

# After Apartheid, Beyond Filiation: Witnessing and the Work of Justice

Michael Rothberg

---

*Abstract.* Through consideration of Mark Sanders's book *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission*, this review essay seeks to re-pose Theodor W. Adorno's question, "What does working through the past mean?" Juxtaposing the post-Holocaust context in which Adorno was writing with the post-apartheid context of Sanders's book, I explore questions of witnessing, mourning, and justice at the intersection of the literary and the legal. Like Adorno, Sanders is concerned especially with what it means for former perpetrators and those who might be understood as complicit with them to face the past; and, also like Adorno, Sanders is committed to tracing the aporias of the aftermath through the deployment of a psychoanalytically inflected critical practice attuned to the micro-level of linguistic difference. With reference to the writings of Auschwitz survivor Jean Améry, I argue that the dilemmas of postcatastrophic reparation made visible by Sanders demand a queering of justice—that is, a thinking of justice beyond filiation, linear temporality, and commensuration.

*Keywords:* apartheid, Holocaust, witnessing, justice, psychoanalysis, mourning

## I. WORKING THROUGH THE PAST

On November 6, 1959, ten years after returning to West Germany in the wake of the Nazi period and Holocaust, Theodor W. Adorno addressed teachers from the Society for Christian-Jewish Cooperation with a lecture in Wiesbaden whose central question continues to echo a half-century later: "What does working through the past mean?" [*Was bedeutet: Aufarbeitung der Vergangenheit?*] Adorno opened his lecture, which he would repeat a couple of

---

*Law & Literature*, Vol. 21, Issue 2, pp. 275–290. ISSN 1535-685X, electronic ISSN 1541-2601. © 2009 by The Cardozo School of Law of Yeshiva University. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintinfo.asp>. DOI: 10.1525 /lal.2009.21.2.275

months later as a radio talk and then again as an address to the Sozialistischer Deutscher Studentenbund (SDS) in 1962, by reflecting on the terms of the problem:

The question “What does working through the past mean?” requires explication. It follows from a formulation, a modish slogan that has become highly suspect during the last years. In this usage “working through the past” [*Aufarbeitung der Vergangenheit*] does not mean seriously working upon the past [*daß man das Vergangene im Ernst verarbeite*], that is, through a lucid consciousness breaking its power to fascinate. On the contrary, its intention is to close the books on the past and, if possible, even remove it from memory. The attitude that everything should be forgotten and forgiven, which would be proper for those who suffered injustice, is practiced by those party supporters who committed the injustice.<sup>1</sup>

Adorno’s initial approach to the question of how one ought to relate to the recent, traumatic past consists of a semantic distinction difficult to render in English. The distinction between *Aufarbeitung* and *Verarbeitung*—between the English translation’s “working through” and “working upon”—stands as an attempt to distinguish two modes of “coming to terms with the past” (as an earlier translation of Adorno’s essay rendered “*Aufarbeitung der Vergangenheit*”). While the “modish slogan” [*Schlagwort*] that gives Adorno his title seeks to “close the books on the past” by drawing a line between it and the present [*einen Schlußstrich darunter ziehen*], the serious [*im Ernst*] labor of “working upon the past” seeks to break the spell [*Bann*] of what has happened through a practice of consciousness-raising or enlightenment [*durch helles Bewußtsein*].

The proximity of *Aufarbeitung* and *Verarbeitung*—and the lack of an obvious way to render their differences in English—points to the enormous stakes for social practice of subtle semantic distinctions. Ultimately, the problem is not merely semantic, however, although language remains the primary medium of approach. The social practice of coming to terms with the past bumps up against an aporia: “One wants to break free of the past: rightly [*mit Recht*], because nothing at all can live in its shadow, and because there will be no end to the terror as long as guilt and violence are repaid with guilt and violence; wrongly [*mit Unrecht*], because the past that one would like to evade is still very much alive.”<sup>2</sup> Addressing, at least potentially, both the claims of justice and the work of mourning, Adorno’s concern with confronting the past identifies one significant zone where law

and literature overlap. Yet, like law and literature, justice and mourning do not necessarily coexist unproblematically. The relation between justice and mourning may be, as Adorno suggests, aporetic; these paired terms draw our attention to a territory difficult, if not impossible, to cross. To mourn is to move on, but to render justice is to maintain the claims of the past on the present or to maintain the present's interest in the past. At the limit, justice may demand a refusal to mourn; it may require an alternative that exceeds the opposition between *Aufarbeitung* and *Verarbeitung*, an embrace of what Ranjana Khanna calls a "critical melancholia" or what Mark Sanders, in the exemplary study of South Africa's Truth and Reconciliation Commission under review here, calls the "ambiguities of witnessing."<sup>3</sup>

We are now almost the exact distance in time from the end of South Africa's apartheid system as Adorno was from the end of the Nazi period when he wrote "The Meaning of Working Through the Past." In almost all ways, the histories at stake—of apartheid and Nazism, of their respective aftermaths—differ dramatically and significantly from each other. Although both Nazism and apartheid were based on virulent racism and committed fundamentally to a vision of human inequality, one "project" moved inexorably toward extermination while the other favored radical segregation and hyperexploitation. Both programs suffered defeat, yet one had defeat imposed from without while the other was transformed by struggle from within. In the aftermath, the logic of extermination entailed that when Germany was divided and reconstituted its Jewish victims played little direct role in the political transition; in South Africa, on the other hand, apartheid's victims—and, even more dramatically, its opponents in the freedom struggle—became its rulers. And yet, despite these and other differences, Adorno's central question about working through the past has been lodged at the center of South Africa's political transition, as it has been in many other nations emerging from politically oppressive regimes. Mark Sanders's important new book *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* makes only occasional reference to Adorno—and no mention of his 1959 speech—but the intellectual resources that have been mobilized in the attempt to come to terms with Nazism and the Holocaust constitute a significant subtext of this study of South Africa's Truth and Reconciliation Commission. Like Adorno, Sanders is concerned especially with what it means for former perpetrators and those who might be understood as complicit with them to face the past; and, also like Adorno, Sanders is committed to tracing the aporias of the aftermath

through the deployment of a psychoanalytically inflected critical practice attuned to the micro-level of linguistic difference.

Neither of Adorno's central terms in his lecture—*Aufarbeitung* and *Verarbeitung*—corresponds directly to the Freudian concept of working through or *Durcharbeitung*, yet the psychoanalytic attitude toward the past contained in that latter concept features centrally in Adorno's recommendations for postwar Germany, as it does in Sanders's diagnosis of post-apartheid South Africa. In his lecture, Adorno introduces a question corollary to that of the meaning of working through the past, namely, the question of "how far it is advisable to go into the past when attempting to raise public awareness [*öffentlicher Aufklärung*]." Such public enlightenment, Adorno continues, requires knowing "whether precisely the insistence on [the past] does not provoke a defiant resistance and produce the opposite of what it intends," but Adorno expresses confidence in the need to make the past public nonetheless: "It seems to me rather that what is conscious could never prove so fateful as what remains unconscious, half-conscious, or preconscious. Essentially it is a matter of the way in which the past is made present; whether one remains at the level of reproach or whether one withstands the horror by having the strength to comprehend even the incomprehensible."<sup>4</sup> Adorno recommends a pedagogy enhanced by psychoanalysis as the antidote to the difficulties of "maneuvering" with the past: "A precise and undiluted knowledge of Freudian theory is more necessary and relevant today than ever. The hatred of it is directly a piece with anti-Semitism, by no means simply because Freud was a Jew but rather because psychoanalysis consists precisely of that critical self-reflection that makes anti-Semites livid with rage." Adorno believes that only such critical self-reflection might effectively attain the "psychic economy" [*psychische Ökonomie*] underlying anti-Semitism's persistence.<sup>5</sup> That psychic economy, Adorno specifies in discussion after his November 1959 lecture, derives not from some "purely German phenomenon," but rather from a more general economy: "a society where simply the immense concentration of economical and administrative power leaves the individual no more room to maneuver."<sup>6</sup> Working upon the past thus has interlaced subjective and objective dimensions, according to Adorno: "We are not only spectators looking upon this predominance of the institutional and the objective that confronts us; rather it is after all constituted out of us, this societal objectivity is made up of ourselves. In this doubledness, that we are subject and object of this society, surely lies precisely also the possibility of perhaps changing it." A "turn to

the subject” aims at fostering a new substantive rationality, while the constant reminder of the objective conditions of fascism requires that psychoanalytic reflection consider its institutional frame, the political economy of “affects and passion.”<sup>7</sup>

More indebted to deconstruction than to the Frankfurt School, Sanders is nevertheless committed to exploring the “doubledness” Adorno highlights—the need simultaneously to address the subjective and objective dimensions of the past’s hold on the present. Sanders approaches this nexus of past and present, subject and object, through an exemplary institution of what Adorno might have recognized as public enlightenment: South Africa’s Truth and Reconciliation Commission (TRC). As Adorno’s comments in “The Meaning of Working Through the Past” already suggest, such a project of enlightenment demands to be approached cautiously, with attention to its potential to misfire, to produce resentment, resistance, and rage instead of reconciliation. Sanders is well aware of the risks, but convincingly demonstrates that the risk of the commission’s going awry constitutes the very conditions of possibility of its success: for all of its limits and failings, the TRC also made possible moments of confrontation with historical violence in which *Aufarbeitung* turned toward *Verarbeitung* or even *Durcharbeitung*, that is, toward a substantive and simultaneously social and psychic working upon and through the past.

The overarching argument that unifies Sanders’s book concerns law and literature, or, perhaps better, what he calls the “quasi-legal” and the “quasi-literary.” Sanders reads the TRC as exemplifying a supplementary relationship between law and literature because it makes visible and “sets to work” the “ambiguities of witnessing”—that is, the movement of testimony between “forensic” and “narrative” truth, between history and fiction or objective and subjective modes. In addition to exploring this supplementary relationship, which is at the core of Sanders’s cautious and complex optimism about possibilities for justice after systematic, traumatic violence, I want especially to focus on a related set of issues that emerge from the TRC and from Sanders’s frequent (and, I believe, productive) reference to the coming to terms with Nazism and the Holocaust. At the core of *Ambiguities of Witnessing* are crucial insights into the problem shared by post-apartheid and post-Holocaust critics: what does coming to terms with a past of racialized violence mean? How can one acknowledge and explain the past—including its hold on the present—without reproducing its disabling terms? Ultimately, and with reference to the writings of Auschwitz survivor Jean Améry, I want to argue that the aporias

and dilemmas of postcatastrophic reparation made visible by Sanders demand a queering of justice—that is, a thinking of justice beyond filiation, linear temporality, and commensuration.

## II. TESTIMONY, TRANSFORMATION, TRANSFERENCE

In the wake of the negotiated settlement that ended more than forty years of apartheid in South Africa, the Promotion of National Unity and Reconciliation Act of 1995 established a mandate for a Truth and Reconciliation Commission. That commission would hold public hearings between 1996 and 2001 and would produce both a large body of testimony (publicly broadcast and available in various media formats) and a multivolume synthetic report on the history of political and racial violence that defined the apartheid era. As Sanders remarks, the “quasi-judicial” body of the TRC was “born out of political compromise,” as almost all such commissions are.<sup>8</sup> In the words of the TRC’s deputy chairperson, Alex Boraine, “amnesty was exchanged for truth.”<sup>9</sup> The Truth Commission’s basis in such compromise and exchange has led to much criticism of the body. As David Attwell and Barbara Harlow write,

Through public testimonies of human rights violations, the TRC has sought to promote reconciliation by providing reparations to the victims and amnesty to the perpetrators. As such it seeks to entrench a new public morality, one that was made possible by a negotiated settlement, by compromise. But this project has its flaws. For one thing, it makes no provision for natural justice; forgiveness in the name of peace has been elevated above justice in the name of principle. For the good of the nation, victims have often been obliged to accept a moral and material settlement that is less than satisfactory. For another thing, by emphasizing individual acts of abuse, it has tended to obscure the systematically abusive social engineering that was apartheid.<sup>10</sup>

Among other complaints, critics have also argued that the discourse of reconciliation and the granting of amnesty to many of the perpetrators of apartheid renders the quest for justice impotent, and that the foregrounding of uncorroborated witness testimony impaired the fact-finding mission of the commission. Sanders does not accept all such assertions—for example, he cites evidence that contradicts the claim about findings of culpability<sup>11</sup>—but

he remains vigilant about the TRC's potential and actual limits. Nevertheless, the greatest value of his book emerges from the noncynical and nonreductive risk that he chooses to share with the object of his study: *Ambiguities of Witnessing* "is a testing of the wager entered into by the Truth Commission—that the transmission of words, the relay of a witness's voice across distance, awaiting a response, would do: something."<sup>12</sup> Sanders is a rigorous and careful thinker and we need to attend closely to his formulations. Testifying in particular to the influence of Derrida and Levinas, Sanders's focus in this passage on the distance of the voice (as opposed to its proximity and presence) and the asymmetry of the awaited response (as opposed to a guaranteed and instantaneous reciprocation) already suggests the ethical orientation of his work. For Sanders, as for Thomas Keenan, whose *Fables of Responsibility* also lies behind *Ambiguities*, the possibility of justice can only emerge from the impossibility of any guarantee.<sup>13</sup> The "something" that may emerge from the wager to relay the witness's voice is necessarily precarious—but it is most definitely not "nothing."

The precarious structure of address relayed by the TRC lies at the heart of Sanders's thesis about the "interdependence" of law and literature.<sup>14</sup> Focusing especially on the "systematic" effects of testimony's centrality to the Truth Commission, Sanders argues that "the ambiguity in all language that, in the most traditional of terms, designates the literary, abides at the nub of forensic procedure."<sup>15</sup> By opening itself to testimony, law puts itself in contact with "the unverifiable" (one of Gayatri Spivak's definitions of the literary that Sander cites): it necessarily "entertains narrations the veracity of which is unknown." This necessary moment of fictionality—the deferral of verification that inhabits legal procedures—"establishes the dependence of law on literature."<sup>16</sup> Simultaneously, however, Sanders highlights literature's dependence on law: "what we call the literary actually depends on the law suspending its procedures of verification in order to hear the narration of the witness. . . . [T]he literary is unthinkable without reference to the verificationary procedures of law. The very fact that we use the term 'unverifiable' suggests that it is being defined in opposition or difference to a truth or item of knowledge obtained by procedures of verification."<sup>17</sup> Although drawn from familiar Derridean motifs of *différance* and iterability, Sanders's argument nevertheless opens up new paths for thinking about testimony's simultaneous legal and literary provenance when he situates these insights in the concrete context of South Africa's difficult transition to democracy.

Beyond tracing the formal and structural interdependence of law and literature, *Ambiguities of Witnessing* makes two linked, substantive arguments about how that interdependence plays out in the TRC: one concerns the transformative potential that the literary installs in the legal and the other locates transference as the condition of possibility of that transformation. First, Sanders demonstrates that the Truth Commission's openness to the literary has a potentially transformative effect on the commission's own charge and on law itself: "the fact that the law . . . calls forth and helps to shape a story that is to be verified should, at least, make it possible to see it as facilitating both a narrative and a counternarrative." Instead of understanding the law as "utterly repressive," Sanders seeks out the unexpected openings that emerge from law's hospitality to testimony and the literary: "Because it must open to the unverifiable, and thus to ambiguities of witnessing, the law, in particular instantiations, makes possible the testimony that, in some instances, questions and transforms what it had set out to accomplish."<sup>18</sup> In other words, "witnesses turned the commission in unanticipated directions by setting its basic concepts to work in unexpected ways."<sup>19</sup> *Ambiguities* chronicles a series of such detours arising out of testimony and focuses in particular on the frequent calls on the part of families of victims (and especially on the part of black women) for "customary" burial rights. The background for such calls is complex:

In British-ruled colonial Africa, custom and law were disjoined at the basis of a system of "indirect rule," which operated to exclude colonized people from legal and political universality by confining them to a sphere of rule by customary chiefs. . . . The disjuncture of law and custom also meant their conflation in the form of "customary law." . . . To reclaim "custom" in sub-Saharan Africa today is thus not to counter the universal calculus of law and rights in the name of cultural difference but rather to negotiate a split within the customary—between custom and "customary law"—which precludes any pure opposition between law and custom. . . . In a complication exemplary of postcolonial cultural politics in Africa and elsewhere, the "past" to be reclaimed is in part a creature of the colonial formation to be superseded.<sup>20</sup>

Although the invocation of custom within a colonial formation thus comes with risks and ambiguities, Sanders also finds in it possibilities: "invoking custom in an arena of human rights, where equal consideration is promised, has the potential to bring the customary to crisis. Implicitly laying claim to legal

and political universality, black women render apparent the disjuncture and conflation of custom and law. . . . Addressed to a forum of human rights, the demand for funeral rights . . . evokes, from the law, another ‘law,’ perhaps that to which Derrida gives the name ‘justice.’”<sup>21</sup> Sanders emphasizes that such calls exceeded the frame of the TRC, whose charge involved exploring “gross violations of human rights” and not—officially, at least—facilitating the work of mourning. In addition, because the appeal to “custom” invoked a complicated “colonial legacy disjoining and conflating law and custom,” it also exceeded the thirty-four-year time frame of the TRC’s charge (violations committed between 1960 and 1994) and served “to reveal not just the crimes of apartheid but also the social rifts and fissures left by almost 350 years of colonial and quasi-colonial rule.”<sup>22</sup>

By providing victims with an occasion to testify and make demands on a “quasi-legal” entity, the TRC rendered the abstraction and universality of the law vulnerable to appropriation by its subjects (or deappropriation, as Sanders would probably put it) and to material histories and legacies seemingly beyond its purview. Sanders traces the effects of this self-generated vulnerability in a series of discursive arenas involving forgiveness, reparation, and justice. In a nuanced set of readings of literary works and testimonial exchanges, he reveals the “precariousness” of the “subject of responsibility” and points toward the aporias that necessarily follow from coming to terms with racialized violence, whether that of apartheid, slavery, or genocide: “Reparations will never be adequate, can never be made, yet they must be made.”<sup>23</sup> Attention to such impossibility casts a new light on the often-evoked “failures” of the TRC: no, the TRC could not render adequate justice, but its failures are instructive and sometimes unavoidable. Such nuance does not in any way amount to apology for the commission’s inadequacies—Sanders is clear on its limits; for instance, its avoidance of apartheid’s everyday, structural violence in favor of “gross violations”—but it encourages us to look awry at the TRC and find its “successes” in unexpected places.

Perhaps most striking, Sanders ultimately reads black women’s repeated demands for burial rights not simply as unexpected material claims, but as testifying to the need to rethink the definition of apartheid from the ground up. Working with a distinction that he rightly suggests is often ignored in discourses on traumatic histories, Sanders differentiates between the “remembering” and the “mournful commemoration” of apartheid, between “epistemic and mournful practice.” But he also goes on to reveal that this distinction does

not hold: mourning becomes epistemology and provides access to apartheid's ontology. The frequent references in TRC testimony to incomplete acts of mourning—bodies missing, funerals not held—once again exceed the commission's stated task of establishing a forensic record of apartheid's crimes. Instead, those references reopen the question of what apartheid *was*: "The legacy of apartheid of which they speak is of undiscovered bodies, of bodies denied a proper burial. . . . What we hear when we listen to those witnesses is this: apartheid was a proscription on mourning, specifically of the other." And this insight leads in turn to a new understanding of apartheid's contemporaneity: "Can we then not say: apartheid *is*, at least for those who remember the worst deeds committed under it, and who attach to them a particular affect, a proscription on mourning the other?"<sup>24</sup> At stake in this rereading of apartheid are not simply matters of recognition. While calls for proper burial are certainly calls for acknowledgment of losses, they are also ultimately calls to remake the social—a remaking that, in a neoliberal South Africa in which inequalities have continued and even sharpened, is still to come. In foreclosing on the mourning of the other, apartheid also foreclosed on "any historical possibility of another social formation," one defined other than by "the ideology of race purity."<sup>25</sup> Conversely, then, the possibility of another social formation will require not just the remembering of apartheid as a series of legally discernible facts, but a work of mourning that engages the affective glue of group psychology. As in Adorno's postwar Germany, Freud's insights remain very much on the agenda in Sanders's post-apartheid South Africa.

But how does the TRC manage to accomplish what it accomplishes—through what mechanism does it open itself to depropriation and to the affective work of mourning? Here Sanders's second substantive thesis on the interlacing of law and literature in the TRC comes into play via a further turn to psychoanalysis. The TRC's ability to open itself to unexpected detours and demands derives, he argues, from its creation of a structure of transference underwritten by substitution and proxy, that is, from its exploitation of the central strategies of representation and psychoanalytic practice. Here, Sanders addresses the key question posed by Adorno: How do we excavate the past in the present without "provok[ing] a defiant resistance"? Like Adorno, Sanders sees the need to confront, rather than avoid, such troubling affects, and he identifies the TRC's value in the mediated confrontation it provided: "The [testimonial] process is mediated, as in the therapeutic situation, and the return to the time of the offense is managed by proxy. This is how the law endeavors to contain

and limit the inevitable repetition of the offense and escalation of violence and counterviolence.”<sup>26</sup> While the therapeutic serves as an analogy here—and, no doubt, as an actuality or goal for many participants—Sanders aims also at a larger question of collective responsibility: “[T]he Truth Commission generalized responsibility across the body politic by making itself a proxy for the perpetrator vis-à-vis the victims whose testimony it solicited.”<sup>27</sup> In fact, this practice of substitution was even more widespread within the commission and touches on its two central types of hearings: “If, at the human rights violation hearings, the commission takes the place of the perpetrator in order to undertake and generalize reparation or condolence, then at the amnesty hearings it assumes the place of the victim in order to receive reparation and condolence, and on occasion apology, from the perpetrator.”<sup>28</sup> In the convincing account developed by *Ambiguities of Witnessing*, the TRC is thus a very particular kind of institution: endowed with the flexibility of a “quasi-legal” (and “quasi-literary”) structure, it creates a public space in which to evoke and even repeat the ambivalent affects connected with traumatic violence, while it simultaneously addresses and lets itself be addressed by witnesses occupying a variety of subject positions. In her essays reflecting on the implications of what she called “totalitarian” criminality, Hannah Arendt held fast to a distinction between *guilt* and *responsibility*. While, for Arendt, the former term describes a legal or moral, and thus individual, disposition, the latter is political and collective.<sup>29</sup> But Sanders demonstrates that the TRC productively crossed over this opposition: through legal, or quasi-legal, means, it produced what Sanders calls here and in his earlier work on South African intellectuals “responsibility-in-complicity,” a “folded-together-ness (*com-plic-ity*) with the other in human-being.”<sup>30</sup> Despite its origins in compromise and despite its inability to confront systematically the structural violence of apartheid and apartheid’s imbrication with capitalist exploitation, the TRC did “something”: It modeled new possibilities of justice at the intersection of law and literature by staging the state’s own complicity and providing a forum of address and response-ability.

### III. QUEERING JUSTICE

What might those new possibilities of justice look like? Sanders provides no singular answer; nor should he. Rather, because *Ambiguities of Witnessing* treats an unsettled, still dynamic situation, it is worth recalling the formulation

of Ruti Teitel, theorist of transitional justice, cited in one of the book's first footnotes: "The conception of justice that emerges [in periods of political change] is contextualized and partial: What is deemed just is contingent and informed by prior injustice."<sup>31</sup> If conceptualizing justice in post-apartheid South Africa means coming to terms with a legacy of racialized violence, how does that unavoidable "contingency" shape the construction of justice? How can one acknowledge and explain the past—including its hold on the present—without reproducing its terms?

One of the fascinating subtexts of Sanders's book involves the comparative nature of coming to terms with racialized pasts. My opening invocation of Adorno was not chosen arbitrarily. Throughout *Ambiguities of Witnessing*, other histories of racialization not intrinsically connected to the South African experience make insistent appearances. For instance, in the discussion of reparations Sanders includes carefully critical commentary on Randall Robinson's *The Debt*, an argument about reparations to African-American descendents of slaves.<sup>32</sup> But most obviously, the working through of the Nazi past and the Holocaust returns repeatedly throughout the discussion of the TRC. Besides Adorno—whose thoughts both on fascist psychology and on "poetry after Auschwitz" occasionally serve as touchstones for Sanders's analysis—the French-Jewish philosopher Vladimir Jankélévitch's meditations on forgiveness and the German psychoanalysts Alexander and Margarete Mitscherlich's account of Germans' "inability to mourn" the Nazi period play significant roles in the formulation of a specifically South African-centric approach to commemoration, reparation, and responsibility.<sup>33</sup> Besides providing conceptual tools that can be tested and then appropriated, rejected, or adjusted to address new circumstances, the act of opening the text to other, nonindigenous histories and theories also has implicit ethical effects: It helps to acknowledge and displace the reified terms of racial discourse by emphasizing the (nonetheless effective) contingency of their historical situatedness.

This ethically oriented combination of comparative remembrance and attention to historical specificity—which I have elsewhere termed "multidirectional memory"—can lead to a reconception of justice beyond commensurability and the stabilizing certainties of identity.<sup>34</sup> A short detour through Auschwitz survivor Jean Améry's essays in *Jenseits von Schuld and Sühne* [Beyond Guilt and Atonement, but translated as *At the Mind's Limits*] can provide a hint as to the ultimate movement of Sanders's argument.<sup>35</sup> Writing on torture as the essence of Nazism in the mid-1960s and in the wake of revelations

about recent French practices in Algeria and ongoing atrocities in Vietnam, Améry exemplifies the same multidirectional practice that both delves deeply into a particularized history and remains open to its echoes abroad.<sup>36</sup> Most significantly, Améry's writings develop a provocative ethical approach to the past that resolutely refuses the complacencies and comforts of a straightforward mastery. Writing against both the Nietzschean critique of resentment and the mainstream psychology of his time, which stigmatized survivors of persecution as "mentally damaged," Améry draws on his own torture at the hands of the SS to challenge commonsense notions of "appropriate" justice. Embracing resentment as an ethical stance, Améry makes an impossible temporal demand:

It is said that we are "warped." That causes me to recall fleetingly the way my arms were twisted high behind my back when they tortured me. But it also sets me the task of defining anew our warped state, namely as a form of the human condition that morally as well as historically is of a higher order than that of healthy straightness. . . . Absurdly, [resentment] demands that the irreversible be turned around, that the event be undone. Resentment blocks the exit to the genuine human dimension, the future. I know that the time-sense of the person trapped in resentment is twisted around [*verdreht*], dis-ordered [*ver-rückt*], if you wish, for it desires two impossible things: regression into the past and nullification of what happened.<sup>37</sup>

Améry's impossible demands—the event must be undone; the event cannot be undone—recall the aporias of posttraumatic reparation Sanders explores. Refusing closure and the simple, but amoral reordering of social temporality it offers, Améry sketches what might ultimately be considered a "queer" conception of justice, one that values the twisted and warped over supposedly "healthy straightness." A new vision of justice—and a remaking of the social formation that would necessarily accompany it—can only emerge, Améry's writings suggest, after a rejection of the "antimoral," "social and biological time-sense, which is also called the 'natural' one."<sup>38</sup> While seemingly far from the sexual connotations we associate today with "queerness," Améry's rejection of "straightness" and his embrace of the "twisted" and "disordered" desires that accompany posttraumatic historical reckoning radically put into question the linear, generational time of "natural," heterosexual social reproduction.

Because of the necessary intimacy between sociosexual reproduction and ideologies of racial purity, Améry's twisted time-sense has particular

implications for the coming to terms with racialized pasts that *Ambiguities of Witnessing* also seeks to enact. *Ambiguities* offers at least two figures for imagining the past-present relationship according to a denaturalized vision of justice: language and adoption. In the course of a bravura reading of J. M. Coetzee's controversial novel *Disgrace*, a novel that works at the discomfiting intersection of sex, race, and violence, Sanders cites Foucault on the origins of race: "One might say . . . that two races exist whenever one writes the history of two groups which do not, at least to begin with, have the same language or, in many cases, the same religion."<sup>39</sup> If racialization derives from the coexistence of apparently incommensurable languages, then Sanders seeks to denaturalize reified racial categories with a double strategy. On the one hand, he pays patient attention to linguistic difference. At various moments in the text, he works closely with Afrikaans, French, German, Greek, Xhosa, and Zulu. He parses and glosses; he considers syntax, tense, and aspect. Such specificity proves fruitful, since, like Adorno distinguishing between "Auf-," "Ver-," and "Durcharbeitung," Sanders demonstrates how minute differences of meaning or structure can take on massive social significance, especially in highly charged moments of historical transition when the semantics of a new sociopolitical disposition are being established. On the other hand, Sanders's very attention to linguistic difference also deconstructs the racial binary Foucault alludes to because it breaks with the logic of identity that binds groups to their "own" languages. In his moving epilogue, Sanders makes this strategy explicit. Describing how he has sometimes left in his text slight indicators of racial difference—"adjectival markers of color"—in order to mark the place of the white critic of apartheid and despite the risks of reproduction this entails, he comments: "One does not want to make too much of it, or too little. Short of a tribunal to establish forensic truth and come to a verdict about culpability—as if that could ever be the end of the story—one attempts a figure. . . . The figure that I have elected, or that has elected me, has never ceased to be that of language. I have put hope in the idea of speaking and being heard in languages that are not one's own."<sup>40</sup> Language figures the necessary, simultaneous acts of appropriation and deappropriation—the crossing of a real boundary that language learning entails and the impossibility of conceptualizing that boundary as an intrinsic piece of biocultural property (despite efforts to the contrary).

The pursuit of languages in their multiplicity can facilitate a queering of justice in the aftermath of the systematic and structural violence of racialized

trauma. The risk of speaking and being heard in languages not one's own—a risk “set to work” by the TRC and pursued with scholarly care by Sanders—helps to pry apart the dominant metaphors and practices of a society defined by and recovering from a history of racial segregation. Beyond the nation as the reproduction of the racially “pure” family lies a queer—heterolingual and deracialized—nation of possibility. As if to demonstrate this link, Sanders follows his avowal of “election” by the figure of language with an autobiographical story of adoption that concatenates multiple mothers, multiple languages, and multiple religions. This powerful conclusion to *Ambiguities of Witnessing*—the details of which I leave to readers to discover—does not provide an easy, ready-at-hand utopianism. But it shows that, in what Améry would have understood as its “warped,” “twisted” way, “apartheid produced the possibility of its own transformation” by requiring—in reality as in fantasy—the very cross-racial intimacy it more famously forbade.<sup>41</sup> If this is surely not everything there is to say about the possibilities of post-apartheid justice, it is most definitely something—something we cannot afford to forget.

- 
1. Theodor W. Adorno, *Critical Models: Interventions and Catchwords*, ed. & trans. Henry Pickford (New York: Columbia University Press, 1998), 89, and Theodor W. Adorno, *Eingriffe: Neun kritische Modelle* (Frankfurt am Main: Suhrkamp, 1963), 125.
  2. Adorno, *Critical Models*, *supra* note 1, at 89; Adorno, *Eingriffe*, *supra* note 1, at 125.
  3. Ranjana Khanna, *Algeria Cuts: Women and Representation, 1830 to the Present* (Stanford: Stanford University Press, 2008); Mark Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (Stanford: Stanford University Press, 2007).
  4. Adorno, *Critical Models*, *supra* note 1, at 100; Adorno, *Eingriffe*, *supra* note 1, at 142.
  5. Adorno, *Critical Models*, *supra* note 1, at 101; Adorno, *Eingriffe*, *supra* note 1, at 142–43.
  6. Adorno, *Critical Models*, *supra* note 1, at 298.
  7. Adorno, *Critical Models*, *supra* note 1, at 298–99.
  8. Sanders, *supra* note 3, at 2.
  9. *Id.* at 3.
  10. David Attwell & Barbara Harlow, “Introduction: South Africa Fiction after Apartheid,” 46 *Modern Fiction Studies* 1, 2 (2000).
  11. Sanders, *supra* note 3, at 194 n.11.
  12. *Id.* at x.
  13. See Thomas Keenan, *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* (Stanford: Stanford University Press, 1997).
  14. Sanders, *supra* note 3, at 9.
  15. *Id.* at 4–5.
  16. *Id.* at 6.
  17. *Id.* at 6–7.

18. *Id.* at 8.
19. *Id.* at 93.
20. *Id.* at 60–61.
21. *Id.* at 61.
22. *Id.* at 65.
23. *Id.* at 146.
24. *Id.* at 35.
25. *Id.*
26. *Id.* at 103.
27. *Id.* at 9.
28. *Id.* at 103.
29. See Hannah Arendt, “Collective Responsibility,” in *Responsibility and Judgment*, ed. Jerome Kohn (New York: Schocken, 2003), 147.
30. Sanders, *supra* note 3, at 187; see also Mark Sanders, *Complicities: The Intellectual and Apartheid* (Durham: Duke University Press, 2002).
31. Sanders, *supra* note 3, at 193 n.4.
32. *Id.* at 122–23; 126–27.
33. *Id.* at 88–92; 49–54.
34. Michael Rothberg, *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization* (Stanford: Stanford University Press, 2009).
35. Jean Améry, *At the Mind’s Limits: Contemplations by a Survivor on Auschwitz and Its Realities*, trans. Sidney Rosenfeld & Stella Rosenfeld (New York: Schocken, 1986). Améry’s work has recently become the object of reflection for theorists of transitional justice. See Thomas Brudholm, “Revisiting Resentments: Jean Améry and the Dark Side of Forgiveness and Reconciliation,” 5 *Journal of Human Rights* 7 (2006), and Magdalena Zolkos, “Jean Améry’s Concept of Resentment at the Crossroads of Ethics and Politics,” 12 *The European Legacy* 23 (2007).
36. Cf. *id.* at 23–24.
37. *Id.* at 68.
38. *Id.* at 72.
39. Sanders, *supra* note 3, at 143.
40. *Id.* at 188–89.
41. *Id.* at 191.