A constitution both narrates and authors a nation's history. The potency with which it can mould a politics of memory thus equals the authority with which it can shape the politics of the day. However, neither the memorial nor the actorial role of a constitution is (historically) all-encompassing or absolute. A constitution, or the Constitution (to honour its precedence as law-text), is but one among many narrators of a given national history and, similarly, is at most a co-determinant, however significant, of the said nation's destiny.

The point of this chapter is that the promise(s) a constitution holds can only emerge from contradictory modes of dealing with that constitution as memory. In other words, the manner in which we deal with the constitution as memory predetermines the fulfillment of the constitution as pledge. The constitution as memory is a monument and a memorial at the same time. In purpose and style these constitutional modes of existence are largely contradictory, but they need not necessarily exclude or eliminate each other. A constitution as delivered promise(s) can possibly be both a monument and a memorial if both modes of memory are duly and simultaneously acknowledged and honoured. The present article canvasses this possibility.

Monuments and memorials have memory in common, but in significantly distinct ways: a monument celebrates; a memorial commemorates. The difference in (potential) meaning(s) may be subtle, and in a dictionary sense “celebrate” and “commemorate” could even be said to be synonyms, but for the present purposes they are not or, at least, not exactly. Heroes and achievements can be celebrated or lionised. The same cannot be said of anti-heroes, failures and blunders: they can be remembered yes, but not celebrated. “Commemorate” is a feasible synonym for “remember” (in its “ordinary significance”, as lawyers would say), but “celebrate” can only be an exultant or jubilant mode of remembering. The closeness in meaning of “celebrate” and “commemorate” is not lamentable. On the contrary, it paves the way for their coexistence – contradictions notwithstanding. The German words Denkmal and Mahnmal neatly capture these contradictions. A Denkmal can celebrate (and may even commemorate), but a Mahnmal inevitably warns (and may even castigate).

It is no use trying to reconcile or “harmonise” these contradictions. It is best, for jurists in particular, to learn to live with and make sense of them. The law brims over with contradictions. So too does the South African Constitution. We need not try to “reconcile” or “resolve” these contradictions – not even by treating them as dialectical antitheses. This will be too “logical” or “rational” a modus operandi in a reality that defies any superimposed logic or rationality. Living with contradictions in our postmodern world is not a fate. It is rather an opportunity to appreciate the contrasts that constitute the full picture of the reality we experience, in other words, an aesthetic mode of coping with the dilemma of contradiction. Monuments and memorials are aesthetic creations. There is no reason why a constitution cannot be the same.
THE CONSTITUTION AS MONUMENT

The Constitution of the Republic of South Africa, Act 108 of 1996, can hardly be called a "modest text". The same was true of its predecessor, the (transitional) Constitution of the Republic of South Africa, Act 200 of 1993. They are both monumental texts – from Preamble to Postamble in the case of the transitional Constitution, and from the Preamble to the short title (and the provisions for its commencement) in the final Constitution. It is possible to "tow the provisions" of both of these remarkable constitutional texts, astirred by one of the most remarkable achievements of the South African nation, namely a peaceful transition to a non-racial democracy after more than three centuries of mostly violent racial aristocracy. The unprecedented Postamble to the transitional Constitution verbalised a quest for national reconciliation that would overcome the atrocities of the past. This remarkably "unjuridical" exhibition of efflorescent language formed part of the substance of the transitional Constitution – all because of the need for a political compromise between the pro-apartheid group and antagonists of apartheid who perpetrated inductible acts in the course of pursuing their conflicting objectives. Much of this Postamble has survived in the Preamble to the final Constitution which, inter alia, "recognises the injustices of our past" and honours "those who suffered for justice and freedom in our land". It furthermore reiterates the need for healing "the divisions of the past" and for building a "united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations". And, as with any respectable monument, a monolithic confession of faith is inscribed in the foot-pieces of both the Post- and Preambles: Nkosilathi "I'frika.

The monumental flare of the Constitution is also manifested in its affluent enaction of the values of democracy and the constitutional state. Section 1 tells us what the new state should look like and proclaims human dignity, equality and freedom to be at the core of the South African version of constitutionalism. Section 7 describes the model Bill of Rights. Section 36 is a depiction of the value-sensitive manner in which constitutional rights must be limited and section 39 prescribes, with a similar sensitivity, how they must be understood. Chapter 3 verbalises the values of co-operative government and Chapter 10 those of public administration. All these monumentalities are immediately evident.

And then of course there have been a number of monumental constitutional judgments handed down by one of the Constitution’s own new creatures, the Constitutional Court. The 11 judges of this court, for instance, all handed down separate judgments in a landmark decision declaring capital punishment unconstitutional. All these judgments are imbued with value statements that deal not only with constitutionalism in the national context, but also with human rights standards world-wide. Two of the justices, Madala and Mokgoro JJ, even solemnised a marriage of Western and African human rights values, the word ubuntu (as it occurred in the Postamble to the transitional Constitution) being the promise of this marriage. There have been a number of other remarkable judgments which, on the superior strength of the nation’s monument to its new-found reconciliation, have given short shift to the remnants of long-cherished biases. Examples of these are denying accused people access to police dockets, reverse onus in criminal proceedings, an obligation to answer inculminating questions during liquidation proceedings, civil imprisonment, stereotyped gender roles as well as anti-gay and -lesbian bigotry.

THE CONSTITUTION AS MEMORIAL

A "good" democrat and constitutionalist, remembering the tyranny of the past, cannot be cynical about the monumental achievements under both South Africa's supreme constitutions so far. (S)he also dotes not wallow in them. The Constitution is the supreme law of the Republic of South Africa, but it is not an overarching, all-embracing super law. This restrained Constitution is the Constitution as memorial – a written law-text that does not profess to constitute the moral high ground of justice all by itself; instead it reminds us of our pledge (and provides us with some legal means) to achieve social justice. The human obligation to do justice cannot be assigned to any law-text, not even the Constitution.

The Constitutional Court, in a number of cases, has explicitly refrained from over-constitutionalising issues, holding "that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed". The notion underlying this restraint is subsidiarity, a term absent from the Constitution’s generous value statements and from South African constitutional jurisprudence, but nonetheless vital in memorialising the Constitution. Subsidiarity obliges any more encompassing, superordinate body or community to refrain from taking for its account matters which a "smaller", subordinate body or community can appropriately dispose of, irrespective of whether the latter is an organ of state or of civil society. The restraint thus imposed has two effects.

Firstly, it brings about a balance of power among organs of state. As far as the vertical division of powers is concerned, it demands deference to federalism. There are examples in our constitutional jurisprudence of provincial governments successfully challenging the exercise of power by the central government, and by the president of the country in particular. The Constitutional Court has furthermore construed the Constitution in a manner that confines on local (or municipal) legislatures the unprecedented status of original law-makers. The Constitutional Court has also made some significant findings on the horizontal division of government powers or roles politica as it is traditionally known. An original law vesting a delegated legislature with unbridled powers to promulgate delegated legislation is, for instance, unconstitutional because it blurs the distinction between the legislative and executive or administrative exercise of government power.

Secondly, the notion of subsidiarity seeks to warrant ownership of and access to the Constitution not only for organs of state or those in power, but for all (potential) beneficiaries of the Constitution's promise(s). The Constitutional Court is by no means the only (or even final) authorised expositor of the Constitution. Constitutional construction is the responsibility of a wider and ever expanding community of constitutional interpreters, who are all enti-
to the obligations it imposes\(^1\). This community includes all who exercise public power: all branches and levels of the judiciary as well as legislative and executive organs of state in every sphere of government\(^2\). Most importantly, it includes individuals, groups and organisations active on numerous playing fields in civil society where the exercise of public power has an effect, but can in turn also be affected. This inevitably includes an institution such as the Institute for Justice and Reconciliation.

The Constitutional Court’s “final” interpretation of the Constitution is not soothsaying. It is part of a process whereby, in a specific instance, the Constitution is concretised\(^3\). This process is initiated not by the judiciary, but by people and institutions belonging to the open community of constitutional interpreters. These latter role-players also pilot the process up to a point where a judicial pronouncement is procured. The eventual concretisation of the Constitution co-depends on these prior endeavours. It cannot be otherwise. The Constitution as a memorial is a promise to the whole nation.

The Fulfilment of (the) Promise(s)

It will be wrong to assume that the co-existence of the Constitution as monument and the Constitution as memorial is (and has been) unproblematic. The Constitution’s promise of a democratic constitutional state can only be kept if the Constitution as monument does not overpower the Constitution as memorial, but also when the Constitution as memorial does not enervate the Constitution as monument. This is a tall order indeed and its implications can, for the present, not be canvassed fully. The following three examples illustrate some effects of the contradiction between the Constitution as monument and the Constitution as memorial:

- Mention was previously made of the commendable manner in which the Constitutional Court, in adjudicating on the constitutionality of capital punishment, relied on in the Constitution as a monument to the values of democracy and constitutionalism\(^4\). The political process resulting in the court’s nonmonumental judgment is not unproblematic, however. The parties negotiating the transitional constitution could not reach an agreement on how to deal with capital punishment. The compromise was simply to constitutionalise an iniquitous right to life and thus, by implication, charge the Constitutional Court with finally casting the die\(^5\). The Constitutional Court reached a decision that was to be expected from any respectable similar forum in its position, further more proceeded in a manner likely to contribute to the solidity of the constitutionalist foundations of our fledgling democracy. However, in the wake of a rising crime rate, and especially the alarming increase in atrocious crimes of violence, the court’s judgment has become a political football, compromising the credibility not only of the Constitutional Court itself, but also of the administration of justice as such.

A substantial segment of the nation, if not the majority, clamours for the reintroduction of capital punishment. This in itself is no reason to criticise the judgment of the Constitutional Court. The court, as a matter of fact, advanced cogent reasons why it would have been improper for it simply to defer to “the will of the majority” at the expense of monumental constitutional and human rights values. However, with the wisdom of hindsight, one might ask whether the politicians negotiating the text of the transitional constitution had appropriately discharged their responsibility of engaging with the issue of capital punishment and of encouraging public debate. Was reliance on the monumental force of the constitutional text to try and consign the death penalty to oblivion not too easy, too “monumental” a way out? Could the monumental dynamism of the Constitution not have reminded the “people” of how the ready availability of capital punishment (an awesome tool of political power) resulted in the untimely extermination of many who fought for the liberation of the land? And then there were those ardent protectors of the old regime, the securocrats’ foot-soldiers, who, in spite of the availability of the death penalty, got away with perpetrating capital offences. This certainly calls the often-proposed “effectiveness” of capital punishment as deterrent into question!

Raising these thorny questions clearly shows that there are no ready made answers to them. What appears instead is how difficult it is to pave a way through a complex constitutional reality permeated with the contradictions of divergent modes of constitutional memory, and then still to reach out to the promise(s) the Constitution holds.

- In an encouraging number of instances “owners” of the Constitution have approached the judicial guardians of “our memorial” for various sorts of constitutional relief. Two examples, telling in their vast dissimilarity, are one of Mr Soobramoney, an ailing, terminal patient seeking constitutional backing for life-prolonging medical treatment\(^6\), and the other of a (once) powerful Mr Louis Luyt, defiantly challenging the legitimacy of aspects of the new constitutional order and of public organs officially authorised to help uphold it\(^7\). Both “challengers” were (due to final findings of the Constitutional Court) unsuccessful. The intricate (factual and legal) reasoning advanced to justify the dismissal of Luyt’s claims is not pertinent to the present discussion. In the Soobramoney case, however, the Constitutional Court inter alia invoked considerations of subsidiarity to dismiss the claim of an applicant/appellant claiming, at state expense, renal dialysis twice a week. He had depleted his resources and could no longer afford to pay for his dialyses. The Addington Hospital in Durban, a state hospital, turned him away because its facilities were over-extended already and patients’ claims to this particular service had to be prioritised. Mr Soobramoney’s terminal condition placed him too low on the priority list to qualify for the much-needed treatment. The court was loath to interfere with, or second-guess the decision of the hospital and the KwaZulu-Natal health authorities (as organs of the executive). This defensible deference to subsidiarity probably contributed to Mr Soobramoney’s premature decease — on the very day that he was informed of the Constitutional Court’s decision. It is hard not to have sympathy with Mr Soobramoney and his family on humanitarian grounds — and precisely this illustrates the dilemma of making sense of the Constitution, either as monument or memorial, in support of individuals in dire need of rudimentary relief. The Soobramoney case is a Mahumal to starry-eyed constitutional over-optimism.
The Cape High Court has of late given some hope to claimants who, like the late Mr Soobramoney, find themselves seeking the fulfilment of the Constitution’s promise of socio-economic (so-called “second-generation”) rights. One Ms Irene Groothoom and 899 other squatters (399 of whom were adults and 510 children) approached the court for an order granting them a right to adequate and sufficient basic, temporary shelter. The claim was brought against executive organs of state in the local, provincial and national spheres of government. Due to extremely poor living conditions, these squatter applicants relocated from their original place of residence in Wallacedene, Kraelhoekien to an area known as New Rust. However, they were eventually evicted from this latter area because it was privately owned land earmarked for the construction of low-cost housing. In the course of the eviction much of the applicants’ building materials were destroyed. They were furthermore precluded from returning to the site where they had previously lived because it had been occupied by others. The applicants were thus truly homeless and they camped on a sportfield adjacent to Wallacedene’s community centre, where they erected temporary shelters with what was left of their building materials. These shelters were grossly insufficient. The Cape High Court, in considering the applicants’ claim for shelter, endorsed the Constitutional Court’s reasoning in the Soobramoney case and thus denied the applicants a right of “access to adequate housing” in terms of section 26(1) of the Constitution. The court then proceeded to consider the 510 children’s right to “basic...shelter” guaranteed in section 28(1)(c) of the Constitution and concluded that, in the circumstances of the case, it had to give effect to this right. The appropriate way of doing this, the court thought, was to grant the children this right together with their parents. The respondents were accordingly ordered to provide both the children and their parents with “basic shelter”. In this way 900 South Africans coming from an eminently vulnerable section of the population could, through access to the Constitution, secure the fulfilment of a basic human need, albeit only for the time being.

- The Supreme Court of Appeal has of late tended to deal with clearly constitutional issues as if they could be disposed of in an “enlightened”, rights-friendly manner without reliance on (or even reference to) the Constitution. In this way, for example, the South African common law on defamation was liberalised by extending the protection of free speech. The law of evidence relating to sexual offences was also modernised by abolishing the so-called cautionary rule of evidence in rape cases without mentioning the word “constitution” once. On the one hand, this tendency can be seen as evidence of profitable reliance on subsidiarity. For instance, the constitutional Court itself has on at least one occasion refrained from disposing of a matter where development of the common law as required by section 39(2) of the Constitution was called for, holding that the Supreme Court of Appeal was the more appropriate forum to do this.

On the other hand, one might ask whether the Constitution was meant simply to operate as a silent background norm, especially in areas where the common law stands to be liberalised. The Supreme Court of Appeal’s enlightened judgments on free speech and the cautionary rule in sexual offences would certainly not have been handed down had it not been for the Constitution. Can any court allow itself to be influenced by the Constitution and then not acknowledge it? Has this national memorial become so insignificant that one of the country’s two highest courts can profess to redress injustices from the past without visiting it?

The Constitutional Court, in a recent decision, overruled a decision of the Supreme Court of Appeal, in which it was held that the review of administrative action had to a large extent remained a procedure determined by common law. The Constitutional Court, in no uncertain (and arguably even exaggerated) terms, proclaimed the sovereignty of the constitutional Constitution where and whenever the exercise of any form of public power becomes susceptible to judicial assessment. This is a reminder that the Constitution as monument will not allow the Constitution as memorial to fall into oblivion all that easily!

There is no predetermined recipe for rescuing the Constitution as monument from the Constitution as memorial and vice versa. Watchfulness seems to be the watchword. An alertness to the perennial antithesis of constitutional blackmail and memorialism need not obviate nor resolve this contradiction in a higher synthesis of dialectical opposites. It reminds us, however, not only that the antithetical dimensions of the Constitution as memory can co-exist, but also that they must be honoured. A nation that only commemorates tends to become oblivious of how meticulous it should be in guarding against the mischiefs of the past. A nation that only commemorates tends to underplay its memorable achievements, thereby denying itself the inspiration it needs to come to terms with an undecided future.

The contradictions engendered by a simultaneously monumental and memorial Constitution can only be catered for, albeit always provisionally and for the time being, through intense public discourse. I wish the Institute for Justice and Reconciliation, as a newcomer to the playing fields of civil society, everything of the best in facilitating this discourse.

2 As to contradictions in realising “the law”, cf Schlag Rights in the Postmodern Condition in Sarat & Kearns (eds) Legal Rights: Historical and Philosophical Perspectives (1997) 263-305. Schlag focuses on contradictory understandings of the law that follow from analytic and instrumental readings of law-texts respectively. The former makes for a preservative stabilisation of social relations and the latter for a transformative destabilisation of society. What is important for present purposes is Schlag’s contention that these contradictory positions are not mutually exclusive.
3 Many of the contradictions in the Constitution are precisely of the kind that Schlag describes. Equality and freedom are, for instance, both proclaimed as fundamental values informing our version of constitutionalism (ss 1(a), 36(1) and 39(1)(a)). A libertarian protection of rights tends to preserve vested rights while an egalitarian promotion of the conditions for equality often require social transformation. This contradiction is also visible in some sections of the Constitution, eg s 9 which enshrines the right to equality, but at the same time authorises unequal treatment to redress inequalities of the past and s 25 that protects property but at the
same time lays the constitutional foundation for the expropriation of property for land reform.


5 As Schlager does too in Rights in the Postmodern Condition.

6 Henceforth “the Constitution” or “final Constitution”.

7 Henceforth “the transitional Constitution”.

8 By virtue of section 232(4) of that Constitution.

9 S v Makwanyane 1995 6 BCLR 665.

10 S v Makwanyane supra paras 237-245 and 307-308.

11 Shabala v Attorney-General, Transvaal 1995 12 BCLR 1593 (CC).

12 S v Zuma 1995 4 BCLR 401 (CC).

13 Ferreira v Levin and others; Vreyhoek and others v Powell NO and others 1996 1 BCLR 1 (CC).

14 Coetzee v Government of the Republic of South Africa, Matiso and others v Commanding Officer, Port Elizabeth Prison and others 1995 10 BCLR 1382 (CC).

15 Harksen v Lane NO 1997 11 BCLR 1489 (CC).

16 Fraser v Children's Court, Pretoria North 1997 2 BCLR 153 (CC); but cf also President of the Republic of South Africa and another v Hugo 1997 6 BCLR 708 (CC).

17 National Coalition for Gay and Lesbian Equality and others v Minister of Home Affairs and others 2000 1 BCLR 39 (CC).

18 S v Mhlongo 1995 7 BCLR 793 (CC) par 59; cf also Motsepe v Commissioner for Inland Revenue 1997 6 BCLR 692 (CC) par 21.


"Nach diesem Prinzip soll das, was die kleineren und untergeordneten Gemeinwesen leisten und zum guten Ende führen können, nicht für die weitere und übergeordnete Gemeinschaft in Anspruch genommen werden."

Subsidiarity is well established (and readily invoked) in, amongst others, German constitutional law as well as in the law of the European Union. It traces its origin to Roman Catholic social thought (Kommers The Constitutional Jurisprudence of the Federal Republic of Germany 2 ed (1997) 113) and it has found various applications in German constitutional law. It has, for instance, informed the notion of federalism decisively (Benda, Muthofer & Vogel Verfassungsrecht II 1051-1052). It is also invoked to determine whether, in the context of the European Union, a matter should be disposed of by a member state or rather by an organ of the Union (cf the Maastricht Case (1993) 89 RevGE 155). As such it has, at the best of (among others) Germany and Britain, been incorporated into Article 3b of the Maastricht Treaty.
Jeremy Sarkin

Our new Constitution is a response to the injustice and divisions of the past; it establishes constitutionalism, broadens the moral community and seeks to promote national unity and reconciliation. It is, moreover, a celebration of the diversity of the land and its people; it seeks to accommodate a plurality of values and interests; it empowers the disempowered and tries to allay the fears of whites and other minorities. It is a home-grown Constitution, responding to the special needs and circumstances of the South African population. At the same time, it brings South Africa in line with international norms and standards and signifies our re-entry into the international community.

So much for a sympathetic appraisal of the 1993 constitution. A less sympathetic assessment may call it an incoherent list of contradictory aims and principles; an attempt to please everybody which will, in the end, only satisfy the greed of lawyers, always ready to cash in on ambiguity and contradiction.

Introduction

A country’s constitution can but does not necessarily narrate or author a nation’s history. A constitution can either, neither or both recount and author a nation’s history. A constitution can also promise. What promise or promises it makes, or is perceived to make, is dependent on a number of factors, including what is contained in the text and whatever else affects its role or pledge. The role that the constitution plays is also dependent on whether the constitution becomes a fundamental component of the life of that society and, if so, how it does this.

Its influence can exert and mould a politics of memory. Firstly, its role is dependent on the manner in which it is drafted – its drafting history could vitally influence its reception in a society, positively or negatively. It is also dependent on the manner in which other forces and institutions enable it and influence its role in shaping that society.

The constitution, and the bill of rights in particular, is a road map for a society. It is a blueprint containing the principles and values for the state, and sometimes the wider society, to operate. However, as a written text, a constitution can have different meanings to the different people who read it. While the text transmits meaning by way of language, constitutional interpretation is not simply about reading the text. In the South African context, as well as in many other regimes, constitutional language is often read and made meaningful in its societal context. In this vein, a society’s history and its present policy considerations are often of fundamental importance to the way the courts interpret what it says. Thus, linguistic interpretation in isolation seldom determines the outcome of court decisions. In resolving linguistic ambiguities or conflicts, decision-makers often implicitly or explicitly consider various values, some historical, that inform and contextualise the constitutional text.

A constitution can thus possibly be both a monument and a memorial. Monuments are meant to be affirming and positive and are designed to celebrate events or people while memorials are seen to have a negative symbolism as places that commemorate loss or defeat.

In the South African setting, the Constitution has the potential to play both roles as it is designed to function both as a monument and as a memorial. Its features are reflections through a mirror of a past where its values were absent. The constitutional text and the manner in which it is often interpreted reflect the memories and legacies of apartheid South Africa. Its design is a product of the memory of the drafters and those who participated in the drafting process. It is, therefore, developed on the critical notions of inclusion, accountability and oversight. Human rights are key direct features of the document in response to a history that was characterised by the absence of regard for human rights. Numerous public democratic and human rights institutions are rooted in the Constitution to ensure that the violations of the past can never reoccur. In this way, the Constitution is a living monument and a memorial.

The Constitution as Memory

When the 1993 interim constitution came into force at the time of the democratic elections of 1994, South Africa had had three constitutions. These constitutions, based on parliamentary supremacy, were adopted in 1910, 1961 and 1983. They took little account of the multi-ethnic, multilingual and multicultural nature of South African society. Indeed, they catered almost exclusively for the white, Christian, Afrikaans, patriarchal minority. It is not surprising therefore, that South Africa was a highly polarised and divided society. Many people had been dispossessed of their land, had experienced the marginalisation of their languages and cultures, and had suffered gross human rights violations. The majority of South Africans had been denied access to an enormous variety of amenities, institutions, places and opportunities, including employment opportunities, particularly in state institutions. The South African state systematically violated the rights of people of colour and subjected them to socio-economic deprivation. Most South Africans were disenfranchised and many were forcibly removed from where they lived and had their citizenship taken away. State employees and others acting with state sanction and assistance routinely carried out torture, assault and killings. Many detentions and deaths in custody occurred. Freedom of expression and association were severely limited. This comprehensive system of racial segregation and its debilitating effects was the major impetus for the formulation of a Constitution that sought to embody democratic ideals.

The specific provisions in the 1996 Constitution cannot be fully appreciated without an understanding of South Africa’s history of apartheid and the resulting erosion of socio-economic status suffered by the majority. It is this memory and legacy that the 1996 Constitution strives to deal with by setting in place values and processes to heal the damage caused materially as well as to the psyche of the nation and the individuals within it. It attempts to do this
to promoting democracy and human rights.

The legacy of the past can be seen throughout the Constitution explicitly and implicitly. From the preamble it is clearly indicated that the intent of the drafters was to ensure that the Constitution was intended to learn lessons from the past and recognise its legacy. South Africa’s history is particularly and eloquently reflected in the preamble, where the South African people recognise past injustices, honour those who suffered for justice and freedom, and adopt the Constitution to heal the divisions of the past and establish a society founded on democratic values, social justice and fundamental human rights.

The determination to uphold political rights partially by preventing history from being repeated is apparent in many of the Constitution’s language patterns and basic content. The preamble refers to healing the divisions of the past, and laying the foundations for a “democratic and open society in which government is based on the will of the people and every citizen is equally protected by law”. This focus on past injustice and equal protection under the law indicates that the drafters of the 1996 Constitution intended to acknowledge South Africa’s history and to ensure that the Constitution overcomes its consequences. The Constitution recognises South Africa’s historical deprivation of universal fundamental human rights in every time it uses language that implies equality, inclusiveness and accountability.

**Memory and the Courts**

The courts in post-apartheid South Africa, especially the Constitutional Court, have in many cases referred to the fact that the constitutional text must be read in the context of the legacy of the past. In the 1995 Western Cape Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others decision\(^1\) the court stated that it will interpret the powers of Parliament by interpreting “the language of the Constitution, construed in the light of the country’s own history”. In the context of equality the court has made similar pronouncements. In Brink v Kitshoff, an early equality case of the Constitutional Court, the court examined the issues in part by reflecting on the systematic discrimination that was suffered by many South Africans during apartheid\(^2\).

In Walker v City Council of Pretoria\(^3\) the constitutionality of steps taken by the Pretoria City Council as far as rates and taxes were at issue. Walker and other inhabitants of traditionally white neighbourhoods, where there were individual meters, had always been charged for water and electricity on an individual consumption-based tariff system. Residents of previously black neighbourhoods, where there were no individual meters, were charged a flat rate per household. With the amalgamation of the previously divided areas, and before individual meters could be installed everywhere, Walker decided to only pay the flat rate, as he contended that he had a right not to be unfairly discriminated against in terms of s 8(2) of the 1993 constitution. The majority of the court found that the differentiation amounted to discrimination, which was, however, fair. Where debt recovery measures were being instituted, the majority of judges found that the policy was an invasion of dignity and was unfair. Justice Sachs dissented from the majority verdicts that held that selective enforcement of debt recovery by the council amounted to unfair discrimination. Once again, history is a vital part of this decision. In fact Deput President of the Constitutional Court Langa opined that any consideration of equality and discrimination could not occur in a vacuum “but should be based both on the wording of the section and in the constitutional and historical context of the developments in South Africa”\(^4\).

Similarly, in the case of National Coalition for Gay and Lesbian Equality v Minister of Justice the court stated that:

[In a country such as South Africa, persons belonging to certain categories have suffered considerable unfair discrimination in the past. It is insufficient for the Constitution merely to ensure, through its Bill of Rights, that statutory provisions which have caused such unfair discrimination in the past are eliminated. Past unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated, and unless remedied, may continue for a substantial time and even indefinitely].

The past, however, is not the only point, or even the starting point for judicial reasoning in the interpretation process. In fact, what occurs in the present, and the effects of the past on the present and on the future, often form the basis for a court’s articulated reasoning (and even its unarticulated reasoning)\(^5\). Thus, Justice Kriegler noted in the Constitutional Court case of The President of the RSA and Another v Hugo that:

The South African Constitution is primarily and emphatically an egalitarian Constitution. The supreme laws of comparable constitutional states may underscore other principles and rights. But in the light of our own particular history, and our vision for the future, a Constitution was written with equality at its centre.

Some judges go even further than examining the text through the lens of the past, present and future. In the death penalty decision, for example, S v Mokwanyane and another\(^6\) Justice Mokgoro noted that where the Constitution is not explicit, the court performs the necessary adjudication “by reference to a system of values extraneous to the constitutional text itself”.\(^7\)

Thus, there is no doubt that the memory of the past is contained in the Constitution. It is a living monument and a memorial to the past. By knowing, understanding, remembering and acknowledging the injustices of the past, these wrongs can be avoided in the future. The past is, therefore, a key feature in the process of examining the Constitution and in the process of defining its role in the life of the nation. The memory of the past plays a vital part in the process of legislative enactment. It is also a critical aspect in the process that government uses to determine what measures to carry out in the future. Ultimately, the extent to which the memory of the past affects the decision-making process of the future depends on the extent to which those making the decisions remember and bear in mind the lessons from the past.
THE CONSTITUTION AS PROMISE

The Constitution, in my view, reflects the promises and aspirations of South Africans for the future. These promises are built on the memory of the problems and mistakes of the past. This role of promise does not discount the historical or memorial role that the Constitution plays. This role rather adds to other roles that the Constitution plays. The role of promise must be seen not as contradictory to that of memory, but rather as one that complements, adds to and maybe even completes its role.

As Charles Villa-Vicencio wrote in 1991:

...a future South African constitution must be written in relation to the demands specified by this history. Methodologically, this requires an inductive, contextual approach, which is informed by an international human rights culture while grounded in the resilience and strength of the South African historical struggle for justice. With apologies to Marx, a constitution or Bill of Rights capable of bringing justice and peace to society is not made under circumstances chosen by those who happen to draft it, but under circumstances directly encountered, given, and transmitted from the past. It is insufficient merely to appropriate the best clauses from the best constitutions of the world. The burdens of the past need to inform the creation of a new future.

A South African Bill of Rights will need to meet the particular demands of the South African situation as its people emerge from a history of conflict, violence and insurrection [my emphasis].

Similarly Albie Sachs, in 1989, stated that a new South African constitution must be interpreted as an instrument having been derived from the Freedom Charter and an instrument that “consolidates ... the gains of the people in struggle”.

The critical question is what role memory has in relation to its role of promise and how memory and promise work together in the constitutional setting. However, constitutionally speaking, the notion of promise is not without problems and does contain flaws. In the South African scenario the notion of promise could and does add to the notion of entitlement and expectation that may not be deliverable because of resource shortages. The Constitution uses language that avoids making promises. However, in a society where socioeconomic deprivation is the major historical legacy, for the majority of people the promise of the Constitution, perceived or otherwise, is for a society different to the one in which they lived in the past. It is this question of constitutional promise that has the most resonance in people's minds.

The 1996 Constitution of South Africa, building on the 1993 interim constitution, provides a rebirth for the country. It establishes many new and important rights for its citizens and strives to provide a living document that is designed to promote transformation. The rights enumerated in the Constitution are testimony to the problems of the past and the hope that the country will overcome this legacy, transcend all socio-economic barriers and ultimately unite the diverse population of the country. South Africa's history and socio-economic makeup is reflected and woven through it.

The Constitution, a document designed to eradicate the apartheid philosophy and its effects and promote equality for all. The document represents an effort to redress the oppression of the past and to reassure all segments of a divided society of their equal position in the democracy.

The late Etienne Muréndik also saw the role of the Constitution as that of promise. He saw it as spanning the chasm between a past "culture of authority" and a future "culture of justification in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command". Thus, the promise of a culture of justification would ensure that politicians as well as individuals would need to justify any action that infringed on the rights of an individual. The process of justification would not only foster respect for the rights entrenched in the Bill of Rights, it also promises a community of debate, information and openness.

The major promises for democracy, the rule of law and human rights are the origins of many features of the 1996 Constitution. Its features include a bicameral parliamentary system based upon the principle of the sovereignty of the Constitution; a justiciable Bill of Rights; an independent judiciary, including a Constitutional Court; an electoral system based on proportional representation, and structures which ensure government at national, provincial and local level. Various state institutions supporting constitutional democracy also serve to promote the ideals and promises of the Constitution. Thus it creates a Public Protector, Human Rights Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Commission for Gender Equality and an Electoral Commission.

Founding provisions in Chapter 1 reflect these promises as broad-sweeping assurances of rights. The applicability of the rights contained throughout the rest of the Constitution is symbolised by the use of words such as "equality", "all", "everyone", "fairness", "justice", "right" and "freedom". These words are also found sprinkled generously throughout most of the subsequent chapters. Chapter 1 also details the official language policy of South Africa. It is indicative of the promise to draft a constitution that is open and inclusive. The Constitution says, "recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages".

The inclusion of eleven official languages can be interpreted as a promise that all languages and, by association, the people who speak them, are on an equal footing with others, in sharp contrast to apartheid-era inequality. Thus, there is a promise of language equality as a section of the attainment of equality in general. Whether this has been attained is open to interpretation.

Arguably, the most important feature of the 1996 Constitution is Chapter 2, the Bill of Rights. The Constitution provides, and promises, that rights in the Bill of Rights will be respected, protected, promoted and fulfilled by the state. As section 7(1) of the 1996 Constitution states, the Bill of Rights is a cornerstone of democracy in South Africa, enshrining, and therefore promising, the rights of all people, and affirming the democratic values of human dignity, equality and freedom. Political rights (free and fair elections, voting, participation in political parties), property rights, human rights (equality, equal protection of the law, life, personal security, privacy, movement, religion,
association, expression), children’s rights, environmental rights, socio-economic rights and rights of accused persons are all entrenched in the Bill of Rights as a response to the denial of these rights during the apartheid era and as a commitment and promise to ameliorate the effects of their deprivation. These provisions are especially important in light of the intensely discriminatory nature of South African society. They are also indicative of the promise made to eradicate the legacy of apartheid.

Some of the most important inclusions in the Constitution make promises about the extent to which the Bill of Rights will influence the lives of individuals. These are clauses that permit rights to be used by one citizen against another and provisions that ensure that the Constitution and rights reach the common law. While the promise of the availability of rights between citizens is not absolute, and the Constitution provides that it binds natural and juristic persons “if and to the extent that is applicable”, “taking into account the nature of the rights and of any duty imposed by the rights”, this promise of extensive constitutional reach to those relations and relationships between citizens still has to be realised.

**The Common Law and the Constitution**

The effect of the Constitution on the common law is an area of major importance as most of South African private law is common law. This area has mostly been left to the Supreme Court of Appeal for development. While the common law has, in places, been changed to reflect a greater degree of equality, freedom and dignity for all, it has often been changed without reference to the Constitution. This is an area of critical importance because if this branch of the law is outside the reach of the Constitution it will continue, for example, “to protect the right of private persons substantially to perpetuate such unfairness by entering into contracts or making dispositions subject to the condition that such land is not sold to or occupied by Blacks”.

An area of the common law that has seen development since 1994 is the law relating to defamation. Defamation became the major area of contestation around the extent to which the 1993 interim constitution could be used by one citizen against another. However, many of the decisions in relation to the issue of defamation itself conflicted with each other. These conflicts were resolved in *National Media v Bogoshi* when the Supreme Court of Appeal abolished strict liability of the press on the grounds that such liability was incorrect, rather than on the grounds that such liability conflicted with the Constitution. Again, as has been seen in other decisions, the court ignored the Constitution and its effect on the common law.

The Supreme Court of Appeal’s finding in the 1998 case of *S v Jackson* is also relevant to a discussion of the role of the Constitution in the reform of the common law. It is a critical case relating to gender equality and the common law. The case deals with an appeal against a conviction of rape. A key question before the court was the applicability of the cautionary rule in sexual assault cases. The finding of the court, per Judge Olivier writing for the court, was that the rule:

**Socio-Economic Rights**

One of the most important areas of promise with enormous resource implications, and therefore an area subject to much debate, was whether socio-economic rights should be protected as constitutional rights. This was critical in the context of historical exclusion of the majority of South Africans from much of the economic and social life of the country. While all parties expressed commitment to the underlying goal of social and economic upliftment, some balked at affording socio-economic rights the status of fundamental rights. The reasons lay in traditional scepticism about enforceability of the
rights and the desirability of involving courts in decisions about economic and welfare policy. The bias in the 1993 interim Constitution in favour of civil and political rights can be explained in light of these concerns.

A critical reason why these rights were finally included was because “a Bill of Rights containing only first-generation rights would be perceived to be elevating rights over necessities, and that would discredit it as a charter of fundamental values. In the mind of the majority, it would make the Bill of Rights a charter of luxuries”.

The 1996 Constitution provides for the right to a basic education (section 29) and the right of access to adequate housing (section 26), health care services, including reproductive health care, sufficient food and water and social security (section 27). Access to land and land reform measures is also provided for (section 25) and children have special entitlements (section 28). These clauses attempt to ensure that the state will continue to improve the living conditions of South Africans through better nutrition, clean and convenient water sources, and improved health care and housing. It should be noted, however, that the language used circumscribes the scope of most of these rights. Thus, the right of “access to” adequate housing or sufficient food or water. In addition, the duty imposed on the state is “to take reasonable legislative and other measures” to realise the right. It is therefore clear that the realisation of these rights will largely depend on the ability of the state to deliver. However, to counter the problem of enforcement which exists in regard to progressive realisation of rights, section 184(3) mandates the Human Rights Commission to demand information from relevant organs of state on measures taken towards the realisation of rights relating to housing, health care, food, water, social security, education and the environment.

The socio-economic provisions and promises are critical because the legacies of apartheid continue to plague the young democracy in the form of poverty, illiteracy, homelessness and other social ills. Improving the lives of the millions of destitute South Africans, particularly in relation to housing and employment, is critical, not only because it is a constitutional imperative or promise, but because without these rights little progress will be made in ensuring public acceptance of civil and political rights. The pride and respect engendered by ownership of the Constitution will wane if the rights it establishes, particularly socio-economic rights, do not result in concrete changes to the lives of citizens. It is also important in this regard that the courts give meaning to those rights, particularly those which, often as a result of compromise during negotiations, presently appear vague and unenforceable.

THE ROLE OF THE CONSTITUTIONAL COURT

In delivering on socio-economic rights, the Constitutional Court, and the courts in general, have made little impact. Only in the very recent past have a few lower courts been willing to deliver on the promises contained around socio-economic rights. The trend of judicial avoidance of deciding cases in this sphere was set in 1995 when the court refused to delineate the extent of the constitutional right to be represented by counsel. The critical case in regard to socio-economic rights is the 1997 case...
legal aid, or the extension of state beneficiaries of such benefits. In our view, it cannot be said that by including socio-economic rights within a bill of rights, a task is conferred upon the courts so different from that ordinarily conferred upon them by a bill of rights that it can result in a breach of the separation of powers.

Thus, while the court was willing to defend the inclusion of these rights in the Constitution by the politicians, and defend the possibility of the courts concerning themselves with budgetary issues, it declined to do so in the Soobramoney case. While the court’s finding in this case can, to some extent, be understood because of the ramifications it could have had, the decision highlights the limited role the court sees for itself. The court indicates in this case, as it has in others, that in so far as some questions are concerned, it will play a hands-off role.

This is highly problematic, because dynamic and robust courts are necessary to find a balance between state and individual interests in a country undergoing transition. Without greater activist intervention by the courts the likelihood of continued under-delivery of services will continue. Judicial scrutiny and accountability, by government at all levels, to the courts will more than likely limit the use of excuses of limited resources, or accounting limitations, for non-delivery of services.

The Constitutional Court, for example, has not assisted in ensuring that many people are able to enjoy constitutional rights that depend on the courts for pronouncement. Firstly, access to the court is complex and expensive. Very few cases get to the court and those that do are dealt with very narrowly. Far from being robust and interventionist, the court often adopts a cautious approach. It has often attempted to avoid dealing with issues of major importance by invoking procedural rules and approaches that have relevance to a particular case or to a restricted area of law. While this approach can be understood in the context of not wanting to tie itself to positions that might affect future decisions, this approach ensures that its decisions have a limited impact. Secondly, while the court complains that there is inadequate reporting by the media on its judgments, it does little to ensure that its decisions are understood or even known about by the general public.

Much more is therefore needed to ensure that the promises contained in the Constitution become more relevant for the majority and the promises that it contains are realised.

**Conclusion**

While the Constitution contains memory and is a monument and a memorial to the past, its role of promise is more problematic. More needs to be done to ensure that it becomes more relevant to the majority. This has particular relevance for socio-economic rights contained in the Bill of Rights. While government has made some headway in general, the constitutional promises have not been achieved. The cases handed down so far by the courts, including the Constitutional Court, have with few exceptions not unravelled sufficiently with, or made impacts into dealing with the legacy of apartheid or the socio-economic deprivation which continues to plague the majority of South Africans. This is surprising given the government’s rhetorical emphasis on the socio-economic needs of the poor and the marginalised, and the fierce debates about including socio-economic issues in the Constitution.

The rights of the marginalised are, in general, yet to become sufficiently available and attainable. In the areas of refugees and foreigners, sales of weapons, internal arms control, human rights abuses by the police and in the prisons, much is needed to get close to the promise of a democratic society with human rights protections for all.

If the promises contained in the Constitution are not perceived as real for the majority, the relevance of the Constitution will become that of a tombstone reminding us of what may have been.

I have been asked to respond to the papers presented by Professor Du Plessis and Professor Sarkin. In accepting this honour, I want to remain modest in doing so, as nobody – and especially not myself – can give lessons or recipes to establish a democratic constitutional order. My response is organised according to two guidelines: realism and optimism! Coming from overseas, but having lived in South Africa for five years, my remarks will be based on a comparative overview of the situation. There is a natural human tendency when one has to appreciate one’s own experience to either look at it in a very critical way or to consider it as the ideal one! The reality is obviously in between.

South Africa followed both a classical and original route in establishing its new constitutional order. Classical, as the constitutional drafting process is well known from many countries having to face a complete change of legal and constitutional values (interim and final constitutions). Original, as South Africa embarked on a route that clearly was its own and had to create answers to questions specific to the South African context.

My first remark will especially be dedicated to the context or more exactly to the Constitution as an instrument perpetuating its own context. I do not know any draft of a constitution that did not, in one way or another, seek to reply to contextual issues or pay tribute to its drafting context. This is especially true from constitutional texts built up after political crises. This is something necessary and unavoidable: a constitutional text (as mentioned by Professor Du Plessis) is a cornerstone and should remain the emblematic figure of the change.

However, from a comparative point of view, I would like to point out two kinds of dangers related to the contextualisation of the Constitution:

- The first one is to pay too large a tribute to the context or to the past, and to forget that a new constitution is normally made for the future and for a period of time. What could appear at a first glance perfectly normal and suitable for the new context can become a handicap later as the context changes and some of the features become outdated. I do not want to say that the memory of the past has to be avoided, but simply that a democratic constitution is primarily made to ensure that democracy will be guaranteed. Consequently, the drafters of the constitution must focus on the most important aspects for the future: checks and balances, human rights, sharing of powers... This is not an irreversible problem if the constitutional amending procedure allows for adjustments later on. However, if the constitution shall remain a promise, it could be wise to some extent to anticipate the changes and to project how the new text will fit in ten or twenty years time. In this regard, the South African process (with the interim constitution and the final Constitution) partially avoided this kind of problem.

- A second danger is to put all constitutional provisions on an equal footing regarding the past. All provisions are useful but some are of a technical, procedural or institutional nature and some are of a substantive nature. Without establishing a clear-cut distinction between the two, there is no
more on certain provisions than on others.

My second remark is related to the distinction made by both speakers between the "meaning of the language of the Constitution" and "interpretation of the Constitution". The weight of interpretation through the implementation of constitutional provisions is sufficiently well known as is the way of dealing with several and sometimes contradictory interpretations. If the language of the Constitution is insufficient to understand the courts' decisions dealing with it (the context being an important element to take into consideration), it is not sure that the interpretation of the Constitution will only focus on memory and context. Then, the context will become one element of interpretation among others. If the past plays a key role during the first years of implementation of the Constitution (it can be a rather long time!), this role usually declines later on, except for the pillars of the Constitution (such as the Bill of Rights) regarded as the historical foundation of the regime.

In that regard, a comparison with Germany's conflict with the European Court of Justice regarding the protection of fundamental rights is a good example. Early in the 1970s, a clash arose between the German Constitutional Court and the European Court of Justice regarding the protection of fundamental rights. With reference to the past, the constitutional court clearly indicated that fundamental rights could only be protected in the last resort by this court, as there was a risk that other courts will not protect these rights as they should, considering the German context post-World War II. The European Court of Justice wanted to protect some of these rights and thought its decision should be final (as scheduled in the European Community Treaty). The German Constitutional Court denied the European Court of Justice the possibility of having the final word, as it was the only body able to interpret and define the extent of the protection. The dispute was settled when the European Court of Justice held that the protection of the rights would be the same as the one provided by Germany.

My third remark will focus on the Constitution as a living instrument. The Constitution can obviously be regarded as a memorial and a monument, but as it applies to a dynamic environment the meaning of constitutional provisions can change and will change. Constitutional provisions are to be reshaped through interpretation and are also self-reshaping in the sense that the same provision would probably be applied in a different way now and in twenty years' time (this is often the case for socio-economic rights). So it is true to say that history counts in the legal reasoning but this does not mean that the provisions of the constitution are interpreted once and forever, exceptions may be made for some provisions (the right to life, the prohibition of torture...). An interesting illustration in that regard is the German constitutional case in the middle of the 1970s where the constitutional court held the abortion act was unconstitutional on legal but also historical grounds - reference was made to the Nazi regime. Nowadays, such a decision would probably be interpreted differently.

Following this idea, it must also be pointed out that cases that dealt with references to the past to justify the interpretation of constitutional provisions could be dealt in the same manner without having to refer to the historical background. In other words, we have faced cases where a reference to the past is psychologically necessary but technically superfluous. For example Walker v City Council of Pretoria CCT 8/97 (on a legal point of view there was no need to refer to the past to justify the discrimination; the implementation of the equality clause would have been sufficient). However, in other cases, the argument is convincing as it allows a more understandable reading of the case, especially for non-lawyers.

My fourth remark will focus on vocabulary and on the promise brought by the Constitution as a new text. References to the past are often made in preambles, first sections or heads of chapters of the Constitution. They are monuments and memorials but most of the time these provisions are declaratory provisions and not normative provisions, meaning that it will be very difficult to use them in concrete cases as such. They have to be implemented through a combined reading of constitutional provisions. If this is done (and it is usually lawyers' work), the text of the Constitution enlarges with new provisions being the result of that combined reading. Once again, interpretation gives the Constitution a new life but this is against the clarity and the promise of the Constitution. Language clarity is part of the new ideal, and logically the implementation of the Constitution will modify that balance. There is a need not to enlarge the gap between the meaning of the words and their implementation on a middle or long-term basis.

My fifth remark is related: Constitution as a common value or a social contract. Obviously, all kinds of legal relations shall not be dealt with by the Constitution. As pointed out, the principle of subsidiarity is one of the values making the Constitution this supreme norm without being everywhere. However, there is a natural tendency, especially for courts, not to quote or refer to the Constitution even when the applied values are those of the Constitution. This has been emphasised through the relationship between the common law and constitutional provisions, but this behaviour is typically not a South African one. Many countries are faced with such a problem. Changes are only to be brought with time.

My sixth remark focuses on the role of the Constitutional Court. The Constitutional Court has a key role to play but is not only the interpreter of the Constitution, as previously said. This is obvious for the observer, not necessarily for the actors. The position of the Constitutional Court is quite often a difficult one. If the Constitutional Court goes too far with the interpretation of the Constitution, it will be criticised as an activist court playing a political role. If the court does not go far enough, it will also be criticised as not being able to fulfil its role. Even if the Constitutional Court is a specific court of law, its position is a special one and the court cannot override its own role. In other words, the Constitutional Court is never the final word. The only one real constitutional supreme court is the people of a country. If one can sometimes regret insufficiencies of constitutional review, one must keep in mind the possibility for the Constitutional Court to be overruled by constitutional bodies - Parliament if it gets the constitutional power amendment, for example in the case of Austria, and finally the people via a referendum.

Finally, I would like to mention two aspects that are in my opinion important to keep the constitution as a memory and as a promise. The first one is education. You will not be able to convince citizens of their rights if they do not know them. This is obvious but should never be underestimated on a long-term basis. The second one is time. When you promise something, you must...
carry it out. But with regard to constitutional promises, you have to warn all
the actors that it will take time. Constitutions are the result of human work,
not promises of God!

2 German Constitutional Court 25th February 1975.
3 National Coalition for Gays and Lesbians v Minister of Justice CCT 10/99.

DISCUSSION

Unidentified

Law and the Constitution should reflect the will of the people. We must never
again allow it to degenerate into no more than what comes out of the barrel
of a gun. I was intrigued to hear that our Constitution is both memory and
promise. A nice concept. I hope we learn from the past and that our politicians
behave themselves in the future. We are told that a nation gets the govern-
ment it deserves. There is a measure of truth in that observation, but it is not
quite true. Politicians have a capacity to impose themselves against the will
of the people. The only antidote to that is strong constitutional government, and
that is an ongoing battle.

Chirevo Kwenda

I was only six years old when my father took me on my first visit to the city,
Salisbury at the time, today Harare. I was taken to see a number of his friends,
people he thought should be my role models. He then took me to what were
called the Salisbury Gardens [where there] was a memorial to those who had
died in the Second World War. On this memorial was written in English,
Shona and Ndebele: We fought and died for our king. All my father said to me
was, "first of all, I want you to know that king was not our king. Secondly, that
was not our war. It is true that we fought. It is also true that we died." The
African experience had been co-opted into a monument for whites. How do
we create monuments that unite? Is it possible? For a constitution to be a mon-
ument worthy of celebration it must reflect the memory of all our people. It
must give concrete expression to this if it is to be respected. South Africa is a
young democracy and its constitutional integrity needs to be established. It
must work hard at doing so.

The Constitution as monument and memorial at the same time. I go back
to this experience of mine. To what extent is the African experience in South
Africa's colonial past remembered and to what extent is it co-opted into the
constitution as memorial and monument? Perhaps there is no answer to that,
but the question must be asked. I was looking at the constitution of Zimbabwe
recently. Effectively it upholds a genre of law that emerged from the Cape
Colony in the 1890s that resulted in a certain form of land occupation. This
was a foreign law and many Zimbabweans are today objecting to that law. This
is probably the case in South Africa too. I would like our presenters to try to
address this issue in the best way possible – the question of customary law and
its status and how it relates to the question of monument and memorial as far
as the constitution is concerned.

Jutti Bredenkamp

I want to link up with the previous speaker. I come from the Khoi-Khoi peo-
ple. What does the Constitution do for my people? What can we get out of it?
Our speakers have made no reference – perhaps understandably so, because
people tend not to take these things too seriously – to this being the decade
of the indigenous peoples of the world declared by the United Nations. I want
these legal scholars, Professors Sarkin and Lourens, to help me understand why
in the human rights debate in South Africa there is, as far as I know, and I am
not a lawyer, so little reference to the indigenous peoples discourse and espe-
cially to what the first indigenous people of South Africa are saying.

To conclude: Only a few weeks ago, the Department of Foreign Affairs
made a statement concerning human rights for indigenous people. It sug-
ested that it was only during the ravages of colonialism and later under apartheid
rule that aboriginal African populations were brutally suppressed, decimated
and displaced. The statement goes on to say that significant progress has been
made in accommodating the aspirations of the Khoi-San communities in this
new South Africa. That is what our Department of Foreign Affairs says. It is
not what I say. The Constitution that we talk about here today is founded on
the values of human dignity, achievement of equality and a commitment to
human rights and freedom. It is not clear to me that the rights of the Khoi-San
are being promoted. I am also not sure that the debate of lawyers and others
about the Constitution addresses the concerns of the Khoi-San. What can be
done to change this? I hope these rights will become part of the concerns of
the Institute for Justice and Reconciliation.

Kim Feinberg

I would like to address Professor Sarkin. I think we know more or less what re-
conciliation means. We have a good idea what justice means. But so often our
definitions are abstract and very academic. We get closer to the grassroots
when we ask what justice and reconciliation mean in relation to one another –
which is the focus of the work of the Institute. Like it or not, this is where
nation-building is compelled to happen. We have a wonderful Bill of Rights.
Our speakers have made this point. But what does it mean in relation to the
messy world in which we live? I would like to ask what human rights educa-
tion means, not as an academic concept but in relation to the real world? How
should human rights education be taught in schools? More specifically how
can it be promoted in our schools?
Fakier Jessa

I would like to ask a question and then expand on it. My question is: why was our Constitution not written or composed in a developmental way? Why does it not allow for changes that will need to be made to it as times goes on? It is difficult to change a constitution. This works against the kinds of changes that will need to be made to accommodate the needs for development.

If one looks at the social development needs of the people of this country — at political development, material and economic development — one would expect that these areas of development would have been taken very seriously in the constitutional debate, allowing for changes to the Constitution in those areas as they are tackled by the nation. We must not allow our future to be shaped by the perception of reality determined by forty years of apartheid. The pastor from Guguletu spoke about problems of education in Guguletu. The problem is that the parents are not sufficiently educated. How does one create a constitution that addresses all these challenges? We are supposed to be proud of our Constitution but it does not speak clearly enough on these things. That is why ordinary people are not impressed with all this talk about rights in the Constitution.

There are also problems about crime. My question is: why was our Constitution not written in a manner that makes these concerns a priority? Should it not allow for revisions on a regular basis? I am trying to give expression to a need for continuing constitutional change in our country.

Unidentified

I think we ought to be very careful about changing a constitution when someone or a particular political party feels like doing so. I think it was Chief Justice Mohamed who said a constitution is necessarily more than a law. It is a mirror that reflects, perhaps in our better moments, who we would like to be. If a government wants to change the Constitution we should necessarily be suspicious. That is a healthy piece of cynicism I offer this gathering.

Responses

Lourens du Plessis

I begin with the last question. It can be understood in two ways. It can be understood as asking why haven’t we adopted the Constitution incrementally, allowing it to adapt to the circumstances. My problem with that would be that once you have accepted the notion of a supreme constitution one should not create a milieu within which politicians can change it too easily. That point has been made from the floor. This is not because the Constitution is sacred...If one were to be cynical, one could say it is a piece of paper containing a number of linguistic symbols. We must not forget, however, that it is because the Constitution seeks to limit power that it should not be too easy to amend it.

The question can of course also be understood to read: does the Constitution contain enough provisions that provide for developmental concerns? I have no doubt in my mind that development can be undertaken with constitutional backing. If it is not done I think it is not the Constitution’s fault. It makes generous provision for second generation socio-economic rights. Children’s rights are protected, educational rights are protected, etc. Chapter 10 of the Constitution tells us how public officials should behave and so on. If it is not used properly that is, of course, a different question. I agree with Jeremy on this score. The Constitutional Court, in particular, has not done very well in implementing especially the so-called second generation of socio-economic rights. I think the guidelines that it has laid down so far are wanting in serious respects.

I think the earlier two questions are the most difficult questions to answer. I am not going to pretend that I can answer them. One of the things I have learnt in the new South Africa is the need to be modest.

I don’t have an answer to the customary law issue. The issues are complex. We are asked to recognise the indigenous legal systems of South Africa that relate to the question posed from the floor. But many people who form part of that history and identify themselves with that background tell us that they do not want the discriminatory, customary law system to dictate to them. Aspects of this law, for example, indicate that women can’t inherit from their husbands. It is well worth noting that people who complain most about customary law are usually not white Afrikaner men. White Afrikaner men who sit on the benches of our courts tend to uphold customary law, while black women, at least a section of them, are strongly against it. I don’t know where the truth lies. I don’t know what the outcome of an argument about customary law should be and I am not going to attempt to answer it right now. I would rather be a good listener.

My answer on the issues of indigenous rights is similar. You ask why we have not paid attention to the rights of indigenous peoples. I think it is simply because there has not been a strong enough lobby to do so. It is not an issue that has been brought to life by people. We need a stronger lobby for that to happen. Fifteen years ago many of us in this hall would have been smoking. Today we won’t even think about smoking in the passage outside. Why?
Because of the anti-smoking lobby. Perhaps a lobby that promotes the rights of indigenous people is required. I don't know how. I don't have the answers, but this is a legitimate concern. I have no doubt about that. I can tell you that there is a possibility of funding within the Institute for people to undertake research in this area. I certainly feel the Institute should provide a home base for people who want to do this kind of research. I think it is a legitimate concern.

Jeremy Sarkin

I want to address the question about the Constitution and its growth in a slightly different way to the way in which Lourens did. No constitution is static. The Constitution is not information at a particular point in time. It grows by interpretation of the courts and the way that society views it. The Constitution continues to be dynamic, which allows it to shift and change according to the way that society grows. While, for example, the American constitution is 200 years old, nobody would say that it is a 200-year-old constitution. Allowing it to generate its own particular dynamic has renewed it. So there is a way of seeing a constitution not as a static instrument but as something that grows over time.

The problem, as Lourens said correctly, is you don't want a constitution whose language can be adjusted according to the dictates of time, in a manner that results in a supreme constitution being manipulated by a majority of voters or even a super majority. There is a need for a tension between having a flexible approach while having a fixed constitution. We need to allow it to adapt and flourish but at the same time ensure that it is not amended very easily. It is right that the court can even strike down an amendment. That is a constitutional issue that might need to be faced in the future.

The question of indigenous peoples, I think, is a much broader political issue than simply how it is perceived and how much lobbying is involved. The response of the state to this is reflective of the early 1990s, what kind of Bill of Rights we needed or wanted and whose rights we wanted to protect. It reflects the mind of the nation, the perceived dangers around group rights and what group rights should mean in our society.

While the international position has been growing in favour of a larger acceptance of group rights, there is obviously a perceived danger in our society about group rights. South Africans, generally speaking, are concerned about ideas of separation, questions of identity and the demarcation of particular regions - for whatever reasons. The notion of the rights of indigenous peoples relates to a particular South African concern about how the establishment or recognition of a particular group might set off the demands of other groups for certain protections, which might be problematic for the nation as a whole. So I don't think it is only the question of whether the San or Khoi-Khoi or any other group who were marginalised and decimated in the past should have constitutionally guaranteed separate rights. It is really a question of how you phrase the questions and how those questions become part of the political debate in a way that does not presuppose that other groups start raising related concerns which lead to cessation, separate homelands and the like. In brief, it is likely to take some time and some distance to move us away from the perceived problems concerning group rights.

Customary law. Customary law was given a junior status in the past and I am not sure that we are doing very well at reversing that. This is partly a political concern that relates to the role of chiefs, traditional leaders, the house of traditional leaders and the way in which they have been included in the political consensus. It is a question of whether there is sufficient strength among chiefs and traditional structures to raise those particular issues. I would hope that customary law issues become far more focused and that people examine the demands that they are making in the name of customary law far more closely, to ensure that these matters are both seen to be more pertinent and taken more seriously.

I have left what I think for me is the most important question - the human rights education question - for last. This is perhaps the most serious question raised in this session. Human rights education is critical for building a human rights culture. It should aim to ensure that all in South Africa know what their rights are and also to ensure that they know how to ensure that their rights are protected. While some education has taken place, this has largely been done by NGOs whose funding does not allow them to perform a lot of education. National institutions, such as the Human Rights Commission whose mandate it is to educate around human rights, have not been too successful at providing such education and the levels of knowledge on the Bill of Rights and such institutions are very low.

While schools have recognised the importance of including human rights education in the new curriculum, little has been done to implement this or provide training to those who are to do it. This is a critical issue that must be focused on. Not to do so could have major negative ramifications for the future.
PHILLIP DEXTER

National reconciliation in our country has largely focused on the need for the protagonists in our civil conflict to forgive one another for the pain, suffering and violence inflicted on one another in the course of protracted conflict. While this has been an important exercise in helping to create an atmosphere in which the new or emerging nation can be built, it has not fully addressed the fundamental character of the relationship between black and white people in our country. This relationship is primarily one expressed in economic terms that are disparate, that of employer versus worker, employed versus unemployed, relatively well-off versus poor or materially secure versus insecure. In other words, the power relationships in our society between people may be changing, but this change occurs largely at the symbolic level generally.

It is also important to note that, in this respect, to talk of national reconciliation may be unhelpful. There has never been a single South African nation. We have always been divided as people, whether on racial, philosophical or other grounds. President Thabo Mbeki has, for example, eloquently characterised South Africa as being a country with two nations within it. If reconciliation encompasses this perspective then it has a meaning for our current context. What has to be considered rather is how a nation can be built. Such a project takes place in a peculiar environment, where the state is increasingly undermined and marginalised because of the powerful hegemony of neo-liberal thinking globally as well as the strategy enjoined by the previous regime to minimise the power of the state.

SOUTH AFRICA'S 'NEW' CAPITALISM

One of the most interesting features of the contemporary South African religious landscape is what is known as Prosperity Christianity. This theological justification for the accumulation of wealth seeks to comfort those who are the "haves" by suggesting that they have because God intended it. Such sophistry is of course indicative of many a ruling class or bourgeoisie, particularly an emerging one or, as in our case, a bourgeoisie that is seeking to reinvent itself as non-racial and enlightened. Yesterday's Russian Mafia is today's ruling oligarchs who, having accumulated property by any means necessary, now, coincidentally, require "law and order". In South Africa, yesterday's apartheid advocates, essentially a merry band of murderers, liars, thieves and their accomplices and beneficiaries, are today's champions of what a worker leader once correctly characterised as "Shoshaloza capitalism".

The basic tenet of this new variant of capitalism is that it is OK if South African workers, who just happen to be mainly black, are exploited from Monday to Friday, because on Saturday we all go to the stadium and sing Shoshaloza together and support Bafana Bafana. Within this view of the world OK is understood to be limited to the granting of formal rights...
to all citizens without any measures taken to address the historical material imbalances created by the unique history of our country. Like Prosperity Christianity, the ideology of Shoshalatoa capitalism suggests that the current status quo is acceptable and that all accumulated wealth and power is legitimate. Nothing could be further from the truth.

The reality for all of us in this country is that Shoshala toa capitalism, or any variant of capitalism for that matter, will never create the conditions for sustainable reconciliation and nation-building to take place. One only has to look to our northern border to see the future if we as a country do not effect the fundamental economic transformation required to address the legitimate aspirations of our people. Zimbabwe is in crisis today precisely because it has been unsuccessful in transforming its economy, the patterns of ownership of property, redistributing wealth and thereby delivering its people from the excesses of colonialism, imperialism and the root of these negative features of society, namely capitalism itself. Whatever one’s view of the President of Zimbabwe, one cannot deny the just claim to land by the people of Zimbabwe.

As we emerge from the painful process of establishing our democracy, the choice we have to make as South Africans is whether we plan and manage the transformation of our economy, or whether change takes place in the context of increasing social and economic instability, conflict and even probably violent confrontation. Reconciliation must now be about access to resources and opportunities. Such a process is one that will entail the exercise of power by different social classes and interest groups.

**VALUES THAT GUIDE NATION-BUILDING**

Within this context it is hardly surprising that we as a nation-in-the-making are grappling with the seemingly intractable problem of values and morality. If some of our people do not have what are considered appropriate values and morals, or seem incapable of ethical conduct, it is precisely because we are a post-colonial society with a violent and amoral history. The values of the frontier are what have informed our interaction as South Africans to date. This is not to suggest that individuals do not have the will to choose differently. The reality is that within this inherited environment the constraints imposed by poverty and ignorance limit the options individuals have. This reality is true for both those who suffered under apartheid and those who benefited from that system.

We are a relatively poor developing country and we have extremes of wealth and poverty within that reality. Many of our people are functionally illiterate and have received only a basic education, and are thus not equipped to immediately create opportunities for themselves to rise above this desperate reality. Within this extremely hostile circumstance of poverty and lack of formal skills is a reality of disease and squalor precipitated by the deliberate under-development of the environment in which people live. Racial capitalism forced the reproduction of labour under the harshest conditions and of the extraction of surplus value through super-exploitation. If people have suffered this material reality and emerged able to differentiate right from wrong or understand the notions of community and society then they would not have been targeted with the force
arise to acquire and hang on to property, where the predominant characteristic of society was one where white might was basically right, could our society have turned out any differently? The reality is that it could have been a lot worse. What is more surprising is if we stop and think about it for a moment is that the vast majority of South Africans are not criminals engaged in violent behaviour and are committed to building a life for themselves and their families. In our haste to voice our fears precipitated by our own insecurities and fragility, many of us forget that it is a tiny minority of our population engaged in criminal activity. The vast majority of our fellow South Africans are busy engaged in a daily struggle for survival, or, if they are more fortunate, for prosperity through hard work. Even during the darkest days of colonial oppression, apartheid violence, the vast majority of South Africans made every effort to bring up their children properly and send them to school if they could, and worked hard for a living.

Socio-Economic Development and Justice

Such a vital project as building the nation is firstly the creation of acceptable material conditions of existence for the citizens of the nation. We must collectively ensure basic security from want, including food, clothing, shelter and physical safety. It is secondly the creation of conditions that allow for the education, as well as the emotional and intellectual development, of all people. Of course, nation-building also requires the development of what is regarded by many as the spiritual and intellectual aspect of human existence. This could be regarded as an aspect of our human existence that includes religion, values, aesthetics, ethics and our daily conduct. This intellectual or spiritual aspect of our existence is the glue that holds the nation together, since it is the collective identity, in all its facets, of the nation. But if one has any regard for the material aspect, and one only has to be poor for short while to appreciate this aspect, then one has to recognise that even this intellectual or spiritual aspect of national restoration is difficult to address without addressing the issue of the present political economy of our society.

Reconciliation, in the sense of finding the space to forgive each other for the past, must happen, but so too must material reparations and compensation. To reduce reparations and compensation to a few handouts by the state would add insult to the injury committed. The only way to ensure adequate reparations is to ensure the thoroughgoing transformation of the economy. Certainly, aspects of this include market-driven policy measures. There are few, if any, serious socialists and communists today who do not acknowledge the role of the market in a mixed economy or even a socialist one. But even if such measures were to be put in place, as are suggested by most advocates of liberal reforms, such as vouchers and opportunities for students and youth, this would not address the imbalances of material wealth and of the quality of life that characterise our society.

Unless there are active measures to address the quality of life of the majority of South Africans on a significant scale, there can be no sustainable national unity. The contradictions are far too great and the extremes too obvious. Even if the correlation between race and class was to be removed, the disproportionate wealth and income distribution would still remain.

that a new ruling class, which is non-racial, committed to democracy, and which has a social conscience, may be able to entrench itself. But the reality is that even such a class would be unable to sustain itself in power if it did not address the extremes of poverty and wealth that currently exist and would probably revert to authoritarianism to keep its own power and privilege. This is particularly so given that we live in a country with a highly politicised and class-conscious working class.

Organisation and Values

A factor that is often overlooked outside the confines of political organisations is their role in promoting the values that have held the national fibre together and in providing the basis for the creation of our national identity, values and spirit. During the darkest days of colonialism, the fact that people were able to be part of any organised community provided them with a sense of solidarity and affirmation needed to maintain their humanity and dignity in the face of brutal exploitation and oppression. It is conceivable that within this social reality people get their sense of identity and bearings from community, that one is able to explain the growth and stability of a broad range of organisations.

But the role of the ANC and the alliance, for example, is often overlooked. Many people with no sense of identity, few sophisticated values and principles, have been able to define their identity within organisations such as the ANC, SACP and Cosatu and contribute to the building of the nation. Such people, who have propagated the building of our new nation, have survived and successfully transmitted these values to the broader population despite the terrible conditions under which people have lived. In that respect, the vast majority of South Africans have a reasonable expectation of an improvement in their current socio-economic situation. This is not some cynical utopian factor, but the legitimate hope of the homeless that they will be housed, the poor that they will get the opportunity to be financially independent, the hungry that they will be fed.

Conclusions

If the primary objective of the national democratic revolution prior to 1994 was achieving democracy and majority rule, now it is the economic transformation of our country. Such transformation requires a number of conditions to be met. In the first instance, poverty and unemployment will have to be eradicated. In the second instance, all preventable diseases will have to be defeated and illiteracy ended. Thirdly, discrimination on any grounds will have to be a thing of the past. Finally, there will have to be a manageable limited difference in terms of wealth and income of those who constitute the least and most well-off in our society.

Admittedly poverty, ignorance, disease, unemployment and crime could exist in a society without equity and equality being prerequisites. There are examples
of countries that have been partially successful in achieving success in this manner. But they have all had to sacrifice something else in return, namely freedom and democracy. Under such authoritarian regimes, even the more benign ones, the ruling elite has always prospered and eventually declined into corruption. In the worst cases these regimes have become no different from the former apartheid regime, apart from the racial aspect of that regime.

The character of developed societies under late capitalism is such that we as South Africans need to carefully consider our choices at this time in our history. When one considers countries of the North, there are few that approximate what the national liberation movement has set as its objective. The closest may well be social-democratic countries such as the Scandinavian countries. What is common to all these failed capitalist regimes is that they thrive through extremely exploitative relations with poor countries. As globalisation has changed in character so have patterns of accumulation. Richer countries are getting richer and poor ones poorer. It is not as if this increasing wealth has significantly improved the lives of the majority in these developed countries. Extremes of wealth and poverty, homelessness, drug abuse and other social problems are endemic in such countries.

The key to national restoration is therefore a development path which the people as a whole gain from and can support. Within such a society there may well be some who gain more than others, who take advantage of opportunities, who work harder. But there should be none who get an unfair advantage, or who are allowed to get away with manipulating the rules to their benefit. In such a society development must include collective reparations from the years of colonialism, apartheid and racial capitalism.

In such a context what is the role of an institution such as the Institute for Justice and Reconciliation (IJR). Continuing the work of the TRC is important. We need to remember never to forget. But surely if our focus is economic development, all institutions and all available resources should be harnessed towards this objective. Whatever one's view of the People's Republic of China, any visitor to the country will be struck by the fact that the primary objective of economic development is asserted ad nauseam at all levels in society. Each activity is motivated by its contribution towards the objective of improving the material conditions of existence of the people. The IJR should ensure that whatever its work on memory, it balances this with a programme to contribute towards the collective material advancement of our people.

Alcinda Honwana

My presentation is on cultural and subjective social reconciliation and healing. This cultural-social dimension is important – not least for rural-based, traditional people living a war and post-war situation. I think it will also have some relevance for South Africa, although the focus of what I want to say is Mozambique and Angola. It is about the way in which people express, embody and articulate their afflictions. It is culturally specific, in the sense of being bound to a particular time and place. Again, I stress my presentation is on materials collected during fieldwork in Mozambique and Angola.

I worked in Mozambique between 1985 and 1990, which was a period of ongoing and intermittent war, and in Angola between 1997 and 1998. During my time in Angola there was an interruption in the war, which has since returned with a vengeance. Mozambique is, of course, today in a post-war situation, having gone through long periods of bloody and devastating war. In brief, while Mozambique has managed to achieve peace, Angola continues to be in a war situation.

Particularly in Mozambique, people are now focusing on rebuilding their lives in the aftermath of war. We need to remember, of course, that this process of rebuilding is done in the context of overwhelming poverty. My story is how they have managed to survive, get hold of their lives and heal themselves.

An important aspect in this great challenge of coming to terms with oneself is coming to terms with one's broader social and cultural environment, which is itself devastated by the wounds of the war. Here, healing goes beyond the delineation of individual trauma or individual affliction. It includes mending social divisions that exist both within and between communities. This is the focus of this paper – the processes of community reconstruction. How community and communities get together again. How families get together after a process of a war that often divided brother from sister and parents from children.

Unlike South Africa, Mozambique has not been confronted with a process of national reconciliation. It has had no Truth and Reconciliation Commission. In Mozambique the option was to forgive and forget and not talk about it. The official position is to let us move forward and put the past behind us. Let us try to forget. At a political level it is probably necessary to draw the line, saying it is time to move on. But at the social level and at the psychosocial level people simply cannot do that very easily. They have to deal with the past on a daily and ongoing basis.

That is what rural people, the peasants in Southern Mozambique, were saying when I worked with them. And that is what they are doing, they are dealing with the past. They are not waiting for the government to bring psychologists to deal with their traumas or to rebuild the villages. They are doing what they can to deal with their situation. Parents are dealing with children who were child soldiers, who were obliged to raid their own villages. Families are seeking to come to terms with the fact that close relatives fought
and social disruption had to be dealt with. They did so with the cultural resources they had available. And it worked.

Pollution has a lot do with bloodshed. Individuals who had been in a war or who are exposed to the devastation of war are deeply affected. War and killing have an impact on individuals and communities. They are polluted by the wrongdoings of war. They, in turn, are potential contaminators of the well-being of society. They carry with them the effects of their past experience. They are seen as vehicles in which the spirits of the war continue to reside. The community is haunted by the spirits of the dead, through those who were influenced by the events of the war. Some spirits might only afflict the individual who committed an offence or an atrocity. Others afflict the relatives, the neighbours and passers-by. So after the war, when the refugees and soldiers return home, cleansing rituals are seen as necessary for both individual and collective healing. The pollution of the past conflict needs to be driven out. People need to regain their composure. They need to be healed. Rituals are important vehicles for conflict resolution, reconciliation and social re-integration among populations that need to deal with past gross violations of human rights.

Healing the Social Wounds of War: Case Studies from Mozambique & Angola

Introduction

Samuel was only nine years old when he was abducted by Renamo rebels during a military attack on his village. He was told to carry a bag of maize meal and had to walk for four days to the Renamo military camp. Three months later he had one month of military training and was forced to serve as a soldier for more than two years. After the cease-fire, Samuel was reunited with some of his relatives. On the day of his arrival his relatives took him to the ndambi (the house of the spirits). There he was presented to the ancestral spirits of the family. The boy’s grandfather told the spirits that his grandchild had returned and thanked the spirits for keeping his grandson alive.

A few days later a traditional healer was invited by the family to help perform a cleansing ritual for the young man. The ritual consisted of a series of symbolic procedures aimed at cutting his links with his traumatic past. His military clothes were burnt and he was cleansed with herbal remedies prepared by the traditional healer. Only after this ritual was he able to freely interact with his relatives and members of his community [field notes, Mozambique, 1995].

When a young man returns from the war, before entering the family house he has to be taken to the river where an elderly person treats him with water and the leaves of a tree called malhà. The treatment in the river always takes place at dawn. In the stream in the middle of the river, the former soldier has
to drink herbal medicine made from *mulbua*, *ngola* and cassia trees. The liquid extracted from the *mulbua* leaves is splashed on his body. When he leaves the river, the young man cannot look back. Looking back is believed to open the door to the spirits of the war to come and haunt him. The past, the war, has to go with the stream (field notes, Angola, 1997).

These are common practices in post-war Mozambique and Angola where people are struggling to bring normality back to their lives after a devastating war. These stories are multiplied countrywide and involve not only the afflicted person but also the relatives and community at large. These cleansing rituals are centred on beliefs about the power of spiritual beings, which are central to people's sense of well-being and security.

This paper discusses processes of healing the social wounds of war of young combatants who were forcibly recruited to fight wars in Angola and Mozambique. The present study emphasises the importance of cultural notions and understandings of healing war trauma since the ways people express, embody and give meaning to their afflictions are generally tied to a specific social and cultural context. In this perspective, biomedical psychotherapeutic notions of mental distress and trauma constitute “western” social and cultural constructs, which may often not be effective in contexts where cultural beliefs and world-views are different. The biomedical approach to healing war trauma should thus be regarded as only one of several ways of dealing with post-war healing in Africa. This paper will highlight other ways of understanding health and healing in post-conflict situations in Mozambique and Angola.

The paper results from research undertaken in Mozambique (1995-1996) and Angola (1997-1998) with war-affected populations, especially child soldiers. Angola and Mozambique were both Portuguese colonies that after a long period of armed struggle for national liberation gained independence in 1975. Both post-colonial governments adopted Marxist orientation and socialist models of development. After independence, opposition parties (Renamo in Mozambique and Unita in Angola) initiated a war against the Frejimo and the MPLA governments. It is in these wars, which lasted more than 15 years in Mozambique and more than 20 in Angola, that many children were drawn into armed conflict as active combatants. The examination of the processes of healing the social wounds of war of these former child soldiers and their families/communities constitutes the aim of this paper.

**BEYOND POST-TRAUMATIC STRESS DISORDER**

Dominant Western psychotherapeutic models are often seen as universal and applicable everywhere. However, this assumption has been challenged, as Western psychology is also a culturally constructed system. Modern psychology locates the causes of psychosocial distress within the individual and devises responses, which are primarily based on individual therapy (Boyden & Gibbs, 1996). Thus, recovery is achieved through helping the individual “come to terms” with the traumatic experience, and healing is held in private sessions aimed at “talking out” and externalising feelings and afflictions. Recently, a new discourse has emerged concerning war trauma and its

**(PTSD)** which was first described in 1980 in the USA, and resulted from research carried out with American veterans of the Vietnam war. This new type of mental disorder is firmly grounded in the modern psychological paradigms outlined above.

In other social and cultural contexts, the situation appears to differ from that of the industrialised “Western” world. For example, Boyden & Gibbs (1996) have shown that in Cambodia individual therapy conducted by modern psychotherapists can be ineffective because it does not account for the place that ancestral spirits, and other spiritual forces, have in the causation and healing processes. Also, by focusing exclusively on the individual, it undermines family and community efforts to provide support and care. Likewise, studies on healing war trauma in Mozambique (Marrato, 1996; Honwana, 1997, 1998) have shown that recalling the traumatic experience through verbal externalisation is not always an effective means to healing. In many instances, people would rather not talk about the past or look back, preferring to start afresh once certain ritual procedures, which do not necessarily involve verbal expression of the affliction, have been performed.

The PTSD approach was developed out of attempts to understand the problems faced by American soldiers who fought in the Vietnam War. It was conceived as an instrument to deal with psychological distress in people who went from a situation of relative “normality” into a traumatic experience (the Vietnam war), and then returned to “normality” – perhaps that is why the prefix “post”.

In Mozambique and Angola, and in other conflict zones, especially in Africa, the vast majority of children we are dealing with were born during the war. Thus, for these children trauma is not “post”, but is current and very much part of their everyday lives. Nordstrom’s (1997) work on war and violence in Mozambique stresses the fact that there violence goes well beyond the military attacks, the landmines and direct war situations, and touches on spheres such as poverty, hunger, displacement and the like. One can say that most of the children we have been dealing with in the aftermath of the war in Angola are still living in violent and potentially traumatic circumstances. Therefore, when applying such models there is a need to adapt them to the concrete situations of the children in question.

**WAR TRAUMA AND THE SPIRITS OF THE DEAD**

In Mozambique and Angola there are local ways of understanding war trauma. In both countries people believe that war-related psychological trauma is directly linked to the anger of the spirits of dead killed during the war. In southern Mozambique these spirits are called *Mifhuku*. These are spirits of those who did not have a proper burial to settle them in their proper place in the world of the ancestors. So they are believed to be unsettled and bitter spirits who can cause harm to their killers or to others (see Honwana, 1997). In Angola this is also a common phenomenon. All over the country, people mentioned that the spirits of the dead killed during the war had to be appeased to ensure peace.
healing, both in Angola and Mozambique. Pollution may arise from being in contact with death and bloodshed. Individuals who have been in a war, who killed or saw people being killed are believed to be polluted by the “wrongdoings of the war”. These individuals are believed to be potential contaminants of the social body. They are seen as the vehicles through which the spirits of the dead of the war, which could haunt them, may enter and afflict the community. Such spirits may afflict not only the individual who committed the offences, but also relatives, neighbours and others. After the war, when soldiers and refugees return home, cleansing or purification rituals are seen as a fundamental condition for individual and collective healing/protection against pollution. They are also important means of conflict resolution, reconciliation and social reintegration of war-affected people into society (Honwana, 1997).

Some families and communities heal the social wounds of war in the post-war period through cleansing and purification rituals or rituals to appease the spirits of the dead. Such practices are more common in the rural areas, although they are also performed in urban settings. The availability of health care alternatives, as well as religious and political affiliations, also determine which therapeutic strategies people choose.

There are various types of rituals. Some are aimed at addressing the problems of the community at large while others aim to heal particular individuals or families.

**COMMUNITY RITUALS**

**Case One**

In April 1993, traditional healers and diviners of Munguine in Manhiça were asked to perform a ritual in the road that links the locality of Munguine to the village of Manhiça. The ritual was needed because nobody would use that road after dark to get to Manhiça. People believed that the spirit of a Renamo commander killed there during the war was harming passers-by. Local people reported that as they approached the place they felt “something” beating them or heard voices sending them back or they were blinded and could not see their way to Manhiça. They requested the performance of a ritual to appease the spirit. The ritual was performed in the presence of local chiefs, local government authorities and the people of Munguine. The specialists performed kafamba (to catch the spirit). Then the spirit spoke through a medium. He requested some money, capulanas (local pieces of fabric) and to be sent home for a proper burial. The local population agreed to contribute money for the spirit and buy the capulanas. The chiefs and the government also made a contribution. A week later the spirit was caught again. A ritual took place in which the spirit was symbolically placed in the capulanas and tied up with the money and some herbal remedies provided by the healers to avoid its return. The bundle was then buried far away from Munguine. According to the local people there have been no more problems in the road since then.

**Case Two**

The town of Kuito in Bie province, Angola, was severely affected by the 1992-1994 war and thousands of people lost their lives. Many of them died on a plateau while trying to escape from military attacks. Landmines have prevented people from reaching the plateau to bury the dead. Many people in Kuito believe that things will not improve unless something is done to appease the dead and place them in the world of the spirits. Kutximulaka and Aurora, two female traditional healers, declared that the government should organise a big ceremony to appease and honour the dead of the plateau.

These rituals are not aimed at addressing the afflictions of one person but those of an entire community that is being haunted by the spirits of the dead; in the case of Manhiça, the spirit of the dead Renamo soldier; and in Kuito the spirits of the dead of the plateau. Both the Renamo soldier and the dead of the plateau were not buried. Proper burials with all the necessary rituals for placing them in the world of the dead were not performed because of the war. Therefore, their spirits are believed to be unsettled and afflict people in those places. Many believe that these rituals have to be performed in places where battles took place and where people died without being properly buried because this is the only way to appease the spirits and ensure peace and stability.

**RITUALS FOR CHILD SOLDIERS**

**Case One**

Returning to the case of Samuel referred to in the introduction, we can look in more detail at what happened to him. When he got to his family home he was not well received. He was not shown affection or hugged. As mentioned above, Samuel was first taken to his family ndamba (the house of the spirits) where he was presented to the ancestral spirits of the family. The boy’s grandfather addressed the spirits informing them that his grandson had returned and thanked them for protecting his grandson and enabling him to return alive. The family elders then talked to Samuel to find out how he was and what had happened while he was away. A few days later a traditional healer was called to perform the cleansing ritual. The practitioner took the boy to the bush where a small hut covered with dry grass was built. The boy, dressed in the dirty clothes he brought from the Renamo camp, entered the hut and undressed himself. The hut was then set on fire, and an adult relative helped the boy out. The hut, the clothes and everything else that the boy brought from the camp had to be burned. This symbolised the rupture with the past. A chicken was sacrificed for the spirits of the dead and the blood spread around the ritual place. The chicken was then cooked and offered to the spirits as a sacrificial meal. After that the boy had to inhale the smoke of herbal remedies, and bathe himself – in the presence of the entire family – with water treated with medicine. In this way his body was cleansed both internally and externally. Finally the spirit medium made some incisions in the boy’s body and
filled them with a paste made from herbal remedies, a practice called karvela. The purpose of this procedure is to give the boy strength. Relatives and neighbours were present at this ritual and helped the practitioner by performing specific roles, or just by observing, singing and clapping.

Only after the ritual was the boy free to interact and be integrated with the rest of the community. This is a ritual affecting an individual. At the same time it touches many others in this process. The individual and community are one. The isolation of the individual disrupts the community. The individual, in turn, cannot be healed without appeasing the community.

CASE TWO

When Pitango from Cambundu in Angola returned home, his family organised a ritual for him. The ritual took place that day, before he could mix with relatives and friends. His body was washed with cassava meal and chicken blood was placed on his forehead (the chicken was killed during the proceedings). Then his mother took some palm oil and rubbed it on Pitango’s hands and feet. During these proceedings elderly relatives frequently called up the ancestral spirits of the family to protect the young man who was back from the war and had to start a new life. Pitango said the elderly in his family, who spoke to him on his arrival, explained that the performance of this ritual was necessary so that the spirits of those killed in the war would not harm him. This was necessary for him to start a new life. Pitango also said that because he did not kill anybody during the war he did not need to go through a ritual performed by a kimbanda (traditional healer).

CASE THREE

Nzinga is a 55-year-old traditional healer in Malanje, Angola. When her 19-year-old nephew, Pedro, returned after spending more than seven years fighting the war alongside Unita she performed a ritual for him.

I could not let him stay without the cleansing treatment. He needed it because there he might have done bad things like kill, beat and rob people...without the treatment the spirits of the dead would harm him. I do not know what happened there, he said he did not do anything...young people sometimes lie...I decided to go for full treatment because otherwise he could become crazy...or even die...

Traditional healers generally perform the full treatment she refers to. It lasted four days and took place in her house. It required a chicken, a kando (mat) and wine or “traditional” beer. She put her nephew in a place of seclusion called muanga (place of ritual treatment) where she placed the mat for him to sleep on. She placed some powdered medicine (dikondo and dikelo) under the mat and in his food and drink. Pedro had to stay inside the muanga for three consecutive days. At dawn on the fourth day he was taken to the river to be washed. After this he was not allowed to look back which symbolised a break with the past, with that dirty war. The dirt of the war was washed from his body and left in the river stream. Back at home, Nzinga cooked special chicken and drinks were prepared with medicine and Pedro ate and drank them throughout the duration of his treatment. During the ritual, family members were present and contributed food and drink, which they all shared during the proceedings.

In all these rituals, it is apparent that it is thought the children brought pollution to their homes and villages. They have to be cleansed as soon as possible before they can socialise freely with relatives and friends. In the case of Samuel, the cleansing ceremony happened a few days after his arrival and was performed by a specialist. In Pitango’s case, he was “washed” with cassava meal, chicken blood and palm oil on the day of his arrival. Pedro’s aunt decided to give a full treatment because she was not sure what he had done during the war.

Another important issue that comes out of these cases is the idea of symbolically breaking with the past – washing the body in the river stream so that the dirt of the war is washed away; burning the hut and the clothes brought from the war. It is interesting that in all three cases, chickens were used in the rituals (the blood for cleansing and the meat for the sacrificial meal shared with the ancestors) and herbal remedies were used to cleanse the body internally (inhaling and drinking) and externally (bathing and rubbing). In these cases, the Cartesian dichotomy which separates body and mind cannot be applied as individuals are seen as a body/mind composite and as part and parcel of a collective body (their wrongdoings can affect their families as well). This explains the direct involvement of the family (both the living and the dead – the ancestors) in the cleansing and healing processes. The ancestors are believed to have a powerful role in protecting their relatives against evil and misfortune. That is why Samuel’s relatives took him to the hut of the ancestors and thanked them for the fact that he was alive and safely back home; Pitango’s family also addressed the ancestors; and Nzinga put Pedro in the place of the ancestors for the duration of his ritual treatment.

These healing and protective rituals do not involve verbal exteriorisation of the experience. Healing is achieved through non-verbal symbolic procedures, which are understood by those participating in it. That is why clothes and other objects symbolising the past had to be burnt or washed away to impress on the individual and the group a complete rupture with that experience and the beginning of a new life. Recounting and remembering the traumatic experience would be like opening a door for the harmful spirits to penetrate the communities. Viewed from this perspective, the well-meaning attempts of psychotherapists to help local people deal with war trauma may in fact cause more harm than help.

The performance of these rituals and the politics that precede them transcend the particular individual(s) and involve the collective body. Family and friends are involved and the ancestral spirits are also implicated in mediating for a good outcome. The cases presented above show how the living have to acknowledge the dead (the past), both the ancestors and the dead of the war, in order to carry on with their lives. The rituals were aimed at asking for forgiveness, appeasing the souls of the dead and preventing any future afflictions.

- My work in Angola was made possible thanks to a Christian Children’s Fund (CCF) consultancy in 1997/1998. The Angolan data presented in this article was collected both by myself and by members of the CCF team in Angola.
In the case of Mozambique, Renamo (Mozambique National Resistance) was created in 1977 by the Rhodesian Central Intelligence Organisation (CIO) which was interested in sponsoring a rebel force within Mozambique in retaliation for Frelimo’s support for the Zimbabwe National Liberation Army (ZANLA) and for its Marxist policies. Renamo was later taken over by South African security forces in 1980, as Frelimo was also a strong support base for the ANC in the 1980s. In Angola, Unita was one of the anti-colonial movements which, alongside the MPLA and UPA-FNLAs, fought against colonial rule. However, after the Portuguese coup in 1974, these three movements fought each other for control over the country. The MPLA emerged victorious, the UPA-FNLAs faded in importance and Unita reconstituted itself with mainly US and South African support, and continued its fight against the MPLA government. (See Vines, 1991; Minter, 1994.)

CONCLUSION

The examination of local healing strategies demonstrates that biomedicine and psychotherapy are just a couple among many ways of understanding and healing distress and trauma. Considering that the majority of the Mozambican population affected by the war is rural, a combination of several healing approaches seems to be necessary to take into account the patient’s world-views and systems of meaning. This paper has suggested that local understandings of war trauma, of healing and of community cohesion and stability need to be taken into account when dealing with post-conflict healing, reconciliation and social reintegration. Traditional healers, religious leaders, the family and elderly members of the community are already creating their spaces in these processes of healing the social wounds of war. They are not waiting for the government to bring the psychologists and other medical practitioners to solve their problems. They are using the means available to them to restore peace and stability in their communities.

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Respondent: Rhoda Kadzie

Raise questions on the two papers we have heard — those of Phillip Dexter and Alcinda Honwana. In so doing I retract from giving my own views, largely because I do not know what reconciliation actually means in our situation.

Alcinda’s papers provide a fascinating exposition of indigenous rituals aimed at the reintegration and psychological healing of youths forced to participate in the banditry of Renamo and Unita. The point about the appropriateness of these local responses to the effects of national catastrophes being superior to the band-aid approach of Western individualistic therapy is well taken. Its broader relevance to the anthropology of post-colonial war-torn society is also taken and well noted. The fieldwork involved is very far from the stereotypical, anthropological tradition. Here we see an anthropologist connecting truly global events with the real life situation of ordinary people attempting to come to terms with the traumas of civil war, and for the sake of the children.

These are truly touching accounts but I would have liked to have seen more of a personal note about the writer’s personal reactions to the tragic issues involved and the nature of the research process under those circumstances. A deconstruction not only of the inappropriate Western remedies but also of her own anguish in investigating and recounting the stories contained would have been helpful.

How widespread are the levels of ritual discussed here? To what extent do they spring from a continuous therapeutic tradition? To what extent are they rather an infusion of culturally adaptive practices in a world turned upside down? Is there any sense that the colonial plus traumatic post-colonial experience has moulded these responses in theoretically interesting ways? What, if any, are the linkages to the political movements involving Renamo and Unita?

For South Africans the interesting, if parochial, point is of what relevance is this paper to the South African experience? Do such rituals find a place in the reactions of victims of apartheid to the violence inflicted upon them? Have we done enough research — real, good, qualitative research — to find out how people have actually dealt with their own life experiences and can we learn from Mozambique and Angola?

Why does the author not expand on the point: “members of the community create their own spaces in the process of healing and do not wait for governments to do so.” Does she imply that the state is irrelevant in the healing process, because she seems to argue, and I quote, “that people rely on their traditions for ritual cleansing”. Was the secular institution like the Truth and Reconciliation Commission useful in the process of national healing and what is the evidence?

She makes a key point — treated more like a passing footnote — that healing mechanisms and “social rebuilding and conflict resolution are partial remedies if not complemented by job creation, skills training and poverty on community intervention and not on socio-economic issues. Is this not perhaps the reason why Africa is prone to recurrent outbursts of violence and revenge, or are these racist assumptions?

In Phillip’s presentations he argues, “that the only way to ensure adequate reparation is to ensure the thoroughgoing transformation of the economy”. He proceeds to suggest that the transformation of the political economy requires (1) the eradication of poverty and unemployment, (2) the defeat of preventable diseases and an end to illiteracy, (3) an end to discrimination and (4) the management of disparities between the rich and the poor. His use of totalising concepts like “eradication, defeat and end” characterises his all or nothing approach. Only a total transformation of the state will bring national restoration and reconciliation and so Zimbabwe’s failure is alluded to as an unsuccessful transformation of its economy, the ownership and the redistribution of wealth and thereby delivering its people from the excesses of colonialism, imperialism and the root of these negative features namely capitalism. It is here that my concerns begin.

Phillip claims that the histrionic press coverage of crime is mainly due to the fact that it has now been democratised. He uses arbitrary statistics to demonstrate the racial and class divisions in South Africa and the persistence of racial capitalism makes redistribution impossible because it coexists comfortably with social laws of capitalism. This is a euphemism, according to him, for new South African whites to bathe in the reflective glory of the achievement of the liberation movement, but still cling to their wealth.

The paper rightly underlines the major challenges facing South Africa. There can be very few thinking South Africans who deny the urgent necessity of socio-economic transformation, but one would have hoped that a representative of the South African labour movement and the South African Communist Party — as the vanguard of the working class — would put forward some good ideas of how to go about it. Instead what do we get? Yesterday’s tired rhetoric, over-blown assertions and a refusal to match hard problems with hard thinking.

This paper remains for me within the mental comfort zone of the 1980 struggle activists. One can respect the emotional intensity behind the argument and the validity of the moral point, but where is the intellect in this paper? What is really interesting about this paper is that it comes down to a root and branch criticism of the performance of the present government by a leading member of the governing alliance. If one were to accept the gist of this paper, then six years after liberation the author’s own party has done nothing to address the national crisis. Where has the author been? Where has his voice been? Calling on the current regime to repent of its sins? Even for someone like me who is often critical of aspects of our governing elite, the paper seems a little unfair on the present government’s performance.

The author seems to think that the country’s middle class blacks and whites callously ignore the cries for socio-economic redress, that we are not aware of the crisis that envelopes our country and which the trade unionists like Phillip himself so vigorously proclaim. But those outside the trade union movement, like myself, would like to know in the words of Lenin: “what is to be done?”
Trade unionists should of course plead the case of the employed working class with all their might but they are doing their followers no favour by implying that there is some easy way in which poverty can be eliminated, and wealth can be distributed, while maintaining a successful African industrial democracy in the current global context.

The author has, of course, every right to his social beliefs. Who can quarrel with the noble claims of his ideology? But, actually, existing socialism came crashing down not because it lacked moral fervour but because it failed the masses by virtue of its actual policies. Are we destined to repeat the mistakes of the century because of a residual simplistic Trotskyism in this country? No, Phillip you can do better. Let's have some new thinking instead of yesterday's rhetoric.

Even though Phillip has rejected crude Marxism, his paper falls squarely within the crude Marxist paradigm. But Phillip Dexter is a respected activist and one of my favourite comrades and needs to be challenged to think differently about post-independent African states in the context of the dominance of a global market economy.

**Discussion**

**Unidentified**

I would like to comment on what Mr Dexter said. He is blaming the media for society's preoccupation with crime. We know that crime has been there for decades, centuries. What the media is reflecting is what is happening. I think he knows that. It is because of poverty and non-delivery that people turn to crime. So don't blame the media. Don't shoot the messenger. You sound a bit like some others in government. We do not expect that from you. Yes, in the past there was crime but it has got worse. Why does crime escalate in transitional societies? We need to face this question full on. If we do not we will sooner or later have people demanding a return to jackboot policing.

**Sechaba Seheri**

I have heard the Phillip Dexter and Rhoda Kadalie show, but no serious solutions. Can someone move us forward?

**Fakier Jessa**

There are no simple answers expectations that we will all have houses tomorrow. Our expectations are more sophisticated than that. But we do want serious economic transformation.

**Alex Lichtenstein**

I am from Florida International University in Miami. This too is a question for Comrade Dexter about crime. It would be foolish to deny that crime is a particular social problem facing South Africa in its transitional phase of existence. This society would be making a serious mistake to duck it. But it is also a problem in the United States. We should not underestimate the degree to which the United States over the past 25 or 30 years has manufactured a "moral panic" regarding crime - not least with regard to the loss and destruction of property. The result has been the turning back of many of the gains made through the civil rights movement in the 1960s.

It also needs to be noted that the moral panic regarding crime has been racialised. And if you look at prison and recidivism rates in the United States over the past 20 or 30 years they have shot up dramatically. The options for human rights transformations of the 1960s have been negated and black people are in jail out of all proportion to the demography of the nation. This is not to deny that real crime has increased in the United States. My point is simply that the "get tough" policing approach of the United States that ignores the lessons of the civil rights movement is not working. It is not keeping people out of jail and it is criminalising a large section of our poor community. When you look at incarceration rates and the ritualisation of crime control and punishment in the United States, you realise that more needs to be done. Caution concerning moral panic about crime is, I think, in order. Be do not play down the problem, face it. Get to the root causes. This could be one of the major issues concerning justice and reconciliation that needs to be addressed.

**Robert Macdonald**

I want to comment on Rhoda Kadalie's comments about Phillip Dexter paper. It may be "yesterday's rhetoric" for many people in this room and many people in the country. However it seems that the absolute income extrema that exist in this country are perhaps obscured to those who hold the wealth in the country. So, when we have a government that reduces taxes, relates to exchange controls and creates an environment more conducive for the pursuit of entrepreneurial initiatives one has to ask what is it trying to achieve and for the benefit of whom? Is it merely a case of business as usual? I hope not.

What I am trying to say is, there is a need for what Phillip Dexter has said today to be said to people who are not in this room. It is unfortunate that businesses have limited representation, if any, in this room. There is, as far as I know, no white business representation. Phillip Dexter's words need to be scaled over and over again (to them). I think, at the same time, it is unfortunate that Phillip labels himself a communist so openly, persistently and repeatedly. It can be that without repeatedly saying so. Certain sectors close their ears soon as they hear you say you are a communist - and then they don't want to listen to you any further. That is just a comment. My real point is that there are members of society who need to hear your message repeatedly. We all need to work at a way of getting them to hear what is being said.
Nyameka Goniwe

I am interested in Dr Honwana’s presentation on traditional rituals and the way in which they are used to unlock the trauma that individuals have locked away inside of them. Has much research been done that can inform us of the consequences of locking trauma, or just simple information, away inside of us? I am concerned about the impact of the culture of silence on our society. How should we deal with it? How does it impact on people’s futures? Is there some form of relief from this trauma or is it locked in forever? How relevant is your work for South Africa? Ritual is clearly a part of South African society, but I am not aware of the kind of practices to which you refer happening very widely in South Africa.

Thapelo Mokushawe

The TRC has done incredibly good work. But more needs to be done. The Institute for Justice and Reconciliation must help society to address some of the issues that have not been addressed or finalised. And other organisations must do the same. We must not say the TRC has done its work and there is no more to do. There are hundreds of kilometres away, but there is also a woman in Bloemfontein who still wants to know exactly what happened to her husband. There is also a need to reach out to the son of an alleged askari who still does not accept what happened to his father. Justice has been inefficiently administered for many people. We can talk about a farmer who kills a five-year-old kid and then gets a five-year suspended sentence. Is this justice? Another person ends up stabbing a white person with a pair of scissors in the neck after a racial confrontation. This person is given a five-year sentence, three in jail and two suspended. Where is justice? These are the challenges that the Institute must help us address. We all need to tackle these problems to make South Africa a good home for us all.

We did not only come here to listen to what all the invited guests have to say – and I have enjoyed what they have said. But more is required. Let us not continue just to be there in society, but to face and deal with the issues that undermine reconciliation by denying justice. If perhaps we can move out of this hall and start addressing these things there is a real possibility for healing.

Thandeka Teyisa

I want to ask Dr Honwana a question. I was very interested in what she had to say because the TRC, it seems, is based on Christian principles of forgiveness and confession. Maybe these African rituals and Christian rituals are aiming at the same thing. I just wondered whether she thought apartheid had damaged the traditional community traditions, especially for people living in urban areas. I am really interested to know whether she thinks the traditions of which she speaks should be encouraged at grassroots level by government.

Responses

Phillip Dexter

Thank you. I want to move beyond rhetoric and characterisations. I shall not therefore respond to all that Rhoda has said. I am a trade unionist. I am also a communist. As someone has correctly observed, there are stereotyped perceptions in the minds of some about people like me. This allows them to dismiss what I say in a crude way that minimises intellectual debate. I take the point; we all need to work much harder at communicating with one another.

I do not think that a conference such as this can get into too much detail. What I decided to do was put the important issues of property and redistribution on the table. This might sound like old fashion rhetoric to Rhoda and some others, but if these issues are not dealt with, the settlement we have reached in this political transition will be in trouble. Rhoda’s response worries me. It seems to suggest that all is well in this economy of ours. Maybe some of the old struggle talk is what we need because the essence of what I was saying is that this struggle is a long, long way from over. Propaganda that agitates has its place in any society, including the crude form that I have apparently engaged in.

The second point I wish to make is this. The debate I have offered is not as crude as Rhoda likes to suggest. That is an easy way to try to dismiss the challenge. I have already said that I don’t think it is the nature of an engagement such as the one we are having here to go into detailed policy proposals. I think, however, that a more sympathetic reading of my paper will show that the issues that I raise are present in many post-colonial societies. These need to be addressed. For that reason, I was trying to ring a few alarm bells. I am trying to say let’s get out of the middle class comfort zone. We must not allow ourselves to imagine that after a conflict and the reaching of some kind of a settlement, all will be well. The implication is that we can get on with life as we always did in the past. You cannot allow the distorted environment of the past simply to drift into the future. Continuing change and ongoing transformation is necessary. What I find interesting is the identity of this Institute, which recognises this. This is what excites me. It recognises that a continual effort for justice and reconciliation is necessary. I am asking for a strong injection of socio-economic issues into everything we say about justice and reconciliation.

One more point. There is the gentleman who referred to the manufactured panic about crime in the US. I think he called it moral panic about crime. That is exactly my point. I am not in the habit of bashing the press for the sake of bashing it – although there are occasions when they both need and deserve it. The point I was making is that the debate about crime statistics needs to be conducted at a more sophisticated level. It tends to lack a historical perspective on crime, dispossession, patterns of ownership and the transfer of property and wealth. What disturbs me is that even in this new age in which we live there is a great deal of crudity of debate and sloganeering that distracts from the issues that I raise.
Alcinda Honwana

People ask about my research. My work in Mozambique has, of course, made me very sensitive to the need to unlock the memories of trauma that people carry within them. The memories of war, torture, rape, exploitation and despair dominate the memory of Mozambicans. The stories of the child soldiers and the stories of the abused girls are all stories of trauma within. To the extent that this reality is not being dealt with, locked up if you like, it has to face the reality that there are damaged, unpredictable traumatised people who have done almost anything at any time. That is not a good basis on which to build a reconciled nation. Indeed, what we do or fail to do today to redress the conflicts of society will impact on the lives of our children tomorrow. Let us start by cleansing our continent of child soldiers.

The question is how do we talk about other people’s suffering; above all, how do we enable victims to talk about their own suffering? How do we externalise these stories? What is the relationship between undertaking a case study of people’s suffering and seeking to enable people to engage in their own healing through telling their stories? How ethical is it to write those stories and share them in a forum like this? What is the boundary? Is the action of the researcher who observes and talks about what she observes an illegitimate intrusion into people’s privacy? This is an ethical question that needs to be addressed. I enquire in this discussion elsewhere and I will happily refer anyone interested to my paper on that. Rather than take the time of the conference, let me simply say that I think sensitive research has its place - whether in medical science or social sciences. Obviously it can be abused and we need to ensure that this does not happen.

How widespread are these rituals? They are quite widespread, not only in southern Mozambique but also in other parts of that country - although I did not spend a lot of time doing research in the central and northern regions. The infrastructure of the country as a whole was such that there was little or no government support, and so people had to take things into their own hands. In some doing they resorted to what was available - namely, traditional ways of healing. When I say that people create their own spaces for healing I am not letting the state off the hook. I am not questioning the relevance or the obligation of the state. I am referring to what can and must be done when the state is quite simply not there. When people are in a situation of crisis, they need to deal with their problems as best they can. I have seen how in Mozambique members of the community create their own spaces in the process of healing and do not wait for the government to do so.

There is a perception, especially in Mozambique and Angola, often among NGOs and international agencies working there, that nothing was happening before they arrived. There is a missionary sense that “we need to go and show them the light”. Well, these communities have their own life and they are doing things. Before and since the NGOs and international agencies arrived things both happened and continue to happen, without their involvement. We need to continually enquire what is happening in communities. We should try to discover what is happening between the people on the ground and political movements, both Renamo and Frelimo, as well as Unita and the PLA.

In Angola I did not do much research about healing. My work on the topic that I spoke about today was based on southern Mozambique and I have a book on this, which will appear shortly. It deals with cultural politics, war, healing rituals and related matters.

On the relevance of my experience to South Africa. Let me deal with this in relation to the TRC. My major criticism of the TRC is that it was largely a top-down approach. This is perhaps inevitable in a state-sponsored initiative. What I was looking at in Mozambique is bottom-up. I have the sense that these are two parallel processes that can or should inform each other. For example, in relation to South Africa, what I would like to know is how communities can complement the TRC hearings in seeking to reconcile people. Communities continue to be divided. For example, in a township how do people deal with former apartheid informers? They know that and so denounced them. Today they are living together. How do they deal with the past? How can they be enabled to find one another? What kinds of feelings do they have? How do they relate to one another? How do they behave towards other people - their families, the community etc? What kind of research is happening on this level?

The TRC hearing is a moment in time - it is quite wrong to expect too much from it. More needs to be done, which no government in Africa or elsewhere in the Third World is capable of carrying out. That is why I talk about creating spaces within which local communities can draw on their own skills to promote reconciliation in their own communities. Someone spoke about the conspiracy of silence. Silence is understandable but it does not help. And yet, as I indicated, the release of trauma need not necessarily be through verbalisation. Ritual is sometimes an alternative to open, explicit, verbalised acknowledgement. And sometimes it is more powerful.

The TRC was an important moment. It gave a number of people space to begin to deal with their trauma. What about the rest? This is what I would be seeking to understand in the research that I would really like to do with South African colleagues. I would like to compare what we find here with what has emerged in Mozambique and Angola. There are obvious differences between these three contexts. These include the kinds of regimes that existed or continue to exist there and here, the nature of the divided societies - apartheid and the great racial divide, etc. There is also the issue of property and land mentioned by Phillip. In Zimbabwe, people are without land. In Mozambique people have access to land. There was a displacement of refugees, but people went back to their land and rebuilt a community around their land. This is the place where the ancestors are buried, the place they can start cultivating and where life can start again. By working the land and having something to do, one has an opportunity to come to terms with one’s loss. To rebuild one’s own village and one’s own place is very therapeutic. How many people in Zimbabwe or in South Africa can do that? A new nation cannot be built with traumatised people.

A final comment about locking the trauma inside of us. There is something that I would like to mention in this regard. People who have locked something within often feel that they will never be able to talk about it. Well, they can talk about it in different ways. Sometimes this is useful; often it is useful.
told the healer that he thinks he killed two people, but he is not sure. So they underwent a process, a psychotherapeutic process, which involved both the man and the healer, until they managed to come to terms with what the man was talking about. He could not talk to his wife and mother-in-law because he believed they would not be the right people to talk to in this context. They would not understand. The person you talk to has to be a person who is part of your system of understanding. The man would not have spoken to a psychotherapist who had come from outside. More research is required on safe spaces and acceptable listeners. In brief, I am saying there are many different ways of dealing with trauma. The title of this session is “subjective healing”. This is as important as material healing. They are interrelated.

**Chapter Six**

**Anticipating a Different Kind of Future**
I was not able to be present throughout the conference due to a family emergency I chose to deal with. I mention this only as a way of making the point that I would not have done this a few years ago. I would not have felt that I could allow a personal matter to interfere with what I would have regarded as my political or public obligations. Maybe things have improved in South Africa sufficiently for there to be space to deal with personal concerns. That is the beginning of normality.

In the post-TRC period we speak about the large-scale project of reconciling. I am not always sure who we are wanting to reconcile - but there is this national project to reconcile. And yet, having the conference to attend to a little family concern, it reminded me that reconciliation also has to do with small, everyday concerns that politically engaged people have for so long neglected.

I recently wrote an article on reconciliation for a book in which I suggested that perhaps modern societies are too big, too complex, for people to reconcile in the old-fashioned way of everybody loving everybody. Societies don't operate as they did before. The fact is that the post-apartheid and post-socialist world has relieved one a little of the damn obligation to really love everyone else. I want to come back to that what means, because national reconciliation is not this spiritual thing about loving your neighbour as some in this post-TRC period would have us believe. A number of important institutional and material aspects of national reconciliation have emerged from the deliberations of this conference to which I would like to return, in reassessing the meaning of reconciliation as a nation-building project. I think these concerns give a measure of credibility to the reconciliation debate. We should not lose sight of these.

We talked about monuments and memorials earlier on. The present regime does not show an over-zealousness in monument building or in monument busting or iconoclasm. We have had a few examples of dams and airports being renamed and there has been a sober approach to this. No big time monuments. Not yet anyhow. Mandela was right. Monuments are largely power gimmicks and creators of histories for the moment. The question that needs to be asked, however, is why is it that the new people in power are not creating monuments in the way one would have expected? I think it has something to do with a forward-looking project that they imagine themselves pursuing. They are effectively saying, if there is anything to be celebrated it is change itself - which I suppose is in itself a forward-looking memorial.

A point I love making in the presence of Alex Boraine is that we often forget that the TRC was itself a kind of gimmick. It was a late-night at-night Kempton Park afterthought. South Africans had reached the historic compromise in the negotiations. They decided to suspend their hostilities and they negotiated a constitutional state. Within this context, the TRC (as is seen in the postamble of the Interim Constitution) was really founded on the approach of "let us forget the past". When you listen to the politicians and negotiators and read the memoranda that they exchanged, the message is clear: "let us forget the past and move forward". We reminded our guys that the problem is that we cannot simply forget the past. Alemo da is correct. It is one thing to say "forever" at a political level. At a psychosocial level people simply cannot do that very easily. It was in this milieu that the TRC was born. The initial idea was to deal with the past as quickly and efficiently as possible so that we could put the past behind us. It should have done a quick job, a kind of snapshot of our history so that we could go forward. But the TRC took on a life of its own. The point I am making is that it never was intended to create too many memorials and monuments to the past. But it did. The TRC has become a kind of monument in and of itself to the past. And, for a variety of reasons, in so doing it has generated a spiritual mode of reconciliation. This is at least how perhaps the majority of South Africans understand the message of the TRC. Intended or not, this is what it is understood to be advocating. The nation was required, through the TRC, to reflect on the past in a ritualistic way. The outcome, as I have suggested, is this apparent incentive that we love one another.

This brings me to a point that Antjie made. The emphasis is further on reconciliation between racial groups and this seems to have resulted in the re-emergence of race in our societal discourse - particularly on the part of those in power. This having been said, there is also a great deal of misunderstanding concerning the position of some in power with regard to race. Thabo Mbeki, for example, is one of the most easily misread writers that I have seen. His I am an African speech is, for example, the most inclusive non-racial speech he has made - although he is often misread as being an Africanist, if not a bit racist! His Two Nations speech is, in turn, often used as a reference point for the new racial debate. His intent, apart, is not to become more and more dominant in our societal discourse, the question is why?

In some ways it has to do with the decline if not demise of the South African Communist Party and the general drift of the South African left away from the principled non-racial position which led to its birth. In the struggle days the South African struggle was typified in purely non-racial terms. It might have been just Marxist-speak, but you will remember that there was a central talk about a principled contradiction that faced South Africa. The principled contradiction had to do with class inequalities that came to express race. But race was never, in those circles, regarded as the dominant contradiction. Why is it then that we are being driven increasingly into the race debate, rather than the class one? It may have something to do with the fact that in attempting to address the concrete manifestation of poverty we are driven into racial talk. We need to guard against this principled contradiction. To fail to do so is to fail to deal with the essential issues facing this country, which is poverty. Reconciliation is more profound and complex than is suggested in the race debate.

Let me come to an end. I am not sure how useful a concept reconciliation is as a national project. When the South African Communist Party was unbanned and communists were trying in 1990 to sell themselves to the South African populous, they met with different religious groups leaders. Joe Slovo, Essop Pahad and others came to the University of the Western Cape in an attempt to explain to religious leaders and others that there was no contradiction between communism and religion. Slovo did a nice party piece about the coincidence of values between socialism and the great religions of the world - projecting, as he did so well, the human and the humane face of socialism. One of the first questions was from a woman in the audience who said, "that
is all very well. I am not anti-communist and all that but I hear that the ANC under the leadership of the South African Communist Party does not believe in retribution – and your affirmation of the religious notion of reconciliation has confirmed this for me." She went on to give a blood-curdling exposition of the importance of retribution. That took Slovo totally by surprise. He had come there to project the need to forgive. Not for a moment did he think that he would be challenged for not being cruel enough. After catching his breath, he said, "well, yes, it is true, but you know we can punish them best by building a democratic society, having human rights, letting them live in that. Perhaps that is the way that we should proceed to build a new nation.

In my understanding, a reconciled nation, a society within which we can live together, is essentially one within which there is a stable political, constitutional and legal framework. I think we have that in South Africa. And it must be protected on a daily basis. Where there is tolerance and the acceptance of diversity and difference as is allowed by our Constitution we are on the way to being a reconciled society. We need to work for rooted conventions of stability. We need not necessarily love one another as long as these conventions of stability are upheld and that they take root and grow. We do not need to love one another, so long as we do not kill one another. We need to work towards the institutionalisation of consensus seeking. If we are a divided society with different sectors, with diversity, then institutionalisation of consensus is a very important thing. An index of decency in a modern society is respect for contrast. There is nothing spiritual about that. Stay married, sober, respecting, giving your word and keeping your word. Add to this a serious commitment to eradicating the final and the major obstacle to nation-building, which is the gap between the poor and the rich, and we are on the way to being a reconciled nation. But again, I am not sure if we should not find a different word to define this project. But, yes, it is a word widely used and entrenched in our democratic vocabulary. The major challenge we face is poverty alleviation and eventually eradication. And yet let me challenge my old comrades again to think afresh. It is perhaps not only poverty alleviation. It is the democratisation of prosperity and wealth creation that is needed.

I am not an apologist for the South African government. I need not be any longer, but I do understand its economic strategy, its fiscal discipline. Putting in place the fundamentals and fiscal discipline does mean less spending on social services than one would ideally have either hoped for or wanted. I am sure that fine-tuning is always necessary, but it seems that only a principled approach to what is being presently pursued will ensure South Africa's growth within the global economy. This can result in job creation and the spread of prosperity. The South African left needs to produce fresh thinking about the creation and the spread of wealth rather than allowing itself to be stuck in poverty alleviation. This alleviation is absolutely necessary. Serious redistribution will not, however, come without the accumulation of wealth and wealth-creation. But this is surely the topic of another seminar.

A last footnote. Perhaps the best way for a society to deal with its divided past and with its hurts and its pains is through the long process of story-telling. We need to look to our writers, poets, artists and different communities who seek to deal with their particular histories in an imaginative creative way. In some small way this Institute must contribute to this as well.

**Antjie Krog**

The obsession of South Africa has always been race, our affliction has always been racism. White. Or Black. No breath in between. For more than three centuries racism has been the deep wound of this country. The constant undertone, the cruel shrill over one. Race has pervaded South African life; it has pervaded the South African soul. So, if one wants to anticipate "a different kind of future" one will have to deal with race and its place in the interaction of South Africans.

Remembering our own past and trying to make sense of Zimbabwe, one can gather three things: firstly, the race card is the most disempowering tool to use. It disempowers the targeters from articulating effectively what they have a problem with. It also disempowers those from the unaccepted colour – how do you ever counter the fact that you've been targetted, not because of what you've said or done or practised, but because of the skin colour you've been born with. How do you reject the colour of your skin? How do you defend it? Will anybody believe me if I say: I am not white, at heart I am black?

Secondly, race can be a trap – trapping the more important debates within the colour codes of race. Instead of dealing with democracy and the restitution of land, the debate is neatly trapped within the black and white squares of race. Thirdly, and more importantly, if people turn against people because of their colour, they in the end always turn against their own. And you can take it from me coming from a community who targetted the majority of South Africans because of their colour – those who humiliated, rejected and killed in the end turned against their own.

Therefore for me a different kind of future would be one where the question of race would find its subsidiary place within a bigger framework. Important, but not dominating. Because racism is not the problem of the continent; neither, I believe, is it the decisive debate. The issue in the countries of turmoil in Africa is power, the use of power, the selling of power, the hanging on to power, the accountability of power. The issue is power, not colour. The tension and injustice and killing are not between races of different hues, but between those wielding power and those who don't. The crucial relationship in Africa is not between black and white, but between those with power and those without; between those who have access to resources that could change the lives of those without resources. The haves on this continent are both black and white; those who do the wheeling and dealing and selling out to former colonisers are mostly black, those who do the physical killing are black, those who die through violence and hunger are black. The essence of struggle in Africa is not between black and white, but between the rulers and the ruled; those who have and those who don't. This is the essential debate – within this, colour plays a role.

People who prefer to scrape all of this under the carpet of race are letting go of the few leverages to really change people. One cannot change one's skin, but you can change your attitude. When you target a group because of its race, it is usually a tell-tale sign that you have already turned against your own, that you are prepared to destroy your own people in order to save them. Hitler has
done that, Idi Amin, Verwoerd, Vorster and Botha, and so it seems, our neighbouring president. Over the years, for some people, Mugabe has become the epitome of someone who holds whites accountable for everything, but himself to no one, especially to his own people. If a country wants to get rid of whites, when will it be the turn of Indians, Arabs, mulattos—how black is black? What is pure black? What religion or language or ethnicity is then the essence of being African?

Together with the continent we need to debate what the responsibility is of those in power, those who rule. With this I am not saying that race and racism are not important issues. I am saying that race can become a trap—like a straitjacket it can bind the debate from a moral one into a political nationalist one. Some will cry: I’m black, I’m African, I’m the majority and I rule at least better than you. Other voices will shout: I’m white, according to you I’m disgusting and I don’t bloody care. Race and ethnicity always shift the debate from where it is right for both of us to what is mine.

South Africans and Africans need to enter the debate on the accountability of power. The moment this becomes the debate, race and racism will find its subsidiary place within a broader more crucial framework. For example, the role race plays in the responsibility of power, the role racism plays in hampering or corrupting the execution of democracy. So the different kind of future I anticipate would be one where South Africans slot in with attempts at a broader debate on the continent—the one between those with power and those without.

The truth commission has played a very important role in establishing a culture of human rights by deliberately and, sometimes at great cost, transcending race. Unlike European countries, the truth commission did not have primary and secondary victims. White and black, coloured and Indian, literate and illiterate, rural and urban victims testified next to one another. The truth commission provided a forum where grief and loneliness and bewilderment and pain had no skin colour; hurt cuts the same. Sacrifices for freedom did not only come from one colour, one area, one group, one political party, but from a wide spectrum of South Africans.

The same was heard before the amnesty committee. The majority of amnesty applications came from black people. We saw black and white, coloured and Indian perpetrators and they killed South Africans of all colours, sometimes people of their own communities. With great care the truth commission tried to get South Africans to transcend race and to realise what matters is not the colour of your skin, but the decisions you take, which affect your fellow men. This is one of the most important legacies of the truth commission and probably one of the most neglected. The debates in Parliament in the issue always seem to fall back into the comfortable stereotypes of race—the rich white nation and the poor black nation. Not the victims and the perpetrators, not the survivors and the beneficiaries, not those who have taken a stand for human rights and those who haven’t, not those who had power like PW Botha and Oupa Gqozo and Gatsha Buthelezi and those who didn’t like Elsie Zingxondo or Ruth First.

Much of the ambiguity with which the government has dealt with the TRC’s final report can, however, be blamed on the TRC itself. An important defect of the commission is its failure to secure a mutual and tacit understanding between itself and the ruling party—the party that had to take its legacy further in overseeing reparation and reconciliation. Instead of being briefed properly on the content and interacting on future steps and decisions, the relationship between the TRC and the ANC deteriorated into a rancorous affair. One can safely say that the way in which the TRC’s findings were initially conveyed to the ANC and the public played a detrimental role in this process. The quarrel between the ANC and the TRC left the populace confused and reduced the debate from human rights into one of race.

Unfortunately the consequence of the ANC’s reaction to the TRC’s final report is that there is currently only one debate—the one on race. There is no debate on human rights, on accountability, on the beneficiaries—who they are, how much they benefitted, how to prevent future abuses, how much of the past is already happening in the present, on collective guilt, on moral choices. I want to plead here: there simply has to be a discussion between the survivors and the victims. It is crucial that both these groups apply their minds to what is sufficient payback. Taxes? Land? All the land? Does South Africa want to be without the beneficiaries of the past or only without whites? Will any payback suffice? It is important that people state their claims and the other party respond to it either by complying or even leaving. But we don’t talk—we wait for the President to say: you owe us, you owe us not. The word white gets everybody into overdrive while the word moral is thrown to the churches—the RDP of the soul becomes the work of priests and imams.

Moreover, it is becoming common cause that the difference between people does not lie in the ability to exercise moral choices under difficult circumstances, neither does it lie in upholding human rights for all people. The difference between the past and the present lies in colour and in colour alone. Colour has become the only morality. Analyses done in countries after World War Two indicate, however, that it takes a long time for a country to step out of the past with its group or nation or race obsession.

According to academics there are three post-war phases. The first one is when the past is used to create unity, to heal a wounded nation. The idea here is that only the version of the past that will induce unity is acceptable. Therefore memories that could undermine or disturb the idea of unity, continuity and finality are often repressed or ignored. This is the time for mobilising on strong group feelings, ethnicity, minority demands—anything that will bring a sense of belonging. It is also the time of the politicians—galvanising the feelings of those who have survived the trauma of the past, redefining the group, bonding with each other on a new basis.

The second phase is sometimes simultaneous: the time to say the sufferer was not in vain, therefore the memories of the war are usually integrated into the dominant political and ideological frameworks. They surface by means of memorials and other national monuments strongly claimed by the new powerful. These two may be followed by an important third phase which sometimes takes more than two decades to happen, when the children of the survivors and the perpetrators have become adults. This is the phase where they want to know more about what their parents and grandparents did in the past, they no longer buy into the united bloc-like solidarity that all group acted the same and supported the same and had no choice but to obey or to suffer. They start to individualise the past, they strip away the collective history...
look for an ahistorical story. The war then starts to lose its historical and political framework and becomes a source for moral criticism. This is then apparently turned against the inner weakness of the prevailing social and political systems with its middle class mentality. Central to this stripping away is no longer the idea of a sensible struggle for a high cause, but the senseless suffering, the persecution, the killings, the pain. In this way the ideologically based and exclusivist view of the past gives way to a pluralist view which also makes space for the marginalised.

A gradual erosion of the traditional ideological values gives way to a less uniform and hierarchical historical culture and public memory. This is regarded as the most important and decisive phase because the moral aspects of conflict are being universalised through a process of de-historicising and individualisation. This is the different kind of future one would like to see developing.

To put it more viscerally: I would rather share a country with people whose basic value system I share, no matter their colour or creed, than share a country with those Afrikaners whose value systems I find problematic, but am forced to be part of them because I am only acceptable in South Africa as an Afrikaner. The day one’s only refuge has become one’s race or ethnicity, is the day we should realise that we have failed to create a different kind of country than the one we had in the past.

In conclusion, the South African government has no choice but to walk the perilous tightrope. It wants to and has to instil national pride, confidence and accountability. It wants to succeed as a black government on the African continent; thus it has no choice but to deal with the notion of race, to restore black pride, black confidence. At the same time it has to change white people into useful non-obstructive citizens and create a South Africanness which does not keep on eclipsing the words coloured and Indian. But the future I anticipate knows that for South Africa to succeed as a country in Africa and in the global context we need above all to keep alive the spirit of humaneness, of caring for our fellow South Africans, set alight by the foundations of the liberation struggle, the election, the Constitution and the thousands of survivors who did or perhaps did not testify before the TRC.

Finally: we should get rid of the word “reconciliation”. It has become the hidden agenda – we no longer have truth, but truth as in reconciliation; we no longer have justice, but justice as in reconciliation. What is more, the word reconciliation presupposes the two groups between whom reconciliation should take place – white and black. The word keeps us then firmly trapped in what we want to escape: the assessment of people according to their race.
beginnings are not endless. Permanent revolutions breed frustration, per- petual transitions bring fatigue. Beginnings are specific moments that require the intense heat and light of human creativity. They interrupt time in order to make time, asking us to risk what has been for what may become. The risks are big and small. In any case, it is not clear that the joy wrought by the "birth of something new on earth" can or should be felt on a regular basis. Beginnings need to mean something.

Beginnings entail open-ended creativity and instrumental action – imagine a goal, evaluate its merit and feasibility, work (more than labour) toward its actualisation. The process is not seamless, especially in matters of political transition. There is no formula or predictable progression that leads inexorably to the "consolidation" of democracy complete with the neat and tidy end of history. In this respect, political science has much to learn from the patterns of literature: beginning, middle, end. The poems, novels and short stories next to our beds, the works that keep us up to meet the dawn, begin in various ways – intrigue, conflict, need, desire. The action comes in the middle. The ability of the author to complicate, dissolve and form the relationships that compose the very substance of the work determines whether we will read on, sample from the television or turn off the light. Middles are where meaning is created and found.

South Africa appears to have entered the middle of something. I say "appears" because middles are notoriously hard to define. The matter may be as simple as the sigh of relief that accompanies Jakes Gerwel's observation that South Africa stands at the "beginning of normality" or as complicated as the need to invent some vital sociopolitical goods in a manner that does not require the re-ignition of revolution, negotiated or otherwise.

We are in a middle when we recognise that it is sometimes easier to build institutions than to live with them. They are moments of strange mixture – satisfaction and unhappiness, fulfillment and want, barrier and opportunity. The time when beginnings show their unexpected consequences, middles are not necessarily moderate. They generate frustration as their constituent elements impede progress. They produce anxiety, especially as they force a look back. In the ensuing debate over the precise meaning of a beginning's promise, the dialectics come to have more than two sides.

Sharp reflections, the essays that compose this volume are also in the midst of something. As Charles Villa-Vicencio notes in the introduction, they are different from normal conference fare. These are ideas and essays that endeavour to make a difference. They succeed. Each invents something directly relevant to the problem of what it means to transcend a century of injustice. In their congruence and clash, the essays are nothing short of eye opening. They delineate old problems that need new solutions and isolate new concerns that might benefit from old perspectives. They also show that the line between the old and the new is not always bright. Thus, they ask questions that are pertinent in this moment, the present that sits between South Africa's past and future. Is it useful to continue talking about reconciliation? Do structures of memory ensure its practice? Can the authorship of constitutional politics contribute to the production of material equality? When does race matter, power threaten, and reconciliation heal?

Posed in connection with the launch of the Institute for Justice and Reconciliation, these questions do not appear to have certain answers. In some sense, they force each essayist to move from South Africa's recent beginning through the actions of history and then on to a set of complex controversies in which concepts contradict, languages fail to translate, people clash, institutions make (unpopular) choices and citizens wait for what has been promised. In their own idioms, the essays claim, "there is something that stands between us". What is intriguing, however, is that these oppositions are defined as opportunities, chances to make and remake the terrain of everyday life. This is not idle chatter, abstract "unity in difference" speak. Many of the essays show less interest in how to rid South Africa of its oppositions – as if that were possible or desirable – than a concern for the ways in which South Africans can recognise their oppositions and render them productive. The language of invention is explicit and rich. It deserves careful study. Here, in a fragmentary and non-prescriptive way, I want to consider the different ways in which these essays propose to turn those things that stand between us – as sources of division – into goods that create standing between us. The distinction is a fine one. At the beginning of the middle, how can South Africans move between opposition and understanding? The essays here suggest that both are important. For personal and political reasons, neither ought to be reduced to the other. If so, the suggestion implicit in these essays is that the task of transcending a century of injustice does not entail all that much transcendence.

Each of us, South African and non-South African alike, lives in the midst of things. Sometimes it is an ecstatic existence, full of discovery and replete with joy. At other times it is nearly unbearable; the burden of living between past and future, neither of which we can fully control. The essays here define and craft something out of this tension. They do so in a way that bears directly on the Institute that they help launch. That is, they offer important insights into what it means to live between justice and reconciliation.

Bridges, Roads and Cul-de-sacs

As a visiting academic my time in South Africa is long but increasingly not long enough. This country is truly remarkable. My letters to distant friends and colleagues generate interesting questions. People are genuinely surprised when I report that South Africans spend substantial amounts of time debating what reconciliation means. They expect me to relate controversy over whether reconciliation works. Most do not understand, however, the reconciliation neither began with the Truth and Reconciliation Commission (TRC) nor ended when the commission handed over its Final Report. In fact I increasingly suspect that a necessary element of reconciliation is the ability of citizens, publics and institutions to argue about what the term means. The arguments are complex and important. Definitions imply purpose, justify action and buttress evaluations of success. Arguments about the difference between real and cheap reconciliation, evident in texts like the Kani Document, speak volumes about what it takes to heal a deeply divided soci
Many suspected duplicity when FW de Klerk argued in his 1989 inaugural speech that: “There is but one way to peace, to justice for all: That is the way of reconciliation.” Is it reconciliation if we say it is? The stakes are heightened even more when reconciliation is set into a constellation with other political god-terms – truth, justice, equality. Can reconciliation be reconciled with other ethical ideals?

The first and last essays in this volume advance significant claims about the nature and value of reconciliation. In his eloquent keynote address, Pieter Fourie finds substance and potential in reconciliation: the TRC has been a good start, there is work yet to be done. Healing must continue, forgiveness cannot. Important in the work of nation-building and the ability of South Africans to “collectively interact,” reconciliation is a bridge between past and future. In a slightly different vein, Jakes Gerwel wonders whether the aims of reconciliation are realistic in modern society. Is South Africa too big, society too diffuse, for reconciliation to be anything but an abstraction? Perhaps, he suggests, the country needs less love and more consensus seeking. Conventions of stability need to be crafted; decency has to be cultivated within a respect for contrast.

At one point, the essay echoes Antjie Krog's forthright contention that “we should get rid of the word ‘reconciliation’”. Much of Krog's argument rests on the matter of race, an issue to which I will return shortly. At another level, however, there is a sense here that definitions of reconciliation have become either over- or underdetermined. Without clear referent, the word does too much and too little. It means everything and nothing at the same time – process, product, goal, institution and cultural bedrock.

If reconciliation is not going to disappear, if Gerwel is correct when he notes that it is deeply engrained in the fabric of democracy, the essays here suggest that South Africa is between definitions of reconciliation. Its meaning and value in flux, the question becomes how to (re)invent the term in light of the times. With great clarity, Aclinda Honwana's essays highlight the contextual dimensions of reconciliation, the difference between national and local efforts to repair the pain of violence and the despair of loss. Reconciliation may thus have something to do with seeing and entering spaces that have not been seen or entered. Siphiwe Xaphile's comments about the experiences of Gugulethu schoolchildren underscore that the ability of reconciliation to break down the spatial divisions of apartheid is fraught with unexpected dilemmas. More systematically, Breyten Breytenbach offers that reconciliation may entail the articulation, recognition and interaction of different identities. What binds these notions is that reconciliation must work in relation to the urgencies of history as it is lived. The bridge between past and future has been built. The essays here ask after the mechanisms by which it can be crossed, especially given that the traffic appears to be running in two directions.

Remembering Metaphor

One engine of reconciliation is memory. Faced with his own conflicts, the Apostle Paul claimed in a rather secular way that reconciliation entails a process of remembrance in which there is more faith and feeling than knowledge. The old is rendered new to the extent that the past affords us the resources to imagine and create relationships with those we oppose. This can occur in a variety of ways. Memory may be a mechanism for survival, a basis for identity. It is also a way of coping with the greater and lesser pains of life.

Memory heals as it helps us to move from an endless melancholy to a mourning that gives way to a vision of the future. Too, memory is a source of justification and action. Right and wrong are plotted in relation to the past. What should and should not happen, the divide between justice and injustice, have much to do with our ability to read the “effects” of past actions.

In different ways, the papers here raise complex questions about the dynamics of memory and its connection to reconciliation and politics. The basic framework for the discussion emerges from Johan Snyman's distinction between a monument and a memorial. The former celebrates a beginning that helps build the future. The latter recalls an ending, a loss that must be taken into the future but never duplicated. Sandile Dikeni's challenge to this position is that the memory business is a gimmick that requires us to feel but offers no compelling reasons why we should. In part, the objection rests on the complex problem of audience. It is difficult to ensure what Snyman calls “interaction between memorial (or monumental) and the public”. Our ability to find meaning in a memory structure depends on a variety of factors: its openness to interpretation, the way in which it relates or does not relate to the larger historical milieu in which it is situated and its ability to weather generational shifts about the meaning of history. Beyond what I can do here, Krog's and Ntabulo Ndebele's imaginations (in the best sense) of historical progress bear heavily on the problem at hand and deserve fuller study.

What I will say is that monuments and memorials become troublesome as they foreclose opportunities for identification between structure and viewer. More seriously, a characteristic problem of monuments is that they can “mean” in different ways, sending messages that are mixed and potentially alienating. The words that sit below the front steps of the Afrikaans Language Monument – Dit is ons erns, translated loosely as “this is what we are serious about” – illustrate why these problems do not have ready solutions. On one side, I personally lack the interpretive skills, the lived experience, to fully understand or appreciate this sentiment. At a basic level, my outsider-ness confounds the possibility of identification. This leaves me with several options. I can feel nothing, a sensation that is for me very much a feeling. Alternatively, I can turn to my own tools in order to reflect on the necessity and emotive qualities of linguistic diversity as it pertains to the growth and preservation of identity.

In this vein, I stand to benefit intellectually and personally from a consideration of what makes other people feel. This introspection can also prompt questions that may or may not lead to interactions with other people about the significance of the monument: What are the terms of the pledge? Is it reversible? Is there any room for the lighthearted in the midst of the seriousness? For others, however, the difficulty may be more profound, particularly as the monument points less to the future than forces a recollection of a how language has been used to classify, divide and subjugate. Serious indeed. The genres can mix. Not all memory structures are for all people. This may not be a problem if the monumental is not uncritically equated with the universal. If it is, there may have to be no monuments at all or a multitude of monuments, each tailored to the specific needs and feelings of an individual.
With respect to memorials, thinking especially about Emily Hobhouse's effort to get the Mother and Child "just right", Dikoni's comments about the varied nature of repression led me to recall Primo Levi's observations about the nature and limits of witnessing. The dead cannot speak; the use of their memory may be the inspiration for "never again" or blasphemy that trivialises what cannot be truly known. The line is a fine one. It leads to intense public debate, a good that may be just if not more valuable than the structures themselves.

Societies build monuments and memorials, not just one or the other. When one stands at the foot of the Union Building and looks between the centre columns of the Police Memorial, the Voortrekker Monument comes into view. The effect is startling. Are these separate entities? Which has interpretive priority? Set on opposite sides of the valley, one of the things that stands between them - as both relation and separation - is the hubub of life in Pretoria, the moments and monuments of everyday existence. This may mean that the debate is less about how to commemorate past and future than about the precise ways in which memory structures shape the present. In other words, the tension or the gap between the monument and memorial is a metaphor for the need to create this place and time (Breytenbach). It may also be a source of metaphor, a site of inspiration in which we can mix ideas and practices in new ways. In either case, the risks of backward looking despair and future looking utopia recede when the cloth of the now is stitched from both past and future.

**Speaking (Now) to Power**

The complex work of memory contains the potential to author the present. A "now document," according to Langa, the South African Constitution is a living text that affords citizens an authorial capacity, an opportunity to write history. In large measure, Lourens du Plessis and Jeremy Sarkin seem to agree. As both monument and memorial, the Constitution is a "blueprint" for South African society, not the finished product. It provides a "framework within which the life of the nation must be nurtured". Through its words, and in the ongoing debates over the meaning of these words, the Constitution provides a model for how a society can invent the terms of collective life, the form and substance of political and social relationships. With elegant argumentation, the papers here reveal much about the complex and important nature of "constitutional" language, the ability of a text to co-ordinate, regulate and inspire.

The act of constitution yields vital words. As they put past and future into play with one another, these words spur more words, dreams and reflections about the ways in which citizens can live and interact. Viewed as a whole, the essays in this volume show an immense sensitivity to the intentional qualities of language. We find and create ideas in speech and language. These goods connect and differentiate us from others. They support collective activity and carry disputes that force us to test our presuppositions about what is true and right. For instance, the charge that Phillip Dexter is proffering "yesterday's rhetoric" needs to be read in relationship to his attempt to understand whether the vocabulary of political transition and formal constitutional rights is rich enough to delineate and motivate peoples for new ways of life.

Horwana argues that healing is a symbolic event that occurs within and without language. Some silences are productive, some words cathartic. A blurring of the objective and subjective, the difference has much to do with our ability to interpret the ambiguities of context and audience. Ndebele maps this problem onto an historical imaginary in which the capacity for progress and creativity appears in narrative. Breytenbach and Ampie Coetzeed plead for language's right to life, stressing how it is "an instrument of observing our own consciousness and thinking, and thus to diversity".

These appeals have very real stakes: the actions of words create and perform power. Read closely, these essays have a great deal to do with power. The term appears again and again. It is a subtle - never fully spoken - keynote, the term that directs but never makes it on to centre stage. Reconciliation gets dissected. Power does not. Two senses of the term are readily apparent. On one side, power is about the human capacity to build something in common. Empowerment, the relations of production, the force embedded in and symbolised by the rule of law - in different ways, these are ideas that speak directly to the potential (a synonym for power in ancient Greek) for collective (inter)action. They are goods that stand between us as bonds, links that allow people to live in relation. On the other side, power is something illusive and divisive. It is an object of our critique. The issue of power, Antjie Krog notes, is about the "use of power, the selling of power, the hanging on to power, the accountability of power". Language must be brought to power. Our words must crack its protective shell, open it to the light of day and return it to the commons from which it came. Ultimately, however, the distinction I am drawing is a false one. The power of language to relate is equally the power to divide. We need to debate the responsibility of those in power in order to create power. And so on. Caught in the middle, the question becomes how to reconcile the fact that our oppositions unify and our unifications oppose.

**Productive Opposition**

Debates over how to create and share power are ensnared in the problem of race. Echoed by others, Krog's lament is a compelling one. The ability to express identity is vital and often constructive. Identity politics are the short road to animosity and violence. In part, Krog sees a need to supplant the "trap" of race with concrete discussions of power. This may be a sensible proposal. I am not sure. What bothers me is the possibility that the dialectics and circles of power frequently generate the same dynamics that lead her to reject the race card. As power is equated with identity and when identity is then tied to historical necessity or destiny, the space for productive debate narrows quickly. Thus, swapping race for power may be risky. It could obscure the fact that how debate occurs is just as important as what the debate is about.

There is legitimate dispute over whether the TRC and its view of reconciliation diffused or armed the race question. One thing that the TRC did do during its short tenure was to stress the importance of civic discourse. The commission's Final Report explicitly calls for the creation of a "culture of debate". Surely, each of the preceding papers is a first stage response to this call.
with American politics, is that it is not entirely clear what it takes to create and sustain a culture of argument. Many cultures teach their children that arguments are the prelude to violence and must be avoided. I find this perception at home and I sense it here. If people are unwilling or unable to risk the possibility that they might be wrong, and that they may need to change their minds about things near and dear, there is precious room for argument.

There are many ways to argue and debate. Making an argument is not the same thing as actually engaging in argumentation with another person. Lists of questions are not arguments. Interlocutors have to spend time negotiating the ground rules for what counts as a reasonable claim. When this question cannot be resolved, new approaches have to be invented. The list goes on. The point is that these kinds of distinctions are not necessarily intuitive. Across national borders, communities and the halls of government, they have to be taught and cultivated. Opposition is a vital good. It keeps all of us honest by demonstrating that there is much in the world that we cannot control. If so, one legacy of the TRC is the need to question whether and how reconciliation can fund productive disagreement.

One place to begin this work may be at the nexus of justice and reconciliation. Each of these terms is dynamic. Each has more than one form. When paired, the terms can coalesce, conspire or contradict. Their sum may be more or less than the parts. As the meaning of reconciliation has grown heavier, many sense that it has lost its connection to justice. The imminent debate over what to do after the amnesty process is over will be important. In it, the value of reconciliation may rest on the ability of individuals and institutions to talk about reconciliation in ways that perform it. To me, the essays here suggest that reconciliation has something to do with the invention of agency. This means different things in different contexts. Some need opportunities to create and express their identities in ways that garner meaningful recognition. The redress of material need may be an essential element of this process. Others may need to craft the skills of identification. In any case, the connection between reconciliation and justice rests heavily on whether it is possible to have oppositions in common, disputes and interactions over what counts as a just and good life. These interchanges need to support action. This is not easy work. As South Africa moves from beginning to middle, there is great potential. I dare say that the Institute for Justice and Reconciliation is one of the stars on the horizon. Its director has decided (again) to step into the midst of things. Although I doubt that he wants it, Charles Villa-Vicencio should have the last word here:

“Political wisdom in transitional politics has to do with steering the ship between impunity and unrestricted punishment (what Odysseus would have seen as the only passage between Scylla and Charybdis). Restorative justice is a tall order. Its demands extend beyond prosecution and the courtroom. It includes punitive justice where necessary, while ultimately addressing the covenant the nation made with itself concerning the values captured in the postscript to the interim constitution...No model of justice covers all the stops. Restorative justice, not least in a situation of political transition, is about not neglecting those ‘stops’ that prepare the way for victims and perpetrators, their respective families, their communities and the nation as a whole to learn to live together after years of enmity. This is never an instant affair. It takes time.”
From left, Hennie Coetzee, Sandile Dikeni, Charles Villet Vicencio and Johan Snyman

Transcending a Century of Injustice conference in session – a bird’s eye view

Guests and delegates listen attentively to speeches at the conference’s opening

(From left) Helen Macdonald, Nyameka Goniwe, Wilhelm Verwoerd and Johan Snyman

From left, Ampie Coetzee, Jakes Gerwel, André Brink and Breyten