Reconciliation and Revenge in Post-Apartheid South Africa

Rethinking Legal Pluralism and Human Rights

by Richard A. Wilson

Human rights are a central element in the new governmental project in the new South Africa, and this article traces some of the specific forms of connection and disconnection between notions of justice found in townships of the Vaal and rights discourses as articulated by the Truth and Reconciliation Commission. The introduction of human rights in post-apartheid South Africa has had varied social effects. Religious values and human rights discourse have converged on the notion of reconciliation. The introduction of human rights in post-apartheid South Africa has had varied social effects. Religious values and human rights discourse have converged on the notion of reconciliation on the basis of shared value orientations and institutional structures. There are clear divergences, however, between human rights ideas and the notions of justice expressed in local lekgotla, or township courts, which emphasize punishment and retribution. The article concludes that the plurality of legal orders in South Africa results not from systemic relations between law and society but from multiple forms of social action seeking to alter the direction of social change in the area of justice within the context of the nation-building project of the post-apartheid state.

Duma Khumalo had been sentenced to death with five others in 1986 for the murder of a local Vaal councilor that he claimed he had not committed. The “Sharpeville Six” became a cause célèbre, a case which was taken to the United Nations and became an international symbol of the lack of justice for blacks under apartheid. When Duma was released in 1993 after seven years on death row, he demanded a retrial but was ignored. He staged a sit-in at the Sharpeville police station for 27 days in November 1995. In December the police took him to meet with the chief prosecutor and white magistrate in Vereeniging, who said that he had no case because there was no new evidence. On January 5, 1996, Duma hid an axe in his coat, entered the Vereeniging court while it was in session, and went berserk. The prosecutor cowered under his desk and shrieked, “Don’t kill me!” As others fled screaming, Duma, an imposing figure at over 6 feet tall and weighing over 200 pounds, swung the axe at desks, chairs, furniture, and the court’s public-address system. He attacked no one, and when armed police arrived he put his axe down calmly and put his hands in the air. In minutes he had created pandemonium, wreaked $15,000 worth of damage, and hewn a large pile of expensive teak firewood. Interviewed in late 1996, he said, “I just wanted justice.”

South Africa’s first post-apartheid government, led by the African National Congress (ANC), has embarked

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1. This research was funded by the Economic and Social Research Council (U.K.), Ref. R00022777. Versions of this paper were given during 1998–99 at the London School of Economics, the University of the Witwatersrand (1995–97) and has done fieldwork in Guatemala and in South Africa. He is the author of Maya Resurgence in Guatemala: Q’eqchi’ Experiences (Norman: University of Oklahoma Press, 1995) and the editor of Human Rights, Culture, and Context: Anthropological Perspectives (London and Chicago: Pluto Press, 1997) and [with B. Gills and J. Roca-Mora] Low-Intensity Democracy (London and Chicago: Pluto Press, 1993). The present paper was submitted 16 xii 98 and accepted 11 v 99.

2. The first of these vignettes comes from a performance at Johannesburg’s Central Methodist Church during a meeting of the Khulumani Support Group (a victims’ organization) on September 21, 1996. The second is based upon my own interviews in 1996–97 with Duma Khumalo, Father Patrick Noonan, and members of the Vaal Legal Aid Centre, who provided Khumalo’s legal defense. Khumalo later testified at the Human Rights Violations hearings in the Vaal and became a fieldworker for the Khulumani Support Group.
upon a nation-building project consciously predicated upon the creation of a “culture of human rights.” This has involved a number of classic liberal institutional reforms such as the incorporation of international human rights law into the Bill of Rights of the 1996 Constitution and the setting up of an array of new bodies such as the Human Rights Commission and the Truth and Reconciliation Commission (TRC). This article evaluates the manifold consequences of state formulations of human rights in African towns by looking at local responses to the view of reconciliation commonly espoused during TRC Human Rights Violations hearings. It attempts to answer questions such as How does transnational human rights talk relate to everyday moralities and normative understandings of justice? Do human rights concepts have any purchase in areas affected by political violence, and, if so, then how and why?

Over the past 15 years, there has been a lively dialogue between anthropologists and colonial historians regarding the relationship between state law and informal moralities and mechanisms of adjudication which are sometimes referred to as “customary law.” A key and contested notion in this debate has been “legal pluralism,” a descriptive term and analytical concept which attempts to address the existence of more than one legal system in a single political unit. In general, anthropologists have found the term useful, whereas historians of colonialism have objected to it. This article asks whether the idea of legal pluralism is valuable for thinking about legal consciousness in the unique historical phase of the dismantling of apartheid, an institutionalized regime of racial segregation and dominance.

Legal pluralism originated in antipositivist legal philosophy in the early 20th century as a reaction to an exclusionary state centralism which regarded only state law as law (see Santos 1995, Teubner 1997). In reality, argued pluralists, state law was far from absolute and in many contexts was not particularly central to the normative ordering of society. Against legal monism, Malinowski (1926) asserted that social norms in non-state societies perform the same regulatory functions as legal norms, thus raising uncodified social rules to the status of law. The insight that law does not have absolute privilege in dealing with conflict was an important one (see Strathern 1985 and Vincent 1990), even though it came with normative functionalist assumptions about organic stability and stasis.

Legal pluralists such as Jane Collier (1975) and Sally Engle Merry (1988) reinforced Malinowski’s stance by conceptualizing legal and social norms as equivalent and mutually constitutive. Judicial rules and extra-state norms (e.g., found in customary or community courts) are both “law” in that both are codes of social thought expressing moralities and social identities. The legal and the nonlegal relate to each other as competing normative discourses, and there is no inherent categorical hierarchy between them (although the state usually enjoys an institutionalized dominance over private moralities).

However, the emphasis on the importance and autonomy of social norms rather than positivized rules often entailed a neglect of the colonial state in the writings of midcentury legal anthropologists of Africa such as Schapera (1938). Legal anthropology in the colonial context often characterized state law and informal law as coexisting but unconnected spheres of authority and adjudication which employed different procedures embedded in distinct moralities. Discussions of the relationship between state and informal law often portrayed the two systems as static and isolated, thus fueling parallel debates about universalism and cultural relativism in the area of human rights.

In South African legal anthropology, an isolationist perspective is adopted in Comaroff and Roberts’s (1982) influential book Rules and Processes. This characterized Tswana law as a forum for individual negotiation separate from the interventions of colonial and postcolonial legal regimes. Although the authors have moved on to look in greater depth at the place of customary law within colonial policy (Roberts 1991), others have maintained a view of it as fundamentally controlled at the level of local communities and culture rather than by colonial and postcolonial states. Gulbrandsen (1996:125), for one, argues that the colonial encounter did not erode the local political-juridical bodies of the Northern Tswana of the Bechuanaland Protectorate (now Botswana), which were able to safeguard a “genuinely Tswana normative repertoire.” The stress in Gulbrandsen’s study is upon the preservation of “cultural integrity” and the “autonomy of Tswana jurisprudence” (p. 128) according to culturally specific ideas about gender, hierarchy, and space, to the detriment of a thoroughlygoing
analysis of the transformation of customary law by successive states.

The anthropological consensus on legal pluralism was directly challenged in the mid-1980s by legal centralist critiques to the effect that collapsing legal and social norms into the same category mistakenly turns all social norms and values into "law." This move makes defining law problematic in that every norm is defined as "legal." Legal pluralism, it is argued by legal theorists such as Brian Tamanaha (1993), loses sight of how the rules of norms into the same category mistakenly turns all social analysis of the transformation of customary law by successive states. Moreover, Tamanaha correctly points out that legal anthropologists never formulated a cross-cultural definition of law that did not somehow rely upon the state (see also Dembour 1990).

The primacy that anthropologists give to Africans' juridical autonomy has recently been subjected to a critique by colonial historians, who generally take the view that customary law was utterly transformed by, controlled, and integrated within the administrative apparatus of the colonial state (see Mann and Roberts 1991:9; Chanock 1985; Klug 1995). Instead of legal pluralism in Africa, there was only "a single, interactive colonial legal system" [Mann and Roberts 1991:9]. The most influential and consistent advocate of the centralist approach to African legal history has been Martin Chanock (1985, 1991a), whose work focuses primarily on the place of the legal regime in the policies of colonial states. He asserts that legal ideology has been a central part of the domination of society by the state. In his materialist reading, colonial and customary law were welded into a single instrument of dispossession and were part of a wider administrative policy of creating and maintaining a particular type of peasantry [Chanock 1991a:71]. Rather than being the product of immutable tradition, "custom" was manufactured as a legitimating device for maintaining the status quo after dispossession by reinforcing the position of the chieftaincy. Pluralism is but a legal fiction, a part of the ideology of British indirect rule in African and Indian colonial territories. According to Chanock (1991a:81), "An indigenous system of land tenure did not exist under colonial conditions, but its shadow was summoned into existence by both colonial and postcolonial states, essentially to retard the establishment of freehold rights for Africans."

In evaluating this debate, my sympathies are broadly with the legal pluralists, since the above centralist critiques have not fully taken into account more recent studies which conceptualize the relationship between state and non-state legalities in increasingly sophisticated ways. We are not forced to choose between the insights of legal pluralists and those of legal centralists, who have been moving closer to each other's position in recent years to look at the interplay between state law and local ideas and institutions of justice. Because of the way the question is formulated [What is the relationship between law and society?], neither tradition is wholly indispensable. Legal pluralism provides an important descriptive model of society as made up of a diversity of modes of conflict resolution, shattering the myth of state law's unchallenged empire. At the same time, the centralist argument has identified a logical contradiction: when the domains of the legal and nonlegal are fused, the category of "law" becomes meaningless, as it includes everything from table manners to national constitutions and transnational covenants of rights. Further, centralists remind us of the Weberian maxim that law is a semiautonomous discourse created by bureaucratic officials for the purposes of legal domination. Law's norms are positivized ones, often far removed from though not wholly unrelated to the lived norms of existential experience.

It is possible to take a more synthetic view of the creative tension between anthropologists and colonial historians and build up a version of legal pluralism that is useful for thinking about the interactions between state officials advocating new human rights ideas and practices and local moralities and legal institutions in African communities. There has been excellent work by social historians on the interactions between Africans and European colonial administrators, each pursuing their own interests, with the result being a "complex patchwork of overlapping legal jurisdictions" [Mann and Roberts 1991:16]. The work of Sally Falk Moore (1978, 1986) provides a useful starting point, as she has maintained a legal pluralist perspective while keeping the state firmly within the scope of the analysis. In Moore's view, "customary law" is the product of historical competition between local African power holders and central colonial rulers, all trying to maintain and expand their domains of control and regulation. Law is imposed upon semiautonomous social fields with uneven and indeterminate consequences. We must not overestimate the power of law, as the connection between native courts on Kilimanjaro and the British colonial high court was "nominal rather than operational" [1986:150]. Moore takes us away from a static view of plural legal systems to look at the historical transformations of regulatory practices, and her work oscillates between small-scale events [individual court cases] and large-scale social processes [colonialism, decolonization, etc.]. Moore largely accepts Chanock's portrayal of the profound transformation of customary law by colonial rule, yet her more interactionist focus upon the Habermasian "life world" and more specifically upon the kinship basis of Chagga society means that she allows more room for local strategizing in pursuit of greater political autonomy. She

6. This can also be done within a state-discourse-centered approach such as that of Fitzpatrick (1987), who analyzes how law operates without having to adopt an approach outside of state law. I thank Marie-Bénédicte Dembour for this observation.

7. As they are in Foucault's writings and those of postmodern legal theorists such as Davies [1996] and Santos [1995].

8. See also Charles van Onselen's work [1982] on vigilantes on the Witwatersrand at the turn of the 20th century.
concludes in one essay (1991:125) that “local law cases reflect the local history of African peoples rather than the history of the Europeans who ruled them.”

Yet there is still some work to do on the notion of legal pluralism in order to replace the stark dualism of pluralism versus centralism by a redefinition of the subject matter. Instead of adopting oversystematizing theories which construct the “legal” and the “societal” as two total and coherent cultural systems with distinct logics (see Santos 1995:116), we must analyze how adjudicative contexts are transformed over time by the social actions of individuals and collectivities within a wider context of state regulation and discipline. In any locale there are a variety of institutions and competing value orientations which have emerged via a long process of piecemeal aggregation, rupture, and upheaval and continue to be transformed by social action.

In a revised view of legal pluralism, the question to be answered is how social actors (encompassing both individuals and collectivities) have contested the direction of social change in the area of justice and what the effects of this are for state formation and the legitimation of new forms of authority. This is a legal pluralism of action, movement, and interaction between legal orders in the context of state hegemonic projects. In post-apartheid South Africa this involves looking at how state officials, township courts, and Anglican ministers combine transnational human rights talk, religious notions of redemption and reconciliation, and popular ideas of punishment and revenge in an effort to control “historicity” (i.e., the direction of social change, in the formulation of Alain Touraine [1971; 1995:219, 368]).

The struggle over historicity in post-apartheid South Africa presents itself as a struggle over how to deal with the political crimes of the apartheid past—to construct discontinuities with the past and in so doing to reconfigure legal authority in the present. The plurality of legal orders therefore exists within a context of remarkably rapid movement in the production of norms and values.

Legal institutions, be they local township fora, magistrates’ courts, or human rights commissions, are simultaneously subjected to centralizing and pluralizing discourses and strategies. At different historical moments, one set of strategies may exercise dominance over another and become hegemonic. In the mid-1980s, as the internal anti-apartheid movement led by the United Democratic Front reached its crescendo and “popular courts” punitively enforced counterhegemonic values and political strategies, the dominant tendencies in the area of justice were fragmenting, decentering, and pluralizing (see Lodge and Nasson 1992). Since the post-apartheid elections of 1994, the main direction of legal change has been towards greater centralization as state officials attempt to restore the legitimacy of state legal institutions. Government officials such as Minister of Justice “Dullah” Omar have sought to integrate certain non-state structures (armed units of the liberation movements and the Inkatha Freedom Party [IFP]) into the police service and exclude others such as township courts. Part of my general thesis about the South African Truth and Reconciliation Commission (TRC) is that it represents one effort on the part of the new regime to reformulate “justice” and establish a unified and uncontested administrative authority. This is a common strategy of regimes emerging from authoritarianism, which seek to unify a fragmented legal structure inherited from the ancien régime. The notion of “reconciliation” found in human rights talk is the discursive linchpin in the centralizing project of post-apartheid governance. The idea of human rights performs a vital hegemonic role in the democratizing societies of Africa and Latin America, one which compels social conformity, guiding the population away from punitive retribution by characterizing it as illegitimate mob justice.

The new values of a human rights culture are formulated primarily by intellectuals and lawyers representing a new political elite which has sought to superimpose them upon a number of semiautonomous social fields. These values engender new discursive and institutional sites of struggle, and their impact is uneven and emergent, raising questions for research such as Has the centralizing project as pursued through the TRC altered the terms of the debate on post-apartheid justice, and, if so, how? How can we more precisely conceptualize the specific continuities and discontinuities between normative codes? In what areas of social life are human rights ideas and practices resisted, when are they appropriated, and when are they simply ignored [for earlier discussions see Wilson 1997a, c]?

In post-apartheid South Africa there are various competing discourses and systems of values around justice and reconciliation. Christian discourses on forgiveness advocated by TRC officials often swayed individuals at hearings, but they clashed with the retributive notions of justice which are routinely applied in local township and chiefs’ courts. In thinking about how to understand the complex negotiations around the TRC’s redemptive concept of reconciliation, I eschew categories of “law” and “society” in order to examine two forms of connection and disconnection between the TRC and its urban African constituency: (1) additive affinities, the close associations between the TRC’s understanding of reconciliation as forgiveness and the religious values of victims and local churches, and (2) relational discontinuities, the divergence of human rights ideas from local court formulations of justice, which emphasize vengeance and punishment. If reconciliation is the key category of the new state’s centralizing project, then vengeance is the main concept around which pluralizing notions of justice coalesce.

These two categories are not static and mutually exclusive.
exclusive, and writers such as Minow (1998) and Jacoby (1983) have asserted that retribution need not entail vengeance and that vengeance and forgiveness can converge. In the South African instance, these categories of justice are reformulated with respect to one another by different social actors. Paying attention to the unintended consequences of moral categories alerts us to the slippage between reconciliation and vengeance. Ironically, the threat of punishment through local institutions can facilitate the results which human rights commissions seek, namely, coexistence of former pariahs and their neighbors in the townships.

The Truth and Reconciliation Commission

Along with the Guatemalan Historical Clarification Commission, the South African Truth and Reconciliation Commission (1996–98) is the latest of more than 15 truth commissions in the world during the past two decades. Truth commissions, set up to investigate certain aspects of human rights violations under authoritarian rule, have become standard institutions in democratizing countries (see, e.g., Ensalaco 1994, Hayner 1994, Huyse 1995). It is argued that they will revitalize citizens’ respect for the rule of law and promote a new culture of human rights.

In South Africa, the 1994 Promotion of National Unity and Reconciliation Act mandated the TRC to investigate “gross violations of human rights,” defined as “the killing, abduction, torture or severe ill treatment of any person” between March 1, 1960 (the Sharpeville massacre), and December 5, 1993 (see Krog 1998; Sarkin 1998; Wilson 1996, 1997b). The terms of reference allowed the possibility of including high-ranking intellectual authors of atrocities, as they referred to “any attempt, conspiracy, incitement, instigation, command or procurement to commit an act.” This was the widest mandate of any truth commission to date, but it did not include the belligerence and technicality of apartheid segregation policies. Detentions without trial, forced removals, and “Bantu” education policy, all legal under apartheid, were not included under the terms of the Act, although they are seen by many as human rights violations. The work of the TRC was divided into three committees: the Human Rights Violations Committee, the Reparations and Rehabilitation Committee, and the Amnesty Committee.

Throughout 1996 and 1997, the Human Rights Violations Committee held 80 hearings in town halls, hospitals, and churches all around the country to which thousands of ordinary citizens came and testified about past abuses. This process received wide national media coverage and brought ordinary, mostly black, experiences of the apartheid system into the national public space in a powerful way. The South African TRC took more statements than any previous truth commission in history (over 21,000), and the Human Rights Violations Committee faced the daunting task of checking the veracity of each account, choosing which would be retold at public hearings, and passing along verified cases to the Reparations and Rehabilitation Committee. The TRC also took on a limited investigative role, and by issuing subpoenas and taking evidence in camera it constructed a fragmented picture of the past. In its final report, published in October 1998, it produced findings on the majority of the 21,298 cases brought before it and named 400 perpetrators of violations. The “truth” of the TRC lay mostly in its officially confirming and bringing into the public space what was already known.

The efforts of the Reparations and Rehabilitation Committee to facilitate reconciliation represented the weakest of the three committees’ activities. Part of the problem lay in the fact that the TRC had no money to disburse to survivors; it could only make nonbinding recommendations to the President’s Fund. The TRC made it abundantly clear that victims should expect little from the process and only a fraction of what they might have expected had they prosecuted for damages through the courts. In the end, it recommended that those designated “victims” should receive approximately US$3,500 per year over a six-year period. It remains to be seen whether the reparations process, a key element of reconciliation, will even begin to address the needs and expectations of survivors.

Finally, the TRC was unique in incorporating an amnesty process, which elsewhere had always been a separate judicial mechanism. The final deadline for amnesty applications was September 30, 1997, and the TRC was overwhelmed with over 7,000 applications. To receive amnesty the applicant had to fulfill a number of legal criteria, including convincing the panel that the crime was political, not committed for personal gain, malice, or spite. Crucially, the applicant had to disclose all that was known about the crime and its political context, including the chain of command which authored the act. If amnesty was refused or if it was later found that not all material evidence had been fully disclosed, the applicant could be prosecuted.

In amnesty hearings, former members of the security police divulged information never made public before, such as the existence of a covert body called Trewits which drew up lists of activists to be “eliminated” (killed). Amnesty applicants also confirmed much of what was suspected, for instance, that in 1989 President P. W. Botha had ordered the bombing of Khotso House, the national office of the South African Council of Churches. The amnesty hearings were a theatricalization of the power of the new state, which compelled key actors in the previous political conflict to confess when they would rather have maintained their silence. Perpetrators were compelled to speak the new language of human rights and in so doing to recognize the new government’s power to admonish and to punish.

This theatricalization of power is a clue to why de-
mocratizing governments set up truth commissions rather than relying upon the existing legal system: truth commissions are transient politico-religious-legal institutions which have much greater symbolic potential than dry, rule-bound, technically obsessive courts of law. The TRC’s legal status was ambiguous: on the one hand, it was not a court of law which could prosecute or sentence, but on the other it was administered by the Ministry of Justice and had powers of subpoena, seizure, and the granting of legal indemnity from prosecution. The South African truth commission inhabited a liminal space between state institutions, and this liminality granted it a certain freedom from both the strictures of legal discourse and the institutional legacy of apartheid. National legal discourse did not contain the language with which to undertake its own rehabilitation, and the liminality of the TRC allowed it to plagiarize from a religious idiom. The TRC’s position as a quasi-judicial institution allowed it to mix genres—of law, politics, and religion—in particularly rich ways, and this makes it an interesting case study for understanding how human rights ideas interact with wider moral and ethical discourses.

Reconciling Races?

The dominant view on reconciliation in the TRC was created through an amalgam of transnational human rights values and a Christian ethic of forgiveness and redemption. It was propagated through dozens of Human Rights Violations (HRV) hearings in which selected victims spoke of the violations which they or relatives had suffered. In the HRV hearings, commissioners would lay a redemptive template across testimonies as they responded to victims’ stories, which conjoined individual suffering and a narrative of nation building. Commissioners’ responses were formulaic and predictable, regularly containing the following stages: a recognition of suffering, the moral equalizing of suffering, the portrayal of suffering as a necessary sacrifice for the liberation of the nation, and finally the forsaking of revenge by victims. There was a progressive movement built into these stages, from individual testimony towards the collectivity and the nation and finally back to the individual, all in order to facilitate forgiveness and reconciliation.

RECOGNIZING AND COLLECTIVIZING SUFFERING

The first stage involved expressing an appreciation of the evidence and sympathy for the witness. The individual circumstances were given recognition and value. From the idiosyncratic individual circumstances, commissioners quickly moved to the universal aspects of suffering under apartheid. When Peter Moletsane [Klerksdorp, Monday, September 23, 1996], recounted how he was tortured in police custody in 1986 after he had protested the killing of his uncle, TRC Chairperson Desmond Tutu replied, “Your pain is our pain. We were tortured, we were harassed, we suffered, we were oppressed.” Tutu was not claiming that he had been actually tortured like Moletsane. Instead, he was constructing a new political identity, that of “national victim,” a new South African self which included all the dimensions of suffering and oppression. Thus, individual suffering, which ultimately is always unique, was brought into a public space where it could be collectivized and shared by all and merged into a wider narrative of national redemption. At ritualized HRV hearings, suffering was lifted out of the mundane world of individuals and their profane everyday pain and made sacred in order to construct a new national collective conscience [Buzzoli 1998; see also, on the self and suffering, Das 1987, 1994; Hamber and Wilson 1999; Scarry 1985; and Kleinman, Das, and Lock 1996].

THE MORAL EQUALIZING OF SUFFERING

In the HRV hearings, commissioners repeatedly asserted that all pain was equal, regardless of class or racial categorization or religious or political affiliation. Whites, blacks, ANC comrades, IFP members, and others all felt the same pain. No moral distinction was drawn on the basis of what actions a person was engaged in at the time. Whether they were informing to the police or placing explosives for the Azanian People’s Liberation Army (APLA), the fact that they suffered was enough. For instance, Susan van der Merwe [Klerksdorp, September 23, 1996] told of how her husband, a white Afrikaner farmer, had been killed by MK (umKhonto we Sizwe, the armed wing of the ANC) guerrillas whom he had picked up hitchhiking along the border with Botswana. His vehicle had been found, but his body remained missing, hidden somewhere in the scrub brush of the desert. Archbishop Tutu responded to the story by saying, “I hope that you feel that people in the audience sympathize with you. Our first witness this morning [an African man, Gardiner Majova, whose son had disappeared in 1985] also spoke of getting the remains of a body back. It is wonderful for the country to experience that—black or white—we all feel the same pain.”

This moral equalizing is a common strategy adopted by reconciling postwar regimes to avoid public identification with one side in the conflict. Eric Santner (1992:144) writes how in Bitburg, Germany, in 1985 at a public ceremony of reconciliation there was a “sentimental equalization of all victims of war,” which he understands as part of a wider rehabilitation of the SS within a narrative of “Western” resistance to Bolshevism. Public rituals such as the TRC hearings in South Africa and the Bitburg memorial service in Germany are complex mnemonic readjustments designed to defuse political discord by denying the ideological reasons for the conflict.14

14. The final report judged that a just war had been fought against the apartheid regime, confirmed as a crime against humanity. Yet in the body of the report all abuses regardless of motivation were subsumed under the same blanket category of “human rights violations,” which made no such moral distinctions.
Liberation and Sacrifice

The embedding of an individual’s account in an allegory of liberation began immediately after the testimony. The first question by the commissioner leading the cross-examination was almost always about the context of the township or area at the particular time, not the individual event or unique circumstances of the victim. In this way, individual events were sutured to a social context: sexual event or unique circumstances of the victim. In this way, individual events were sutured to a social context of chaos, resistance, rioting against police, and rent and school boycotts and therefore part of a wider liberation struggle. “Sacrifice” provided the main symbolism for grafting individual pain onto wider political narratives and social processes, providing new meaning for death by creating a heroic figure of self-sacrifice in a new mythology of the state. Meaning was attached to the death by a process of teleologizing—of mapping onto the experiences of the dead and the survivors a narrative of destiny which portrays an inexorable progression towards liberation and the place of the specific individuals within it. This teleologizing of loss and pain is a common feature of “survivor’s syndrome” and has been documented for the Holocaust (Bettelheim 1952) and Argentina (Suarez-Orozco 1991).

The message was that people had died not in vain but for the liberation of the nation. Commissioners often referred to victims as “heroes.” The history of the new South Africa is a history of suffering which was necessary for its liberation and redemption. A clear link was forged between religious interpretations of suffering emphasizing sacrifice and martyrs and a more secular liberation narrative, with its imagery of national heroes. A unifying symbol which brought these two narratives together in a particularly powerful way was the figure of the black-consciousness leader Steve Biko. It emerged in the testimony of a security policeman applying for amnesty that Biko had been chained to a gate in the crucifix position before he died (The Guardian [Manchester and London], March 31, 1998), turning him into a symbol as a Black Christ of the oppressed African nation.

Benedict Anderson (1991) has drawn our attention to how nations are imagined through their war dead, focusing upon cenotaphs and tombs of the unknown soldier, which are filled with the ghostly imaginings of the nation. On certain memorial days, the whole nation participates in a simultaneous event to memorialize its dead. Similarly, HRV hearings often ended with the chair’s asking the audience to stand and observe one minute’s silence for the new nation’s fallen heroes. This has been institutionalized in South Africa with a Day of Reconciliation on December 16, ironically also the day on which the ANC celebrates the initiation of the armed struggle in 1961 and Afrikaner nationalists celebrate the Day of the Covenant in memory of the white settlers’ defeat of 12,000 Zulu warriors at the Battle of Blood River in 1838. This is the day on which the TRC started its work in 1995.

Redemption through Forsaking Revenge

Explaining why he had gone to such lengths to allow Winnie Madikileza-Mandela the opportunity to apologize, TRC Chairperson Desmond Tutu said, “I believe that we all have the capacity to become saints” (Weekly Mail and Guardian [Johannesburg], December 23, 1997). In the final stage of the process, the spiritual recompense for the loss of a family member was accentuated in the hope that it would preclude any need for individual acts of retaliation. The experience of the TRC was to heal wounds and smooth over resentments. Once individual suffering was valorized and linked to a national process of liberation, commissioners urged those testifying to forgive perpetrators and abandon any desire for retaliation against them. Commissioners never missed an opportunity to praise witnesses who did not express any desire for revenge. When Desmond Tutu replied to a case of murder in which the body was not found, he gave out clear signals about his views on retaliation. In the case of Susan van der Merwe, who had lived in relative penury after her husband’s disappearance, Tutu said, “It is good to see that you are not bearing any grudges. You state that your story of pain is but a drop in the ocean, but it is still pain that happened to you. I hope that God will anoint your wounds with the Holy Spirit and heal them.” The hearings were structured in such a way that any expression of a desire for revenge would seem out of place. Virtues of forgiveness and reconciliation were so loudly and roundly applauded that emotions of vengeance, hatred, and bitterness were rendered unacceptable, an ugly intrusion on a peaceful, healing process.

What were the responses to the TRC’s narrative on reconciliation in the townships of South Africa? How did local actors respond to the transnational human rights discourse when it was introduced to their communities via the TRC? My twelve months’ research focused on the Vaal Triangle to the south of Johannesburg, an industrialized and urban region of approximately 2 million people. It is an area with a long and intense history of political violence, from the Sharpeville massacre in 1960 to the necklacing of black councilors in 1984 to the undeclared war between the ANC and the IFP in the 1990s that temporarily derailed the peace talks between Nelson Mandela and F. W. De Klerk. Politically motivated massacres continued into late 1993, just months before the nonracial elections. My analysis of this research identifies no single definable relationship between human rights and “society”; instead, the language of rights has had uneven and varied social effects. Religious values and human rights discourse converged on the notion of reconciliation on the basis of shared value orientations. There was a clear divergence, however, between human rights discourse and popular notions of justice as expressed in a local township court.
Adductive Affinities between Religion and Rights Discourse

The concept of adductive affinities draws its inspiration from Weber's notion of "elective affinities," which pointed to the reciprocal effects of a resonance or coherence between frameworks of values in different social fields. In post-1994 South Africa there has been a discernible correspondence between the state's nation-building discourse on reconciliation and the social doctrine of large sections of the "progressive" Catholic and Protestant churches. This section of the religious community has been a fountainhead of symbolism for the TRC's own conceptualization of reconciliation. It also provided the main societal infrastructure for the TRC.

The collective effervescence of ritualized hearings became the mechanism through which the TRC's idealization of reconciliation was transmitted to participants. The hearings positioned individuals and their private narratives within a public narrative structure which made them aware of themselves as particular types of subjects. The creation of new identities ("victim," "perpetrator") engendered new types of attitudes and dispositions (forgiveness, repentance) which bound the subjects to the TRC's reconciliation project. This process drew upon a context of existing value dispositions or affinities, and new values were forged in the ritual hearings themselves. The important thing here was the ability of the ritual process to create loyalties and identities which had not existed before.

The TRC's organizational structure was intertwined with a number of societal institutions but none like the church sector. The use of the same networks of personnel by the two institutions led to an overlapping of structures and the transmission of national narratives on reconciliation to individual victims. The TRC relied on the churches rather than conflict-resolution NGOs or any new mediating structures, as it saw them as the authentic representatives of the community and civil society.

Because of the overlapping of TRC and religious personnel in the process of statement taking, religious values were conveyed to victims even before the hearings. The majority of statements taken in the Vaal were written down by religious activists in church settings. Statement takers were the first point of contact between the commission and victims. During interviews with statement takers, the TRC's message on reconciliation was woven into their written testimonies as the oral testimony of the victim was rendered as text. This prestructuring of the discourse was a vital part of the shift away from retribution and towards a view of justice as emanating from truth and reparations.

Two of the Vaal's most active statement takers were church stalwarts. One of them, Thabiso Mohasoa of Sebokeng's Zone 7, is an International Pentecostal Church activist. Perhaps strangely for a person writing down oral histories of political violence, he explained that "reconciliation means to forget what happened." When asked how he responded to victims' feelings of revenge during statement writing, Mohasoa described how he steered a victim's perspective in order to, in his words, "uplift reconciliation":

I had understood those feelings before . . . I understood retaliation. People don't know any better. Life in South Africa means fighting one another and retaliating. If he does it to me, I will do it to him and to his grandchild and then I will be satisfied . . . . when taking a statement, people would be aggressive, saying "I want these perpetrators to be hanged." But the TRC will be a failure if people send negative ideas to it.

Beyond the overlapping networks of TRC statement takers and church activists, there was an institutional fusion of churches and TRC structures in the Vaal. The TRC relied heavily on a religious infrastructure to carry out important functions such as statement taking, the arranging of hearings, and the reconciliation of conflicts of the past. Religious groups were the only local organizations in the Vaal explicitly working with the TRC towards the goal of reconciliation. Before the HRV hearings in Sebokeng in August 1996, a group of churches led by local Catholic priests led a prayer service in Sebokeng's notoriously violent Zone 7 to encourage victims to testify. Local township clergy helped the TRC to identify victims; their members took the vast bulk of the statements and advised in the selection of cases to come to public hearings.

In addition to direct organizational links, the work of the TRC was indirectly reinforced by the conflict-resolving agendas of local ministers. A key actor in the Vaal was an Irish priest fluent in SeSotho called Father Patrick Noonan. The priest activist had run Nyolohelo Catholic Church in Zone 12 of Sebokeng for 25 years. He had radical political sympathies and was known affectionately by local ANC youth as "Comrade Patrick." Father Noonan was a political firebrand in the 1980s, when the Vaal was made ungovernable by rent and school boycotts, barricades on street corners, and necklacings of alleged "apartheid collaborators." Now his mission is to pursue reconciliation through forgiveness: "The truth commission is like a national confession. There is an injection of morality and ethics and that is good . . . . The majority of victims have never gone to counseling, but those that do go mostly through the parishes. That was my program of renewal."

Father Noonan has had a significant impact on the individual members of his congregation. One, Cecilia Ncube, has had to cope with the murder of her husband, David, killed in the Sebokeng Night Vigil Massacre on January 11-12, 1991. David and Cecilia had been attending the night vigil of their nephew Christopher Nangalembé at 11427, Zone 7, Sebokeng. Christopher, a member of the ANC Youth League and a Peace Committee monitor, had been killed by a petty criminal, Victor Khetisi Kheswa, whom he had brought before a court run by the comrades. Cecilia left Christopher's night vigil at 10 P.M. on Friday the 11th and went back to her
house across the street. She was awakened at 1 A.M. when members of Kheswa's gang (Kheswa was in hospital with a gunshot wound in the stomach) attacked the gathering of mourners with hand grenades and AK-47s: "I heard shooting and big explosions, like a bomb or hand grenade, and then sirens." Press reports at the time placed the death toll at between 36 and 42 and the number of wounded at least at 100.15 Instead of being consumed by a desire for revenge, Mrs. Ncube now embraces the new ethos of reconciliation in the country and credits Father Patrick Noonan for guiding her: "He is the man who gave me the strength to forgive these people. They didn't know what they were doing. That is how I survived. I just forgave and moved on. I was on a local renewal committee, and I had to be strong. From Father Patrick I learned that I couldn't bear a grudge and just had to forgive." She distanced herself from the other relatives of those killed in the Night Vigil Massacre, who combined to form the organization Vaal Victims of Violence under the leadership of a member of an African nationalist political party which opposed the TRC's amnesty provisions in the Constitutional Court. Cecilia commented on the unveiling of the memorial to those killed, "The other victims were still sick. They were aggressive and violent and calling for revenge. I am a teacher and understand better. They are just ordinary people."

In addition to their role in promulgating the values of reconciliation as forgiveness and their symbolic duties, ministers continue to play an important role in mediating ongoing armed conflicts arising from decades of apartheid.16 Reverend Peter "Gift" Moerane of Sharpeville has urged militarized youth of both the ANC and the IFP to negotiate an end to their cycle of violent revenge killings. He is perhaps the only nonpolitical party leader with any real authority among ANC youth in Sharpeville. Similarly, Father Noonan has used his credibility with armed militants to try to end the cycle of revenge killings begun in the anti-apartheid years.

From the above instances in the Vaal and elsewhere we get a picture of the TRC as having close affinities with religious institutions—sharing personnel and organizational structures, values of forgiveness and reconciliation, and ritual symbolism. This close association between human rights and religious doctrine remains one of the best explanations for the TRC's ability to convert many to its cause of reconciliation. As Chanock (1985:79-84) has demonstrated, this involvement in legal consciousness on the part of Christian missionaries is not new. During the colonial period missionaries sought to shape African attitudes to legal transgression by introducing ideas about individual and humanist rights and Christian guilt and sin. Nevertheless, local actors also pursued other notions of justice which were less shaped by Christian values, throwing into relief the limitations of religion in resolving political conflicts.

**Revenge and Retribution in a Local Court**

Juxtaposed to religious affinities to human rights ideas were strong discontinuities which were articulated primarily through local courts. I term these disjunctures "relational discontinuities" to distinguish them from early legal pluralist accounts of customary law and to draw attention to the mutual influences between local, national, and transnational formulations of justice.

Discontinuities in legal consciousness were expressed during and in the aftermath of the HRV hearings held in the Vaal in August 1996. A large section of the weeklong hearings held at the Sebokeng teacher training college dealt with the atrocities committed by IFP agents based at KwaMadala hostel at the Iron and Steel Corporation (ISCOR) plant. The most widely known case at the hearing involved the mothers of Christopher Nangalembe and Victor Kheswa, the principals in the events that led to the above-mentioned Night Vigil Massacre and subsequent retaliatory acts. The TRC hearing was the first time that Margaret Nangalembe, mother of Christopher, and Anna Kheswa, the mother of Christopher's killer, Victor Kheswa, had met since their sons' feuding had begun five years earlier. They both gave their differing accounts of events and, at the urging of commissioners, shook hands publicly in an act of seeming reconciliation. Anna Kheswa stated her strong desire to leave the poverty of KwaMadala hostel and return to her old house in Zone 7 of Sebokeng township, across the road from the Nangalembe household. The Nangalembe family expressed no opposition and said that Anna Kheswa need fear no hostility from them. At the time, Tutu and other commissioners extolled this case as the apogee of reconciliation within the TRC process. Yet the ritual enactment of reconciliation, the shaking of hands between the mothers of militarized youth, has had little purchase in terms of advancing any reconciliation at the local level. No IFP members from KwaMadala have successfully returned to any of the Vaal townships from whence they fled in the 1990-91 period. To the contrary, some IFP members, such as Dennis Moerane of Sharpeville, have been summarily executed by armed ANC Special Defense Units when they have tried to return to their former homes in the townships.17 This is partly the result of the lack of any dispute resolution mechanisms within the TRC framework to negotiate a lasting local peace and the return of former pariahs to the community. In many townships the TRC represented little more than a symbolic and performative

15. The case against Kheswa and his gang members collapsed after it was found that the confessions were extracted under torture. Kheswa was later found dead on the road to Sasolburg on June 17, 1993, while in police custody. Several members of his gang similarly died in questionable circumstances. Many observers allege that members of his IFP gang were killed off one by one by police when they threatened to expose their links with the latter.

16. Often working closely with human rights NGOs.
ritual with little organization on the ground to implement its version of reconciliation.

Moreover, there were few initiatives within the TRC to engage with the bodies that actually exercise political authority in the townships—local justice institutions, armed vigilante groups, and local political party branches, which were seen as too compromised by their previous role in the violence. Commissioners I interviewed were hostile to the rough justice of local courts, demonizing them as kangaroo courts antithetical to human rights. This is ironic in that some commissioners linked to the United Democratic Front had actually promoted community courts in the 1980s as prefigurative organizations of revolutionary people’s power. In the new centralizing culture of human rights, armed units of the anti-apartheid movement must be either incorporated within policing and military structures or isolated and left to wither away.

In return, there was profound disdain for the TRC among local political actors. The ANC representative to the 1991–92 Peace Committees in Sebokeng, Watch Mothebe, scorned the Nangalembe-Kheswa reconciliation: “Those two are only individuals. Their reconciliation has no further weight. Ms. Nangalembe cannot forgive on behalf of the community. She cannot allow Ms. Kheswa’s return. This must be done by legitimate community institutions, not by the TRC who come in for one week and then say they’ve sorted everything out.” If the TRC’s policy on reconciliation was not entirely legitimate and effective in some black townships, then how do former “enemies of the community” negotiate their return? Who absolves them and negotiates on behalf of the community? What does this tell us about the relationship between transnational human rights, state law, and local justice?

In the township of Boipatong, there was the kind of overarching legitimate “community” institution to which Mothebe referred—a local court—which did seem to have the ability to protect former apartheid councilors and enforce a more lasting peace than in surrounding townships. Boipatong [population about 41,000] is located across the highway from the massive, Dickensian ISCOR works and wedged between several packing and canning factories. This urban social space contains a heterogeneous linguistic mixture, including speakers of SeSotho, Pedi, Shangaan, Zulu, and SeTswana, and a class mixture of wealthy professionals, industrial laborers, domestic workers, and large number of unemployed. It holds a special place in the history of violence in South Africa, as the peace talks between Mandela and de Klerk were broken off in June 1992 after armed IFP members, allegedly with police accompaniment, streamed across from KwaMadala hostel and slaughtered over 40 residents of the squatter settlement of Slovo Park, in Boipatong.18

Residents of Boipatong mediate and adjudicate many disputes with little reference to the national legal system or bodies such as the TRC, which was seen by local people I interviewed as weak, ineffectual, and a “sell-out.” The low level of reparations and the granting of amnesties to perpetrators strengthened the view that human rights ideas violated local understandings of justice. Instead of appealing to human rights commissions to solve problems of social order, local adjudication occurs through a daily kgotla (plural lekgotla, SeSotho for “meeting” or “court”) [see Burman and Sharf 1990, Goodhew 1993, Pavlich 1992, Schepers-Hughes 1995, Shaf and Ngcokoto 1990]. This local forum mainly deals with petty crimes and domestic disputes, and its presence has implications for the legacy of political violence. In particular, it has protected black councilors who participated in the apartheid local government structure—the Transvaal Provincial Administration—between 1988 and 1990. In 1984 during the Vaal Uprising three councilors were burnt alive by militant crowds, and Esau Mahlatsi, the mayor of Lekoa Council, was murdered in 1993. Boipatong is now unique among Vaal townships in that apartheid-era councilors can live there free of intimidation.

The neighborhood court has a strong patriarchal character. The permanent members of the court are all male and fall into two groups—those over 45, many of whom were former convicted isotsis or “gangsters”, and those between 20 and 30, most of whom were MK combatants. The kgotla today is a fusion of two models of township justice—the patrimonial and gerontocratic courts of the 1970s and the “popular” revolutionary courts of the 1980s—and therefore combines two groups that were often violent political adversaries during the height of the liberation struggle in the mid-1980s. The religious dimension is not absent, as the court contains a preponderance of members of the Zionist Christian Church, which has its main bases in rural areas but also appeals to the urban poor. The court hears many family disputes (Tuesdays and Thursdays are “Ladies’ Days”) and cases of petty theft, assault, inheritance, and unpaid debts. It rarely deals with rape cases and never hears murder cases.

The kgotla draws its legitimacy from its claim to be an expression of traditional authority and customary law. Its participants call it “tribal law” and thus assert a discontinuity in relation to the criminal courts and international human rights. Unlike the white magistrate’s courts, the kgotla avoids sentencing to jail if at all possible. It is said that everyone can speak out fully, anyone can cross-examine the plaintiffs, and sentencing is by consensus. Court members claim that unlike that of the human rights commissions, cross-examination by members of the community always identifies the guilty and achieves justice through punishment rather than reconciliation and amnesty. Thus a discontinuity with national and international legal structures is created by local social actors through notions of “community” and “tribe.” This is an image of the township dwellers’ own alterity as traditional rural, tribal, premodern peoples. However, few residents have been on an African farm
The importance granted to suffering as a form of redress in magistrate’s court decisions resonates with local courts’ judgements. Sentencing in common law recognizes retribution but seeks to subdue the “collective will” and rationalize inchoate passions of hatred and vengeance. Because of their shared valuing of vengeance, there are a number of connections between local courts and the police. The Boipatong kgotla is officially recognized by the local magistrate and police station, and the court sends certain types of cases it cannot resolve (e.g., murder and rape) to the formal criminal justice system. It assists the police in apprehending suspects and hands over those who will not consent to beatings. This cooperation between systems has increased since the formation of the new South African Police Service, but it is not altogether unprecedented. During the apartheid years, the state at various historical junctures enhanced the integration of a dual system of justice and promoted the setting up of customary courts in rural areas and local courts in the townships.

Yet there are also disjunctures between informal and formal law—the retribution of state law is different from popular justice: it involves not the blood, sweat, and screams of the spectacle of public flogging but a more silent administrative incarceration behind the doors of police stations and prisons. Suffering is still the basis of justice, but it is a slow, hidden suffering which victims cannot witness. In assuming the right to punish, the state deprives the victims of their role in inflicting suffering upon offenders.

These historically produced relationships have taken on new meanings in the post-apartheid period as the neighborhood court in Boipatong has dealt relatively successfully with the political violence of the past. It is no coincidence that two former National Party members and councilors from 1988–90 have remained in their homes in the township, whereas such “apartheid collaborators” have been killed or driven from their homes in all other townships of the Vaal. During interviews, former councilors reported that since 1994 they are no longer verbally or physically assaulted and feel protected by the neighborhood court, which they say is prepared to act punitively against anyone who threatens them. This contrasts strongly with the situation in neighboring townships without local courts such as Sharpeville, where councilors have not returned to their former homes but have been banished to shantytowns or special barbed-wire-enclosed camps constructed by the police. The existence of an overarching justice institution in Boipatong has created an environment less conducive to revenge killings.

19. The “community” became heavily politicized during the years of anti-apartheid struggle and came to represent a cornerstone in the ideology of local ANC cadres opposed to the authoritarian state. Urban communities are not homogeneous, and “community justice” is not a static concept but historically produced. The concept of “community” in the post-apartheid era is subjected to contestation by a variety of actors including new policing forums as well as advocates of local justice.

20. This last point is best illustrated in the case of a man condemned to death for killing a fellow hostel dweller he believed to be a malignant being sent through witchcraft (see Sack 1986).

21. In his characteristic rebuttal of religious and human rights values, Friedrich Nietzsche (1969:161) in Thus Spoke Zarathustra speaks of how law attempts to dignify itself through the notion of proportional retribution, all the while keeping its spoon in the pot of hatred: “The spirit of revenge: my friends, that, up to now, has been mankind’s chief concern: and where there was suffering, there was always supposed to be punishment.”

22. The creation of the modern dual legal system is usually traced back to the 1927 Native Administration Act.
The unintended consequences of township justice are worth remarking upon here. Despite the opposition in Boipatong to the TRC, the local court realizes many of the objectives of human rights institutions around conflict mediation. I hesitate to use the word “reconciliation,” since no one in Boipatong thought that it accurately described the process of coexistence with former “apartheid collaborators.” Yet it is ironic that a neighborhood court which portrays itself as a punitive “tribal” authority and rejects the TRC’s humanitarian view of human rights for a more retributive view of justice in the end facilitates the kinds of solutions extolled by the TRC. It does so not through notions of reconciliation and restorative justice derived from Christian ethics and human rights talk but through expressions of traditional male authority and the likelihood of physical sanction against any who flout its decisions (see Renteln 1990, Merry 1990).

Conclusions

Until the 1960s, legal anthropology was dominated by a form of legal pluralism that proposed an equivalence and continuum between all types of legal rules and social norms and operated with a static and isolationist view of customary law which too readily assumed the existence of different systems. Over time, it moved from codifying customary rules to advocating a processual approach which portrayed local law as characterized by open and seemingly limitless individual negotiation and choice making. This legal pluralism has for decades been the dominant intellectual paradigm in writings on the Tswana, in what are now South Africa and Botswana. From Schapera (1938) in the early part of the century to Comaroff and Roberts (1981) to more recent writers such as Gulbrandsen (1996), studies of legal practices and discourses among Setswana-speaking peoples have largely accepted the dualistic colonial and apartheid legal system at face value and ignored how state law transformed local adjudicative institutions. This paradigm may have resulted from the actual historical experiences of Setswana-speaking peoples but is in my view more likely to have been the result of an entrenched analytical frame which reproduced assumptions of isolation and autonomy. Certainly the people forcibly categorized as Tswana in the former South African “homeland” of Bophuthatswana, run by the corrupt Lucas Mangope, had intimate knowledge and experience of legal coercion from a violent state.

A different form of legal pluralism emerged in the 1970s from within critical legal studies and the cross-disciplinary law-and-society movement. The emphasis in studies of legal pluralism now became the dialectical relationship between state institutions and local normative orders and the relations of dominance and resistance between them. Marxist legal anthropologists such as Snyder (1981) argued rightly that the processual approach treated dispute processes as too self-contained and thus tended to ignore the wider political context.

Local moralities and norms were in a subordinate but resistant relationship to state law, demanding recognition in their own terms (Merry 1990:181). Studies in this tradition began to look at the politics of judicial processes, drawing from Gramscian notions of hegemony in which law is an ideology that expresses and maintains structures of inequality. Foucauldian readings also took hold, seeing law as a disciplinary apparatus and a site of struggle and contestation between dominant and resistant discourses of power (see Humphreys 1985 and Hunt and Wickham 1994).

This critical version of legal pluralism is adequate in many ways for understanding the uniquely polarized history of apartheid legality. It is particularly well-suited to analyzing the dualistic legal system administered by a white-run political and legal bureaucracy and resisted by the local political actors who carved out a sphere of “popular justice” in the 1980s. Yet, with its narrative of dominance and resistance, it is predisposed to ignore the real connections between local and state law and the ways in which especially elite Africans (in chiefs’ courts and “Bantustan” bureaucracies) have participated in and acquiesced in state policies. Relations between formal and informal justice institutions in the initial post-apartheid context are even more volatile and contradictory than before, and they present a socio-legal environment that prior formulations of legal pluralism or centralism cannot fully encompass.

A revised legal pluralism would have to preserve from this one the idea that many states engage in centralizing efforts to resolve their hegemonic crises, but it could not accept that there is always an inherent asymmetry between centralizing and pluralizing processes. Instead of the stark polarity of dominance and resistance which reduces the complexities of a historically produced political-legal context, we must turn our attention to shifting patterns of dominance, resistance, and acquiescence, which occur simultaneously. As we have seen in the Vaal townships, local courts are both connecting up with policing structures and bypassing them in order to exercise a certain degree of autonomy to judge and punish. Religious moralities and institutions, in contrast, encourage a more favorable disposition towards human rights values. The notions of additive affinities and relational discontinuities take us away from generalizations about law and society and offer more concrete ways of theorizing the uneven reception of human rights ideas in a locale.

In this multivalent context, the degree of plurality of legal fields is often a matter of the strategic perspectives of social actors. The legal system may appear quite pluralistic from the Olympian vantage of the Justice Ministry, which surveys hundreds of unregulated armed units and local courts across the country, each dispensing a different version of “justice” over which it has only tentative control. However, from the perspective of a petty criminal apprehended by Boipatong kgotla members and handed over to the police in van der Bijl Park, the institutions of justice look relatively unified and integrated.
There are multiple connections between state institutions, religious organizations, and local courts, to the extent that we see a splintering of the unified fields of "state" and "society" and an eradication of their firm boundaries. Diverse social fields in African countries are too complex and emergent to be constrained by any explanation which sees "law" and "society" as a priori structural categories to be understood by a single explanatory framework. Instead of two coherent unified systems locked in a structurally determined struggle, we see combinations of actors and collective groups producing norms and creating new historical experiences and experiences of history. The direction of social change in post-apartheid South Africa, what Touraine calls historicity, is the product of the social action of individuals and collective actors (political parties, local courts, religious organizations, etc.) engaged in the reflexive self-production of society.23

Just as "civil society" implies too much common purpose among non-state actors with regard to state versions of the idea of human rights, the "state" itself is not unified and coherent in its policies. The diversity in human rights practices within the South African state can be well demonstrated by juxtaposing the activities of different arms of the state in the Vaal in 1995-96. Only months before the TRC began taking statements from victims, arranging its one-week hearing in the Vaal townships, and carrying out public education on human rights in the area, policemen in the Murder and Robbery Unit at the nearby van der Bijl Park police station were routinely torturing criminal suspects using methods honed during years of defending successive National Party regimes (1948-94). Because of successive litigation from human rights lawyers,24 four Vaal policemen were suspended in late 1995 for torturing 30 prisoners. The presiding judge struck down the prisoners' confessions exacted through torture and recommended an internal police investigation. When I reinterviewed a staff member at the Vaal Legal Aid Centre in 1998 and asked if the situation had improved, he replied, "Yes. Prisoners awaiting trial are no longer being tortured. They are only being assaulted."

The post-apartheid South African regime is in an agonizing process of state reformation; its ANC ministers are unifying, consolidating infrastructure, and desperately trying to transform institutions such as the police, prisons, and magistrate's courts tainted by their involvement in administering apartheid. Such a hegemonic crisis is not unique to South Africa. Jean-François Bayart (1993:249) understood the tentative and emergent hegemonizing projects of postcolonial African states when he wrote, "In order to understand 'governmentality' in Africa we need to understand the concrete procedures by which social actors simultaneously borrow from a range of discursive genres, intermix them and, as a result, are able to invent original cultures of the State."

Human rights is a central discursive genre in the new South Africa, and this article has traced some of the procedures through which state officials combine human rights ideas and practices with religious notions of redemption and forgiveness and how these resonate with local perspectives, are reformulated, or are rejected. The procedures work in different directions simultaneously, both reinforcing and obstructing the introduction of human rights values into a context of semiautonomous legal and moral fields. If revised, legal pluralism remains one useful category which allows us move beyond stark formulations of "state" and "society," to chart the concrete consequences of social action which contest historicity in the area of justice and reconciliation.

Comments

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South Africa is one among many contemporary states that is undergoing a "democratization" of its political structure and a reform of its legal system. Democratization includes not only the principle of majority rule but also a legitimized opposition, not only "power to the people" [however those people are defined] but also limitations on the people's power, and not only a reformed legal system but also one that necessarily struggles with installing principles of strict accountability. Without these principles of accountability, which have been institutionalized as the "rule of law" in Western political systems, democracies inevitably begin to resemble other political forms, such as despotism, monarchy, and oligarchy. I explored this relationship between democratic form and the rule of law in Settling Accounts (Borneman 1997) and began constructing an anthropological theory of the temporal specificity of democratic form. There I argued that it is more accurate analytically to speak not of democratic essences but of democratic process. Hence all regimes are either continuously democratizing or they begin resembling tyrannical forms of rule. The key variable in this process, I maintained, is that democracies require a system of strict legal accountability, without which criminality grows in the center of regimes but is practically displaced to the margins. Democracies require ritual purification of the center, but this purification must be done holding to the procedural guarantees and principles of the rule of law.

Wilson presents us with the extraordinarily interesting case of what he calls "state reformation" (which I suggest we specify as democratization of the South African regime), and he seeks to account for changes in legal form during this period of departure from an undemocratic apartheid regime. He frames his argument in terms of

23. These observations are more generally applicable to narratives on history in Latin America and Eastern Europe. On the latter, see Garton Ash (1997), Moeller (1996), and Rosenberg (1995).

24. Such as Tony Richards and Peter Jordi, then of the Law Clinic at the University of the Witwatersrand.