

## Chapter 3

# When Time Gives: Reflections on Two Rivonia Renegades

Johan van der Walt

### Introduction

This chapter engages with aspects of the lives of two key figures in the Rivonia trial. The first is Nelson Mandela, one of the accused. The second is Bram Fischer, leader of the defence team. The engagement with Mandela and Fischer will unfold in five sections under the following headings: Mandela and the Laws of Reflection; The Performative, the Constatative and the Impossible Foundation; The Gift and the Secret; The Renegade Moment; Bram Fischer's Madness.

The first section consists of a re-reading of the essay Jacques Derrida published on Nelson Mandela when Mandela was still in jail. It engages with the way Derrida situates Mandela within the play of the laws of reflection and how he then moves to contemplate a Mandela who cannot be reduced to or captured and imprisoned by these laws of reflection. The second section moves on to two further themes that Derrida raises in the essay on Mandela, the relation between the performative and the constative in speech acts and the impossibility of foundations or origins. These are key themes in Derrida's thought to which he returns many times in his work. The engagement with these themes in the Mandela essay is significant because of the way it highlights the relation between these themes in Derrida's work, but also because of the way it allows one to trace the boundaries of speculative reflection and to follow a trace to the Mandela who can ultimately not be contained by these boundaries of reflection.

The third section marks these boundaries of reflection with reference to the secret and the gift or the secret of the gift. The concepts of the secret and the gift play a pivotal role in the strand or tradition of philosophical thought that first became known as phenomenology and later as deconstruction. They stand in as reflection-resistant or reflection-resisting articulations of the boundaries of epistemological and normative reflection on and through which existing worlds and their pro- and inhibiting confines are constructed. As such they also point us to a freedom beyond these pro- and inhibiting confines of existing worlds. This freedom cannot be named, but a certain allusion to it is possible through invocation of moments of sheer madness that resist, challenge and rebel against all normative conceptions and ideals of freedom. The fourth section describes these

moments as renegade moments, moments that differ from revolutionary moments because they cannot be reduced to the endorsement, postulation and revolving of ancient normative conceptions – the hallmark of revolutions according to Arendt. Ultimately, they simply erupt as instances of an absolute freedom to act. ‘Madness beyond insanity’, Foucault calls this freedom.

The section on the Secret and of the Gift (third section) already invokes a remarkable renegade moment in the life of Mandela. The last section, ‘Bram Fischer’s Madness,’ turns to a life that was ultimately consumed by a renegade moment. In view of Arendt’s assessment of revolutions in terms of the revolving or recycling of ancient normative ideals, renegade moments should be considered as the real or essential inauguration of the newness and new worlds that Arendt’s reflections on revolutions and politics also contemplate profoundly. The renegade moment – in the instant of its withdrawal into the madness of absolute freedom – is not concerned with ancient norms and values. It is not concerned. It is simply and exclusively an eruption of unprecedented action. It is the eruption of the unprecedented. If at all related to revolutions, they might be considered as the very seeds from which revolutions ultimately spring. But they ultimately also withdraw from revolutions – and the stale language of revolutions – to return to that which always occurs much earlier. They withdraw to the absolutely unprecedented opening or giving of time from which new times and new worlds derive in the very final or first analysis. They take part in the pure performative, the pure act of withdrawal that ‘is’ or ‘gives’ time and through which time gives itself to new times and new worlds by withdrawing from them.

### **Mandela and the Laws of Reflection**

Jacques Derrida published his essay on Mandela in 1987. Mandela was still in jail at the time. The essay reflected then and still reflects today on Mandela’s resistance to the apartheid regime, focusing mostly on Mandela’s address to the court during the Rivonia trial. The essay turns on three key themes to which Derrida always came back in his work – the laws of reflections and speculation; the relation between the constative and the performative elements in speech acts; and the impossibility of acts of foundation and the need to substitute or at least supplement such ‘acts’ with retroactive ratifications or consolidations without which they basically remain spectral stirrings with no significant purchase on reality. In this section of this chapter, we shall briefly look at the first of these three themes again and at the way that Derrida articulated it in his essay on Mandela.

Derrida starts off with Mandela’s admiration for the law and specifically with Mandela’s dismissal of Marxist critiques of the parliamentary system as ‘undemocratic and reactionary’. ‘On the contrary’, stated Mandela clearly during the Rivonia trial, ‘I am an admirer of [this] system ... [and] have great respect for the British political institutions ... and system of justice’. ‘The independence of its

judiciary never fails to arouse my admiration', he continued. 'Respect', 'admirer' and 'admiration' are the key words here for Derrida and the emphases on these words are his.<sup>1</sup>

Mandela's respect and admiration nevertheless do not make him a 'simple inheritor' of these British institutions. If he is an inheritor, writes Derrida, he is the 'authentic inheritor' who does not simply 'conserve and reproduce' but also 'turn[s the inheritance] upon occasion against those who claim to be its guardians' so as to 'reveal in the inheritance ... what had never seen the light of day'.<sup>2</sup> This 'what had never seen the light of day' would be revealed, if at all, by an 'unheard-of act of reflection', says Derrida. It would be revealed, in other words, still by an act of reflection and thus by a certain mirroring, but an unheard-of act of such reflection or mirroring. The act of reflection or mirroring and thus of repetition appears to be inescapable also here in this authentic inheritance, but there is something extraordinary about it, so much so that it is 'unheard-of'. We shall return to this invocation of an 'unheard-of act of reflection' below, for in it is discernible an act that might be called 'purely revolutionary' or even 'pre-revolutionary' because of the way it embodies the very 'seeds' of revolution. Let us first look at what is at stake for Derrida in these mirroring reflections that he also ascribes to Mandela's *ad-mir-ation* of the law.

Derrida's engagement with mirroring and the *speculum* (the Latin for mirror still discernible in the German *Spiegel*, Dutch *Spiegel* and Afrikaans *spieël*) can be traced back to his engagement with Hegel and Bataille in an early essay on 'restricted and general economies'. Speculative economies are restricted economies, argues Derrida in this essay. They only spend for purposes of investment. The risk they take with others and otherness through the temporary forfeiture of possession has one aim only, and that is to increase possession. The speculation at stake in this investment of the self or the 'own' in the 'other' is aimed at a profitable re-possession of the self. This profitable investment and speculation goes to the heart of Hegel's speculative philosophy, according to Derrida. In Hegel's historical dialectic between spirit and matter or nature, spirit only spends itself (alienates itself/objectifies itself) in nature or matter in order to return to itself as dialectically enriched spirit. It is not an expenditure of spirit in an encounter with matter or nature for the sake of matter or nature. It is not an expenditure of spirit for the sake of losing itself selflessly in that what is strange and foreign to it. The latter expenditure of the self, the complete loss of selfhood, argues Derrida, is what Bataille has in mind with the notion of 'general economy'. At issue in this general economy is an expenditure of the self on the other that envisages or contemplates no profitable return from which selfhood would emerge enriched or enlarged. At issue in the general economy is a pure eroticism, that is, a pure desire

---

1 Jacques Derrida, 'The laws of reflection: Nelson Mandela, in admiration', in Jacques Derrida and Mustapha Tlili (eds) *For Nelson Mandela* (New York: Seaver Books, 1987), 16.

2 Derrida, 'The laws of reflection', 17.

for the other or otherness and a pure desire to merge with this otherness without any consideration of possible consequences. Were Bataille's general economy possible, it would not pay the slightest consideration to economic concerns with survival, let alone concerns of profitability.<sup>3</sup>

Attention to Mandela's mirroring admiration for the law and Western political and legal institutions undoubtedly still confines him (at least for us) to this speculative dialectics of investment. The focus on Mandela's admiration for Western democratic institutions renders him visible as one who risks his life for laudable ideals that we all understand. And this visibility is the beginning of a new confinement. The closing paragraph of Derrida's essay makes this abundantly clear:

[W]hat remains to be seen ... is also the figure of Mandela. Who is he? We have looked at him through words which are sometimes the devices for observation, which can in any case become that if we are not careful. What we have described, in trying precisely to escape speculation, was a sort of great historical watchtower or observation post. But nothing permits us to imagine this unity as assured, still less the legitimacy of this optic reflection, of its singular laws, of the law, of its place of institution, of presentation or of revelation, for example of what we assemble too quickly under the name of the West. But doesn't this presumption of unity produce something like an effect ... that so many forces, always, try to appropriate for themselves? An effect visible and invisible, like a mirror, also hard, like the walls of a prison. All that still hides Nelson Mandela from our sight.<sup>4</sup>

All the words through the optics of which Derrida endeavoured to observe Mandela in the essay that ends with this passage evidently bother Derrida. They have, he fears, produced an effect. They have constructed an image of Mandela, as if from the vantage point of a watchtower or observation post. And it is from this vantage point that many forces seek to appropriate Mandela. But the unity and legitimacy of this effect is in no way assured, suggests Derrida. In fact, not only is the unity and legitimacy of this effect not assured, the effect effectively hides Mandela from our eyes, insists Derrida. The unitary effect – the picture we get of Mandela through the optic play generated by words of the essay – effectively hides Mandela from our sight, like the walls of a prison. The walls created by the mirroring play of language are as hard as the walls of a prison, he concludes. His choice of words in this regard inescapably reminds one of the self-imprisonment in a hall of mirrors that Calvino describes in *If on a Winter's Night a Traveller*.<sup>5</sup>

The closing paragraph of Derrida's essay on Mandela is truly remarkable, for among the words that went into Derrida's engagement with Mandela in this essay

3 Cf. Derrida, *L'Écriture et la Différence* (Paris: Éditions du Seuil, 1967), 369–407; *Writing and Difference* (Chicago: University of Chicago Press, 1978), 251–77.

4 Derrida, 'The laws of reflection', 41–2.

5 Italo Calvino, *If on a Winter's Night a Traveller* (New York: Vintage, 1988), 161–8.

were also words that one might have assessed as an appreciation of the authentic inheritance or unheard-of reflection that at least in some respect transcends the regular reflection or mere mirroring that kept Mandela doubly imprisoned at the time (beyond the brick walls of the prison there were also the hard walls of optic mirroring that kept him incarcerated) and perhaps still keep him imprisoned today. For instance, Derrida also engaged with the Mandela who, in addition to his declaration of respect for Western political institutions, holds up to these institutions a challenging perfection of their ideals of democracy and equality and respect for the individual that he gleaned from 'Marxist reading' and the 'structure and organization of early African societies'. 'The land', Mandela averred in his address to the court, 'then the main means of production, belonged to the tribe'. 'There were no rich or poor, and there was no exploitation of man by man.' In this society Mandela discerned the '*seeds of a revolutionary democracy* in which none will be held in slavery or servitude, and in which poverty, want and insecurity shall be no more'.<sup>6</sup>

Is there not here, in this invocation of the seeds of a revolutionary democracy that Mandela discerned in early African societies, an intimation of the unheard-of reflection that ultimately makes Mandela not just an inheritor but an authentic inheritor of Western democracy that 'reveals... what has never yet been seen in the inheritance'? One might want to think so, but Derrida does not even exclude *these* observations of Mandela from the 'devices of observation' through which the essay has effectively constructed a unitary image of him. Going by the regular rules and principles of prose and dissertation, Mandela's invocation of the revolutionary democracy that can be gleaned from early African social arrangements is part and parcel of the hard prison and speculative walls that still hide him from our eyes.

In other words, the unitary effect created by the language of the essay on Mandela is not broken by the invocation of Mandela's fascination with early African societies. It is simply completed by it. It only contributes to a more complete unitary effect that also accounts for an element of Mandela's person that is well known and can hardly be ignored without becoming grossly negligent as far as constructing Mandela's portrait is concerned. But the deconstruction of this portrait has surely not yet begun with this completion of it. Paying due attention to Mandela's fascination with the social organization of the societies from which he came is essential for anyone who would like to begin to understand him. But the critical or deconstructive move that would begin to understand Mandela also on this count as an *authentic heir* of the traditions of these societies would have to begin to ask how Mandela does or did not simply 'conserve and reproduce' this inheritance but also 'turn[s or turned it] upon occasion against those who claim to be its guardians' so as to 'reveal in [it] ... what had never seen the light of day'. Derrida's essay does not claim to have begun to do this with regard to either of these two elements of Mandela's double inheritance. The 'unheard-of reflection' that Mandela may have accomplished with regard to the traditions that

6 Derrida, 'The laws of reflection', 24, 26.

he admires to 'reveal in [them] what has never seen the light of day' must itself still be revealed. The suggestion at the end of the essay is clear. There is a Mandela that we have not seen yet and may never come to see. For all practical purposes one can call this Mandela the secret Mandela, the one whose secret has not yet been revealed to anyone and will never be revealed.

What are the conditions for talking earnestly about 'the secret Mandela' or 'Mandela's secret'? There are probably more conditions for talking about a secret and for talking in this case about 'Mandela's secret' than can be listed here. But one crucial condition is this one: To remain a secret, the secret may never be revealed and must in fact not at all be subject or susceptible to any possibility of revelation. Only when this condition is fulfilled can one talk seriously about a secret. This is what Umberto Eco tells us in striking fashion in one of his novels, but it is also a crucial element of Derrida's understanding of the secret, contends Jean-Luc Nancy.<sup>7</sup> Can we nevertheless begin to understand better what is at stake in this secret that cannot be revealed? Can one come to understand something of or about a secret without revealing it and thus ruining it? The suggestion in what follows is that this is indeed feasible. The suggestion is in fact that this is what Derrida's work aimed at all along. Deconstruction is an endeavour to alert us to secrets that cannot be revealed and to facilitate an understanding of or at least an experience of these secrets, an experience of their irreducible secrecy that will not allow for any revelation. It is thus only through deconstruction that we might come closer to the secret Mandela that we will never come to see. And that is how we will approach Mandela's un-disclosable secret in what follows – through deconstruction and specifically through two further strategies or themes of deconstruction that Derrida brings into play in the essay on Mandela. The first concerns the relation between the performative and constative in speech act theory. The second concerns the figure of impossible foundational acts.

### The Performative, the Constative and the Impossible Foundation

The other two themes of deconstruction announced here, the relation between the performative and constative elements of speech acts and the *impossibility of*

7 Jean-Luc Nancy, *La pensée dérobée* (Paris: Galilée, 2001), 63: 'Il veut toucher ainsi au secret ... de tout nom et qui est le secret par excellence: celui qui reste secret même quand on le dévoile, surtout quand on le dévoile.' Cf. Umberto Eco, *Foucault's Pendulum* (London: Quality Paperbacks Direct, 1989), 619–20: 'We invented a nonexistent Plan, and They not only believed it was real but convinced themselves that They had been part of it for ages, or rather, They identified the fragments of their muddled mythology as moments of our Plan, moments joined in a logical, irrefutable web of analogy, semblance, suspicion ... A plot, if there is to be one, must remain secret. A secret that, if we only knew it, would dispel our frustration, lead us to salvation; or else the knowing of it in itself would be salvation. Does such a luminous secret exist? Yes, provided it is never known.'

*founding* that haunts all constitutional acts, indeed lead us deeper into the realm of Mandela's secret. Considering that constitutional acts of founding that inaugurate new institutional settings are also speech acts that convey or communicate meaningful content, the two themes are necessarily closely related. Derrida brings the theme of the performative and constative sides of the speech act into play in two regards in the essay on Mandela. The first concerns the failed speech act that marked and marred the constitutionalization and institutionalization of apartheid. The second concerns the revolutionary dream of a purely performative speech act that would never become contained or constrained by the constative acts that result from the performative.

The essay describes apartheid as a failed speech act, an act that was simply too weak to establish the order that it aimed to establish. Speech acts that aim to found new orders perpetrate a minimum or threshold level of violence without which they fail to achieve what they set out to achieve. They have to break down old orders effectively and they have to eradicate all significant resistance to the new order effectively. Only then does the violence that they continue to perpetrate or once perpetrated become inconspicuous or surreptitious enough to be forgotten and only then does the new order begin to appear as an instance of effective order and not as a continuation of disorderly violence. This is what apartheid could never do. It could never perpetrate enough violence, the minimum level of violence required to establish itself. Derrida writes:

Not all performatives, a theoretician of *speech acts* would say, are "happy". That depends on a great number of conditions and conventions that form the context of such events. In the case of South Africa, certain "conventions" were not respected, the violence was too great, visibly too great, at a moment when this invisibility extended to a new international scene, and so on. The white community was *too* much in the minority, the disproportion of wealth *too* flagrant. From then on this violence remains at once excessive and powerless, insufficient in its result, lost in its own contradiction. It cannot manage to have itself forgotten, as in the case of states founded on genocide or quasi-extermination. Here [in the case of apartheid] the violence of the origin must repeat itself indefinitely and act out its rightfulness in a legislative apparatus whose monstrosity fails to pay back. A pathological proliferation of juridical prostheses (laws, acts, amendments) destined to legalize to the slightest detail the effects of fundamental racism, of a state racism, the unique and the last in the world.<sup>8</sup>

The description or analysis of apartheid that Derrida articulates here evidently turns on a radical *real-political* understanding of political institutionalization. He clearly exempts no institutional foundation from what seems to be an indispensable founding violence. But there are conventions regarding this founding violence that the apartheid regime did not respect. Apartheid's violence was too visible

8 Derrida, 'The laws of reflection', 18.

at a time when a certain insistence that violence be kept invisible became an international standard. Derrida's invocation of speech act theory merges here with Walter Benjamin's critique of violence that would become the main focus in his seminal essay 'Force of law'.<sup>9</sup> Benjamin's critique of violence entertains no illusionary ideals about institutionalizations that would not be violent. Derrida would take Benjamin to task in 'Force of law' for entertaining the notion of a final apocalyptic violence – a divine violence – that would finally break out of the cycle of law-creating and law-maintaining violence. But Benjamin's critique remained a functional heuristic for Derrida in 'Force of law' and so it is also here in the essay on Mandela. In terms of Benjamin's critique, apartheid's violence can be analysed as an infinitely insufficient law-founding violence that necessitated an infinitely excessive law-enforcing violence.

It is also against this background of the inevitability of institutional violence of either the founding or securing kind that the bizarre 'liberal' rejection of the ANC's turn to violence in the struggle against apartheid becomes glaringly evident – the rejection of those liberals who worked against apartheid from within the system and insisted that the resistance to apartheid remains 'democratic'. This liberal rejection of the ANC's turn to 'anti-democratic' measures turned on nothing less than a convenient blindness regarding the violence perpetrated by the system of apartheid on a daily basis. The violence perpetrated by the system of apartheid was abominable, these liberals surely acknowledged, but that somehow did not count when it came to taking any kind of concrete action. When the stakes were really up, only the violence that sought to end apartheid's violence counted and warranted enough rejection to cut ties, refuse association and decline support. The violence of apartheid itself did not warrant this principled cutting of ties, refusal of association and denial of support. These liberals continued to work within the system, associated with it and thus supported it despite its quotidian violence. They thus lent apartheid some kind of legitimacy that the resistance to apartheid, on the other hand, did not merit according to them. They insisted that the ANC should join *them* in a democratic struggle against an undemocratic regime. They did not contemplate giving up their institutional and personal security in order to join the ANC. One should also not forget that this was the time that two of the major 'liberal democracies' of the world, the United States and the United Kingdom, the latter being the very democracy whose institutions Mandela singled out in his admiration, labelled the ANC and Mandela as 'terrorists'.<sup>10</sup> It is against this background that Mandela explained the ANC's resort to armed resistance and rejection of this supposedly 'democratic way': 'Only a people already enjoying democratic and constitutional rights has any grounds for speaking of [such] rights. This does not have meaning for those who do not benefit from them.'<sup>11</sup>

<sup>9</sup> Derrida, *Force de Loi: Le 'Fondament Mystique de L'Autorité'* (Paris: Galilée, 1994).

<sup>10</sup> Mandela was only taken off the United States' official list of terrorists in 2008.

<sup>11</sup> Derrida, 'The laws of reflection', 19.



However, there is absolutely nothing mysterious or enigmatic about this rejection of democratic rights, principles and measures under circumstances that in any case make a mockery of these rights, principles and measures. It requires little more than common sense to reject the demand to play by rules by which no one is playing. This part of Mandela's person and legacy is therefore neither extraordinary, nor mysterious or enigmatic. It is far from 'secretive'. His stance in this regard was and is still fully visible, transparent and comprehensible. At issue here is surely not an 'unheard-of reflection' that 'reveals what has never seen the light of day'. By taking this stance, the Mandela whom we cannot see has not yet moved one inch closer to the stage that will, in any case, never present or reveal him. What is Derrida getting at then, when he talks about a Mandela that is infinitely shielded from our vision by a wall of mirrors that is as hard as prison walls?

The second invocation of the performative/constative configuration of speech acts and of law founding and securing violence in the essay gives us a clue in this regard. It leads one closer to what might still become 'manifest' as the undisclosed secret of Mandela, the secret that nevertheless will remain undisclosed and unrevealed even while becoming manifest. Derrida returns to the performative/constative thematic in response to the new order that Mandela envisages for South Africa: An order that is founded on 'the will of an entire nation'.<sup>12</sup> According to Derrida, Mandela seems to be invoking Rousseau here without quoting him. He seems to be invoking a general will that is not just the sum of all the individual wills that constitute a people.<sup>13</sup> And we know that Rousseau's general will is a fiction, an idea that has to be presupposed for purposes of entertaining a certain idea of inclusive democracy, but one that has no material reality. Mandela, in other words, appears to envisage for South Africa something that is, going by all realistic expectations, simply impossible. He was not one for real or realistic expectations. He always chose the unexpected route, writes Achille Mbembe poignantly.<sup>14</sup>

Not only is that which Mandela envisages for South Africa realistically speaking impossible. It also runs head-on into the problem of an impossible institutionalization. At issue is a 'performative [institutionalization that] will not appear to refer to any fundamental pre-existing law'. Being an idea of which the material realization is impossible, it would have to 'erase itself from all empirical determination' for it 'seems no more accessible here than anywhere else'. What Mandela envisages for South Africa runs into the same problematic that the foundations of new constitutional orders generally run into, but it also does this so with the stakes raised infinitely higher. To begin with the problem of foundation:

---

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Achille Mbembe, 'Nelson Mandela, les chemins inattendus', *Le Monde Diplomatique*, August 2013, 14–15.

This phenomenon marks the establishment of almost all states after a decolonization. Mandela knows that: no matter how democratic it is, and even if it seems to conform to the principle of the equality of all before the law, the absolute inauguration of a state cannot presuppose the previously *legitimized* existence of a national entity. The same is true for a first constitution. The total unity of a nation is not identified for the first time except by contract – formal or not, written or not – which institutes some fundamental law. Now this contract is never actually signed, except by supposed representatives of the nation which is supposed to be “entire”. This fundamental law cannot, either in law or in fact, simply precede that which at once institutes it and nevertheless supposes it: projecting and reflecting it! It can in no way precede this extraordinary performative by which a signature authorizes itself to sign, in a word, legalizes itself on its own without the guarantee of a preexisting law. This violence and this autographic fiction are found at work just as surely in what we call individual autobiography as in the “historical” origin of states.<sup>15</sup>

As already mentioned, this theme of the impossible foundation – requiring pre-existing authorization that it will only obtain later, retroactively, etc. – fascinated Derrida endlessly and his work returns to it often.<sup>16</sup> He probably never realized – or if he did never indicated that he did – that he was grappling with a problematic that Hans Kelsen had already addressed squarely and without much ado in his *Reine Rechtslehre* as well as in other writings.<sup>17</sup> Kelsen very lucidly concluded that the *Grundnorm* or foundational norm was nothing more than a presupposition or a fiction that we must maintain for the sake of speaking coherently about law as law. For Kelsen too, the law always lacks a secure foundation. Whatever foundational security it might ever come to claim, has to be extracted from the strength of a presupposition. However, it is from Derrida and Derridean thinkers – especially Jean-Luc Nancy – that we gain a deeper understanding of the dynamics at stake in this presupposition or fiction with which legal systems are sustained. The name of Marcel Mauss – one of the thinkers on whom Derrida himself relied fundamentally for the thoughts that are at issue here, should also be added here. It is from these thinkers that we learn that the presupposition of law on which legal orders depend are ultimately based on either a gift or an act of sacrifice or, most likely, on a combination of gift and sacrifice.<sup>18</sup> And it is here,

15 Derrida, ‘The laws of reflection’, 20.

16 Cf. especially Jacques Derrida, ‘Declarations of independence’ (1986) *New Political Science* 7–15.

17 Hans Kelsen, *Reine Rechtslehre* (Aalen: Scientia Verlag, 1994), 66–7; Kelsen, *Vom Wesen und Wert der Demokratie* (Aalen: Scientia Verlag, 1981), 31–2.

18 For a more extensive discussion of the distinction between gift and sacrifice, cf. J. van der Walt, ‘Timeo Danaos et Dona Ferre and the constitution that Europeans may one day have come to give themselves’, in J. van der Walt and Ellsworth (eds) *Constitutional Sovereignty and Social Solidarity in Europe* (Baden Baden: Nomos Verlag, 2015), 267–307.

in the region of the distinction between gift and sacrifice, that one draws closer to Mandela's secret, closer to something about Mandela that one will never come to know, notwithstanding the possibility of knowing about it, notwithstanding the awareness that this 'something' is there. However, it will presently become clear that this 'something' is not a thing at all.

The undeniable *logic* of sacrifice makes sacrifice a very likely 'filler' with which the irreducible emptiness or lack that accompanies constitutional foundations can be 'filled'. The logic of sacrifice can very plausibly stand in for the representative contract that should always but never in fact precedes constitutional foundations. It would seem to self-evidently answer the question regarding the identity of the author or authoritative power that gets to decide the foundational rules that inaugurate the new constitutional order. The question opens up, we saw, because we do not have a pre-existing rule in place that stipulates who the author or authoritative power should be. Something must be invoked that fills the space opened up by the absence of a rule so self-evidently that the question regarding the rule does not or cannot even arise properly. The invocation of sacrifice answers the question in advance: We suffered. We sacrificed. So we get to make the new rules, end of story. And this being so, we can also demand that sacrifices now be made by others, by those who made us suffer or caused the suffering. There is such a self-evident logic to all of this that no one in his or her right mind can be imagined to doubt the principle.<sup>19</sup> In fact, the logic of sacrifice seems to negate the need for presupposing Kelsen's *Grundnorm*, the *Grundnorm* on the basis of which the existence of a political people can be assumed. The one who sacrificed through suffering just 'naturally' becomes the *pouvoir constituant* that gets to lay down the new constitutional order; hence also Nancy's acute observation that the history of sovereignty is irreducibly tied to the history of sacrifice.<sup>20</sup> But there is of course nothing 'natural' about the 'idea' that past suffering founds the right to make new rules for the future. Nietzsche, for one, balked at the idea. But Nietzsche

---

19 Ulrich K. Preuss, 'Perspectives on post-conflict constitutionalism' (2006/7) 51 *New York Law School Law Review* 469–70: 'Constitutions come into being after a revolution or war ... After a revolution ... the triumphant forces lay out their principles of how society should be ordered. [They ... impose] their rule upon the defeated groups who are then usually denounced as "counter-revolutionary", "reactionary", or sometimes even as "enemies of the people". Constitution-making after a war is not very different. If the war was lost, then the demoralized masses place the blame for their defeat and sufferings on the ... "old regime". They throw their rulers out of office and ... demand ... a new constitution [that] reflect their needs, hopes and aspirations. But even after a victorious war, a new distribution of power, i.e., a new constitution, is on the agenda of the nation. The people want recognition and remuneration for their *sacrifices* and hence demand a new distribution of the benefits of the social compact' (emphasis added, text slightly paraphrased).

20 Nancy, *Le Sens du Monde* (Paris: Galilée, 1993), 141.

himself was acutely aware how ‘self-evident’ or ‘natural’ this idea had become in the course of a history of Christianization.<sup>21</sup>

This logic of sacrifice can indeed take us a long way into the foundation of some constitutional order, no doubt. But there is one essential distance that it cannot cover. It cannot reach what Mandela envisaged for the new South Africa, namely, a constitutional order that would be one laid down by and for ‘the entire nation’. Mandela’s and Rousseau’s counter-factual ideal of a constitution founded by and on a general will that is the will of each and everyone, cannot be realized by the sovereignty claimed solely on the basis of past sacrifices and past suffering. This is so because those who inflicted suffering and demanded sacrifices in the past, however unjustly and obnoxiously so, are still part of this ‘entire nation’. If the new constitutional order is to be one for the entire nation, past sacrifices no longer suffice as the obvious foundation for the new constitutional authority and constitutional order. Something else or extra must be assumable and assumed then. Chances are that those who suffered and sacrificed in the past will indeed often or at least sometimes play pivotal roles in post-liberation foundational procedures, but if they are to do so on behalf of ‘the entire nation’, quite a few assumptions or presuppositions will have to be possible regarding their ‘extraordinary wisdom’, that is, the ‘extraordinary wisdom’ – probably obtained through their own suffering – ‘not to make the same mistakes’, or the like. Quite a few assumptions will have to be possible about their extraordinary generosity, humanity, decency, etc., for none of this will be readily attested by a pre-existing and pre-documented rule or norm that has been signed or ratified by everyone involved.

Imagine those responsible for causing untold suffering in the past ever signing or ratifying the signature of such a document. If there is any of the typical psychological resistance left in them – resistance that might range from regular honour, pride and the understandable wish not to be embarrassed in public, on the one hand, to persistently parochial self-righteousness and pathological inability to own up to any mistakes or misdeeds, on the other – past oppressors will not sign a document that will properly license the hitherto oppressed as the *pouvoir constituant* that can produce a properly grounded foundational norm or *Grundnorm*. And even if they would, what would the dignity and legitimacy of the *pouvoir constituant* and *Grundnorm* gain from the signature of those who signed it, belly up, with no trace left in them of the honour, pride and regular psychological resistance that reside in simple selfhood?<sup>22</sup> Should they – these belly-up signatories – not rather be discarded, Schmittian style, as the ‘vanquished enemy’ who has nothing further to say about the political future of the people, thereby accepting that they are

21 Cf. F. Nietzsche, ‘Zur Genealogie der Moral’, in *Sämtliche Werke, Kritische Studienausgabe*, vol. 5 (Berlin: Walter de Gruyter, 1999).

22 Recall for a moment Hegel’s dialectic of the master and the slave: The master can gain no self-consciousness from the acknowledgement of a slave who has no self-consciousness. Cf. G.W.F. Hegel, *Phänomenologie des Geistes* in *Werke in 20 Bänden, Bnd 3* (Frankfurt a.M.: Suhrkamp Verlag, 1970), 145–55.

simply not part of 'the entire nation'? Would this not be less embarrassing to the vanquished and more dignifying to everyone involved?

Circumstances might be imaginable under which this Schmittian resolution may indeed be more 'dignifying' to everyone involved, but they would be limited to cases where the vanquished enemy or oppressor has for all practical purposes no combatant left standing and simply has to sign an unconditional peace treaty and depart from the scene (supposing for the moment signing the treaty would still serve any purpose other than final humiliation). Such cases would, in other words, be restricted to instances of quasi-extermination with regard to which serious questions regarding constitutive and constitutional legitimacy, dignity, etc., would no longer be pertinent and nothing less than distasteful to anyone with any degree of common sense. Whatever one may wish to think of situations like these, this was not the situation in which South Africa found itself towards the end of apartheid. A Schmittian resolution of the conflict, the quintessentially sacrificial resolution,<sup>23</sup> was therefore not an option that Mandela or anyone else could contemplate at the time.

What then, might have made a Kelsenian termination of apartheid feasible? Let us ask more generally: What might make a *pouvoir constituant* and a *Grundnorm* for the *entire nation* assumable or presumable in the absence of the proven and pre-existent title to sovereignty and constitutional authority that we contemplated above? What will make it feasible to presuppose such a *Grundnorm* for the entire nation in the way Kelsen contemplates the presupposition of the *Grundnorm*? The one thing that stands a chance of making this presupposition feasible is a certain retreat from the past that leaves many things undecided and open, open enough to create a space in which an entire nation can commence to simply live together again and find a *modus vivendi* of the kind that Rawls contemplates as the necessary first step to what may eventually emerge as an overlapping consensus.<sup>24</sup> At issue in this 'leaving things undecided and open' would be a retreat from the logic of sacrifice. This logic, we saw, ties everyone inescapably to the past and to past scores that must still be settled. At issue in the retreat from this logic would be a turn to the rather illogical or at least a-logical dynamic of the gift from which Derrida distinguished the relentless logic of sacrifice.

Why the gift? Why is the gift an alternative to sacrifice, considering the proximity and almost lack of distinction between gift and sacrifice that common sense might stress easily? And why might Mandela be said to have opted for the gift instead of sacrifice? And why might the secret of Mandela and the Mandela that we will never come to see be related to this option for the groundless gift instead of the logically well-grounded sacrifice? Let us consider these questions one by one.

---

<sup>23</sup> Cf. Wolfgang Palaver, 'A Girardian reading of Schmitt's political theology' (1992) 93 *Telos* 43–68.

<sup>24</sup> Cf. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 142, 154–64.

## The Gift and the Secret

Why the gift? How does the gift differ from sacrifice notwithstanding its apparent proximity to sacrifice? Sacrifice ties one to the past, the gift breaks with it. This difference becomes evident in a certain forgiveness that simply breaks with the past and thus allows for the very commencement of a new beginning and a new time. The gift in forgiveness lies in the new time that it makes possible, the time that it gives by allowing a break with the past. The gift in forgiveness is the gift of time, that is, the giving of time and the time that is given. This is a key insight that Hannah Arendt already articulated clearly and which Derrida would revisit extensively and incisively,<sup>25</sup> and it is this insight that casts significant light on Mandela's secret without revealing it. It is the regard for the mystery or secret that attaches to any forgiveness that *simply gives time* that leads one into the vicinity of Mandela's irreducible and unfathomable secret. It is to this link between the secret of the gift and Mandela's secret to which we turn now.

One will never be able to start again if one cannot at some stage just let go of the past, Arendt tells us.<sup>26</sup> At issue in this *general* letting go of the past is a forgiving that has more in common with a Nietzschean forgetting than a Christian forgiveness. Derrida would note the Christianization of forgiveness that would eventually take place in South Africa under the auspices of the Truth and Reconciliation Commission.<sup>27</sup> This Christianized forgiveness still demanded that those who committed crimes confess and come clean. It singled them out for a forgiveness that had to be deserved through confession and remorse, the kind of forgiveness that Derrida unmasked as no forgiveness at all. There is no one left to forgive if the only candidates for forgiveness are those who have already dissociated themselves remorsefully from their misdeeds, he showed us with an exact and exacting conceptual analysis.<sup>28</sup> The argument may well have raised concerns among many that Derrida actually proposed a reckless 'letting off the hook' of criminals, but it surely also created space for – and may well have contemplated – the forceful claim that the regular course of criminal justice provided a sounder alternative to this Christian forgiveness as far as managing or negotiating the transition from apartheid to post-apartheid was concerned.<sup>29</sup> Be

25 Cf. Jacques Derrida, *Donner le temps 1. La fausse monnaie* (Paris: Éditions Galilée, 1991).

26 Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1989), 236–42.

27 Jacques Derrida, *Cosmopolitanism and Forgiveness* (London and New York: Routledge, 2001), 30–32.

28 Derrida, *Cosmopolitanism and Forgiveness*, 32–8.

29 The legitimacy of a criminal justice system that programmatically leaves certain crimes unprosecuted will always remain in question, went the argument. Whether the new sovereign should punish or pardon in the wake of prosecution and conviction is of course a different question. Cf. J. van der Walt, 'Vertical sovereignty, horizontal constitutionalism,

it as it may, this Christianized forgiveness was still much too much bound up with the past and past misdeeds to qualify for the forgetful Nietzschean liberation from the spirit of revenge. It was still too fixated on wrongdoers to facilitate the gift of more time for an entire nation that would consist of both the culpable and the innocent. Moreover, this massively mediatized fixation on a select number of wrongdoers in fact went a long way towards obfuscating the fact that much of that which was fundamentally and structurally wrong in the past was being left untouched in the 'orchestrated' transition that was taking place, as some would argue very forcefully later.<sup>30</sup>

Why can Mandela be said to have opted for a gesture of forgetful forgiving that gave *time* to an *entire nation* and not just to some? Why can he be said to have given an entire nation the first time ever to work out the conditions for a common future that would include everyone involved? The gesture of forgetful forgiving would eventually be authored by a whole generation of ANC leadership. A whole generation of ANC leaders would eventually sit down with leading members of the apartheid government without insisting on confessions or concessions that settled past scores. However, Mandela can be said to have initiated this gift in way that also created the opportunity for other ANC leaders to follow. Why so? A key passage from his biography provides the answer. Mandela and the ANC leadership had already been transferred from Robben Island to the Pollsmoor prison in Cape Town when he was referred to the Volks Hospital for surgery in 1985. The transfer to Pollsmoor was clearly understood as a move of the government to isolate the core leadership of the ANC from the rest of the ANC members incarcerated on Robben Island. After his surgery Mandela was further informed that he would henceforth also be isolated from the other ANC leaders in the Pollsmoor prison. This isolation could have had devastating consequences for the ANC leadership, but Mandela saw in it an opportunity for a renegade moment in which he would break lines with all lines, even with his comrades, in order to break with the past. This is how he explained the situation:

The change, I decided, was not a liability but an opportunity. I was not happy to be separated from my colleagues ... [b]ut my solitude gave me a certain liberty, and I resolved to use it to do something I had been pondering for a long while: begin discussions with the government ... This would be extremely sensitive. Both sides regarded discussions as a sign of weakness and betrayal. Neither would come to the table until the other made significant concessions.<sup>31</sup>

---

subterranean capitalism: A case of competing retroactivities' (2010) 26(1) *South African Journal on Human Rights* 118–19.

30 R.A. Wilson, *The Politics of Truth and Reconciliation in South Africa* (Cambridge: Cambridge University Press, 2001).

31 Nelson Mandela, *Long Walk To Freedom* (Randburg: Macdonald Purnell, 1994), 513. Heinz Klug (University of Wisconsin Law School) cast doubt on the veracity of this passage from Mandela's biography in a response to the argument regarding Mandela's

Mandela could easily have alienated himself from the ANC leadership with this risky move. He could easily have sidelined himself, among his peers, as the comrade who had given up the struggle, the one who had become tired and just wanted to get out of prison while he still had some years to live. The language of betrayal, the melancholic language that is always tied to the past, was still in the air. And the apartheid regime could easily have exploited his move by encouraging the interpretation that he had given up the struggle. They could easily have abused his initiative for the sake of some strategic advantage. Mandela nevertheless took this step with the clear conviction that he was doing what he had to do. With this courageous step of selfless leadership and statesmanship he single-handedly precipitated the first essential step in the political transition that produced a constitutional foundation for an *entire* nation. With this unique act of political conviction and courage, Mandela bestowed on South Africa the gift of a new beginning.

Was Mandela's gift well received? This is a key question that leads one to the heart of the gift, the secret of the gift, the gift of the gift, and to the heart of Mandela's secret. The question concerns the very possibility or impossibility of receiving a gift properly or well. Whether something even close to an 'entire nation' ultimately materialized in South Africa is a question that remains contested and will probably remain so until the end of time.<sup>32</sup> That is why this 'entire nation' still has to be assumed or presumed in Kelsenian style whenever the need to talk about a new South African legal order is at stake. Mandela's *gift* has surely not resulted in something that is tangibly given. A lot ended up as patently given in 'post-apartheid' South Africa. A lot finally emerged from the years of transition

---

'mad gift' that follows here during a panel discussion of Mandela's legacy at the 2014 Annual Conference of the Law and Society in Minneapolis (May 2014). Klug suggested that Mandela never broke rank with the ANC cadres and never made any significant move in the negotiation process without due consultation with the rest of the ANC leadership. Would Klug's assessment of this passage (and several similar passages from *Long Walk To Freedom*, as Stephen Ellmann pointed out to me at the time) turn out to be accurate, much of the argument that I base on it would fall apart, and that would leave Bram Fischer the only real renegade invoked in this chapter. The day that Klug's assessment would turn out to be true would be sad and devastating, for it would unmask one of the truly inspiring narratives of the end of apartheid as a cheap myth that was at least co-cultivated or authorized by an ageing and somewhat self-aggrandizing 'patriarch'. Personally speaking I would hope not to live as long as to witness such an unmasking of Mandela's legacy. I, for one, would like to sustain the memory and/or imagination of an isolated old man, who, after having given and/or sacrificed his youth to the resistance against oppression, still had enough renegade madness in him to break rank again, and this right after intrusive surgery that would have left most mortal males of his age content to follow easier routes. The difference between Klug's and my assessment of Mandela's legacy may well be another case of the 'competing retroactivities' that I have described elsewhere. Cf. Van der Walt, 'Vertical sovereignty'.

<sup>32</sup> Cf. Van der Walt, 'Vertical sovereignty', 118–19.



as undeniable facts of the new South Africa. Among these facts there would eventually be undeniable signs of significant normative and moral progress. But the gift itself cannot be counted among positive facts, not even among positive facts of positive developments, that is, not even among facts of “progress”.

It is the contemplation of the withdrawal of the ‘entire nation’ from the entire set of positive facts that make up post-apartheid South Africa that leads us into close proximity to a hidden stage, the hidden stage on which Mandela’s secret might become manifest, on the one hand, while remaining undisclosed, on the other. It is here that we move into the vicinity, neighbourhood or contemporaneity of the Mandela whom we still cannot see, the Mandela who is still hidden from us – also now after his death – by walls of mirrors and mirroring, so many years after his release from the prison walls that also still hid him when Derrida wrote the essay on Mandela and the laws of reflection. This is the question that one must ask as one approaches this enigmatic stage: What is the ground for Mandela’s graciousness and the ground for Mandela’s gift? Why did Mandela become the personification of grace and graciousness in the time we live? We have already mentioned that there is something illogical or at least a-logical about the gift. The gift has no ground in logic. The gift that is always and ever again the *first* gift – it is not a gift if it is not a *first* gift – is groundless, absolutely groundless. Any explanation of Mandela’s gift or of his graciousness would ascribe or relate it to some cause or instance of causation. It is very possible to do so. One may ascribe it, for instance, to the ‘greater humanity’ taught by the African philosophy of Ubuntu about which Mandela must surely have known or learned quite a bit since childhood. One might ascribe it to some sanctification of his person that resulted from years of incarceration, some purification that occurred through long years of personal sacrifice. But what do these ascriptions offer us apart from rather mundane reflections on Mandela in the mirrors of things that we believe we know and understand? What would it tell us about Mandela that would not ultimately reduce him to – and imprison him again in – what *we* make of him? The Mandela whom we need to contemplate and whom we are trying to contemplate here is the Mandela who has always, just like the ‘entire nation’ that he contemplated all along, been withdrawing from all positive instantiations. The entire nation will always withdraw from its positive instantiations and Mandela, the contemplator of ‘entire nations’, will always withdraw from all positive instantiations or portrayals of his person.

The tradition of thinking that would engage most consistently and consciously with the gift and the given status of things, the tradition of thinking to which Edmund Husserl gave the name phenomenology, has all along stressed the insight that the gift retreats or withdraws from the given. The gift withdraws from that which ends up, among us, as discernibly or positively given. The title of a recent essay on Heidegger provides one with a succinct articulation. Of concern in this way or method of philosophical thinking is that which gives itself through a withdrawal –

‘... ce qui se donne en se retirant’.<sup>33</sup> What ends up among us as discernibly given does so by grace of a purely performative giving that withdraws from the scene of the gift. The gift never becomes part of its own scene. It is not a scene but the end and beginning of the scene that leave the scene behind by withdrawing from it or abandoning it. It is for this reason that it can only be contemplated in positive or constative language through predications that constantly abandon themselves and constantly shed themselves like already dead or dying skin. It is this language – the language through which phenomenology has always sought and still seeks to describe the process of appearance – that eventually also came to be called ‘deconstruction’.

The gift exceeds or transcends what is given, but not in the format of a surplus that overflows. The gift exceeds or transcends by grace of a reserve of giving that is never exhaustively given. A negative or inverse excess or transcendence is thus at stake in the gift. And those who are adamantly aware of this reserve of giving that is never given will only approach it with recourse to the least naming of words or words that refuse to name. Among these least naming of words do we find words such as ‘secret’, the word to which Heidegger, Calvino and Derrida would sometimes resort.<sup>34</sup> Paul Celan would make mention of an ‘absurdity’ pursued by an impossible poem.<sup>35</sup> Foucault would resort to notions of ‘madness’, a madness way beyond the medical classification of mental illness. And he would locate in this absolutely foreign madness the possibility of the birth of the first man and

33 Cf. Bernard Dov Hercenberg, ‘De ce qui se donne en se retirant’ (2012) 75(2) *Archives de Philosophie* 311–34. The article is nevertheless not as instructive as its title promises. Nancy’s work offers us a much profounder engagement with this thought. There is probably no text of Nancy that does not engage with the giving that withdraws in some way or another, but some of his most forceful articulations in this regard can be found in the essays ‘Le cœur des choses’ and ‘Sens elliptique’, both in Nancy, *Une Pensée finie* (Paris: Galilée, 1990). Consider for instance the following passage with reference to both Aristotle and Kant: ‘Dans le “il y a” de l’existence, et dans ce qui “y vient” à la présence, il y va donc de l’être, et du sens de l’être. Sous ses deux grandes formes philosophiques, le transcendantal a désigné une mise en réserve, un retirement ou un retrait de l’être. L’être d’Aristote est ce qui se réserve en deçà ou au-delà de la multiplicité des catégories (prédicaments, ou transcendants) par lesquelles l’être est dit “de multiple façons”. L’être s’offre et se retire dans cette multiplicité. Et le transcendantal de Kant désigne la substitution d’un savoir des seules conditions de possibilité de l’expérience à un savoir de l’être qui soutiendrait cette expérience. L’être s’offre et se retire dans cette condition, dans une subjectivité qui ne s’atteint pas comme substance, mais qui se sait (et qui se juge) comme demande.’ Consider also the reading of the resurrection and ascension of Christ as a giving that withdraws in *Noli me tangere* (Paris: Bayard Éditions, 2003) to which this chapter is also much indebted.

34 Cf. Calvino, *If on a Winter’s Night a Traveller* 192; Martin Heidegger, *Gelassenheit* (Pfullingen: Günther Neske, 1959), 24; Jacques Derrida, *Politiques de l’Amitié* (Paris: Galilée, 1994), 288–93.

35 Paul Celan, ‘Der Meridian’, in Celan, *Gesammelte Werke* (Frankfurt a.M.: Suhrkamp, 1983), III, 199.

his first step towards freedom – *la naissance du premier homme et son premier mouvement vers la liberté*.<sup>36</sup> Here, in these non-naming or least-naming of words do we find some intimation of the Mandela that we will never see; the secret Mandela; the absurd Mandela; the mad Mandela; Mandela the first free man; the freest man in the world, Derrida calls him; the man beyond sight, beyond the reflections of mirroring languages; Mandela, along with Goya's idiot, the first real man.<sup>37</sup>

From this madness stems his decision to break with friends and enemies and the very distinction between friends and enemies in 1985. And it is with this decision, perhaps more than with anything else, that he began to retreat into the invisibility that Derrida already sensed in 1987. For the friend–enemy distinction is one of the crucial optics of the political. It is the pair of binoculars that render the political possible, insist some.<sup>38</sup> And they do so with more acclaim and endorsement from others than would generally be conceded or admitted, for the friend–enemy distinction reflects a veritable metaphysics of the political that renders the political visible. It is from this visibility that Mandela began to withdraw in 1985.

Beside Mandela in the Rivonia trial, not (yet) as an accused but as counsel, stood another man whose life would be claimed by mad liberty; another man whose fundamental and utter invisibility would soon become manifest. Bram Fischer was his earliest alias. Bram Fischer the Afrikaner revolutionary, the first *vry boer* (freehold farmer), the first Afrikaner beyond language, the first to slip through the language of his ancestors never to return to its confines. It is especially with regard to him, but also still with regard to Mandela, that we will move now to reflect upon the phenomenon of the 'renegade moment'.

### The Renegade Moment

When we turn now to take a closer look at what is called here 'the renegade moment' we in fact return again to something that has already been invoked above in another context: 'the seeds of a democratic revolution'. Mandela discerned the seeds of democratic revolution, we saw, in the egalitarian land use arrangements of early African societies. In what follows, we will look for the seeds of revolution, democratic revolution included, elsewhere. We shall look for these seeds in renegade moments, moments on the eruption of which any kind of normative content, the idea of common land use included, has at best secondary or indirect bearing. At issue in these renegade moments is, in fact, a moment of madness, the effect of which on any normative progress or regress hangs, for the moment, completely in the balance. It may come to contribute to considerable or

---

36 Michel Foucault, *Histoire de la folie à l'âge classique* (Paris: Gallimard, 1972), 556–7.

37 Foucault, *Histoire de la folie à l'âge classique*.

38 Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker & Humblott, 1996).

epochal normative progress, as in the case of Mandela's moment of madness that we described above. Or it may contribute to very little or no significant observable moral progress (which of course does not detract one iota from its irreducible dignity), as in the case of Bram Fischer to whom we turn presently.

The crucial point is this: without this moment of madness, no significant shift in the current arrangement of things can be expected. If no one's rational inclination to maintain the security and stability of existing status quos ever gets overwhelmed by a moment of utter despair or sublime inspiration that precipitates a casting off of all shackles of reasonable caution so as to precipitate further a chain of unforeseeable events, nothing significantly new or different will ever happen. Moments of madness are the passages through which new times give themselves to us. It is from moments of madness that we receive the gifts of time. Madness is the pure performative, the purist performative thinkable, the performative that absolutely refuses the constative consolidation of comprehensible language, absolutely refuses any censoring of the somersaulting synapse. Each of the accused in the Rivonia trial will have had this moment of madness that catapulted them into a course of action that exposed them to utter destruction, the moment that abandoned them to persecution and prosecution by a governmental and military force from which they could expect no mercy and no decency. Mandela, we saw above, had another such a moment when he risked becoming branded as a traitor of the people for whom he had been locked up in jail for 27 years. Bram Fischer's moment of madness came 10 years after the Rivonia trial.

Revolutions never bring about significant normative progress. For that, they are much too much driven and informed by normative ideals that are already well articulated and understood in advance, before the revolutionary events commence. This is one of the key points that Arendt makes in *On Revolution*. Revolutions reinstate ancient principles of justice, not new ones.<sup>39</sup> Ancient regimes are taken to task and destroyed by revolutions for reasons of failing to honour principles that basically everyone already knew and grasped well before the first revolts erupted, not for failing to honour principles that only came to be understood and articulated after these revolts. A critical mass of people's support is required for any significant revolt. No mass of people will ever be moved to rebel by some newfangled idea that only few understand. At issue is a point that Gadamer already made well many years ago in his response to Habermas' critique of hermeneutics.<sup>40</sup> A significant critique of traditions are only possible on the basis of values or insights that are as 'traditional' as any other value or insight; hence also the quite traditional reflection/mirroring/admiration of old British democratic institutions and principles in

39 Hannah Arendt, *On Revolution* (Penguin Books, 1990), 208–14.

40 Hans-Georg Gadamer, 'Rhetorik, Hermeneutik und Ideologiekritik' and 'Replik', in *Hermeneutik und Ideologiekritik* (Frankfurt a.M: Suhrkamp, 1971), 57–82 and 283–317, especially at 307: 'Veränderung von Bestehendem ist nicht minder eine Form des Anschlusses and die Tradition wie die Verteidigung vom Bestehendem.'

Mandela's justification of his revolt against apartheid. It is evidently not towards revolutions that we must look for the absolutely unprecedented.

Arendt's political thought celebrates the emergence of newness and the birth of new worlds that results from significant political action. It should be clear, however, that this birth of new worlds can hardly consist in the normative innovation that such political action brings about. The most that one can expect from political or revolutionary action is a normative *re*-newal or *re*-generation of some kind. But political or revolutionary action cannot be reduced to these normative renewals or regenerations. Their essence is not exhausted by whatever moral regeneration they bring about. Their essence must ultimately be understood in terms of the sheer freedom to act and the unfathomable desire to act freely, for without this freedom to act and desire to act freely, no normativity will ever induce significant action. People often put up for years with moral discontent – so also the accused in the Rivonia trial – before they finally move to do something about it. When they finally do, something else, something quite apart from moral or normative considerations, spurs them into action. The moral or normative considerations and discontent were there all along. Had this been all that was needed, the action would have followed directly and mechanically from the very first observation that something was amiss. The seeds of revolution – to use again Mandela's rather Aristotelian phrase here – are not contained in the old jars that store normative ideas and ideals. They erupt from renegade moments that withdraw from these jars, withdraws into the mad moment of the pure performative; and it is from here that they give (or fail to give, as they often do) the new worlds that will soon enough describe themselves with old languages again.

What ultimately spurs a person into action belongs to or derives from unfathomable realms of the soul that remain irreducibly unfathomable and secret. It remains so unfathomable and so secret that one may for all practical purposes call it a personal madness that others can never hope to understand. Here erupts the realm of absolute freedom. Here commences the crack. Here shatter the mirrors of personhood and the masks of personae and personality. Here do the mirrors of assigned identities – the social roles and responsibilities that render persons comprehensible – begin to give way to a freedom that knows no bounds. Here is where Antigone entered her cave. Here lurks also, like an unknown animal, the Mandela that we have never seen and will never see, Mandela the freest man in the world. And here too entered Bram Fischer to become, forever, another one of those freest of men, those freest of men (the 'first' or 'only' men, Foucault calls them) who all ultimately withdraw into the other world or worlds from which they come.

### **Bram Fischer's Madness**

Stephen Clingman wrote a brilliant biography of Fischer that concludes with a dismally obtuse remark regarding Fischer's flawed understanding of the 'morally compromised ideology' of communism. Clingman writes:

If the judgment is purely historical – that Bram was wrong because communism failed – it will be contingent and superficial: change the result and we would have to change the verdict. A more telling version is the moral one: Bram's flaw was that he was swayed by a morally compromised ideology, and the specific absolutism it induced produced his particular tragedy. After all, moral blindness is one consequence of the classic tragic flaw, and given the Soviet show trials, the gulag, the invasions of Hungary and Czechoslovakia, perhaps it captures Bram's one failing. Or perhaps, with some greater nuance, Bram's flaw was one of *understanding*, in that he did not fully comprehend the wider resonances and implications – the essential fatalism – involved in his choices.<sup>41</sup>

Perhaps the worst aspect of this flabby bourgeois passage is the consensus regarding the 'morally compromised ideology' of communism that it assumes, for Clingman does not even offer some kind of argument, here or on subsequent pages, why communism is intrinsically a morally compromised ideology and not, as many might think, an ideology with an incidentally bad historical record. He assumes his readers already agree with him. We need not go further into this aspect of the passage for it certainly does not warrant much attention. More relevant for the theme that we are elaborating in this chapter is the question why one might come to think that a flawed understanding of any ideology could have such a decisive influence on someone's life as the influence on Fischer's life choices that Clingman attributes to Fischer's flawed understanding of communism. Why would Fischer's life be *captured* by admiration for and reflections on/of communism, any more than Mandela's life would be captured by admiration for and reflections on/of British political and judicial institutions? This is a question that we have distilled here from Derrida's essay on Mandela, and we cannot fault Clingman for not contemplating it. He is surely no Derridean or deconstructivist biographer and never claimed to be one. However, if we do ask this question here in the context of Clingman's biography of Fischer, it is because this sublime book – sublime notwithstanding its many disappointing moments – provides one with significant thoughts and information with recourse to which Derridean thoughts can surely be thought. One can begin in this regard with an observation that Clingman makes one page after the passage cited above. Here Clingman observes:

Bram's life migrated into fiction ...<sup>42</sup>

This remarkable phrase introduces a paragraph in which mention is made of a number of literary works that were inspired by Fischer's life – *At the Still Point* by Mary Benson, André Brink's *Rumours of Rain* and *Burger's Daughter* by Nadine Gordimer. But a keener thought lurks here that concerns much more than the impact

<sup>41</sup> Stephen Clingman, *Bram Fischer Afrikaner Revolutionary* (Cape Town: David Philip, 1998), 450–51.

<sup>42</sup> Clingman, *Bram Fischer*, 452.

of Fischer's life on literature. What does it mean when a life really migrates into fiction instead of (or apart from) just becoming a character in some novel? It means much more than one can properly contemplate here, but it surely also means this: A life that migrates into fiction is a life that moves into the vicinity, neighbourhood and contemporaneity of art. It traverses art, but only to slip through its grasp; only to slip away from it. Art is its slipstream. *Such a life enters a different time zone.* Clingman begins his narrative with the following sentence:

A life begins long before it starts, emerging from other lives before returning to them.<sup>43</sup>

And he returns to this beginning close to the end:

A life begins long before it starts; it endures long after it ends.<sup>44</sup>

Not all lives begin thus and end thus, but some do. And those that do have time on their side. Commenting on a certain positive side to the subjection of Sholto Cross (member of the South African Communist Party and anti-apartheid activist) to a second period of 90 days' detention without having been charged, Fischer observed:

In a sense, time is always on our side.

'It is unlikely that there ever was a moment when he surrendered that belief', comments Clingman.<sup>45</sup> True. He knew that he would outlive apartheid, its law, its judiciary, its short-lived convictions and sentences. Consider his words at his own trial:

Hence, though I shall be convicted by this Court, I cannot plead guilty. I believe that the future may well say that I acted correctly.<sup>46</sup>

Apartheid's judiciary sensed this too. Having just returned to Johannesburg after Fischer's funeral, Issy Maisels (leader of the defence team during the Treason Trial) happened to meet Justice Rumpff (presiding judge during the Treason trial) at the airport. Having told Justice Rumpff where he had been, the judge replied: 'You know, he'll be remembered long after you and I are forgotten.'<sup>47</sup> Indeed,

[w]e will always remember you ... our children will know that South Africa bore a son like you,

---

43 Ibid., 1.

44 Ibid., 457.

45 Ibid., 344.

46 Ibid., 410.

47 Ibid., 440.

said Lilian Ngoyi, one of the Treason trialists whom Fischer had defended, in her funeral tribute.<sup>48</sup> Perhaps the apartheid prison desperately tried to contain this memory by demanding and retaining Fischer's ashes after his cremation. It is not clear what became of them.<sup>49</sup> But if the idea was to retain or restrain his ghost, the effort was in vain. Time would forever be on Fischer's side.

What does it mean to have time on one's side? This question should be read in conjunction with one that Clingman asks, now at his finest, early in his narrative:

If there are certain histories in the air, certain examples, gestures, styles, ways of being in the world, what did Abraham Fischer bequeath to his grandson Bram, five years old when he died?<sup>50</sup>

How does a life end that participates thus in histories, examples, styles and ways of being that are in the air, bequeathed from one generation to next and the next? If a life begins long before it starts and endures long after it ends, how can one ever suggest that it has or had an ending, let alone a right ending? This is nevertheless what Clingman suggests at one point, surely also against his own better insights: 'Bram Fischer was a tragic figure indeed; but his story had the right ending.'<sup>51</sup> How can the life of a man whose career and political association had been destroyed by ruthless state oppression, whose friends ended up in jail, whose wife had died in an absurd car accident, who himself spent the last decade of his life ailing and waning away in jail, be said to have ended correctly without making a mockery of either this life or of the meaning of 'correctness'? Clingman again, now closer to the bitter reality:

Molly was dead, [Bram] was on trial, his career was over, his Party smashed, his friends in jail or exile. It was an end ... and he saw it; going underground was like committing suicide.<sup>52</sup>

Fischer's daughters believed he would never have gone underground had their mother still been alive.<sup>53</sup> *If on a winter's night a traveller ...* Molly Fischer drowned when the car Bram was driving left the road on an icy winter night in the Free State and ended up in the only pool in miles and miles of arid countryside. Clingman, sublime now:

48 Ibid., 442 (the sequence of her words slightly altered in the quotation above).

49 Clingman, *Bram Fischer*, 440–41.

50 Ibid., 27.

51 Ibid., 452.

52 Ibid., 357. The quotation above is a slightly adjusted version of words that Clingman heard from Pat Davidson who became a close friend of Fischer at the time of his trial.

53 Clingman, *Bram Fischer*, 357.



A car goes into a pool and a life is ended. For one person time stops, for another it goes on for ever. The light from that scene travels outwards, and it is travelling still. It will continue forever, and there are stars in the universe where that scene has still not arrived. It will never end. In Bram's mind it would not go away.<sup>54</sup>

This endless scene will never attain shape; it will forever remain nameless. 'For one person time stops, for another it goes on for ever.' Thus also can time always remain on one's side: as infinite and interminable loss that cannot be suffered in one lifetime only. As bearers of infinite and interminable loss do some lives endure long after they end. Thus do they migrate, not into, as we shall see shortly, but *through* fiction, through the most cathartic of narratives imaginable. Talking about the correctness of an end under these circumstances is as sacrilegious as talking about the 'unreality' or the 'error of understanding' that ultimately accompanied and solicited this end; as sacrilegious as relating any of this to the 'morally compromised ideology' of communism:

A life begins long before it starts; it endures long after it ends.

Bram's life migrated into fiction ...

We will always remember you ... our children will know that South Africa bore a son like you.

A car goes into a pool and a life is ended. For one person time stops, for another it goes on for ever. The light from that scene travels outwards, and it is travelling still. It will continue forever, and there are stars in the universe where that scene has still not arrived. It will never end.

[T]here are certain histories in the air, certain examples, gestures, styles, ways of being in the world.

These are the silent traces of a sublime thought embodied in Clingman's narrative of Bram Fischer's life. But this thought must still be thought and only becomes thinkable in the wake of a Derridean resistance to the laws of reflection, mirroring and speculative representation. For this purpose we need to break into Clingman's language and even invert it. For Bram Fischer still remains invisible to us, notwithstanding Clingman's sublime portrait. Artaud's madness does not enter the work of art, writes Foucault.<sup>55</sup> Fischer's madness will not enter any biography. His life also never *migrated into* fiction for no fiction will ever have accommodated or reached him. He only traversed fiction – slipped into it only to slip out of it again.

<sup>54</sup> Ibid., 326.

<sup>55</sup> Foucault, *Histoire de la folie* 556: 'La folie ... ne se glisse pas dans les interstices de l'œuvre; elle est précisément l'absence d'œuvre' (Foucault's emphasis)

Like Antigone (who of course only slipped from and never into fiction), Fischer went underground. He slipped through and away from all histories in the air, all examples, gestures, styles and ways of being in the world. He will, in fact, never be remembered because he never entered any memory. Having never entered memory he cannot be forgotten either. His life is unforgettable life.<sup>56</sup> There will only be memories that will remind us of those who can neither be remembered nor forgotten and among those there is one of whom the first of several aliases was 'Bram Fischer'. 'The light from [this] scene travels outwards, and it is travelling still. It will continue forever, and there are stars in the universe where [it] has still not arrived. It will never end.' Time is therefore always and irreducibly and interminably on his side. Time cannot abandon him, for he bears an infinite burden and the burden of the infinite.

Thus did Fischer's mad liberty become the passage of the infinite's withdrawal from the finite, the withdrawal of the temporal into eternity. And thus did he/does he cross the threshold of the visible and the invisible.

This, then, is how time gives. This is the way times are given. Through Bram Fischer, and through those with him. Through their madness. '[Par] cette folie qui nous et partage le temps.'<sup>57</sup>

---

56 Cf. Giorgio Agamben, *The Time that Remains* (Stanford: Stanford University Press, 2005), 39; cf. also Maurice Blanchot, *L'écriture du Désastre* (Paris: Gallimard, 1980), 44–5: 'Lorsque nous somme patients, c'est toujours par rapport à un malheur infini qui ne nous atteint pas au présent, mais en nous rapportant à un passé sans memoir.'

57 Foucault, *Histoire de la folie*, 551.