



Lethe's Law: Justice, Law and Ethics in Reconciliation

Emilios Christodoulidis & Scott Veitch (eds.)

Oxford, Hart Publishing, 2001, 235pp.

Hardback, ISBN: 1841 131 091.

In Greek mythology Lethe is imagined as a river in Hades that causes forgetfulness among mortals who drink from its waters. Forgetting stills dissension. But without remembrance, souls who drink from Lethe remain without replenishment, unable to assimilate their experience of the present with their sense of self and place in the world. Against such oblivion stands the possibility of truth. Following Heidegger, the editors of this excellent collection suggest, truth might be grasped as *a-lethe-ia*, a partial unconcealment that entails the 'the pushing back of the borders of oblivion' (p. ix). If 'reconciliation' expresses an ethical–political aspiration not only for order but for a sense of being-together in the world, then a society divided by past wrongs must take its chances with *a-lethe-ia*.

Lethe's Law, explores the 'logic of law's disclosures and concealments' in dealing with a painful political past (p. ix). It provides a welcome set of philosophical reflections on the possibilities and limits of law for facilitating reconciliation. Always at stake in these reflections is the articulation of law and politics: the politicisation of law in pursuit of reconciliation and law's ambiguous role in sustaining or curtailing a reconciliatory politics. South Africa's Truth and Reconciliation Commission (TRC) figures prominently, but Chile, Germany, Northern Ireland, Israel and Australia are also discussed. The essays are organised under three heads.

Criminal Law, amnesty and time. Amnesties are usually perceived as an instance in which politics prevails over justice. In the face of political necessity, law is applied to suspend law: a blind eye is turned to a criminal past in order to secure a democratic future (Veitch, p. 36). The danger of amnesty, then, is oblivion. For, as Günther points out, 'guilt is a form of memory' (p. 13). In order to reckon with the past we must begin to judge it. Yet amnesty waives not only punishment but judgement, thus foreclosing an important avenue of public, rational attribution of responsibility for past wrongs. While criminal law is concerned with judging individual culpability, it can provide an important impetus to public deliberation over the attribution of responsibility. South Africa's TRC sought to counter the threat of oblivion by amnesty by making amnesty conditional on full disclosure of wrongdoing and demonstration of political objective. Yet, in arbitrating the bargain of truth for mercy, the Amnesty Committee was forced to depart from formal legal rationality for



what Veitch calls 'legal politics'. Since it had to judge what was to count as political, this quasi-legal institution was drawn into a conditional re-reading of the past in light of present political realities. Consequently, the 'full disclosure' the TRC sought from perpetrators was not the truth of events but the truth of their accounting. In asking 'what happened then?', it invited the respondent to recount what happened then, *now* (p. 36).

Justice between past and future. In the gap between repressive past and democratic future, law becomes a prominent site in which collective memory is contested. Conflicting groups turn to law and to quasi-legal institutions in an effort to 'vindicate their memories and sanction them in an authoritative way' (Czarnota, p. 123). In times of transition, law is expected to be both a revolutionary instrument for change and to provide a conservative brake on arbitrariness by securing legitimate expectations. For Balint, the capacity of law to facilitate democratic transition lies in the authority that it lends to acknowledgement of past wrongs and in its provision of an institutional framework to sustain a reconciliatory politics. But law's demand for coherence and certainty in human affairs make it a blunt instrument with which to pursue reconciliation directly. Legal rationality tends to cover over and exclude as incongruous those ambiguities and contingencies to which a reconciliatory politics must attend (p.147).

Memory and the ethics of reconciliation. The certitude and coherence that is necessarily enacted on the past through law is the source of law's deficiency and its political attractiveness as a site for the 'recovery' of collective memory. This is demonstrated by Bilsky's fascinating discussion of the Kastner libel trial in Israel, in which the claimant (in law) becomes the defendant (in fact). In this case, the authority lent by law to a highly partial and 'politicised' narrative account of past events cut short rather than facilitated public debate and served as pseudo-justification of Kastner's later assassination. Neither should we be too sanguine about entrusting constitutional law with the task of sustaining the openness of collective memory (p. 212). According to Christodoulidis, history's 'suppressed alternatives, dangerous supplements, difference, traces' cannot be recovered by legal reasoning, but only covered over, since law must 'reduce the past in order to actualise it as memory' (pp. 211, 227). The past can only be remembered legally in terms commensurate with its overcoming. But, if truth is not a precondition for forgiveness, as van Roermund suggests, but a disposition to forgive makes the search for truth possible, then we need not be too dispirited about the representational limits of law (p. 179). For on this account, the possibility of forgiveness does not depend upon first securing a shared understanding of the past through legal procedures. Rather it is a willingness on the part of those wronged to defer justified claims to retribution for the sake of securing a democratic future that opens the way to disclosure and acknowledgement.



The strength of these essays is that they penetrate those taken for granted categories and clichés that often mire discussion about transitional justice. They eschew the complacency that leads to banal generalisation: ‘It was a great massacre, how horrible! Of course, there have been others... Finally, one will appeal to human rights, one cries out ‘never again’ and that’s it! It is taken care of’ (Lyotard quoted by Christodoulidis, 226). Far from feeling such a sense of satisfaction, the reader of this collection is likely to be left perplexed. *Lethé’s Law* sensitises one to the complexity of the task that a reconciliatory politics sets for the law and the always partial unconcealments of truth upon which legal judgements and procedures must rest.

Andrew Schaap
Department of Politics, University of Edinburgh.