

This article is published in a peer-reviewed section of the Utrecht Law Review

## The Right and the Good in Aeschylus' *Oresteia* and Yael Farber's *Molora*: Transitional Justice between Deontology and Teleology

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### 1. Introduction

#### 1.1. Deontology and teleology

In a Kantian scheme of justice, the task of the judge is limited to awarding 'each what is his' (*suum cuique*) in accordance with a fixed set of rules. Thus, Kant describes the judge's verdict as the conclusion of a syllogism with the legislator's will and the facts of the case as its major and minor premise.<sup>1</sup> In Kant's view, this line of reasoning is the only way to preserve a 'state of right' in which the greatest harmony is attained between the state and the principles of right – a condition that reason would oblige us to strive after by means of a categorical imperative.<sup>2</sup> As such, the judge's verdict should never be meant as a means to promote any societal purpose that lies beyond these principles. With regard to criminal law, for instance, Kant claims that punishment should only be imposed on someone 'weil er verbrochen hat'; as a noumenal being, his inborn status as a 'Zweck an sich selbst' protects him against any other treatment.<sup>3</sup> This means, first of all, that his punishment should be *proportional* to his crime. But it also means that the criminal's due punishment should never be remitted. For Kant, respecting the criminal's noumenal capacities requires explaining his transgression as arising from a maxim that the criminal has adopted as his rule of action. Impunity (*Straflosigkeit*) would therefore not only harm the state of right in itself; it would also degrade the transgressor to a mere 'thing', without any prospects of being re-established into his full humanity.<sup>4</sup> The remission of due punishment, in fact, is estimated by Kant as 'the greatest wrong' (*das grösste Unrecht*).<sup>5</sup>

In a philosophical tradition that goes back to Aristotle, however, being fully human entails more than just developing one's individual noumenal capacities. In his *Politics*, for example, Aristotle explains

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1 I. Kant, *Metaphysik der Sitten*, 1907, p. 313.

2 *Ibid.*, p. 318.

3 *Ibid.*, p. 331.

4 *Ibid.*, p. 330.

5 *Ibid.*, p. 337. The 'right of pardoning' (*Begnadigungsrecht*) is considered by Kant as 'the most delicate of all rights' (*unter allen Rechten das schlüpfrigste*) on the part of the sovereign. Therefore, Kant reserves it exclusively for treason (*crimen laesae majestatis*), which would only harm the dignity of the sovereign himself. In Kant's view, any other transgression demands full retribution as the only way to restore both victims and perpetrators to their full humanity.

that the unfolding of one's humanity essentially depends on one's associations with others within the private circle of the household (*oikos*) and the public sphere of the city state (*polis*), described by Aristotle as a community that is held together by a shared sense of morality and justice.<sup>6</sup> When he defines man as a 'political animal' (*politikon dzōion*), Aristotle thus not merely refers to humans as gregarious animals that cling together just for the sake of *life*; instead, he explains that the *polis* exists for the sake of the *good life*, understood as a state of human happiness (*eudaimonia*) for which the virtue of justice and a well-ordered *polis* are primary prerequisites.<sup>7</sup> For Aristotle, therefore, justice is not an end in itself; instead, it is intertwined with the private and public relations that enable the good life as the ultimate goal (*telos*) of human existence. Within such a relational conception of justice, in which primacy is given to the good over the right, it is impossible for a judge to decide a specific case on the sole basis of pure reason and logical deduction from a given set of principles of right. Instead, the Aristotelian approach to adjudication demands the judge to investigate how these principles work out within the particular framework of the concrete *relations* in which they are operative.<sup>8</sup> In contrast to Kant, who adheres to a strictly *deontological* approach to law, Aristotle thus proposes a *teleological* theory of law, taking its understanding of human happiness as its highest goal.

### 1.2. Transitional justice

The antagonism between deontological and teleological conceptions of law can be felt throughout the field of law.<sup>9</sup> It is particularly pressing, however, in the context of what is commonly referred to as 'transitional justice'.<sup>10</sup> In the wake of massive and enduring violations of human rights, both victims and perpetrators can come to perceive the loss of humanity. A lived experience of such dehumanization is reported, for example, by Primo Levi, who reports that prisoners and their guards in Auschwitz 'paradoxically fraternized in a uniform internal desolation', having 'buried their humanity' either 'under an offence received or inflicted on someone else'.<sup>11</sup> How, then, if at all, could surviving victims and perpetrators *regain* their humanity after the violence and bloodshed has ended? How could legal institutions possibly contribute to this? Should the legal response to mass atrocities be primarily directed to retribution of all wrongdoing, or rather to restoration of the community in which both the perpetrators and their victims will inevitably have a share? Could perpetrators ever be partly released from their due punishment and still be held accountable as full noumenal beings? Should transitional justice be focused primarily on doing justice to what happened in the *past*, or should it rather construct a workable common *future*? In other words: should the legal response to massive violence and bloodshed mainly be a *deontological* one, giving primacy to the right in awarding 'each what is his' (*suum cuique*) according to a given set of principles of law? Or should the response to mass atrocities be primarily *teleological* in nature, with the 'state of right' being subservient to some higher outward good?

In recent years, these and related questions have attracted wide scholarly attention, both in legal studies and adjacent fields of research. In this context, it has become standard to refer to Aeschylus' *Oresteia* as a story in which the institution of a court of law marks the successful transition from a tribal society ruled by the force of vengeance and reciprocal bloodshed to an ordered civilization governed by law.<sup>12</sup> Whereas legal literature generally only refers to the *Oresteia* in passing,<sup>13</sup> this paper sets out to

6 Aristotle, *Politics* 1252a-1253a.

7 Cf., e.g., E. Garver, *Aristotle's Politics. Living Well and Living Together*, 2011, pp. 214 et seq.

8 See esp. Aristotle, *Nicomachean Ethics* 1137b, where he describes equity (*epieikeia*) as a superior kind of justice that overrides the outcome of abstract deductive reasoning if specific circumstances of the case demand it.

9 Cf., e.g., J. Rawls, *A Theory of Justice*, 1999, pp. 26-30. When Rawls speaks of a teleological approach to law, however, he primarily thinks of utilitarianism, with Aristotle figuring only prominently (but distordedly) when Rawls lays out his 'Aristotelian Principle' on pp. 372-380. See also P. Ricoeur, *The Just*, 2000, pp. 38-40.

10 See, e.g., R. Teitel, *Transitional Justice*, 2000 for a comprehensive overview.

11 Primo Levi, *Survival in Auschwitz*, 1996, pp. 121-122.

12 See, e.g., A.M. Hol, 'The Theatre of Justice. On the educational meaning of criminal trials', in C. Brants et al. (eds.), *Transitional justice*, 2013, pp. 121 et seq.

13 See, e.g., H. Gibbs, *Constitutional Life and Europe's Area of Freedom, Security and Justice*, 2011, pp. 121-123, with further references. For more sustained analyses of Aeschylus' *Oresteia* in legal literature, see, e.g., R. Foqué, 'Criminal Justice in a Democracy. Towards a Relational Conception of Criminal Law and Punishment', 2008 *Criminal Law and Philosophy* 2, no. 2, pp. 207-227, where Foqué analyses the *Oresteia* as a confirmation of his theory of relational criminal law, and P. Gerwitz, 'Aeschylus' Law', 1988 *Harvard Law Review* 101, no. 5, pp. 1043-1055.

examine the topic of adjudication and conflict resolution in Aeschylus' *drama* more in full. Moreover, it will discuss the same topic in *Molora*, in which South-African playwright Yael Farber redrafts Aeschylus' original into a play that investigates the workings of the Truth and Reconciliation Commission (TRC). It is our contention that conflict resolution in both plays depends on a precarious balance of a deontological conception of law, like Kant's, on the one hand and a teleological approach like Aristotle's on the other. This can, we think, be aptly understood by studying the plays from the perspective of the legal and moral philosophy of Paul Ricoeur, which adopts some crucial elements of Kant's Doctrine of Right without, however, betraying its fundamentally Aristotelian nature.

### **1.3. Ricoeur**

Like Aristotle, Ricoeur grounds his moral and legal philosophy by presupposing an innate human *telos* that requires associations with others for its true fulfilment. First, as Ricoeur has it, the individual human being is a capable subject that needs to actualize their human capacities in *interpersonal* relations with other subjects; these relations, as he explains, can be placed under the heading of a dialogue between an 'I' and a 'you' that helps the subject to constitute an identity.<sup>14</sup> These face-to-face relations, however, lack the relation to a third party that Ricoeur considers as equally essential. In order for the subject to be fully human, interpersonal relations do not suffice; so-called '*institutional* forms of association' would also be indispensable. Institutional mediation, as Ricoeur explains, enables us to associate with others while remaining at a certain distance. In this way, it extends interhuman relations to all those that the proximity of the face-to-face relation of an 'I' and a 'you' leaves out. As such, institutions allow subjects to become part of a social system that is not confined to relations of subjects with other subjects, but comprises a plurality of subjects united by the institution.<sup>15</sup>

Ricoeur adduces the pragmatics of human discourse as a parallel to this. As he explains, human communication is 'at least a bipolar phenomenon' that naturally involves an 'I' and a 'you'.<sup>16</sup> It is only with regard to others that one is really able to identify oneself; and it is only in the context of interlocution that a subject can say something meaningful. It is not difficult, however, to see how communication usually involves more than just a bipolar relation. To begin with, the proximal relation of interlocution does not in itself account for the *formal institution* of language in which human discourse is usually framed, encompassing not only the partners in a concrete dialogue, but all members of a linguistic community more in general. And, more fundamentally: human discourse depends on more than the formal rules of syntax and semantics alone; from the well-known theory of speech acts, it can be understood that it essentially relies on the confidence that language users are wont to place in each other as co-operative partakers in a common enterprise.<sup>17</sup>

What goes for language, Ricoeur argues, applies to law as well. Only within the context of bipolar relations with others can one designate oneself as the responsible author of one's own actions. The social bond of contracts, however, depends not only on an 'I' and a 'you', but also on the institution of law in which it is embedded. Therefore, it comprises not only the partakers in a mutual agreement, but also the members of a legal community more in general. Like human discourse, the body of rules and principles within this community are predicated upon a structure of trust that serves as its ultimate rule of recognition. Full membership of such a community is therefore essential 'for the achievement of human potentialities'.<sup>18</sup> As Ricoeur further explains, it is only in the context of *politics*, broadly understood with Hannah Arendt as the condition of human *interesse* within the public realm, that the innate wish for the good life can find its ultimate fulfilment.<sup>19</sup> As such, it is important to recognize that Ricoeur does not understand the institution of the public space merely as a formal structure, but rather, with Aristotle, as an organic construction that originates from the innate human desire to co-operate in a shared moral

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14 P. Ricoeur, *Oneself as Another*, 1992, p. 30; Ricoeur, *supra* note 9, p. 5.

15 Ricoeur, *supra* note 14, pp. 194 et seq.

16 Ricoeur, *supra* note 9, p. 6.

17 See, e.g., H.P. Grice, 'Logic and conversation', in P. Cole & J. Morgan (eds.), *Syntax and Semantics. 3: Speech Acts*, 1975, pp. 22-40, in which Grice lays out his seminal theory of the 'cooperative principle' in human discourse.

18 Ricoeur, *supra* note 9, p. 8.

19 H. Arendt, *The Human Condition*, 1958, p. 51 ('inter homines esse'); Ricoeur, *supra* note 9, pp. xv-xvi.

enterprise. 'It is as citizens', Ricoeur argues, 'that we become human.' Like Aristotle, therefore, he contends that the wish to live in the moral community of a *polis* signifies nothing else.<sup>20</sup>

As Ricoeur further argues, however, the 'crowning achievement of the good life'<sup>21</sup> as the *telos* of human existence cannot be provided by the association with others as such. In addition to what he designates as the 'horizontal axis (...) of dialogical constitution of the self', therefore, fulfilment of the human capacity for the good life requires a 'vertical axis' that provides the predicates that qualify human actions in terms of morality.<sup>22</sup> For an important part, this vertical axis is Kantian in nature, comprising, among others, a purely deontological 'level of the norm, of duty, of interdiction' that holds its subjects accountable for its actions as full noumenal beings. As Ricoeur hastens to say, however, deontological moral philosophy can only do without teleology at the price of ignoring 'the rootedness of moral philosophy in life, in desire, in what is lacking'.<sup>23</sup> *Morality*, defined by Ricoeur as a set of 'norms characterized by the claim to universality and an effect of constraint', should therefore be regarded as subservient to *ethics*, understood as the innate human aim of living the good life in association with others.<sup>24</sup> With particular regard to the act of judging, such a primacy of the good over the right certainly does not mean that the judge can do without a set of predefined rules.<sup>25</sup> After all, as Ricoeur explains, it is only 'when backed by a juridical system existing essentially of written laws' that the judge can impose himself on the contestants in the required position of a non-partisan third party.<sup>26</sup> Ultimately, however, judging comes down to defining the force of law in terms of a singular situation,<sup>27</sup> for which ethics can require a correction to what would only be 'legally just'.<sup>28</sup>

For Ricoeur, the 'philosophical place of justice' is thus found at the intersection between the horizontal axis that enables the subject to shape an identity on the one hand and the vertical axis of moral qualification on the other hand. As such, his account of law may be understood as a reconciliation between Kantian deontology and Aristotelian teleology. As he emphatically states, however, his understanding of law is most fundamentally Aristotelian in nature, with justice conceived as 'a wish before it is an imperative'.<sup>29</sup> For Ricoeur, therefore, adjudication cannot depend on reason alone, but should also take its recourse to the virtue of 'practical wisdom' (*phronesis*), with the just often entailing a 'unique decision made within a climate of uncertainty and incertitude'.<sup>30</sup> Ricoeur believes that the pursuit of justice must not seldom end with the judge's 'heartfelt conviction' that is ultimately grounded in the human *telos* of living the good life in association with others, only secondarily ratified by a predefined set of rules. Ricoeur's adherence to such a model of adjudication is directly linked to his Aristotelian view of man as a 'political animal' (*politikon dzōion*), owing his full humanity to interpersonal and institutional relations with others. Outside the moral community of the *polis*, Ricoeur contends, one can only be an 'initial draft of a man', not being able to live up to one's full potential.<sup>31</sup> Therefore, doing justice may importantly consist of setting up or restoring such a community, integrating or re-integrating both victims and perpetrators in the shared moral enterprise of which they have been deprived or which they have forsaken.<sup>32</sup> After all, it is only as full members of a stable *polis* that their humanity can fully unfold itself.

#### 1.4. Philosophy in action

In our view, Aeschylus' *Oresteia* and Yael Farber's *Molara* are presentations of Ricoeur's model of law in action. Aeschylus' original play and Farber's adaptation are both densely populated by victims and perpetrators suffering from a sense of deprivation and a lack of fulfilment of which they can only be

20 Ricoeur, supra note 9, p. xvi.

21 Ibid., p. xv.

22 Ibid., p. xii.

23 Ibid., p. xvi.

24 Ricoeur, supra note 14, pp. 171-173.

25 Ibid., p. 170; Ricoeur speaks of 'the primacy of ethics over morality'.

26 Ricoeur, supra note 9, p. 135; see also P. Ricoeur, 'Le juste entre le légal et le bon', in *Lectures I. Autour du politique*, 1991, pp. 176 et seq.

27 Ricoeur, supra note 9, p. 129.

28 Ibid., p. vii; cf. Aristotle, *Nicomachean Ethics* 1137b.

29 Ricoeur, supra note 9, p. xvii.

30 Ibid., p. xxi.

31 Ibid., p. 10.

32 Ibid., pp. 129-132; cf. also pp. 133 et seq.

relieved by means of a public trial. As a result of what they did or what they suffered, wrongdoers and their victims alike find themselves in a state of subhumanity, either being debarred from or actively defying the communal order of real *polis* life. Adjudication can only really solve the conflict by setting up or restoring such an order, in which both parties can finally fulfil their full humanity. At the same time, however, both the *Oresteia* and *Molora* point out that the institution or restoration of such an order is only possible by establishing a clear 'vertical axis of moral predication' that holds the perpetrators responsible for their actions and decidedly acknowledges the unwarranted grief of the victims. In fact, as we will argue, both plays clearly indicate that unambiguously *dividing* the parties, giving them each their due, is paradoxically essential to *integrate* them, on a higher level, within the same community.

In what follows, we will develop our argument in the following way. First, we will offer a short account of the Orestes myth as it is plotted in Aeschylus' *Oresteia* and describe briefly how Farber's play translates the story to post-apartheid South Africa. Then, we will provide a side-by-side analysis of the plays in which we will particularly emphasize the ways in which both dramas depict their protagonists as subhuman figures, mere 'drafts' of human beings, unable to fulfil their human capacities in relation with others within the shared moral order of real *polis* life. Subsequently, we will explain how the protagonists' main actions in the plays are motivated by the desire to resolve the subhumanity from which they suffer. At first, they set out to establish justice, doing their utmost to create *kosmos* out of *chaos* on their own accord. Ultimately, however, they acknowledge that communal life is only possible when they subject themselves to a court of law as an institutional third party, recognizing that both the 'winner' and the 'loser' of the trial partakes in the same cooperative enterprise of a common society. Both Aeschylus' *Oresteia* and Yael Farber's *Molora* thus confirm Ricoeur's conception of law as a precarious balance between deontology and teleology, with the establishment of an enduring social peace, however, as its highest outward goal.

## 2. *Oresteia* and *Molora*

### 2.1. *The story*

The *Oresteia* is a series of three interconnected tragedies, first performed in 458 BCE at the Great Dionysia, a sacred festival in Athens in which the entire civic community was expected to participate.<sup>33</sup> The first play of the trilogy, *Agamemnon*, opens at the moment when, after a long siege, the Greek army led by Agamemnon has won the Trojan War. In the king's absence, the city of Argos has been ruled by his wife Clytemnestra, and his triumphant return is eagerly anticipated: by the Argive citizens, who look forward, albeit with apprehension, to the restoration of normal order; and by Clytemnestra, who has been plotting in secret towards Agamemnon's death in revenge for his sacrifice of their daughter Iphigenia. The vengeance is exacted, and in the trilogy's second play, *Libation Bearers*, the dead king's exiled son Orestes returns to Argos and avenges in his turn the killing of his father by killing Clytemnestra and her new consort. After the matricide, Orestes is pursued by the Furies as the earth-bound ('chthonic') deities who traditionally avenge intra-familial bloodshed. Political order is only established, however, in the trilogy's third play, *Eumenides*, in which Orestes stands trial before a newly instituted court of law that is presided over by the goddess Athena. The judgment of this court finally breaks the chain of killing and requital initiated by the sacrifice of Iphigenia.

Aeschylus was not the first writer to tell this story; its most extensive earlier treatment can be found in Homer's *Odyssey*, in which it serves as a foil for its main story about Odysseus' successful return into his household and his city.<sup>34</sup> Among the surviving versions, the *Oresteia* stands out for the extent to which the myth's central events are made to reflect real-life issues of justice and conflict resolution. The *Oresteia* plays on political concerns that were acutely felt at the time of its first performance, when the juridical system of Athens had just been radically reorganized.<sup>35</sup> But Aeschylus' fellow citizens also felt

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33 On the relation of ancient Greek tragedy and its social and cultic context, see especially the various essays in J.J. Winkler & F.I. Zeitlin (eds.), *Nothing to Do with Dionysos? Athenian Drama in its Social Context*, 1990.

34 See, e.g., A.M. van Erp Taalman Kip, *Agamemnon in epos en tragedie*, 1971 for an exhaustive comparative analysis.

35 For the historical reorganisation of the Athenian Areopagus court and its political implications in the 460s-450s BCE, see D.M. Carter, *The Politics of Greek Tragedy*, 2007, pp. 22 et seq.; A.H. Sommerstein, *Aeschylus: Oresteia*, 2009, pp. xv-xviii; D. Raeburn & O. Thomas, *Aeschylus, Agamemnon*, 2011, pp. xix-xxi; also A.H. Sommerstein, *Aeschylus: Eumenides*, 1989, pp. 25-32.

that his plays could also teach them something valuable about *polis* life more in general. In Aristophanic comedy, Aeschylus is emphatically celebrated for his ‘good counsel’ (*nouthesia*), with his tragedies making people ‘better members of their communities.’<sup>36</sup> The idea of the *Oresteia* containing some sort of political wisdom has persisted well into modern times, with successive interpreters of the *Oresteia* continuously finding new significances in the plays. Farber’s adaptation is a clear example of this. As she explains in her foreword to the play, the *Oresteia* struck her as ‘as a powerful canvas on which to explore the history of dispossession, violence and human-rights violations’ in the country she grew up in; accordingly, she designed *Molora* as a drama that explores ‘the journey back from the dark heart of unspeakable trauma and pain – and the choices facing those shattered by the past’. Thus, she explicitly draws on Aeschylus’ story as ‘an examination of the spirals of violence begat by vengeance’, with these spirals being finally broken in the court of law.<sup>37</sup>

*Molora* stages the challenges that South Africa faced after the end of apartheid. Farber’s stage directions describe its ‘ideal venue’ as a ‘bare hall or room – much like the drab, simple venues in which most of the testimonies were heard during the course of South Africa’s Truth and Reconciliation Commission’. The play is structured as a series of such testimonies, interposed by flashbacks of what happened and songs of a Chorus of women who represent the community. Clytemnestra is *Molora*’s only white character; Electra, Orestes, Agamemnon and the women of the Chorus are all black. At first instance, Clytemnestra seems only proud of what she has done, boasting about her killing of Agamemnon as a rightful deed of justice. In their testimonies as witnesses before the TRC, Electra and Orestes demand full retribution of what has been inflicted upon them, describing their sufferings in gruesome detail. In the course of the process, their call for revenge subsides. When Electra jumps forward to kill her mother, she is withheld by the Chorus and Orestes, who urges her to ‘rewrite this ancient end’. As Electra finally crawls back, the Chorus pray that the cycle of bloodshed is finally broken. As Farber states in her foreword, a way out of the conflict is thus not provided by some *deus ex machina*, but, instead, by ‘the common everyman and everywoman who (...) gathered (...) to face their perpetrators (...), and find a way forward for us all.’<sup>38</sup>

## 2.2. Progress?

The *Oresteia*’s narrative trajectory from retaliatory killing to juridical resolution has often been described in terms of a quasi-historical progress, with the civilization of the *polis* and the rationality of law ultimately replacing an archaic and tribal conception of justice that calls for reciprocal vengeance and perpetual bloodshed. In such readings, the story of Aeschylus’ *Oresteia* emerges as something like a charter myth for the emergence of classical Athens as the centre of the civilized world.<sup>39</sup> In recent decades, such progressivist interpretations of the *Oresteia* have met severe criticism. In a ground-breaking article, for example, Froma Zeitlin argued that the *Oresteia* does not show us real resolution of a conflict, but rather a ‘hierarchization of values’ which places ‘Olympian over chthonic on the divine level, Greek over barbarian on the cultural level and male over female on the social level.’<sup>40</sup> In her thorough deconstructive analysis of the play, Zeitlin contends to uncover the ‘dynamics of misogyny’ that, in her view, importantly inform the play’s myth-making. Accordingly, she claims to show how Aeschylus’ *Oresteia* legitimates a repressive ‘social and political ideology’ whose mythic basis would often have been ignored. In this way, Aeschylus’ play would reinforce an authoritative power that oppresses the barbarian and the female by organizing and manipulating reality in ways that are usually neither recognized nor acknowledged. Therefore, in the *Oresteia* the conflict would not really be ended, but instead be continued under the thin surface of a ‘civilization’ that oppresses victims and leaves perpetrators unpunished.<sup>41</sup>

36 Aristophanes, *Frogs* 1009-1010.

37 Y. Farber, *Molora*, 2008, pp. 7-8 (foreword).

38 *Ibid.*, p. 7.

39 Classical statements of this line of interpretation include J.H. Finley, *Pindar and Aeschylus*, 1966, pp. 246 et seq.; H.D.F. Kitto, *Greek Tragedy*, 1957, pp. 64 et seq.; and C. Macleod, ‘Politics and the *Oresteia*’, 1982 *Journal of Hellenic Studies* 102, pp. 124 et seq. See also D. Sailor & J.C. Stoup, ‘The Translation of Transgression in Aeschylus’ *Agamemnon*’, 1999 *Classical Antiquity* 18, pp. 153 et seq., who argue that in the trilogy’s progression towards the judicial, aristocratic notions are redefined in democratic or isonomic terms.

40 F.I. Zeitlin, ‘The Dynamics of Misogyny. Myth and Mythmaking in the *Oresteia*’, 1978 *Arethusa* 11, no. 1, p. 149.

41 *Ibid.*, pp. 173-174.

Although such critical readings of the *Oresteia* have much to commend themselves, we believe that they tend to overlook an aspect of the trilogy's design that we regard as crucially important for its proper understanding: the pervasive desire for a political community that has been obviated or disturbed by reciprocal violence and bloodshed. As we will explain further below, this desire marks a lack of fulfilment on Ricoeur's 'horizontal level' of stable relations with others that can be felt throughout the entire trilogy, from the opening lines in *Agamemnon* until it is finally resolved at the *Oresteia*'s conclusion in *Eumenides*. In our view, the pervasiveness of this desire goes a long way to explain why all protagonists ultimately subject themselves to a 'vertical axis of deontological predication' that may, indeed, be less than perfect, although far less oppressive than Zeitlin envisions. In fact, as we will further explain below, the official recognition of the Furies' laments as legitimate complaints plays a crucial role in the final resolution of the conflict. Accordingly, social peace is only established when they are given pride of place within the *polis*. As such, they are not *silenced*, as Zeitlin has it, but genuinely *incorporated* into the social fabric of the community; only in this way can their divine forces finally be turned to the good.

With regard to Yael Farber's *Molora*, we encounter parallel problems. The play has been most extensively studied in the recent thesis of Astrid van Weyenberg, which explores how themes of Greek tragedy were received into postcolonial Africa.<sup>42</sup> As for the *Oresteia*, Van Weyenberg subscribes to Zeitlin's interpretation of the play not really culminating in conflict resolution, but rather in the dominance of one version of justice over other versions.<sup>43</sup> In the reality to which *Molora* refers, Van Weyenberg argues, something similar happened. The 'forward-looking' conception of justice that the TRC constructed would far too often have ignored the Furies' legitimate laments; in *Molora*, this would not be properly recognized.<sup>44</sup> In our discussion of this matter, it will not be our objective to assess to what extent *Molora*'s depiction of the workings of the TRC matches what really happened in the aftermath of apartheid.<sup>45</sup> At least regarding the depiction of justice within the play *itself*, however, we believe that a Ricoeurian reading of *Molora* puts her critique into a different perspective. With Ricoeur, we would argue that partial *amnesty* for perpetrators, especially when an honest and public testimony of what really happened is one of its conditions, does not necessarily result in *amnesia* of the victims' unwarranted sufferings and the perpetrator's transgressions. The *publicity* of the trials, in fact, does not count for nothing, setting up a new public narrative of past events that may serve as a clear 'vertical axis of moral predication' that still, and enduringly so, holds perpetrators responsible for their actions. As we will see, the force of such publicity is explicitly thematised in the *Oresteia* and *Molora* alike. Therefore, Van Weyenberg's view of *Molora* as a rather superficial treatment of justice, not really dealing with the ambiguities that transitional justice necessarily entails,<sup>46</sup> seems only partially justified. Below, we will explain this.

### 2.3. *The desire for fulfilment*

In Aeschylus' *Oresteia*, violence and bloodshed mark the disturbance of the royal household (*oikos*) of the city of Argos; and it is clear that the atrocities within Argos' principle household also obviate real communal *polis* life in the city more at large. Many scholars take Aristotle's trilogy to reflect the emergence of the *polis* as the result of the forces of the *oikos* submitting themselves to the laws of the city.<sup>47</sup> Christian Meier, for example, contends that Aeschylus' *Eumenides* marks the 'discovery of politics' as a 'splitting off of the political from the social order', with a man-made civic order finally being placed over the particularist forces of nature.<sup>48</sup> As we believe, however, Aeschylus' *Oresteia* presents the *polis* rather as the object of an innate desire for fulfilment that is inherent in the human condition. For us, Aeschylus' *Oresteia* thus exemplifies Aristotle's claim about the naturalness of the *polis* and its essential

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42 A. van Weyenberg, *The Politics of Adaptation. Contemporary African Drama and Greek Tragedy*, 2011, pp. 117 et seq.

43 *Ibid.*, p. 149.

44 *Ibid.*, pp. 152-54.

45 Interesting analyses of transitional justice in post-apartheid South Africa can be found e.g. in R.A. Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*, 2001; A.R. Chapman & H. van der Merwe (eds.), *Truth and Reconciliation in South Africa: Did the TRC deliver?*, 2008.

46 Van Weyenberg, *supra* note 42, p. 151.

47 See, e.g., H. Ferguson, *A Companion to Greek Tragedy*, 1972, p. 108.

48 C. Meier, *The Greek Discovery of Politics*, 1990, p. 85. See also K.M. Crotty, *Law's Interior*, 2001, pp. 38 et seq., where he describes the *Oresteia* as an account of 'the rise of the liberal state'.

role as a precondition for the fulfilment of human life. As such, we believe that it makes little sense to view the *Oresteia* as referring to some sort of prepolitical ‘state of nature’ from which humans would have liberated themselves by wilfully instituting the civilized life of the *polis*. Instead, we take Aeschylus’ *Oresteia* as reflecting the natural need for a well-ordered *polis* as a prerequisite for the unfolding of human capacities.<sup>49</sup>

In the *Oresteia*, the absence of a genuine *polis* is figured in terms of three dominant sets of imagery: the image of the animal, the image of the wanderer, and the complementary images of darkness and light. These images permeate the entire trilogy. In the opening lines of Aeschylus’ drama, for example, animal imagery is imminently present when we encounter a Watchman who identifies his duty as a degrading ‘labour’ (*ponos*), having spent his long year’s watch ‘like a dog’ (*kunos dikēn*), perching on his elbows on the palace’s roof.<sup>50</sup> Some commentators on this passage have been reluctant to allow the scope of the simile to extend beyond the watchman’s uncomfortable physical position.<sup>51</sup> In a poetic process characteristic of Aeschylus, however, the image of the ‘watchdog’ gains resonance through its reiteration as the trilogy progresses. Clytemnestra compounds the watchman’s diagnosis by describing her own role during the king’s absence as that of a ‘watchdog of the house’;<sup>52</sup> Agamemnon himself is hailed by his wife, in pointedly ambivalent terms, as a ‘watchdog’ returning to protect his homestead;<sup>53</sup> Clytemnestra, in the delirious visions of the prophetess Cassandra, is figured as a fawning but hateful bitch;<sup>54</sup> and, in *Libation Bearers*, Agamemnon’s orphaned daughter Electra describes herself as one ‘dishonoured, worthless, shut up in the bowels of the house, a dangerous dog, crying in secret’.<sup>55</sup>

What unites these instances is a lack of human fulfilment that affects both victims and perpetrators. John Heath, therefore, seems right when he states that the *Oresteia*’s imagery of dogs and other animals ‘tells us that without the *polis* we live in moral *chaos*’. As Heath explains, the *polis* enables us ‘to live fully human lives’, saving us from a ‘world where animals and humans are inextricably and ruinously woven together’, instead providing a differentiated *kosmos* with ‘animals, humans, and gods in their respective places’.<sup>56</sup> It is in the absence of such a ‘differentiated *polis*’ that Orestes describes the situation in which he and his sister find themselves after the killing in terms of a fable involving eagles and vipers.<sup>57</sup> The *Oresteia*’s animal imagery thus seems to suggest that victims and perpetrators are united in a state of subhumanity that results from what they did or what they suffered. Being either debarred from or having actively broken with a shared communal order, they are not able to live fully human lives.

Complementary to the image of the animal is the image of the wanderer. Having likened himself to a dog, the Watchman disparages his resting place as a ‘night-walker’s bed, wet with dew’;<sup>58</sup> Electra, deprived of a father to ensure her the place in the social fabric of her household and city that she deserves, describes herself and her brother Orestes as ‘wanderers’ (*alōmetha*), having been ‘sold off’ (*pepramēnoi*) by her mother. While Electra professes to live the life of a slave, (*antidoulos*),<sup>59</sup> her brother is, ‘exiled’, bereft of his inheritance (*ek [...] chrēmātōn*).<sup>60</sup> Like the *Oresteia*’s animal imagery, the image of the ‘wanderer’ unites those who are circumstantially victimized by the trilogy’s successive transgressions with those who have perpetrated them. Having killed Agamemnon, Clytemnestra ‘will be without a *polis*’ (*apopolis d’ esēi*) and ‘without friends’ (*steromenan philōn*),<sup>61</sup> with her transgressive act debarring her from the

49 Cf., e.g., C.A. Bates, ‘Aristotle and Aeschylus on the Rise of the Polis. The Necessity of Justice in Human Life’, 2003 *Polis* 20, no. 1-2, p. 43.

50 *Agamemnon* (hereafter: *Ag.*) 3-4. For the Greek text, we follow A.H. Sommerstein’s recent Loeb edition (2009). All translations are our own.

51 E. Fraenkel, *Aeschylus: Agamemnon*, 1950, p. 4.

52 *Ag.* 606-10.

53 *Ag.* 896-901; the watchdog image is one in a series that also includes the ‘forestay of a ship’, the ‘pillar that supports the roof’, ‘a father’s only son’; ‘land appearing to sailors in despair’, ‘daylight appearing after storm’, and a ‘spring to a thirsty traveller’ – none of which describe Agamemnon as a human being embedded in human society. The only image to do so – ‘a father’s only son’ – is factually (and manifestly) untrue.

54 *Ag.* 1228-9.

55 *Libation bearers* (hereafter: *Lib.*) 446-9.

56 J. Heath, *The Talking Greeks*, 2003, p. 211.

57 *Lib.* 1048-1050.

58 *Ag.* 12.

59 *Lib.* 132-4.

60 *Lib.* 135-7. For the implications of exile for a Greek citizen, see, e.g., D. Allen, *The World of Prometheus: the politics of punishing in classical Athens*, 2000, pp. 201-204.

61 *Ag.* 1429.

performance of the rituals that define her normal role within the household and the city.<sup>62</sup> Similarly, his matricide leaves Orestes a 'wandering outcast estranged from his land' (*alētēs tēsde gēs apoxenos*),<sup>63</sup> a man 'outside custom (*ek-nomos*) on his journey back to humanity'<sup>64</sup> who, having no succour from 'wandering' (*errein*), is reduced to a mere 'shadow' (*skia*) of a man.<sup>65</sup> As Orestes' pursuers observe: 'Having spilt on the ground his mother's blood, is he then going to live in the home of his father in Argos? What altars will he use, what public altars? What phratry will admit him to its lustral water?'<sup>66</sup> As Silvia Montiglio acutely observes in her comprehensive study of the notion of 'wandering' in Greek culture, the wanderer has 'lost his center of belonging'.<sup>67</sup> In fact, with the city's principal household having been uprooted, the entire community seems to disintegrate: 'statelessness' becomes the general condition.

The Watchman indicates as much when he says in the trilogy's opening lines that, rather than whistling himself to sleep, he finds himself lamenting 'the misfortune of this house, which is not now admirably husbanded as it used to be';<sup>68</sup> and the disintegration of the civic body is made strikingly clear when the *Agamemnon's* Chorus, in their confusion over the killing of their king, ceases to speak in a single voice.<sup>69</sup> The trilogy's second play, especially, emphasizes the spreading of disfranchisement that results from the killing of Agamemnon: since there is 'enmity in the house' (*echtos en domoisi*),<sup>70</sup> the dead Agamemnon is 'not receiving his due' (*atimos*);<sup>71</sup> and consequently, the house has been visited by a dream 'which made its hair stand on end' and 'raised a cry in its deepest interior',<sup>72</sup> announcing the displeasure of the dead. Clytemnestra's attempts to appease the dead are mere 'token reciprocations (*charis acharitos*):<sup>73</sup> 'reverence stands aside'.<sup>74</sup> Agamemnon's children are 'deprived of a home' (*atima dōmatōn*),<sup>75</sup> as well as of the privilege of attending Agamemnon's funeral rites;<sup>76</sup> and ritual order having been disturbed, there has been a 'deprivation of the father', for which payment is due.<sup>77</sup> Similarly, the matricide leaves Clytemnestra and her avengers 'deprived' or 'disenfranchised' (*atimoi*).<sup>78</sup>

It is this pervasive sense of privation that evokes in the *Oresteia's* characters the desire for a fulfilment that is, eventually, achieved as a result of the trial that re-instates Orestes to his father's household. The trilogy consistently figures this desire as the eager anticipation of light after darkness. The Watchman describes the stable motions of the constellations that appear among the 'thronged stars' as 'bright potentates which bring winter and summer to mortals',<sup>79</sup> a paradigm of cosmic order, that serves as a foil or contrast for the statelessness in Argos. The sign that announces Agamemnon's return to Troy is described as 'bringing by night a message of light bright as day',<sup>80</sup> and Agamemnon himself is hailed as 'the bringer of a common light out of darkness to the entire populace'.<sup>81</sup> Indeed, the returning king

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62 *Ag.* 1542-59; see esp. K.J. Hame, 'All in the Family: Funeral Rites and the Health of the Oikos in Aeschylus' *Oresteia*', 2004 *American Journal of Philology* 125, no. 4, pp. 513 et seq., who demonstrates that Clytemnestra's performance of rites that she should not be performing indicates the unhealthiness and illegitimacy of the household she now heads.

63 *Lib.* 1043.

64 *Eumenides* (hereafter: *Eu.*) 90-4.

65 *Eu.* 299-302. For Orestes as 'wanderer', see further *Eu.* 235-2 and 652-6. 'Shadow' occurs frequently in Greek poetry as an image for man, unprotected by a community, at his most ephemeral. See, e.g., M. Theunissen, *Pindar. Menschenlos und Wende der Zeit*, 2000, pp. 45-49, with further references. Cf. also Ricoeur, supra note 9, p. 10 on individuals being debarred from *polis* life as 'initial drafts' of human beings.

66 *Eu.* 662-666.

67 S. Montiglio, *Wandering in ancient Greek culture*, 2005, pp. 34-35, citing passages where 'wandering' is explicitly opposed to 'being part of the *polis*' (*politeuesthai*).

68 *Ag.* 18-19.

69 *Ag.* 1346-1371.

70 *Lib.* 101.

71 *Lib.* 96-9. The deprivation is specified at *Lib.* 484-5: while the other dead, by receiving offerings, can 'enjoy their banquet', Agamemnon, being excluded from this commonality, remains *atimos*. See also *Lib.* 431, in which the dead Agamemnon is called a 'king without a people' (*aneu politān*). For 'atimos' meaning 'not receiving his due', see, e.g., P.E. van 't Wout, *Harbouring discontent. The pragmatics of atimia terminology in classical Athens*, 2013, p. 157.

72 *Lib.* 32-7.

73 *Lib.* 44.

74 *Lib.* 55-8.

75 *Lib.* 407-9.

76 *Lib.* 430-33.

77 *Lib.* 434-9.

78 See, e.g., *Eu.* 95-102; 354-356.

79 *Ag.* 4-7.

80 *Ag.* 22-3.

81 *Ag.* 522-3.

is a 'welcome light' appearing at the city gates,<sup>82</sup> eagerly awaited by 'the *polis* that craves him.'<sup>83</sup> After Agamemnon's death, 'sunless darkness' has descended once more upon Argos' principal household,<sup>84</sup> with Justice (*Dikē*) operating in a 'no-man's-land' where light and darkness alternate;<sup>85</sup> and accordingly, Electra supplicates her dead father to 'kindle in the house a light,'<sup>86</sup> a request that the Chorus echo with their prayer for 'a man to set the house free.'<sup>87</sup>

Yael Farber's *Molora* brings up similar themes. The drama opens with a short testimony before the TRC by Clytemnestra, the only white character of the play, who came to power in absence of Agamemnon, her black husband. In her testimony, Clytemnestra explains how she killed Agamemnon upon his return, proudly describing her deed as a 'masterpiece of justice.'<sup>88</sup> As the play continues, however, we come to know Clytemnestra not only as a perpetrator, but also as a victim. In Farber's version, Agamemnon not only slaughtered Iphigenia, but also Tantalus, her first husband ('I met your father the day he opened up my first husband / and ripped out his guts'), after which he forced her to marry him.<sup>89</sup> Clytemnestra thus explains her horrible deed from the fact that 'we were a country at war', in which it 'only mattered that we survived.'<sup>90</sup>

The killing of her husband, we learn, has all but set Clytemnestra free of her misery. As a victim, she lived 'with the dark figure of vengeance beneath the bed'; as a perpetrator, however, her night rest has been uprooted by the knowledge that one day, 'consequence will arrive. One dark night – unannounced at the door.'<sup>91</sup> The life of a perpetrator, she explains, is not to be envied; it is a restless and subhuman life, in which '[t]he hounds that avenge all murder / will forever hunt you down.'<sup>92</sup> Electra, testifying before the TRC as Clytemnestra's victim, complains of a similar lack of human fulfilment. She addresses her mother, Clytemnestra, as 'the shadow that fell on my life', who made a 'child of her through fear.'<sup>93</sup> In the years in which her house was ruled by her mother, she was treated like a slave,<sup>94</sup> locked up in her own house. As a result, Electra complains, 'no man came near her'; her womb therefore 'remained empty', leaving her without a child.<sup>95</sup> Years of degradation passed, in which she was 'not permitted to sit at the table', but was 'fed like a dog' instead.<sup>96</sup>

It is clear that the protagonists in both plays live a life that Hannah Arendt would refer to as *dzoë*, not *bios*: practically the life of an animal or a plant, not in any way the fulfilled life of a true human being.<sup>97</sup> Whether this is a *prepolitical* state, in which the civilized order of the *polis* has not yet been established, or, rather, a *depoliticized* state, in which the *polis* has fallen into pieces, does not seem very relevant.<sup>98</sup> What seems to count is rather that the characters in both plays suffer from an *apolitical* state, which seems to result from the social exclusion of victims on the one hand and from the active transgression of the moral order of perpetrators on the other. In Ricoeur's terms, this deprives both victims and perpetrators from the 'horizontal axis' of institutional relations with others that serves as a precondition for the unfolding of their full humanity. Or, to use Aristotle's phrase: in the absence of the true moral community of the *polis*, they are bound to live subhuman lives, not being able to fulfil their natural purpose as 'political animals'. In this way, victims and perpetrators in both plays are left with an unfulfilled desire, restlessly wandering around in a world in which they are bereft of any real sense of belonging.

82 *Ag.* 601-5.

83 *Ag.* 604-5.

84 *Lib.* 49-54.

85 *Lib.* 61-5.

86 *Lib.* 471-80.

87 *Lib.* 131 and 160 (*analytēr domōn*).

88 *Ibid.*, p. 23: 'Here lies Agamemnon my husband / made a corpse by my right hand. A masterpiece of justice. Done is done.' Cf. *Ag.* 1429-1431.

89 *Molora*, supra note 37, p. 44; the incident is derived, not from Aeschylus' *Oresteia*, but from Euripides, *Iphigenia in Aulis* 1148-1152: 'It was not of my own free will but by force that you took and wed me, after slaying Tantalus, my former husband, and dashing my baby on the ground when you had torn him from my breast with brutal violence.'

90 *Molora*, supra note 37, p. 51; cf. the 'dog simile' in *Ag.* 3 and *Lib.* 447.

91 *Ibid.*, p. 51.

92 *Ibid.*, p. 142.

93 *Ibid.*, p. 24.

94 *Ibid.*, p. 40.

95 *Ibid.*, p. 41.

96 *Ibid.*, p. 47.

97 Arendt, supra note 19, pp. 96-97.

98 Cf., e.g., Bates, supra note 49, pp. 43-46.

## 2.4. The search for fulfilment

The protagonists of both plays are haunted by a pervasive desire for political order; and it is this desire that principally informs their actions. In Aeschylus' *Oresteia*, Agamemnon does all that he deems necessary to re-integrate into his city as a full member of the community. In his speech upon his arrival before his palace, Agamemnon does not refrain from boasting about his victory at Troy. At the same time, however, he seems concerned that this victory has given him a godlike status that may obviate his re-integration in the social fabric of his city.<sup>99</sup> Therefore, Agamemnon pays homage to his *polis* and its patron gods before anything else.<sup>100</sup> Having discharged his immediate religious duties, he then promises to convene assembly meetings in order to take care of all 'other matters concerning the community and the gods' (*ta d' alla pros polin te kai theous*).<sup>101</sup> At the end of his speech, he announces to enter forthwith into 'the darkness of his house' (*melathra kai domous*).<sup>102</sup> As it turns out, however, Agamemnon's resumption of command over his household and his city is obstructed by the repercussions of the ill-fated act that enabled him to sail to Troy and to win glory in the first place: his killing of his daughter Iphigenia.

While the Argive citizens, content with Agamemnon's promise of instigating *polis* life, seem quite happy for Agamemnon to disappear into the darkness of his house,<sup>103</sup> Clytemnestra, emerging from the palace to meet her husband, desires Agamemnon to perform one more action in the light outside before allowing him to claim his privacy. In what is often referred to as Agamemnon's 'carpet scene', Clytemnestra has prepared to have him enter his house by treading on a blood red 'spreading of fine clothing', hoping to keep him apart from the community in which he so avidly desired to be re-absorbed.<sup>104</sup> On Clytemnestra's reckoning, this is how Agamemnon may enter his home 'led by Justice' (*hōs an hēgētai Dikē*).<sup>105</sup> As Agamemnon realizes and acknowledges, by treading on the fine clothing, he will symbolically and publicly re-enact his original transgression of killing Iphigenia: he will 'despoil his house under his feet and ruin his wealth',<sup>106</sup> thus knowingly destroying 'the adornment of his house' (*domōn agalma*).<sup>107</sup> The very performance of such an action, the prerogative of a god rather than a man, will prevent Agamemnon from successfully re-integrating into his household and city. However, driven by a pervasive desire for re-integration, he proceeds to do what Clytemnestra asks of him, treading on the blood red clothing while entering the darkness of his house. Having re-enacted the killing of Iphigenia, his search for re-integration and fulfilment is bound to fail.

In our view, it is important to acknowledge that Agamemnon's re-enactment of his crime takes place before the eyes of the Argive citizens who constitute *Agamemnon's* Chorus. In this way, Clytemnestra cleverly forces the people of Argos to recognize the transgressive nature of the sacrifice of which they tended to absolve Agamemnon in their entry song.<sup>108</sup> By redrafting the 'public narrative' of what has happened, Clytemnestra seems to aim at instituting or re-establishing the *polis* as a public space of shared morality of which she herself could be a full member. The proof and public acknowledgment of Agamemnon's guilt, however, is not enough for her. Having prayed to 'Zeus lord of fulfilment' (*Zeus teleios*),<sup>109</sup> she follows her husband into the palace and kills him. Upon re-emerging from the darkness of the house, Clytemnestra delivers a speech that she addresses to the Chorus in their capacity as 'assembled

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99 Cf. e.g., L. Kurke, *The Traffic in Praise*, 2013 [1991], pp. 223 et seq., who recognizes similar problems for returning victors having won great glory (*kleos*) in athletic games.

100 *Ag.* 810-811.

101 *Ag.* 840-50.

102 *Ag.* 851-4.

103 For the 'darkness' of private space and the 'light' of the public realm, cf. Arendt, *supra* note 19, p. 71, where she notes the fact that one of the Greek words for 'house', *melathron*, like the Latin word for the most public part of the house (*atrium*), is coined from the word for 'dark' or 'black' (*melas*, Lat. *ater*); unfortunately, in Arendt's text the word *megaron* is substituted for *melathron*.

104 *Ag.* 908-10. Not a 'carpet', actually, as Sommerstein (*supra* note 35, p. 104) explains, but 'clothing (...) evidently fine in texture and richly embroidered (...) either a garment of exceptional luxury or a wall-hanging (...) this fabric will be ruined, its beauty and value destroyed, even by the single, brief passage over it of Agamemnon's unshod feet'; cf. also J. McNeil, 'Bridal cloths, cover-ups and kharis: the 'carpet scene' in Aeschylus' *Agamemnon*', 2005 *Greece & Rome* 52, no. 1, pp. 1-17.

105 *Ag.* 911. Splendid ambiguity, as Raeburn & Thomas (*supra*, note 35, pp. 163-164) explain: 'To [Agamemnon], Justice will lead him indoors as she has (...) guided the whole Trojan expedition; but for Clytemnestra, Justice refers to vengeance for Iphigenia.'

106 *Ag.* 949-50: *dōmatophthorēin*.

107 *Ag.* 208.

108 Cf., e.g., D.J. Conacher, *Aeschylus' Oresteia*, 1987, pp. 33-37.

109 *Ag.* 973.

Argive elders' (*presbos Argeiōn tode*), thus emphatically assuming a role in the public realm.<sup>110</sup> She roundly asserts that the killing of Agamemnon was a deliberate, politically significant action (*epraxa* 'I acted').<sup>111</sup> Killing her husband was a 'job' (*ergon*) well done, and the hand that did it an 'instrument of justice';<sup>112</sup> she can invoke the 'fulfilled justice of [her] child, its ruin and its fury' by which she killed Agamemnon.<sup>113</sup> Agamemnon and his consort Cassandra have 'acted to their just desert' (*ouk atima epraxaten*).<sup>114</sup> Now, with order having been re-established, Clytemnestra claims that her house (*melathron*) is free from apprehension, its hearth fire being kindled by Aegisthus as her own new consort.<sup>115</sup>

The Argive citizens, however, regard her action simply as another crime, worthy of nothing less than 'public curses' (*dēmothroous t' atas*).<sup>116</sup> Having performed an act of 'severance' (*apedikes, apetames*),<sup>117</sup> Clytemnestra has alienated herself from the community whose political viability she had hoped to re-establish: in their turn, the Argive citizens declare that Clytemnestra 'will be without a *polis* (*apopolis d' esēi*)' and 'without friends' (*steromenan philōn*).<sup>118</sup> Faced with the Argive citizens' refusal to accept that order is finally established, Clytemnestra realizes that her attempt to set up a real political order, in which she and her fellow citizens would both have a place, has failed; while ruling the city from the royal palace, she is practically an exile in her own city. Therefore, she and Aegisthus are driven to the mere assertion of force, so that real political 'community' (*koinōnia*) must yield to lonely tyrannical privilege.<sup>119</sup>

The restless search of the *Oresteia's* protagonists to fulfil their desire for real communal life in a well-ordered *polis* repeats itself in the trilogy's second play. The return of the exiled Orestes once more evokes, in his sister Electra and in the play's Chorus, an eager anticipation of the establishment of a political order; but just as Clytemnestra's killing of Agamemnon fails to bring this about, so Orestes' matricide turns out not to constitute the 'fulfilment' of justice that was eagerly hoped for. For a moment, *Libation Bearers'* Chorus – consisting not of Argive citizens, but of partisans of Electra and Orestes – believe that it does. When Orestes drags his mother into the house to kill her, they celebrate the restoration of the house;<sup>120</sup> 'the light', they sing, 'is now plain to see';<sup>121</sup> and the gods of Fortune 'will take up residence again in the house' (*metoikoi domōn*).<sup>122</sup> Resembling Clytemnestra's description of the slaying of her husband, the Chorus use the word 'action' (*eu g' epraxas*) to describe the matricide; a usage justified by their conviction that, in putting his house in order, Orestes has 'liberated the entire city of Argos' (*eleutherōsas pasan Argeiōn polin*).<sup>123</sup> Like the audience, however, Orestes knows better: having spilt kindred blood, Orestes cannot simply assume command of his household.<sup>124</sup> Instead, he is driven away from his home and his city by the Furies, leaving the Chorus in utter despair.<sup>125</sup>

## 2.5. 'Rewrite this ancient end'

The state of subhumanity in which *Molara's* protagonists find themselves is obviously reminiscent of political reality. Phrased in the words of the TRC in its final report, both victims and perpetrators of South Africa's apartheid regime showed clear scars of a 'dehumanizing past' that the Commission sought avidly

110 *Ag.* 1393-4. See also *Ag.* 855-6, where she addresses the Chorus in similar terms.

111 *Ag.* 1377-81. *Praxis* is the action needed to establish or sustain polis life (*bios politikos*); cf., e.g., Arendt, *supra* note 19, pp. 12-13.

112 *Ag.* 1404-6; see also *Ag.* 1421. As Arendt (*supra* note 19, pp. 12-13) observes, what goes for *praxis* also goes for *ergon* (as opposed to *ponos*, 'labour', being performed by slaves).

113 *Ag.* 1432-3.

114 *Ag.* 1443; note the echo from 529-33, in which a Herald narrates of the vengeance exacted from Troy.

115 *Ag.* 1434-6.

116 *Ag.* 1409.

117 *Ag.* 1410. Literally: 'You have cast aside, you have cut away'. Note that the verbs are left without an object, thus ambiguously denoting both the city's disintegration and Clytemnestra's own atomization.

118 *Ag.* 1429.

119 *Ag.* 1617-74.

120 *Lib.* 942-5.

121 *Lib.* 961.

122 *Lib.* 969-71, cf. *Ag.* 57, with the eagles representing Agamemnon and Menelaos as 'fellow citizens' (*metoikoi*) of Zeus.

123 *Lib.* 1044-5.

124 The same, crucial issue is raised by the Chorus at *Ag.* 1542-59: Agamemnon having been killed by the very person who, in the normal order of things, would have been the one to perform his obsequies, there will be no one in the house to give the dead man his religious due. See esp. Hame, *supra* note 62, pp. 513 et seq., with further references.

125 See *Lib.* 1075-6, in which the Chorus brings *Libation bearers* to a close: 'When will a god finally bring accomplishment, when will the fury of calamity finally come to rest and cease?'

to repair.<sup>126</sup> As the Commission stated, '[a]partheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished.'<sup>127</sup> Therefore, the Commission saw it as its task to restore the dignity of *all* South Africans, so that all 'sons and daughters of South Africa' would finally be able to 'feel truly "at home"'.<sup>128</sup> A central concept that underlies its model of restorative justice was defined as *ubuntu*, understood as a relational philosophy of 'humaneness' that considers that 'people are people through other people'.<sup>129</sup> Heinous crimes were seen as the 'antithesis of *ubuntu*', leaving both wrongdoers and victims in a lonely state that is bereft of real community. In its mission to restore *ubuntu*, the Commission organized hearings in which victims and perpetrators were actively confronted; the public nature of these hearings served to build a shared 'public acknowledgment' of previously 'untold suffering'.<sup>130</sup> In this way, the TRC sought to set up a newly constructed 'collective memory' that would give both victims and perpetrators their due share.<sup>131</sup> On a more horizontal level, it tried to 'reconcile' victims and perpetrators in such a way that they could be incorporated into a new 'national unity' in which they would henceforth recognize each other as full subjects of right.<sup>132</sup>

Thus, we can understand that *Molora's* protagonists' search for integration and fulfilment is not left to Orestes, Electra and Clytemnestra themselves, but is mediated instead by the TRC as a third party. The action of the play being entirely set in the context of a series of open hearings, the Chorus, consisting of seven black women who sing traditional Xhosa songs, represent the original audience to these hearings. Unlike the audience at the real hearings, they are initially reluctant to interrupt them. But when Orestes grabs an axe and lifts it high over his head as he prepares to kill his mother, the women of the Chorus rise and move towards him, physically preventing him to commit the matricide. Ultimately, Orestes throws away his axe in despair; Electra, however, insists on retaliation:

Orestes: I can not shed more blood.

Electra: But the Furies demand it. They cry out for more.

Orestes: There is still time, sister. Walk away. Rewrite this ancient end.<sup>133</sup>

But Electra is not convinced by Orestes' words. She grabs the axe that Orestes has dropped and runs towards Clytemnestra. However, the women of the Chorus overpower her and rock her gently like a small child. Electra then bursts into tears. Into the microphone at the testimony table, Clytemnestra speaks the last words of the play:

'We are still only here by Grace alone.

Look now – dawn is coming.

Great chains on the home are falling off.

This house rises up. For too long it has lain in ash on the ground.'<sup>134</sup>

In *Molora*, the Chorus thus helps Orestes and Electra to 'rewrite' Aeschylus' *Oresteia* in a striking way. According to Farber's stage directions, Orestes and Electra even help their mother, who has fallen, on her feet again. Clytemnestra realizes that she owes her life to her former victims. Meanwhile, the Chorus prays for a common future, in which the cycle of bloodshed and vengeance is finally broken.<sup>135</sup> Whether their wish has any chance to materialize, however, remains to be seen.

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126 *TRC Report 2003*, vol. 1, 4.43; 1.4.53.

127 *Ibid.*, 5.81.

128 *Ibid.*, 5.80.

129 *Ibid.*, 5.85.

130 *Ibid.*, 5.2.

131 Van Weyenberg, *supra* note 42, p. 121; A. Feldman, 'Memory Theaters, Virtual Witnessing and the Trauma Aesthetic', 2004 *Biography* 27, no. 1, p. 173.

132 *TRC Report 2003*, vol. 1, 5.10 et seq.

133 *Molora*, *supra* note 37, p. 83.

134 *Ibid.*, p. 87.

135 *Ibid.*, pp. 85-86.

## 2.6. Justice?

In Aeschylus' *Oresteia*, a public trial is only set up in *Eumenides*. At the outset of the trilogy's third play, Orestes seeks refuge with Apollo, who makes it clear that his 'journey back to humanity'<sup>136</sup> cannot succeed without a decisive judgment – one that commands the consent of the entire Argive citizenry in a way that neither Clytemnestra's killing of Agamemnon nor Orestes' matricide could accomplish. To be sure, such an authoritative judgment can only be awarded by the joint efforts of Apollo, typically dwelling in Delphi as the religious centre of the Greek world, and Athena, who institutes a law court on the sacred 'rock of Ares' (*Areo-pagos*), just opposite her sanctuary on the Athenian acropolis.<sup>137</sup> Both localities are invested with great authority. At the opening of *Eumenides*, for example, the priestess at Delphi recites at length the hierarchy of its tutelary deities, with Pallas Athena figuring among its most prominent ones.<sup>138</sup> Whereas both *Agamemnon* and *Libation Bearers* open on revelations of chaos and disarray, *Eumenides* thus begins with an evocation of order. Divine stability is also referred to when the Athenian Areopagus is introduced. The Areopagus and its newly instituted law court are under the tutelage of the god Ares,<sup>139</sup> 'reverence' (*sebas*) and 'the fear that is concomitant with reverence' (*phobos syngenēs*) will keep the Athenians and their court from wrongdoing,<sup>140</sup> and the 'citizens' (*politai*) are enjoined not to alter their 'customs' (*nomoi*).<sup>141</sup>

Before this court, Apollo serves as Orestes' spokesman, while the Furies indict him on behalf of Clytemnestra. Ultimately, the discussion about Orestes' guilt narrows down to a biological debate on the male and female contribution to human procreation. The Furies maintain that Orestes descends primarily from his mother, who 'nourished him beneath her zone'.<sup>142</sup> Apollo contends that the female contribution to procreation is only material, with the real source of human life being only present in the seed of the man.<sup>143</sup> Therefore, he argues that Orestes was right in being loyal to his father and not to his mother. The female parent, he argues, is in fact not really a parent, but only 'the nurse (*trophos*) of the newly begotten germ'; her services would merely be those of a 'stranger for a stranger' (*haper xenōi xenē*).<sup>144</sup> In his commentary on the play, Sommerstein characterizes this biological argument as a 'clever and specious but fallacious piece of forensic pleading' that would not have been accepted at face value by Aeschylus' audience.<sup>145</sup> Nevertheless, when she casts her decisive vote for the acquittal of Orestes, the goddess Athena adopts Apollo's reasoning wholesale: 'I am my father's child, therefore I shall not set a higher value on the death of a woman, when she had killed her husband, the guardian of the home (*dōmatōn episkopos*)'.<sup>146</sup>

This judgment of Athena, for which the conclusive argument seems to depend entirely on the supposed superiority of the male over the female, has provoked much criticism,<sup>147</sup> of which Froma Zeitlin's reading stands out as most influential. Zeitlin traces Apollo's 'scientific' argument to 'a whole series of antitheses' between the male and the female that, in her view, inspires the entire drama.<sup>148</sup> The progress of justice that the *Oresteia* seemingly entails would in fact come down to the establishment of a male order from which all that is female has been eradicated. Apollo's view on human procreation, for example, would effectively deal with the 'human dilemma of the female in her dual role of mother (power) and wife (deference)', thus also effectively removing 'the psychological issue from the human dilemma of a son who has killed his mother' by defining it as a problem of human nature and its place in a divine cosmology at large. The 'dynamics of misogyny' that inform such considerations, Zeitlin

136 *Eu.* 93.

137 *Eu.* 480-484; *Eu.* 683-695.

138 *Eu.* 20-21.

139 *Eu.* 689-90.

140 *Eu.* 690-2.

141 *Eu.* 693-5.

142 *Eu.* 607-608

143 See, e.g., L.A. Dean-Jones, *Women's bodies in Greek science*, 1994, pp. 225-227.

144 *Eu.* 657-61. The theory of reproduction that underlies Apollo's argument is ascribed by Aristotle to Aeschylus' contemporary Anaxagoras, and had other advocates in the subsequent generation: see Sommerstein, *supra* note 35, p. 206.

145 Sommerstein, *supra* note 35, pp. 206-208; the citation above rounds off a list of six reasons that, in Sommerstein's view, make it unlikely 'that the author intended or expected his audience to find [Apollo's] argument convincing'.

146 *Eu.* 738-40.

147 For an overview of feminist criticism regarding the *Oresteia*, see, e.g., S. Goldhill, *Aeschylus' Oresteia*, 1992, pp. 97-99.

148 Zeitlin, *supra* note 40, pp. 171-172.

argues, strive to free man 'from the irrefutable and often anguished fact that man is from woman born'.<sup>149</sup> As such, Aeschylus' *Oresteia* would help to build an ideology of professed male rationality that merely represses its subjects instead of liberating them.<sup>150</sup>

By itself, Zeitlin's critique of Athena's verdict is justified. In opposition to Zeitlin, however, we do not subscribe to a reading of the *Oresteia* in which the new order merely displaces or even completely eradicates the female; instead, as we will explain further below, we believe with Gerwitz that 'the system of law in Aeschylus' *Oresteia* incorporates the female', with female forces maybe even acting as its 'steering spirits'.<sup>151</sup> More importantly, perhaps, we believe that the call for *kosmos* out of *chaos* is not primarily motivated by the desire for male domination of the female, but, instead, by the heartfelt desire, shared by all protagonists, for a life in which they have stable relations with others in a well-ordered society. In order for that desire to materialize, both Orestes and the Furies acknowledge that submission to the authority of the newly instituted court of law is indispensable; in fact, they seem to recognize that the restoration of *kosmos* that can thus ensue is more important than the outcome of the trial.<sup>152</sup> When he first lays out his case, Orestes concludes: 'I ask you to judge the issue of whether I did it with justice (*dikaiōs*) or not; however I fare in your charge, I shall be content'.<sup>153</sup> With the ballot being even,<sup>154</sup> only Athena's support for the male is finally decisive.<sup>155</sup> Accordingly, Orestes is reluctant to understand Athena's verdict as the justification of what he has done. Instead, he seems to recognize the verdict solely as the cue to his reinstatement in his father's household, counting on his community to acknowledge that he 'is an Argive again, dwelling amid his father's wealth, thanks to Athena and Apollo and to Zeus the Saviour who brings all things to fulfilment'.<sup>156</sup>

Obviously, the Furies are less content with Athena's verdict. Their objections, however, are not directed at Athena's judgment or its motivation as such. Instead, they only complain that Athena's judgment leaves them 'deprived of their office' (*atimos*).<sup>157</sup> Their insistence on the 'deprivation' (*atimia*) to which they are now subjected recalls the insistence on this word in the opening scenes of *Libation Bearers*; thus, we can understand that their sense of disenfranchisement threatens humanity's fulfilment in the communal context of a *polis* once again. For the trial to put an end to the protagonists' subhuman state, Athena's judgment in itself does not suffice. That is why, to the surprise of some commentators,<sup>158</sup> the acquittal of Orestes is not the climax of the play, but only marks a point halfway; in the remaining half, the goddess still has to remedy the Furies' complaint of *atimia*. This is a precarious task. As P.E. van 't Wout argues in her recent thesis on this subject, Athena 'cannot admit that the verdict leaves the Furies *atimos* and offer compensation'; to do so would threaten to reopen the conflict because it would 'imply that the court had failed to take into account the Furies' well-founded claim to recognition'. However, 'Athena cannot deny the legitimacy of the claim either'.<sup>159</sup>

Athena ultimately succeeds in her task by offering the Furies a place in the *polis* that prevents them from 'wandering (*errein*) in deprivation (*atimos*) and estrangement (*apoxenos*)',<sup>160</sup> instead, they can be 'landholders' (*gamoroi*) held in just esteem (*dikaiōs timōmenos*),<sup>161</sup> which is far from being either 'defeated' or 'deprived'.<sup>162</sup> Athena is adamant that these boons are not offered in mere compensation for

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149 Ibid., pp. 173-174.

150 Ibid., p. 174.

151 Gerwitz, supra note 13, pp. 1043-1055.

152 Note that for Orestes, the action (*praxis*) of submitting himself to judgment is itself a form of enfranchisement – regardless even of the trial's outcome – just as the killings of Agamemnon and Clytemnestra were described as enfranchising actions (*praxeis*).

153 *Eu.* 469.

154 *Eu.* 740.

155 *Eu.* 737.

156 *Eu.* 757-760.

157 *Eu.* 778-81: the complaint is repeated verbatim at *Eu.* 808-10, and varied at *Eu.* 791-2 = 821-2 and 845-6 = 879-80. During the voting, the Furies had already warned the jurors against 'depriving (*atimasai*) them in any way' (*Eu.* 711-2).

158 See, e.g., Kitto, supra note 39, p. 93.

159 P.E. van 't Wout, 'From Oath-swearing to entrenchment clause', in: Blok & Lardinois (eds.), *Sacred Words: orality, literacy and religion*, 2011, p. 154.

160 *Eu.* 881-4. The word *errein* 'wander' is echoed from *Eu.* 301, said of Orestes before he stood trial; *apoxenos* 'estranged' occurs just three times in the *Oresteia*, once of Clytemnestra after the killing of Agamemnon at *Ag.* 1282 and once after the killing of Clytemnestra of Orestes at *Lib.* 1042.

161 *Eu.* 890-1; cf. *Eu.* 869.

162 *Eu.* 795-6.

Orestes' acquittal. Instead, they are explicitly presented as crucial of what the institution of the Areopagus court and the judicial process are actually about. The 'fear' (*phobos*) that the Furies inspire should not be 'banned from the city' (*poleōs exō balein*), but, instead, be integrated with 'reverence' (*sebas*) in such a way that the citizens are withheld from doing wrong.<sup>163</sup> Therefore, the incorporation of the Furies within the Athenian soil, their dwelling place within the Akropolis hill being crowned by Athena's own sanctuary, pertains to a 'veritable victory' (*nikē mē kakē*)<sup>164</sup> awarded by Athena in a politically significant action (*tade egō prassō*) that she performs 'out of goodwill towards [her] citizens' (*politai*).<sup>165</sup> Having accepted Athena's offer, the Furies' status and character are dramatically modified; consequently, they change their name from *Erinyes* ('dread ones') to *Semnai* ('stately ones') or *Eumenides* ('kindly ones').

Far from being displaced or even eradicated from a male *kosmos*, as Zeitlin has it, the Furies are now integrated in the social fabric of the *polis* as 'enfranchised aliens' (*metoikoi*).<sup>166</sup> As such, their cry for retribution and vengeance will no longer aim to poison the city 'with drops of venom that its soil shall not endure';<sup>167</sup> instead, the Furies pray that 'no hurtful wind blow to the destruction of the trees,' while 'no scorching heat blasts the budding plants, passing the borders of its proper clime.'<sup>168</sup> No wonder, therefore, that a sacred and festive procession of Athenian citizens, headed by Athena, accompanies the Furies' transferral to their new dwelling. While escorting the goddesses, they bear torchlight,<sup>169</sup> singing a song that ends with the collective cry of *ololo* as the mark of a festive occasion – just as Agamemnon's imminent homecoming and Orestes' matricide were crowned with such cries.<sup>170</sup> Both the reference to 'light' and the *ololo* mark these events as politically significant; and whereas on the previous occasions, the action or event celebrated with this cry failed to establish the 'light' of the political, the incorporation of the Furies in the new judicial order brings the trilogy to a resounding conclusion. In a Kantian vein, one could, of course, argue with Zeitlin that justice has not been done. The participants in the procession who accompany the Eumenides to their place of belonging, however, think otherwise. Their desire for the establishment of a moral community that enables them to fulfil their *telos* has finally materialized.

## 2.7. Reconciliation?

The course of events as depicted in Farber's *Molora* has raised a similar debate. Other than in Aeschylus' original, in *Molora* the notion of grace (note the Christian capital in Clytemnestra's text that concludes the play: Grace) plays an important role. At first, the play seems to embrace the dominant discourse of 'forgiveness' and 'reconciliation' that the TRC deemed necessary to 'shut the door on the past' and to 'move on to a glorious future of a new kind of society'.<sup>171</sup> For actively promoting this kind of discourse, the TRC has often been praised, but also, and understandably so, severely criticized. In a compelling essay, Derrida, for example, argues with Kant that any act of forgiveness serving an extrinsic goal is meaningless. In his view, the acquittal of the perpetrators, granted in exchange for their public confessions, is seriously flawed. 'Le pardon,' Derrida argues, 'n'est, il ne devrait être ni normal, ni normatif, ni normalisant. Il devrait rester exceptionnel et extraordinaire, à l'épreuve de l'impossible'.<sup>172</sup> For Derrida, the workings of the TRC have nothing to do with justice. Omitting to assign 'to each what is his' (*suum cuique*), the TRC would merely be an institution that seriously confuses the formation of a new national unity and the therapeutic treatment of victims and perpetrators with justice. In her dissertation on the subject, Van Weyenberg seems to follow Derrida in this, arguing that *Molora* offers 'little reflection' on the inherently problematic nature of reconciliation, leaving the Furies' legitimate laments unheard. Suggesting that

163 *Eu.* 668-702.

164 *Eu.* 903.

165 *Eu.* 927-8. Note the language of *praxis* again, which Arendt (*supra* note 19, pp. 12-13) astutely recognizes as denoting deeds that establish or sustain the political.

166 *Eu.* 1010-20. On *metoikoi*, see also above, note 122.

167 *Eu.* 780-784; 810-814.

168 *Eu.* 938-941.

169 *Eu.* 1005.

170 *Eu.* 1043 and 1047; cf. Sommerstein, *supra* note 35, p. 276: 'Thus the trilogy that began with a solitary Watchman, straining his eyes yearlong for the light of a distant beacon (...) ends in a blaze of torchlight and in cries of rejoicing.' Previous *ololo*-cries: *Ag.* 28 and 587-93; 1118 and 1236; *Lib.* 942.

171 *TRC Report 2003*, vol. 1, 1.91 et seq.

172 J. Derrida, 'Le siècle et le pardon', in *Foi et savoir*, 2000, p. 108.

reconciliation is possible, in fact, *Molora* would not live up to the 'potential of theatre to work against the closure of reconciliation'. Therefore, Van Weyenberg regards Farber's play as essentially flawed.<sup>173</sup>

One could, of course, argue against such objections by emphasizing that the mandate of the TRC and its policy of 'amnesty for truth' was part of the outcome of difficult negotiations that probably prevented a bloody civil war. As Tutu explains in his foreword to the final TRC Report, critics among his fellow citizens only 'have the luxury of being able to complain because [they] are now reaping the benefits of a stable and democratic dispensation' that otherwise would have been impossible.<sup>174</sup> Moreover, one could argue that amnesty of perpetrators certainly does not mean that they are not convicted. On a theoretical level, Ricoeur makes this point in a particularly powerful fashion. Dividing the trial process into various 'structural elements' that should be distinguished from each other, Ricoeur argues that in criminal cases, the judge's *verdict* should be carefully distinguished from the punishment that may ensue. With a positive verdict, Ricoeur states, the guilt of the accused is legally established. His change of juridical status should, then, be seen as the performative virtue of a 'speech act that states the law in some determined circumstance'. Even if punishment is remitted, the performative force of the verdict has important effects. Already on its own accord, Ricoeur explains, it brings an end to uncertainty and chaos by instating a 'vertical axis' of moral and legal predication that recognizes some as wrongdoers and acknowledges others as victims, thus separating the parties by determining the just distance between them.<sup>175</sup> Only in this way, we remember, can they, on the horizontal level of human relations, be ultimately united in the same human *interesse* of political society.<sup>176</sup>

Other than Kant, therefore, Ricoeur argues that *Straflosigkeit* ('impunity') does not necessarily encompass 'the greatest wrong' (*das grösste Unrecht*), leaving both victims and perpetrators in the subhuman state in which they entered the trial.<sup>177</sup> The shared acknowledgment of the victim as offended against and humiliated on the one hand and the public declaration of the accused as guilty of serious transgression on the other do not count for nothing. In Ricoeur's view, the effect of *publicity* can hardly be overemphasized.<sup>178</sup> Public recognition of what has happened in the past can prevent *amnesty* to turn into a state of *amnesia*, in which all suffering and wrongdoing is wiped away from public memory for the sake of the future. Such collective forgetfulness has detrimental effects.<sup>179</sup> Subduing the communal memory of traumatic events, Ricoeur argues, bereaves both victims and perpetrators from the cathartic experience of the mutual *recognition* that they need to become fully human again.<sup>180</sup> The idea of *forgiveness* or *pardon*, amounting to real *reconciliation*, however, implies something else. In many ways, forgiveness and reconciliation constitute the *antithesis* of pardon, which, as Ricoeur explains, 'requires memory' instead of silencing the voices of the past.<sup>181</sup> Forgiveness and reconciliation can 'deliver from the weight of debt', so that memory is freed for future projects. Because its project, however, is to 'overlook the debt', it can never just ignore or suppress accounts of what happened in the past.<sup>182</sup>

Rather than ignoring the Furies' legitimate laments, as Van Weyenberg suggests, Farber's *Molora* seems to take this thoroughly into account. By way of a *deus ex machina*, a sudden rain of ash falls down on the characters as Clytemnestra's final testimony concludes the play. Clytemnestra, formerly white, is now blackened. 'It falls softly, the residue of revenge', she mutters.<sup>183</sup> Clytemnestra's deeds, however, will not be forgotten; the public determination and shared recognition of her guilt, revealed to the audience of an open trial, help to curb the call for vengeance. Whether or not she is really *forgiven*, however, remains to be seen. Only Clytemnestra *herself* concludes that she owes her life to 'Grace'; both Orestes and Electra stay silent on this subject.<sup>184</sup> The women of the Chorus, who represent the population, have

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173 Cf. Van Weyenberg, *supra* note 42, pp. 151-154.

174 *TRC Report 2003*, vol. 1, 1.22.

175 Ricoeur, *supra* note 9, p. 136.

176 *Ibid.*, p. 132.

177 Kant, *supra* note 1, p. 337; see also above, Section 1.1.

178 Ricoeur, *supra* note 9, p. 138.

179 *Ibid.*, p. 143.

180 *Ibid.*, pp. 138-139.

181 *Ibid.*, pp. 143-144.

182 *Ibid.*, p. 144.

183 *Molora*, *supra* note 37, p. 87; in one of South Africa's indigenous languages, Sesotho, 'molora' means 'ash'.

184 See also Van Weyenberg, *supra* note 42, p. 142.

other priorities. For the sake of their children, they pray only that ‘they may stop crime and killing each other’, desiring that ‘the work they are doing’ will have success. This, they maintain, is only possible when ‘the truth’ about what happened is publicly recognized.<sup>185</sup>

### 3. Conclusion: the art of judging

Both Aeschylus’ *Oresteia* and Yael Farber’s *Molara* show us how legal procedures may enable the transition from a violent society of reciprocal bloodshed to a well-ordered state of human *interesse* in which the subjects can unfold their full humanity. In Aeschylus’ *Oresteia*, the public trial, presided over by Athena, creates *kosmos* out of *chaos* by setting up a clear ‘vertical axis of moral predication’ that gives each party his due. At the same time, the trial also integrates the parties within the social fabric of the *polis*, thus finally ending their wandering existence. In *Molara*, something similar happens. While rewriting the official account of South Africa’s recent history, publicly acknowledging the previously untold suffering of the victims and clearly recognizing the transgressive behaviour of the perpetrators, the workings of the TRC have a performative force that should be seriously reckoned with. In this way, the amnesty for the perpetrators does not necessarily mean that the TRC does not give ‘each party his due’; the public acknowledgment of what really happened, at any rate, does not count for nothing. More importantly, the TRC does not only set victims and perpetrators apart, but also unites them in a shared moral order that enables them to build a common future in which they may finally live truly fulfilling lives.

Once again, these events can be understood from the philosophy of Paul Ricoeur, who discerns a ‘short-term end’ and a ‘long-term end’ of judging. On short-term notice, Ricoeur argues, judging signifies deciding, its important goal being nothing more than ending the uncertainty. Additionally, however, Ricoeur identifies a ‘long-term end’ of establishing public peace that, in his view, is more important but also more concealed.<sup>186</sup> In first instance, Ricoeur explains, to judge is to value and to assess, awarding ‘each what is his’ (*suum cuique*) in correspondence with the ‘vertical axis’ of a legal and moral hierarchy. In this way, the judge intervenes in a social practice, backed by the authority of social conventions and ultimately by force. So far, judging can be understood with Kant as delimiting ‘mine’ and ‘thine’, only correcting unjust distributions or deciding about the claims of the one towards the other.<sup>187</sup> As such, the act of judging consists in separating; this is well expressed by the German term *Urteil*, indicating that judging is about isolating the part (*Teil*) of the one from that of the other.<sup>188</sup> In this way, the institutional third party of the judge, ruling in accordance with a set of fixed rules, sets up the ‘vertical axis’ of the right in a way that the parties themselves never could. In Ricoeur’s view, however, distinguishing between the ‘mine’ and the ‘thine’ of the parties cannot be viewed as the *real* purpose of the act of judging. The ‘trial process itself’, Ricoeur explains, ‘is only the codified form of a broader phenomenon, namely, that of conflict’. Accordingly, the judicial act of separation is ultimately subservient to the good, defined by Ricoeur as the ‘long-term end’ of social peace. Only when the parties are re-integrated within a real political *interesse* can they unfold their full humanity.<sup>189</sup>

In our view, Aeschylus’ *Oresteia* and Farber’s *Molara* serve as profound examples of this procedure. In the absence of any legal or political institutions, their protagonists attempt to establish their own ‘vertical axes’ of moral predication, thus striving to transform *chaos* into *kosmos* of their own accord. On the ‘horizontal’ plane, however, and more fundamentally, their actions tend to be motivated by the wish for integration in a community of which they are deprived, either because of what they did or what they suffered. In both respects their attempts are bound to fail because of a lack of institutional mediation. Only the performative act of a public trial, with the judge’s authority ultimately backed by force, is able to set up a vertical *kosmos* that has any chance of endurance; at the same time, the plays clearly show how public trials and hearings may also restore or enable human relations on the horizontal level. Thus, the place of the just is marked in a provisional manner. On the one hand, it is presented as the ‘good’, being

185 *Molara*, supra note 37, p. 86.

186 Ricoeur, supra note 9, p. 127.

187 See, e.g., Kant, supra note 1, p. 245.

188 Ricoeur, supra note 9, p. 128.

189 *Ibid.*, p. 130.

an alternative for bloodshed and violence; on the other hand, however, it also defines 'the right', erecting the axis of moral and legal predication that is indispensable in any legal system.<sup>190</sup>

With justice thus requiring the mediation of an institutional third party, transcending the mere 'I' and 'you' of proximal interpersonal relations, both plays teach us that justice is opposed to vengeance as the act of procuring justice by oneself. This does not mean, however, that vengeance should be completely eradicated from justice. On the contrary: as the *Oresteia* teaches us, the Furies and the Eumenides are one and the same.<sup>191</sup> In order to serve the good, justice may thus comprise a civilized form of vengeance that no longer makes 'the dust drink the black blood of the citizens',<sup>192</sup> but brings 'peace to those who dwell in Pallas' city' instead.<sup>193</sup> As a true miracle, that can never be enforced, however, reconciliation between the warring parties is not to be hoped for. Instead, we prefer to speak with Ricoeur of 'mutual recognition', with the adversaries in a judicial conflict regarding each other as subjects of right, whose causes deserve to be heard in the court of law. As such, mutual recognition implies an emphatic choice for legal *discourse* over *violence*, thus paving the way for a sustainable peace that fosters human life instead of destroying it.<sup>194</sup>

At any rate, we believe that both Aeschylus' *Oresteia* and Farber's *Molora* clearly envision that the 'philosophical place of justice' can be found somewhere in between the deontological axis of the right on the one hand and a teleological axis of the good on the other hand. Within this scheme of justice, deontology is essential to create *distance*, clearly distinguishing between the parties 'mine' and 'thine'. Paradoxically, the distance that is thus created enables the judge to integrate the parties within the *polis* as a place in which their differences do not impede them to relate to each other.<sup>195</sup> Of course, one may still, and with good reason, contend that the outcome in both plays is unjust, not really awarding either perpetrators or victims their due in accordance with a set of fixed rules and principles. Both Aeschylus' *Oresteia* and Farber's *Molora*, however, confront us with the pervasive desire of its protagonists for true human fulfilment, living the good life in relation to others within a well-ordered *polis*. With justice thus being presented as the object of an innate wish, it can be understood why they ultimately give primacy to the good over the right. In fact, we believe that the plays explain this to us in a compelling way. ¶

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190 *Ibid.*, p. 130.

191 *Ibid.*, p. 145.

192 *Eu.* 979-980.

193 *Eu.* 1044-1045; cf. Ricoeur, *supra* note 9, p. 131.

194 Ricoeur, *supra* note 9, p. 131.

195 Cf. *ibid.*, p. 132.