

In conversation

Commissioner Prof Tshepo Madlingozi talks to Prof Jaco Barnard-Naudé on the occasion of the University of the Western Cape launch of *Spectres of Reparation: Re-encountering the Truth and Reconciliation Commission* (2023)

Jaco Barnard-Naudé and Tshepo Madlingozi¹

Tshepo Madlingozi: We end the day on a celebratory note, to launch these two wonderful books by Jaco. One is '*Om my kastele in Spanje te sloop*', a poetry collection published by Human and Rousseau. The second one is '*Spectres of Reparation in South Africa- Re-encountering Truth and Reconciliation Commission*' published by Routledge. Thank you, Diana Ferrus, for joining us, you are a legend. Thank you for being here. I've never met you, but you are one of my heroes, so thank you. This launch is not going to be a full-fledged academic discussion, it's going to be a launch of the books into the world for you to grapple with the books and for you to really engage with them.

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I'm convinced that the subjects of the two books ultimately speak to the same thing.

This conversation focuses on a wonderful, wonderful book, *Spectres of Reparation in South Africa*. It's a timely book for a number of reasons. Firstly, as you know, the discourse and the praxis of transitional justice really started in the 1980s, I mean the 'new' transitional justice phase. So, it's 40 years since this discourse and practice came into effect.

The current discourse agitating for a shift from 'transitional justice' towards 'transformative justice' is an admission, at least of late, that transitional justice did not exactly fail, but that it has its limits. Therefore, the suggestion is that we should think about measures, mechanisms, processes that, in the aftermath of the transitional justice period, really centralizes transformation and not simply continue the notion of transition beyond the official conclusion of the relevant period. Jaco, your book critically engages with this debate.

Secondly, still with reference to time and timeliness, for us in South Africa, of course, it is 30 years of democracy in 2024. And we're already, I would say, in this mode of reflection. Not celebration only, I hope, but reflection, more reflection than celebration. Both are critical, but we are maybe ultimately saluting ourselves, which is necessarily a kind of double gesture. Lots of questions arise with this salutation of 30 years of democracy. What do we mean by democracy when so many people are still hungry? About 60% of the youth are unemployed, one in seven children go hungry. The rate of GBV, especially rape, is higher than in most war zones. This is the most unequal country in the world. But we talk about 30 years of the democracy. But what kind of democracy? A "violent democracy"? A "neoliberal democracy"? So, those are the kinds of reflections that we need to engage in. Jaco, your book recentralises the unfinished business of reparation: can there be democracy when there has not been repair, redress, and equitable sharing? These are the questions that you are forcing us to confront.

But thirdly, you know, this year marks just about 10 years since the Fees Must Fall protests of 2015. The Fees Must Fall protest was really a protest about some of the questions and issues that, Jaco, you're talking about in this book: Issues of reparations, issues of repair, issues relating to what we mean when we say that we are striving to build a society where everyone has got a sense of affective and material belonging. So, it's timely in that sense too, because what you are doing in this book is not to criticize the TRC for the sake of criticizing the

TRC. We all know the limitations of the TRC. There's no need to bash the TRC. The limitation in terms of the enabling statute, the limitation already embedded in the Interim Constitution, the limitation embedded in how the TRC did its work. We all know that. But what you are suggesting here is that we need to re-encounter the TRC as a country, re-open certain questions. **So, I really want you to start by saying what was the inspiration of this book? Why do we need to read this book at this time? And who is your target?** I ask that last question because a lot of concepts here are psychoanalytic and they miss lots of us who are perhaps lawyers like myself. So, so really, **who are you in conversation with?** Yeah, there's also the politics of citation, of course, that we can perhaps talk about later. **We'll start with the inspiration of the book and why now? After that, I want us to talk about some of those central concepts in the book.**

Exploring the concept of lack

Jaco Barnard-Naude: I want to start with just giving you a little bit of a sense of the journey of the book. It started around 2008 when I was invited to contribute a paper to a Cape Town symposium that was titled "Justice and Reconciliation in South Africa". I had the sense then of essentially a tension between this transitional justice that you've just spoken about and something "after". So, the tension between justice as transitional justice, understood basically as some form of amnesty, on the one hand, and the justice that comes, must come, "after" amnesty. So, I situated myself very much within how I understood that tension between traditional, strictly speaking, transitional justice as some form of amnesty, and a justice that exceeds that.

And so, I started and wrote about the TRC's documented work on the business sector and the question of material reparation. That led me, over the course of the next 12 or 13 years, into an excavation of other aspects of the TRC, such as, for instance, the claim of its originality, its exceptionality, the widespread assertion that it was a new form of institution, that it was wholly novel, never done before in the way that it was done.

Other questions that also quickly arose were the questions around the TRC's relationship with apology. Because as you know, the TRC Act, the Promotion of National Unity and Reconciliation Act, famously didn't require a perpetrator to offer an apology in order to be granted amnesty. So, there was in a very particular sense, when it came to the actuality of the proceedings, a standoff of

sorts between the Commission and the presence in its proceedings of the notion of apology. The Commission, I discovered, was not particularly forthcoming in terms of how it wanted to negotiate or navigate the standoff between the presence or presentation of apology and its lack as a formal requirement for the granting of amnesty.

So, as I went along, I started discovering these forms of what I call in the book “lack” in the TRC. But ultimately it seemed to me that at the heart of all these manifestations of lack in the TRC sat the question of reparation. Because if you, for instance, for the moment just leave the question of material reparations suspended and you start thinking about the question of the so-called reparative symbolic value of apology, then you again enter into the territory of reparation as it relates to apology – the question of ‘to what extent could the TRC facilitate that kind of what the literature calls “symbolic reparation”’ and this within a quasi-judicial context where apology was not a formal requirement?

So, reparation became a critical signifier in the lexicon that arose out of this excavation or exploration of the manifestations of lack in the TRC. But it also became quite clear to me that I didn’t just want to write a critique in the negative sense of criticism of the TRC. I didn’t just, in other words, want to expose and exploit relentlessly the lack in the TRC. I also wanted to draw out of the lack some kind of emancipatory and affirmative possibility for reparation by thinking it as a formation of ‘justice’, to go back to the original language within which the enquiry first arose. That is, I think, where the image of the spectre of reparation forced itself into the question and with it came the question of haunting, the question of ghosts and of ways in which one could start thinking about reparation as a kind of ghost that haunts the TRC, but that not only haunts the TRC, but in fact, the South African nation as constituted or not by the post-1994 moment.

We don’t have to have read *Hamlet* or Derrida to know that with the figure of the ghost there comes an injunction to the presently living, an imperative, an ‘it must be done’ – and it seems to me now that the injunction of the spectre that haunts South Africa is that there *must* be reparation.

TM: That’s one of the things that I appreciate about this book in comparison to previous engagements with the TRC; which is that you point to the lack. However, the lack has opened up the possibility of setting emancipatory meanings and actions – we say both meanings and action. Whether it is the lack of shame, whether it is to do with the lack of apology, whether it is to do with

the lack of material reparations. But before we go further, let's unpack some of the central concepts of the book.

The role of reparations in justice

First, the concept of the subject. The theory is that the TRC, or even South Africa as such, remains a subject constituted by the lack of reparation. South Africa as a subject, the TRC itself as the subject. Secondly, this really deep idea of lack, but lack in relation to desire. I'm using lack in a sense of needs now. As you say, in the Interim Constitution (really the ancient constitution), over and over again, the sense of lack is there; there must not be retaliation, there must not be vengeance, there must not be victimization, right? There must be uBuntu, there must be forgiveness, reconciliation, and so forth, right? **So how are you understanding this question of lack in relation to the question of need, but also the question of reparations vis-à-vis reparation as an ongoing process, reparation as opposed to reparations.** Later we'll talk about decolonization as disclosure, but not now. **Just those three central concepts: subject, the lack, reparation.** Then also the last central concept, the concept that is on the cover of the book, the spectres, their haunting, their hauntology, the ghosts. How do you deal with these in the book? Earlier on, we were talking about ancestors and I know you're talking about ancestors in the book as well. How, ultimately, are you using this concept of the ghost? The ghost, after all, means different things to different people. So just those four concepts of the subject, the lack, reparations as reparation, and then also the spectre.

JBN: So, it became quite clear to me when I started writing about reparation that it was not possible to avoid psychoanalysis. It became quite clear also because I had become familiar with the ways in which Melanie Klein and her singular psychoanalytic work on reparation was politicized all over the world, especially and specifically in work on international relations, the relationship between psychology and politics, and this politicisation of Klein proliferates without pause, I would say. 'Treating' the TRC as a subject became inevitable once the psychoanalytic framework was in place, because it necessarily implied putting the TRC 'on the couch', so to speak. That, then, became my unavoidable premise, the premise of 'treating' in the wide sense of that word, the TRC as a subject. Through the adoption of this premise, one is led or you lead yourself to a particular figure or to a particular literature and there is, of course, a long history that starts in the late eighties in which the Euro-British tradition in critical legal

studies turns to psychoanalysis as a discourse that can be productively enlisted as a critique of law.

Having done a lot of work before this book on critical legal theory, I was conscious of the psychoanalytic turn in the work of Goodrich, Douzinas and others. They, in their turn, especially Douzinas, was heavily influenced by the Lacanian psychoanalytic project, in which the concept of lack as a definitive existential and constitutive moment in the coming into being of the subject is fundamental – Lacan is, after all and to the bitter end, all about lack. So, I basically made the decision to treat the TRC as a subject and once the Lacanian orientation became part of my horizon of consideration, I could not but start treating the TRC as not just any sort of subject but specifically as a subject of lack. Of course, in the very moment that you start talking about lack, you start talking about desire – lack founds and grounds desire – that is the Lacanian logic. Desire arises, is founded upon, the subject's enduring sense, even if only unconscious, that the lack needs to be compensated for, if I can put it that way.

In the context of 'playing' (not 'applying' exactly) this thought in relation to the subject of the book, the question then became "to what extent can we in the TRC's report read this very general, even unspecified, desire of any subject whatever, for 'filling' or 'compensating' for its lack, as something more specific and defined, namely as *its* desire for *reparation*?" Put differently, I was interested to explore the terms of articulation that were enlisted from within the language, and thus the lexical confines of the TRC, through which the desire to compensate for the lack becomes legible. And it became clear to me that the salient term of articulation for desire in the TRC was 'reparation', for the term is quite clearly legible across the TRC's seven volume report, especially towards the end, which is also no coincidence.

I say this, because the closer we get to the 'end' of the TRC, the more urgently the desire for reparation is articulated, not just because the TRC begins to realise by the end the trouble that the lack of reparation poses for its legitimacy, but also because it is acutely aware at the level of its 'mind' or 'consciousness' that, much like all desire, its desire for reparation is strictly speaking impossible finally to satisfy and that this is the case *in advance*. The TRC cannot, could not, overcome the fact that as much as it manifested the *desire* for reparation, it was not designed as a juridical institution that could or would, short of the urgent interim reparations (which were a disaster by the way), manifest reparations as concrete institutional attempts at the fulfilment of that desire.

As everybody who has studied the TRC, even if only superficially, would know: as much as the constitutive power of the TRC was to grant amnesty, it was at the same time an institution that was equally and deliberately grounded in the *lack* of a constitutive power, namely the power to order reparations and thus concretely to 'manifest' as I said, reparation(s). That 'manifestation' was said in the *Azapo* judgment to be more 'appropriately' the work of the government. All of that, then, seemed to me to indicate that the lack of the TRC could be argued as the more specified and particular lack of reparation.

So those were my thoughts about the subject, its lack and reparations in the wider context of reparation. This question of the difference between reparation and reparations is a difference that I took from Mark Sanders' magnificent book on the TRC. Sanders writes about the way in which, if you think about it with Klein, reparation is really a lifelong kind of disposition (of the 'normal' 'depressive' position of the psyche as Klein calls it) and an activity of the subject that is directed by that disposition, something that is constitutive and constitutive so as to be fundamentally impossible to complete with finality (as you know, this matter of finality and the 'final', especially as it was used in relation to the 1996 Constitution, has been part of our progressive critique for a while now).

Reparation as a psychic disposition (of the individual subject, of the collective of the community, as much as of an entire 'nation') cannot be actualized in a finality and in a completeness. This ideal (abstract) level at which reparation is articulated as impossibility, of course must and often does immediately translate into what Sanders then calls "reparations", which is very particular, singular, concrete active interventions that aim at repair or as we sometimes say in the law, 'restitution'. I don't draw a sort of strict distinction between those two – reparations are manifestations of reparation and there are good and less good reparations, which is where progressive emancipatory critique comes in as a form of thought with which it is possible to distinguish good from less good reparations, 'judging' them essentially.

Spectres and their significance

The question of spectres, remains. Okay, so I was particularly at the same time as I was turning to Lacan and the psychoanalytic literature, the psychoanalytic turn in critical legal theory, I was also quite deeply and definitively constituted as a researcher by the enormous influence of Derrida and particularly the later

Derrida, the Derrida 'after' the turn to law (not ethics – there was no 'turn' to ethics, for deconstruction was from the start in Heidegger, ethically *directed*, so to speak). Lots of people say that we shouldn't be drawing that distinction between Derrida 'before' and 'after' the law but even they cannot deny that the later work represents a much more explicit turn for deconstruction and the Derridean project to what is sometimes called the "questions of the day" or "current affairs" (as though there are "affairs" that are not "current"). Within this later Derrida, the highly influential, though also very heavily critiqued and just plainly criticised, *Specters of Marx* stands out for me. So I would say that *Spectres of Reparation* can be read and in some senses was deliberately positioned to stage, what Slavoj Žižek would call a 'parallax', sideways, conversation with *Spectres of Marx*. In literary terms, *Spectres of Marx* is the primary intertext in *Spectres of Reparation in South Africa* – and deliberately so. An intertext is, of course, much more than just a reference. It is a confrontation in the form of an argument between two. There is what has been said and then there is what is being said in response to what has been said. Those are the terms of the confrontation. But, of course, what has been said is constantly being filtered through the psyche of the one responsible for what is presently being said, who is, alas, also the one who is reading and, inevitably, also by dint of the very act of reading, "constructing" – even if such a reading is claimed as a "deconstruction".

There is no such thing as the "original" meaning – meaning is an ongoing production (sometimes critical, in other hands dogmatic), it is not a static fact, frozen in historical time; and it is precisely here where things go wrong for some people who are presently working their laborious way as self-styled 'deconstructive' lawyers through the Derridean 'corpus'. This is not the occasion for further criticism about that, but it must be said, if it must be said, that those who are reading Derrida, of all people, as though the texts that carry his signature (ultimately) harbour some sort of final and definitive "meaning" that can be "discovered" (like a veritable conqueror) and then claimed as *the* authoritative meaning, represent, in my eyes, and whether they know it or not, the highest form of a fundamental betrayal of everything that the Derridean project stood for – still stands for – at the ethical as well as the political level, not to mention the (juridical) level at which one is responsible for one's own psychic integrity. Eventually (and it is no coincidence), the initial and initiatory so-called 'scholarly' betrayal that originated at the discrete level of literal and literary textuality as an (apparently friendly) disagreement, spreads itself out,

virally seeps into the world of one's relations with others – and it unfortunately becomes the hallmark of everyday intersubjective socio-symbolic 'texts' that turn the initial formulation on its head – in other words, it is no longer a "scholarly" betrayal, but rather a concrete, very real, betrayal of scholars.

The non-foundational 'foundations' of deconstruction, for lack of a less laboured description, such as provisionality, tentativity, reading as writing, fluidity, marginality, especially responsibility to the *other*, I can go on, are simply unceremoniously swept away in the process of what is at bottom nothing but a brutal, cruel and also desperately pathetic and calculative attempt to remain at the centre of the delusion that one is, and remains as, has always already been, master in one's 'own house' (to echo Freud's famous formulation to Fließ in reference to the unconscious). It is a delusion that is absolutely in conflict with, totally antithetical to, psychoanalysis (Lacanian as well as Freudian) or, if you will, to whatever 'psychoanalytic deconstruction' may still be. I do not see how it is possible to get anywhere in any way with both psychoanalysis and deconstruction if one is bent doggedly to insist on and persist in the maintenance of this delusion, not to mention that reparation, at least as I understand it, will remain entirely out of the picture, for reparation is psycho-ethically, as well as psycho-politically and psychosocially, also the very opposite of masterly delusion – and in this country reparation cannot but be premised not only on the shattering of the delusion that one is master in one's own house – it is accompanied, necessarily and simultaneously, with the *realisation*, the emergence into (the) reality, that the 'house' that one has appropriated as one's 'own' has, from the very beginning, never been that.

The spectres of reparation in this country and everywhere else, bears some relation and some lineage to the idea of the spectres of Marx that Derrida conjures in that book. So, I think that it goes without saying that this lineage of the spectres of reparation traced from the spectres of Marx is, to a great extent, a lineage, a legacy, an inheritance of the Left and it is yet another betrayal if one pretends that this matter of genealogical facticity can somehow be avoided, sidelined or disavowed without losing one's integrity (that word again) in the process.

In the course of the research for the book, I also discovered that this idea of spectrality and of hauntology goes all the way back to Alexandre Kojève's reading of Hegel in Paris in the 1930s and how there arrives a stage in Western metaphysics at which the idea of a clear and present complete Being is

undermined (philosophically first, but yet inseparable from politics and ethics) to the point of losing the stability of a 'ground' and becomes thought as a question of absence at the heart of Being. So, I found appealing for the constellation of thought that I was trying to construct, admittedly as a deconstruction, the image of the spectre as the apparition of an absent presence, let's say as a 'representation' of lack.

But then of course, and this is where I will end, it became very clear to me that if I was going to continue writing in the contemporary South African context about spectres and of the spectre, there needed to be local resonance as well. So I read up on uBuntu and Ramose's reading of its 'ontology' as a tripartite constitution of the living dead, the living and the yet to be born. In other words, Ramose's unquestionable centralisation of ancestry in African cosmology. I realized that I was (mostly unconsciously, at least at first) trying to forge common ground between two hugely divergent bodies of thought: the ontology recast as hauntology that we inherit out of the twentieth century's critique of Western metaphysics in which psychoanalysis delivers the final blow, so to speak, and then this almost wholly other body of thought in African cosmology about the spectre and spectrality of and haunting by, the ancestry of those who are before us (in possibly all the senses of the word 'before'). So that was why I thought the idea of the spectre particularly would bear a lot of productive or generative potential if I could rely on the psychoanalytic tradition as the decisive dangerous supplement to the Western critique of metaphysics at the same time as I drew upon the African philosophical tradition, not saying at all that they are the same or to insist on the differences which are, after all, rather obvious, but rather set up a tentative and uncertain, searching conversation or even, if you want, a kind of unsure and impure dialectic which is not a dialectic exactly, between these two.

What else can I say about the spectres, except for the fact that it is something that in terms of the structure of the book really carries through to the moment that you spoke about that we are also commemorating now (the present circumstances, I think, militates against anything that would resemble celebration) now almost ten years since the Fees Must Fall movement. Because what struck me about the Fees Must Fall moment as a political moment was how much that movement at that moment was grounded in the work of mourning and, also very much in the haunting that attends in the work of mourning, specifically speaking, then, the ways in which this spectre of reparation haunted in both traumatogenic and generative, creative ways in that

moment. And that's why I thought it would in the final instance be necessary to carry, drag even, the spectre to the point of its contemporary apparition, to the point where it was already in attendance, carry it, therefore, from the TRC moment to the Fees Must Fall moment – and make it face itself at the same time as it was facing (the) other(s) – us.

Political implications of reparations

TM: There are at least two interesting aspects from what you said. Number one, I see the notion of the spectre and of the ghosts as not exactly dangerous. But, there is a risk of confusion in the South African context. You mentioned Marx. You will remember that *Specters of Marx* was dedicated to Chris Hani just after Chris was assassinated. Derrida goes on effectively to say that Hani, unlike other ANC leaders, still insisted on the question of reparation and perhaps that's why he dies; perhaps that's why he's killed. Unlike other ANC leaders, Hani does not think about the Mercedes-Benz, mansions and so forth. I don't know if that's true or not, but there is the thought that he really insisted on this question of reparations. And maybe that's why he dies and therefore there is his ghost which continues to haunt the ANC even today. The party-political consequence of the disavowal of Hani's spectre is what's now called the MK party, which consciously, opportunistically or not, reclaims this notion of radicalism of MK and of Chris Hani as its commander in chief and so forth and so forth. The spectre of Hani not only haunts the ANC and its confessed deep-seated challenge with corruption. The spectre of Hani haunts all of us: how have you transitioned to a genuinely transformed society, he seems to be asking us?

The second thing that you said that is interesting to me is Fees Must Fall. I say this because Fees Must Fall did grapple with the two notions of the spectre and the haunting. Protestors lamented: "when we walk around campus, we are haunted by the ghosts, not of our ancestors, but of the colonial oppressors in the building, statues, and the aesthetics of the university." Whatever the setting, you feel the colonial-apartheid "masters". Even if they are invisible, they are there, they are here: in the classroom, in the Dean's office, in the Vice Chancellors office, in the halls of residences, in the textbooks. So we talk about this idea that we are haunted by the ghosts of the oppressors in these spaces. So that's what I'm about: alienation. But protestors also invoked other ghosts: their political ancestors. They invoked these when they faced the ghosts of their

oppressors: Biko, Winnie Mandela, Fanon, bell hooks, and others. They invoke these ghost to defeat the Other ghosts.

Let's come to some political questions now and move away a little bit from some of the conceptual issues. I want to ask two questions. First, on the one hand, someone would say: 'but you are setting up a straw man'. **The TRC was never about reparations. Why are you focusing on reparations from the perspective of TRC? In fact, it's in the name, "truth and reconciliation".** Goodbye. Truth and reconciliation. Goodbye. This is different to other similar institutions that are called truth, justice, reconciliation commission. Some countries even go further to say we are a TRRJ - truth, reconciliation, reparation, justice commission. The South African TRC **doesn't make that claim. It makes the claim that says: "we unpack the past to get as complete a picture as possible"; 'you come and tell us the full story and we grant you amnesty', 'you tell us your story and we declare you a victim'.** In fact, the act is called the Promotion of National Unity and Reconciliation Act – reparation is not the key focus. **Someone would say, "Why do you say the constitutive lack in the TRC is the lack of reparation?"** We can talk about symbolic reparation and so forth. So that's one question that I want you to address. So that's the first question.

Another question is this one: you ask somewhere in the book whether it is ever possible to repair? I would like you to say a little bit more about that. And particularly this question that I asked in a different formulation in one of my essays on social justice: Is it possible to *do* social justice in a still profoundly colonial socio-political context? Is it possible to secure proper reparations in such a neo-apartheid context? Or what does your agitation for reparation mean in a state that is a settler, neo-colonial state? Was the deal less for reparation but for BEE and affirmative action for professionals like myself – that is our "reparation". And then for the rest of the impoverished majority, "reparation" was cast in the terms of socio-economic rights (within "available resources", "progressively" if there is state capacity, etc.) But you are saying we should really focus on the reparative dimension. **What are the political implications of agitating for reparation in an undecolonized context? Or is reparation the start of finishing the business of decolonization?** I ask this because I worked for Khulumani Support Group. At Khulumani, we used to proclaim: 'no reconciliation without redress.' But we also went further: redress, reparation, restitution and redistribution must all be implemented as part of a holistic

framework of post-apartheid repair. So, **the focus on reparation to the exclusion of all these other R's bothers me. Why this choice?**

JBN: I'll start with the first question which was, "Why is it that the constitutive lack of the TRC is reparation if it must be accepted that the TRC was never set up for reparation? But this is one implication of treating the TRC psychoanalytically, which is to say, asking after its unconscious and taking that unconscious 'seriously', as Maria Aristodemou would say. When you take the unconscious of the TRC seriously, reparation rises to the surface quite quickly, quite immediately, or, to put it differently, with rather a lot of "immediacy" (a term I take from Ulmen's translation of Schmitt). What I would call, the institutional representation of the TRC's unconscious was the Reparation and Rehabilitation Committee (RRC), which on the whole did not garner much attention.

I write extensively about the three short days that were allocated to consider the role of business in apartheid. Those three days were arranged to take place immediately after the TRC's encounter with Winnie Madikizela-Mandela which, after all is said and done, cannot be denied as a moment of its devastation. By the time of the hearings on the role of business, you have an utterly exhausted, spent TRC (Krog's *Country of My Skull* accounts this rather evocatively). Aspects of the transcripts of those hearings (which are reproduced in the book) left me with the sense that the RRC operated its practice essentially in the unconscious space of the TRC, if I can put it like that.

Yet the RRC concludes in the Report in very, very strong terms that "without adequate reparation and rehabilitation measures, there can be no healing or reconciliation". It exhorts the State, the government, to make reparation, but it cannot itself make reparation, because it is restricted legislatively, it doesn't have the power to order the reparation that it deems necessary and essential not only on the level of being morally, deontologically, if you will, the right thing to do, but also and at the same time at the level of its own legitimacy - there's a moment in the report where the RRC says that the international legitimacy of the TRC will be severely compromised if there are not going to be reparations, which is presumably to say nothing of its domestic legitimacy.

The RRC didn't have a reparation budget. It could not *make* reparation (appear). The reparation becomes what the TRC realises it desires in the end and it does what it can by way of 'recommendations' within the legislative and institutional restrictions attendant, to secure the manifestation of reparations in its aftermath. There remains the question of the relationship between coloniality

as a contemporary political fact and reparation. I think, and this is a theme that really runs throughout the book, that it is necessary, now perhaps more than ever to stare (down) the beneficiary, as it were, with the etymology of the word 'beneficiary', which literally means, 'good maker'. It is a counterintuitive meaning; it is a wholly repressed meaning which I retrieve, excavate (to enlist Foucault for a moment) in order to ground an argument about the conditions of possibility attendant upon the beneficiary's belonging to a truly post-apartheid polity. What are the possibilities that arise for 'South Africa' when the beneficiary is brought to an identification with the etymological meaning of its present political designation, becomes, in other words, a 'good maker'? My hope, if there is such a thing, lies to a great extent in holding open the space for those possibilities.

The interconnection between colonization and reparation

The conclusion of the book is precisely about thinking the possibilities that have been opened up by the late arrival of 'decolonization' as a prominent signifier in our political and legal landscape, an arrival for which the student protestors are responsible. So, for me, in many ways, the question of reparation and of making good and of the beneficiary interpellated as a 'good maker' cannot be denied its being as a question of decolonization. It is not possible to say in this country that reparation and decolonization are worlds apart, because they simply aren't. I don't think that we will have a decolonized South Africa after reparations, but at least it can figure as a beginning, a start, some form of acknowledgement and of taking responsibility for what the Constitution euphemistically, imprecisely, calls the 'injustices of the past'. And of course, I try throughout the book to say that this focus on the beneficiary is not an argument that somehow absolves the State. In fact, the state's responsibility intensifies as a necessary implication of the argument – in democracy, the people (still) constitute the State – if reparation is the people's fundamental desire, if a significant portion of them are working visibly towards making reparation and if the majority remains in need of reparation, while yet (also) making reparations of their own, then the State's responsibility for reparation intensifies without question.

TM: We have a lot of time. So, we'll open the floor. Let's keep them short and to the point. My last solicitation to you Jaco is to look forward and project. There's been calls for a new national dialogue in the wake of the establishment of the "government of national unity". But also embedded in that call is a call for a

new TRC, at least from some quarters. So, my question is an obvious and a short one. **Would you be in favour of a new TRC? If you are, how would it look like? How would we avoid this haunting and this lack in the new TRC?** I very much like your chapter on apology and the spectre of shame. Unfortunately, we can't get to that discussion now. But you remind us how some people were forced to forgive, without perpetrators asking for apology, perpetrators not forced to apologise, but other people being forced to forgive. We won't have time to get to that. Anyway: **Will you be in favour of another TRC and how would it look like to avoid all the pitfalls you mentioned?**

JBN: I don't think that a new TRC can avoid spectrality, another spectre and the question of its haunting. Institutions are forever haunted in one or the other way by that which they exclude through conscious suppression and unconscious repression. If it's going to be an institution, it will be in one or the other way a form of (artificial) closure and thus of law, a juridical apparatus of some kind – and so it will not avoid the question of haunting and of being haunted by an impossible justice. But there is unquestionably a need for a justice and reconciliation commission or a reparation and reconciliation national forum that can confront institutionally the question of the unfinished business of the TRC.

What we have come to call the 'unfinished business' of the TRC primarily concerns the question of justice beyond the TRC's iteration of the concept as 'transitional' (psychoanalysis, by the way has a lot to say about the 'transitional object' and I am working on the political and legal relevance of that at the moment). So the question of the legacy of the TRC in relation to socioeconomic forms of reparation, material reparation (which can in no responsible way be divorced from the psychic dimension of reparation), but then also those forms of symbolic reparation that the TRC neglected or could only very partially elicit, remains as the remains of the TRC, remains as its 'unfinished business' – and it is with those remains that we are left to work, it is out of the encounter with those remains, however painful such an encounter might yet be, at least for some, that hope can be made. I have asked myself throughout the writing of this book the question of what would have happened, how different we would be now, if we in some or the other way found a way to institutionalize the TRC as a continuation, an ongoing form of – let's call it 'therapy' if we want to stay with the contemporary idiom in wide circulation. There is a growing literature these days on the concept of the 'therapeutic state'. How that concept sits with its present biopolitical iteration, which is a thanatopolitical, necropolitical iteration as neoliberal hegemony the world over, is a question for another occasion.