

François du Bois and Antje du Bois-Pedain (eds). ***Justice and Reconciliation in Post-Apartheid South Africa***. Cambridge: Cambridge University Press, 2009. Pp. 334. £55.00. ISBN: 9780521882057.

Sometimes, one can judge a book by its cover. The strikingly beautiful cover of this book on justice and reconciliation in South Africa is more than a mere decoration. As the editors of this exciting collection on transitional justice explain, the artwork on the cover was created by modern San artist Andry Kashivi and depicts the struggle for acceptance and belonging, 'for citizenship and reconciliation' in the new South Africa. The San communities of the !Xun and Khwe live on the margins of South Africa and on the brink of poverty. In the introduction to the book, the editors take trouble to explain the symbolic link between the marginalization of the San people and the quest for legal and political transformation in South Africa. The book's emphasis on the art

of transformation extends beyond the description of the artwork. In quite a literal sense the book addresses (among other themes) the transformative function of art in the chapter by Carrol Clarkson entitled 'Drawing the Line: Justice and the Art of Reconciliation'. Clarkson analyses post-apartheid South African art, and in doing so she illustrates and explains the re-drawing of lines, specifically the 'lines that reconfigure the margins of exposure of one to the other' (at 288). The inclusion of this chapter adds freshness and originality to a collection of chapters on transitional justice, a field which cannot always be said to be characterized by great originality (or intellectual vigour).

This collection, however, is vivid and attractive in many respects. It sets out to explore various facets of the transitional processes that have been underway in South Africa since the early 1990s. This topic has been subjected to extensive academic excavation – not always particularly deep or productive. The depth and variety of the contributions distinguishes this collection and makes it worth reading – it reminds one of how exciting this topic *can* be. The collection draws together the work of a group of outstanding scholars and one 'public intellectual' in the person of Pumla Goboda Madikizela, a former Commissioner of the Truth and Reconciliation Commission (TRC) and currently professor in psychology at the University of Cape Town.

The collection starts on a high note. I consider the chapter by Emilios Christodoulidis and Scott Veitch ('Reconciliation as Surrender: Configurations of Responsibility and Memory') the highlight of the book. As the title indicates, the authors throw a question mark over the use of the term 'reconciliation'. The authors ask the important question 'why reconcile?'. They argue that the need for reconciliation is not at all self-evident. They criticize the way memory in South Africa was organized around the axis of reconciliation, and argue that the emphasis which the TRC placed on reconciliation has led to a disavowal of responsibility. According to the authors the TRC turned reconciliation into an ideology of surrender to the forces of economic exploitation. I am of the view that the ideology of

surrender encompasses much more. South Africans surrendered their own views of how the transitional process should take place to the state and to the TRC. Does it follow that Apartheid victims have now also surrendered their right to reparation and prosecution of the wrongdoers who did not receive amnesty? Fundamentally, the authors argue against glib justifications and easy answers. In the tradition of Walter Benjamin they ask whether the claim of generations of victims have been settled far too cheaply.

The long-neglected question of reparations forms one of the themes of the collection and links the chapters by Theunis Roux and François du Bois. Theunis Roux's chapter is another highlight of the book. Since Roux was a member of the ANC Land Claims Court Working Group he is in a good position to write on the process of land restitution in post-Apartheid South Africa. Roux applies Robert Nozick's historical entitlement theory of property to the South African land restitution scheme. In a theoretically rigorous piece, Roux argues that the process of restoring property rights has been preoccupied with purging the post-Apartheid state of unjust holding in accordance with a Nozickian approach to property rights. Nozick's historical entitlement theory permits the state to interfere with property rights only in the most basic case, i.e. for the rectification of past unjust transfers. Roux relies on Waldron's distinction between utilitarian and rights-based arguments and identifies Nozick's theory as a rights-based argument for private property. Roux examines Waldron's further distinction between general- and special-right-based approaches. A general-right-based approach justifies private property as essential to the 'development of individual freedom'. A special-right-based argument for private property is one which justifies private property as being necessary for the protection of property rights which have been legitimately acquired by, or transferred to, the holder. Roux argues for a general-right-based approach, and states that a general-right-based approach more convincingly explains the moral wrong done to property holders when their rights are

unjustly taken away. The application of property rights theory to the South African context helps to explain the major shortcoming of the land restitution process: the inadequate attention paid to the role land restitution can play in enhancing national reconciliation.

François du Bois writes about Apartheid reparations in a more general sense. He points out that one of the tasks of the TRC was that of 'restoring the human and civil dignity of victims by recommending reparation measures' (at 119). Du Bois reflects upon the possible political reasons why the recommendations of the TRC with regard to reparations were not implemented. He touches upon the philosophy of distributive justice. Probing this question more deeply would have made for interesting reading.

Jaco Barnard-Naudé addresses the responsibility of the corporate sector. He does so in the critical tradition. Barnard-Naudé's piece is fresh and original. He examines the TRC's inability to call the business sector to account for complicity in human rights violations during Apartheid. In essence, he argues that the TRC's (inadequate) treatment of the role of business in Apartheid 'created an archive which forgets more than it remembers' (at 203).

In the chapter entitled 'Radical Forgiveness: Transforming Traumatic Memory beyond Hannah Arendt' Pumla Gobodo-Madikizela describes the experience of the South African TRC as 'one of the most profound historical moments at the close of the twentieth century' (at 37). She takes issue with Arendt's claim that there are atrocities which are morally beyond forgiveness, and she argues that there is a place for forgiveness in a society previously divided by hatred. The relevance of Arendt's work for South Africa is sometimes questioned, but to Gobodo-Madikizela the relevance is clear: Arendt wrote about totalitarianism and the Apartheid regime was a totalitarian regime. Since the totalitarian nature of Apartheid is not as self-evident as the author suggests, the author should have substantiated this view more strongly. But Gobodo-Madikizela has a powerful voice and the chapter raises intriguing questions.

Antje du Bois-Pedain takes up one of the topics touched upon by Gobodo-Madikizela: the issue of collective guilt. She analyses the famous essay by Karl Jaspers, 'The question of German Guilt'. Her analysis of the concept of political responsibility is clear and insightful. She concludes that trials may be a double-edged sword. Notwithstanding their emotionally satisfactory ascription of individual responsibility trials can distract from the importance of political responsibility. She writes that responsibility for violence should be ascribed to those who contributed to the social legitimization of such violence. Her chapter cleverly engages with that of Veitch and Christodoulidis.

Two authors, Volker Nerlich and James Gibson, write on the courts as a tool for transformation, Nerlich in the context of prosecution of the perpetrators of gross human rights violations and Gibson on the 'evolving' legitimacy of the South African Constitutional Court. As recent judicial politics surrounding the independence of the South African judiciary has shown, the legitimacy of the Constitutional Court should not be taken for granted. Gibson's chapter addresses an underexplored and important topic. His methodology however is controversial and, I would submit, doubtful. To divide South Africans into four racial groups (as Gibson does) and then to analyse the perceptions these different groups have of the Constitutional Court leads to generalizations which are outdated. Regardless of how meticulously the study is carried out, race-based methodologies tend to reinforce stereotypes.

Minor flaws aside, *Justice and Reconciliation in Post-Apartheid South Africa* is a wonderful collection. It has been said that writing about the South African TRC has become a cottage industry of sorts. Not many authors who capitalize on the trendiness of the subject find something new to say. All of the authors of this collection say something new. The book is friendly and accessible, elegant, and erudite.

The concluding chapter of the book does more than merely sum up and give us easily

digestible conclusions. Through the final chapter's analysis of the ideal of reconciliation, the book's central theme comes full circle. In contrast to Veitch and Christodoulidis, du Bois and du Bois-Pedain take a generally hopeful view of reconciliation. They address the risks and promises of reconciliation and repeat some of the questions posed by Veitch and Christodoulidis; importantly the question of how and why the ideal of reconciliation came to be identified. In moving and sensitive prose the authors state why they believe in reconciliation: 'for reconciliation opens up possibilities for the pursuit of justice where otherwise the choice lies between submission or fighting to the bitter end' (at 310). But, in spite of all the good words, it is clear that the struggle continues.

François du Bois and Antje du Bois-Pedain, Post-Conflict Justice and the Reconciliatory Paradigm: the South African Experience.

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Individual Contributions

François du Bois and Antje du Bois-Pedain, Introduction;

Emilios Christodoulidis and Scott Veitch, Reconciliation as Surrender: Configurations of Responsibility and Memory;

Pumla Gobodo-Madikizela, Radical Forgiveness: Transforming Traumatic Memory Beyond Hannah Arendt;

Antje du Bois-Pedain, Communicating Criminal and Political Responsibility in the TRC Process;

Volker Nerlich, The Contribution of Criminal Justice;

François du Bois, Reparation and the Forms of Justice;

Theunis Roux, Land Restitution and Reconciliation in South Africa;

Jaco Barnard-Naudé, For Justice and Reconciliation to Come: the TRC Archive, Big Business and the Demand for Material Reparations;

Stéphane Leman-Langlois and Clifford Shearing, Transition, Forgiveness and Citizenship: the TRC and the Social Construction of Forgiveness;

James L. Gibson, The Evolving Legitimacy of the South African Constitutional Court;

Carrol Clarkson, Drawing the Line: Justice and the Art of Reconciliation;