**Abstracts**

**‘The Speech of Victims: Colombia: a case study’**

**Diana Acosta Navas, Harvard University**

According to the Final Report of the South African TRC, one of the central mandates of the Commission was to restore the dignity of the victims of apartheid, by listening to their testimony and recommending reparations. In this paper I elaborate on the idea that hearing people’s testimonies can contribute to restore their dignity. Different theorists seem to agree that dignity can be restored through the provision of a platform for narrating human rights violations in front of an official audience, who is receptive to the story and takes it as a part of an official narrative of the nation’s history.

This notion echoes a pair of intuitions voiced by a number of philosophers of language, political philosophers and feminist philosophers. One of them is that the uptake of speech can make a difference as to the kind of act performed by the speaker. The other, that the capacity to perform certain speech acts is correlated with having a certain standing in society and, importantly, with having the status of a citizen. If we consider the conditions of citizenship to be a constitutive part of a person’s dignity, we can see how enabling the performance of certain speech act can restore the status of victims as citizens and, thereby, their dignity. In the first three sections of the paper, I present these ideas in depth. Overall, I want to suggest the view that institutions of transitional justice can restore the dignity of victims by enabling the performance of speech acts that are constitutive of citizenship.

If we regard institutions of transitional justice as (at least partly) aiming to enable victims to perform such speech acts, we can also assess the success of such institutions by evaluating the extent to which they do so. In the last section of the paper I use this conceptual framework to examine the two central institutions of transitional justice in Colombia.

**‘Protecting the Rights of Victims in Transitional Justice: An Interrogation of Amnesty’**

**Jonathan O. Chimakonam, University of Calabar**

Often, before embarking on wide spread abuses of human rights since the post ICJ era, most perpetrators are aware of the legal odds. They are however buoyed that if their regimes collapsed, they would at least push the matter to a teetering point where they could press for amnesty in return for a transitional process involving cooperation, surrender, confession, reparation and reconciliation. The Chilean, the Peruvian and the South African cases have become citeable precedence. This presents amnesty as an unjust instrument of transitional justice. One of my goals would be to employ what is called interrogatory method to examine amnesty as a programme of transitional justice. In arguing my point, I shall attempt to highlight the danger which amnesty poses to the rights of victims and to the long term peace and stability of the society. I aim to do this by articulating what I call the ‘Colour Theory of Transitional Justice’ (CT-TJ), the Thesis of Transitional Compromise (TCC) and the principle of ‘Justice as Inevitable Reaction’. My advocacy for a Rule of Law based transitional justice shall be presented as a viable alternative to amnesty. My methods shall consist in deduction, argumentation, interrogation and prescription.

**‘On the Right to Truth: Problems and Prospects’**

**Jimmy Goodrich, Rutgers University**

The “Right to Truth” is a right of victims of mass atrocities to know the nature of the wrongs committed against them. The righ has been recognized by judicial bodies across several countries and in international settings. I explore the philosophical and moral foundations of such a right and consider what the implications of taking such a right seriously may be.

**‘Supersession, Reparations and Restitution’**

**Caleb Harrison, University of North Carolina**

In “Superseding Historic Injustice,” and in subsequent articles, Jeremy Waldron proposes and defends what he calls the Supersession Thesis. According to the Supersession Thesis, present-day circumstances might be such that the demands of justice in the present can override the demands of justice made by cases of historic injustice. Waldron applies the Supersession Thesis to the appropriation of aboriginal lands by white settlers throughout North America, Australia, and New Zealand, focusing on the history of wrongful appropriation of Maori lands in his home country of New Zealand. He argues that even if it is incontrovertibly true that an injustice occurred when Maori land was wrongfully appropriated (as he thinks it is), present circumstances are such that the justified claim to reparations possessed by aboriginal groups may be superseded by the claim to a just distribution of resources possessed by the world’s existing inhabitants.1 While the central claim of the Supersession Thesis seems to be straightforwardly true — that determinations of justice depend on circumstances — it is less clear what conclusions about reparations are entailed by this fact. Waldron’s suggestion — that the Supersession Thesis entails the conclusion that reparations might be superseded — seems to conflate claims to restitution (a much stronger claim) with claims to reparation (a much weaker claim). The Supersession Thesis might entail that claims to restitution can be overridden by changes in circumstance, but I argue in this paper that Waldron is wrong to conclude that claims to reparation are overridden by changes in circumstance; to the contrary, claims to reparation are quite robust to changes in circumstance.

**‘Comparing Victims’ Complaints- The Influence of Risk-Taking’**

**Lisa Hecht, Stockholm University**

In Transitional Justice contexts victims will raise complaints about human rights violations they have suffered in the past. In this paper I consider how to compare and prioritize such complaints. I look at the particular case in which two innocent victims suffered an equal unit of wrongful harm. I discuss the influence of risk-taking and reject the idea that the complaint of those who took a greater risk has less weight than that of somebody who took a smaller risk. I argue that - contrary to widespread intuitions and some scholarly arguments - taking a greater risk does not diminish one’s complaint about a rights violation. This holds as long as the risk was permissible and the victim had no duty to avoid the risk. I will address two arguments that have been suggested to show that risk-taking diminishes the complaint of the victim. The first is that taking a risk is basically consenting to being harmed. The second is an argument from distributive justice according to which it is less bad if those who took greater risks suffer harm. Both arguments fail and I will explain why this is so. The conclusion then is that we have to treat the complaints of innocent victims equally and should not prioritize among them.

**‘Voluntary or Compelled Reconciliation? Toward Attaining Peaceful Racial Co-existence in post-apartheid South Africa’**

**Bernard Matolino, University of KwaZulu Natal**

More than 20 years into the much hoped for racial rainbow post-apartheid South Africa, cordial racial relations have only but become a mirage. In the place of the rainbow symbolism is an abandoned gigantic ruin of the project of racial reconciliation. Increasingly, ordinary people are becoming impatient with Mandela and Tutu’s project and in various ways they are beginning to vent their previously hidden feelings and despise for races other than their own. Important institutions such as legislative bodies and social institutions tasked with attaining reconciliation are decidedly impotent in the face of a promising racially inspired division. To diagnose the exact aspect responsible for the failure of the project of the rainbow nation I will retrace my analysis to Kwame Nkrumah’s consciencism. I will seek to show that the father of African independence had relevant insights for South Africa. I will draw on his insistence for the need to develop a unitary ideology that will be responsible for both institutional and individual values. Through Nkrumah’s insightful analysis of the tension authored by fragmented facets of society, I seek to argue that South Africa has always been a fragmented society that has developed highly artificial modes of reconciliation. I set out to single two moments in post-apartheid South Africa as having largely contributed to the current divisions we see; the truth and reconciliation process as well as the development and institutionalisation of the constitution and its apparatus as supreme law in this country. I hope to show that these two moments were imposed modes of reconciliation that the majority of citizens from all races are either sceptical of or much distanced from.

**‘Afro-Communitarianism, Humaization and the Nature of Reconcilliation’**

**Rianna Oelofsen, University of Fort Hare**

This paper commences by explaining the effects on our understanding of the concept of reconciliation from an Afro-communitarian perspective. The paper then moves on to suggest some tentative reasons why we might want to accept the Afro-communitarian view of ethics and the person over a Western conception. In other words, by giving a brief sketch of what an Afro-communitarian conception of reconciliation entails, the paper argues that this conception of reconciliation is able to deal with the issue of identity transformation integral for lasting peace and reconciliation.

**‘The Role of Victim Organisations in Transitional Justice’**

**Mia Swart, University of Johannesburg**

Victim organisations often appear after in the aftermath of intense conflict to help victims raise their voice about gross injustices and to mobilise collectively for recognition and reparation. Historical examples, most prominently the Holocaust victim organisations show the important role such organisations can play in initiating reparations claims, mobilising victims and applying pressure to obtain such reparations.

But such mobilisation on behalf of victims is not necessarily as noble and universally desirable as it sounds. The context of mobilising and advocating for the payment for reparations for serious human rights violations, the subject of this article, has lent itself to various forms of inter-victim and inter-organisational tensions and conflicts. It has for example triggered questions relating to the extent to which victims groups are necessarily representative of the majority of victims who suffered from a particular form of injustice.

**‘Transitional justice as legal exceptionalism’**

**Derk Venema, Radboud University, Nijmegen**

This article puts forward a general, morally neutral theory of transitional justice. Against theoretical sceptics, I argue that transitional justice is indeed essentially different from normal justice. I characterize transitional justice’s defining functional property as: normatively distinguishing the new regime from the old. This function has repercussions for the legal form of its several instruments, which I call ‘legal exceptionalism’, which has four aspects: its ultimate *goal* is not the immediate outcome of its own procedures, but establishing legal normalcy; its *means* is ‘reverse unequal treatment’: turning around the unequal treatment scheme of the ousted regime; its *political form* is ‘a-legality’ or state of exception, its *cultural form* is rite of passage, or passage ritual, distinguishing the evil past from the just future. The theory is applied to the five modes of transitional justice: constitution, prosecution, reparation, lustration, and information.