Sibeko's ability to observe the complex dimensions and manifestations of political violence stood in stark contrast to the closed, unyielding racism that pervaded the judgement of the Honourable Justice Jan Basson when he convicted the Upington 25 and sentenced 14 of the accused to death.

In 2013, a larger group of survivors (more than 60) travelled by train to meet with Coetzee at Pretoria Central and later that year, they met with him at the

Worcester Prison, to where he had been transferred. After serving almost half of his prison sentence, Stefaans Coetzee was released on parole in 2015. At the time, Coetzee said: "I take full responsibility for the bombings. I know asking for forgiveness would be a selfish act, so all I can do is say I'm sorry. I hope that by meeting me, they [the survivors and community] can find healing" (Maregele 2013).

Crimes against humanity: mediating the bounds of accountability

My conversation with Stefaans Coetzee took place three years after his release at the Stellenbosch University conference titled, *Recognition, Reparation, Reconciliation: the Light and Shadow of Historical Trauma*. The session was part of a series of dialogues with victims of apartheid atrocities peppered throughout the conference. These dialogues envisaged conference delegates as witnesses to the articulation of individual and collective historical wounding in the aftermath of violent political conflict. How my session differed was that it was, I believe, the only panel at the conference of this nature that involved a discussion with a *perpetrator* of a *post-apartheid* atrocity (author's emphasis), an extreme act of racially motivated violence.

I initially declined the invitation, unsettled by the prospect that this "performance" would give inappropriate, added visibility and perhaps legitimacy to a man who, despite his apology for his actions, had executed a grotesque act on behalf of violent ideologues who were wedded to the disruption of South Africa's "velvet revolution". At first instance, I viewed his apology as contrived and self-serving; and believed that, having been forgiven by many members of the Zwelethemba community, he had assumed some sort of residual power, emboldened by his public process of self-reflection. I was concerned that Stefaans Coetzee, a key co-perpetrator of a brutal murder, rather than the ravaged community of Zwelethemba which had experienced unbearable loss and enduring harm, would garner attention and even empathy, as he embarked on his journey towards reconciliation. I was also troubled by the extent to which the individuals and families from the affected community might have felt compelled to fall in line with the truth and reconciliation endeavour and its urging towards empathic witnessing and the promotion of healing through truth-telling.

But perhaps most importantly, I struggled with an interior anger and an envy that seemed to fuel my initial reticence to be in conversation with Coetzee about his take on accountability and reparation. These emotions were clearly linked to a deep sadness that I had stored and an injustice that had been triggered by Coetzee's consultations with the Zwelethemba community and the families harmed by his conduct. What had at once enraged and saddened me was that no such process, nor

indeed an apology, had been proffered to the family of my friend and colleague, Anton Lubowski, barrister to the Upington 25, who had been assassinated by men schooled in the same ideology and cruel aspirations that underlined Coetzee's murderous intent.

After various exchanges with colleagues and friends in South Africa and Australia, reading what I could about Stefaans Coetzee and watching the documentary, *Black Christmas*, directed by respected South African filmmaker, Mark Kaplan and two videos, all of which explored the responses of the survivors of the Zwelethemba bombing to Coetzee's entreaties and apology, I recanted, feeling easier that the conversation with Coetzee would include a representative from the affected community, Harris Sibeko and Deon Snyman, CEO of the Restitution Foundation.[13] These intense exchanges over weeks served to shape and influence my tentative belief in a process that might generate new knowledge and interpretations of events and create opportunities for social repair.

Our conference dialogue took place a few months later in a lecture theatre packed with delegates, many of whom no doubt bore the concerns that had informed my own ambivalence and trepidation that circled my task as facilitator. One option, which might have mitigated the degree of my emotional investment in the process, was to have approached the panel as a lawyer simply moderating a conversation at a conference. But such detachment would have falsified a process in which I was now clearly implicated and so at the start of the conversation, I briefly revealed the reasons for my initial reticence and clear apprehension to participate in the session to both the audience and the panel.

I began – and ended – our dialogue with Harris Sibeko, partly to address my disquiet about foregrounding Coetzee, but also to offer acknowledgement of his community's loss. Harris Sibeko had fought against apartheid for much of his life, suffering dire consequences. And two years after South Africa committed to a new democratic order in 1994, his community was subject to a devastating racist attack. Ten years elapsed before Sibeko and a small group from the Zwelethemba community visited Coetzee in Pretoria Central Correctional Centre. During those ten years, Sibeko played a key role in facilitating the physical and psychological recovery of the people of Zwelethemba, gently encouraging slow engagement with Coetzee as a potential form of healing. A firm adherent of reconciliation, Sibeko acknowledged that, although many of the people directly affected by the bombing had endorsed or supported the idea of forgiveness, there were others severely traumatized by the bombing who rejected his compassionate convictions. In response to my final question about his reaction to Coetzee's apology, Harris Sibeko seemed to draw on his commitment to forgiveness, perhaps as he did to survive his torture by apartheid agents decades earlier, and quietly declared: "I love that man, Stefaans."

Deon Snyman, a lapsed minister in the Dutch Reformed Church in the black community of Nongoma in KwaZulu, a province in the south east of the country, left the ministry to join the Restitution Foundation, primarily because he had increasingly believed that forgiveness and reconciliation were unattainable in the absence of restitution. He met and worked with Harris Sibeko and Stefaans Coetzee after commencing a community-led, experimental restitution process in 2010 in the "conservative" town of Worcester that sought to bring together the racially stratified and divided community to initiate responses to the 1996 Worcester bombing. "At that stage", Deon explained, "I thought that all the people within Worcester could . . . recogniz[e] themselves as either victims, perpetrators or bystanders of colonialism and apartheid abuse [and this] could mobilise them towards a restitution process" (Snyman, 9 November 2018). In retrospect however, Snyman acknowledged that the fierce boundaries of apartheid were hard to dislodge and that the few measures of "restitution might at most assist communities to consider tolerating each other in order to make it possible to . . . live in peace" (Snyman, 9 November 2018).

Initially nervous but then progressively confident, Stefaans Coetzee was a convincing and compelling exemplar of repentance as he answered my questions. He spoke of the fear that accompanied his stance from within prison, generated by the animosity of his co-conspirators and inmates, and the rejection he confronted when he sought to re-enter an Afrikaans community on his release. Despite this rebuff, Coetzee was hopeful that he could work with his community to transform their racist beliefs and expand the reach of repair he had offered the community of Zwelethemba. Underlying his aspiration was the gnawing realization that his confession and apology would "ring hollow" if "those millions of people who voted for the [apartheid] policies, shaped (his) beliefs and taught (him his) faith, remain silent" (Snyman, *Peace Train*, 2013).

The combination of the panellists and the framing and reframing of questions which were largely informed by the conference aims and objectives, allowed for a slow revelation of complex and damaged lives and an examination of the "light and shadow" of historical violence. Importantly, the unforeseen possibilities evoked by our mutual exchange and the process around it made visible the deep work that disruptive and painful dialogue about historical harm and associated contemporary trauma can ultimately render, usefully "complicat(ing) our understanding of the roles of 'victim and 'perpetrator'". In addition, the conversation exposed and explored the shifting boundaries of legitimacy in the realm of political crime. And to add to the levels of complexity, it highlighted the unstable imperatives for accountability in relation to crimes against humanity against the backdrop of national pleas for reconciliation and reparation in a post-conflict setting. My own encounter with Coetzee was undoubtedly transformative as I redrew

the lines that had evidently framed my initial assumptions and biases about "appropriate" responses to perpetrators of political violence.

Looking back and forward – and back again

The scenes depicting two crimes of apartheid – the first, erupting at the time of apartheid's impending collapse and the second, executed two years into a post-apartheid South Africa when the remnants of the system were fighting for air – are a manifestation of the extent to which violence permeates and links both periods. The first scene or case study was filled with the hallmarks of a brutal and racist system turning in on itself: a township "necklacing"[14] of a black policeman perceived to be a traitor; a legal system invoking an acceptable common law doctrine to criminalize legitimate political protest and convict 25 people of the murder of one man; the assassination of the barrister representing the 25 by a former Irish mercenary at the direction of apartheid henchmen; the refusal of bail to the Upington 25 while on trial for three years and the detention on death row for 14 of the 25 for a further two years amidst the trappings of death by hanging.

The second scene displays some of the lingering features of apartheid, as they sought to find their place amongst the declarations of democracy in a post-apartheid South Africa: the bombing of residents of a predominantly black community months after the SATRC had conducted hearings in the township; the desperate complicity in murder and maiming by a young white supremacist, seemingly betrayed by the demands of transformation; the calculated admission of guilt by extremists directed at protecting the exposure of their fatal *modus operandi*; a subsequent wrestling with culpability by a defector; and the allure of the apparent benefits of reconciliation to those plainly antagonistic to its cause.

These two studies, and their spread over time signal the infiltration of violence, the extent to which the system of apartheid has brutalized its people and enabled an inurement, a habituation to its effects. While the truth behind each of the crime scenes may be impossible to uncover, the exploration and linking of an entrenched and complex history through these two events offers some way of penetrating the enormous reach of a system and its stacked players at work. And through the staging of these two acts comes the revelation of the expediency of the state as it navigates the safeguards of its survival across these two co-dependent worlds, first, as facilitator of crimes against humanity and then, seamlessly assuming the role of enabler of a rights-infused, "violent democracy" (Von Holdt 2014). And I was caught between the cracks.

Excavating these two scenes took me back and forth across the malleable borders of state and political violence and accountability and to a questioning of the boundaries which I had drawn to define my implicated self:

- from the spontaneous killing of a black policemen at the height of apartheid's demise, to the premeditated murder of black civilians by white supremacists in a post-apartheid democracy;
- from the political justification by my client, Justice Bekebeke for his role in the murder of Lucas Sethwala and his subsequent amnesty appeal before the SATRC, to the ideological justification of Stefaans Coetzee's role in the Zwelethemba bombing and his invitation to the community ravaged by his deed, to accept his remorse. Both sought indemnification from past acts of violence.

The role of the state in moulding these two men and the motivations underlying their cruel deeds is clearly analogous; its subsequent and urgent endorsement of transitional justice and reconciliation served to confuse, if not undermine, the lines of accountability. During the Upington trial, I was aware that the mother of Lucas, Beatrice Sethwala, would sometimes attend court. That her son had been brutally killed by some of my clients was a horror that I had to manage with the clinical detachment of a defence lawyer. That some of my clients had been responsible for this death was unquestioned; that the cloak of criminal liability had been cast so wide as to ensnare 25 disparate people who were then convicted of his murder with 14 sentenced to death, was a perversion of the law to serve the ends of a coercive state.

In May 1991, the South African Appellate Division overturned 21 of the 25 murder convictions, replacing the majority with convictions of public violence; three of the 21 convictions were quashed. All of the 14 death sentences were overturned and four accused were ordered to serve jail terms of varying length. Many of the Upington 25 had spent several years in prison – during the trial on conviction when bail was refused, the trial on extenuation and then on death row, amounting in the case of the four commuted death sentences to periods in excess of the sentences imposed by the Court of Appeal. Almost ten years later the SATRC Amnesty Committee found that the killing of Lucas Sethwala was politically motivated and Justice Bekebeke, found to have been a co-perpetrator in the murder of Sethwala, was granted amnesty, having made full disclosure of his conduct in accordance the amnesty provisions of the Promotion of National Unity and Reconciliation Act 34 of 1995.

In addition, the SATRC declared that Mrs Sethwala and those who testified from the Upington 25 (some of whom may have been implicated in her son's death) were victims of gross human rights violations and accordingly eligible for consideration for individual reparation grants by the SATRC's Reparations and Rehabilitation Committee (Durbach 2015: 362). Had Stefaans Coetzee appeared before the SATRC, he too might have been granted amnesty had he made full disclosure of his involvement in the Worcester bombing and demonstrated that his

actions were designed to support a political motive or ideology – that he was, in the words of Harris Sibeko, a "military operative" acting under orders. In the absence of a truth and reconciliation commission hearing however, Coetzee had created his own forum and procedures to examine his culpability, a process of extended consultation and reflection, and an outcome designed in response to community need rather than compliance with statutory criteria.

Conclusion

As the lawyer to the Upington 25, I chose to see beyond the acts of some of my clients and to make visible the "unseen" in how we structured our defence: to draw attention to the impact over decades of the culmination of state violence, exclusion and poverty on the lives of my clients and their subsequent actions; and to expose the deliberate intention of the state to make an example of their disparate purpose. Our clients, perceived by the prosecution and judge to be unbelievable witnesses at the trial on conviction, refused to give evidence at the trial on extenuation and sentence, arguing that do so would simply legitimate a process that was intent on contriving their defeat. What our defence consequently entailed was the construction of extenuating factors via interviews with our 25 clients, building a profile for each accused which might mitigate against the imposition of the death sentence, "[t]he most devastating and the most irreversible recourse of the criminal law, involving as it necessarily does, the planned and calculated termination of life itself" (*S v Mhlongo* 1994: 587e–g). Our anthology of evidence from an anthropologist, criminologist, clinical and behavioural psychologists became a cry for life rather than a vindication of violent action, a plea to the state to condemn violence rather than repeat it (Minow and Rosenblum 2002: 19).

And despite my reservations, my eventual participation in the conversation with Stefaans Coetzee was a recognition of the overwhelming role of violence – political and personal – in shaping our existence under and post-apartheid. If we were to break its vicious cycle, and block the spaces for its renewal, it became important to understand and excavate its origins and my own reasoning underlying its selective application. It was also an opportunity for me to see and make plain the impact of state violence on one of apartheid's former executioners and his struggle to own his actions and to demonstrate the imperative of collective culpability by his collaborators more broadly. As Deon Snyman wrote in an email to me after a lengthy telephone conversation in which he persuaded me to take on the Coetzee assignment:

> *In many ways Stefaans Coetzee is a remarkable person. I think he is assisting white South Africans to understand the importance of: (i) acknowledging of wrong doing*

> *(ii) taking responsibility for wrong doing (iii) truth telling about the wrong doing and listening to how the wrong doing affected the lives of the victims (iv) remorse (accompanied with feelings of guilt and shame) (v) unconditional apology (we have been very clumsy with apologies for colonialism and apartheid) (vi) proof of transformed behaviour (vii) commitment to do restitution. Many black South Africans are very angry with white South Africans and expect that white South Africans work with their fellow white South Africans to mobilise them to change their behaviour and commit to restitution. It is not an easy job. I find Stefaans a helpful tool in doing this work, especially within less sophisticated white communities. His story is in such contexts quite powerful and he is able to relate to them in a way that I am not able to. In a strange way I think this work provides Stefaans a space to do his restitution by encouraging white South Africans to consider their old ways. I am the first person to acknowledge that this work is very messy and not without its serious limitations*. (Snyman 2008)

Going beyond my own initial reticence and uncertainties regarding Coetzee's acts of violence and repair, and undertaking the exacting conceptual, political and emotional work that this entailed, required some solid time. In addition, it meant moving between the fixed sites of state and political violence and their transformation, and thus my own: from the structural violence under apartheid and the daily state-sponsored crimes against humanity invoked to entrench the system's power, to my justification of political violence in response to decades of social and economic brutality and deprivation; from my denunciation of political violence perpetrated by those determined to uphold the legacy of apartheid and disrupt the fragile transition to a non-racial democracy, to my slow acknowledgement that accountability and potential reparation – and even emancipation – may emerge from hostile quarters when the "unseen" is made visible. These were uncomfortable shifts but necessary to allow the space for new forms of resistance, repair and accountability and "the creation of a lawful world" (Benjamin 2019: 26) to evolve over time. As Jessica Benjamin has written, "under conditions of great asymmetry (of power)" there is temptation to devise and clutch onto "narratives of justification and attempts at legitimation . . . that stand in the way of . . . overcoming the violence that has separated us" (Benjamin 2015: 18). Through processes not contemplated, our "staging of the hidden" rendered intangible measures of redress in recognition of the persistence of historical state violence and its complex manifestation of contemporary harm.

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Notes

1. The South African Truth and Reconciliation Commission conducted hearings around the country in 1996–8. The various reports of the SATRC are available at: www.justice.gov.za/trc/report/index.htm
2. Chair in Historical Trauma and Transformation, Stellenbosch University and member of the SATRC Human Rights Violations Committee.
3. See conference description: "Recognition, Reparation, Reconciliation: The Light and Shadow of Historical Trauma", Stellenbosch University, 5–9 December 2018, https://recognitionreparationandreconciliation2018.co.za/conference-description/
4. I practised as a lawyer in South Africa from the early to late 1980s.
5. The "rainbow nation" is a term used by Archbishop Desmond Tutu, the Chairperson of the South African Truth and Reconciliation Commission, to describe the diverse groups and cultures that would transcend the racially segregated apartheid South Africa following the 1994 elections. The country's first democratic elections saw Nelson Mandela become the first black president of the nation after almost 50 years of minority white rule.
6. For a detailed account of the trial of the "Upington 25", see Durbach (1999).
7. A Casspir is a large four-wheel drive, mine-resistant, armoured vehicle that was adapted for use by the apartheid police and defence forces.
8. The death sentence was authorized under the South African Criminal Procedure Act No. 51 of 1977. In *S v Makwanyane* 1995 (3) SA 391 (CC), the first case heard by the new South African Constitutional Court, the Court declared the death penalty inconsistent with key provisions of the new South African Constitution, particularly the prohibition on cruel, inhuman or degrading punishment and the right to life.
9. In South African criminal cases involving serious crimes such as murder, the judge was often assisted by the appointment of two assessors who would generally advise on questions of fact but not questions of law. See Van Zyl Smit and Isakow (1985).
10. The jury system in South Africa was abolished by the Abolition of Juries Act 34 of 1969.
11. Filmed interview with Justice Albie Sachs, South African Constitutional Court, Constitution Hill, Johannesburg, 14 February 2007 (on file with author).
12. Founded in 1995, the Khulumani Support Group was originally established to provide support and assistance to people testifying before the SATRC. A membership-based, civil-society organization, Khulumani has evolved to advocate for the implementation of the SATRC's recommendations for truth-telling, accountability and redress for victims of apartheid.
13. Established in 2002, the Restitution Foundation is a non-profit organization with a particular focus on the role of South African churches in facilitating socio-economic justice, healing and reconciliation through restitution.
14. "Necklacing" is a brutal practice executed by forcing a rubber tyre (often filled with or doused in petrol) around a person's neck or chest and setting it on fire; often used on political informers.

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