A Missed Opportunity: The Rhetoric of Social Cohesion in Parliamentary Debates - 1994 – 2014

Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

Department of Private Law

(Centre for Rhetoric Studies)

UNIVERSITY OF CAPE TOWN

FEBRUARY 2022

Supervisor: Distinguished Professor Ph-J Salazar

DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the footnoting convention for citation and referencing. Each contribution to, and quotation in, this opinion from the work(s) of other people has been attributed and has been cited and referenced.
3. This opinion is my own work.
4. I have not allowed and will not allow anyone to copy my work with the intention of passing it off as his or her own work.

Signature: Signed by candidate

Acknowledgements

This thesis would not have been completed without the guidance of my supervisor, Distinguished Professor Philippe-Joseph Salazar, whose methodical and disciplined approach influenced my research and writing.

I would like to express my gratitude to the staff at Parliament for their co-operation and assistance with providing the research material in an electronic format. I specifically want to thank Ingrid Henrici and Sadeck Casoojee at the Library of Parliament, Ajmat Jaffer at the Hansards unit, and Masibulele Xaso and Tanya Lyons at the National Assembly Table.

I would also like to thank my manager, Ashraf Kariem, at work for being understanding when I needed time off work. I am grateful to my friend, Patti Smith, who assisted by proofreading the final version of this thesis.

I am extremely grateful to my family for their constant support and encouragement, specifically my husband and best friend, Ashoek Adhikari.

Abbreviations

Abbr.	Title
ACDP	African Democratic Christian Party
ANC	African National Congress
Apla	Azanian People's Liberation Army
ARV	Antiretroviral
Azapo	Azanian People's Organisation
Cope	Congress of the People
DA	Democratic Alliance
DP	Democratic Party
EFF	Economic Freedom Fighters
FF	Freedom Front
IFP	Inkatha Freedom Party
MF	Minority Front
MK	uMkhonto weSizwe
NCOP	National Council of Provinces
NNP	New National Party
NP	National Party
PAC	Pan Africanist Party
SACP	South African Communist Party
TAC	Treatment Action Campaign
TRC	Truth and Reconciliation Commission
UDF	United Democratic Front
UDM	United Democratic Movement
VOC	Vereenigde Oost Indische Compagnie - Dutch East India Company

Notes

Note 1: As the issue of race and the legacy of apartheid, in particular, are embedded in the primary sources being analysed, the analysis will as a matter of course use similar racially-based terminology. These race categories are defined in the apartheid Population Registration Act 30 of 1950 that required people to register as belonging to one of four different racial groups from birth: White, Black, Coloured and Indian. The Act was repealed in 1991.

Note 2: In that regard, it is crucial that these be defined upfront to avoid confusion: Whites refer to people of European descent. Indians are people of Indian descent. Coloureds are people of mixed white and indigenous descent, those descended from slaves from the Far East, and may include those who descended from the indigenous groups such as the San and Khoi. African refers to people who are descendent from indigenous Bantu-speaking ethnic groups. Blacks refer to all people that are not white.

Note 3: In terms of writing style, as whites, blacks and coloureds are culturally diverse groups in the South African context, the use of these labels will not be capitalised as they are descriptors and not proper nouns. As Indians and Africans are descriptors relating to place names, they will be capitalised accordingly.

Note 4: The democratic South African government is based on a co-operative system that has three components – national, provincial, and local or municipal governments. These spheres are responsible for different aspects of governance with some being interdependent and interrelated. Each sphere has its own legislative structure to approve decisions within its mandate. National Parliament comprises two houses: the National Assembly and the National Council of Provinces (NCOP). The NCOP, which has 90 delegates i.e., ten per province, represents provincial interests at a national level. Although not elected directly but through party lists, the National Assembly, which has 400 seats, is expected to represent the people and provide a forum for the debate of issues and legislation and to oversee the government. It is this representative role that prompted the decision to focus on speeches delivered in the National Assembly.

Note 5: Data sources - The rhetorical analysis, as proposed, will be based on the transcripts of debates and deliberations of the National Assembly. Debates in the Houses of Parliament are transcribed and published by the institution as part of the long-standing tradition of Hansards, which is a comprehensive record of all speeches and interactions in the chambers. This system

dates to 1774 and was adopted in 1910 by the Union of South Africa. The United Kingdom's parliamentary website describes the practice as follows:

> Hansard is a substantially verbatim report of what is said in Parliament. Members' words are recorded and then edited to remove repetitions and obvious mistakes, albeit without taking away from the meaning. Hansard also sets out details of Divisions and reports decisions taken during a sitting.[1]

It is named after the English printer, Luke Hansard and his descendants, who compiled the reports until 1889.[2]

These are available in hardcopy format from 1910 to 2013. Although unformatted electronic copies were published from 2000 alongside the hardcopies, from 2014, Parliament stopped publishing in hardcopy completely.

[1] https://hansard.parliament.uk/about Accessed on 1 March 2018.
[2] https://www.parliament.gov.za/hansard?sorts[date]=-1 Accessed on 1 March 2018.

ABSTRACT

Title: A Missed Opportunity: The Rhetoric of Social Cohesion in Parliamentary Debates - 1994 – 2014.

Author: Zarina Rahman

Date: February 2022

Introduction: This thesis aims to explore whether the parliamentary rhetoric of Members of Parliament as leaders in South Africa contributed to social cohesion in the country. The motivation for the thesis was the violent actions by South Africans towards foreign nationals, specifically from the African and Indian sub-continent, who had migrated to the country in search of better prospects. Based on the country's history of racial discrimination and oppression, the thesis explores whether leaders were conscious of the need to build a South African identity that coheres sufficiently to accept and adjust to such social changes.

Method: The thesis analyses parliamentary rhetoric during periods of crisis in the first twenty years of the South African democracy with the aim of ascertaining whether speakers display the ethos required to encourage social cohesion based on values. To delineate the available information into feasible segments, the thesis identified an area of crisis relating to each of the three Presidents during this period: Mandela (Truth and Reconciliation Commission (TRC)), Mbeki (HIV/Aids), and Zuma (Marikana). In addition to a rhetorical analysis, the thesis examines the extent to which speakers display an awareness of their audience(s).

Findings: Although the tensions of the apartheid past remained evident during the debates about the Truth and Reconciliation Commission, as it was early in the democracy and the memories of that past was relatively fresh, there was some attempt to build coherence around values. However, the analysis of subsequent debates indicates a stronger adherence by Members of Parliament to party political positions than to the representation of the interests of the public on whose behalf they were debating. While expressing a party position is the norm within functioning established democracies, in the South African context, it tended to ignore the extent of the residual divisions and, consequently the best interests of the nation. The thesis recommends that the citizens of the country use their constitutional rights to rhetorically express their needs and to ensure that their voices are heard.

Table of Contents

Chapter One - Introduction

> We have reached the end of an era. We are at the beginning of a new era.
>
> Whereas apartheid deprived millions of our people of their citizenship, we are restoring that citizenship.
>
> Whereas apartheid sought to fragment our country, we are re-uniting our country.
>
> The central theme of the Constitution for the Transition is the unity of our country and people.
>
> This Constitution recognises the diversity of our people. Gone will be the days when one language dominated. Gone will be the days when one religion was elevated to a position of privilege over other religions. Gone will be the days when one culture was elevated to a position of superiority and other denigrated and denied.
>
> We emerge from a conflict-ridden society; a society in which colour, class and ethnicity were manipulated to sow hatred and division. We emerge from a society, which was structured on violence, and which raised the spectre of a nation in danger of never being able to live at peace with itself.
>
> Our agreements have put that era behind us. This shameful past dictates the crucial need for a Government of National Unity. We are firmly on the road to a non-racial and non-sexist democracy.'[3]
>
> Nelson Mandela
>
> Address to the plenary session of the Multi-Party Negotiations Process
>
> 17 November 1993

This quote by Nelson Mandela is indicative of the racial divisions that existed in South Africa in the aftermath of decades of legislated segregation through apartheid-rule. This plenary meeting was the culmination of months of negotiations between 26 political parties to end the violence that accompanied apartheid and to agree on an Interim Constitution that would guide the change to democracy until a final version was adopted.[4] In making the epideictic appeal for unity to the political leaders before him at the World Trade Centre in Kempton Park,

[3] http://www.anc.org.za/content/address-nelson-r-mandela-plenary-session-multi-party-negotiations-process Accessed on 10 February 2021.

[4] https://www.concourttrust.org.za/uploads/files/Background_to_Multi-party_Negotiations.pdf Accessed on 6 January 2022.

Johannesburg and to the country, Mr Mandela demonstrated an understanding of the fissures that needed to be healed.

1.1. Background

South Africa's diverse political and cultural history can be traced to the period of colonisation and settlement in South Africa. The country was colonised initially by the Dutch through its proxy, the VOC (*Vereenigde Oost Indische Compagnie* - Dutch East India Company) in 1652 and subsequently by the British in 1806. Although the settlement at the Cape was initially a refreshment station for ships en route to the East, officials released from the company settled as farmers displacing the indigenous Khoikhoi population. The settler community that was supplemented by the arrival of French Huguenots from 1688 and the importation of slaves from elsewhere in Africa and the East changed the demographics of the region.[5]

At the same time as European settlers started moving into the interior of the country and the colony was being taken over by the British, uprisings and warfare in the interior of the continent among expanding indigenous groups resulted in further demographic changes. The period of Mfecane (crushing) resulted in power being consolidated to create larger kingdoms in the latter part of the 18th and first two decades of the 19th centuries.[6] The outcome of the conflict and migration saw new leaders ruling over expanded communities that were rebuilt from the fragmented remains of previous settlements. In addition, the 19th century saw changes not only as the indigenous groups encountered the settlers, but as the political and cultural differences between the groups of settlers caused rifts.

By the time that the Union of South Africa was declared in 1910, the geographical area that comprised South Africa had four separate regions each with its own form of colonial government. Of these, Natal and the Cape Colony had been ruled by the British while the Orange Free State and the *Zuid-Afrikaansche Republiek* were previously Boer republics. The discovery of diamonds and gold in these republics resulted in new waves of immigration into the region. The administrative systems imposed, both during the colonial period and the subsequent Union and Republic, either limited participation by people of colour or barred them outright.

By the end of the 1980s, after decades of apartheid rule by the white minority government, violence, economic decline, and global changes compelled transformation and

[5] Hermann Giliomee & Bernard Mbenga (eds) *New History of South Africa* (2007) ch 2.
[6] Ibid ch 4.

reconciliation. The discriminatory policies that had been introduced during the colonial encroachment was consolidated in the 20th century in a legal framework administered by an independent state ruled by the white minority for their benefit. At the same time, the oppressed people established organisations to respond to these policies, initially through negotiation, which escalated to violence as the discrimination became more repressive. The democratic government established after a period of negotiation in the early 1990s required the inhabitants, who had been in intense opposition to each other and whose cultures and histories varied significantly, to form a single, united South African nation.

1.2. The Parliamentary Tradition in South Africa

While colonialism bequeathed a divided society, it was ultimately legislated apartheid that reinforced it. The parliamentary tradition and its basis for apartheid is crucial for understanding the challenge that the country faced in the early 1990s as it aimed to 'transcend the divisions and strife of the past'.[7] To understand this legislative foundation, and as this thesis focusses on parliamentary rhetoric, it is essential to trace these systems of government to its geneses.

1.2.1. Precolonial governance.

Before examining the parliamentary tradition, it is worth noting how precolonial governance systems were structured. These tended to be organised in familial groups led by chiefs. While the nomadic hunter-gather Khoi and San could be individualistic, those that travelled in groups had leaders who were chosen based on wealth rather than lineage.[8] Bantu-speaking groups in the interior were organised in homesteads that were headed by the eldest male of a genealogical line who held economic, social and religious authority. This chief, along with headmen from prominent families who administered specific areas on his behalf, collectively formed a council. The chief's role included settling disputes through the application of customary law that had been built up through application.[9]

In the period prior to the armies built up for the Mfecane, chiefs were expected to confer with councillors and elders to ensure that they met their responsibilities to the clan. These consultations served to thwart challengers and the possibility of being ousted. Women in these chiefdoms were regarded as perpetual minors with rights and obligations but no voice in the homestead. As chiefs were the sole owners of land, property, and people, they tended to rule

[7] The Constitution of the Republic of South Africa Act 200 of 1993. The section titled 'National Unity and Reconciliation' is not numbered and occurs as an epilogue prior to the schedules to the Act. 139.
[8] Giliomee & Mbenga op cit 21.
[9] Pierre De Vos & Warren Freedman (eds) *South African Constitutional Law in Context* 2nd ed (2021) 33.

authoritatively especially in the period after the Mfecane when a tighter rein was held on councillors. Due to segmentation (splitting of clans), no part of South Africa was occupied by a single clan during the colonial encroachment period.[10]

1.2.2. Colonial Governance

The VOC in the Cape had been conferred with sovereign rights by the States General in the Netherlands that allowed it 'to govern, to build forts, to raise armies and to wage warfare'.[11] The company that was both company and state brought with it the traditions of Roman Dutch law and reformed religion through its early capitalist practices. While the Roman Dutch tradition introduced egalitarianism related to justice, the VOC's control of foreign governments in the East brought hierarchical tendencies, including slavery.

The VOC introduced separate legislative, administrative, and judicial institutions and practices that mirrored the Dutch systems. The legislature called Council of Policy (*Politieke Raad*) that consisted of the 'Governor, officials and nominated individuals' remained accountable to the authorities in the Netherlands.[12] Although the indigenous people and slaves at the Cape had equal recourse to the justice system, the hierarchical structure of society mitigated against this.

When the British took over the Cape in 1806 after the collapse of the VOC due to corruption, it continued to administer using the Roman Dutch tradition. The administrators that the British sent in 1822 to address the endemic corruption established an independent legal system that included a Supreme Court headed by a Chief Justice and an Attorney General to ensure independence and deter corruption. Judges had to come from the British Bar and lawyers were expected to get their degrees in Britain.

The British Westminster approach to governance was influenced by the need to have a free and efficient economy. The British Governor relied, initially, on a Council of Advice from 1825 made up of officials, which was replaced by a Legislative Council in 1834. Ordinances by these bodies had to be approved by the Governor. The Legislative Council, which consisted of officials and nominated persons, was replaced in 1854 by an elected Parliament for the Cape of Good Hope.[13] Of the two Houses, the members of the Legislative Council (Upper House)

[10] Ibid 33-5.
[11] Penny Russel & Nigel Worden *Honourable Intentions?: Violence and Virtue in Australian and Cape Colonies, c 1750 to 1850* (2016) 32.
[12] J J N Cloete *Parliaments of South Africa* (1985) 4.
[13] Ibid 6.

were elected by registered voters and presided over by the Chief Justice, while those of the Legislative Assembly or Lower House were elected by males in the colony irrespective of race as long as they were landowners. This system remained in place until the Union of South Africa, apart from the inclusion of a Prime Minister and a small Cabinet in 1872. With the implementation of the Glen Grey Act by the end of the 19th century, however, only coloured men retained the vote.

Although Natal was initially colonised by the European Voortrekkers,[14] it was declared a British colony in the mid-1840s. The colonial power established a similar Westminster system that consisted of a Legislative Council made up of elected members and appointed officials.[15] These chief officials formed an Executive Council. By 1893, this system was expanded to two Houses: an upper Legislative Council appointed by the Governor and a lower Legislative Assembly elected by voters. Although this colony similarly proclaimed a colour-blind qualified franchise, the qualifications were so stringent to effectively exclude people of colour.

Although Dutch farmers had been moving into the interior as individual families in search of land since the start of the 19th century, the concerted movements of large groups into the interior from 1838 as part of the Great Trek resulted in the formation of two Boer Republics in the northern parts of what would become South Africa: the *Zuid-Afrikaansche Republiek* or Transvaal between the Vaal and Limpopo Rivers and the Orange Free State between the Orange and Vaal Rivers.

The various legislatures in the Transvaal that had been established from 1845 were consolidated to form the *Zuid-Afrikaansche Republiek* by 1858.[16] Its constitution provided for a House of Assembly elected by white males and explicitly barred equality with people of colour.[17] Executive power was vested in the President and the Executive Council, who were accountable to the Assembly. By 1890, the colony created a separate House of Assembly for the foreigners' that had begun to settle there after the discovery of gold.[18]

The Dutch residents of the Orange Free State adopted a constitution in 1854 that made provision for an elected House of Assembly. Executive authority was vested in a State

[14] This area was initially colonised by Dutch settlers who had migrated as part of the Great Trek.
[15] Giliomee & Mbenga op cit 191.
[16] Cloete op cit 12.
[17] De Vos & Freedman op cit 33.
[18] Giliomee & Mbenga op cit 197.

President who was elected directly by registered voters and was assisted by an Executive Council.[19] In addition to a constitution that recognised the right of courts of law to review legislation, the colony also had a Bill of Rights that 'guaranteed rights of peaceful assembly, petition, property and equality before the law'.[20] These provisions were, however, limited as they applied only to white males.

1.2.3. The Union

The establishment of the Union of South Africa by an Act of the British Parliament followed the defeat of the Boer Republics during the South African War that ended in 1902 and the Bhambata uprising of 1906.[21] The Act prepared by the South African National Convention between 1908 and 1909 aimed to unite what, by then, were essentially four British colonies to safeguard the interests of the colonisers. While delegates from the existing legislatures were represented to draft the constitution that would create a single Union of South Africa, black South Africans were excluded from this process.

The Union of South Africa Act of 1909, which was derived from the existing colonial parliamentary systems, retained the British Westminster model that recognised the supremacy of Parliament. Parliament consisted of two Houses: the directly elected House of Assembly and the Senate, which was composed of senators elected by the Assembly and nominated by the Governor-General so that each province had equal representation.[22] Until the British Parliament passed the Statute of Westminster in 1931, the Union was directly accountable to the Sovereign in Britain and his Governor-General. This Act allowed for dominions to be autonomous, while upholding allegiance to the Crown through its relationship with the Governor-General.

The Union's Constitution provided parliamentary democracy for white males while the black majority would be governed administratively only. A concession that the Cape Colony secured to retain the voting rights for those people of colour, who had been part of the qualified franchise, resulted in a constitutional crisis in the 1950s. This section in the Constitution could only be amended through a parliamentary process that required a two-thirds majority by a joint sitting of both Houses.[23] After Parliament passed the Separate Representation of Voters Act in

[19] Cloete op cit 9.
[20] De Vos & Freedman op cit 32.
[21] Giliomee & Mbenga op cit 169, 229.
[22] Cloete op cit 19.
[23] De Vos & Freedman op cit 35-6.

1951 to remove coloured voters, it was rejected by the Appellate Division as unprocedural. This was overturned in 1956 only after the ruling National Party (NP) amended the composition of the Senate and of the Appellate Division.[24]

To ensure that the indigenous African majority was kept in check beyond the restrictions placed on them by the Glen Grey Act, the promulgation of the Native Land Act passed by the Union in 1913 restricted Africans to seven per cent of the land.[25] Restricted to rural areas and African townships, the Native Urban Areas Act of 1923 assigned the function of implementing pass laws and administering townships to white municipalities.[26] Separation of black Africans was further consolidated by the Black Administration Act of 1927 that established a separate legal system for the administration of customary law, and the Black Authorities Act of 1951 that transferred the responsibility to chiefs within separate homelands.[27] The homeland constitutions made provision for both elected officials and appointed chiefs, combining the traditional and Westminster forms.[28] While chiefs were appointed as leaders, these independent homelands remained accountable to the State President.

1.2.4. Republicanism

The National Party-Afrikaner Party alliance that won the elections in 1948 increasingly legislated apartheid policies, as it entrenched its power. A referendum, held among the white minority in 1960, endorsed the government's proposal to establish a republic. The Republic of South Africa Constitution Act 32 of 1961 that came into effect on 31 May 1961 retained the existing parliamentary system, replacing the Governor-General with an equally nominal State President as the head of state.[29] The parliamentary system, as constituted in 1910, continued, barring changes to the number of representatives that included the removal of members representing coloured interests by 1970 and the inclusion of senators representing South West Africa from 1949.[30] The Union thus became the Republic of South Africa and simultaneously withdrew as a member of the Commonwealth of Nations.

[24] Ibid 36 and David Welsh *The Rise and Fall of Apartheid* (2009) 53 (David Welsh hereafter).
[25] David Welsh op cit 32.
[26] Giliomee & Mbenga op cit 251.
[27] De Vos & Freedman op cit 37.
[28] Cloete op cit 132-170.
[29] Ibid 47.
[30] Ibid 54-57.

1.2.5. The Tricameral Parliament

In an attempt to resolve the political, and increasingly violent, impasse in the country because of the discrimination against, and the exclusion of, people of colour, and after once more consulting the white minority, the government passed the Republic of South Africa Constitution Act 110 of 1983. This established the Tricameral Parliament that provided for separate representation for whites, coloureds, and Indians. Each of the three chambers operated separately when managing matters related to their own race but took joint decisions on matters of national importance. As the House of Assembly, representing whites, had a majority that exceeded the combined total of the other two chambers, it was effectively able to determine and veto decisions.[31]

1.2.6. The Democratic Parliament – continuity and change.

By 1994, the parliamentary system introduced by the colonial governments, which were adopted and modified by the Union in 1910 and the Republic of South Africa in 1961, served as the basis for the democratic Parliament. This was instituted initially through the Constitution of the Republic of South Africa Act 200 of 1993 and confirmed by the Constitution of the Republic of South Africa, 1996. As with the previous incarnations of the Westminster system, the democratic government adopted a two-tier legislative system consisting of a National Assembly and a National Council of Provinces (NCOP). The National Assembly consists of members elected directly through a system of proportional representation where political parties nominate candidates, while the nine provinces established on 27 April 1994 nominate ten members per province based on the party representation in that province to form the NCOP.

The democratic government departed from the previous legislative incarnations, where Parliament was supreme, to one that was based on the Constitution as the supreme law. This Constitution includes a Bill of Rights that protects 'the fundamental human rights of all citizens irrespective of race, colour, sex or creed', and the mechanisms for its enforcement.[32] These provisions are supported by an independent judiciary tasked with protecting the constitutional democracy led by the Constitutional Court, established by the 1993 Interim Constitution, as the apex court. The Constitutional Court, as 'the guardians of the Constitution in general and the Bill of Rights in particular', has the power to pronounce of the constitutional validity of

[31] David Welsh op cit 218-20.
[32] De Vos and Freedman op cit 40.

any legislation or policy.[33] Further safeguards include a separation of powers between the Executive, legislatures, and the judiciary, with mechanisms to ensure accountability.

Despite this constitutional basis for the democracy, the previous parliamentary tradition was preserved, including the ceremonial aspects such as the procedural processes relating to announcements and tabling of documents. The mace and black rod of the Houses of Commons and Lords has been retained as a feature of the National Assembly and the NCOP, respectively. Similarly, Parliament is 'opened' soon after the start of each year, but as the country does not have a ceremonial sovereign leader, the President uses his constitutional power to convene both Houses.

In a further deviation from the Westminster system, while the President is responsible for the functions of the head of state, once elected by the National Assembly from among its members, he ceases to be a member of Parliament. However, notwithstanding this anomaly, he retains the responsibilities accorded to a Prime Minister as the head of Cabinet.[34] In this dual position, while the President cannot dissolve Parliament, it can dismiss the President and Cabinet through a vote of no confidence. As the President is not a member of Parliament, it creates a further anomaly that there is no direct accountability to the institution, except through the actions of Cabinet members.

The relationship between Parliament and constitutionalism can be understood as one where Parliament is expected to place limits on any possible abuse of power by the Executive who remains accountable to Parliament and who, in turn, provides it with the authority to govern on its behalf. Constitutionalism, through a parliamentary system, must ensure that its values permeate the policies and procedures of the state. This relationship, however, operates in the context where there is common ground between the Executive and the majority party about policies, thus impacting on accountability.[35] In South Africa, this relationship is further complicated by an electoral system where Members of Parliament (MPs) owe their positions to parties rather than to the electorate directly.

A further distinguishing aspect of the relationship between constitutionalism and a parliamentary system is that Parliament's focus is the interests of the majority while the

[33] De Vos & Freedman op cit 47.

[34] Philippe-Joseph Salazar 'The Joint Sitting of Parliament, 15 April 2003: A Rhetorical View of the Reparation Debate' in Erik Doxtader & Charles Villa-Vicencio *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) 48.

[35] Katja Ziegler, Denis Baranger & Anthony W Bradley (eds) *Constitutionalism and the Role of Parliaments* (2007) 2.

Constitution protects minorities and individuals. The dominance of the ANC in Parliament and government since 1994 has resulted in greater reliance on the court system, including the Constitutional Court, to resolve public concerns about policy proposals. This is despite the constitutional provisions that indicate that the National Assembly is elected to represent the people and that allows for public participation in decisions. The consequence of this approach that uses the judiciary to counter state action, besides the obvious delays, is that it requires a vigilant society and is limited to those with the resources.

In addition, it should be noted that despite the incorporation of former homelands and the recognition of traditional leaders by the democratic state, the Constitution provides for this through a short chapter that reinforces this form of governance as separate from the national parliamentary system. While customary law is recognised by the legal system and traditional leaders must be consulted on legislative amendments that may affect it, Parliament's efforts to pass the Traditional Courts Bill, initially introduced in 2011, has stalled due to concerns about constitutionality and jurisdiction.[36]

While the National House of Traditional Leaders Act 10 of 1997 established a structure to address traditional governance within a democracy, from 2009 its status was further reduced by being placed under the supervision of a government department responsible for traditional affairs. Although it was expedient at the time to resolve the matter of traditional leaders in its current constitutional form, this matter and the remaining divisions in the country are yet to be tested, especially as traditional control over land, such as the Ingonyama Trust, has remained in place.

1.3. A United Divided South Africa – The State of Party Politics.

The number of political parties that contested the first democratic elections in South Africa in 1994 reflect the divisions that existed in the country at the time. The 19 parties included former liberation organisations such as the African National Congress (ANC), Pan-Africanist Congress (PAC), and the Azanian People's Organisation (Azapo),[37] existing parliamentary parties such the NP, and the Democratic Party (DP), and regional and special interest parties such as the Inkatha Freedom Party (IFP), Freedom Front (FF),[38] African Christian Democratic Party (ACDP), Africa Muslim Party, Federal Party, Minority Front (MF), among others.

[36] Fatima Osman 'The Third Time a Charm? Traditional Courts Bill 2017' (2018) 64 *SA Crime Quarterly* 45–54.
[37] A Black Consciousness liberation organisation.
[38] This party established a month before the 1994 elections by a former military General, Constand Viljoen, promoted the right to self-determination of communities, especially for Afrikaners.

While several of these parties ceased to exist after participating in the first democratic elections, the fortunes of others either waned or improved over the following two decades. Smaller parties that failed to garner enough votes for a seat in Parliament did not contest subsequent elections, although new parties entered the political arena, either through a reconfiguration of the special interest parties or because of divisions in the larger parties.

Parties that had greater support included the IFP, which was established in 1975 by Zulu ethnic leader, Chief Mangosuthu Buthelezi. As the third biggest party in the 1994 elections, the IFP formed part of the government of national unity. The DP was established in 1989 from a merger between the Independent Party, National Democratic Movement, and the Progressive Federal Party. In 2000, the DP merged with the New National Party (NNP) and the Federal Alliance to form the Democratic Alliance (DA). The relationship with the NNP was short-lived as several NNP members joined the ANC in 2004.

As the party responsible both for the statutory imposition of apartheid as well as negotiating its end, the National Party did not retain power after the first democratic elections. The sunset clauses of the Interim Constitution ensured that, as the official opposition in 1994, it not only formed part of the new government, but was also able to have its leader, Mr F W De Klerk, appointed as an Executive Deputy President. By 1999, the party had been rebranded as the New National Party to dissociate it from its apartheid past and despite the brief coalition with the DP in 2000, the party disbanded by 2005.

The ANC came into power after decades of preparing for the transition from a liberation movement to a governing party.[39] While David Welsh quotes Nelson Mandela referring to the ANC as a 'broad church' when addressing the aims of the organisation's constitution, this description is probably most apt when referring to the ANC that negotiated the end of apartheid and came into power.[40] Although the ANC has remained the ruling party since the 1994 elections, its support has declined, and it too experienced fissures.

Bantu Holomisa, a former homeland leader was expelled from the organisation in 1996, ostensibly for reporting a fellow ANC member to the Truth and Reconciliation Commission.[41] He subsequently launched the United Democratic Movement (UDM) in 1997 with disaffected leaders from the NP. A second group broke away from the ANC in 2008, after Thabo Mbeki

[39] This included discussion documents such as Ready to Govern, Strategy and Tactics, Through the Eye of the Needle.
[40] David Welsh op cit 38.
[41] https://www.justice.gov.za/trc/media/1996/9609/s960930b.htm Accessed on 16 August 2021.

was removed as President. Although President Mbeki did not join nor endorse the new party, his removal from office and the change in leadership of the ANC served as the impetus for the creation of the Congress of the People (Cope) by former ANC leaders, Messrs Lekota, George and Shilowa. ANC Youth League members, who were expelled in 2013, formed the Economic Freedom Fighters (EFF) in 2014. Although this party entered Parliament after the period that this thesis reviews, its election campaign was based on providing justice to Marikana victims, which is a topic of analysis.

South African parliamentary politics, since the first democratic elections and specifically the period under review, has been dominated by the ANC as the majority party with smaller parties gaining the remaining seats. The ANC, which under the Mbeki presidency had over 66% of the vote, steadily lost support in the past three national elections after increasing reports of corruption within its ranks and civil unrest related to mismanagement of resources and services. The DA has remained the official opposition since 1999 followed by different smaller parties during the separate terms. While these fluctuations should raise questions about the future of South Africa's political ideology assuming the balance shifts, it is crucial to note that despite the plethora of political parties, there are no discerning ideological differences.[42] Opposition parties, which are constitutionally obliged to allow membership to all applicants, still tend to appeal to groups based on identity, region, or leadership. This continued abundance of parties is an indicator of the deep-seated role that identity plays within South Africa and may, despite its waning support, ensure that the ANC's broad-church appeal ensures that it retains power.[43]

1.4. Rationale

One of the positive consequences of democracy in South Africa was that opportunities for social and economic mobility were more widely available and designed to change the patterns of class structure and wealth accumulation from one being based purely on race. However, despite these initiatives, the majority of black South Africans remain trapped in poverty and the country has the undesirable status of having the highest levels of inequality between the wealthiest and poorest citizens.[44]

An additional aspect of democracy was the renewal of relations with the international community as its borders opened. This resulted in an increased number of foreign nationals entering the country either as refugees fleeing conflict on the continent or simply as migrants

[42] This excludes the recently established EFF.
[43] Fourteen parties won seats in the 2019 elections.
[44] https://wid.world/news-article/2020-regional-updates/ Accessed on 28 December 2021.

seeking better opportunities. These changes in the context of global and technological advances over the past thirty years signalled the fluid nature of the conception of a nation and the imprecision of factors influencing cohesion.

While the social and economic disparities that persist in terms of race can be understood as a consequence of colonialism and the extensive and prolonged nature of apartheid's economic subjugation, and while debate and analysis in this regard is ongoing, the concern of this thesis is the apparent lack of cohesion between South Africans of differing class, race and cultural backgrounds. This sense of pride in being South African and sharing a history and values appears to be equally absent from the rhetoric of leaders in society. Notwithstanding this absence, intolerance and prejudice among South Africans may be increasing, often by perpetrators and victims who may be too young to have lived through apartheid, indicating that the effects of the previous divisions were so deep-seated that it permeated subsequent generations. Although the African National Congress had understood the extensive damage caused to society by apartheid,[45] the question is whether their actions as government have ameliorated it.

In addition, and of greater concern, is the lack of tolerance shown by South Africans towards certain foreign nationals who are recent residents in the country. The victims of the violence tend to originate from other African countries or from the Indian subcontinent. The intolerance displayed and the violence perpetrated has resulted in deaths, and the destruction of property and livelihood of foreign nationals as well as South Africans. The instances of looting and mob violence, in what has been termed 'xenophobia', appeared to have reached disturbing levels in the recent past from 2008.[46] That South Africans would behave in such a hostile manner towards others, many of whom are in the same social and economic position as they are, questions the values by which South Africans define themselves, both individually and collectively. Regardless of this definition, the behaviour, which ultimately is criminal, has not been condemned by political leaders.

The continued fragmented nature of South African society, more than twenty-five years after the first democratic elections and the negotiated peace process, raises the question of whether the leaders in the country have paid enough attention to this crucial matter or whether they have missed an opportunity. While the democratic state had established a legislative and

[45] See 2.1.4.

[46] South African Human Rights Commission: Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals (2010).

policy framework to rectify past injustices and equalise the treatment of its citizens, it may be possible that it underestimated the longstanding divisions that continued to exist.

1.5. Focal Question

The building of a unified South Africa was premised on the recognition of the diversity that existed in the country, as is evident by the motto adopted on the coat of arms that translates to 'diverse people unite'. Whether this diversity was fully understood by South African political leaders in Parliament will be examined through selected rhetoric from 1994 to 2014. While parliamentary debates take place within a wider political context including changes in leadership, the approach of the thesis is to address the role of MPs, as representatives of the citizens of the country, and their responsiveness to events taking place within their constituencies and in the country.

As conduct during crises are indicative of values and character (ethos), the thesis analyses the consideration given to the notions of social cohesion and nation-building during specific parliamentary debates in periods of crisis. To delineate the available information for the study into practicable segments, it has identified an area of crisis under each of the three Presidents – Mandela (Truth and Reconciliation Commission), Mbeki (HIV/Aids), and Zuma (Marikana) – in the first twenty years of democracy.[47] The introduction to each analytical chapter below provides a brief description of the crisis and the reasons for choosing the specific debates.

The rhetorical analysis draws heavily on the work of Erik Doxtader who when writing about reconciliation in the 1985-1995 period stated, 'For the very best and the very worst of reasons, reconciliation's words have been used repeatedly to imagine and craft a path between South Africa's past and its future'.[48] This quote provides an accurate approximation of the analysis in the thesis and aims to raise the same Hegelian reflection about whether words of reconciliation transform human relationships or transformed relations give rise to reconciled ways of speaking.[49]

[47] Technically, South Africa had four Presidents in this period but President Motlanthe who served between President Mbeki and President Zuma was only in office for seven months as an interim arrangement.
[48] Erik Doxtader *With Faith in the Works of Words: The Beginnings of Reconciliation in South Africa, 1985-1995* (2009) *ix* (Doxtader 2009 hereafter).
[49] Ibid *x.*

1.6. Parliamentary procedure[50]

As the debates analysed in this thesis took place in Parliament, it is important that the rules governing the discourse are clarified to understand the rhetorical context. As representatives of the people,[51] there is a constitutional requirement that parties participate in proceedings in a manner consistent with democracy. Legislative matters and oversight functions are generally discussed in parliamentary committees after which the committee tables a report with its decisions and recommendations. As parliamentary committees are effectively a substructure of the National Assembly, these decisions must be ratified by the House. A committee report is debated when it contains recommendations that the House needs to agree on to take the matter forward. While both committee discussions and National Assembly debates are open to the public, committees, often referred to as the engine-room of Parliament, make the key amendments and decisions. The debates in the National Assembly serve to ratify these decisions and provide political parties with a wider platform to defend their positions to their supporters and detractors as they effectively speak to the nation.

In addition to debating legislation that had been approved by parliamentary committees, the House can debate motions in the form of a subject for discussion or a draft resolution,[52] condolence motions, or members of the Executive may request an opportunity to make a factual or policy statement to the National Assembly.[53] Following a proposal or statement, members of each party are allowed to participate in the debate on the motion or comment on the statement.

Decorum in the House is governed in terms of freedom of speech, appropriate conduct, volume of conversations, interruptions, and disruptions. Failure to adhere to the decorum may result in the Member being named or being ordered to leave the chamber. If such an order is ignored, a Member may be forcibly removed by the Sergeant-at-Arms.[54]

An orator always addresses the Presiding Officer in the Chamber, who is titled the Speaker in the case of the National Assembly and may only speak when recognised. Members must refer to each other respectfully and may not impugn the dignity of any other Member. This respectful reflection relates equally to previous decisions, statutes, and judges or other

[50] This information was provided by the Office of the Secretary of the National Assembly in Parliament.
[51] Supra note 4.
[52] National Assembly Rules ch 7.
[53] Ibid 133.
[54] Ibid ch 5.

persons of similar regard. Points of order may be raised only if the Speaker recognises a Member.

Political parties are allocated time in accordance with the number of seats held, which since 2012 has been set at a minimum of three minutes for smaller parties unless the Member agrees to less time.[55] Prior to 2012, because of the number of parties, smaller parties could be allocated as little as one minute, which hindered their ability to contribute to a debate. The party generally determines the time allocated to each of its speakers. Decisions about time allocations are taken at the weekly programming meeting, after consultation with the relevant portfolio committee, where appropriate, and negotiation among parties. As with the time allocation, the speaking order gives priority to the majority ruling party, except in cases where it is a motion proposed by a member of an opposition party.

[55] Ibid 81(3).

Chapter Two - An Analytical Framework

To analyse the effect of legislative rhetoric on social cohesion and nation building in democratic South Africa, one must clarify what is meant by these concepts. As these relate to individual attitudes and behaviours functioning as a collective, it is pertinent to start with an understanding of social identities, specifically ethnicity, before addressing factors affecting cohesion. As this thesis is based on a rhetorical analysis, this chapter includes a discussion of applicable concepts.

2.1. Concepts for a Cohesive Nation

2.1.1. Social and Ethnic Identities

Social identities are generally based on a variety of factors including gender, race, class, age, and include situationally based components drawn from experiences, memories, and beliefs. While these identities occur naturally and contextually, in South Africa because of apartheid, it was also linked to ethnicity. Gerard Maré defines ethnicity as social identity formation based on culturally specific practices and a unique set of symbols and beliefs, including a belief in a common origin. This history provides symbols, narratives, hierarchies, and a sense of group identity. In the African tradition this also tends to be patriarchal and, as it derives from a pre-capitalist period, it denies class differences.[56] Edwin Wilmsen suggests that ethnicity as an existential presence is based on the belief of 'endemic cultural and social, often racial, difference'.[57] The debate about ethnicity varies from the primordial to the instrumental where primordialism views ethnicity as a pre-modern, given state while instrumentalism views it as another form of resource mobilisation on behalf of interested groups.[58]

The apartheid state's emphasis on ethnicity that was linked to cultural and religious identities to achieve racial domination in the sense of 'imagined communities' and 'invented traditions' posited by Anderson and Hobsbawn, and Ranger served to conceal the way social identities were linked to power.[59] Dominant groups were not defined in terms of ethnicity but used their position to define subordinate groups who, in turn, tended to accept the definition as

[56] Gerhard Maré 'The National Question Confronts the Ethnic Question' in Edward Webster & Karin Pampallis *The Unresolved National Question: Left Thought Under Apartheid* (2017) 169 (Maré 2017 hereafter).
[57], Edwin N Wilmsen 'Introduction' in Edwin N Wilmsen & Patrick McAllister *The Politics of Difference: Ethnic Premises in a World of Power* (1996) 2.
[58] Jan Nederveen Pieterse 'Varieties of Ethnic Politics and Ethnicity Discourse' in Wilmsen & McAllister 27.
[59] Gerhard Maré 'Race, Nation, Democracy: Questioning Patriotism in the New South Africa' (2005) 72 (3) *Social Research* 505 (Maré 2005 hereafter) and David Chidester, Adrian Hadland & Sandra Prosalendis 'Globalisation, Identity and National Policy in South Africa' in David Chidester, Phillip Dexter & Wilmot James *What Holds Us Together* (2003) 302.

a form of asserting collective identity.[60] Ethnic consciousness was thus realised under specific conditions as communities reacted to threats against its interests.[61]

Ernesto Laclau addressed the issue of ethnic identities within a democracy using the concepts of the particular and the universal by concluding that the relationship between the two is unbridgeable as 'the universal is no more than a particular which at some moment has become dominant'.[62] He argued that there can be no pure particular groups because, although it may protect the marginal, it would be reactionary and antagonistic as that group should be advocating for the primacy of its identity. In the absence of antagonism, these identities would have to recognise not only the rights of other particular identities but also the power relations that exist.

While historical deconstruction may remove the myths of timelessness from ethnicity and question how far back in time one should go to determine authenticity, the concept of ethnicity and adherence to it remains real. The claim to primordial ethnicity can be understood as the need to own the past to use it in the present as the foundation for group separation from others. The 'imagined community' formation takes place in reference to an other through the creation of borders that distinguishes one group from another.[63] Within South Africa, these imposed ethnic boundaries gave rise to South Africa being described as 'multicultural' in the way that it is understood in North America, Europe and Australia. Neville Alexander illustrated this idiosyncrasy by referring to Deputy President Mbeki's acclimations of his African identity when the Constitution was debated in Parliament.[64]

The static approach of ethnicity discourse that assumes continuity conceals the way it changes and asserts a new identity as it encounters and engages with changing contexts.[65] That an identity is constructed with reference to an other does not mean that the referent identity remains passive. The complexity of the demarcation is evident as individuals can belong to more than one category depending on context and it is not timeless but is open to change because of 'interaction of different and opposing discourses'.[66] Laclau argued that, in the South

[60] Wilmsen op cit 5.
[61] John L Comaroff 'Ethnicity, Nationalism and the Politics of Difference in an Age of Revolution' in Wilmsen & McAllister 165.
[62] Ernesto Laclau 'Universalism, Particularism and the Question of Identity' in Wilmsen & McAllister 50.
[63] Aletta J Norval 'Thinking Identities: Against a Theory of Ethnicity in Wilmsen & McAllister 65.
[64] Neville Alexander *An Ordinary Country: Issues in the Transition from Apartheid to Democracy in South Africa* (2002) 81.
[65] Pieterse op cit 29.
[66] Norval op cit 65.

African context, an identity cannot be asserted without simultaneously asserting the context for that identity. Equally, destroying the context and its power relations destroys the identity that existed within that context. Resolving the tension between the particular and the universal identities in South Africa requires recognising the ambiguity that resulted from apartheid creating not only the identity of the oppressor but also that of the oppressed who was defined in relation to the oppressor.

2.1.2. Society and Cohesion

The complexity of social cohesion becomes apparent in the context where tensions between identities are exacerbated by the continued adherence and promotion of ethnic identities. The disparate and invented identities that constituted South African society in 1994 would require a concerted approach based on a defined understanding of society. Considering the differing cultures, histories, and experiences in the country, one may think about this not simply as developing cohesion between separate components but rather as establishing society anew.

To understand how society is structured, this thesis draws on Emile Durkheim, one of the leading theorists in this regard, who proposed that 'society is bound together "not by a material relation, but by the ties of ideas"' that arose naturally and 'as a *sui generis* formation'.[67] Addressing competing identities within society, he proposed the concept of the conscience collective as 'a composite, the elements of which are individual minds', which has its own specific characteristics. Durkheim contrasted two forms of cohesion in society i.e., mechanical solidarity as found in groups that are very similar to each other where groups adhere to a common set of beliefs and rules, and organic solidarity where, in addition to a common set of beliefs, solidarity is arranged based on the differences that comes with the growth of individualism in society. Although this individualism that accompanies a division of labour comes at the expense of strong commonly held beliefs, it gives rise to the conscience collective that provides for multiple individual differences or identities. While the effects of groups on individuals can be understood as the consequences of the individual members' attitudes and behaviours, social cohesion similarly influences the structural conditions of networks amongst members. A group with differentiated members with varying concentrations of interpersonal ties may be cohesive if the social network has specific structural ties.[68] Under apartheid, this notion of a *sui generis* formation of society was inverted so that the mechanical solidarity of

[67] Anthony Giddens *Capitalism and Modern Social Theory* (1971) 67, and Michael Follert 'Contractual Thought and Durkheim's Theory of the Social: A Reappraisal' (2020) 20(3) *Journal of Classical Sociology* 168.
[68] Noah Friedkin 'Social Cohesion' (2004) 30 *Annual Review of Sociology* 418.

cultural ties through ethnicity was emphasised over the organic solidarity. While a division of labour occurred as capitalism grew, this was similarly kept in check.

In explaining modern society's division of labour and specialisation, Durkheim pointed out that social solidarity and moral rules in modern societies tends to be codified in laws that provide rules of conduct and moral discipline. Legal regulation serves to maintain social solidarity while simultaneously managing the differences that arise through the division of labour. This consciousness that was maintained through religion, language, and law in early society has been secularised in modern societies with a stronger focus on law. While morality cannot be measured, the complexity of the regulation reflects that of the social relationships.[69] The state, therefore, has a greater role to play as a buffer between the individual and the fragmented groups to maintain a sense of common solidarity and morality.[70] The maintenance of a morality that recognises the interdependence of individuals is, thus, through the sharing of principles and social institutions that are codified in law. In the civil law tradition, inequality caused by difference could be displaced by social solidarity with the protection of individual rights and freedoms often found in a country's constitution and legislation.[71] The social compromise that is the basis of constitutions and founding documents ensures durability and social inclusion. Using Durkheim's interpretation of the role of the law, the depravity of apartheid is apparent as it used the legislative framework to enforce the divisions in South African society rather than to maintain a common solidarity. In contrast, the democratic government adopted a constitution that included a Bill of Rights covering a wide range of freedoms.

Accepting conflict as part of social life, Durkheim suggested that the role of solidarity in mature societies was to moderate differences so as to develop more rational and organised societies.[72] The role of the state and its institutions in this context serves to not only uphold the morality of the law, but to symbolise the national values that underpin that morality. William Easterly, Jozef Ritzan and Michael Woolcock define social cohesion as 'the nature and extent of social divisions in society', which represent the points that schisms can develop, and note that socially cohesive societies have fewer such fault lines and are more able to

[69] Phil Johnson, Michael Brookes, Geoffrey Wood & Chris Brewster 'Legal Origin and Social Solidarity: The Continued Relevance of Durkheim to Comparative Institutional Analysis' (2017) 51(3) *Sociology* 649.
[70] Barbara A Misztal 'Durkheim on Collective Memory' (2003) 3(2) *Journal of Classical Sociology* 130.
[71] Johnson, Brookes & Wood (et al) op cit 650.
[72] Arthur F Clagett 'Theoretical Continuities in Conceptual Formulations of Social Cohesion and Control in Social Relations' (1967) 8 (2) *International Journal of Comparative Sociology* 229.

manage the potential risks of diversity.[73] The authors make the connection between the quality of institutions and social cohesion arguing that while strong institutions encourage social cohesion, a socially cohesive society is important for well-functioning institutions. Social cohesion, understood as 'the extent to which people work together when a crisis strikes or opportunity knocks', echoes Durkheim's contention that it does not require cultural homogeneity or the absence of political conflict or dissent.[74] A socially cohesive society will accept short-term losses due to reform measures as part of the trust that these will be compensated for by longer term gains.

This ability to manage the risks that accompany diversity and to accept short-term losses is an indication of the levels of tolerance in society. Amanda Gouws defines it as 'the willingness to 'put up with' things that one rejects or opposes'.[75] While intolerance stems from physical and psychological insecurity, like Easterly (et al) she notes that tolerance is more closely linked to trust in democratic institutions and processes. Citizens are more likely to tolerate inconvenience if they know that it is not systemic and trust that it will be rectified. However, as the apartheid experience of most citizens in South Africa was one where the state acted directly against their best interests, tolerance levels and trust in institutions in 1994 was low.

The Durkheimian understanding of the organic formation of society around shared ideas and values underscores not only the damage done by apartheid but the crucial responsibility of the democratic state to reverse it by providing a common moral platform through trusted processes and institutions.

2.1.3. Nation-Building

Considering the divisions within South African society in the early 1990s, building this 'new' nation would require a collaborative effort. While nation-building may be defined as the building of a communal identity expressed through linguistics, history, culture, and religion by those living within a defined territorial border, these were contested concepts.[76]

[73] William Easterly, Jozef Ritzan and Michael Woolcock (2006) Working Paper Number 94 'Social Cohesion, Institutions, and Growth' *Centre for Global Development* 4.
[74] Ibid 3-4.
[75] Amanda Gouws 'The Importance of Political Tolerance for Fostering Social Cohesion' in Chidester, Dexter & James 43.
[76] Andrea Kathryn Talentino 'The Two Faces of Nation-Building: Developing Function and Identity' (2004) 17 (3) *Cambridge Review of International Affairs* 559.

The notion of nation-building over the past 70 years has been used in the context of failed states where the reconstruction of formal institutions of state is required as a shift from instability caused by internal conflict or decolonisation to a democracy instead of the traditional understanding of creating a sovereign nation.[77] In post-conflict South Africa, the previous minority state had not failed, which allowed for the existing state apparatus simply to be expanded so that it included the majority in the country. The democratisation of the process was negotiated and given effect in the Interim and final Constitutions.

However, despite provisions supporting unity in the two constitutional documents, this form of nation-building does not address the internal identity creation that establishes the nation from the individuals occupying the shared space, which was crucial for overcoming past conflicts and developing links between citizens.[78] The aim would not be to develop an ethnically homogeneous society but rather to encourage a common commitment to a single state.[79] Alexander agreed that 'the population that resides within a given independent state' would comprise the nation, but contended that in the post-colonial African context the state should create the conditions for the formation of identity so that individual identities based on 'language, region, religion, gender, or any other significant social marker' form part the national identity, which ultimately should be grounded in 'shared experience'.[80] This echoes Durkheim's understanding of the state's responsibility for maintaining a common morality and establishing solidarity as it protects society's cultures, languages, and history.

The nation can, thus, be defined as the collective of social identities rather than as the personal dimension of an individual identity, except as a patriot.[81] The national identity may be one of many other contextual identities that bind social groups and maintain self-esteem.[82] It would include both ethnic and civic identities where the former relates to inclusion based on language, religion, and 'the myth of shared kinship', while the latter is defined by residency, political ideas and loyalty to institutions, and a shared history.

This traditional understanding of nationalism has recently been supplemented by a new approach to nationalism in Africa based on origin, which is strongly linked to a political-legal

[77] Ibid 557.
[78] Ibid 561.
[79] Ibid 559.
[80] Alexander op cit P88-9.
[81] Maré 2005 op cit 504.
[82] Norbert Kersting 'New Nationalism and Xenophobia in Africa: A New Inclination?' (2009) 44 (1) *Africa Spectrum* 8.

understanding of citizenship as opposed to one that is based on rights and loyalty.[83] This form of ethno-nationalism aimed mainly at migrants from the continent is provoked by competition for local resources, which tends to ignore the long-standing tradition of welcoming strangers that had existed on the continent. In addition, the changing nature of identity within the increasingly integrated global context has resulted in nation-states adopting a defensive approach that asserts their sovereignty, which has been exacerbated by the transnational movement of people as nations react to political and fiscal crises.[84] In South Africa, while this attitude has resulted in violence, its reactionary nature must be understood against the philosophy of the former liberation movements that adopted the inclusive Freedom Charter and the new democracy that described itself as a 'rainbow nation'.[85]

2.1.4. The National Question

The question whether the democratic Parliament had missed an opportunity must be understood in the context of the previous ideas about nationhood and cohesion. The difficulties that South Africa would face when it finally overcame apartheid was not lost on the ANC during its time as a liberation movement as it attempted to resolve its thinking about the divisions in the country through what it called the 'National Question'. It understood that the range of divisions stemming from the colonial experience to the development of the skewed capitalist system in the country would require an approach that transcended entrenched race and ethnic differences.[86]

In addition to the obvious political and economic domination, it understood colonialism's emphasis on racial and ethnic identification as a device to establish the racial superiority of the colonisers.[87] Sovereignty during this period, was defined through the notion of frontiers that were imposed as colonisers advanced through the seemingly open spaces. These borders, imposed to accentuate differences of language and culture between the colonisers and the indigenous and slave populations, were accompanied by violence. This reinforced the insider/outsider approach as an expression of power.[88]

---

[83] Chidester, Hadland, & Prosalendis op cit 297-8.
[84] John L. Comaroff 'Ethnicity, Nationalism and the Politics of Difference in an Age of Revolution' in in Wilmsen & McAllister 174.
[85] Kersting op cit 11-15.
[86] Edward Webster & John Mawbey 'Revisiting the National Question' in Webster & Pampillis 4.
[87] Jeremy Cronin & Alex Mohubetswane Mashilo 'Decentring the Question of Race: Critical Reflections on Colonialism of a Special Type' in Webster & Pampillis 22.
[88] Peter Vale 'Sovereignty, Identity and the Prospects for Southern Africa's People' in Chidester, Dexter & James 22-41.

While the national question was initially understood in terms of European countries' liberation struggles, the South African interpretation can be traced to the Communist Party of South Africa in the late 1920s that recognised the distinctive feature of having colonisers who were living alongside the colonised. Pallo Jordan noted that it was referred to 'as a "colonialism of a special type"…In other words, black South Africa was the colony of White South Africa'.[89] Cronin and Mashilo quotes Harold Wolpe's interpretation that asserted, "'Power was transferred [in 1910] not into the hands of the masses of the people of South Africa, but into the hands of the White minority alone.'".[90]

Despite the unequal development, the ANC's response extended beyond simply ending white domination, aiming instead to develop a 'good society'.[91] The philosophy of documents such as the African Claims of 1943 and the Freedom Charter of 1955 envisaged a society organised to meet the social and economic needs of all its citizens. The African Claims called for support 'until freedom, right and justice are won for all races and colours' and to provide universal public goods such as education, health, and welfare. Similarly, the Freedom Charter took an inclusive, non-racial approach to its vision for the future that focussed on providing public services to all who lived in South Africa. It is crucial to note that the Charter does not proclaim these rights to citizens but rather to all who live in South Africa. Despite the redistribution of the country's resources that would be required to remedy this uneven development, in 1962 it was resolved that that the country should become a 'democratic social welfare state' and that the task of government was to advance it 'without crippling industry, commerce, farming and education'.[92] The influence of the Freedom Charter can be seen in the Preamble and Bill of Rights in the Constitution.

Although the establishment of a non-racial democracy indicated progress in creating this envisaged nation, the incoming government may have underestimated the uneven experience of apartheid among the black population, specifically related to the emphasis of difference that had been exacerbated by the establishment of ethnic 'homelands'.[93] In addition to ignoring these distinctions, the black population had varying experiences of collaboration, and class and political allegiances. These fractures have been allowed to continue to exist as is

[89] Z. Pallo Jordan 'ABC's on What the National Question Entails' (2019) No 46 *Umrabulo* 7.
[90] Cronin & Mashilo op cit 26.
[91] Robert van Niekerk 'The African National Congress: Social Democratic Thinking and the Good Society, 1940–1962' in Webster & Pampillis.
[92] Ibid 56.
[93] Maré 2017 op cit 164.

evidenced by the constitutional recognition of traditional leaders who were erstwhile apartheid collaborators and the introduction of legislation that protects ethnic-based rights.[94] This approach reinforces the question about how tradition is determined and defined both in terms of action and duration i.e., who, in a constantly changing global context, are the guardians of tradition. Similarly, one would have to question at which point all inhabitants within the defined borders are considered both South African and African in cases where their descendants can be traced to other parts of the world.

2.1.5. Reconciliation

The divisions created by South Africa's history and the conditions under which these divisions ended compelled the country to accept reconciliation as part of the process of creating a different nation. As it was a condition of the negotiated end to apartheid that a reconciliation commission be established during the first few years of democratic rule, this extended beyond simply a tacit acceptance.[95] In the context where the state and its institutions remained intact and human rights were provided for in the Interim and final Constitutions, reconciliation was focussed on the social cohesion required to create shared national bonds.

While reconciliation generally means the coming together of things that were previously united and then divided, in South Africa this unity had never existed. The context within which unity had to be created was one that included fragments such as racial divides, former homelands, gender disparities, inequality, and an exploitative migrant labour system. [96] Shared identities in the post-apartheid period would have to be constituted not by individuals who held the same view but by those who, in the Durkheimian sense, recognised collective concerns in a shared context. The collective attachments did not need the same understanding of the history of the country but the ability of people to live together, experiencing the '"minutiae of everyday life"' in shared spaces where access to opportunity for participation is available and inequalities are addressed.[97]

What the reconciliation process would mean when dealing with the past atrocities of both the apartheid state and the liberation movements was not clear. The process could include a combination of establishing the truth, demanding accountability and justice, granting

[94] Ibid 176.
[95] Interim Constitution op cit.
[96] Maré 2005 op cit 502.
[97] Ibid 515.

amnesty, and reconciliation.[98] Uncovering the truth would be painful and would depend on the relationship between the new state and the previous regime.[99] The argument for justice was complex as the new government needed to balance the reconstruction of society with upholding the law by ensuring accountability. While accountability could be by legal punishment, compensation or lustration i.e., purification by sacrifice, there was the risk of impunity for perpetrators.[100] Doxtader suggests that rather than forgetting, amnesty, in the context of transition, serves as the legal interruption of the law without assuming a transcendence of difference but rather by placing faith in the possibility of reconciliation.[101]

In addition to these considerations, the question of how far back the enquiry should go was a factor – should it include all the atrocities since colonialism started or simply those that were legislated? In addition to the timing, there was also the distinction between the perpetrators and those issuing orders, those actively involved in human rights violations and those enforcing petty apartheid rules, and the tacit support that the apartheid state received from those that elected it.[102] While the notion of due obedience was legislated in Argentina to address such disparities,[103] in South Africa Archbishop Tutu[104] contended that the conditioning of individual behaviour, which mitigated against questioning authority, played a similar role.[105] This was complicated in South Africa where violence was perpetrated by both the state as well as liberation movements.

While these factors addressed the challenges with defining the applicable framework, the counter-arguments related to preserving the stability of the new democracy, and the reconciliation of society. In societies like South Africa that had been polarised, there is the risk that prosecution may result in coups or insurrections or, in cases where the transition occurs over an extended period, that the outgoing regime is able to use the opportunity to grant amnesties, resulting in impunity.[106] During the negotiation period, South Africa was at risk of the former and through that period experienced the latter. For reconciliation to be effective, it

[98] Stanley Cohen 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past' (1995) 20 (1) *Law & Social Inquiry* 7-50.
[99] Ibid 15.
[100] Ibid 29.
[101] Erik Doxtader 'Reconciliation—a rhetorical concept/ion' (2003) 89 (4), *Quarterly Journal of Speech* 273 (Doxtader 2003 hereafter).
[102] Jeremy Sarkin & Erin Daly 'Too many questions, too few answers: Reconciliation in transitional societies' (2004) 35(3) *Columbia Human Rights Law Review* 684.
[103] Cohen op cit 32.
[104] The Chairperson of the Truth and Reconciliation Commission.
[105] Sarkin & Daly op cit 686.
[106] Cohen op cit 35.

should endure beyond the parties involved in the process to prevent a recurrence of the tension that had given rise to the initial conflict.[107] This would require conflicting parties to accept the legitimacy of the process and the public agreements and promises made, build relationships, establish the rule of law based on human rights, build trust in state institutions, and redress socio-economic inequality.[108]

The effect of reconciliation must be understood in relation to the recognition of identity and experience because, while reconciliation tends to trump recognition when building peace and ending violence, recognition of past experiences is a crucial component to maintaining the transition to the new democratic reality. Accepting that both concepts are important to move beyond violence, determining the relationship between the two becomes complex.[109] While recognition serves as an affirmation of the individual, Doxtader notes that the struggle for the constitution of identity may ultimately be better pursued through the vulnerability of mutual recognition.[110]

Reconciliation would therefore have to entail the alteration and reconstitution of accepted norms into a new perception that requires action from all parties, including sacrificing justice and truth for the promise and potential of a better future. By agreeing to create this reconciled future, individuals and collectives are expected to set aside their identity and self-interest for the chance at a shared peaceful future. While these concepts require a turn from differentiated pasts to a shared future, this unity in difference provides the potential for possibility in relation to each other. The expression of this potential in words had to be based on the understanding that reconciliation is an ongoing process rather than as a final end-state to be reached. In the South African context where citizens had been deprived of a voice and words about identity distorted, the continuous rhetorical expression of the interplay between recognition and reconciliation is crucial. Acceding to one in the absence of opposition of the other may result in the potential for both to decline.

2.1.6. Rhetoric to Reconcile

Despite the challenge of trust that reconciliation causes, it serves as the basis for democratic rule especially in periods of transition when power is being distributed. Doxtader points to the

[107] Toshihiro Abe 'Reconciliation as Process or Catalyst: Understanding the Concept in a Post-conflict Society' (2012) 11 *Comparative Sociology* 788.
[108] Ibid 793.
[109] Erik Doxtader 'The Faith and Struggle of Beginning (with) Words: On the Turn Between Reconciliation and Recognition' (2007) 40 (1) *Philosophy & Rhetoric* 122 (Doxtader 2007 hereafter).
[110] Ibid 123.

difficulty of defining reconciliation because it required the logic underpinning the concept, i.e., creating something new, to negate the component identities of the new entity. Regarding it as the juncture between being and becoming, he suggests that reconciliation is 'a call for rhetoric and a form of rhetorical activity. In both, individuals locked in conflict employ speech to turn historical justifications for violence toward mutual oppositions that set the stage for civil (dis)agreement and common understanding'.[111] Using rhetoric, opposing views are able to find the appropriate words to create and maintain the new reconfigured beginnings. Alexander, referring to Anderson's contention that nations are created in language to which one was invited to form an 'imagined community', similarly asserted that the nation did not need to speak the same language but that they should be able to communicate with each other.[112] The approach is based on the expression rather than the resolution of disagreement and distrust.

Doxtader's analysis of reconciliation in South Africa locates the initial link between reconciliation and rhetoric in *The Kairos Document.* This was published by a group of theologians in 1985 in the context where the Dutch Reformed Church supported by the state acted to preserve the myth of white supremacy as God's will.[113] Religious opposition to apartheid policies evolved as it preached reconciliation in opposition to divisions as part of the messianic message of hope. *The Kairos Document* suggested that citizens could apply the strategy of naming their experience of oppression to oppose it and to build reconciliation. Using *The Kairos Document*, religious leaders declared apartheid a heresy and accused the state of misusing biblical texts to divide citizens. The aim was that the act of naming their suffering could be used by Christians to reconcile both with each other and with God, thus changing them from simply being oppressed to being capable of collective action through the rhetoric of naming.

This rhetorical basis for reconciliation persisted into the 1990s as the negotiation period commenced. While reconciliation was negotiated through dialogue and 'talks about talks', negotiation could not proceed in the absence of an agreement to reconcile. This agreement to reconcile was preceded by a period of ungovernability where the country's minority government increasingly resorted to violence to maintain order and the ANC, whose resources were reduced, faced the prospect of inheriting a destroyed country. Here Doxtader refers to

[111] Doxtader 2003 op cit 267-8.
[112] Alexander op cit 86.
[113] Erik Doxtader 'Making Rhetorical History in a Time of Transition: The Occasion, Constitution, and Representation of South African Reconciliation' (2001) 4 (2) *Rhetoric and Public Affairs* 229 (Doxtader 2001 hereafter).

Nelson Mandela's prison letter to the then leader of government, P W Botha, proposing an end to the violence by noting the concerns to be resolved for both the black majority and the white minority that required a compromise between having majority rule and an assurance that the white minority will not endure domination.[114] The articulation of the challenge paved the way for further similar rhetorical ventures about reconciliation during the processes of unbanning the liberation movements and the release of Nelson Mandela. These talks provided the basis for the negotiations that ended formal apartheid and the accompanying violence by serving as the 'deliberative scaffolding for a transition to democracy'.[115] The road to democracy was marked not only by positive outcomes such as the drafting of the Interim Constitution and compromises about the form of reconciliation but also by drawbacks such as periodic threatened brinkmanship, the Boipatong massacre in 1992[116] and the assassination of Chris Hani. It was in the aftermath of the Boipatong massacre, as Mandela and De Klerk debated the form that reconciliation would take, that the sunset clauses were incorporated in the Interim Constitution thus resolving the impasse.[117]

The interim peace that existed to resolve the form of reconciliation and governance led to changes in the type of rhetoric employed by leaders for whom the notion of transitioning to the state became a conceivable reality. As an example, it was Nelson Mandela who addressed the nation two days after the assassination of Chris Hani to call for peace after violent outbursts had resulted in at least 70 deaths.[118] Mandela's rhetoric calmed black anger and white fears as he defused tensions by assuming the role of statesman at a time before he was one. Kenneth S. Zagacki concludes that Mandela's rhetoric constituted 'through its own performance, ritualized forms of interaction necessary for achieving a transformation toward a national, democratic identity, one based in peaceful displays of disapproval'.[119]

In South Africa, reconciliation was formed in the process of setting the past aside to talk about reconciling and constituting a different future. How this may have compromised social cohesion and justice becomes complex when it is the setting aside that provides the basis for the trust to establish rights of democracy while it raises the question of how new identities

[114] Ibid 236.
[115] Ibid 239.
[116] Residents from a hostel in Boipatong attacked a nearby township on 17 June 1992 resulting in 39 deaths. These men were purported to be aligned to the Inkatha Freedom Party. This was seen as a threat to the negotiations as the ANC believed that the workers had been supported by the state.
[117] Doxtader 2001 op cit 242.
[118] Kenneth S Zagacki 'Rhetoric, Dialogue, and Performance in Nelson Mandela's "Televised Address on the Assassination of Chris Hani"' (2003) 6 (4) *Rhetoric and Public Affairs* 709-35.
[119] Ibid 729.

are constituted in the context of denying the past. Reconciliation, therefore, was not the bringing together of what had been split but served instead as the bridge between the past and future. The subject of this thesis is whether parliamentary rhetoric in the interim period since agreeing to reconcile has been used appropriately to maintain this bridge. Enacting reconciliation, however, comes into conflict not only with identity, but memory, justice, sacrifice, politics, and recognition of past voices and actions. While reconciliation is contingent on the words expressed to give effect to it, it is also displayed in the expression of the words i.e., in the rhetorical act of engaging.

2.2. A Rhetorical Analysis

As this strong link between rhetoric and reconciliation is the analytical device of this thesis, it is important that it clarifies some of the concepts. Using an Aristotelian approach, one can distinguish between three main forms or branches of oratory i.e., epideictic or ceremonial, which addresses issues in the present and is used to praise or blame; judicial or forensic, which would contain arguments analysing the past with the aim of defending or accusing; and deliberative or legislative, which tends to focus on persuasion of policy or legislation to be enacted in the future. As this is a study of parliamentary oratory, the presumption would be that it would consist of largely deliberative speeches however the analysis will indicate that it may include variations of all three branches.

In addition to the divisions of the forms of persuasion, the study will include an analysis of appeals used by different speakers within the speeches. These include appeals to reason (logos), or emotion (pathos) or the appeal to demonstrate the speaker's integrity (ethos). As deliberative speech acts relate to decisions about the future, the rhetorical appeals would be expected to be based largely on reason and logic to persuade the audiences. The analysis will aim to address the extent to which this contention is valid and whether emotional and ethical appeals are nonetheless based on reason and the degree of intersection between the types of appeal as the country gave effect to the negotiated reconciliation.

2.2.1. Rhetoric - History and Tradition

Although the cultural tradition of rhetoric and its analysis can be traced back to ancient Greece, it is one that changes and grows when new and different forms of rhetoric are recorded.[120] As the tradition is based on texts that are studied, analysed, and taught, the choices of texts tend to be influenced by cultural norms of gender, race, class, and identity. These choices that were

[120] Patricia Bizzell 'Editing the Rhetorical Tradition' (2003) 36 (2) *Philosophy & Rhetoric* 109-118.

dominated by socially privileged men of Western culture saw the 'traditional tradition' focusing largely on Roman and Greek texts such as that of Plato, Aristotle, Cicero, etc.[121] While this tradition provides some substance, it is not fixed nor coherent, and is constituted by those who enter it. As people of colour and women enter the tradition, they introduce a heterogeneity that brings with it a different perspective about culture and interests compared to the traditional approaches where the right to speak and be heard was not often extended to previously marginalised groups. While these changes are not without antagonism, the criteria for texts remain consistent as language is used to manage social interactions and persuasion as a form of public discourse and civic virtue.[122]

According to Thomas B. Farrell, rhetoric in human history can be understood as productive, constitutive and inventive arts.[123] As productive art, rhetoric creates speeches that are theoretical as it uncovers knowledge during the process of persuasion. While the speech can only be studied as rhetoric after the fact, its grounding in the historical context acts as an index of that period. Constitutive rhetoric is viewed as rhetorical practice that accommodates the prevailing conventions as it constitutes new forms of understanding and 'even unprecedented modes of consciousness and affiliation'.[124] Rhetoric's constitutive role would be one that precedes its persuasive function because before audiences can be convinced, they need to be formed as a collective within a tradition. This repetition of tradition and creation of history allows for innovation and constitutes new rhetorical traditions that incorporate previously overlooked discourses. A rhetorician, therefore, is both governed by the past tradition and acts in terms of their autonomy as they perform rhetoric.

This constitutive role moves beyond the productive to situate rhetoric in history and to include the audience as a participant in the creation of the rhetorical identity. This marriage of the practical and theoretical provides rhetoric with the space to straddle the past and the future. The inventional concept places rhetoric in the position where, though operating under the constraints of the past, it can propose a desired future that may change the perceived conditions of the present. Understanding rhetoric within human history is to see how it operates within the context of the prevailing forms of persuasion as well as against the background of what is unavailable.

---

[121] Ibid 110.
[122] Ibid 115.
[123] Thomas B Farrell 'Rhetoric in History as Theory and Praxis: A Blast from the Past' (2008) 41 (4) *Philosophy & Rhetoric* 324.
[124] Ibid 325.

2.2.2. Rhetoric's potential

As noted, the power of rhetoric in South Africa had the potential to turn from violence to peace and compromise despite circumstances that may have appeared fated. The use of fitting words under the appropriate circumstances was sufficient to suspend anger and defuse tensions. Lloyd F. Bitzer identifies the notion of a rhetorical situation, which he argues comes about because of objective exigent circumstances where the appropriate rhetoric is called for to alter reality through the audience who are mediators of change within certain constraints. He defines an exigence as 'an imperfection marked by urgency', which is rhetorical when it is 'capable of positive modification' through the application of discourse.[125] The practice of rhetoric should, therefore, be examined not only by adherence to the practice of the tradition to achieve excellence but the social conditions of time and space within which it takes place.[126]

As the traditional understanding of rhetoric merges with contemporary voices in the context of the changing social and cultural conditions of practice, it creates the space to reflect and invent as it improves. Farrell argued that it is ultimately about the practice of judgment (to enact *krisis*), which has both internal and external aspects that influence mastery of rhetorical practice.[127] To improve rhetorical practice through competitiveness and strategic imagination requires both the internal skills and the relational external components to be present in the body politic in which the discourse takes place. While classical rhetoric outlines the importance of virtue through practical wisdom (*phronesis*), reasoning with like-minded others using enthymemes, and the context for the discourse, the argument is refined depending on circumstances and the audience whose attention must be engaged. The argument will only be valid within that context and with that audience. Equally, the audience must relate to the proofs employed for the inferences to hold and for it to be accepted as practical wisdom. The ability to recognise and affiliate with the topic and its emotional effect on the audience provides the speaker with the tools to prudently judge the appropriate reasoning within that context.

2.2.3. Audiences and Rhetorical constraints

If the potential of rhetoric depends both on the speaker and the audience, the analysis of it must address not only the skill of the rhetor but whether the audience could be persuaded. While the constitution of the collective occurs during the practice speaking, the identity assigned to the

[125] Lloyd F Bitzer 'The Rhetorical Situation' (1992) 25 (1) *Philosophy & Rhetoric* 6.
[126] Thomas B Farrell 'Practicing the Arts of Rhetoric: Tradition and Invention' (1991) 24 (3) *Philosophy & Rhetoric* 183 (Farrell 1991 hereafter).
[127] Ibid 186.

audience is theoretical as it occurs prior to the speech act. The process of constituting the audiences as a collective from previously disparate identities could include constituting problems, projects, or historic conditions.

As a public forum, the audience, in the case of Parliament, extends beyond those in the debating chamber to the general populace who are comprised of competing cultural and social identities. As a constitutionally-mandated public debating forum, this general populace is not confined to citizens in the country but incudes other governments and international agencies, large corporations, and any entity or person who may need to get a sense of the policy framework of the South African state.

Chaim Perelman understands audiences as composites that are constructed of disparate individuals with their own varying beliefs. In addition to the internal individual differences, the beliefs and values of audiences are categorised as real and preferable, as imagined by the speaker, which serves as the basis for common ground between the speaker and the audience. Facts, including scientific findings and political theories about governance, are considered real, while the speaker would intuit shared values that are considered preferable. Perelman understood commonly-held presumptions as real within the context of particular audiences.[128] The values that the speaker asserts as preferable may be based on authority and may be categorised hierarchically in terms of quantity or quality. These assertions form the basis of Perelman's distinction between universal and particular audiences, where assertions that are real apply to universal audiences while those that are preferable appeal to particular audiences. While the universal audience is comprised of rational beings capable of believing a set of facts that would be considered normal and rational by all other such individuals, Perelman understood that while every speaker would have their own conception of what comprises a universal audience, assertions of value could not be made to universal audiences as values would not bind all humans under all circumstances.[129] Persuasion of the universal audience through facts would require appeals to logos, while the particular audience would require pathos attached to values. Speeches in a public context that address both universal and particular audiences would thus be expected to have a combination of facts and values. As

[128] Alan Gross 'A Theory of the Rhetorical Audience: Reflections on Chaim Perelman' (1999) 85 *Quarterly Journal of Speech* 205.
[129] Ibid 207.

speakers would aim to persuade the audience through the course of the speech, the order of the discourse would be crucial for effecting this alteration over the period of the speech.[130]

Audiences may be thought of as a discourse community that provides the logos for the contextual link between rhetoric and existing texts.[131] A discourse community guides what forms part of appropriate discourse and decorum by establishing ethos through accepted standards and level of knowledge. Farrell suggested that the rhetorical community be thought of as a forum where views may be expressed. While the interaction in the forum may be based on a contested issue, it is managed rhetorically through the rules and procedures that are innate to the institution that both constrain and allow exchanges. The values and methods of argument in forums depend on whether the norms in that forum relate to the speaker, message or constituency i.e., whether it relates to authority, integrity, or responsibility/conscience, respectively.[132]

While acceptability relates to topic, place, conventions, and proofs, it also serves to reinforce the prevailing discourse and requires the speaker to understand the context sufficiently so that it can be altered without being excluded from the community. This places the orator in the ambiguous position of being constrained by the discourse community as well as leading the audience to understand the future differently.[133] The individual agency of the orator to persuade as it has been traditionally understood requires the orator to express a level of humility as they accommodate and adapt to the audience's intellect, modes of expression, and the way they represent themselves. This view that the orator is constrained by the audience and uses the constraint to persuade the audience explains how rhetoric is used to maintain traditions and as the tool through which tradition changes.[134] Tradition is thus constituted and adapted as rhetoric mediates between the past and present as it envisages possible future scenarios and creates a sense of possible continuity. As tradition, therefore, constrains rhetoric and rhetorical performance acts to constitute adapted forms of tradition, the orator is expected to both have individual agency to persuade about change while integrating in the audiences' traditions.

Bitzer's exigent rhetorical situations that include constraints provided by circumstance and by the audience, who act as mediators of change, is further constrained by the rhetor's

[130] Ibid 209.
[131] James E Porter 'Intertextuality and the Discourse Community' (1986) 5 (1) *Rhetoric Review* 35.
[132] Farrell 1991 op cit 197-8.
[133] Michael Leff 'Tradition and Agency in Humanistic Rhetoric' (2003) 36 (2) *Philosophy & Rhetoric* 135.
[134] Ibid 140.

character and style.[135] The rhetorical situation may be simple where the audience and exigence is limited, or complex addressing several audiences and conditions. Additionally, it may be highly structured, aimed at a particular audience and requiring specific discourse, or loosely structured where the audience and constraints may change. A rhetorical analysis of speech acts, in this case of political speeches delivered within an institutional environment, must include an understanding of that specific environment and its constraints such as the form, language, time, and audience.[136] Parliamentary rules introduce constraints of appropriate language, sequence of speakers, and time allocation per speaker. The ability of politicians to debate in a manner that allows for the type of strategic manoeuvring for effective persuasion would have to be analysed within these constraints. While political arguments are relatively unregulated requiring no technical knowledge, strategic manoeuvring in response to constraints is dependent on the situation. [137]

2.2.4. Democratic Deliberation

Democracy relies on the exchange of ideas through public deliberation, which in turn requires a set of rules to ensure that it remains civil and productive. The democratic nature of the exchange occurs as each participant is allowed to speak freely, reason, express their views, and raise questions on the basis that they will equally listen to other participants. As the contention of the thesis is that legislators in a newly-formed democracy have missed an opportunity to create a sense of cohesion, the analysis must address not only the forms of persuasion that existed but also the choices made about what to say (invention), how the speeches are arranged, what style the speaker chooses to use to persuade, and how the speech acts are delivered.

While democratic deliberation can be understood as this exchange of views, it obscures the cultural context of the exchange and the possible differential meanings assigned to commonly accepted terms. The notion of an exchange between relative equals similarly ignores the requirement that vested interests would need to be justified by the powerful to the less powerful. These rules often tend to 'exclude already marginalised' groups according to Patricia Roberts-Miller as 'good public discourse' tends to emphasise detached specific forms that may exclude populist rhetoric.[138] Although deliberation aims to change existing social conditions

[135] Bitzer op cit 8.
[136] See Parliamentary Procedure supra
[137] Yvon Tonnard 'Comments on 'Strategic Manoeuvring in Political Argumentation'' (2008) 22(3) A*rgumentation* 331.
[138] J Michael Hogan & Dave Tell 'Demagoguery and Democratic Deliberation: The Search for Rules of Discursive Engagement' (2006) 9 (3) *Rhetoric and Public Affairs* 479.

with participants either challenging or defending it, inequalities between participants means that the challengers invariably are those without power confronting existing social formations with the aim of creating new ones. Changing the existing context requires the challengers to define the problem and those maintaining the context to be willing to engage and to confront the challenge using the definitional terms presented. Those challenging the existing status must be able to 'speak in ways that are responsive to the political speech of a critical mass of fellow citizens' so that the alternative terminologies can be asserted.[139]

Public deliberation is therefore competitive and co-operative as political speakers deliberate about commonly-held meanings and terms. Speakers must be able to use the existing rhetorical discourse to assert a new type of thinking and to shift priorities. This introduction of changed culture is akin to dissenting using existing rhetorical forms where any agreement would be a compromise and be open to further challenges of dissent by new challengers who have their own interests.

Deliberation and creating persuasive arguments in the context of diversity will require the ability to see competing interests and perspectives for democracy to function. Deliberative politics in this sense holds the potential for transformation as citizens and speakers to move from the private subjective view to the civic approach. For access to deliberation to be fair and equitable, the procedural forms of engagement should make provision for views and rhetoric outside the mainstream.[140] This is pertinent in the context of South Africa where the democratic government simply adopted the existing parliamentary system and procedures.

2.2.5. Decorum and Dissent

As an arena for debate in the interest of public good based on consensus, dissent within a parliamentary context is expected to be mediated under rules of decorum. While this can determine norms of equality, democracy, and justice, it does not necessarily result in consensus due to differences of opinion about common good. Inversely, an overt focus on consensus tends to mitigate against the expression of diverse and constructive views that dissension would create. It is this potential that dissent has in relation to consensus in the formation of common interest that is the basis of Doxtader's study of the middle of public life.[141] This middle

[139] Scott Welsh 'Deliberative Democracy and the Rhetorical Production of Political Culture' (2002) 5 (4) *Rhetoric and Public Affairs* 688.
[140] Gerard A Hauser & Chantal Benoit-Barne 'Reflections on Rhetoric, Deliberative Democracy, Civil Society, and Trust' (2002) 5 (2) *Rhetoric and Public Affairs* 265.
[141] Erik Doxtader 'Characters in the Middle of Public Life: Consensus, Dissent, and Ethos' (2000) 33 (4) *Philosophy & Rhetoric* 336-369 (Doxtader 2000 hereafter).

mediates the tensions between personal and collective interests, the need for change while maintaining institutional stability, and the balance between just and good. It provides the space both for the creative changes that the opposing views provide as well as the opportunity for the public to demand accountability as social movements and interest groups challenge prevailing norms and stimulate debate. It is here that the public can encourage 'unity in difference'.[142] Robert L. Ivie notes that the verbal sparring of rhetoric promotes tolerance and contemplation as each speaker considers their own values and identity in relation to the other, thus negotiating 'hubris and humility where opposing identities and interests confront one another'.[143]

Public deliberation in diverse societies such as South Africa require both the representation of norms and the ability to address diverse public goods. While the state would be unable to represent all views equally, it is the deliberation between competing voices that creates consensus between recognition and equality. This consensus can only occur if the marginal views are allowed to be expressed, however, while this expression is required, it is also expected to be modified during the process to creatively develop collective views. There is the risk though that this expression of identity and calls for recognition by the marginal voices may be rejected in favour of prevailing norms. This bridge between dissension and consensus depends on the transformative power of rhetoric. Rhetorical dissent as free speech is thus a fundamental component of a heathy democracy.

2.2.6. Invention and Ethos

While communicative dissensus acts as an accountability mechanism to ensure that recognition is given to diverse identities in the public space, Doxtader similarly proposes that ethos serves as a form of moderating constructive dissent from the violence of disagreement and alienation. He notes that ethos 'is a relational good that binds creative proposals for political change with the deliberative norms that support collective life' so that dissenters balance desire with reason.[144] The ethos or character of the dissenter is expressed by their willingness to risk their self-interest in favour of collective good and whether they would be willing to endure the changes they propose. While the expression of ethos may not necessarily result in success, it provides the bridge between opposition and consensus as it illustrates the value of the dissenting proposal for collective good as well as an understanding of the dissenting view in

[142] Ibid 340.
[143] Robert L Ivie 'Rhetorical Deliberation and Democratic Politics in the Here and Now' (2002) 5 (2) *Rhetoric and Public Affairs* 279 (Ivie 2002 hereafter).
[144] Doxtader 2000 359.

the institutional system. Crucially, ethos is displayed as a dissenter risks sanction for the transgression.

Dissent should be viewed as providing deliberative revisions, rather than rejection, by changing emphasis so that there is some congruence with the consensus approach and the difference of opinion is not mutually exclusive. To change the world view, constructive dissent must both disrupt current thinking and beliefs as well as create new ones that are plausible, without alienating the audience. Ivie suggests that the tool for creating this double act is metaphor that he likens to a rhetorical trickster that both disrupts and affirms by using the relations between difference and similarity.[145] Irony as the trickster's tool is used to show up inconsistencies in seemingly similar concepts allowing the dissenter to reframe opinions through rhetorical invention. To be able to take advantage of the play between disrupting and affirming requires the dissenter to understand the areas of convergence and divergence well to create both the links and the differences using metaphors.

The use of metaphors to persuade is done in conjunction with other rhetorical tools such as repetition, inversion, and hyperbole with the additional aim of establishing a political identity and style.[146] While this requires creativity, how metaphors are used in rhetoric becomes crucial considering the forms of persuasion using either logos, ethos or pathos as it aims to draw parallels between the original issue and a different one by showing a similarity between the two. Aristotle's explanation for how metaphor functions was based on categorising it as evoking the imagination that may be either 'sensitive' occurring in all beings or 'calculative' occurring in calculative animals i.e., humans.[147] While the use of a metaphor that appeals to the sensitive imagination relies on instinctive responses, appeals to calculative imagination requires the audience to make rational connections without revealing the calculative strategy of the speaker. Metaphor in rhetoric must be analysed in terms of its contextual use for it to be understood.

In a similar argument, Perelman suggested that despite the misconception that epideictic speech was artistry, it was ideal for creating the community of shared values required to persuade about fairness and justice both in judicial and deliberative discourses. As the goal in epideictic speeches are to expound on values that result in community coherence, whether it

[145] Robert L Ivie 'Enabling Democratic Dissent' (2015) 101 (1) *Quarterly Journal of Speech* 51 (Ivie 2015 hereafter).
[146] Carola Schoor 'Political metaphor, a matter of purposeful style' (2015) 5 (1) *Metaphor and the Social World* 83.
[147] Ibid 88.

is abstract such as nationalism or as concrete as mourning the dead, it requires the speaker to have the authority or ethos to relate to the community they are addressing. Similarly, for democracy to function it required the minority to accept the deliberative decision of the majority, which would only be possible if there was a sense of shared values.[148] These values are not fixed or immutable and are constantly being recast through invention where the audience's thoughts and attitudes are adapted to the values being presented and bonds strengthened as the basis for future calls to action. The ethical persona required to persuade an audience about shared values requires the rhetor to display goodwill, *phronesis*, and good moral character to induce admiration and for the audience to emulate.

The ability to persuade an audience of a dissenting view while maintaining the deliberative scaffolding of democracy requires speakers to have the ethos to inspire trust in an audience about the rhetorical invention presented. This ability requires the presentation of credible alternative in a manner that Aristotle refers to as calculative and Ivie as being a rhetorical trickster. The credibility of the dissenting view relates to both the ethical appeal of the speaker as well as the tools of invention used to present it. As South Africa entered its democratic phase, it required orators who not only possessed these persuasive capabilities but who were accustomed to the rhetorical discourse.

[148] Chaim Perelman, James Winchester & Molly Black Verene 'Rhetoric and Politics' (1984) 17 (3) *Philosophy & Rhetoric* 132.

Chapter Three - Mandela: Seeking Reconciliation through the Truth

This chapter addresses debates related to the Truth and Reconciliation Commission, which was established to give effect to the provision for 'National Unity and Reconciliation' in the Interim Constitution. While this provision specified reconciliation and amnesty, it did not include the word 'truth',[149] however it required that Parliament pass a law 'providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with'.[150] The TRC was not a crisis created by the Mandela presidency but, as a consequence of its work, atrocities of the past were imported into the present under circumstances that mandated that the past be set aside and a new present and future be created.[151] The Mandela presidency was not only the first democratic one in South Africa but also the first constitutional democracy. As a President elected by Parliament and not directly by the people, the South African President is compelled to govern within the prescripts of the Constitution. In this sense, President Mandela inherited the TRC as part of the constitutional democracy.

The requirement for reconciliation can be traced to the negotiation period that preceded the 1994 democratic elections where it was acknowledged that the impact of South Africa's history of violent oppression as well as the response to it during apartheid should be addressed to resolve the remaining hostilities. Reconciliation, according to the Interim Constitution, proposed a metaphorical 'bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence'. Specifically, the postamble included the following:

> The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.
>
> These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *uBuntu* but not for victimisation.

The use of the uniquely African concept of *Ubuntu* to persuade demonstrated that the drafters understood the extent of the divisions and antagonism that needed to be overcome. Doxtader

[149] Doxtader 2009 op cit 9.
[150] The Constitution of 1993 op cit epilogue.
[151] Doxtader 2007 op cit 136.

points out that the bridge that the postamble presents between the violent past and democratic future is based on the condition of reconciliation and reconstruction.[152]

The Commission had the power to grant amnesty to those applicants who made a full disclosure of politically-related actions during that period. In addition to providing a platform for victims of gross human rights violations to relate their experiences, it was also tasked with developing measures for reparation and restoring the dignity of those that suffered. The aim of public victim testimony and amnesty had the underlying intention of building a human rights culture in the country. Through this process, South Africa attempted to find a balance between the Nuremberg-style trials of Germany and the blanket amnesties provided in similar South American commissions.

The configuration of the TRC can be attributed to several possible sources. It may have been a proposal by the ANC whose Skweyiya and Motsuenyane commissions[153] called for 'a national dialogue on the human rights violations of the past' and to undertake a 'full investigation of the abuses that occurred under the apartheid system'.[154] In addition to keeping negotiations going, the compromise on amnesty may also have been to ensure the commitment of the security forces in the new democracy.[155] Notwithstanding these pragmatic possibilities, it may be possible that the inclusion at that late stage of the negotiation process was based on humanitarian principles held by the ANC. A lecture delivered by Kader Asmal, a senior member of the ANC, in 1992 argued that the success of the democratic movement rested on a 'vision of human relations that is the antithesis of the apartheid heritage' based on a form of reconciliation that assessed the past to assign responsibility and create the 'revival of moral conscience'.[156]

The TRC, once established, was not without criticism by both the victims and perpetrators. It not only downplayed apartheid as a system and as a crime against humanity, it also did not consider the legal machinery that caused apartheid to be enforced under 'the guise of a rule of law'.[157] Nor did it consider legislation enacted prior to 1 March 1960 that had an

[152] Doxtader 2009 op cit 246.
[153] The ANC established these commissions to investigate violations in its training camps.
[154] Doxtader 2009 op cit 204.
[155] Graeme Simpson 'Tell No Lies, Claim No Easy Victories' in Deborah Posel & Graeme Simpson (eds) (2002) *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* 226.
[156] Doxtader 2009 op cit 231.
[157] Mahmood Mamdani 'Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)' (2002) 32 (3/4) *Diacritics* 58.

effect in the mandated period.[158] By focusing on individuals, the TRC only confronted 'activities of the "foot soldiers" who carried out instructions without getting to the thinkers, planners, and legitimisers of apartheid's criminal activities except by way of implication'.[159] The individualisation of amnesty disregarded the impact of forced removals, pass laws, and detentions without trial that were fundamental for the maintenance of apartheid. Perpetrators were not expected to show remorse, only to provide a full disclosure of the facts of their actions.[160] The trade-off for victims of apartheid was that amnesty came at the cost of the right to seek justice. There was also contention about the cut-off date for actions that would be eligible for amnesty. Although the Interim Constitution specified 5 December 1993 as the latest date, political parties subsequently campaigned for it to move to 10 May 1994, the date of Mandela's presidential inauguration.

In addition, the TRC experienced challenges that cast doubt on its work. The first obstacle was a constitutional court challenge by Azapo, and the Biko, Mxenge, and Ribeiro families about the validity of the amnesty provisions in relation to section 22 of the Bill of Rights.[161] The court cited the postamble to the Interim Constitution and ruled that reconciliation and *Ubuntu* took precedence and that the possibility of amnesty served as an incentive for disclosure. The TRC also lost a court challenge by the NP who demanded an apology after it felt that the Commission was biased in its response to the NP's failure to apologise for apartheid. This shifted the focus from the National Party's complicity to the TRC's actions.[162] In addition to addressing legal challenges, as a statutory body it could make enforceable decisions but had to abide by administrative fairness – *audi alteram partem* – that was often used by both victims and perpetrators, consuming a great deal of the TRC's administrative and legal power.[163]

The contextual motives for establishing the TRC as well as the criticism related to its functioning are important for understanding the speakers in the debates, their residual emotions

---

[158] Tinyiko Sam Maluleke 'Truth, National Unity and Reconciliation in South Africa: Aspects of the Emerging Agenda' (1997) 25 (1) *Missionalia* 65.
[159] Ibid 64.
[160] Erik Doxtader & Philippe Joseph Salazar *Truth and Reconciliation in South Africa: The Fundamental Documents* xii.
[161] While Steve Biko died while in police custody, Griffiths Mxenge and Fabian Ribiero and their spouses were assassinated by the state. https://collections.concourt.org.za/bitstream/handle/20.500.12144/2014/02Founding%20Affidavit.pdf?sequence=10&isAllowed=y Accessed on 10 January 2022.
[162] Simpson op cit 227.
[163] Deborah Posel & Graeme Simpson 'The Power of Truth: South Africa's Truth and Reconciliation Commission in Context' in Posel & Simpson (eds) 6.

as well as that of the audiences whom they attempt to persuade. Although it was inevitable that the discussions to resolve the conflict in South Africa would result in compromises, the tensions about whether these were ideal and whether it had popular support appeared in the speeches that were delivered. Although the TRC would reveal actions from a difficult period that preceded the Mandela presidency, it also simultaneously dealt with the promotion of reconciliation and nation-building as its mandate. It is important that these two approaches to understanding nation-building are clarified: while the debates tackled the issue in relation to the TRC, the analysis looks at the way the debates gave rise to (or not) the concept itself. It is important to reiterate that this thesis explores the opportunities for social cohesion within parliamentary debates in the manner that it promoted reconciliation.

The three debates that are analysed were chosen as they illustrate different phases of the TRC process in Parliament and, while each debate provides insight into the behaviours and attitudes at that point in time, collectively it demonstrates changes over the first five-year period of democracy. While the issues raised by the TRC process were obviously emotive, they were not revelations when the debates were taking place. Equally, all political parties represented in Parliament across the spectrum had understood the nature of the compromise that the country was expected to make. These debates provided the platform for the elected leaders to display leadership in the interest of the common good rather than in their own, and their supporters' narrow interest. These debates are characterised by the speakers who were either members of the liberation movement or defenders of apartheid prior to negotiations and thus embody the reconciliation that their rhetoric should display.

The debates chosen were the enactment of the Promotion of National Unity and Reconciliation Bill (the TRC Bill) on 17 May 1995, the NP's threatened withdrawal from the TRC process on 22 May 1997, and the debate about the final TRC report on 25 February 1999.

3.1. Promotion of National Unity and Reconciliation Bill [B30-95] – 17 May 1995

The long debate on the TRC Bill was the culmination of an extensive process of discussion and negotiation, both in the period prior to the elections and since in the parliamentary committee responsible for justice. The TRC Bill gave legal effect to the process envisaged in the Interim Constitution. The aim of the Act was to investigate and establish 'as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during

the period from 1 March 1960 to the cut-off date'.[164] While the speakers in the debate raised the expected deliberative concerns about process and justice, the debate was characterised by epideictic arguments based on identity and status. As this was only one year after the establishment of the democratic government and as the topic was one that addressed the country's divisive violent past, the debate elicited strong emotional appeals related to guilt, trust, suspicion, and redress.

Although he was not the first speaker, it is fitting that the analysis starts with President Mandela, not only owing to his national and global stature, but because his involvement in the debate was extraordinary. It was unorthodox for the President to debate the approval of legislation because, in terms of the Interim Constitution, the President was responsible for assenting to and promulgating Bills passed by Parliament and referring it back to Parliament in the event of a procedural shortcoming in the legislative process.[165] His participation would have been at variance with those responsibilities. By simply participating, President Mandela indicated the importance he attached to the legislation and, accordingly, reconciliation, as was evident by his speech.

President Mandela's address was also exceptional when evaluated against the rest of the debate. His overall ethical appeal, both directly by being present and in his demonstration of a just, democratic, ANC-led government, was unwavering. The humility he displayed during the introduction when he digressed to apologise for his absence was done with a measure of levity and served to reinforce his 'common' touch. He humorously used the term 'playing truant',[166] which implied being naughty rather than a transgression or misconduct. This deference was displayed later in his speech again when he responded in kind to clan praises by the leader of the IFP, a party with whom the ANC was still in conflict in the KwaZulu-Natal province.

The apology for his absence in his introduction, reinforced by his humility, enhanced President Mandela's ethos in a context where it was already globally well established. This was emphasised when he made it apparent that his apology was a personal one, separate from his role as President. This distinction was exhibited again when he stated that it worried him that

[164] Promotion of National Unity and Reconciliation Act, (No 34 of 1995) The initial cut-off date for violations of human rights that the TRC would consider was 6 December 1993. It was subsequently changed to 10 May 1994 through amendments to the Act.
[165] The Constitution of 1993 s82(1).
[166] *Debates of the National Assembly of 1995* Vols 5 and 6 23 January to 11 October 1348 (Hansard 1995 hereafter).

'the President' of the country was not able to be present in Parliament, and when he expressed concern about 'the heavy programme of the President'. When he reminded his audience about the aims of the Bill, he used the phrase, 'I, as President,' before stating what he thought the responsibility of the President was in terms of reconciliation.

Although he used the title of the Bill to appeal to speakers to resist attacking each other, he demonstrated pathos with the concession that 'it is not easy for politicians, including the leaders of political organisations, to suppress the temptation to score points against opponents'. Displaying virtue, he acknowledged that upholding his responsibility as President meant that he had refrained from political attacks, which implied that while empathising about this difficulty for his immediate audience, they needed to enact *krisis* to create the balance between their desire for recognition and reconciliation.

It is significant that in making this appeal he referred to leaders of 'the past 12 years',[167] which indicated that he considered those that participated in the tricameral Parliament as part of this group. This inclusive approach and his magnanimous appeal for respect and for the protection of minorities meant that his slight about those without 'legitimacy and credibility'[168] was moderated.

This focus on reconciliation was sustained as he addressed the contentious issue of the cut-off date where he attempted to persuade his audience that changing the date would be considered only as a concession to those who had sacrificed. His argument, while expressing sympathy, is fallacious because he used the current violence as conditional leverage for not considering a change of date. A charitable interpretation of this exhortation may be that President Mandela sought to use the extension of the date to reduce political violence, which at that stage served as a deterrent to nation-building.

Notwithstanding his attempt to take a relatively impartial view in his speech, when he refuted the perception that the government was 'settling scores', he switched from a reference to government to referring to the ANC as being 'even-handed'[169] in its approach. This slip-up, during a period when the government of national unity was in place, may indicate an innate belief that it was a *de facto* ANC government.

[167] Ibid.
[168] Ibid 1349.
[169] Ibid 1352.

President Mandela's humility and deference maintained an ethical appeal throughout his deliberative speech, and it was only when he addressed the cut-off date that he appealed to logos. His presence supported by his contribution provides a persuasive entreaty to his immediate as well as wider national audience to reconcile past differences. This was emphasised by his final remarks when he praised the audience for their role in 'this miracle'[170] and reiterated his accountability to them.

Taking the view that Nelson Mandela's participation in the debate was not as an ANC member but as the President of country, then an analysis of the approaches by ANC speakers provides some insight into the tensions within the party about the outcome of the negotiations. While all speakers towed the party line that required them to support the legislation, there were differences in rhetorical emphasis relating to the responsibility of the state to uphold morality, the need for recognition of sacrifices made, and taking a pragmatic approach that balanced different interests.

As the first ANC speaker and the Cabinet member responsible for drafting the Bill and for its implementation, Minister of Justice, Mr Dullah Omar,[171] established ethos in his introduction when he expressed sympathy with the families of the 104 miners that were killed on 12 May 1995. His speech revealed his conflict between the need for reconciliation to advance as a country and the need for justice based on the truth, while expressing the importance of morality.

His speech contained both deliberative and epideictic approaches as he, in giving effect to his position in government, tried to argue the merits of the legislation. He introduced the Bill by quoting the Interim Constitution as he contended that while it provided a framework, 'genuine' reconciliation could only be achieved through the detail provided in the legislation. While the latter part of his speech devoted to enumerating the legislative provisions was deliberative, he took an epideictic approach as he outlined the context in which the Bill was tabled. It is here that his discord about reconciliation was most apparent.

He used conciliatory metaphors such as 'stepping stone'[172] and 'historic bridge' to denote the connection from one state to another as he described the past that would be left

[170] Ibid 1353.

[171] Mr Omar was an advocate who defended clients accused under apartheid laws and who held leadership positions in the United Democratic Front and the National Association of Democratic Lawyers. He occupied leadership positions in the ANC after its unbanning in 1990 and formed part of the constitutional negotiating team.

[172] Hansard 1995 op cit 1339.

behind and the basis on which the future was expected to be built. When he introduced the notion of the Bill being important for government's obligations to the international community, it allowed him to pre-emptively proffer the defence that a metaphoric 'Chinese wall'[173] existed during apartheid that may have blocked information from ordinary South Africans. By building the argument about the differences that must be bridged and contrasting it with the way apartheid was understood internationally, he developed the ethos of his argument. Using these statements, Mr Omar's expression of empathy on the basis that the citizens were unaware of the extent of the atrocities acted to confirm the importance of reconciliation and forgiving the past.

He attempted to manage the inconsistency between wanting justice for the victims and the need for reconciliation as he conceded that the granting of amnesty to perpetrators would ignore the victims of human rights violations but rationalised it by pointing out that it was required to meet international obligations, for reconciliation, and that it was the condition that allowed for the establishment of the democratic state. Mr Omar tried to balance the rational requirement for unity and reconciliation with the need for redress for the damage inflicted by apartheid.[174]

His statement confirming the rationale that amnesty and reconciliation were contingent included the notion of dealing with amnesty and the past on a 'morally acceptable basis'. This reference to morality was repeated in the conclusion of his speech. When dealing with amnesty, he appealed to logos as he used phrases such as 'morally acceptable basis', 'rule of law' and 'accountability' at least thrice to emphasise the need for justice.[175] This aimed not only to convince the immediate audience and wider supporters but also the detractors who may have viewed the legislation as betraying the victims of apartheid. This logical argument was continued as he explained the notions of justice and fairness associated with the rule of law, which he illustrated by contrasting it to the violations of the apartheid state.

This moral superiority was evident in his statement that 'the new democratic Government will fulfil its obligation under international law by dealing with the violations of human rights which occurred in the past'.[176] This indicated that the current government, in

[173] Ibid 1340.
[174] Ibid.
[175] Ibid 1341-3.
[176] Ibid 1340.

contrast to the apartheid state, would act in a morally acceptable manner and that it would redress the effects caused by a system that preceded it.

While he continued to maintain a balanced approach when discussing how the legislation would apply equally to all parties, he differentiated the actions of the liberation movements from the apartheid state using the international community's condemnation of apartheid as proof. His concession that 'excesses' were committed by the liberation movements and that the ANC had instituted voluntary commissions of inquiry during their time in exile served to extend the ethical appeal of their support for the TRC. Mr Omar's use of logos was balanced by an ethical and conciliatory appeal about the importance of human rights and dignity. He used the Afrikaans word, '*menswaardigheid'*,[177] which literally translated means ''the worth of a person' to make this point to identify with a wider audience, specifically the Afrikaner community who would have been the supporters and beneficiaries of the apartheid system.

As the Minister in charge of the legislation, Mr Omar was also the last speaker in the debate. Here he maintained his ethical approach in his deliberative speech by expressing appreciation and making commitments, including specifically addressing the concern about the composition of the TRC in Afrikaans in a response to the Freedom Front. This ethical appeal was underscored by his concession that it would be his responsibility to consult all parties including those outside Cabinet. When he expressed support for reconciliation by describing how he understood it, he repeated the word 'reconciliation' in a form of *anaphora* that served to reassure the audience beyond the chamber. Mr Omar's epideictic conclusion that referred to 'a morally acceptable basis' and 'the need to restore a national moral conscience'[178] that provided the basis for the justification of the compromise was like Father Mkhatshwa's[179] epideictic speech, which, in keeping with his religious background, focussed on the moral basis of the legislation.

Father Mkhatshwa distinguished between the technical and the moral aspects of the Bill and reminded the audience that 'every political activity has, or should have, a moral basis'.[180] The epideictic basis for his attempt at deliberation was evident in the preface to statements

[177] Ibid 1342.
[178] Ibid 1348.
[179] Father Mkhatshwa became active in the liberation movement in the 1970s and despite several detentions and banning went on to become a patron of the United Democratic Front, which when it was established in 1983.
[180] Hansard 1995 op cit 1360.

where he used caveats rather than proposals. To reassure the audience, he addressed possible 'blanket impunity to violators'[181] by referring to the work undertaken by a South African judge, Richard Goldstone, in Yugoslavia and Rwanda, where similar crimes were being investigated. While this suggested that he was questioning the process, his second caveat pointed to the rigour (he used the word vigour) with which the TRC would conduct its business in the interest of finding out the truth.

The second part of Father Mkhatshwa's speech that addressed the need for reconciliation, displayed his Christian values as he claimed that it was only after justice through the work of the TRC that reconciliation could begin and 'humanity' be restored, and 'all Gods people in this country' could be '*once again* one united South Africa' (my emphasis).[182] This appeal for a unity that had not previously existed illustrated by his epideictic statements made an ethical appeal to both the immediate audience as well as wider sectors of society such as the security forces and the staff at Parliament. To emphasise his commitment to cohesion he addressed the economic disparity between the minority and the majority in the country in his conclusion and referred to them as 'brothers and sisters'. Father Mkhatshwa's epideictic approach was characterised by attempts to provide hope by talking about values and culture to effect reconciliation.

The notion of morality underpinned the speeches of Ms Verwoerd[183] and Mr Momberg[184] as well. By identifying themselves as Afrikaners, their epideictic speeches and associated ethical appeals to that particular audience focussed on redress of the past. While Ms Verwoerd aimed to persuade a broader audience beyond the chamber that may have been non-partisan, Mr Momberg's speech was directed at Afrikaners like him that had played an active role in upholding the apartheid system. The appeals though similar, took very different forms.

Ms Verwoerd established ethos with her audience even before speaking as she shared a surname with the infamous leader that institutionalised apartheid. Her ethos was confirmed as she identified herself as Afrikaner and chose to deliver her speech in Afrikaans. By creating *stasis* in her introduction about concerns that this group may have had and by using those as the basis for the argument in her speech, she was able to address their reservations directly.

[181] Ibid.
[182] Ibid 1361.
[183] Melanie Verwoerd is an Afrikaner who joined the ANC after its unbanning and was the youngest female elected to Parliament in 1994. She shares her surname with the architect of apartheid by having married his grandson.
[184] Mr Momberg was a founding member of the Democratic Party before he joined the ANC in 1992. Before that he was a member of the NP since 1957.

When she raised the audience's main concern of the TRC being a witch-hunt as her first statement, she attributed it to nameless 'people', which allowed the latitude of being conciliatory rather than accusatory. This approach was repeated when she suggested that the views were 'perhaps understandable',[185] and when she used the phrase 'we Afrikaners' and the word 'we' to confirm her position in this group as she proposed an alternative approach to addressing the past. This appeasement was displayed again when she suggested that there were points in the legislation that people did not grasp, which implied a lack of understanding rather than a malevolent intent. To prove that apartheid affected many different sectors, she appealed to pathos when she cited an anecdote about an Afrikaner friend whose baby was maimed by the apartheid state.[186]

Her conclusion, which like the rest of the speech encouraged the group to participate in the reconciliation, included metaphors such as 'crooked wood' producing a 'straight plank', and an 'illness' and 'partial cure'[187] that suggested a detached, rather than an emotional response. Although she reverted to English at the end of her speech, she continued to confirm her identity as part of the group. The speech does not deal with the issues of amnesty or culpability but instead focussed on reconciliation, which may be interpreted as either naiveté or a considered form of persuasion.

Delivering his very short speech in Afrikaans as well, Mr Momberg, a former NP member, expressed his guilt as he exhorted his fellow Afrikaners to repent. Although his introduction, which was dedicated to the anti-apartheid activists that were killed and maimed, established his ethos with that group, his speech was based on the redemption that he believed the legislation would offer to people like him who were misled. He used biblical expressions related to guilt and confession, including a quote from a hymn, and suggested that those who do not confess 'deserve to be consumed in the hell of self-reproach forever'.[188] The personal entreaties in Mr Momberg's speech were a theme observed in speeches by other ANC members. While it was about redemption for him, for others it was about uncovering the truth. The use of the metaphor of closing the book on apartheid echoed Prof Asmal (below) as it was premised the need to deal with the past unlike his former NP colleagues who used it to appeal for forgetting.

[185] Hansard 1995 op cit 1401.
[186] Ibid 1402.
[187] Ibid 1403.
[188] Ibid 1408.

Mr van Eck[189] who like Mr Momberg, was a previous member of Parliament but for the opposition, used his speech to illustrate the values of the ANC by contrasting it with the apartheid state. His short judicial speech that expressed support for knowing the truth ridiculed the former Minister of Police who had been unable to respond to parliamentary questions because of apartheid's secrecy. He confirmed his focus on morality as he explained that he was able to expose some of the atrocities by using his parliamentary position.[190]

As the chairperson of the committee that debated the legislation, although the overall aim of Mr De Lange's[191] speech appealed to the law's morality and the need to bridge the past and the future, it tended to meander between different approaches and appeals, possibly because it was improvised. His introduction indicated this disorder as he spoke about rising with 'great humility', which with his reference to the Bill being called the 'mother of all Bills',[192] served to display a hubris rather than actual humility. While a sense of pride was justified, an appeal to ethos would have been better served if he had acknowledged contributions by others thereby displaying the reconciliation that the Bill intended. When he acknowledged the other members of the committee later in his speech, it was because they assisted him, as he accentuated his role with the qualification 'from time to time, when they were there'.[193] His acknowledgment of them included describing their contributions as creating a Bill that was a 'lappieskombers'[194] the Afrikaans word for a patchwork quilt. This was a peculiar way to describe a very comprehensive and important Bill as the traditional understanding of this type of quilt is that it is stitched together from leftover pieces of fabric.

He used the word humility twice more, which appeared trite in the context of the overall self-important approach of the speech that tended to point to his personal achievements in relation to the Bill. Although he dedicated the Bill to the victims of apartheid, the legislation was seen as a service to them, rather than a form of justice or right. His statements that the Bill created a 'soft place for victims to come and deal with hard issues', that '*we* have created this truth commission' (my emphasis) , 'to send out a message to the victims that we have not

[189] Mr van Eck started his political in the Progressive Party in the 1960s and won a parliamentary seat in 1987 after which he continued as an independent opposition member. He joined the ANC in 1992 despite being part of the DP in 1989.
[190] Hansard 1995 op cit 1424-6.
[191] As an advocate, Mr de Lange participated in several democratic and lawyer organisations including the UDF and National Association of Democratic Lawyers. He joined the ANC in 1991.
[192] Hansard 1995 op cit 1426.
[193] Ibid 1427.
[194] Ibid 1438.

forgotten them… the struggle – has been for them and in dedication to them'[195] displayed a patronising outlook that the victims were being provided with a gift rather than rightful justice and redress. It also demonstrated that he did not identify with this audience directly.

As indicated, because this is an unprepared speech, the structure does not conform to one for persuasion. When lauding the uniqueness of the Bill, Mr De Lange stated that perpetrators had been allowed to 'bask in the glory of what they have done'[196] and get 'off scot-free' without providing any evidence for this statement. He addressed the issue of the cut-off date by creating a straw man argument about a fictional proposal, which allowed him to display a potential benevolence about the date. When he refuted statements by Mr Maree, which was done in several turns and resulted in him referring to Mr Maree as a liar, he resorted to praising other NP members to establish the contrast. This unstructured approach was evident as he used a metaphor of a dying animal to describe the ending of apartheid by stating that a hunter killed 'that *lovely* springbok'[197], which was a bizarre way of describing an oppressive system. Mr De Lange oscillated between topics and made no real attempt to establish ethos. Notwithstanding the structure, he had moments that are deliberative where he employed logos such as discussing the requirement for the legislation and how it formed part of the broader aims of the democratic government.[198]

As the last speaker before the Minister, Mr Maharaj's[199] role would have been to respond to the points raised in the debate however his speech served to argue the moral superiority of the ANC's position. His introduction included a joke that seemed to have been aimed at Mr van Heerden's invective about communism. While the punch line was obscure, the joke was told in the traditional racist 'Van der Merwe'[200] form, which served instead to diminish Mr Maharaj's subsequent appeal to ethos. These appeals used the President's speech in the debate as well as Mr Mandela's generally accepted ethos to rebuke the opposition for their conditional support and to serve as proof of the superior morality of the ANC. While he was epideictic as he condemned the 'unjust and immoral laws'[201] of apartheid and praised the

[195] Ibid 1427.
[196] Ibid.
[197] Ibid 1431.
[198] Ibid 1431.
[199] Mr Maharaj joined the ANC as a student, was imprisoned for 12 years, and continued working for the organisation while in exile. He returned when the ANC was unbanned and formed part of the re-launched SACP in 1990.
[200] During the apartheid period, racist jokes that had the purpose of suggesting that white South Africans were not intelligent usually had a central figure with the surname 'Van der Merwe'. Hansard 1995 op cit 1433.
[201] Ibid 1435.

liberation movements for their actions, his concluding remarks were deliberative and conciliatory as he used the emotional appeal of creating a better society for the country's children. The concessions and tone of the latter part of his speech were indicative of the tension between justice and compromise that marked the ANC's inputs to the debate. He conceded that the Bill substitutes amnesty for justice, but that compromise was required for reconciliation and, in response to the NP, that reconciliation should be a voluntary act.

A similar acknowledgment about setting aside identity to create a new society was expressed by Mr Gumede. [202] His short epideictic contribution in which he appealed for the truth was ethical as he recognised the privilege of addressing the House by contrasting it with the difficult circumstances 'in our communities'.[203] When he recounted the history of the ANC and the country's apartheid policies, he juxtaposed the differences using a repetition of the words 'right' and 'might'. While this implied a light-hearted approach, the seriousness of the sacrifices made was noted through an appeal to pathos as he listed the names of those that had been killed and injured including some of the details of the injuries. His conclusion using *hypophora* was an emotional underscoring of his appeal to find answers.

This tension relating to sacrifices was overt in Ms Jana's[204] speech in which she indicated overall support for the legislation but appealed to logos to raise concerns. In her first equivocation, she referred to the legislation as one of the 'more enlightened' before claiming that it 'violates the fundamental rights of civil people'.[205] Her speech appeared to oppose the Bill as she pointed out the constitutional disparities between the postamble and section 33 that limited the infringements on the rights guaranteed in the Constitution. This was displayed as she pointed out that the Bill favoured the interests and rights of the perpetrators rather than the victims who were the only ones expected to make sacrifices and when she refuted the moral justification for removing liability from the previous state and the individuals who led it. Despite these misgivings, she expressed her support in an ethical appeal designed to demonstrate the selfless actions of the ANC and the government to 'advance reconciliation'.[206]

---

[202] Mr Gumede, a lawyer, was an active member of the ANC for most of his life. In 1983, he was elected as joint President of the UDF along with Oscar Mpetha and Albertina Sisulu. He was 80 years old when he was elected to Parliament in 1994.
[203] Hansard 1995 op cit 1421.
[204] Ms. Jana was an anti-apartheid activist and lawyer who represented senior figures such as Nelson and Winnie Mandela as well as ordinary South Africans who were targeted by the apartheid state. Ms. Jana was the last person to see the Solomon Mahlangu before he was hanged for murdering two white people. Despite being an ANC MP, her political allegiance tended to the Black Consciousness movement of Steven Biko.
[205] Hansard 1995 op cit 1354.
[206] Ibid 1354.

As proof she quoted Beyers Naude, a white, anti-apartheid cleric who was ostracised by the Dutch Reformed Church and banned by the apartheid government. Her vacillation between deliberative rhetoric, supporting a balanced view, and her need to criticise imbalances in the legislation as it related to victims and perpetrators produced uneven and stilted support.

Her anecdotal conclusion that used pathos when describing reparations for the death of a child served not only to reinforce her ethical position, it also aligned her with the ethos of Mahatma Gandhi. As the Indian conflict was characterised by divisions between two main sectors of its society, the anecdote also served as an apt analogy for the topic being debated.

From his graphically gruesome anecdotal introduction it was evident that Mr Ebrahim[207] was equally conflicted. He used pathos through four related anecdotes about the injustices suffered by both activists and innocent bystanders to illustrate the sacrifice made by liberation movements. The ethical argument that related to the strength of his beliefs and the 'morality of liberation'[208] while being incarcerated was equally graphic and ultimately epideictic in a debate about legislation. In fact, he referred to the Bill only once in his speech to make a logical appeal for the recognition of the victims of the apartheid regime.

After provoking pathos for the victims of apartheid, he counter-intuitively expressed sympathy for those in the audience that would be most hostile to his emotional pleas, the Afrikaners, for the difficulties they faced during the Anglo-Boer war.[209] While the logical argument was framed to equate the suffering of the two groups, Mr Ebrahim was able to demonstrate the virtue of moral superiority. The ability of the liberation movement to forgive atrocities in a context where the Afrikaners resentment towards the English remained long after the war served to emphasise the extent of the sacrifice being made. In his concluding remarks, which may in fact not be the conclusion of the speech as his time had expired, he used a type of *chiasmus* that compares those that fought against apartheid with those that were in power to conclude epideictically with a focus on values.

[207] Mr Ebrahim who joined the liberation in his youth was arrested in 1963 for sabotage and after spending 15 years in prison, went into exile on the instruction of the ANC. While operating in the political underground, he was kidnapped by the apartheid security forces from Swaziland and imprisoned until 1991.
[208] Hansard 1995 op cit 1366.
[209] Ibid.

The notion of recognition of personal sacrifice was blatant in both Prof Du Toit[210] and Dr Davies'[211] speeches. As the third Afrikaner representing the ANC in the debate, Prof du Toit's speech started with an account of a personal violent incident just before the elections, which he used to motivate for extending the amnesty date. Using his personal sacrifice in an appeal to humility, Du Toit emphasised his ethos when he changed from referring to himself in the first person to using the more detached impersonal pronoun 'one' and his clichéd, masculine expression that 'cowboys do not cry'.[212] By addressing the audience as 'comrades' he indicated his allegiance to his party, rather than to the broader audience or to those who may identify with him. This was reinforced by the reference to President Mandela by his clan name 'Madiba'.

Prof Du Toit's demeanour, when he switched to Afrikaans to address the Afrikaner audience directly, emphasised his association with his party over his cultural identity. Unlike Ms Verwoerd and Mr Momberg who attempted to persuade this group, he opted to rebuke and offend them as being leaderless and without direction. There was no attempt to establish ethos or seek middle ground in his approach, instead he threatened their identity when he stated '[H]e must change'(*sic*).[213] It was only at the end of his speech when he acknowledged that there were young Afrikaners who were 'demonstrating solidarity with the new enlightenment' and conceded that the 'Afrikaner's mentality is changing'.[214] Prof Du Toit's speech, which was epideictic based on values, appeared to be directed at establishing his ethos within his own party rather than arguing for the Bill or trying to convince other Afrikaners.

While Dr Davies also called for acknowledgement, his approach was designed to shock his audience and demonstrate how casually insensitive the apartheid state was, as he cited details from the dossier that was compiled on him by the, ironically named, Civil Co-operation Bureau (CCB).[215] The CCB was established as a death squad to eradicate anti-apartheid activists. While this personal connection functioned to create sympathy for Dr Davies, he made an ethical appeal when he expressed humility about his role and used this example as proof for the argument for the establishment of the TRC. Unlike many of his ANC colleagues, he opted

[210] Prof du Toit who was admitted as an advocate in 1970 lectured in constitutional law at the University of the Orange Free State from 1973. He joined the ANC in 1992.
[211] Due to his anti-apartheid activities and his leftist political leanings, Dr Davies went into exile in 1979 until 1990. He was part of the Centro de Estudos Africanos at Eduardo Mondlane University in Maputo, Mozambique and joined the ANC and SACP during this period.
[212] Hansard 1995 op cit 1417.
[213] Ibid 1418.
[214] Ibid 1419.
[215] Ibid 1408.

for a more confrontational approach when he refuted statements by members of the former apartheid Cabinet who stated that they had not issued the orders for the attacks. He singled out the Minister of Minerals and Energy Affairs in the government of national unity, who had held the post of Minister for Foreign Affairs from 1977 to 1994, to illustrate the incongruity of proceeding without holding perpetrators to account. By citing remarks that the Minister had made to the media and in Parliament in 1986, he provided proof that a Minister who had supported apartheid was able to retain a senior government post.[216]

Unlike his ANC colleagues, Mr Hofmeyr[217] did not display the conflict of conviction about the issues of justice and reconciliation. As the deputy Chairperson of the Portfolio Committee that finalised the Bill, he took a pragmatic position in support of the legislation. Mr Hofmeyr's speech can be divided into two intertwined parts: one was epideictic and appealed to ethos by praising the public and the ANC, and the second refuted statements made by previous speakers. This structure, particularly the latter part, may have been devised as part of the ANC's strategy to address statements by the opposition parties midway through a long debate. However, the division of these two areas were not well-defined as he responded to previous speakers while addressing the approach that the ANC had taken, resulting in his aim to appeal to logos being interrupted by his emotional responses.

Mr Hofmeyr appealed to ethos as he explained that the secrecy provision, initially mooted as part of the amnesty hearings, was discarded because of the pressure that the 'public brought to bear' to illustrate the democratic behaviour of the ANC.[218] This humility was displayed again when he explained the even-handed manner with which the ANC had dealt with the Bill and contrasted this with what liberation movements elsewhere had done. This argument is false because the ANC had not been outright victors, which meant that their choices were limited. As further proof, he cited the example of World War Two air force pilots who were not prosecuted.[219] This analogy tends to exaggerate the already false comparison because while the ANC was involved in violent conflict, it was not conventional warfare. This ethical stance was continued when he refuted concerns that the Bill was targeted at Afrikaners, and to display ethos, he praised the Afrikaners that had fought against apartheid in Afrikaans. It was

[216] Ibid 1409-10.
[217] Mr Hofmeyr was active in student politics during the 1970s and was banned for five years by the apartheid state. He was involved in left-leaning organisations and joined the UDF when it was established. He successfully challenged the apartheid state to allow the UDF to hold public meetings in the Western Cape.
[218] Hansard 1995 op cit 1397.
[219] Ibid 1397.

apparent that Mr Hofmeyr's epideictic approach, which appealed to both ethos and logos, was maintained despite disagreeing with previous speakers. Although he addressed statements made by the opposition, his logical responses addressed issues raised, rather than to retaliate.

His colleague, Mr Macozoma's[220] speech, despite its attempt at humour in his introduction to accentuate the ANC's ethical standing, continued to display the party's conflicting views on the aims of the TRC as it related to justice and truth. His speech, which was a mix of epideictic and deliberative approaches, seemed to have two parts: the first was three anecdotes related to the topic while the latter part addressed the importance of the legislation and ultimately took a realistic approach.

The first anecdote demonstrated that European countries were still grappling with reconciliation 50 years after the end of the Second World War. The second anticipated a series of questions and criticisms that may have been held by many in the audience but in this case, it was attributed to the brother of an activist assassinated by the apartheid government, which gave it *gravitas*. The third story, which seemed to be a continuation of the first, performed the function of responding to the questions and criticisms. These anecdotes implied that as revenge and retribution did not serve the Europeans, compromise was the way to hold onto the 'political miracle'.[221]

Mr Macozoma established *stasis* of quality relating to the compromise and reasoning aloud so that the conclusion was inevitable to the audience. This form of *hypophora* served to increase his ethical standing as he paraphrased Malcolm X, a black leader from the United States, who was killed for defending his principles. However, his principled statement that 'justice should not become a victim'[222] to compromise was invalidated as he argued the importance of the Bill. This contradiction was displayed again as he described instances of injustice that clearly had to be accepted as a compromise to get the truth. His contention that knowing the truth was crucial for reconciliation, which did not mean 'sweeping difficult issues under the carpet', refrained from providing deliberative solutions. Instead, the precariousness of the democracy and the importance of pragmatism was obvious as Mr Macozoma revealed

[220] Mr Macozoma was arrested at age 19 for leading student protests and after spending five years on Robben Island, he continued to be active in the liberation movement including the United Democratic Front.
[221] Hansard 1995 op cit 1389.
[222] Ibid.

his concern about the loss of 'the political miracle' with the phrase 'ephemeral and evaporate'.[223]

As one of the leading and early proponents of the TRC, Prof Asmal's[224] contribution was critical. Like his ANC colleagues, the tension that agreeing to the TRC evoked was evident in his speech but unlike many of them he took a pragmatic approach by addressing it upfront. This speech that appealed largely to logos, started in a relatively facetious manner when he used *paralipsis* to refute statements by the NP's Mr Schutte about the ANC's commissions. His ethical appeal stating that he did not have the 'tradition of deference'[225] of the President acknowledged the President's request for ethical behaviour, which he simply flouted with his continued *paralipsis* by stating that he would not use the 'tu quoque' and 'mote and the beam' arguments, which he, in fact, did. That Prof Asmal would refute Mr Schutte in this manner is indicative of the pragmatic approach that he took as he upheld and extended his ethos by disagreeing without apparent rancour. This pragmatism was displayed throughout his speech as illustrated when he, in turn, used Mr Schutte's statements to refute the IFP's Mr Mzizi's call for a judicial process.

Even though Prof Asmal's speech started with a partisan response to Mr Schutte, it remained conciliatory and deliberative as he used logos to appeal to the audience beyond the National Assembly when he stated that it was important 'to refer to what we are about' and, when referring to criticisms, that 'we carry public opinion'.[226] Although he conceded that the Bill was a compromise, he also recognised that it has left scars on both victims and perpetrators. His suggestion about the appropriateness of the decision to have a commission was introduced by citing extreme examples that had been used elsewhere, which served to confirm the logical appeal of his argument.

While Prof Asmal addressed the tension directly, his support, understandably, was not neutral as he addressed the issues that the TRC was set to resolve. His sarcastic comment about 'attacks of amnesia'[227] and cosmetic cover-ups displayed this partiality. The listing of the names of activists that were killed and of actions taken by the apartheid state illustrated the degree of damage and the scale of the sacrifice by the liberation movements. His comparison

[223] Ibid 1390.
[224] Prof Asmal went into exile at an early age and was responsible for the establishment of a several anti-apartheid movements in the United Kingdom. During this time, he occupied senior positions within the ANC including on the ANC's constitutional committee.
[225] Hansard 1995 op cit 1378.
[226] Ibid.
[227] Ibid 1379.

of the actions of the apartheid government as 'systematic violation of human rights' and the passive concession that 'things were done in the heat of the struggle'[228] develops this contrast between a calculated and cold apartheid government and the impassioned response to it. This partiality aimed to assure (using Perelman's understanding) that particular audience who may still have had misgivings that there was empathy for their sacrifice. Prof Asmal used the expression 'close the book' and 'close the chapter' favoured by the NP (see below) when he made the deliberative argument in favour of the TRC, justifying it with the logical appeal that 'we sacrifice justice for truth so as to consolidate democracy'.[229] His concessions that included statements such as 'the Bill is part of the process of compromise, the process of compromise that started with Codesa[230] and Kempton Park', '[I]t will not be an easy process', 'it is not impunity to allow people to go away', and by focussing on the uniqueness of the concept of *Ubuntu* when quoting the Interim Constitution, reinforced his appeal to ethos and logos as he concluded his speech.[231]

As the Bill being debated would result in the exposure of the apartheid atrocities, it was expected that the members of the political party that had upheld and enforced the discriminatory system would take a defensive approach. This approach varied from deliberative appeals, based on logos, for equivalence of treatment of atrocities by all political parties to epideictic attacks on the ANC.

Mr Fismar, Minister for General Services in the Government of National Unity, the first NP speaker, illustrated this balance as he tried to remain deliberative but vacillated between epideictically attacking the ANC and forensically justifying apartheid. To address his obvious ethical challenge, he introduced his speech by welcoming President Mandela's contribution and associating his party with the amnesty date although he indicated distance when he switched to the passive voice, as a form of impartiality, to indicate that an extension would be welcomed. His defensiveness was demonstrated when he used phrases such as 'a conflict' and 'the wrong ideology'[232] that reduced apartheid to a discord and avoided addressing its systemic basis.

[228] Ibid.
[229] Ibid 1381.
[230] Codesa is an abbreviation of Convention for a Democratic South Africa, which was the structure of all interested and affected parties that negotiated the end of apartheid and violence and the establishment of democracy.
[231] Hansard 1995 op cit 1383.
[232] Ibid 1357.

To augment his party's ethical position, he epideictically cast them as virtuous having agreed to selflessly support the legislation despite its apparent flaws. This virtue was negated by the lack of humility displayed by making the support conditional on the process unfolding in the manner that they proposed, and the arrogance displayed with the false argument that they 'were never afraid to enter risky waters to bring about change'.[233] This tension was evident as he dissociated himself and his party from apartheid by using the passive voice but justified their actions as a reaction to communism and to 'the other side'.[234] While he praised F W de Klerk with 'eternal appreciation' as the main protagonist of the democratic South Africa, he relegated President Mandela 'together with others'. Equally, when he thanked the committee, he continued the self-praise by singling out his NP colleague, Danie Schutte. Mr Fismar's speech indicates his difficulty with setting aside his identity to support the Durkheimian notion of collective attachments.

In keeping with the defensive approach, Mr Fismar took the view that they should 'close the book on the past',[235] that a positive aspect of the legislation would be that it 'bring(s) comfort and acceptance', and that 'the book full of reproach, accusations and palliatives that should be closed once and for all'. Mr Fismar was the first person in the debate to introduce the theme of closing the book, which was repeated by his NP colleagues. His attempt to solicit sympathy in an emotional appeal in his conclusion, by justifying apartheid as a response to the urban terror that South Africans had to endure, and the 'sacrifice' that was being asked of them, indicated a direct appeal to NP supporters only.

Messrs Schutte, Groenewald and Bakker attempted to take a pragmatic approach by deliberatively arguing that the process should remain rational and that parties should be treated equally. By attempting to remove the emotional aspect of the apartheid past from the TRC's work, they may have been trying to minimise the impact that the uncovering of the truth would contain. This may also have been an attempt to protect those who were simply following orders.

Mr Schutte echoed Mr Fismar about the conditional support that their party would give to the Bill by using the protection of the fragile state of reconciliation to avert a threat to democracy as the apparent altruistic reason. Mr Schutte's deliberative speech, which appealed to logos, used the word 'sensible' at least four times interspersed with similar sentiments such

[233] Ibid.
[234] Ibid.
[235] Ibid 1356-9.

as ‘pragmatic’, ‘balanced’, ‘impartial’, ‘equitable’ and ‘meaningful’.[236] Like Mr Fismar, he pleaded to ‘close the book’ on the past. He premised this defensive appeal to logos by suggesting that the political strife and violence, which had resulted in ‘accusations and recriminations’,[237] had happened without agency or liability. This allowed him to use *dialysis* where in response to a question about the future that created stasis, he provided possible options. This dispassionate approach when dealing with options and presenting his argument, using international examples to propose that the problem must be dealt with in a forthright manner, allowed for the continued appeal that it be ‘sensible and pragmatic’.[238]

His concern about the amnesty process also focussed on equality, and his praise of Parliament for the unique step of legislating a truth commission through ‘sensible procedures’ reiterated the appeal to logos and served as an introduction to criticise the ANC’s commissions. These practical values and the admonition that it should ‘not jeopardise’[239] what had been accomplished was repeated as Mr Schutte concluded his deliberative speech that ultimately called for emotion to be removed from what would inevitably be an incredibly emotional process. This argument formed the basis of the NP defence that actions taken were within the law and that any deviations were the result of uncontrollable unnamed individuals.

Mr Groenewald’s deliberative speech raised concerns under the banner of addressing public perceptions of the TRC being established to deal with reprisals and revenge as he aimed to establish ethos by proposing that these perceptions should be transformed so that the process was impartial. In this way Mr Groenewald appeared to make a rational, detached argument rather than a direct attack, which was in keeping with the dispassionate approach proposed by his colleagues. His proposal that the composition of the Commission be carefully considered was supported by aligning himself with the proposal by the Association of Law Societies[240] for a judge to chair the TRC, thus reinforcing this appeal to both logos and ethos.

Mr Groenewald’s reiteration of the view expressed by his colleagues that reconciliation was a voluntary action seemed to imply either an underlying fear of intimidation, indicative of the level of existing distrust, or it was to reassure the NP’s supporters that they were being protected by their leaders. To address this in a rational manner, he provided both a legal proof about time limits on prosecution of crimes as well as an ethical appeal to maintain the dignity

[236] Ibid 1373-8.
[237] Ibid 1374.
[238] Ibid.
[239] Ibid 1377.
[240] Ibid 1412.

of Afrikaners by using President Mandela's statement about protecting minorities. When forensically contrasting the actions during apartheid with that of the liberation movements by referring to 'crimes committed by members of the security forces',[241] he removed liability from the previous government. His epideictic conclusion, which appealed to 'all sides' to have the 'required humility' and 'acknowledge own mistakes sufficiently'[242] was consistent with the rest of his speech that neither accused nor conceded directly.

Mr Bakker's deliberative speech similarly appealed to logos despite his incongruous introduction of expressing 'great joy' at being able to participate in the debate on a Bill of that gravity. As he delivered the speech in Afrikaans, this may be a consequence of the translation. His attempt at ethos, by aligning himself with the aims of national unity and reconciliation and by informing the audience that he was a jurist to indicate knowledge about the law and the ability to be impartial, was in keeping with the rational approach of the NP. His bias was displayed when he compared the Magoo Bar bomber to the apartheid state's actions using references such as the 'man who planted the bomb' in contrast to 'the security forces who in *any way* made themselves guilty of crimes'.[243] What is noteworthy was not only his use of the passive voice but like his NP colleague, Mr Groenewald, he attributed the apartheid actions to the security forces, thus dissociating the former state from the acts of violence.

The divisions in the National Party, however, were evident from Mr Maree and Dr van Heerden's epideictic speeches, as both opted to criticise the ANC in their speeches. The main objective of Mr Maree's speech, which was delivered in Afrikaans and notwithstanding the occasional misinterpretation, was to attack the Minister of Justice and the ANC. His attempt to establish ethos by indicating that the NP had supported the establishment of the TRC as early as November 1993 was weak, as the Interim Constitution that that stipulated the creation of the TRC in statute was finalised in that month. His epideictic invectives expressed the conditional support of his party through phrases such as, 'how much suspicion they [the ANC] created', 'the largest and most expensive propaganda apparatus', 'threatened the NP with retribution by means of the truth commission',[244] and that the legislation was 'conceived and born in sin'. Even Mr Maree's praise of the NP members of the committee lacked conviction because it sounded as if they were simply present rather than active participants. His bad conclusion of introducing a red herring about the cost of the Commission was followed by a *non sequitur* that

[241] Ibid 1414.
[242] Ibid.
[243] Ibid 1423.
[244] Ibid 1395.

stated both Dr du Toit[245] and Prof Asmal had confirmed that the country already knew the truth. The argument he made was not only in contradiction to his own introduction that expressed support for the TRC but deviated from the approach taken by his NP colleagues.

Dr van Heerden illustrated similar mistrust and defensiveness as he attacked the Minister of Justice as a fallen angel.[246] This set the tone for an epideictic speech that justified apartheid by blaming communist regimes of committing 'serious atrocities',[247] which required the defence of South Africa. This explanation was consistent with his claim that the dismantling of the USSR allowed for changes in South Africa. Dr van Heerden's defensive, epideictic speech, which defended principles that was an anathema to most of the immediate and wider audience, was apparent by the number of interjections and interruptions.

Of the NP speakers in the debate, Ms van Wyk's speech was distinct from her colleagues as she quoted the postamble to the Interim Constitution and aligned herself ethically to President Mandela. This alignment, however, did not extend to the rest of the ANC as she criticised the Minister and other unnamed, presumably, ANC speakers in her epideictic approach. Other than the President, she praised the efforts of her party by elevating them as being responsible for an enlightened role in the process of passing the Bill. Her conclusion, interestingly and in contrast to her NP colleagues, criticised those still supporting apartheid through an emotional appeal with expressive phrases such as, 'hands and hearts will be free to help the living to prosper', 'the inner healing of the psyche of the nation'[248] and '*Ubuntu'*. Her speech, while not completely contradictory to the differing NP views that were offered, had similarities with that of ANC Afrikaner members, Prof Du Toit and Ms Verwoerd, and her conclusion may provide insight into why she subsequently became an ANC member.

The two representatives of the Inkatha Freedom Party (IFP), as the third largest party in the National Assembly during this period, took two slightly differing approaches to their speeches although they were consistent about the party abstaining from the vote on the Bill. Mr Mzizi displayed his ethos by recognising the chairperson of the committee, the officials, and the President to express relative impartiality before stating the reluctance of his party to back the legislation on principle. Using a deliberative approach, he expressed support for the provisions of the Interim Constitution and the need to promote reconciliation and expose the

[245] This Du Toit was an academic from the University of Cape Town that had made a submission to the Portfolio committee when it discussed the Bill.
[246] Hansard 1995 op cit 1414.
[247] Ibid 1415.
[248] Ibid 1421.

truth but suggested that the courts are more likely to be objective. The proof for his distrust was provided in an emotional appeal that portrayed the IFP as victims of political violence by both the apartheid government as well as the ANC in its former guise. His analogies of a 'McCarthy Commission', and '1984',[249] the novel by George Orwell, to indicate an all-powerful state where citizens' rights are reduced, emphasised this appeal for sympathy and their concern about victimisation.

His IFP colleague Mr Cassim's approach was to raise his objections to the Bill by recognising and aligning himself to speakers from across the political spectrum in a combination of deliberative and epideictic approaches. In this way, he was able to establish ethos through his diplomatic approach while still disagreeing with the Bill. In addition to this non-confrontational approach, Mr Cassim also, possibly inadvertently, portrayed himself as an educated and refined speaker through his ornamental language and by quoting T S Eliot, Shakespeare, Dante and Cato.[250] This language and his need to correct other speakers[251] indicated his obliviousness to the *kairos*, the appropriateness of the context.

That the other speakers in the debate ranged from the far right in the case of Dr Mulder of the Freedom Front to the far left in the case of Mr Sizani of the PAC as well as Mr Green of the ACDP and Ms Smuts from the Democratic Party was a fitting indication of the spectrum of political views in the country at this time.

While Dr Mulder's introduction appeared to concede the point in Mr Ebrahim's speech about the suffering of the Afrikaners, he inverted the concession to express concern about meeting the aims of national unity and reconciliation. This inversion tactic was used through the rest of the speech that switched largely between deliberative and forensic approaches to reveal an underlying emotional response. To establish ethos, his first statement, after responding to Mr Ebrahim, quoted a political science academic from the University of Cape Town that supported his argument that the Bill did not promote national unity. His citation of the long title[252] of the Bill not only served as the commonplace label for his audience but also formed the basis of his argument against the Bill. When addressing his concerns about the TRC, he remained deliberative by raising concerns and proposing solutions, however, when he dealt with the issue of amnesty, which formed the bulk of the speech, his attempts to maintain

[249] Ibid 1364.
[250] Ibid 1403-7.
[251] Ibid.
[252] The long title of an Act summarises the purpose and content of the legislation and must be amended if the content changes.

a judicial approach betrayed his emotional attitude. The tensions between his party and the NP were apparent when he expressed his party's view that the NP had bungled it and the ANC had benefitted. As support for this argument, he appealed to pathos by describing criminal acts that were carried out by people who had been granted amnesty. His illustration included quotes from a report, without indicating the source, from the father of one of the victims, and from court documents, all of which described shocking images. These quotes were all in Afrikaans providing a clear indication of the audience that he was addressing. His anger was displayed as he resorted to sarcasm when explaining that the problem with the composition of the Cabinet Committee comprising of two ANC and two NP Ministers was apparently that the NP had no members on it.[253] Dr Mulder used *syncrisis* that contrasted phrases from the Interim Constitution with a negative concept to demonstrate the intensity of his conviction about the dire effect of passing the Bill. His sense of betrayal can be traced to the fact that Dr Mulder was formerly part of the Conservative Party, which was established from a group of NP members who opposed P W Botha's tricameral parliament reforms in 1982.

The PAC was a similar splinter party, established in 1959 by members of the ANC, who had opted not to participate in the negotiation process but took part in the 1994 elections. Mr Sizani's introduction appealed to pathos with his candid appraisal of the personal difficulties that the Bill fostered.[254] His pleas for justice and fairness as he evaluated distinct positions such as reparations for victims, and the differences between amnesty for freedom fighters and those that defended apartheid, remained deliberative. His use of *prolepsis* to refute the contention that his party found itself on the same side as the NP was supported by an international example and the law as proof.[255] He used the same strategy when refuting the cut-off date reported in the media by providing contrary evidence in relation to the cases they had reported. Even when conceding that a change in the cut-off date would benefit other PAC members, he used the logical counter that it would apply equally to members of other parties. His ethos was maintained throughout the speech that appealed to the logos of justice for their members.

Both Mr Green and Ms Smuts were deliberative in their approaches albeit while appealing to different audiences. While Ms Smuts introduced her speech with an appeal to

[253] Hansard 1995 op cit 1372.
[254] Ibid 1390.
[255] Ibid 1391

pathos about a young man injured in the attack on the Heidelberg Tavern,[256] which formed the basis of her logical argument for justice, Mr Green appealed to his audience based on morality.

Ms Smuts used an emotional appeal that quoted the victim to argue against changing the cut-off date. When she used the metaphor of 'closing the book', it was to epideictically state that the country was 'not merely writing and closing the book on the past. We are writing the script for the future'.[257] This epideictic approach was evident in her references to constitutional values and her view of those who committed crimes. As the DP's history traced back to the Progressive Party, Ms Smuts took a relatively neutral position. She made no distinction between acts by the previous state and the organisations fighting apartheid and, in her appeals to logos, she opted not to recognise the consequences of the Bill for either side.

Mr Green, as the deputy President of the newly formed ACDP, was able to maintain a similarly neutral approach. This was a party that had not existed until the year before the 1994 elections and, therefore, had no historical links to the freedom struggle other than what their supporters, like other South Africans, experienced during that period. This was also a party that had a very well-defined support base i.e., followers of the Christian faith to whom Mr Green's appealed using a combination of deliberative and epideictic approaches that focussed on the morality and values contained in the Bill. As his party had no record of apartheid-related behaviour, his appeal was conciliatory.[258]

This debate exposed the tensions and concerns of the different political parties at a point when the democracy was still young. While every ANC member expressed support, many used their platform to raise specific concerns about the compromise between foregoing justice to secure truth and reconciliation, often leading to contradictory statements within the same speech, or ethical concessions for the greater good. As this was early in the democracy and the recollection of apartheid's force and impact was relatively fresh, the need for recognition of sacrifices and the force of long-held identities remained strong across the political spectrum. The ANC's focus on values and integrity in epideictic speeches, which included condemnation of the apartheid state and its supporters, was one that was based on maintaining the democratic state and expressing moral superiority about the liberation struggle.

[256] This attack on a tavern was carried out in December 1993 on the eve of the first elections by Apla members, killing four people.
[257] Hansard 1995 op cit 1384.
[258] Ibid 1399.

For the NP and FF, the concerns related to distrust was evident by the appeals for voluntary disclosure and a fear of reprisals. These arguments ranged from approaches that were purely logical by focussing on the rationality of the rule of law to attacks on the ANC and a justification for apartheid as a defence against communism. The genesis of the approach taken by the apartheid state at the TRC of blaming the atrocities on individuals in the security forces was evident in defensive NP speeches. Although smaller parties expressed views that mediated between those of the ANC and the NP, it was evident that they tended to appeal to their particular audiences. This served to confirm the diversity of attitudes rather than work towards developing shared values.

3.2. Withdrawal of National Party from the TRC Process – 22 May 1997

The debate on the withdrawal of the NP from the TRC process took place after its leader appeared before the TRC as part of the special hearing for political parties. The National Party and Mr de Klerk's view was that the Commission, specifically the Chairperson and Deputy Chairperson, had prejudged the submission and had treated the party representatives unfairly,[259] which resulted in their threat to withdraw from the process. While the topic of the debate, which was called for by the Chief Whip of the ANC, was obviously the NP's threatened action, the objective of the debate was not clear. Since the TRC was an independent, statutory body with its own powers to act against unco-operative witnesses, one could assume that the aim of the debate was to either provide a public platform for the political disagreement or to persuade the NP to reconsider their stance. The *kairoskairos* of Parliament assumes legislative debates both in the rhetorical and the literal understanding, which in this case should result in a debate aimed at persuading the audience about a better future. The acrimony in this debate, however, which indicated the levels of discord that existed in South African society at the time was illustrated by the many appeals to pathos in speeches that tended to vary between judicial and epideictic approaches and by the instances of heckling in the debate. While heckling and interjections are expected in parliamentary debates, the sniping comments made by MPs indicated a strong emotional response.

The ANC's emotional appeals were based largely on anger, which the first speaker, Ms Shope, demonstrated through her graphic accounts of the torture suffered by Zanele Zingxondo as it was relayed to the TRC. Ms Shope, who had been active in women's liberation organisations, spoke about how the TRC process had revealed the treatment of women by the

[259] https://www.justice.gov.za/trc/hrvtrans/submit/np2.htm Accessed on 13 January 2022.

apartheid government. She used the expression 'through the TRC'[260] several times as she named those that were assassinated so that there was a distinction between those that were previously known and those whose fates had been disclosed. Her anger was apparent as she mentioned these names and descriptions and rebuked the NP and its leader for refusing to acknowledge the truth and apologise. Her appeal to pathos increased as her quotes became more graphic. By leading with the gruesome descriptions of torture, Ms Shope's appeals for reconciliation in her conclusion and references to 'our responsibility' and 'our guilt'[261] bolstered her ethical appeal. She reinforced this by aligning herself with Nelson Mandela who 'stretched out the hand of reconciliation'. The basis of her argument was that the TRC process brought closure for many South Africans and that the NP's refusal to acknowledge the truth would derail it. By describing the extent of the torture, Ms Shope called for recognition of the sacrifices made by the victims in a speech that was both judicial and epideictic to ultimately make a deliberative plea. Using narrative to express the sacrifices made, despite the anger it would invoke, illustrated her commitment to reconciliation.[262]

The Deputy Minister of Defence, Mr Kasrils, expressed his anger more directly in a judicial speech suggesting Mr De Klerk must have known about the actions of the security forces. He used the adage of the three monkeys who refuse to acknowledge reality as a sarcastic analogy of Mr De Klerk's refusal to concede that the actions were sanctioned by the state in his introduction and applied alliteration to place names[263] to indicate how widespread this knowledge was in geographical terms. His accusation that Mr De Klerk would have known about the atrocities as a member of the State Security Council was based on logos and as proof he referred to a letter from a member of the Black Sash[264] published in the media that week confirming that the organisation had informed government about these crimes in the 1980s. Mr Kasrils criticised Mr De Klerk and his party using metaphors that are slightly mixed but all denoting decay such as the Afrikaans metaphor '*n Vis vrot van die kop af*',[265] which he translates as 'a fish stinks from the head down' and 'whole orchards' of rotten apples that

[260] *Debates of the National Assembly of 1997* Vols 13, 14 and 15 6 February to 25 November 3196-7 (Hansard 1997 hereafter).
[261] Ibid 3199.
[262] Doxtader 2003 op cit 280.
[263] Hansard 1997 op cit 3220-1.
[264] The Black Sash was a human rights organisation that was established in 1955 in response to an amendment to the constitution that increased National Party representatives in the senate so that they could remove coloured voters from the voters' roll. The symbolic draping of the constitution with a black sash was adopted by members who draped a black sash over their bodies while silently protesting.
[265] Hansard 1997 3221.

sowed the seeds of apartheid. To further justify his statement that Mr De Klerk should have known, he provided evidence of Mr De Klerk talking about 'the dastardly Vula plot'[266] at the same time as members of Operation Vula were killed by security forces. He followed this up by challenging De Klerk to sue him. His conclusion that compared the NP to the Rump Parliament criticised the party for being at a low point, which he supported with a reference to the departure of Roelf Meyer.[267] Unlike Ms Shope who called on the NP to continue participating in the TRC so that it would foster reconciliation, Mr Kasrils taunted the NP by telling them not to run away from the truth. He repeated this in Afrikaans speaking directly to Afrikaners who formed the bulk of NP supporters.

The Minister for Sports and Recreation, Mr Tshwete's introduction deviated from the topic to mock the IFP. In his case, the anger extended beyond the NP's refusal to co-operate but was sparked by the IFP member's speech. Mr Tshwete's condemnation focussed on the IFP as a minion of the NP using metaphors such as the 'charge' and 'handler', the 'grease-boy of the machine of apartheid'[268] and, strangely, as the 'biblical Lazarus' to emphasise this subordinate role. The bible refers to two Lazarus' – one that was resurrected by Jesus Christ and another that Jesus mentioned who was poor and lived off crumbs from the rich. The assumption is that it is the latter Lazarus that Mr Tshwete was referring to although that Lazarus ended up in comfort on his death, which makes the reference incongruous.

His criticism of the NP, which contrasted it with the ethical position of the ANC and President Mandela who showed 'magnanimity' when they chose not to 'persecute or prosecute'[269] the NP, was fallacious as the option had not been available. The speech, which combined epideictic and judicial approaches, praised the ANC who averted 'Nuremberg trials' and provided a 'golden opportunity' and condemned the NP and apartheid by using expressions such as the 'most barbaric racial tyranny the world has seen since Hitler'[270] 'chicken out', 'run away', 'De Klerk's nostalgic yearnings for the ignominious past', and 'political quagmire'. By calling them cowards for not taking advantage of the opportunity presented by the TRC, he suggested that this downfall was part of a pattern that followed their withdrawal from the government of national unity. Like Mr Kasrils, he cited Roelf Meyer's departure as indicative

[266] Ibid.
[267] Roelf Meyer was a member of the National Party and was instrumental in the negotiating process and the drafting of the interim and final constitutions. To be successful, this had obviously meant that Mr. Meyer had been able to gain the trust of the ANC.
[268] Hansard 1997 op cit 3225.
[269] Ibid 3226.
[270] Ibid.

of the party's demise. Mr Tshwete's judicial speech was strengthened in his conclusion that declared De Klerk's withdrawal 'an admission of guilt'.[271]

Mr De Lange, like Mr Tshwete, started his speech off-topic as he sarcastically censured the editor of the Afrikaans daily paper for a critical editorial and dismissed the contributions of the other speakers as not being worthy of engagement. Notwithstanding Mr De Lange's lack of decorum, he maintained the combination of epideictic and judicial approaches of his colleagues to demonstrate the extent to which the ANC was willing to compromise. These descriptions of the impact of apartheid used emotional metaphors including stating that the country was 'broken and bleeding'[272] and that there were both 'open' and 'harsh' wounds. His implied threat that the disparities 'each in their own right could spark a major upheaval'[273] and his epideictic comparisons, which indicated how ethical lines were blurred to damage the 'moral fabric' of society, was used to question the NP's commitment to reconciliation. To refute the claims made by NP speakers that they had been prejudged, Mr de Lange provided proof by pointing out that members of the security forces were confessing. Although Mr de Lange's conclusion in contrast to the rest of his speech was deliberative and conciliatory as he referred to nation-building 'as a process, not an event', he maintained the judicial approach he had taken in his speech by calling on the NP to confess and apologise.

The Minister of Justice and Constitutional Development, Mr Dullah Omar's speech at the end of the debate, relied largely on logos as he combined epideictic, judicial and deliberative approaches. His defence of the TRC relied on the provisions of the legislation and the conduct of the chairperson rather than the apartheid history of the NP. While Mr Omar took a less accusatory approach than his ANC colleagues, he reproached the NP for trying to 'intimidate the TRC'[274] and in addressing the lack of tolerance, he aligned himself with General Viljoen of the far-right FF. This ethically functioned to indicate that he was able to recognise someone who would previously have been his enemy but may also have served to rile the NP as many of the FF members were formerly part of the NP. Mr Omar's speech like that of General Viljoen succeeded ethically as they both aimed to persuade based on the interests of the greater good of the country.

[271] Ibid 3227.
[272] Ibid 3230.
[273] Ibid.
[274] Ibid 3235.

As the National Party's threatened action was the topic of the debate, their responses were crucial. It was apparent that the ANC had decided to remind the audience of the sacrifice they made by participating in the TRC by describing the effects of the apartheid system. Defending apartheid was obviously not a response that the NP could take nor was it the substance of their threatened action. The NP speakers were relatively consistent that the matter related solely to the treatment of their leader by the TRC.

While both Mr Schoeman and Ms Camerer acknowledged the harrowing details provided by Ms Shope of the ANC, they remained resolute, using logos, that the debate should address the manner that Mr De Klerk was treated. Mr Schoeman used epideictic phrases such as 'objectively', 'judged', 'guilty', and 'fairness'[275] to make his point. His interchanging of the word 'revenge' for 'reconciliation'[276] in the acronym TRC indicated the mistrust that continued to exist. To illustrate his point, he referred to the statements by Deputy President Mbeki about former President Mobutu Sese Seko as an example of the equal treatment that was expected. This served both as an appeal to logos as well as an ironical point. Mr Schoeman's conclusion after several interjections stressed the equally ethical position of Mr De Klerk and implied that his unfair treatment related to ulterior political motives.

Ms Camerer refuted the statement that the NP was not concerned about the past and confirmed that her party had expressed the view that if the process 'went wrong there was a danger that South Africa could go wrong'[277] at the start of the committee process. She supported this by quoting by Mr De Klerk in an appeal to ethos. Both the initial view and the quote, however, was not about seeking the truth nor reconciliation directly but rather as a warning that exposing the past held a danger for the country. This judicial approach was combined with an epideictic form that questioned the implementation of the Act, which was supported with a reference to views about bias expressed in the *Cape Argus* newspaper.[278] As further contention of bias, she maintained her appeals to ethos and logos by citing the Appellate Division of the Supreme Court that had previously ruled against the TRC about natural justice.

In contrast to the previous two NP speakers, Mr Matthee and Mr Maree's speeches were emotional and defensive. In a combination of epideictic and judicial approaches, Mr Maree defended the NP with the conflation of the withdrawal from the process with the erroneous

[275] Ibid 3200.
[276] Ibid.
[277] Ibid 3214.
[278] Ibid.

notion that the NP did not have any representatives on the TRC.[279] His ignorance of the requirement that TRC be composed of politically neutral commissioners may have been either a misunderstanding or an explicit view that reinforced his contention that the TRC was biased. His emotional justification was expressed with sarcasm with statements that Archbishop Tutu was 'too heartsore to be able to think',[280] that the TRC had been 'brainwashed'[281] and this was propaganda by Mr Kasrils who was a coward that ran away during the Bisho[282] massacre.

Mr Matthee maintained the party line by using logos to defend Mr De Klerk as he compared the TRC's response to him with that received by the ANC. Like his colleagues, he used a combination of epideictic and forensic approaches as he described the way Mr de Klerk was treated. He reiterated the defence used by Mr Maree about the establishment of the Harms and Goldstone commissions to refute Mr Kasrils' contention that Mr De Klerk chose not to know about the apartheid crimes.

The NP speakers' focus on the treatment of their leader meant that their response did not address the issues raised by the ANC speakers, while, similarly, the ANC not could have represented the TRC, which, as stated, was an independent body and to whom they would have to account as well. The debate was therefore one where the two main political parties were talking past each other by debating separate issues. While they may have refuted points raised, such as Mr Maree repudiating Mr Kasrils contention that Mr de Klerk should have known about apartheid crimes, the acrimony displayed served to underline the established social divisions.

These divisions were evident not only in the speeches itself but in the extent to which the debate was interrupted. The first speech where this was seen and the one that displayed the greatest hostility was by Mr Mncwango of the IFP. His speech made a judicial argument where he seemed to consciously avoid establishing any ethos. His introduction placed distance between the topic being debated and his party, which he identified as a NP problem rather than one that affected the country. He expressed disdain using logos to reproach the National Assembly for establishing the TRC by reminding them of the warnings that the IFP had issued. This logical appeal was undermined by a lack of ethos, which reached its low point when he

[279] Ibid 3224.
[280] Ibid.
[281] Ibid 3225.
[282] On 7 September 1992, the ANC protested against the Ciskei government to pressure them to step down and establish an interim administration that would manage the transition to democracy. Ciskei was a separate 'homeland' with its own rulers, and the apartheid state that had established it, refused to intervene. The Ciskei armed forces opened fire on the protesters, resulting in the 29 participants being killed and 200 injured. Mr Kasrils was one of the leaders of the protest.

described the TRC as a 'sensationalist circus of horrors' and its chairperson as a 'weeping clown'.[283] The remainder of his speech was devoted to attacking Archbishop Tutu whom he accused of being biased against the IFP and of having condoned an assassination attempt on the leader of the IFP at Robert Sobukwe's funeral.[284] These accusations resulted in a great deal on interjections such as points of order and of clarity about the interpretation of the rules of the National Assembly to the extent that the Speaker suspended the business of the House to consult the Hansard and the Rules. (An analysis of these and other interjections are addressed below.) To support his contention that the Chairperson was biased, the discrepancies in the manner that the Commission dealt with the Magnus Malan[285] trial and Chairperson's attitude towards the IFP during the apartheid years were offered as proof of injustice.[286] Mr Mncwango's proclamation that the killings and the assassination attempts were 'part and parcel of a strategy'[287] implied that the ANC was threatened by the IFP. This speech served as an indication that, despite their continued participation in the government of national unity, the relationship between the IFP and the ANC was deteriorating because the underlying divisions of the past and the IFP's role in upholding apartheid had not been addressed.

General Viljoen of the Freedom Front who followed Mr Mncwango agreed that the debate was about a clash between the NP and the Commission but understood its effect on reconciliation as a 'national conflict'.[288] His speech was deliberative with overt appeals to logos, although his ethical appeal to his Afrikaner audience was provided by his having left the NP and founded the FF, and as a former General in the apartheid army. He confirmed the audience that he was addressing by delivering his speech in Afrikaans and belittling the NP using sarcasm about the NP dancing with the ANC, the TRC being 'their own creation',[289] and contrasting the indecisiveness of the NP with the TRC who had the 'large and elevated aim' of managing reconciliation in a fragile environment. Although he referred to a speech by Mr De Lange of the ANC when inferring that the situation was the result of the intolerance that existed in the country, instead of criticism, he took a conciliatory approach by appealing for co-operation to rectify the injustice.[290] The altruistic outlook exhibited by his deliberative

[283] Hansard 1997 op cit 3202.
[284] Ibid 3202.
[285] Archbishop Tutu indicated that he would still call Magnus Malan, the former Minister of Defence who was tried for murder dating to 1987 in 1996, before the TRC regardless of the court's findings.
[286] Ibid 3209.
[287] Ibid 3210.
[288] Ibid 3211.
[289] Ibid.
[290] Ibid 3211-12.

references to the Interim Constitution and the TRC Act must be understood in the context that a speedy solution that did not probe apartheid crimes too deeply would be to his advantage. Equally, while his conclusion to reconcile the NP and the Commission appeared ethical, an engaged NP would ensure that they were the party held responsible for apartheid.

Besides General Viljoen who represented the far right in South Africa, the diversity of remaining smaller parties included the far left (PAC) and two parties, the DP and the ACDP, who were comparatively non-aligned in relation to the topic.

Ms De Lille, a former trade unionist who represented the PAC, took a similar combination of epideictic and forensic approaches as the ANC by focusing on the impact of apartheid and the need for the truth. Using emotional appeals, she condemned Mr De Klerk and his past actions using expressions that could appear deliberative such as 'reconstruct this country from the ashes and debris of apartheid', but was instead forensic as she declared Mr de Klerk guilty and called on him to confess.[291] She confirmed this using comments such as the truth hurting, the cap fitting, and direct questioning of his integrity as she urged the NP to have 'humility to fulfil the last act of their careers'.[292] Like Mr Tshwete of the ANC, Ms De Lille used the magnanimity of the 'African people' as a threat to coerce a confession, which if not provided would 'be raked up again' as it was for Nazi criminals. This threat of conditionality, which ignored the agreements made during the negotiating process and played on the racist trope of Africans not conforming to democratic principles, was raised again when she compared their actions with the Nazis by suggesting that the NP may have to 'face the concept of Nuremburg trials'.[293] Her anger remained constant as her conclusion found him guilty albeit of 'non-co-operation'. Ms De Lille introduced the theme of global authority through her references to 'the world' who was 'calling upon', and 'waiting for' action from the NP and as part of her conclusion she noted that they have been 'condemned throughout the world' and that De Klerk 'stands arraigned before the courts of the world'.[294] While this may have aimed at an ethical appeal that indicated a wider condemnation of his actions even though it is a vague as 'the world', Ms De Lille did not provide any proof. This demonstrated either a wilful ignorance of legislative democracy, political naivete or simply political manipulation.

[291] Ibid 3218.
[292] Ibid.
[293] Ibid 3219.
[294] Ibid.

Ms Smuts of the DP used the opportunity of the debate to criticise the NP. She did this initially in an epideictic manner by praising and defending the Chairperson of the TRC[295] and more intentionally in her conclusion when she spoke about the aims of the process. She appealed to logos as she refuted Ms Camerer's contention that the rules have not been applied consistently when she praised the Chairperson for applying the law equally in the way he dealt with different political parties and for providing 'a moral base' for the TRC.[296] This direct contradiction should be understood as part of the competition for support from disgruntled NP voters as the DP was steadily growing its support base. This political capitalisation was evident as she, similarly, refuted Mr Mncwango, who had referred to the Chairperson of the TRC as a 'weeping clown', by stating that his weeping was 'the defining moment' of the process. As proof of his even-handedness, she pointed to his rejection of the ANC's defence that they were fighting a just war and suggested that the NP's response was 'a smokescreen' that he was seeing through as well.[297] In her defence of the Chairperson, Ms Smuts used the word 'stumble' to explain his actions implying an accidental action rather than a considered one and provided an excuse for the Archbishop by indicating that he would have been able to counter their apparent ignorance by stating that he had informed them about the atrocities, which would have caused him to 'regrettably' abandon his impartiality. This defence also served to imply that the NP had lied to the TRC without directly accusing them of doing that. In her attempt to use the opportunity of the debate for party political point-scoring, Ms Smuts was compelled to concede that he was biased. She did this in an oddly tautologous manner, possibly to avoid accusing him, by saying 'He prejudged and that is, regrettably, prejudice in our view'.[298] This concession, which agreed with the NP, also called on them not to abandon the process. The fallacy of her argument that aimed to persuade using logos was exposed in this conclusion.

As one of the smallest parties and one representing a Christian audience, Mr Green of the ACDP took an epideictic approach that included deliberative aspects. He introduced and concluded his speech with biblical references and, while questioning the 'wisdom'[299] of the NP's decision, he appealed to logos through a deliberative argument that looked at the impact of criticising the TRC. Mr Green's appeals to morality was made using a combination of epideictic and deliberative approaches that called on parties to perform their duties in the

[295] Ibid 3215.
[296] Ibid 3216.
[297] Ibid.
[298] Ibid.
[299] Ibid 3222.

interest of justice. He focussed on morally correct actions and the responsibility to ensure reconciliation. The newness of the party did not mean that they were oblivious to the history of the country as Mr Green conceded that the NP was likely to be responsible for the apartheid past as he appealed to them 'to ensure the moral integrity'[300] of the nation.

As noted, the debate was characterised by interjections by members both as part of the rules of the Assembly i.e., points of order and as heckling and jeering. During Mr Mncwango's speech, the need for a ruling was so acute that the business of the House was suspended to allow the Speaker to study the Hansard. The interjections related to rules about insulting judges and the equivalence of the TRC (Ms Pandor), points of order (Mr Bekker, Mr Gibson, on equivalence, Mr Maree on the bias of commissioners, Mr Hofmeyr on continued insults) and the precise statement to be withdrawn and the permissibility of quoting. Prior to the last speaker in the debate, the Minister of Justice, the Speaker of the National Assembly ordered Mr Mncwango to withdraw his remarks about the Chairperson of the TRC. As he refused, he was ordered to leave the House.

The constant interruptions tended to make the speeches disjointed and while the interruptions were emotional baiting, with occasional calls to correct the stated facts, they were indicative of the tensions and intensity of emotions that existed in the country then. Not only were the memories of the apartheid atrocities still relatively fresh, but they were also placed in the public consciousness daily through coverage of the work of the TRC. They were indicative of the changes that the country had undergone in the interim: three years had elapsed since the first democratic elections, a year had passed since the TRC started its work resulting in many of the atrocities being made public, the NP had left government and the ANC had more experience of being in power than when the legislation was debated two years prior. In addition to the interjections, MPs were more critical with direct attacks and increased sarcasm often disregarding the decorum of the House. In fact, the animosity between Messrs De Lange and Schoeman deteriorated to the extent that it resulted in a fistfight in September 1998.[301]

3.3. National Response to TRC report – 25/2/1999

This debate took place about four months after the TRC submitted its final report comprising of five volumes to President Mandela. At this stage the Human Rights Violations, and

[300] Ibid 3223.
[301] https://mg.co.za/article/1998-09-21-brawling-mps-suspended/ Accessed on 31 January 2021.

Reparations and Rehabilitation committees had wrapped up their work but the Amnesty Committee, whose deadline had been extended, had only submitted an interim report.

It was also three months before the end of the first democratically elected government and Parliament and after Nelson Mandela had announced that he would not be available to be President for a second term, making it apparent that Thabo Mbeki who had been elected President of the ANC in 1997 would succeed him. The impending elections, these political changes in an environment where Mandela was considered the global embodiment of reconciliation, and the public knowledge of the atrocities that the TRC had exposed in the previous three years resulted in a debate where political parties articulated and possibly exacerbated the divisions in South African society. The extent of the divisions was illustrated by court challenges disputing the findings of the TRC launched by both the ANC and the NP as the TRC was finalising its report in 1998 before handing it over to the President.[302]

While deliberative approaches would have been expected in a debate where the TRC findings would affect the future of the country, the contributions were generally epideictic, either condemning or praising the findings and the work of the TRC. Although there were members that exhibited the required leadership of elected officials by fulfilling their legislative duties, the debate provided a platform for parties to reproach each other using the protection of parliamentary privilege.

A joint sitting of both Houses of Parliament – National Assembly and National Council of Provinces – was called to debate the report that President Mandela had tabled in the institution. As noted previously, in terms of the Constitution, the President ceases to be a Member of Parliament, once elected, which would indicate that President Mandela was provided with the privilege of opening this debate. As one of the last speeches that he would deliver in Parliament, it was evident that his aim was to continue fostering reconciliation. When he forensically raised concerns about the TRC findings and processes, he expressed it in a manner that minimised any judgement and appealed to ethos. He appealed to a wide audience by being inclusive, as illustrated when he referred to 'political leaders and *all of us* in business, the trade union movement…'[303] and, when referring to the effects of apartheid, he spoke about '*our* attitudes to one another'.[304] In his conclusion, he summarised the instruction from the

[302] *TRC Report* Vol 6 55-60. https://www.justice.gov.za/trc/report/finalreport/vol6_s5.pdf. Accessed 31 January 2021.
[303] *Debates of the Joint Sitting of Both Houses of Parliament of 1999* Vol 1 5 February to 26 March 34-5 (Joint Hansard 1999 hereafter).
[304] Ibid 35.

'people of South Africa' as '*we* should forgive, but not forget'. Even when addressing the aspect that required an appeal to logos, i.e., the recommendations in the report, he managed to maintain an ethical appeal by either indicating how the recommendation had been given effect to by government and the Constitution or by endorsing it as existing principles of the democratic government.

His epideictic references to the importance of diversity, reconciliation, and the building of a nation remained deferential, even when he thanked the TRC and accepted its report 'with all its imperfections'.[305] To maintain his ethos, he used the passive voice when listing the criticism of the process and expressed it as the opinion of others. This deferential approach continued as he focussed on values when he praised not only those that sacrificed to end the apartheid system but also recognised the difficulties that it caused for those that were conscripted and those who benefited who he described as being imprisoned in 'jails of hate and fear'.[306] This equitability was evident when he talked about healing and rehabilitation as he acknowledged the difficulties that those who 'committed gross violations of human rights'[307] would have in reintegrating into communities. The humility he displayed when he pointed out that many business leaders made donations after he had 'made personal calls', which completely ignored his stature in South Africa and globally, was woven through his speech including his conclusion that noted he had raised these issues 'only as a small contribution to the debate'.[308] He confirmed his ethical appeal by placing himself at the service of the country that he referred to as 'the small human miracle'[309] in his final statement. President Mandela's speech avoided racial epithets, referring instead to those who benefitted and those who sacrificed and, in this way, he demonstrated the values he was articulating. This combination of epideictic and deliberative approaches that drew on values to encourage a better future was, as expected from President Mandela, an outlier when compared to the rest of the debate.

While President Mandela's speech was epideictic, Deputy President Thabo Mbeki was mainly forensic with separate appeals to pathos, logos and ethos, and a conclusion that combined epideictic and deliberative approaches. In contrast to President Mandela's speech that avoided dealing with the issue of race, Mbeki's introduction addressed it directly as he

[305] Ibid 35-6.
[306] Ibid 38.
[307] Ibid 41.
[308] Ibid 43.
[309] Ibid 44.

identified it as the 'defining parameter'[310] for national unity. He did this with a forensic approach, which appealed to pathos, where his examples of colonialism were designed to illustrate the extent of its depravity aimed particularly at African people. When he spoke about the almond hedge planted by Jan van Riebeeck, he described the indigenous population as 'the menacing black African hordes of pagan primitives'[311] and the cordoned area as 'the enclave of European civilization'. His use of quotes and expressions, such as 'great pity that such creatures as they be should enjoy so sweet a country', 'justly won by the sword' and how the 'temporary sojourners' became 'permanent citizens while transforming the native masses into temporary sojourners',[312] when depicting the violent actions of the colonisers was designed to evoke emotion. The almond hedge was used as a metaphor for the violence and divisions that existed, which Mr Mbeki linked to the TRC by stating 'Out of it all were born the *programmed killers* who have spoken and will speak to the Amnesty Committee of the TRC'.[313] The imagery of the locals as uncivilized was extended as he quoted the Dutchman, Cornelis van Purmderend, the Frenchman, De Laval, the Englishman, Ralph Standish, and Jan van Riebeeck to indicate the pervasively violent nature of colonialism. Although Mr Mbeki concluded that section in a deliberative manner by suggesting that it would be dealt with as part of the national debate called by the President, it was apparent that the degrading imagery was used to illustrate the deep-seated link between racial domination and the country's colonial history. While this was a compelling argument, one would have to question the value of his descriptive account, which served to elicit an emotional response at the end of a legislated process.

Mr Mbeki's forensic topic, which addressed the work of the TRC directly, was introduced by applying conjectural stasis about the TRC's promotion of national unity and reconciliation through an appeal to logos. His response was to outline the flaws in the process by quoting Wynand Malan's[314] minority report, mentioning the efforts made by the ANC to engage the TRC, and pointing to the conclusion that TRC had reached despite contrary evidence or a lack thereof. He improved the ethos of his defence of freedom fighters by referring to the Geneva Conventions and Protocols. His use of evidence and logos was the basis for his arguments about both the legitimate actions of the liberation movement and the importance of having resolved the issue rather than government addressing it. Though Mr

[310] Ibid.
[311] Ibid.
[312] Ibid 45.
[313] Ibid.
[314] A TRC commissioner who differed about reparations and the granting of amnesty to security force members.

Mbeki's response indirectly indicated that the TRC did not assist with achieving reconciliation, as the incoming President he was unable to outrightly reject the TRC findings as it was the basis for the negotiated democracy. Instead, he concluded the topic with a deliberative submission that the Amnesty Committee, whose work had not been concluded, could deal with these matters.

Maintaining the forensic approach, Mr Mbeki's appealed to ethos as he addressed the TRC findings about different sectors of society. When he criticised the judiciary as the sector that upheld the apartheid laws, he used the analogy of Dr Dering who sued Leon Uris to illustrate the distinction between morality and unjust laws.[315] To support this and maintain his appeal to ethos, he quoted Kader and Louise Asmal and Ronald Suresh Roberts about reconciliation and morality. Mr Mbeki's criticism of sectors that did not 'rebel against tyranny'[316] was at odds with President Mandela who had sympathised with those that had benefited.

He concluded his speech with a combination of epideictic and deliberative approaches, which appealed to logos and pathos, as he proposed measures for reparation while praising the intended beneficiaries, the victims. Using the opening line from the poem by Yevgeny Yevtushenko, Mr Mbeki introduced this topic with some caution by proposing that monuments be built, that communities be uplifted, that jobs be created and then that 'no genuine fighter…engaged in struggle for personal gain'.[317] To confirm the notion of genuine fighters, he appealed for the preservation of their dignity and the importance of not 'turning them into mercenaries'.[318] As the incoming President, Mbeki would have been aware of the financial cost of reparations and his approach, while not devoid of truth, may have been a warning of the change in policy that was introduced in this regard. Mr Mbeki's conclusion that addressed the importance of reconciliation displayed his natural flair as a statesman by recognising the international community and South Africa's role. In contrast to his emotional displays of anger in the earlier parts of his speech, here he quoted a phrase that he attributed to young Afrikaners – 'Yesterday was a foreign country'[319] – to support the need to create a different future.

It was apparent, other than for his conclusion, that Mr Mbeki used the opportunity of this speech to evoke an emotional response in his audience. Considering that this debate was

[315] Joint Hansard 1999 op cit 52.
[316] Ibid.
[317] Ibid 54.
[318] Ibid.
[319] Ibid 55.

the culmination of a period of intense public revelations, and that five years of democracy had passed, one would have to question the purpose of this approach. The question of who he was persuading and what action he hoped to elicit was unclear within the *kairos* of the debate. This speech should be understood in the context of the end of the circumspection of the Mandela era and the start of a more secure ANC rule.

Mr Mbeki's speech was analysed in greater detail than the other speakers because at that stage, he was the *de facto* head of government and, possibly because of occupying this position, the themes that he advanced were further developed by the other ANC speakers. One the main themes that was addressed through a combination of epideictic and forensic approaches was that the TRC had not addressed the past nor the role of liberation movements sufficiently. The Minister of Justice and Constitutional Development, Mr Omar, whose government department was responsible for the TRC legislation addressed the report as he concluded his speech by expressing support for its work despite 'its flaws and weaknesses'[320] and compared it somewhat patronisingly to off-spring. He was deliberative as he included it in the constitutional interventions that were established to protect democracy and appealed to the rule of law as being 'cardinal'.[321] By stating that the responsibility for the TRC report rests with Parliament, Mr Omar was able to simultaneously pledge support for the democratic institution while relinquishing responsibility for any further action emanating from the findings.

The Minister of Transport, Mr Maharaj, in recognising the importance of the debate as 'the eyes of the world'[322] were on South Africa made the case for reconciliation using a deliberative approach based on logos. Despite this overall aim in his introduction, Mr Maharaj used the opportunity to condemn the benefactors of apartheid. In this epideictic turn, he, however, refrained from naming leaders but implied that everyone who benefitted was equally culpable. To do this, he quoted the opposition leader Gen Viljoen's book that confirmed that there were 'only two types of South Africans: "Us" and "the enemy"' as well as the ethos of Primo Levi and the example of the German people as evidence.[323] This ethos of shared blame was extended as he concluded deliberatively by calling on all South Africans to participate in the democratic South Africa. In his conclusion, however he contradicts this earlier contention of shared guilt by accusing the apartheid leaders of having abandoned those who acted on their

[320] Ibid 67.
[321] Ibid.
[322] Ibid 92.
[323] Ibid 93-4.

instructions. This contradiction implicit in Mr Maharaj's speech echoed Mr Mbeki who recognised that racial and class divisions were aligned in South African society. While the notion of shared culpability and responsibility would have resonated with a wide audience, his reproach of former leaders in this debate displayed the existing schisms.

The TRC's approach of equivalence of political parties formed the basis for the Deputy Minister of Environmental Affairs, Mr Mokaba's speech, which progressed from epideictic criticism of white opposition parties, using emotional, racist language, to a deliberative, ethical appeal for reconciliation. His reference to the entire white establishment in his introduction as having 'blood on its hands' and calling white political parties 'renegades, apostates and turncoats'[324] was counteracted by his argument that the ANC fought a just war. This latter contention was introduced by ethically aligning himself to past and future ANC leaders by naming Oliver Tambo[325] and referring to the 'young lions' of the country. When he refuted the notion that the ANC's actions should be equated with that of the apartheid state, Mr Mokaba forensically appealed to logos by referring to international legislation such as the Geneva Convention and the specific 1977 Protocol relating to armed conflict. To support this argument, he combined it with the ethical appeal of Tambo's teaching that the enemy was the apartheid system and not the people. This contradiction between his opening remarks that targeted white people and the fight against a system not the people, illustrated the difficulties that existed with forging a different future, and the tension between aims and words evident in Mr Mbeki's speech as well.

While expressing a similar view that the ANC fought a just war and that the TRC process was flawed, the Deputy Minister of Defence, Mr Kasrils appealed to ethos differently through his defence of the ANC's actions. His epideictic introduction that quoted the moral religious tenet 'Thou shalt not kill'[326] was designed to appeal to a wide audience and served as the basis for his moral defence of fighting 'evil'.[327] He supported his ethical appeal of fighting evil by referring to the TRC report, Chief Albert Luthuli, and the 1961 uMkhonto weSizwe (MK) manifesto. Unlike other speakers, he illustrated his conciliatory approach by conceding that there had been errors such as the Bisho incident and acknowledged the presence of a victim of ANC action, Mr Neville Clarence[328] in the gallery. Mr Kasrils' ethos was displayed as he

[324] Ibid 105.
[325] Oliver Tambo was the president of the ANC during its period of exile from 1967 to 1991.
[326] Joint Hansard 1999 op cit 121.
[327] Ibid.
[328] Mr Clarence was mentioned by Mr van Schalkwyk as well as an example of a victim of ANC action.

recognised that the evil had specific creators rather than seeing all white people as complicit by confronting those that were responsible and stating that the victims were the 'ordinary people who suffered'.[329] The extent of his humility was evident as he reassured the apartheid military leader, Gen Viljoen that divisions in the army were being addressed.

Mr Ramathlodi justified the ANC's actions using its principles to illustrate the injustice of the TRC's approach. His judicial introduction, which recognised Solomon Mahlangu, elicited sympathy as he explained how he had not been allowed to provide him with a proper burial. This emotional appeal was sustained by graphic descriptions of the killing of innocent people in Maseru on two separate occasions. His epideictic praise of the ANC included the principles and integrity of the Freedom Charter, President Mandela's opposition to domination regardless of race, its adherence to these principles despite possible persecution in the past, and having voluntarily established internal commissions of inquiry into the actions of its own members.[330] Using this ethical basis, he argued that the rights for which the ANC had fought should extend to the party itself and refuted the criticism about the ANC's challenges to the TRC's report. Mr Loots' epideictic speech took a similar approach based on ethos as he outlined the detailed planning that the ANC undertook before deciding on targets to ensure that civilians were not killed. This ethical description that focussed on values of the ANC was used to expose the lack of consideration by the NP during the same period.

While these speeches used epideictic approaches based on principles to ethically justify the ANC's fight against apartheid, Mr Moosa and Ms Jana opted for a judicial approach that appealed to logos. Mr Moosa's introduction that credited the ANC with the establishment of the TRC appealed to ethos, however in addressing the system of apartheid, he made the logical argument that despite the UN resolution declaring apartheid a crime against humanity, the TRC chose to address the liberation movements actions as equal to the apartheid military forces. Using a legal basis for his argument, he demonstrated the disparity in approach and outcome that resulted in bias.[331] The second part of his speech continued the legal argument where, in a similar approach to Mr Mbeki, he evaluated the role of the judiciary in upholding apartheid.[332]

Ms Jana's ethical introduction dedicated her speech to Solomon Mahlangu and to all victims of apartheid. Her judicial speech combined an ethical and logical appeal as she

[329] Joint Hansard 1999 op cit 123.
[330] Ibid 162.
[331] Ibid 97.
[332] Ibid 51-2 and 99.

supported her condemnation of apartheid by citing the international denunciation.[333] Like Mr Moosa, Ms Jana used these appeals to explore the way that the legal system of apartheid affected the daily lives of black people in South Africa. For Ms Jana, the drawback, which the TRC faced, of a calculated, legislated system reinforced her logical argument that it had not addressed the violations against human rights.[334]

Despite the concerns raised by many ANC members about the accuracy of the TRC report, there were members such as Mr Ngculu and Ms Direko who welcomed its findings. Although Mr Ngculu's introduction of the difficulties experienced by those who joined uMkhonto weSizwe while thanking the TRC for exposing the details[335] made an altruistic ethical appeal, his recollection of raids by the apartheid government caused him to switch from praise to blame and single out the former general and FF member, General Viljoen.[336] The divisions and complexity about race were evident as he criticised what he referred to as the black opposition parties without naming them for doing very little during the period that the ANC was sacrificing and only committing acts of violence during the negotiation period. He also criticised the IFP for disrespecting the TRC process. Although Mr Ngculu did not qualify his praise of the TRC, his call for unity was insincere as he dismissed the contribution of other liberation organisations. Like Mr Ngculu, Ms Direko used anecdotal descriptions of apartheid cruelties to thank the TRC for uncovering the truth.[337] Her anecdotes also served to illustrate the negativity of the apartheid state. In both these cases, the combination of forensic and epideictic approaches that discussed the values and actions of the apartheid state was offset against the need for recognition for the ethos of sacrifice amid the circumstances that the ANC encountered.

Using a similar anecdotal approach to illustrate the repercussions of apartheid, Ms Mbete-Kgotsitsile focussed not only on the role of women in the liberation movements but also those who benefitted who were unaware of the actions of some of their male relations.[338] By addressing the plight of women regardless of where they found themselves, she established ethos through her display of reconciliation around a common cause. Like for Mr Ngculu, the

[333] Ibid 160.
[334] Ibid 161.
[335] Ibid 114-16.
[336] Three ANC speakers referred to Gen Viljoen in different ways: Mr Maharaj quoted his philosophy on warfare to support his argument, Mr Kasrils reassured him that the military was uniting, and Mr Ngculu remembered him as being responsible for apartheid crimes.
[337] Joint Hansard 1999 op cit 155-8.
[338] Ibid 138-41.

debate provided a platform for her to raise unique challenges that women in the liberation movements experienced, which she supported by naming some of them and recounting their stories at the hands of the apartheid government.[339]

As the National Party and its Afrikaner supporters were responsible for implementing apartheid, Ms Verwoerd, as she had in the 1995 debate, used this opportunity to address that audience. Using her ethos as an Afrikaner, her infamous surname, and speaking in Afrikaans, she combined epideictic and forensic approaches to persuade this audience. She used the narratives of a young Afrikaner boy who witnessed his mother and sister's deaths by the apartheid state,[340] which preceded a personal anecdote about her grandmother and the Anglo-Boer war to elicit pathos by comparing this trauma with that of the mothers who had testified at the TRC.[341] She maintained this Afrikaner theme when addressing the healing process by quoting an Afrikaner and by referring to the British campaigner, Emily Hobhouse, to reinforce the analogy of divisions created by the Anglo-Boer war and by apartheid. Her use of Afrikaans served to sever that identity from the NP, which was emphasised with her charitable portrayal of most Afrikaners as 'shocked and confused'.[342] Ms Verwoerd's conclusion about reconciliation saw her making a commitment on behalf of young Afrikaners as she inverted the issue by identifying as African, which she repeated in *isiZulu*[343] thus appealing to ethos. This inversion in her conclusion has parallels with Mr Mbeki's concluding quote, which he attributed to young Afrikaners.

These epideictic arguments that defended the ANC's actions while condemning apartheid and the TRC report were balanced by praise for the ANC, which could be construed as a form of campaigning. While Mr Omar's introduction appealed to ethos as he recognised the families of victims in the audience was followed by condemnation of the white opposition leaders for their role in apartheid by citing the TRC report, his intention was to praise President Mandela. This ethical praise of President Mandela, which was supported by quoting Archbishop Tutu,[344] was used to remind the audience that this ethical leader was an ANC member. The principled positions and humility associated with President Mandela was in this way aligned to the ANC. During this epideictic part of his speech, Mr Omar introduced the

[339] Ibid 141-3.
[340] Ibid 132.
[341] Ibid 133.
[342] Ibid 135.
[343] Ibid 136.
[344] Ibid 64.

fallacious, albeit politically expedient, notion of the magnanimity of the ANC[345] when he stated that the 'white political parties' had 'been so generously permitted to participate'[346] and who 'continue through the generosity of this very President and the new democratic order to participate in the new democracy'. This argument ignored the long process of negotiation and compromise that had preceded the 1994 democratic elections.

This praise of the ANC and its magnanimity was echoed by the Minister of Health, Dr Dlamini-Zuma, whose speech was initially forensic with an appeal to pathos, as she explained the challenge that the ANC faced after democracy by listing the types of atrocities they had faced, and by naming victims.[347] This allowed for a deliberative approach, which appealed to ethos, where she explained reasons for supporting reconciliation, including changing the attitudes of those that committed gross human rights violations. Using a similar flawed argument to Mr Omar, she indicated that they chose not to take revenge, equally ignoring the negotiated agreement. She used the device of creating stasis throughout her speech, which served as the basis for her epideictic praising of the ANC and its actions.[348] While this could be interpreted as arrogance or simple electioneering, the narrow focus on the ANC and her recognition of MK, the ANC's military wing, in her conclusion defined her audience and allegiance, which negated any broader ethical appeal.

As a parliamentary debate, there was an expectation of deliberative oratory, which both President Mandela and Deputy President Mbeki as leaders delivered. It is important to note that despite expressing their disagreement with the TRC's findings, the ANC chose to deliberatively encourage conciliation. This was illustrated in the second half of Mr Omar's speech where, echoing Mr Mbeki, he appealed to logos as he advocated that reparations did not have to be monetary compensation to individuals but was about restoring dignity within society by addressing violence against women, finding bodies, and renaming streets and buildings as commemorative acts.[349] This appeal to logos was combined with an ethical appeal that spoke about recognising the 'dignity', 'humanity' and 'sacrifices' of victims as he proposed reparation that balanced 'capacity, affordability, as well as the ethos and value system, which South Africa wishes to nurture and encourage'. The similarity between Mr

[345] A similar argument was used by Mr. Tshwete and Ms. De Lille in the 1997 debate.
[346] Joint Hansard 1999 op cit 64.
[347] Ibid 80.
[348] Ibid 79-84.
[349] Ibid 66 -7.

Mbeki and Mr Omar's proposals about reparation was an indication that a decision had been made and was being communicated to the nation.

Ms Hani's short epideictic speech, which called for reconciliation and for the TRC report to be used as a guide, appealed to ethos as she called for a focus on the victims to unite the country. Like Mr Kasrils, she expressed conciliation using the collective both in addressing the victims as well as the past actions as she referred to 'how low we once sank, the stronger will be our resolve not to repeat these terrible deeds',[350] which could have signified the actions of either the apartheid state or the ANC. Her ethos was elevated by the fact that as Chris Hani's widow she may have been expected to be bitter or vengeful but instead took a forgiving approach.

Mr Ndebele's speech, which initially appealed to ethos by dedicating it to Andrew Zondo and by recounting the story of the grace that Zondo's mother displayed despite the indignity that she suffered at the hands of the apartheid state, was a combination of judicial and epideictic approaches that was supported by an Achebe quote to illustrate the importance of dealing with the past.[351] This ethos was decreased as Mr Ndebele used the opportunity to ensure that Andrew Zondo's name is linked to the leader of the DP whose father had sentenced him to death. Using this focus on the past, he included a deliberative plea about injustice that was being perpetrated in his province, KwaZulu-Natal, specifically against the ANC at the time. While he remained judicial in his logical presentation of the evidence of bias by the IFP leaders, his plea for unity was deliberative and appealed to both logos and ethos. He enhanced his plea by speaking to them directly in Zulu to relay a moral lesson on the basis that he was the son of a priest.[352]

Mr Yengeni, as the last speaker in the debate, was expected to conclude by responding to the arguments that were made by previous speakers. This was an opportunity for the ANC to demonstrate the leadership required for the country to heal and acknowledge its past. Mr Yengeni, as a former detainee who had testified before the TRC about the brutal torture meted out by the apartheid state,[353] was an ideal candidate to express moral superiority. While he established ethos in his epideictic introduction by recognising MK and, specifically Nelson Mandela as its first Commander-in-Chief, his reaction to opposition parties was less virtuous.

[350] Ibid 146.
[351] Ibid 171.
[352] Ibid 173.
[353] https://www.justice.gov.za/trc/media/1997/9707/s970714g.htm Access on 31 March 2020.

His response to the NNP, ignored its leader, and opted instead to address the frenetic concerns raised by Mr Maree about the Deputy President by praising Mr Mbeki.[354] He similarly responded to Mr Mncwango of the IFP by praising the ANC. When addressing the DP, he used the word 'opposed'[355] repetitively to logically indicate how their actions conflicted with the fight for freedom. He summarised this epideictically by comparing the ethical approach of the ANC with the opposition parties who he accused of using the debate to garner votes in the upcoming election from the electorate that they had oppressed in the past. To illustrate the extent of this duplicity, he used pathos by reminding them of Fritz Schoon,[356] and of children who were killed or remained missing, and ethos by quoting by Archbishop Tutu about white leaders not appearing before the TRC.[357] Mr Yengeni's conflicted mindset was apparent as he criticised the TRC processes immediately after using a quote from its chairperson to support his own criticism. Although Mr Yengeni concluded ethically by quoting President Mandela from when he received the TRC report on 29 October 1998, Yengeni's speech appeared to meander without a sense of considered invention. The effect of his ethical appeals should be measured in relation to the lost opportunity of being able to display moral leadership.

Although the ANC and other liberation organisations may have been able to claim the moral high ground in this debate, the NP or as it had reinvented itself by this debate, the New National Party (NNP), found itself in a defensive position especially because of its reluctance to co-operate with the TRC. This was apparent in the leader Mr van Schalkwyk's speech, which was a combination of judicial and epideictic approaches. He displayed a naiveté as he described the factors that shaped his world view, which miscalculated the values of the broader audience, as he compared 1955 as a year proudly marked by the British Lions Rugby Tour of South Africa with the adoption of the 'unfamiliar' Freedom Charter in Kliptown, which seemed to 'suddenly' intrude on that history.[358] This may have been designed to ethically distance himself from the apartheid state because of his youth to plead ignorance by having a different perspective. This approach continued with the addition of an appeal to logos when he addressed the TRC report by demonstrating its perceived bias in favour of the ANC as a factor that

[354] Joint Hansard 1999 op cit 176.
[355] Ibid 177.
[356] This is the same young boy who had witnessed his mother and sisters' deaths as mentioned by Ms. Verwoerd.
[357] Joint Hansard 1999 op cit 177.
[358] Ibid 56.

affected his initial support for the process. While not rejecting the report, this criticism provided the diversion to avoid addressing the findings.

Despite this, Mr van Schalkwyk was unable to ignore the actual topic of the debate, i.e., apartheid. The ethos of his epideictic condemnation that 'apartheid was an immoral and unjust system' was weakened by his defence of the actions of the apartheid state by equating it with the ANC's violations and by quoting the Malan minority report that the threat of communism was a factor. He appealed to logos by quoting the same report as the Deputy President to criticise Mr Mbeki and to support his call for amnesty and his claim of bias.

To change the topic, he applied translative stasis about the next steps. Used differently, the names of victims[359] across the spectrum would have been ethical but in this instance his phrase 'nothing we can do will bring back…' appeared callous in his rush to move on. His deliberative plea to political leaders to form a pact and 'close the book on past conflict and despair' was supported by expressing culpability through proposals such as ending 'a time of agonising', that they must 'free our people from psychological pressure and destructive, collective guilt feelings', and that if it did not happen, they would all continue to be 'prisoners of a dark shadow hanging over our shoulders and the quagmire of the past'.[360] Mr Van Schalkwyk's proposed pact served to protect the beneficiaries of apartheid: his first condition that there was no hate speech 'inside or outside this House'[361] was gratuitous because the Constitution adopted in 1996 and the Rules of Parliament already prohibited it; his concern about race-based laws and qualifying equality, while overtly addressing discrimination, in reality, focused on affirmative action and black economic empowerment legislation; his suggestion to bar those who had committed gross human rights violations from high office would effectively bar many of the ANC leaders who as a result of the TRC report and legislated apartheid would be implicated; and his call for 'joint mechanisms' and 'inclusive national consensus' based on practical considerations, while conciliatory, may also be interpreted as an appeal for influence bearing in mind that it was his predecessor who had withdrawn from the Government of National Unity.

While Ms Camerer's speech based on both ethos and logos outlined the concerns about amnesty raised by Mr Van Schalkwyk in more detail using judicial and epideictic approaches

[359] Ibid 59.
[360] Ibid 60.
[361] Ibid.

to indicate the TRC's bias in favour of the ANC,[362] her colleagues Mr Malatsi and Mr Rabie chose to justify their membership of a traditionally white conservative political party. Mr Malatsi, a black member, used a combination of judicial and epideictic approaches as he described the values that he held and why he acted as he did during apartheid. Although he established ethos as he aligned himself to the values of both President Mandela and Mr De Klerk and as he called for reconciliation[363] and the restoration of dignity,[364] he appeared to be conflicted about his loyalties. This was evident by his statement that 'It is unfortunate if I have not chosen the party of the President'[365] and his references to Mandela,[366] Luthuli and Puis Langa[367] to support his calls for reconciliation. The inconsistency was exacerbated when Mr Malatsi used these appeals to ethos to defend his membership of the National Party.

Mr Rabie, a coloured member of the NNP, whose speech was in Afrikaans,[368] used a combination of logos and ethos in an epideictic speech that seemed equally conflicted. He justified his role in the NNP and the tricameral Parliament with the logical argument that they changed the apartheid system from within. In an appeal to ethos and pathos, he pointed out that they were victimised by the United Democratic Front (UDF) for being part of that system. While his approach was very similar to his colleague, Mr Malatsi, he was more strident in his defence of the NNP as he made a distinction between the NNP and the old NP to separate his party from the apartheid state.[369] His inconsistency resulted in a fallacious argument illustrated when he praised Mr De Klerk's court action[370] and ignored the fact that Mr De Klerk was the head of the apartheid state and of the security apparatus. Unlike Mr Malatsi, Mr Rabie not only defended his actions, but he also condemned the values of the ANC and the credibility of the TRC. He accused the ANC of not taking responsibility, of consorting with gangsters, and for being disingenuous in its relationship with the IFP.[371] He similarly indicted the TRC for being weak and cited the TRC's differing reactions to the leaders that refused to testify as logical

[362] The Employment Equity Act, Act, Act 55 of 1998 that aimed to reverse the discriminatory employment practices of the colonial and apartheid past had been passed the previous year and the state had started discussions about Black Economic Empowerment.
[363] Joint Hansard 1999 op cit 118.
[364] Ibid 120.
[365] Ibid.
[366] Ibid 119.
[367] Puis Langa was the Deputy Chief Justice of the Constitutional Court at that time and had previously, as an advocate, been an active member of the anti-apartheid movement.
[368] Afrikaans would likely have been Mr. Rabie's mother tongue and in this instance, he would be appealing to the Afrikaans-speaking sector of the coloured community.
[369] Joint Hansard 1999 op cit 151-4.
[370] Ibid 149.
[371] Ibid 150.

support. Mr Rabie's ethos was diminished by his responses to the heckling he experienced and his criticism of the ANC by ironically declaring 'This hate speech does not contribute one iota to reconciliation'.[372]

The discord that existed at that time was probably best illustrated by Mr Maree's contribution to the debate. His epideictic response, which appealed to pathos and ethos, seemed to be one where he appeared to forego his prepared speech to respond to the Deputy President. It is possible that this decision and the intensity of the fear that he expressed resulted in a somewhat muddled speech, which was exacerbated by several interjections. The aim and the audience were unclear although a charitable interpretation may be that he was expressing the concerns of his support base using metaphors such as seeing Mugabe's ghost[373] to imply that the Deputy President was displaying tyrannical tendencies. As his reaction was based on a comparison between the conciliatory speech made by the outgoing President Mandela and the guilt-evoking one of Mr Mbeki, this impromptu response could be interpreted as expressing the fears of many white South Africans at the time. A less charitable interpretation would be that Mr Maree was reacting to that guilt and to his diminished power as illustrated by his reference to the victor dictating the debate and the 'victor's selective morality'.[374] This notion of a victor that disregarded the negotiation process and concessions by both the ANC and the NP/NNP demonstrated the mistrust that continued to exist.

If one understands the NNP's defensive statements in the context of the actions of its antecedent party, it may provide some insight into the stance taken by the IFP who had co-operated with the National Party. Both Mr Mncwango and Mr Pienaar appealed to the ethos of the leader of their party as the basis for their criticism of the ANC and the TRC. Mr Mncwango's judicial and epideictic speech repeated the account of the assassination attempt on Dr Buthelezi at Robert Sobukwe's funeral as well as Archbishop Tutu's response at the time,[375] which set the tone for the rest of the relatively long speech that praised the leader of the IFP while blaming the ANC for the violence that took place between the two organisations and criticising the TRC for being biased towards the ANC.[376] Although his conclusion committed to reconciliation, the ethos of this pledge was undermined by his parting shot that sought to expose the level of bias by naming a TRC commissioner allegedly implicated in

[372] Ibid 152.
[373] Ibid 165.
[374] Ibid 170.
[375] Ibid 68.
[376] Ibid 69-70.

smuggling weapons. While his views remained consistent with his approach in previous debates, one must understand the defence of Chief Buthelezi as a diversion from the issues being debated and the IFP's role. Casting themselves as victims allowed him to ignore the findings of the TRC in relation to apartheid and the IFP. This ploy was as evident in Mr Pienaar's speech where he appealed to logos and ethos as he established qualitative stasis about the possible reasons for the establishment of the TRC i.e., as a noble cause or a vehicle for revenge.[377] By reiterating Mr Mncwango's judicial and epideictic approach of the TRC's bias in favour of the ANC and the defence of the IFP leader, he aimed to demonstrate that it was to exact revenge. He cast Minister Buthelezi as both the victim of the ANC as well as a reconciler in comparison to the TRC, which he accused of wanting to be above the courts of law and failing in its mandate to foster reconciliation. In a further appeal to ethos, and to distract from the TRC findings, he used his identity as an Afrikaner to illustrate the reconciliatory character of the IFP leader.[378]

Gen Viljoen's speech similarly addressed his Afrikaner identity by confirming it and the Freedom Front's as South African. However, this message was not without controversy as the FF represented the remnants of the conservative right who supported apartheid. This may account for Gen Viljoen's introduction, which like Mr Maree of the NP deviated from his prepared speech to respond to the Deputy President. His epideictic response raised concerns about values and appealed to ethos by conceding that this behaviour was uncharacteristic of Mr Mbeki thus displaying virtue.[379] His judicial speech appealed to pathos as he addressed the Afrikaner identity in relation to their history of being victimised and persecuted, including before leaving Europe and, subsequently, when fighting the British in South Africa. Using this history, he rationalised their role in apartheid as possible 'redirected' anger against the British and by referring to 'mistakes [that] were made' in the passive voice to remove agency and intention.[380] While it was irrefutable that he represented the Afrikaners, his audience was the governing party and its supporters as he declared the Afrikaner as indigenous[381] and willing to reconcile.

When dealing with the military, he continued his judicial approach but appealed to logos instead by explaining the strategy of the armed conflict as part of the Cold War as

[377] Ibid 158-60.
[378] Ibid 159.
[379] Ibid 85.
[380] Ibid 89.
[381] Ibid.

understood from the apartheid government, which he once again used to appeal for inclusion. He justified this with an appeal to ethos aimed at the governing party when he stated that 'those in uniform, who had a perception on both sides that they were serving a just cause on both sides'.[382] As an indication of his commitment to reconciliation, he concluded by this appeal for the issue of amnesty to be resolved by finding an 'African solution'. Notwithstanding the defensive statements in his speech, the ethos established by Gen Viljoen's commitment to reconciliation cannot be ignored considering the role that he had played in upholding the apartheid state. The difference between his considered approach and that of his colleague, Maj-Gen Groenewald, was an indication of his allegiance. Maj-Gen Groenewald, unlike other speakers did not propose reconciliation but took a judicial approach with an appeal to logos as he called on the ANC to acknowledge their role in the violence. By supporting his contention with statistics, he maintained that the ANC was responsible for most of the violence as well as for the poor state of the economy.[383] He also accused the TRC of bias by providing proof from the TRC report. He used repetition of the words 'justify' and 'humiliate'[384] as he accused the ANC of murder and the TRC of bias. This approach that made no attempt to acknowledge the effect of apartheid on the majority displayed pathos about the perceived diminished social role of his supporters.

Representing a party that had historically opposed apartheid, Mr Leon of the DP was able to maintain a relatively neutral stance. Although his introduction was epideictic, when he questioned the values of the ANC by responding to statements by the Ministers of Justice, of Transport and of Health, he used appeals to logos and ethos to defend his party's actions during apartheid.[385] When he addressed the report, he quoted from the Azapo ruling to boost the DP's ethical position of having supported the process despite its 'flaws and inadequacies'.[386] His deliberative appeal against forgetting the past used repetition of the tautologous phrase 'not one single'[387] as he enumerated reasons for remembering and again as he concluded using the phrase 'never again', which echoed President Mandela's inaugural speech that stated 'never, never and never again'.[388] While Mr Leon's responses to previous speakers could be viewed

[382] Ibid 91.
[383] Ibid 136-7.
[384] Ibid 138.
[385] Ibid 100-105.
[386] Ibid 103.
[387] Ibid 104.
[388] http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS176 Accessed on 16 January 2022.

as election campaigning by a growing party, his call for remembering served to criticise both the ANC and NP.

His colleague, Mr Seremane, combined a judicial and epideictic approach as he discussed the values of the ANC and what their lack of full disclosure signified about their leadership using appeals to logos and ethos. To demonstrate the failings of the ANC, he used strange metaphors such as 'knights in golden armour'[389] to describe those that tried to suppress the release of the TRC report. While that may have been sarcasm, his statement about the ANC putting 'the state through the thorax and chest of the monster…when the monster will rise to suck more human blood'[390] was a metaphorically vivid way of expressing that the ANC's true character would emerge at some point. These and other similar cliches may have had the converse effect of alienating the audience through its complex language and imagery. Mr Seremane's effort was focused on exposing the ANC's negative past rather than guiding a different future.

The two Christian party leaders in the debate represented diverse political views but displayed similar ethical attitudes. Bishop Makgoba of the PAC epideictically celebrated the work of the TRC as he called for the release of political prisoners by demonstrating *gravitas* as he related his own experiences.[391] Although the PAC felt aggrieved about their members who remained in prison, when Bishop Makgoba made the appeal for their release, it was a moderate request using the word 'perhaps' twice indicating that he would rather not offend his audience. His conclusion was deliberative as he proposed the erection of a monument to liberty to remember those that have sacrificed and continued to appeal to ethos with the selfless call for reconciliation stating 'we offer ourselves as vehicles for spreading peace and human rights…'[392]

The ACDP's lack of apartheid history allowed its leader, Rev Meshoe to take a relatively neutral stance. Although introducing his speech epideictically with a call for 'lasting peace, forgiveness and reconciliation',[393] he was judicial as he pointed out the injustices and biases in the TRC process. His proposal of a general amnesty was significantly unbiased considering his party had no vested interest in the amnesty process, having not committed violations. In keeping with the principles of his party and his profession, Rev Meshoe appealed

[389] Joint Hansard 1999 op cit 143.
[390] Ibid 144.
[391] Ibid 109.
[392] Ibid.
[393] Ibid 111.

for a day of prayer and the inclusion of 'God, the Almighty'[394] and 'Lord Jesus Christ' in the healing process. Despite his religious proposal, he established ethos with the caveat that he was aware it may not be 'politically correct'. His audience, however, was clearly defined as he defended Christianity in relation to the TRC findings that it had been used to promote apartheid but conceded that some churches had not done enough to confront apartheid.

In an unusual practice the Speaker of the National Assembly, Ms Ginwala, who traditionally only presided over debates, made a short statement. This may be attributed to her connection to the issue being debated as she had been active in the anti-apartheid movement in exile for about 30 years. Her speech that summarised the debate called for reconciliation as she deliberatively urged MPs to continue the discussions in other forums to build unity.[395] She used a quote by President Mandela from the debate to support her argument. As part of her call to bridge the divides, she used the repetition of the word 'other' to appeal for a change in mindset from 'the ghettoes of the past'.[396] Her ethos increased as she concluded her speech by reciting excerpts from a poem by Rabindranath Tagore titled 'Where the mind is without fear', which is a prayer to God that was written when Bengal was still under British rule,[397] as a form of inspiration.

This debate signalled not only the end of the TRC process but took place at a time when several other political changes were occurring. Mr Mandela had announced his retirement and it was apparent that Mr Mbeki would be the incoming President, the NP had been re-invented to distance itself from its past, and the DP had embarked on a growth strategy. The tensions that related to issues of identity, both through declarations as well as language, of accountability and denials, and of the compromise between justice and uncovering the truth was further exacerbated in the context of an election year where the compromises of the first democratic election no longer held sway.

3.4. Conclusion

Notwithstanding the compromises of the negotiation period and the agreements and rights captured in the Interim and final Constitutions that existed throughout this period, the past could obviously not simply be cast off. The complexity of analysing these debates was that the topic was precisely about how the past would be resolved.

[394] Ibid 113.
[395] Ibid 179.
[396] Ibid 180.
[397] Ibid 181-2.

The issues of identity and recognition evident in the 1995 debate were consolidated rather than mitigated over the period of the subsequent debates. The hardened stances by groupings on either side of the divide, and the continued assertion of identity instead of recognition of the other, served to reinforce the divisions that had existed in the negotiation period. This occurred in the context where resources that had previously served a minority now had to be used for all citizens equally, requiring sacrifices by some. Building the nation in this period as affirmative action and black economic empowerment policies were still being implemented meant that class differences continued to mirror previous race divisions. The practicality of a shared understanding of the nation that cohered around the minutiae of everyday life was still being developed.

The constraint faced by all speakers, with the likely exception of Nelson Mandela, was an ethical one, where they needed to transcend the appeal to their particular audiences to constitute a universal audience based on shared values. The exposure of past atrocities in graphic detail through the TRC process challenged the notion of common values as it rendered reconciliation secondary to the pathos and logos that accompanied the revelations. Over the three debates, this ranged from gratitude for knowing about the past to anger about injustice on the one side, while those with vested interests used rationality about a legislated system to defend or deny past actions.

This meant that the need for recognition of identity trumped that of reconciliation for many speakers. While this was not consistent and varied depending on interests, maintaining this tension in the long term resulted in consolidation of attitudes rather than setting aside of self-interest for altruism. In the context where there was a deficit of trust to start with, it was exacerbated by the revelations of the past. Too many speakers held steadfast views rather than offering concessions and compromise to build trust. The exigence of bridging the past and the future that was evident tended to be caught in the present instead, explaining the preponderance of epideictic speeches.

Chapter Four – Mbeki: The HIV causing Aids Conundrum

When the impact of the global HIV/Aids epidemic was initially felt in Africa in the 1980s, it appeared to follow the global trend of being limited to homosexual males, haemophiliacs, and intravenous drug users. In South Africa, the impact initially lagged behind that of other African countries, such as Uganda, but by the turn of the century, the country had one of the highest rates of infection. The spread of the disease among the heterosexual population differed from the global trend where it remained associated with intravenous drug users and the homosexual male population.

The awareness of the disease and the increasing incidence of HIV/Aids and associated medical conditions in South Africa occurred at the same time as the country was negotiating the transition from the apartheid government to a democratic state. For the incoming ANC, the scale of the impact had not reached the levels that it would later in the decade and the immediate focus was on the new governance systems and the redesign of the apartheid state. However, this also provided the space for new policies to address the disease as evidence about the effects of the disease and the increase in the number of infected became available. The annual national surveys of antenatal patients found that the prevalence had doubled between 1990 and 1991. As many ANC members who returned from exile had experienced the impact of the disease on the continent and elsewhere first-hand, they understood its effects. A conference was held in Maputo in early 1990 where the ANC 'met with representatives of the internal anti-apartheid movement and drafted the Maputo Statement on HIV and AIDS in Southern Africa'.[398] Discussions were initiated between the ANC and the apartheid Department of Health in 1991 and, by the following year, a conference on Aids that included a wide range of participants in the sector was convened. This conference established the National Aids Committee of South Africa to co-ordinate the response to the disease in the country and produced an Aids plan, which was subsequently adopted by the new Government of National Unity in 1994. Two members of the drafting team, Dr Nkosazana Dlamini-Zuma, and Dr Manto Tshabalala-Msimang, became the first two post-apartheid Health Ministers.[399]

[398] Helen Schneider & Joanne Stein 'Implementing AIDS policy in post-Apartheid South Africa' (2001) 52 *Social Science and Medicine* 725.
[399] Nicoli Nattrass 'Aids and the Scientific Governance of Medicine in Post-Apartheid South Africa' (2008) 107 (427) *African Affairs* 158.

Despite this apparent rational approach by his organisation and the democratic state, as President of the country from 1999 (effectively since 1997),[400] President Thabo Mbeki took a view that questioned the fundamental understanding of the relation between the virus, HIV, and the resultant disease, Aids. His questioning of the relationship and his forays into research about the effects of the available treatment regimens at the time, however, did not remain purely academic musings but appeared to influence the way the Minister of Health managed the response to the disease as well. Whether her approach was inspired solely by President Mbeki's reservations or whether she independently held similar views is not a matter that will be analysed in this thesis other than to indicate that her support of the President's view was unwavering.

President Mbeki initially generated controversy in the scientific community about his handling of the HIV/Aids response when he promoted a drug called Virodene in 1997. The drug was developed by a group of local researchers at the University of Pretoria who, with the support of the then Deputy President Mbeki, had been able to brief Cabinet about their findings. It was subsequently found that the drug contained an organic solvent and an investigation by an independent panel of experts revealed that it did not pass basic testing. Consequently, it was turned down for further clinical trials by both the university ethics committee and the Medicines Control Council. However, by defending the researchers, Deputy President Mbeki drew the ire of Aids patients who suffered in the absence of effective treatment. Paroske suggests that Mbeki's support for Virodene may have been rooted in the need to find a local solution as part of his promotion of an African Renaissance.[401]

President Mbeki's mistrust of drugs developed by large pharmaceutical companies was one of the main reasons for the approach taken during his presidency. While addressing the National Council of Provinces, in October 1999, President Mbeki, referring to his research on the internet, questioned the toxicity of Zidovudine or AZT, which he asked the Minister of Health to investigate.[402] In addition to questioning the efficacy of proven treatments, President Mbeki entertained the counsel of scientists whose views had been discredited by the international scientific community. When he established his Aids council in 2000, half of the

[400] Vishnu Padayachee, Imraan Valodia & Thokozani Xaba 'Reflections on Post-Mandela Era' (1999) 34(32) *Economic and Political Weekly* 2223.
[401] Marcus Paroske 'Deliberating International Science Policy Controversies: Uncertainty and AIDS in South Africa' (2009) 95(2) *Quarterly Journal of Speech* 155.
[402] Adele Baleta 'South Africa's AIDS care thrown into confusion' (1999) 354 *The Lancet* 1711.

experts were orthodox scientists, and the other half were Aids denialists.[403] He is reported to have contacted David Rasnick, of the University of California, Berkeley to request his support for 'his [Mbeki's] efforts regarding AZT and Aids'.[404] Rasnick, Peter Duesberg and Charles Geshekter held the unorthodox view that the long-term use of recreational and anti-HIV drugs caused Aids. President Mbeki's view was based on his own research as indicated by the opening remarks to the Aids Panel in which he described how he had 'ploughed through lots and lots of documentation' to understand the 'controversy around these matters'.[405]

President Mbeki's views and the policy decisions of the Minister of Health did not go unchallenged by either the opposition parties or civil society organisations, who petitioned government and the courts to provide treatment for HIV/Aids patients. Over 5 000 scientists signed the Durban Declaration confirming that HIV causes Aids in response to the President's position shortly before the thirteenth international Aids conference in Durban, South Africa, in July 2000.[406] It was at this conference that President Mbeki's denial of the link between HIV and Aids was presented as an alternate view, which suggested that the disease should be understood as an impact and effect of poverty rather than as a crisis on its own.[407] When the largest advocacy group, the Treatment Action Campaign (TAC), took government to court in 2001 to compel it to provide antiretroviral (ARV) treatment to HIV-positive pregnant women to prevent the transmission of the disease from mother to child, the government challenged the court ruling, and it was only implemented after the Constitutional Court upheld the High Court's decision in favour of the petition.

In contrast to the President's statement's questioning the link between HIV and Aids, and the effectiveness of ARVs, and despite the Minister of Health's unwillingness to implement the stated policy, the Department of Health confirmed in January 2002 that there were no real barriers to delaying a phased expansion of services to HIV-positive pregnant women and that Neviropine could be provided.[408] By November 2003, Cabinet had approved a new comprehensive strategy to deal with the management and treatment of HIV/Aids in the country. These decisions and actions by the state and the rest of government, in opposition to

[403] Nattrass op cit 161.
[404] Adele Baleta 'Questioning of HIV theory of AIDS causes dismay in South Africa' (2000) 355 *The Lancet* 1167.
[405] Nattrass op cit 161.
[406]Kiran van Rijn 'The Politics of Uncertainty: The AIDS Debate, Thabo Mbeki and the South African Government Response (2006) 19(3) *Social History of Medicine* 522.
[407] Thabo Mbeki (2000) Speech at the Opening of the 13th International AIDS Conference, https://www.nelsonmandela.org/omalley/index.php/ Accessed 27 September 2017.
[408] Nono Simelela, W D Francois Venter, Yogan Pillay & Peter Barron 'A Political and Social History of HIV in South Africa' (2015) 12 *Current HIV/AIDS Reports* 258.

the President of the country and of the governing party at the time, were indicative of the divisions and the levels of frustration present in the country. Despite these decisions, the Minister of Health continued to take a different view and to obstruct the delivery of the health services required, and it was only after the removal of President Mbeki from office in 2008 that access to ARVs improved.

This period in South Africa and in the presidency of Thabo Mbeki was one of crisis in which many ANC members found themselves in opposition to their own party's policies. While analyses may exist about President Mbeki's views and the Minister of Health's support for alternative remedies and practitioners, this chapter looks at how this matter was addressed in Parliament through specific debates on the topic in that period. While the situation did not improve immediately after the decision to provide ARVs to the public, the debates under discussion focus on that initial period before the Cabinet decided to revise the policy.

The three debates analysed below were chosen as they illustrate the extent to which the President's approach created a crisis from his first year in office. Using Bitzer's concepts,[409] the urgencies created by these circumstances gave rise to rhetorical situations that combined with the parliamentary debates to modify perceptions and behaviour. In these cases, the audience was the President and government, primarily, and the public, as a secondary form of mediator to bring about change as in the case of the TAC court action. The actions of the local scientists and community organisations served to heighten the exigencies thus creating a reinforcing cycle. The constraints in these exigencies were provided not only by the beliefs and attitudes but also by the way power relations between the legislature and the Executive functions of the state were diluted through political party allegiances and behaviours.

4.1. Combating spread of HIV/Aids – 25 August 1999

This debate was proposed as a Subject for Discussion[410] by Mr Ellis, a member of the DP, the biggest opposition party after the elections. The topic of the debate, as one with a defined action, should have been deliberative as it was forward-looking because it sought solutions. While some of the speeches included deliberative arguments, the analysis will indicate that the debate was characterised by epideictic approaches that either aimed to denounce the extent of

[409] Bitzer op cit.

[410] The National Assembly's Guide to Procedure defines a Subject for Discussion in the following way: Such a motion provides an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision. A member or party proposing such a motion should identify it as a subject for discussion. A subject for discussion may be in the name of a member or a party.

the spread of HIV or to praise the government's efforts. The debate took place about two months into the Mbeki presidency when the impact of HIV on society was better known. This debate also preceded President Mbeki's statements that questioned the efficacy of AZT in the NCOP in October as well as at the International Aids Conference in Durban the following year.

As parliamentary convention indicates that the proposer of the topic leads the debate, Mr Ellis established ethos in his introduction by commending the Minister of Health on her appointment and by pledging his party's support. He sustained this epideictic approach by outlining the extent of the problem being debated and here he appealed to a combination of logos and ethos by quoting Dr Peter Piot, the Executive Director of the Joint United Nations Programme on HIV/Aids, and the *Business Day* newspaper,[411] albeit from two years prior. Mr Ellis displayed *phronesis* as he committed to finding solutions in an inclusive manner by his use of the personal pronoun 'we', and his understanding of the effect of the disease on society and the economy with phrases such as, 'We simply cannot afford this'.[412] When he stated that 'We will, in time, if we do not already know of someone close to us…who will die of HIV/Aids', it was apparent that he was addressing the audience in the chamber as well as the public. The humility conveyed by the statement was evident as the disease tended to affect the poor, black community to a greater extent and, as a formerly privileged, white man, Mr Ellis had included himself in the group that would be affected. Despite epideictically criticising the previous Minister of Health, when Mr Ellis expressed concern about government's response to the increasing pandemic, he did so in an ethically deft manner by suggesting that there 'has not been a clear commitment' and that the initiatives 'remains *cloudy*'.[413] The latter half of Mr Ellis' speech was deliberative and appealed to logos as he enumerated proposals to address the HIV challenge, and reiterated his ethical appeal by using the pronoun 'we' and confirming his party's commitment to fighting HIV.

As the proposer of the debate, in terms of convention Mr Ellis was also allowed to conclude it. In his closing remarks as the second last speaker,[414] Mr Ellis continued to appeal to ethos as he epideictically commended the quality of the debate and pledged support to the new Minister, despite blaming the previous Minister for the ANC speakers' defence of

[411] *Debates of the National Assembly of 1999* Vols 28 and 29 14 June to 18 November 477 (Hansard 1999 hereafter).
[412] Ibid.
[413] Ibid 478.
[414] Conventionally, the proposer of the debate is the last speaker but in this case the Minister as a member of the Executive was the last speaker.

government policy.[415] By shifting the blame, he effectively justified the arguments of the ANC members, further extending his ethical appeal.

His DP colleague, Ms Sigabi, who delivered her maiden speech appealed to ethos and logos more explicitly using a combination of epideictic and deliberative approaches. Her introductory statement 'We believe if we want to set our nation free, we need sufficient confidence in ourselves to reach proper examinations of issues that are important to our nation. We will not be able to build a new nation unless we establish it on sure foundations' set this tone for her speech.[416] While her epideictic focus on the impact of HIV on women specifically, appealed to the ethos of media reports, when she addressed the unequal gender relationships, she appealed to logos with deliberative proposals to assist rape victims. She supported these appeals by referring to the expertise of the Committee for Human Rights, Law and Ethics of the South African Medical Association.[417] By not judging men and instead suggesting that they be included 'as co-agents of change',[418] and by stating that '[M]en, like women, need to be learning all the time', Ms Sigabi's ethical appeal and the significance of her rational speech devoted to a specific vulnerable group must be understood within the context of the patriarchal society that existed in South Africa at that time, despite the constitutional changes guaranteeing equal rights.

Ms Mndende of the UDM's speech took a similar approach as she called on all parties to unite and then illustrated that unity in her speech. She used a combination of epideictic and deliberative phrases such as 'responsibility of every South African',[419] 'together we may lead by example', '[T]he multisectoral approach can be the only approach', and her concluding remarks 'If for no other reason, then let us persevere out of national pride, so that our children may stand tall one day in the memory of our successes. Failure cannot be an option'[420] to rally and challenge her audience. This appeal to ethos was reiterated in her praise of the Minister and government in a speech that placed the issue of HIV above party politics. Like Ms Sigabi, she identified women as vulnerable and needing special protection in society and her call for action, which was expressed using the collective terms 'we', 'us' and 'our', increased this appeal.[421] Although Ms Mndende maintained her ethical appeal through conciliatory proposals,

[415] Hansard 1999 op cit 498.
[416] Ibid. 492.
[417] Ibid 493.
[418] Ibid 492.
[419] Ibid 485.
[420] Ibid 486.
[421] Ibid 485.

she did not abandon her legislative responsibility as she deliberatively questioned how funding for combatting HIV was being spent,[422] and requested details about the strategic plan that the Minister had mentioned in a briefing the previous day.[423]

Dr Gous of the NNP, in contrast, opted to address the matter by providing a forensic and epideictic explanation based on logos. Not only did he disregard the topic, his speech ignored the audience expecting solutions. This lack of decorum was evident in his use of humour in his introduction[424] as well as his statistical illustration that there should be 64 MPs who were HIV-positive.[425] His forensic account of the history of HIV and its spread, and the epideictic explanation of the physiological aspects related to the transmission of the disease appealed to ethos as a display of Dr Gous' expertise. By not addressing his audience for whom managing the disease was vitally important, the appeal could instead have been interpreted as disdain. While Dr Gous concluded deliberatively by stating '[T]he message here again is very simple: Abstain totally – I think that is a bit impractical – or stick to one-partner sex',[426] his indifferent attitude was reinforced as he dismissed his own proposal. A cynical interpretation of his attitude may be that, as the disease affected the black community mainly, this was not a real concern for his conservative white NNP constituency.

Dr Mulder, who also represented a conservative white constituency, introduced his short speech epideictically by appealing to ethos as he responded to partisan comments from the ANC by calling on parties to not politicise the issue by providing proof of the joint commitment made earlier that year.[427] This epideictic approach was retained as he appealed to logos to indicate the impact of the spread of the virus on society and the economy.[428] Although he appealed to the ethos of President Mbeki, his lack of deliberative solutions, combined with his listing of the impacts and misconceptions, and the way he questioned the new Minister's approach,[429] served to diminish his overall ethos. In a different form to Dr Gous, Dr Mulder displayed similar indifference by his lack of identification with the majority of the audience.

While Rev Meshoe similarly condemned government action, he appealed to the epideictic values of his Christian faith. As the perception that HIV was spread by unprotected

[422] Ibid.
[423] Ibid 486.
[424] Ibid 483.
[425] Ibid.
[426] Ibid 484.
[427] Ibid 491.
[428] Ibid.
[429] Ibid 492.

sexual intercourse with multiple partners conflicted with these values, his speech appealed to the ethos of these morals, including the criticism that the distribution of condoms would lead to promiscuity, and appealing to the government to promote abstinence and a moral alternative.[430] By appealing to both ethos and logos his support of this epideictic view quoted a *Business Day* newspaper article about HIV data, while his deliberative proposal that HIV be a notifiable disease relied on the Department of Health information in this regard.[431] Rev Meshoe's deliberative conclusion maintained his Christian ethical values such as 'the benefits of abstinence for the unmarried' and the exposure of 'all dangerous lifestyles like prostitution'.[432] This view addressed only a segment of the audience and served to judge those affected by the disease rather than offer practical solutions.

Although Mr Mfundisi from the United Christian Democratic Party (UCDP) represented a similar Christian electorate to Rev Meshoe, he opted not to draw on the same values. The UCDP was a new party that had won three seats in the 1999 elections. Using a combination of appeals to logos and ethos, Mr Mfundisi epideictically outlined the seriousness of the problem by referring to the UN Human Development Index, and combined this with practical deliberative statements, such as suggesting that sex education be introduced at primary school, that all leaders talk about the disease in all their meetings, that there was training for caregivers, and that care be provided for the vulnerable.[433] His only indication of a Christian view was advice to pastors that they 'preach against practices that make infection easier'.[434] His epideictic conclusion, which appealed to ethos, called on the audience to unite 'lest we have the whole nation perishing'.[435]

The only opposition member that supported the government's approach was Rev Zondi from the IFP. His epideictic introduction and conclusion appealed to ethos as he congratulated the Minister on her appointment and commended the leadership of the President.[436] This epideictic approach was combined with deliberative proposals, which appealed to logos, as he outlined the prevalence of HIV on the African continent and proposed practical solutions such as condom distribution accompanied by education and, like Mr Ellis, that community

[430] Ibid 487.
[431] Ibid 486.
[432] Ibid 487.
[433] Ibid 494.
[434] Ibid.
[435] Ibid.
[436] Ibid 483.

organisations be used to educate the public.[437] His suggestion of providing treatment to pregnant women indicated his consideration of vulnerable members of society.[438] Rev Zondi's inclusion of society in the solutions, and the appeal to MPs to display the 'same commitment and leadership' as the President and the Cabinet in fighting HIV, aimed to enhance his ethos by recognising the role of his immediate and wider audiences.

These appeals by opposition members must be evaluated against the pro-government stance by ANC members. While it was early in the Mbeki presidency, and before he elicited controversy, it was interesting that MPs would represent government's views to this extent. Dr Jassat, as the first ANC speaker, proposed a re-wording of the motion to indicate that the urgency had already been understood by the governing party. His speech that combined epideictic and forensic approaches appealed to logos and ethos to prove this point by listing the government actions already taken.[439] This approach, which did not make any deliberative proposals, could be perceived as patronising and dismissive of the topic. Ms Twala echoed the approach taken by her colleague, Dr Jassat, by defending the policies of government. Her speech, through a similar combination of epideictic and forensic approaches with an appeal to logos, provided an inventory of the programmes that government had implemented as examples of the response.[440] These, such as the multimedia project Soul City, aimed at young people,[441] were stated without any proof of efficacy. When she referred to Cosatu's[442] support for Bills that dealt with non-discrimination as proof of its commitment to fighting HIV,[443] it was as if this was extraordinary rather than expected from a trade union regardless of the HIV crisis. By directly criticising opposition parties as having treated vulnerable groups as dispensable and implying that they were only beginning to develop HIV policies while the ANC was ahead, Ms Twala raised a straw man defence to deviate from the topic. This criticism appeared to divert attention from the health crisis and served as an early indicator of a party losing touch with the electorate suffering from the disease.

Of the ANC speakers, Ms Nqodi sounded most conciliatory. Although she started her speech with a joke, unlike Dr Gous, it did not make light of the disease but epideictically

[437] Ibid 482.
[438] Ibid.
[439] Ibid 480-1.
[440] Ibid 488-9.
[441] Ibid 488.
[442] Cosatu was the largest trade union federation at the time and had formed an alliance with the ANC in 1991.
[443] Hansard 1999 op cit 488.

complimented the speakers[444] and established ethos. Her statement that she was led by the ANC motto, 'a better life for all'[445] served to preface her understanding of the gravity of the impact of the disease. She established ethos in an epideictic speech and appealed to a wider audience when she stated that it was not a topic for point-scoring, as she called on a partnership between government and the people. This non-partisan approach was confirmed by her statement that the partnership was being demonstrated in the House that afternoon. Her support for the government's programmes was cited as the proof of the partnership when she stated '…as we are demonstrating this afternoon, by joining the awareness campaigns and public education initiatives led by the Department of Health and the Aids activists'.[446] By linking the Department of Health with the Aids activists, she engineered their support for government. This epideictic balance between non-partisanship and support for government was reinforced when she stated, '[R]egardless of our affiliation, we must support this government's national vision…and to build a new patriotism that will strengthen us in our work to build a better life and better world'.[447] Her approach, which suggested supporting the government's programmes was the right and obvious thing to do in terms of being patriotic without being defensive, appealed to ethos. She did not simply list a set of initiatives but advocated to convince her audience that the initiatives were the correct ones. When she spoke about the programme aimed at the youth she said, '*Whether we believe it or not*, this is the most vulnerable group'.[448] By expressing potential misgivings of some in her audience as her own, she was able to persuade them that it was still the right path to follow. In this way, Ms Nqodi advocated for policy support by identifying a disparity that existed, quantifying it, proposing actions to overcome it as well as the consequences of the proposed action. Despite the strong argument made by Ms Nqodi, she did not conclude her speech due to time constraints.

The following ANC speaker, Mr Mpehle, similarly advocated for the government's policies by forensically listing programmes that it had implemented. While he made similar epideictic arguments as Ms Nqodi, he did not ethically appeal to the wider audience. When Ms Nqodi called on MPs to rise above their party affiliations, she exhorted them to follow a vision, even if it was the governing party's vision – 'we must support this Government's national vision, the vision to accelerate change'[449]; when Mr Mpehle attempted the same, it was under

[444] Ibid 494.
[445] Ibid.
[446] Ibid 495.
[447] Ibid.
[448] Ibid.
[449] Ibid.

threat of survival – '…all of us, regardless of political affiliation, race or class, can only survive provided we are united against HIV/Aids'.[450] When Mr Mpehle called for an exhibition of patriotism it was because it 'emanates from the efforts to build a united nation of South Africa'.[451] Ms Nqodi, in contrast, had loftier ideals and wanted to build a 'new patriotism that will strengthen us in our work to build a better life and a better world'.[452] It was, however, not only these differences that distinguished the appeals by the two ANC speakers but the fact that Mr Mpehle implied that the DP and Mr Ellis, in particular, had vested interests in the pharmaceutical industry and in this way, despite his earlier call for a non-partisan approach, diminished his ethical position by being partisan himself.

The final speaker in the debate was the Minister of Health who, as a member of the Executive, was expected to provide a forensic report on the programmes that government had implemented to deal with the crisis. The Minister, in addition to meeting that expectation, established her ethos by taking a conciliatory approach, which epideictically appealed to all sectors of society to be partners. She did this by calling on 'all levels of political leadership, individually and collectively' and then more directly to her audience when she said 'each one of us, again individually and collectively, to demonstrate that political commitment'.[453] Interestingly, unlike the ANC speakers before her, she did not take a dogmatic approach, conceding instead that tackling the disease required that it be spoken 'openly about', that 'the key to our success is our openness about HIV/Aids', and that government would 'rely on communities and families'.[454] She maintained her ethos by not criticising any of the other speakers and instead thanked those who 'committed themselves to join the fight against HIV/Aids' and when addressing government's strategy of promoting abstinence, faithfulness, and the use of condoms, she reassured Rev Meshoe about the inclusivity of the message.[455]

There were, however, statements in the speech that provided an insight into the battles that would be fought later such as, when as part of her introduction, she stated that HIV was not a health problem,[456] by reiterating Mr Mpehle's statement that there was no vaccine,[457] her

[450] Ibid 497.
[451] Ibid.
[452] Ibid 495.
[453] Ibid 499.
[454] Ibid 500.
[455] Ibid.
[456] Ibid 499.
[457] Ibid 502.

conclusion that indicated Uganda had reduced their prevalence of HIV without the use of ARVs, and her comments that the effectiveness of the drugs were misleading.[458]

As this debate took place relatively early in both the democratic era and the HIV crisis, it displayed a combination of both party interests and arguments in the interest of the public. Political parties such as the ACDP, the NNP and the FF opted to defend the interests of their narrow constituencies, although not overtly. Their partisan stances are evidenced by the lack of deliberative options that would address the South African population. While the Democratic Party who had called the debate were supported by smaller parties who were motivated by conciliation to seek solutions, the governing party took differing approaches. This varied from relying on the authority of the government and attacks on the opposition parties to advocating a collective approach to change. This defence of government by the ANC in the legislature is one that will increase in subsequent debates.

4.2. President's apparent refusal to accept to accept mainstream scientific view on Aids – 19 April 2000

The topic of this debate, as the one above, was a Subject for Discussion called for by Mr Ellis of the Democratic Party. However, this time the topic dealt directly with the President's views on HIV and Aids. As a debate focused on values and beliefs, speakers, as expected, took an epideictic approach, although some speakers included deliberative proposals, which tended to elevate their ethos. The purpose of analysing this debate relates not to the topic of the President's approach nor the party political attacks but the extent to which the speakers are aware of the public that they represent. How the debate addressed the issues that mattered to South Africans especially those affected by the disease is important as it indicated whether the politicians were aware of the social context. While the President's statements served as the motivation for the debate, it is not addressed as it is not relevant to the analysis.

As noted previously, in terms of convention the proposer leads and concludes debates of this nature. Even though the DP had called for the debate, Mr Ellis was preceded in the debate by the Deputy President, Mr Jacob Zuma, possibly due to the latter's status in government.

Mr Zuma's epideictic speech, which appealed to logos, endorsed the President's view as one that simply questioned existing information on the logical basis that all truths and scientific knowledge should be examined as part of scientific enquiry, and in fulfilling his duty as

[458] Ibid.

President. His introduction. which outlined the incidence of HIV in Africa,[459] set the tone for this approach as one based on facts, although his refutation of the suggestion that the President had denied the link between HIV and Aids was non-committal and vague. He said,

> Neither the President nor the rest of our government has made any determination, whatsoever, that would prejudge the conclusions of whatever scientific investigation is happening on HIV/Aids. Accordingly, at no point has the President said that he challenges the view that HIV causes Aids *or the contrary*.[460]

What 'or the contrary' meant was not clear but could be interpreted as meaning that while he had not challenged it, he had not accepted it either. By including 'the rest of our government', Mr Zuma indicated that President Mbeki had the support of his Cabinet in questioning the prevailing science, which was expressed using the plural possessive pronouns 'we' or 'our' in the remainder of the speech.

To justify the President's consultation of dissident views, he forensically invoked the example of the persecution of Galileo as someone who had challenged conventional wisdom of his time and who, ultimately, was vindicated. The fallacy of his argument that 'his views were considered to be so threatening to the scientific establishment'[461] was refuted by Dr Mulder later in the debate who pointed out that it was the church leaders and not his fellow scientists that had called on Galileo to recant. A further fallacy was that while Galileo based his work on research and observations, as Mr Aucamp (AEB) and Mr Mangena (Azapo), pointed out, the dissident scientists had not conducted any original research to support their contentions.

To extend the logical appeal for tolerance, Mr Zuma referred to a quote from 'ACTUP San Francisco, one of the HIV/Aids NGOs in the United States',[462] who had been refused permission to exhibit at the upcoming International Aids Conference, as proof of the debate being stifled. He used the ethos of an international organisation to epideictically enhance the ANC's esteem with the fallacious and diversionary suggestion that as the majority political party, it did not have the right to brand other parties as dissident simply because they represented a smaller section of the population.[463] His argument that compared democratic

[459] *Debates of the National Assembly of 2000* Vol 33 4 April to 26 May 2752-3 (Hansard 2000 hereafter).
[460] Ibid 2753.
[461] Ibid 2754.
[462] Ibid.
[463] Ibid 2755.

principles and decisions by an electorate with proven science that had a direct bearing on whether people survived an infection or not, was a *non sequitur*.

After citing interventions that the government had instituted, he again used Galileo to enhance the logos and ethos of his argument as he defended the meeting of the panel of scientists that was arranged for the following month. Here he used Galileo to suggest the possibility of an alternative solution – 'But suppose we discover, as Galileo did, that the so-called mainstream scientific view is incorrect? Suppose there were even a 1% chance of the solution lying elsewhere'.[464] Mr Zuma obviously chose to ignore the fact that Galileo's ideas were so divergent from what the church held to be true that he was summoned to the Holy Office in Rome to repent for his heresy.[465] For a member of the audience hoping for a miracle cure, this possibility would raise their hopes. He pre-emptively responded to the criticism about including dissident scientists through an epideictic appeal to prudence and rationality when he stated, 'Unlike Galileo, we are not in any way suggesting that it is a fact that the prevailing mainstream scientific view is wrong. All we are saying is that issues must be debated and all views considered'. Mr Zuma's use of the persecution of Galileo as an analogy, assumed how much his audience knew about the astronomer, and the debates and condemnation that his work evoked from the Catholic Church at that time. A possible explanation for this bizarre reference, besides the obvious appeal to the logic and ethics of science, may have been to the broader international audience, who were similarly disturbed by the President's alternative solution forays. This was at a time when South Africa had re-entered global politics and needed to maintain investment confidence to rebuild its economy.

Dr Nkomo's epideictic speech, which appealed to both logos and ethos, took a more assertive approach. As the chairperson of the Portfolio Committee on Health, he introduced his speech by aligning himself to the ANC and its policies, which he described as an organisation that 'forever seeks the truth and does not worship at the altars of transient calves'.[466] The reference to the worship of a false deity served to remind the audience of the golden calf that was worshiped by the Israelites when Moses left. Its use here suggested that the ANC was the authentic leader rather than temporary attractive solutions, which was conveyed by using the word 'transient' rather than 'golden'. The worship of the golden calf has also been interpreted as a worship of wealth and as he criticised the pharmaceutical companies for their focus on

[464] Ibid 2756.
[465] https://plato.stanford.edu/entries/galileo/#4 Accessed on 27 May 2020.
[466] Hansard 2000 op cit 2761.

profits, this expression may have served as an allusion to that industry. He provided proof of the ethos of the ANC by noting the organisation's early responses to the disease.[467]

The main argument that Dr Nkomo made, however, related how he understood the manifestation of the disease in Africa as different to that found in the United States. Using *hypophora,* he questioned and responded with evidence of these differences, which served to indicate that, despite the accepted view, there was no consistency in understanding the disease. By sowing doubt, he was able to logically make the argument for listening to the opinions of scientists that have 'wide-ranging international experience'.[468] He used this to epideictically rebuke the Democratic Party as arrogant and suggested that this behaviour was like that of the apartheid leaders.[469] By constructing this divisive argument, he appealed to logos and the ethos of the ANC as liberators as he reminded the audience of the divisions between the victims and their former oppressors.

Dr Nkomo epideictically criticised pharmaceutical companies by establishing definitional stasis to suggest that they should find more cost-effective ways of producing medicines[470] and to call on them to withdraw their court challenge to the Medicines and Related Substances Control Amendment Act.[471] In contrast, by appealing to ethos, he portrayed government as benevolent as they were 'charged with a grave responsibility to care for the afflicted'[472] and as they had not banned the use of antiretroviral medication by the private sector. This argument cast the ANC government in a patronising parental role rather than as servants of the people. This echoed the sentiment in Mr Zuma's speech when he stated that the 'President, as the head of state, needs to take informed decisions on all questions that affect the lives of all our people'.[473] Dr Nkomo's distrust of the pharmaceutical industry was further epideictically illustrated when, by appealing to logos, he suggested that the release of the letter that Mr Ellis quoted was a breach of protocol designed to disguise the real motive of the pharmaceutical industry to use Africans as test subjects.[474] This correlation allowed him to imply an alliance between the DP and the pharmaceutical companies, which he extended in his

[467] Ibid.
[468] Ibid 2762.
[469] Ibid.
[470] Ibid 2763.
[471] The pharmaceutical industry had challenged the Act as unconstitutional and that it transgressed the WTO's TRIPS agreement – http://www.msf.org/en/article/south-africa-big-pharma-backs-down. Accessed on 28 January 2018.
[472] Hansard 2000 op cit 2763.
[473] Ibid 2753.
[474] Ibid 2764.

concluding epideictic remarks using definitional stasis to argue that Africans were being manipulated for the benefit of profits and so that countries such as Britain and the United States would benefit.[475]

This epideictic approach was affirmed by Ms Njobe with similar messages and appeals to logos and ethos. She used logos to explain that there were unanswered questions and, as proof, repeated the notion of different strains of the virus and included the 'Africans and the monkey meat story'[476] to indicate how little was known and to reiterate the ANC argument that HIV in Africa was unique. Like Dr Nkomo, she aligned her ethos to that of the ANC and the ANC-led government. In this aspect, she appealed to both logos and ethos as she forensically summarised the programmes that the government had instituted. Although she appealed to the ethos of Dr Makgoba, as President of the Medical Research Council (MRC) whose applied research was '[U]nlike in the past when this body concerned itself with basic research',[477] she did not define this 'past'. If one takes this in context, the past would be the apartheid era, which implied that this new research was an innovation by the democratic government. This epideictic commendation must be seen in the context where both Mr Ellis (DP) and Dr Gous (NNP) had referred to Dr Makgoba as disagreeing with the President's approach to the disease in the debate.

While the argument of her speech was aligned to that of her colleagues, Ms Njobe's introduction not only defended the President but epideictically praised his actions and provided logical proof how these 'challenges'[478] that he posed had been to the country's advantage. Her first example was President Mbeki's iconic 'I am an African' speech delivered in Parliament when the Constitution was adopted on 8 May 1996 while he was Deputy President. On that occasion, all subsequent speakers responded by equally proclaiming that they too were African in a display of unity. Her second example was Parliament's commitment to make the 21st century an African one, again in response to a challenge by the President. These examples can be analysed in context, for the purposes of this analysis, they related to a call for unity and identification as Africans, which, while commendable, supported the arguments by the Deputy President and Dr Nkomo for addressing the disease in a uniquely African manner and reinforced the notion of the President's custodial role.

[475] Ibid.
[476] Ibid 2773.
[477] Ibid 2775.
[478] Ibid 2772-3.

As the final ANC speaker, the Minister of Health introduced her speech by appealing to ethos when she forensically informed the audience that she had just returned from Atlanta where she met with a wide range of African health ministers, and other agencies. Using this as a basis, she epideictically criticised Mr Ellis as unpatriotic for questioning the President and erroneously argued that his statements about the White House were untrue[479] when he had not said anything in that regard. Her speech overall, made the same epideictic argument as her ANC colleagues about the science not being clear and the differences between Africa and the rest of the world. This approach was supported by the logical and ethical justification of the President's questions. In addition, she took a deliberative approach that outlined the programmes that the government had implemented with the rationale that it demonstrated how government was taking action to deal with the disease.

In justifying the President's approach, like the Deputy President, she epideictically addressed the question of his denial directly and equally made a statement that may be open to interpretation when she said, 'Let me begin by stating categorically for the record neither the President, nor indeed, members of the Cabinet have ever said that they do not believe that Aids exists, nor have we ever said that we deny the linkages between HIV and Aids'.[480] Like Mr Zuma, she appealed to logos as she added the support of Cabinet, and although she rejected denying the link, she did not confirm it either. In her categorical statement, she included a red herring by refuting that they did not deny the existence of Aids, which had not been raised as a concern at all. While Mr Zuma had raised the notion of a 1% chance of finding an alternative solution, Dr Tshabalala-Msimang suggested 'medical sleuthing always works in strange ways', '[R]esearchers often speak of serendipity or an accident. They focus on one thing and discover something very different or even more important.', and 'creatively acting on a hunch'.[481] These epideictic musings insinuated that a unique response to the epidemic would be fortuitously discovered and as further proof, which appealed to logos, she used conjectural stasis to explain the unique manifestation of the disease in Africa in terms of sexual orientation, race and gender.[482]

When epideictically defending the proposed meeting of scientists by appealing to the ethos of a White House policy adviser who had planned a similar meeting but had to cancel as

[479] Ibid 2786.
[480] Ibid 2787.
[481] Ibid.
[482] Ibid 2787-8.

Robert Gallo,[483] refused to participate, Dr Tshabalala-Msimang quoted Gallo saying that 'he had no time to waste over such things'. This was vague enough to allow the Minister to use logos to imply that it was a rejection of a policy discussion rather than what it was i.e., a rejection of a meeting with the Aids dissident, Peter Duesberg in 1988,[484] more than ten years earlier. Although she epideictically appealed for unity in her conclusion, she nonetheless, used the statement to disparage the DP as not being willing to act collectively.[485] The Minister's speech indicated a change in her approach to the audience from the previous year when she was conciliatory.

The message from the ANC speakers was that as HIV in Africa was different from what was being seen in the rest of world, it required a specific African response. Their dissent relied on the ethos of science as they presented an alternative to the western approach. The Deputy President's aspirational statement about 'even a 1% chance', the dismissive approach of Dr Nkomo, Ms Njobe's praise of Mbeki and the Minister's appeal to serendipity was an indication that an African solution may simply appear. Their appeal for modification thus constituted a collective that reminded the audience of their previous status as victims where solutions were not found in the mainstream but through local actions. It was also, unfortunately, an indication of the difficulties that Aids patients, desperate for a solution, had to endure.

Dr Ngubane from the IFP, who was the Minister for Arts, Culture, Science and Technology, also defended the President. In addition to his party being part of government, his government department was funding the MRC at the time. He epideictically repeated the justification that the President had not denied that HIV causes Aids and that the President simply wanted to get as much information as possible. His approach, while appealing to logos, was argued based on the affordability of implementing the required treatment. His example of the cost of treatment, however, was unrelated to the issues that the President had questioned and may simply have been Dr Ngubane's view. While his use of figures appealed to ethos by displaying his technical medical knowledge about the extent of infections and the costs that the Health department would incur,[486] his deliberative suggestion, which appealed to logos, that it would be more affordable to simply treat the 'intercurrent infections and the opportunistic infections in those people, which in itself costs a lot of money'[487] and that it made

[483] Robert Gallo is credited internationally for his co-discovery of HIV as the cause of AIDS.
[484] Peter H Duesberg *Inventing the Aids Virus (*1996) 394.
[485] Hansard 2000 op cit 2790.
[486] Ibid 2765.
[487] Ibid.

no sense to provide pregnant mothers with AZT if they were going to pass on the virus through breastfeeding, demonstrated an insensitivity towards those infected with HIV. As a medical doctor, Dr Ngubane was able to appeal to ethos as he displayed his expertise with the use of technical terms and when he pointed out the negative effects of antiretroviral medication.[488] In this case, his reference to printouts that he had brought to the debate to indicate that the ARVs cause liver damage appealed to logos but did not provide substantial proof.

Dr Ngubane echoed the Deputy President that scientific thinking that goes against conventional wisdom is often rejected, and forensically used the example of Howard Temin who identified the role of the provirus in cancer but whose work was initially rejected.[489] This logical argument concurred with the ANC view that alternatives should be sought. While he equally agreed with the ANC that the disease presented itself differently in Africa by establishing conjectural stasis, he did not argue for searching for a unique solution.

As the only non-ANC speaker to defend the President, it appeared that Dr Ngubane placed greater value on his personal position within government than as a member of an opposition party who should have been representing the collective. This was illustrated by his use of the plural personal pronouns 'we' and 'our' and his dismissal of treatment for those suffering from the disease by presenting financial constraints and arguing about the futility of attempting to assist because it is easier to deal with the opportunistic infections.

As the proposer of the debate, Mr Ellis' epideictic criticism focused on the effect that the President's statements would have on South Africa's international reputation by referring to the letter that President Mbeki had written to world leaders and, thus, possibly addressing the same audience as Mr Zuma. His statements that it 'will *further* undermine South Africa's international reputation and harm our efforts to combat Aids effectively'[490] and that '[T]he consequences for our international standing and reputation can surely only be negative'[491] was based on the commonplace acceptance of these contentions without providing proof. He took a similar approach to his criticism of the dissident scientists. Considering that the broader South African audience may not have been familiar with the intricacies of the country's international standing nor scientific positions, it resulted in diminishing his argument that the President was being irrational. This was evident in his quote from the letter that President Mbeki wrote to

[488] Ibid 2766.
[489] Ibid 2767.
[490] Ibid 2758.
[491] Ibid 2759.

world leaders that referred to the burning of books and their authors where the lack of context served to imply that the description used by the President was akin to calling for those actions.

While Mr Ellis epideictically conceded that the ANC's view that the manifestation of the HIV crisis in Africa, in general, and in South Africa, in particular, was unique and therefore required a unique response, initially appealed to logos and ethos as he stated '[T]here is surely no problem with this',[492] when he noted it for a second time, however, his response was a *non sequitur* that linked it to President Mbeki's refusal to acknowledge that HIV causes Aids. Mr Ellis' claim that the President's views about the link between HIV and Aids was a political issue was without elucidation, again introducing a *non sequitur* that it should be 'about what they are going to do to limit its spread'.[493] While this was a valid point, his introduction of it lacked the ethos required, having been preceded by epideictic political criticism. This ironically rendered Mr Ellis' speech equally political, not only by the lack of cogent argument but by the lack of ethos arising from his sole purpose of criticising the President. This epideictic criticism was consistent as he reminded the audience of the government's previous failures such as Sarafina II[494] and the Virodene[495] vaccine. Although he appealed to the ethos of the President of the MRC with a quote to support his argument, his sarcastic conclusion '…for someone so committed to this African Renaissance, I sincerely hope that he will listen very carefully to what his president of the Medical Research Council has said'[496] again diminished his ethos. Mr Ellis dissociated himself from the issue and from his audience and their values when he referred to 'this'[497] African Renaissance and 'his' president of the Medical Research Council.

While his utterances betrayed his detachment, his lack of any expression of concern for those impacted by President Mbeki's views was equally significant, thereby losing an opportunity to create cohesion and display leadership. Like the Minister of Health, it was apparent that Mr Ellis took a less conciliatory approach than he had the previous year. This lack of ethos was displayed in his epideictic speech that concluded the debate as well when he denounced the partisan nature of the debate and the vilification of speakers by the ANC before doing the same. This included implying that the chairperson of the Health committee was a

[492] Ibid 2758.
[493] Ibid 2760.
[494] Sarafina II was a play that was expected to convey a message to address HIV. However, its message was inaccurate and unclear, it was costly in terms of the Department of Health's budget, and it was unfairly awarded to a friend of the Minister of Health in 1996. https://www.nytimes.com/1996/10/08/world/south-africa-scandal-over-sarafina-spotlights-corruption-in-the-anc.html
[495] Hansard 2000 op cit 2760.
[496] Ibid 2761.
[497] Ibid.

lapdog 'only there to please his masters'[498] and suggesting that the Kaiser Foundation withdraw an award made to him. In concluding that speech, he reverted to sarcasm when responding to the Minister about the letter. His final comments that stated '[S]he will see that I was right'[499] was arrogant and disdainful of the audience for whom this was a matter of survival.

His colleague, Ms Kalyan, who Mr Ellis had said would 'deal with the elements of what that effective response needs to be',[500] did not elevate her ethos any more than her colleague. Her epideictic speech criticised the President and his government to the extent that she questioned the abilities of not only the members of Cabinet but the civil society representatives on the South African National Aids Council.[501] These were the members of the electorate who she would need to persuade about the viability of her party. Her need to point out these failings caused her to stretch the logic of her arguments such as claiming that only 'HIV-negative' pregnant women qualify for free medical care.[502] While her subsequent claim that HIV-positive women are discriminated against by not getting ARVs may have been accurate, this did not disqualify them from getting access to free medical care. Equally, when she made the logical comparison of the cost of a new plane for President Mbeki at R300 million with that of providing medication at R25 to reduce mother to child transmission, she used extremely diverging figures to exaggerate the point.[503]

Unlike Mr Ellis, when she addressed the issue of the Aids dissident scientists, she provided proof of their statements. Her ethos was diminished, however by her use of juvenile sarcasm when she suggested that Duesberg 'inject himself with HIV-infected blood to prove his hypothesis'[504] and when she questioned President Mbeki's continued display of the red ribbon denoting sympathy for Aids sufferers. Like Mr Ellis, Ms Kalyan's epideictic speech was a political attack in which she did not provide any deliberative leadership, although she was more aware of her audience as she addressed the treatment for HIV-pregnant women, and the prioritisation and underspending of funds.

While Dr Gous of the NNP's epideictic speech used logos to address the President's views on Aids, it was so indifferent as though it were an academic discussion. He referred to the response by the 'lay' press and questioned whether the intention was for the matter to be

[498] Ibid 2791.
[499] Ibid.
[500] Ibid 2758.
[501] Ibid 2775.
[502] Ibid 2776.
[503] Ibid.
[504] Ibid 2777.

public or whether it was 'merely to satisfy the inquisitive nature of the President's mind.[505] The use of the word 'lay' suggested that the media were not professional while the 'inquisitive nature' implied that this was mere speculation. His argument appeared to dismiss the seriousness of the debate by stating that the issue had 'been very poorly managed' and by separating the 'President's right to speak to whomever and whenever' from the responsibility of the Office of the President not to create doubt.[506] This implied that the President's comments are a trivial private matter that had been given more attention than was warranted. When he explained what Aids dissidents believe, he refuted their argument that poverty causes Aids with the logic that 'affluent and well-nourished people also contract HIV' and as proof referred to the '61-page document published in 1995 by the United States National Institute for Health'.[507] To support his contention that many scientists refused to engage with Aids dissidents, he also quoted Dr Makgoba of the MRC [508] and like Ms Kalyan, he challenged disbelievers to get a transfusion of infected blood, albeit in a less puerile manner.

Dr Gous' purely logical argument was like that in the previous debate where the aim of his contribution was to display the extent of his knowledge about the topic. He did not intuit any conclusions about what the President's statements may mean for those affected nor did he propose any deliberative action. This was an issue that did not affect his audience, and his views informed the broader audience that this was all an over-reaction.

Dr Mulder of the FF who addressed a similar constituency as Dr Gous, introduced his epideictic speech with statistics of the spread of the virus. In his short speech, which appealed to logos, he made the single appeal that the President and the government desist from engaging in a debate that was best left to specialists.[509] He maintained his ethical position by not criticising the President directly and by graciously suggesting that it was a 'mistake for the President to start a public debate',[510] both as it would create confusion and cause a reversion in behaviour because, as politicians, they were not experts. He epideictically concluded on a unifying mature note calling for the maintenance of credibility by the state and to save lives.

Mr Aucamp of the AEB concurred with Dr Mulder that the President should desist from public debates albeit in a more strident manner. He used the opportunity to belittle the President

[505] Ibid 2768.
[506] Ibid.
[507] Ibid 2768-9.
[508] Ibid 2769.
[509] Ibid 2782-3.
[510] Ibid 2782.

by comparing him to the main character from an Afrikaans children's television programme, *Liewe Heksie* (Dear Little Witch) that aired in South Africa in the 1970s and 1980s.[511] She was a gullible witch who found herself in amusing situations because of her naiveté. His epideictic speech, which appealed to logos, used the opportunity to extend the critique to include the President's diplomatic approach to Zimbabwe,[512] which was an issue of contention among opposition parties and the media at the time. To illustrate the fallacy of the President's approach, Mr Aucamp used inappropriate witticisms such as 'he remains dead quiet', '[H]e is as silent as the grave', and '[N]ot even the man (*sic*) with the stethoscope, only the man (*sic*) with the microscope, can pronounce upon this'[513] before detailing other mistakes made by government. His conclusion continued the sarcastic tone of his speech, which was completely devoid of any ethical appeals to unity or in the interest of the public. As noted previously, his approach may be explained by the fact that the virus did not appear to affect his audience and in this respect his attitude was similar to Dr Gous.

Ms de Lille of the PAC started her epideictic speech with an apparent conciliatory message, which appealed to ethos, as she called for unity in fighting the disease and provided proof by referring to a United Nations statement about the significance of the disease.[514] This ethical start was undermined when despite a concession to the Deputy President about considering all views, she resorted to sarcasm to criticise the President, including reminding the audience about his role in supporting Virodene.[515] The essence of Ms de Lille's epideictic speech was to provoke, not only the President and the governing party but her colleagues as she challenged them to be publicly tested for Aids. In making the challenge she appealed to logos as she referred to an unnamed study in the United States, 'which found that most people go into a very strong denial phase once they are diagnosed with the disease'. This reference appeared to imply that the President's denial was linked to being HIV-positive as she repeated the statement and added the phrase 'and they question HIV'.[516]

Ms de Lille's speech incited and offended in a similar manner to the DP and AEB speakers, while in contrast it was significant that many other speakers with similar time constraints took a more deliberative approach while promoting the interests of their

[511] Ibid 2784.
[512] Ibid 2784-5.
[513] Ibid 2785.
[514] Ibid 2779.
[515] Ibid.
[516] Ibid 2780.

constituencies. Ms Dudley of the ACDP did this as she introduced her speech by addressing the moral issue of sex outside marriage and that fact that government, through its Aids prevention programmes, seemed to be encouraging this negative behaviour.[517] She appealed to logos and ethos when she referred to a journalist writing on the issue and the actions of former dissidents to support her case that government did not understand the science and its advances. When she addressed the provision of ARVs to prevent transmission from mother to child, she made the logical argument that government was, in fact, providing these to health workers who could be monitored to study the effects.[518] Like Ms Kalyan, she mentioned the low cost of the drug and compared it with wasted expenditure on other government functions. Unlike Dr Gous, whose speech reduced the President's comments as simple musings or inquisitiveness, Ms Dudley epideictically appealed to logos as she conceded that that while an 'open debate is useful and a good thing', the use of public funds to allow for it, 'when no new evidence has emerged', was not.[519] Ms Dudley's speech confirmed that she remained accountable to her supporters both directly by chastising government for promoting promiscuity among the youth but also in her role as a legislator whose responsibility it was to ensure government action benefits the public that she represented.

Ms Rajbally of MF also opted to make a deliberative case for solutions by providing evidence of the impact of the disease on society. Her speech covered the impact on individuals affected by the disease as well as the impact on the economy. She did this by expressing concern about the 'thousands of lives' that would be lost and the number of children orphaned by the disease, which she concluded would be a 'setback in human development'.[520] She appealed to ethos as she outlined the cost on humanity and to logos as she pleaded for a cheaper alternative for prevention and for a more urgent need to find a cure. This ethical appeal was enhanced as she displayed knowledge about the difference in costs and application between Nevirapine and AZT. She refuted the concern raised by the President that ARVs has side-effects with the logical argument 'but, which drug does not have side-effects?'.[521] Ms Rajbally's speech, which took both epideictic and deliberative approaches while appealing to logos, provided an ethical message indicative of a more practical approach.

[517] Ibid 2770.
[518] Ibid 2771.
[519] Ibid.
[520] Ibid 2772.
[521] Ibid.

Mr Ditshetelo of the UCDP refuted the President's statements on HIV when he politely suggested that 'the approach towards finding a solution to it (HIV) has brought about conflicting opinions'.[522] He appealed to logos as he forensically repeated the evidence cited by Dr Gous about the 61-page document published in 1995 including the full name of the organisation as well as conclusions drawn from the study.[523] To illustrate how discredited scientists such as Duesberg were within the international community, he referred to the '1992 international Aids conference in Amsterdam' where delegates wore badges that said, 'It's the virus, you idiot!'.[524] Like Ms Rajbally and Ms Dudley, Mr Ditshetelo attempted to provide deliberative advice in addition to his logical forensic message but faced time constraints.

Mr Mangena of Azapo's short epideictic speech was based on logos as he explained the facts related to HIV and refuted the views of the dissidents based on their lack of scientific evidence. He based his rationality on the scientific method and was consistent as he called on his colleagues to equally maintain an open mind.[525] He concluded ethically by reminding Parliament and government of their duty to the people of the country when it came to education about prevention, the provision of medical care and the obligation to find a cure.[526] By avoiding references to the President's views and reminding his immediate audience of their responsibility, Mr Mangena appealed to ethos.

As noted, this debate displayed the start of acrimony between the ruling ANC and the Democratic Party that had not existed the previous year after the second democratic elections. If we assume public representatives who act in the interest of the electorate, then this may be a display of growing frustrations. As the crux of the debate was about different scientific approaches, speakers may have alienated the audience who needed solutions.

However, as this debate took place in a year where the second local government elections were scheduled to take place, one should understand the posturing as attempts to appeal to the electorate. Notwithstanding this motivation, several political parties opted to appeal to their narrow support base. This debate, which was characterised by epideictic speeches that either praised or condemned the President with approaches that varied from the ANC being defensive

[522] Ibid 2778.
[523] Ibid.
[524] Ibid 2779.
[525] Ibid 2785-6.
[526] Ibid 2786.

to sarcasm and dismissive comments by the main opposition parties, however served as a precursor of divisions that would intensify over time.

4.3. The fight against poverty and HIV/Aids is an urgent national priority – 10 May 2001

This debate took place during the short period when the Democratic Party and the New National Party had merged to form the Democratic Alliance (DA). This alliance was formed on 24 June 2000 to contest the December 2000 local government elections as a single political party. It was also in the context of the continued refusal by President Mbeki to concede that HIV causes Aids insisting instead that it was caused by poverty.

While the ANC speakers all addressed the topic of the link between poverty and HIV, possibly to defend President Mbeki's comments, they avoided conceding causality. As the debate was introduced and concluded by the ANC, the exigency in this case was one that they had recognised. Despite a collective message, the debate was characterised by differing approaches by the ANC speakers, which may have been indicative of divisions in the party about the issue at the time.

Mr Saloojee who was the chairperson of the Portfolio Committee on Social Development opened the debate by appealing to logos as he epideictically explained the negative effects of poverty and its cyclical relationship with HIV leading to further poverty.[527] This introduction, which included statistics to indicate this correlation in sub-Saharan Africa, aimed to prove the contention that 'the problem of HIV/Aids in an African context is one of development'.[528] His appeal to logos was combined with pathos as he illustrated the impact of the disease on poor children and on women who were placed in risky situations because of their economic circumstances.[529] Mr Saloojee's support for the government position on HIV was epideictically expressed as he appealed to the logic that the impact of poverty would undermine both these efforts thus arguing that, because of the link, it would require an equal focus. While his epideictic characterisation of the impact of the disease recognised the government's efforts, his deliberative proposals appealed to the logic of tackling it by involving communities in curbing the spread and addressing the stigma.[530] Here he established ethos as he used the collective pronouns 'we' and 'us' to indicate sympathy with those afflicted by the disease.

[527] *Debates of the National Assembly of 2001* Vol 6 8 to 11 May 2612-14 (Hansard 2001 hereafter).
[528] Ibid 2613.
[529] Ibid.
[530] Ibid 2614.

While Mr Saloojee did not address the President's views directly or express any opinion about the link between HIV and Aids, his argument confirmed the correlation between the disease and the economic status of those that are mainly affected. Equally, while he mentioned the court victory where the pharmaceutical companies withdrew their challenge to the Medicines and Related Substances Control Act,[531] which would allow for the importation of generic drugs, he did not address government's stance about the provision of ARVs nor the effect of this on the poor. Mr Saloojee appealed to ethos by maintaining his focus on social issues and the impact of HIV.

While Mr Saloojee's speech appealed to logos, his colleague, Ms Bhengu's speech appealed to pathos. It was unusual in the context as she made an emotional appeal by revealing the personal impact that HIV had on her family when she confessed that her daughter seated in the gallery was HIV-positive. Her epideictic speech used emotional words and phrases such as 'heavy load', 'the whole world turned dark', 'I felt helpless', and '[M]y heart was torn'[532] as she recounted her reaction. She listed the treatments that her daughter required[533] as proof of the argument that poverty exacerbated the effects of HIV since she could afford these interventions.[534]

Although Ms Bhengu made an ethical appeal for the issue not to be politicised and for South Africans to unite in fighting the effects, her deliberative appeal to government was limited to 'a holistic programme that will take care of poverty-related problems of people living with HIV'.[535] To reinforce the personal nature of her emotional appeal, she concluded by requesting that counselling services be established in Parliament 'because HIV/Aids is not only *out there*, it is also here with us'.[536] This revelation by Ms Bhengu served to ethically enhance her status as one experiencing the same difficulties as the citizens she represented. By expressing an understanding of her privilege in relation to most people who are affected by the disease, Ms Bhengu expressed humility. However, in this context, she stopped being a legislator and behaved like a mother, and an individual affected by HIV. The difficulty of this presentation for the audience would arise because, while she deserved sympathy, she was not, despite having first-hand experience, representative of those affected by the disease. A very

[531] Ibid.
[532] Ibid 2622.
[533] Ibid 2622-3.
[534] Ibid 2623.
[535] Ibid.
[536] Ibid 2624.

cynical view could be that she was manipulating the audience by revealing such an intensely personal matter using a public platform at a time when being HIV-positive was stigmatised. Conversely, this disclosure could have been aimed at addressing that stigma publicly.

Ms Bhengu's emotional description of dealing with HIV contrasted with that of her colleague, Ms Lobe, who focussed largely on poverty. When she addressed HIV as a disease carried by migrant male workers to their rural homes,[537] it was raised in the context of the impact of the migrant workers on family life. Although she called for linking HIV awareness to women's rights and expressed concern about the vulnerability of the youth,[538] her epideictic speech, which appealed to logos, mainly focused on the definition of poverty and its historical roots. This provided the basis for her explanation of how it was being alleviated by local government programmes,[539] Other than this epideictic description of government policy, she did not provide any deliberative solutions to inform the urgent fight against HIV and poverty.

Dr Mbulawa-Hans, who like her ANC colleagues argued the case for the link between HIV and poverty, appealed to ethos by taking a candid approach about the impact the disease would have on the poor. Her forensic introduction established this ethos as she explained her understanding that the democratic dispensation would herald a change in 'the overall quality of life of the poorest in South Africa',[540] and as she deliberatively recognised the impact that HIV would have on making that change by declaring that '[I]f we do not go to war against HIV/Aids, the results will be catastrophic'.[541] Her epideictic description of facts about the virus was followed by the claim that the 'issue of the link between HIV and poverty has been put to rest' without elucidating what this meant, which could have indicated a reluctance to address the President's view.

Her deliberative speech that outlined proposals appealed to both ethos and logos as she called for 'united action', that they 'depoliticise the issue', that the strength of communities be harnessed, and that the youth who were being impacted the most by the disease are included.[542] These proposals aimed at being as inclusive as possible as she addressed a wide range of

[537] Ibid 2632.
[538] Ibid.
[539] Ibid 2633.
[540] Ibid 2638.
[541] Ibid 2639.
[542] Ibid 2640.

affected groups by using logos to challenge conventional approaches such as submissive women, the silence about the disease, talking about sex, and the use of condoms.[543]

Although Dr Mbulawa-Hans maintained her ethos throughout the speech as she appealed for unity and in focussing on the plight of the poor, she digressed before concluding her speech to berate Ms Kalyan from the DA as being 'confused' and warned 'the nation out there' about 'people like Sandy Kalyan'.[544] This negated the ethos of her subsequent call on 'all members of Parliament' to act together and her reiteration of the difficulties of poverty.[545]

The final ANC speaker in contrast, the Minister of Housing, Ms Mthembi-Mahanyele, despite representing government, provided a conciliatory speech in which she appealed to ethos as she displayed humility by forensically presenting the human rights approach that the new democratic government had taken and the difficulty that HIV posed for it.[546] When she epideictically outlined the complexity of poverty, she aligned herself to the ethos of the World Health Organisation (WHO) to emphasise the negative impacts of poverty on health.[547] By highlighting the effects on mothers and children, she appealed to both logos and pathos, and, thus, made an ethical argument. This case was augmented by statistics from the WHO, as well as a quote from the economist and philosopher, Amartya Sen.[548] Her ethos was sustained by her frank account of the challenge that HIV posed and the limitations of government provision. She did not overtly defend government, nor did she address the criticism that it had not made treatment available. Instead, she portrayed the realities faced by those with the disease such as dying patients who had to go home and the challenges faced when caring for them, and child-headed households in an appeal to pathos.[549]

Although it is convention for the last speaker to respond to the arguments made by opposition members, Ms Mthembi-Mahanyele did not criticise any of the other speakers and maintained her ethos through her non-partisan approach. She expressed good will (*eunoia*) and virtue in her conclusion as she reminded her audience of their duty as responsible representatives when she described them as 'a responsible detachment sent out by the nation to work for progress and a better quality of life', and when she called on them to focus on

[543] Ibid 2640-1.
[544] Ibid 2641 Dr Mbulawa-Hans and Ms Kalyan were colleagues in the DP until 1999.
[545] Hansard 2001 op cit 2641.
[546] Ibid 2642.
[547] Ibid.
[548] Ibid 2643.
[549] Ibid 2644-5.

'issues of national interest outside of narrow political posturing'.[550] In this sense, Ms Mthembi-Mahanyele's ethical display created a sense of social cohesion although her contribution must be evaluated in the context of being part of a government that was effectively denying the same poor the treatment they needed. It may be an indicator of her virtue that she resigned from government the following year and took up a position within the ANC organisation.

Ms Rajbally from the MF was one of only two opposition parties who expressed support for the government's programmes, and in her case, including for programmes that were non-existent. While she introduced her epideictic speech by endorsing the link between HIV and poverty, the logic of her following statements appeared confusing. The first, that poverty was concentrated among all populations of the country,[551] would imply that it was not concentrated but was instead spread. The second, that the Northern Province had the highest proportion of females in poverty due to the 'disadvantaged position of women in the labour market'.[552] This reasoning would be true for the rest of the country except if the Northern Province had more females overall. The statistical proof for these, which appealed to logos, were equally fallacious such as that the 12,2 million women who were infected globally accounted for 42% of the 30,6 million HIV-positive adults in Africa, which implied that that all the global HIV-positive women were in Africa. While Ms Rajbally epideictically commended government on providing drugs to HIV-positive pregnant women, at that stage the programme had not been implemented and the TAC would only take government to court in August that year. Her praise and conclusion that 'applauds the government's response to poverty in 1994'[553] could be understood in the context of the co-operation agreement that was brokered between the ANC and the MF in 1999 after the national elections and the importance of these allies demonstrating their support.

Dr Baloyi from the IFP, took a less sycophantic approach although, like his colleagues in previous debates on this topic, he did not criticise the government. His proposals that appeal to pathos and ethos, however, attempted to provide a different frame of reference. His epideictic introduction, which appealed to logos, used a sporting analogy[554] to explain the importance of taking different perspectives, which he suggested the dissident scientists may provide. While he expressed support for the strategies implemented by government by citing these policies, he

[550] Ibid 2646.
[551] Ibid 2636.
[552] Ibid.
[553] Ibid.
[554] Ibid 2619.

also conceded that the difficulties faced by government was a result of poverty.[555] Dr Baloyi's deliberative approach, which appealed to pathos and ethos, aimed to unify with phrases such as 'everyone is offered legitimate hope', 'all groups', 'across all cultures', and 'each one must identify his or her role and responsibilities' and by suggesting that they call on the 'wisdom' of the poor and the infected. Despite identifying poverty as a constraint for the government to deal with HIV, he conceded that it affected everyone equally.[556] Dr Baloyi appealed to ethos in a speech that combined epideictic and deliberative elements to focus on the best solutions for the majority in the country by acknowledging the challenges of poverty while calling for strategies to treat as wide an array of affected people as possible.

The party most critical of government's actions, as in the previous debate, were represented by Ms Kalyan and Mr Gous of the DA who took different approaches to the debate. Ms Kalyan peppered her introduction with superlative expressions such as 'extremely disappointing', 'severe constraint', 'ineffective preventative strategy', and 'destroy South Africa',[557] among others, to express her epideictic opinion based on ethos and logos. Her appeal to logos using statistics to support her argument, however, did not verify the source of the data. By using these terms and statistics, Ms Kalyan built a forensic case based on logos against President Mbeki and the Minister of Health by indicating that their actions were responsible for that situation.[558] Her epideictic claims that they wasted money in various forms – Mbeki on the Aids panel and the Minister by celebrating the court victory over the pharmaceutical companies with 'bubbly' was balanced by deliberative proposals about how the money could have been spent on more deserving endeavours.[559] She appealed to pathos to build the case for wastefulness by providing additional statistics about infection rates and deaths and by using the word 'bubbly' for champagne to imply a frivolousness. The forensic claim that '[S]ince 1994 South Africa has promised poor children that it will reduce poverty',[560] while not untrue, was not accurate either as the promise was made to all in the country, not only children. This specification, however, allowed her to appeal to logos by referring to a study by the Institute for a Democratic Alternative in South Africa (Idasa)[561] on child poverty and to extrapolate this

[555] Ibid 2620.
[556] Ibid 2621.
[557] Ibid 2615.
[558] Ibid 2616-17.
[559] Ibid 2617.
[560] Ibid.
[561] Idasa was established in 1986 with the initial focus of creating an environment for white South Africans to talk to the banned liberation movement in exile. From 1994, Idasa's focus changed to ensure the

to government's lack of ARV provision. While she concluded deliberatively by appealing to ethos when she called on the audience to 'work together collectively', this was negated by the lack of ethos displayed in her speech.

Her colleague, Dr Gous, took a different approach to the link between poverty and HIV: while Ms Kalyan suggested that Aids caused poverty, Dr Gous conceded a relationship between the two. His epideictic speech, which appealed to logos, denied a causal relationship, as he stated 'a person is not infected by poverty, and poverty is not contagious' and 'the vast majority of cases by far are caused by HIV infection', however acknowledged that 'poverty has an effect on HIV/Aids'.[562] Dr Gous' remained consistent as he presented factual statements that defined what it meant to be HIV-positive, what the acronym 'Aids' represented as well as how the disease manifested itself and, to make the link with poverty, what was understood by 'socio-economic diseases'.[563] His use of an analogy of malnutrition due to poverty to prove that poverty cannot be responsible for the crisis reinforced this appeal to logos. His speech resembled an information briefing or lecture as he ignored the audience by using phrases such as 'we refer to this as', '[W]e therefore refer to this', and '[I]n this context it would then be correct to say'.[564] In his attempt to maintain this detached approach as he generalised about the spread of the disease in Africa and Asia due to behaviour, he pre-emptively refuted the argument that he was judging those populations. It was in the latter part of his speech that he concurred with his DA colleague to forensically remind the audience of government's past failures using equally superlative expressions such as 'infanticide' and 'a crime against humanity'[565] as he appealed to ethos and logos. His epideictic conclusion, which conceded that poverty was a factor, claimed that the ANC was using it as an excuse for their failure and quoted an editorial from the *Citizen* newspaper to ethically support this argument.[566]

While Ms Kalyan was deliberative in her conclusion, the main message of both DA members' speeches was to criticise the government and the President without considering the audience beyond the chamber and those that elected them. While highlighting the failures of the state was understandable in terms of the role of the opposition, they did not present themselves as a credible alternative by displaying the ethos of leadership.

---

establishment of democratic institutions in the country, political transparency and good governance. The institute was dissolved in 2013.

[562] Hansard 2001 op cit 2625.

[563] Ibid 2624-7.

[564] Ibid.

[565] Ibid 2626.

[566] Ibid 2627.

While the smaller parties were critical of government, many raised these as concerns for their constituencies and as direct appeals to government to understand the extent of the problem. The short epideictic contribution by Mr Maseka of the UDM appealed to logos as he expressed concern about the impact of HIV on the economy and ethically called on government to provide ARVs and to prioritise people's health over the weapons.[567] The cost of weapons that South Africa had procured in that period was a matter of public debate. The arms deal was an issue noted by Mr Ditshetelo of the UCDP as well, whose epideictic criticism of government, which appealed to logos and ethos, included the suggestion that their failure to address poverty was a lack of action, that the state had spent far more on the arms deal than they disclosed, and that the victory over the pharmaceutical companies should mean that it could provide ARVs.[568] While he did not address the President's views, he emphasised HIV as the cause of Aids.

Dr Mogoba of the PAC used his limited time to epideictically illustrate the severity of the problem using pathos through an analogy of having a court sentence the same number of people to death.[569] His ethical call for unity and logical proposal that more resources be allocated to find solutions formed part of his deliberative proposals. Like Mr Ditshetelo, he concluded with an explanation about poverty by conceding its apartheid roots but blaming its continuation on the ANC. He was deliberative as he logically proposed eliminating poverty through improved education but countered this by epideictically criticising the government's spending on arms, parties, and symbols.[570]

Ms Dudley of the ACDP was consistent as she appealed to the ethos of Christianity and her party's electorate by epideictically elevating the status of Africa as a continent that was 'blessed with abundant resources'[571] and ascribing the cause of the existing poverty to humankind and their policies. This allowed her to remind her audience of the role of 'God who blesses nations' and that the problems that existed were the result of 'inept governments who play God in the lives of the people'.[572] In keeping with her Christian philosophy, she epideictically commended the Catholic Church for their work with Aids sufferers as well their stance on family values and against condoms through an appeal to ethos. To support this

[567] Ibid 2628.
[568] Ibid.
[569] Ibid 2635.
[570] Ibid 2635-6.
[571] Ibid 2628.
[572] Ibid.

argument, she used logos as she quoted statistics about the effectiveness of condoms and research about the unintended consequences of promoting condom use[573]

Mr Aucamp of the AEB made an ethical appeal for reconciliation to address the problem using phrases such as 'urgent plea', 'join hands', 'not of party-political priority' and, in a display of leadership, '[W]e have to set an example in this House'[574] in an epideictic approach. This conciliatory tone was reinforced when he addressed the President's views as the 'wrong stance' and by forensically choosing a quote from 1998 in which President Mbeki stated that HIV spreads through sex.[575] He ethically appealed to his conservative electorate as he, however, disagreed with the programmes for condom use and deliberatively proposed that bibles be distributed instead.[576] He invoked the Lord in his conclusion that reiterated the appeal for conciliation.

The topic of the debate that included both poverty and HIV functioned to establish an assumed link between the two in the speeches. While none of them attributed HIV to poverty, the phrasing provided supporters of government policy to use this to rationalise it without any reference to President Mbeki's understanding. The difficulty that the topic created for those calling on the government to provide additional treatment was that they were compelled to address both if they were to maintain their decorum. The result was that while it provided ANC members with a defence, it constrained opposition members who tried to use the platform to call on government to change its policy as the reality of the difficulties that poverty continued to present could not be ignored. This may account for the discordant speeches by the Democratic Alliance while smaller opposition parties used it to illustrate that the persistent poverty was also a consequence of government action. The debate illustrated an increase in the party divisions and a disregard of the audience not only with the specific topic but how they addressed the interconnected race and class apartheid legacy still being experienced by the majority in the country. While calls were made for government action, MPs ignored the audience that had elected them.

4.4. Conclusion

The analysis of this crisis is taken from debates over the three years when President Mbeki and Parliament was most vocal about his alternative view. It is evident from the analysis that there

[573] Ibid 2629.
[574] Ibid 2637.
[575] Ibid.
[576] Ibid 2638.

were divisions within the ANC about the President and the Minister of Health's attitudes and values related to HIV. However, these were managed so that the party presented a united front. Despite presenting views based on logos including the use of statistics about the dire impact of HIV, ANC members appealed to the past by reminding the audience of their identities as victims rather than offering deliberative proposals to address the exigency. A stark indicator of the constraint faced by some ANC members is that Ms Bhengu, who in 2001 despite appealing to the pathos of her own experience, could only muster deliberative proposals for the institution of Parliament rather than for citizens whom she conceded were worse placed.

The consequence of the party closing ranks meant that the electorate was placed at a disadvantage where the party that the majority had voted for was not acting in their best interests by providing the basic care expected from the state nor was it taking a longer-term view of what its stance would mean for the country. The opportunity for the ANC to sustain the morality of society where attitudes and behaviours could be persuaded about this crisis was lost as it either defended the government's stance in opposition to the needs of citizens or attacked the opposition to divert attention.

For the opposition parties, Mbeki's comments were fodder to attack and criticise him. The largest opposition party, the Democratic Party, and its later iteration as the Democratic Alliance, was relentless in this regard to the extent that that was all that it did. While it is expected that the role of the opposition was to perform greater oversight, this degenerated into offensive and superlative claims. This trend becomes more evident over the three-year period to the point that its rhetoric lacked dignity and it dispensed with any pretence of respect for the President. Unfortunately, this approach caused the DA's ethos to suffer and therefore, its status as a credible alternative to diminish.

To their credit, many of the smaller opposition parties, while being critical of the President, tended to maintain a level of decorum. Over this period, as the extent of the crisis grew, it was evident that many of these parties used the opportunity to protect their constituencies as they remained critical of government. There are several instances where smaller parties were more conscious of the citizens that they were addressing than those that had garnered the most votes in the elections.

As a further indication of the disregard for a matter that affected so many South Africans, these three debates in the first three years of the nine years of the Mbeki presidency were the only full debates devoted to its impact. A further debate, which was held in November

2002 to debate a Portfolio Committee report about the effect of HIV on women and children, lacked rhetorical exigency as it was debated two years after the hearings took place and a year after the report was adopted by the Committee. It also took place after the state had agreed to investigate the provision of ARVs to a wider group in addition to the HIV-positive pregnant women in terms of a court order.[577]

This simply remained a tool for opposition to use to criticise the ruling party during debates on other topics until President Mbeki left office in 2008. Members of opposition parties would raise it as parliamentary questions or statements or as an example of how government was failing its people. This failing was a consequence of a parliamentary system where elected members are chosen by parties rather than geographical constituencies and meant that MPs owed greater allegiance to the party than to the electorate.

Chapter Five - Zuma: Marikana – dying to earn a living

On Friday, 17 August 2012, South African and the world woke to the news that several miners in the Rustenberg area in the North West Province had been shot and killed and scores more injured. The extent of the shootings was initially underestimated with some media reporting that 18 miners had been killed.[578] It was in the ensuing days as information was released and confirmed, witnesses interviewed and as journalists kept probing the scope of the incident that it was revealed that 34 miners died and 78 were injured. This massacre had been preceded by a week of protests and violence that saw ten people being killed, which comprised two policemen, two security guards and six miners.

At the heart of the protests was a labour dispute in which miners were demanding an increase in salary from the R4000 a month that they were earning to R12 500. The strike was led, initially, by the rock drill operators who, because of labour union negotiations had steadily seen their income and status eroded over the preceding years. This group of miners had traditionally been viewed as being of a superior status due to their specialised skills for which they were accordingly remunerated at a higher level.[579] However, over time as the dominant labour union, the National Union of Mineworkers (NUM), negotiated for across-the-board improvements and increases to salaries,[580] which were in line with improving the conditions for the lowest paid workers, rather than about the issues that affected the different classes of workers directly, this group found their status and salaries being eroded. This paved the way for a smaller labour union, the Association of Mineworkers and Construction Union (AMCU) to win over disaffected members from NUM.

The National Union of Mineworkers was established in 1982 and was, at the time of the protests, the largest affiliate of the Congress of South African Trade Unions (Cosatu). Cosatu has been in a tripartite alliance with the ruling ANC and South African Communist Party since the unbanning of these organisations in 1990. This alliance places Cosatu in a compromised position when protecting workers' interests, especially when negotiating with the state about the conditions of service for public servants. However, in this instance, it was not the state but private mining interests that the state sought to protect as the mining industry continued to form a relatively large component of the South African economy.[581] These

[578] Crime Reporter and Sapa '18 shot in 'battle of Marikana' *The Citizen* 17 August 2012 at 3.
[579] Greg Marinovich (2016) *Murder at Small Koppie* Ch 2.
[580] Ibid 30.
[581] Jorge Maia 'The interface between mining and manufacturing' (2013) *Industrial Development Corporation of South Africa* 1 https://www.idc.co.za/wp-

tensions about the relationship with the state by one union and the loss of its members to another form part of the backdrop to the events that took place in Marikana at the Lonmin mine in 2012.

The strike started on 9 August 2012 and escalated over the next few days with incidents of assaults and violence between the different labour factions at the Lonmin mining company. On 12 August 2012, two security guards were killed and the following day, six miners and two policemen were killed. By 15 August 2012, the tensions in the area were high with police, the Minister for Mineral Resources, and the Lonmin shareholders all publicly raising concerns and visiting the area. In this period, large numbers of striking, armed miners occupied a hill near the mine while their leaders attempted to address their concerns with the management of the mine. Included in these discussions were the police and the Minister for Mineral Resources. Matters came to a head by 16 August 2012 when the police surrounded the miners with barbed wire on the hill and shot and killed 34 miners and wounded 78 more. Many of these miners were shot at close range and several were shot in their backs, apparently while attempting to flee. Having been killed where they had been gathering a distance away, none of the miners posed a direct threat to either the mine or the local community. It appears that the police had taken a covert decision to ensure that the strike ended that day.[582]

In response, President Zuma who was on a state visit to Mozambique, returned to the country to express his condolences and address the nation on what was the worst massacre in the democratic history of South Africa. He undertook to establish a commission of inquiry to investigate the cause of the incident and the Farlam Commission headed by a retired judge was established on 23 August 2012. The Commission was given four months within which to report on its investigation, which was expected to examine the actions of the mine management, the police, the labour unions, and the Department of Mineral Resources, into what had resulted in the deaths. The Commission eventually only tabled its report to the President on 31 March 2015 after numerous extensions to its reporting date. While the Commission made several wide-ranging recommendations that either called for further investigation or for the implementation of existing policy, it did not hold any party ultimately responsible for the massacre, including the police.[583]

content/uploads/2018/11/IDC_research_report_Interface_between_Mining_and_Manufacturing.pdf. Accessed on 21 February 2022.

[582] *Marikana Commission of Inquiry*: Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province (2015) 409.

[583] Ibid ch 25.

To understand the implications of these deaths beyond that of a mining labour dispute gone wrong, it is important to outline the context within which it took place. South Africa's mining industry had been built using the cheap migrant labour that came from the rural areas both within South Africa and from the neighbouring countries. As labour from the surrounding countries was reduced in the latter half of the twentieth century, due largely to those countries gaining independence, there was a greater reliance on cheap labour from the rural areas in South Africa. It was in this context that the NUM had been formed as the largest labour union to protect workers' rights.

These migrant workers were predominantly male and lived in squalid conditions in single-sex hostels on the outskirts of the mining towns. Their meagre income needed to support them in these conditions as well as provide remittances for their extended families who remained in the rural areas. Living under these harsh conditions and working long hours, many of the men took to drinking excessively and engaged in extramarital affairs, adding further pressure to an already low wage. While the democratic government ensured that many of the workers' rights were entrenched in the Constitution of the country and in mining legislation and policy, the reality, however, for most of these miners remained the same as it had been during the apartheid period. At the time of the strike, many of the miners were indebted to money-lenders simply to meet their daily requirements because their salaries had not kept pace with the rising costs of living.[584]

The killing of so many by the state, thus, took place more than 18 years after apartheid ended and when the democratic state that had come into being had done so based on providing a better life for all. Not only had the state failed to improve the lives of these miners, it acted in the exact manner that the apartheid government had, by killing its own citizens. These were citizens that were enduring harrowing conditions simply to earn a living.

5.1. Motion of Condolence for Lonmin tragedy – 21 August 2012

This debate took place five days after the massacre during the period of national mourning declared by President Zuma. Zuma's statement, in addition to appointing the ministerial committee to support the families of the deceased and announcing that he would establish a judicial commission of inquiry, also stated that the period of mourning included 'the eight members of the community-based anti-stock theft group called Isikebhe, who were ambushed

[584] Marinovich op cit ch 19.

and killed in Pomeroy near Msinga in KwaZulu-Natal'.[585] While the killing of eight people was tragic, it was a criminal act and by including it Zuma was either equating the deaths of 34 miners killed by the state with a criminal act or reducing the significance of the massacre to normal criminal action. This association of the two acts may have been designed to dissociate the state from the Marikana killings.

The epideictic motion of condolence proposed by the Chief Whip of the ANC, however, made it clear that the condolences were for all those that died at Marikana when he welcomed the commission of inquiry announced by the President that would investigate the causes of 'all the deaths including those of the police, security guards and miners'.[586] By including this qualification, he refuted the popular narrative that focussed only on the miners' deaths to include the security personnel as well as the police officers. The call for parties to find a resolution defined this as a mining dispute by stating that the House 'calls on all parties involved in the conflict at the mine to work towards a peaceful resolution' and only mentioned the police when noting that 'over 34 people were killed and scores injured in clashes between police and the striking miners', and when it acknowledged that 'another 10 people, including two police officers and two security guards, were killed'. However, the composition of the ANC speakers where two of the four were associated with the police portfolio indicated that the ANC understood the gravity of the police's actions.

The events must be understood in context of the importance of mining as the basis of the country's economy going back to the late 1800s when diamonds and gold were discovered, and the sector's reliance on foreign investment to ensure its viability. While the audience were those in the Assembly and the citizens of the country, particularly those in Marikana, for the state, which was responsible for protecting the economy, it included these investors.

The Minister of Police, Mr Nathi Mthethwa, as the first speaker in the debate, introduced his speech epideictically by appealing to pathos, although he did not mention deaths or injuries but rather 'tragic events' and 'incidents'.[587] His appeal to the nation to prevent a repeat of this action, while ethical, was based on the false premise that they were responsible for and would have been able to intervene in state action. As epideictic speeches tend to focus on the present, with the aims of either praising or blaming, to unite the audience around a value

[585] http://www.thepresidency.gov.za/content/president-zuma-declares-period-mourning-and-appoints-coordinating-ministerial-committee Accessed on 13 March 2020.
[586] *Debates of the National Assembly of 2012* Vol 5 30 May to 21 August 1525 (Hansard 2012 hereafter).
[587] Ibid 1527.

or set of values, the Minister's argument can be viewed as opting to unite the country first. However, he expressed regret that the event took place and not for the consequent loss of life. It was only after a conditional concession that 'people lost their lives *in a manner* that could have been avoided if all of us had adhered to the noble principles of our Constitution' that he expressed his condolences to the families of those that died and to the injured.[588] His inclusion in this expression of sympathy of the call for consideration of police officers who were expected to 'intervene in difficult situations' and his maintenance of the constitutional argument, which combined appeals to pathos with the logos of the Constitution that 'guarantees rights and imposes *responsibilities'*, was supported by a further quote from the Constitution about the role of the police. This theme of the rule of law as a value was reiterated as he reminded the audience of the importance of the Constitution and its principles as it related to the right to assemble, which included the requirement of being 'unarmed'.[589] In this way, the Minister developed his argument in support of the police and implied that the blame rested with the miners for being armed and for contravening the Constitution. The comparison of the role of the police and the constitutional responsibility of the miners functioned to defend the police action based on the supreme law in the country.

This was confirmed by the Minister's indication that the quotes from the Constitution formed the 'philosophical underpinning of our conduct' and should guide police action. This indirect defence of the police's actions was accompanied by proof that implied that they had no choice such as '[T]he events of Thursday, 16 August 2012, were not a sudden eruption but a culmination of events that were building over months and months…The police did all in their power to avert such a situation'.[590] This reiterated the contention that the police acted within the law and upheld their responsibilities but were forced into a situation that caused the deaths. He supported this argument of the lack of adherence to the rule of law by quoting President Zuma who used the precise phrase to describe the democracy after the latter had visited Marikana on 17 August 2012. The quote included the statement: 'We do not expect such incidents, particularly in a country where there is a high level of organisation within the labour movement. We have trade unions with many years of experience in organising workers within the framework of the labour laws of the country'.[591] When compared to NUM, AMCU was a relatively new trade union having only been registered in 2001. This suggested that both the

[588] Ibid.
[589] Ibid 1527-8.
[590] Ibid 1528.
[591] Ibid 1528.

President, when he made the statement initially, and the Minister, by quoting it, considered the inexperience of AMCU as a drawback to upholding the rule of law. When he forensically outlined the actions taken by the President and the state to assist the families and those injured, he appealed to logos and ethos as he again referred what the *nation* faced.[592] His deliberative account of the actions that the Ministerial committee intended to undertake was intended not only to reassure the nation but the wider audience beyond South Africa that this matter was being resolved.

The Minister reiterated the epideictic argument that sought to reassure and to distribute blame beyond the state as he concluded his speech by repeating the connection between the rights and responsibilities in the Constitution and by, again, appealing to the ethos of the President with a quote from the same media statement that they were 'fully committed to ensuring that this country remains a peaceful, stable, productive and thriving nation'.[593]

Although this speech aimed to reassure, it addressed those concerned about law and order. It also devolved responsibility to a nation and citizenry who were not involved in this instance. The expressions of commiseration were limited to two statements, one of condolence and one indicating that the events were 'regrettable'. Any hurt or outrage that the injured or remaining loved ones may have had was not recognised and they therefore had to be satisfied by the impending commission of inquiry.

Minister Mthethwa concluded the debate and here, in line with parliamentary convention, his focus was on responding to and refuting the previous opposition speakers. In a debate that meant to express the condolences of government and Parliament, this approach appeared petty. In correcting the Leader of the Opposition by pointing out that ten additional people had been killed before 16 August 2012, he diverted the audience's attention by forensically referring to the gruesome nature of some of those deaths and introducing the role of the '*izangoma*'[594] (faith-healers). His only conciliatory comments were, interestingly, also to the Leader of the Opposition whose proposals he commended by suggesting that it could form the terms of reference for the commission.

The Chief Whip of the Majority Party, Dr Motshekga, as the second speaker epideictically recognised the mourning period, although he equally did not immediately express sympathy with those suffering the loss. His ethical appeal categorised the massacre as

[592] Ibid 1531.
[593] Ibid 1530-1.
[594] Ibid 1600.

part of the country's history of violence associated with apartheid, which formed the basis of his inference that the 'traumatic past where black life and, in particular, African life, was so cheap and easily discarded' was ultimately responsible for the violence.[595]

As proof of this argument, he provided a forensic account of the previous violent strikes in the mining industry and by including details such the statistics of the number of strikers, of arrests, and the number of deaths he appealed to logos as he attempted to demonstrate that this strike and the deaths were characteristic of labour disputes in the industry. Dr Motshekga's argument appeared to deflect the blame on the mining industry when he epideictically stated 'Thus, the Lonmin tragedy must be seen in the context that the mainstay of the mines was and still is cheap labour, cheap black labour'.[596] To express sympathy for the plight of miners, he quoted a journalist from the *Daily Maverick* news website who described the intensity of the labour provided by miners. This argument again allowed him to redirect attention from the state to the mining industry.

As further proof he referred to a study conducted by the Bench Marks Foundation that analysed problems at Lonmin.[597] To establish the ethos of the Foundation, he explained their principles, independence, and links to the churches, which allowed him to use the virtue of an independent third party to provide contextual information about the industry. This form of innuendo allowed him to make a statement within the constraints of 'the impending commission of inquiry', which 'would be necessary and extremely important to examine all underlying socioeconomic reasons for the scale and depth of this tragedy'.[598] In this way, blame is assigned through an independent respected entity.

The latter half of his speech argued that while it was important to understand the events, the focus should be on peace and compromise. He balanced calls that the 'inquiry must be able to give us a comprehensive understanding of how we descended into such anarchy' with '[O]urs is not to apportion blame to the parties involved' and implied that questioning the causes of the massacre are simply negative comments and politically opportunistic.[599] As examples of this negativity, he quoted from an article written by a British journalist for the *Daily Mail* and from a statement released by Dr Wilmot James of the DA to support his

[595] Ibid 1531.
[596] Ibid 1532.
[597] Ibid 1533.
[598] Ibid 1533-4.
[599] Ibid 1534.

argument.[600] In doing so, he cast the South African government as the victim of those who want to see it fail. Dr Motshekga, however, either disingenuously or unknowingly, neglected to indicate that the journalist, Mr Johns, was a former South African who relayed his own experiences of apartheid having been classified as coloured.[601] Equally, in quoting Dr James whose article tackled the relationship between the NUM and the mine management, Dr Motshekga failed to note that Dr James was referring to information he received from miners themselves.

The straw man fallacies established by these quotes allowed Dr Motshekga to epideictically introduce issues that were not relevant to the debate such as the DA's policy on labour relations and the suffering that the majority of South Africans had endured under apartheid. While he epideictically conceded that the 'apartheid divisiveness, the untold suffering, and the deprivation… are still prevalent', as a member of the governing party, he avoided responsibility for it.[602] Using this apartheid history, he appealed to ethos as he referred to being in 'a country in mourning' where 'a fight for a better wage in order to live a better life, took a desperate and catastrophic turn, resulting in 44 deaths'.[603] Ironically he appeared to echo Mr Johns as he noted that '[I]n an instant our country was plunged back into the dark years of our past and we saw the rainbow nation fast disappearing in the wake of such brutality'.[604] His focus on apartheid provided the opportunity to recast his audience as 'a people of negotiators, a people of forgiveness and a resilient people of peace'. The repetition of various forms of 'negotiate', coupled with 'peace', 'compromise', and 'forgiving', as he defined who South Africans were and as he invoked Nelson Mandela as 'the prototype of the leader', epideictically served to define the values he expected of his audience. He appealed to the ethos of Nelson Mandela and Mahatma Gandhi with a quote from Mandela, delivered in India ten years after the democratic elections in South Africa, in which he referred to the inspiration that Gandhi provided and that reiterated the notions of 'peace', 'negotiation' and 'compromise'.[605] Dr Motshekga introduced divisions so that he was able to appeal for unity in a context where divisions had already been created between the state and its citizens. By doing this, he was able

[600] Ibid 1534-5.
[601] Lindsay Johns 'The South African miners' massacre raises the ghosts of apartheid - and fears for South Africa's future' *Daily Mail Online* 20 August 2012.
[602] Hansard 2012 op cit 1535.
[603] Ibid.
[604] Ibid.
[605] Ibid 1536.

to propose the notions of peace and compromise without dealing with the actions that had taken place.

When he addressed the violence, he continued to forensically identify apartheid as being responsible for the violent nature of society and implied that the violence that was experienced was an assault on democracy and social cohesion as it 'remains under threat of the very real disparities between the rich and poor, black and white, women and men, rural and urban'.[606] As proof, he referred to the finding of the recently tabled National Development Plan that had identified inequality and unemployment as overarching issues to be addressed. His quote by Archbishop Emeritus Desmond Tutu, in an appeal to ethos, appeared to support the statement about the National Planning Commission's report, as he prefaced it by saying '[B]y addressing these fault lines'.[607] However, this was taken from a completely different context as it was taken from a book by Tutu written in 2000, which captured his reflections on the Truth and Reconciliation Commission.[608]

It was only in his conclusion that he epideictically expressed sympathy to the family and friends of those that died but preceded it with a 'call for cool heads, calm and national dialogue to prevail'.[609] Considering the solemn nature of the debate and the shocking events that precipitated it, this should ideally have been the end of the speech but in an indecorous turn he commended the Minister of Justice and Constitutional Development because the National Interfaith Council of South Africa had agreed to raise funds for those in Marikana. This inclusion at the very end of a speech was gratuitous as it did not address either the audience in the room nor, more importantly, the broader audience in the country as it indicated a collegiality between two senior public representatives in a speech that had avoided any acknowledgement of government's role in the deaths being debated. This indicated a lack of respect for those that had suffered through this process.

When the Minister for Mining, Ms Shabangu, introduced her speech, she appealed to ethos and pathos as she indicated that the gathering was in 'a spirit of deep sadness and in an outpouring of condolences'.[610] This epideictic approach was combined with a forensic one, where like the Chief Whip, she equated the emotion to that experienced during apartheid. While this evocation of the past served to express her sympathy, her senior position in the state

[606] Ibid.
[607] Ibid. 1538.
[608] Desmond Tutu *No Future without Forgiveness* (1999) 221.
[609] Hansard 2012 op cit 1538.
[610] Ibid 1554.

responsible for the deaths resulted in the expression of remembrance appearing insincere as she suggested 'We must finally rid this land of them' and 'The tragic events at Lonmin's Marikana mine, which reverberated through every corner of our country, shame us all'.[611] Like the Chief Whip she also called for a refocus 'on answers, not recriminations, on rationality, not rhetoric' and equally diverted attention by suggesting that there are groups abroad that want to see the 'country at war with itself'.[612] This red herring was used in Dr Motshekga's speech to remind the audience of the past, while Ms Shabangu used it in hers to praise the ANC and its actions. To support this, she forensically provided a list of the government policies and legislation that had been implemented and attributed this to the ANC only even though it would have been approved by a multiparty Parliament. This conflation of the state and her party appealed to the ethos of the principles and history of the ANC by stating that it had 'consistently and throughout its one hundred years stood on the side of natural justice and for the rights of those who, through the sweat of their brow, contribute to the wellbeing of us all'.[613] As further proof, and in an appeal to ethos and pathos, she outlined her actions as well as that of the President once he was informed of the killings. She did this by associating the strike on 10 August 2012 to National Women's Day that had been celebrated the day before to remind the audience of the women who had lost sons and husbands and by referring to the President's early return, his announcement of the commission of inquiry, and his visits to families and the injured as testimony to the 'fact that government cares' and that the President 'clearly showed that he was gravely concerned'.[614] These stated considerate actions were the precursor to reassuring the audience that the country remained 'a constitutional democracy underpinned by a stoical commitment to upholding the rule of law and protecting the rights enshrined in the Bill of Rights'.[615] Her argument endorsed that of the Minister of Police who sought to reassure a wider audience.

To illustrate this adherence to the rule of law, Ms Shabangu forensically described provisions and implementation of the Mineral and Petroleum Resources Development Act passed in 2004, which was expected to transform the mining sector, and concluded this with the epideictic claim that it was an achievement for both the state and the ANC.[616] This conflation that seemed to infer that the other parties were lacking in this regard was confirmed

[611] Ibid.
[612] Ibid 1554-5.
[613] Ibid 1555.
[614] Ibid.
[615] Ibid 1556.
[616] Ibid 1557.

as she described the work of her government department to ensure transformation. When she extended this logical appeal by referring to the Labour Relations Act, she used the opportunity to respond to Mr Lekota to imply that as AMCU was not a registered union, she was not aware of them until these incidents took place. This stated ignorance resulted in heckling from the audience in the chamber to which she unfortunately responded but it deteriorated to the extent that she issued an *ad hominem* attack against Mr Lekota[617] for having led soldiers into a township as well as telling a member to 'shut up'.[618] The loss of decorum and subsequent points of order resulted in diminishing the already limited ethical position that the Minister had at the start of her speech. Despite her epideictic explanations about the government's support and echoing the Minister of Police's calls for restraint and support for the President's Commission, Minister Shabangu failed to uphold the dignity that was required under the circumstances. Although she expressed her condolences again as she concluded, she ended her speech with a critical remark aimed at the opposition parties, stating 'we will go back to the ground and work on the ground and not go there to score points and pose for TV cameras'.[619]

The Minister of Mineral Resources, Ms Susan Shabangu, took a similar approach to the Chief Whip not only by evoking the identities associated with apartheid and by avoiding the role of the state in the killings but also in the lack of dignity that she displayed. In addition to responding to heckling, she told a member to 'shut up', which would be contrary to expected decorum under any circumstances, not only parliamentary debates. As the Minister who was closely involved in the discussions and negotiations with the miners, which she conceded in her speech, her sympathy was hollow and devoid of any ethos. Her position and recent experience at the mine should have warranted some indication of understanding the difficult circumstances that the miners and the security personnel faced, yet her fallacious refutation took the audience back to the 'years of struggle'.[620] Her appeal to pathos appeared melodramatic considering her position as the Minister who was involved in the discussions to end the strike and would be better suited to an outsider not involved in the incident.

The last ANC speaker who was the chairperson of the Portfolio Committee on Police, Ms Annalise van Wyk, took a more conciliatory and empathic approach as she attempted to

[617] The attack related to Mr. Lekota's time in the ANC where, as Minister of Defence, he was purported to have deployed soldiers in Khutsong township in the North West Province in 2006. https://www.news24.com/News24/Khutsong-Lekota-faces-uproar-20060305. Accessed on 13 March 2020.
[618] Hansard 2012 op cit 1559.
[619] Ibid 1562.
[620] Ibid 1554.

balance sympathy for those that died with her support for the difficult responsibilities of the police. Her epideictic introduction, which appealed to ethos and pathos, identified not only the deaths but the fact that there had been conflict, as she stated 'South Africa was confronted by the images of the police and striking mineworkers in a bloody confrontation and was staggered by shock and sadness; a sadness further compounded by the news that 34 mineworkers were killed and 78 injured'.[621] Like her ANC colleagues, she emphasised the rule of law and the importance of not apportioning blame but unlike her colleagues, she cast herself as part of the collective. Her calls to unity included the phrase 'as a nation, we…' repeatedly and unlike her colleagues, she placed emphasis on getting answers to what led to the deaths.[622] She did this though statements such as, 'Nobody can leave this situation without properly examining the reasons that led up to this tragic event' and '[A]s a nation, we need the commission to provide us with the answers and an understanding of what exactly led to this situation. We need to fully understand what happened and why it happened'. She repeated need for answers several times in her epideictic speech and this frankness appealed to ethos, epitomised by her claim, 'It is a time when, as a nation, we need to seek the answers together'.[623] As a white woman addressing the deaths of black men, her ethical appeal was enhanced as she combined it with logos when she conceded that it was not a 'normal protest' and that the 'commission needs to determine whether the SAPS acted within the confines of the law and whether they were justified in using deadly force'.[624] This was reinforced when she conceded that the police may not have been adequately trained or used their equipment correctly, which she analysed by establishing stasis of quality. This *hypophora* was not designed to provide the answers but acted as a deliberative approach to seeking answers in a balanced manner.

When she placed her faith in the commission of inquiry, it was not as her colleagues did, which was to shut down debate, but to find solutions, and she illustrated her ethos when she called on everyone, including the media, to co-operate with it.[625] This was significant because it was the media that had exposed the extent of the killings despite being restricted from the area at the time of the killing. This integrity was further displayed by her knowledge in terms of upholding the rule of law when she appealed to her direct audience in Parliament to scrutinise the report of the commission when it was tabled and when she expressed support

[621] Ibid 1593.
[622] Ibid 1594.
[623] Ibid.
[624] Ibid 1595.
[625] Ibid.

for the work of the Independent Police Investigative Directorate by quoting the relevant section in the legislation. Despite this ethical appeal in dealing with the topic of the debate, including a deliberative request that the police involved provided with counselling, Ms van Wyk, opted to conclude her speech by epideictically refuting statements made by opposition party members.

As the party credited with bringing democracy to South Africa, and having been the governing party for 18 years at this point, the ANC party leaders were out of touch with the reality of their citizens. The circumstances that necessitated the debate would in any democracy be understood as extreme but, in a country where the democratic government was already tasked with undoing years of apartheid oppression, this was a monumental test of the strength of that democracy. Instead of assurances, the electorate received Orwellian-type obfuscation.

The Democratic Alliance had five speakers in the debate, which was unusual as it exceeded the number of speakers from the majority party. Parliamentary convention determines speaking time allocation in relation to the proportion of seats occupied in the House. While the DA may not have had more time than the ANC, it appeared to have divided the time allocation to include more speakers so that each speaker could address a particular topic.

The leader of the DA in Parliament,[626] designated as the Leader of the Opposition, Ms Mazibuko, made an ethical appeal for unity and accountability as her epideictic speech expressed sympathy in her introductory comments, and took a conciliatory tone when she said 'we have come together united in sorrow' and '[W]e are united in grieving' and as she aligned her party with the condolences of government and all the other parties.[627] This ethos was heightened as she used a traditional Xhosa expression to address the relatives and friends of the departed. Her choice of language was significant, as it was the language spoken in the Eastern Cape from where most of the deceased miners hailed.

Like the ANC speakers, she conceded that it was not the time for recriminations, which was in keeping with the non-judgmental form of expressing condolences but stated that it was 'the time for difficult and painful questions'.[628] Remaining ethical, while welcoming the judicial commission of inquiry, she called for accountability by deliberatively summarising the scope and aims of the issues that was to be investigated using a combination of proposals and

[626] The leader of the DA at that stage was Helen Zille who opted to retain her position as Premier of the Western Cape province resulting in a distinction between the leader of the party and the leader in Parliament.
[627] Hansard 2012 op cit 1538.
[628] Ibid 1539.

conjectural stasis. She presented these deliberative proposals aimed at a wide array of players and actions to get a complete understanding of the events without making accusations. This balanced approach suggested that 'The role of every actor - from the mineworker to the trade union leader, from the police officer to the board member of Lonmin and from the responsible government Minister to the President himself - must face fair and impartial scrutiny'.[629]

While ANC speakers compared the events to the apartheid past, Ms Mazibuko epideictically pointed out that it reminded the audience of 'Sharpeville and Boipatong'.[630] By naming these specific events she ethically equated the Marikana deaths with massacres. She illustrated the contrast when she followed this directly with the fact that 'South Africa today is a different country. We are a constitutional democracy' developing the logical inference that this transgressed democratic principles. Her appeal to the value of the rule of law differed from the ANC speakers because she raised it as a form of protection for those that were killed in contrast to the Minister of Police who used it as a form of enforcement when he juxtaposed the rights of citizens with their responsibilities and by emphasising the responsibilities of the police in law. Her approach also differed from the Chief Whip who raised the notion of the rule of law to point out the 'triggers'[631] that undermine it while Ms Mazibuko's approach was to uphold the principles to protect citizens. Finally, her conclusion continued the ethical appeal maintained throughout the speech as she displayed humility by asking Parliament to take collective responsibility for not holding 'the government and the safety and security agencies to account'.[632]

This ethical approach was maintained by her colleague, Dr James, whose short epideictic speech described the difficult living conditions of the people of Marikana while appealing for an improvement in their plight. His phrases such as 'live in fear', 'in a broken environment', 'live in an artificial environment', 'live in division', and that they 'wish to live in safety' aimed to indicate these struggles.[633] His emotional pleas on behalf of the workers described them needing 'support so that they may heal', that '[W]e are defined by *ubuntu*'s sociality and not by the cold alienation of male isolation', and that they sat in the 'unforgiving' sun for three hours 'because they merely wanted to be understood and heard. They also wanted

[629] Ibid 1540.
[630] Ibid.
[631] Ibid 1537-8.
[632] Ibid 1541.
[633] Ibid 1562-3

to be comforted'.[634] Despite the ANC's recriminations and the Chief Whip's direct attack on him, Dr James maintained his ethical position by not responding and instead honouring the miners by praising their resilience. His comment addressing Dr Motshekga maintained this appeal to ethos by noting 'People of Marikana don't need your platitudes, hon Motshekga, they desire justice'.[635] It was only in his conclusion, after he forensically referred to accounts from miners and evidence about workers having been shot in the back as an 'act of cowards', that he made a deliberative appeal for this to be explained by the Minister of Police.[636] Dr James' speech was designed so that the audience recognised the human face of the tragedy.

Ms Kohler-Barnard diverged from the ethical approach of her colleagues to argue instead about related political concerns. Although she appealed to pathos as she epideictically introduced her speech by describing the nation as being 'in shock and still are unable to fully comprehend the horror of what we watched on television' and compared it to 'that dark time of our history',[637] appealing to logos she changed her focus from values to blame. This reproachful stance that was aimed at the Minister of Police was preceded by her self-congratulatory statement crediting her party with the idea of a judicial commission of inquiry, presumably to confirm her party's importance to its supporters. While ensuring that government was accountable to Parliament was within her remit, her behaviour was indecorous as she transgressed the exigence of the situation. By raising other issues for which the Minister should be held accountable, such as the militarisation of the police, the calls for violence by the former Police Commissioner, and the corruption within the crime intelligence division, she ignored the audience in mourning, both in Marikana and the nation.[638] Her repetition of the militarisation of the police as the overriding cause of the killing, by providing proof of the effects of their conduct, diminished her ethos in this debate. She echoed Mr Lekota of Cope when she argued that this was contrary to the provisions of the Constitution and used the example of Andries Tatane's death as an example of the police's violent reaction.[639] Although these epideictic recriminations were interspersed with sympathetic statements such as '[T]hose protesters may have been attempting to charge against impossible odds' and 'next stage after our national grief will be anger and the search for a reason', these lacked sincerity when

[634] Ibid 1563.
[635] Ibid.
[636] Ibid.
[637] Ibid 1570-1.
[638] Ibid 1572
[639] Andries Tatane was beaten to death by seven police during a service delivery protest in Ficksberg in 2011 P10, Cape Times, 15 April 2011; P4, Sunday Times, 31 March 2013.

followed by further castigations.[640] Her obliviousness to the appropriate decorum and the audience was reaffirmed as she made negative assertions about the country such as '[O]ur reputation as a nation, which could hold a peaceful Fifa World Cup is in tatters. Our economy will suffer. Our attraction to tourists fell the moment the first body hit the floor' at a time when the country required reassurance.[641]

Her consistent focus on the Minister's failings was maintained until the conclusion of her speech resulting in no acknowledgement of those who had lost loved ones or who were injured. This inappropriate contribution to a condolence motion functioned to use the killings as a political weapon and indicated that those affected were not part of her party's support base. Notwithstanding the political argument, Ms Kohler-Barnard's lack of genuine compassion at a time when the killings resulted in national shock, dissociated her party from the nation.

While Ms Kohler-Barnard used the opportunity to criticise the police service, Mr Motau's speech argued to amend labour legislation.[642] Mr Motau, however, observed the decorum of the debate as he expressed his condolences in his introduction. He used this expression of sympathy to introduce the importance of finalising the legislation to prevent any further violence and in this respect, while his introduction was epideictic, the remainder of his speech was deliberative. Although it was somewhat incongruous to discuss the provisions of legislation during a condolence motion, Mr Motau was able to maintain a degree of ethos as his speech was conciliatory rather than the admonishing manner with which Ms Kohler-Barnard approached her topic. Mr Motau displayed ethos as he took a conciliatory tone that indicated that he understood the impact of the tragedy on the public and that he formed part of the group suffering rather than as an outsider. He used phrases such as '*our* hard-won freedom', 'join *my* fellow hon members in extending my deepest condolences', '*our* new democracy', '*we* should take active steps', and '[A]s *we* mourn the tragic loss of life' throughout his speech clearly indicating a sense of being part of the collective loss.[643] Despite this epideictic approach, which appealed to ethos by expressing compassion, he digressed with politically motivated statements that criticised Minister Shabangu for her instruction to 'the police to shoot-to-kill'[644] when she was Deputy Minister of Police, and when he used the opportunity to deliberatively indicate what the DA would do if it were in government. These claims and,

[640] Hansard 2012 op cit 1572.
[641] Ibid 1573.
[642] Ibid 1578-80.
[643] Ibid 1578.
[644] Ibid 1580.

despite the conciliatory language used, his contribution about the draft Bill were not relevant for the affected audience seeking reassurance and would have invalidated his ethical appeal.

Mr Lorimer's introduction, which was epideictic with an appeal to pathos, which argued that it was shocking that these killings would take place in a democracy, seemed indignant and self-centred rather than addressing his audience. His first words were 'Speaker, how terrible! How terrible that in a democracy, we *have* to stand here and talk about the violent killing of 44 of our countrymen'.[645] While the circumstances were terrible for those that died and their families and friends, his claim should have considered them rather than the circumstances of the debate. Although, like other speakers, he appealed to ethos by comparing the killings with an apartheid massacre, the killings at Langa, Uitenhage in 1985,[646] Mr Lorimer's forensic recollection was from his perspective as a journalist when he worked for Capital radio. This functioned to indicate his role in the apartheid era as that media company was known for their liberal anti-apartheid stance and uncensored news.[647]

Mr Lorimer aimed his epideictic criticism at the governing party and its alliance partner, Cosatu. His logical questioning of police actions, by establishing stasis of quality, was balanced with sympathy for the conditions they faced and for having lost two of their colleagues, as he pointed out '[A]lready two officers had been horribly killed'.[648] By offering this justification, in addition to noting that they 'were underequipped, undertrained, badly led', he removed any onus from the officers and blamed the ANC-appointed managers. When dealing with the labour relations, like other speakers, he claimed that 'the violent template of our industrial relations system has been established by Cosatu' and, like Dr Mulder, he referred to the transport strike that had taken place in 2006 as proof.[649] His claim was that by being aligned to the governing party they had 'never been accountable for the actions of their members', and that this culture had been adopted by the newer AMCU.[650] Mr Lorimer extended this epideictic criticism to Minister Shabangu for not meeting and claiming to be unaware of AMCU. This politically motivated argument to expose the failings of the governing party completely ignored the audience who were affected by the killings. He did not express sympathy with the miners,

[645] Ibid 1590.
[646] At least 20 people attending a funeral were killed by the police in Langa, Uitenhage in the Cape Province in 1985 on the anniversary of the Sharpeville massacre.
[647] https://www.news24.com/SouthAfrica/Local/South-Coast-Fever/days-of-quality-radio-good-music-gone-forever-vusi-mthalane-20161012 . Accessed on 20 March 2020.
[648] Hansard 2012 op cit 1591.
[649] Ibid 1592.
[650] Ibid.

nor the nation, although he deliberatively focussed on the importance on ensuring these shootings did not occur again.

As noted above, it appeared that each DA member had a chosen topic to address and in Mr Lorimer's case, it was a series of governance failings. In this respect his speech was as unsuitable as his colleague Mr Motau as these matters should be addressed in a debate more directly linked to oversight. Like Kohler-Barnard, Lorimer's speech is inappropriate in that it focussed on criticism without considering the wider audience whose loss was being debated nor the impact of such an event in the democratic period. Another reluctant similarity that can be drawn between Ms Kohler-Barnard and Mr Lorimer was that unlike their other DA colleagues in the debate, they were both white and formerly privileged, which may account for the difference in their approach to the debate, not in terms of direct race dynamics but in understanding the cultural differences.

Of the smaller political parties, there were a range of responses that are similar to the DA's from some seeing it as a labour dispute, to expressions of sympathy for the victims and blame for the government and the ANC.

Mr Lekota of the Congress of the People was senior member of the ANC, having held both ministerial and party leadership positions before he left the ANC. He used his previous experience in the ANC to illustrate how the party had betrayed the Constitution and its own policies and principles. While his introduction epideictically appealed to pathos and ethos as he described the finality of death and the responsibility of Parliament to ensure accountability and oversight, his speech was forensic. By appealing to logos, he argued that government transgressed the constitutional principles by quoting the relevant section that 'prescribes that there shall only be one police service, not a police force'.[651] Like previous speakers, he evoked emotion as he reminded the audience of the killings at Sharpeville in 1960 and Langa, Uitenhage in 1985.[652] However, his comparison was not about similarities to the Marikana deaths but as proof that the decision by the democratic government to have a 'police service' and not a 'force' was correct. His appeal to logos, as he pointed out that the Constitution had not been amended to allow for a reversion, was supported by the suggestion that the killing of Andries Tatane was a precursor to the violence of Marikana as a consequence of the decision.[653] He used conjectural stasis to describe the Marikana killings and question the basis on which

[651] Ibid 1541.
[652] Ibid.
[653] Ibid 1542.

the decisions were made. To demonstrate the excessive police response, he stated 'I didn't see water cannons, teargas or rubber bullets, but live ammunition was unleashed on the people', which was in keeping with his oversight of senior state officials and politicians.[654] It was significant that this was the only statement that subsequent ANC speakers were able to refute and not his logic of how the Constitution was transgressed.

While the logos and ethos of Mr Lekota's speech was sustained by his focus on the state's actions, his epideictic concluding remarks that indicated the impropriety of the relationship between the governing party and Cosatu as unconstitutional was ethically dishonest as he had previously endorsed those relationships and principles when he was an ANC member. He equally used fallacious reasoning to indicate that taxpayers' money paid for the union members when public employment was not linked to union membership. He used this argument to criticise the Minister of Mineral Resources for only meeting with the Cosatu-aligned trade union, NUM and here he resorted to sarcasm as he asked '[W]e saw the Minister of the NUM meet with NUM. But where is the Minister of AMCU?'.[655]

While there are several similarities between Mr Lekota and Ms Kohler-Barnard's speeches, by appealing to logos, his arguments were stronger than Ms Kohler-Barnard who did not provide any principled basis for her approach other than to show up the Minister of Police. While Mr Lekota also did not express sympathy, he recognised the impact of the deaths and the emotional aspect of the loss albeit in a personal manner in his introduction when he stated 'I hope that in future the immensity of the responsibility we all carry in this House will never weigh as heavily as it does on my own shoulders today. Death is final and nothing can reverse it. Those who have been shot and killed are gone forever'.[656] It may be to refute this logos that Minister Shabangu reminded the House that it was Mr Lekota as Minister of Defence who deployed soldiers in Khutsong in 2006.[657] While Mr Lekota's argument about the importance of upholding the tenets of the Constitution appealed to logos and was similar to Ms Mazibuko, his ethical appeal was reduced by focussing on an attack on the ANC in a debate to express condolences.

In contrast, Mr Holomisa of the UDM, despite blaming the government for the events at Marikana, was able to maintain both his ethos and adhere to the decorum of the debate. His

[654] Ibid 1543.
[655] Ibid 1545.
[656] Ibid 1541.
[657] Ibid 1559.

formal epideictic introduction to his speech appealed to ethos as he expressed sympathy with the miners' families and friends.[658] While the Minister for Mineral Resources provided reasons for the escalation of the violence, Mr Holomisa was the only speaker who provided a detailed forensic description of the events as they unfolded on the day. His appeal to ethos was combined with logos as the proof for his claims was attributed directly to the miners using expressions such as 'we are told that', '[A]ccording to the workers' version of events', 'workers complain…', and 'as alleged by the workers'.[659]

Despite the fact that his description of events would lead to an obvious conclusion, he phrased it as establishing conjectural stasis rather than an accusation when he said '[W]ith these mistakes, one wonders whether a plan to ambush the workers had not been carefully crafted because, by running towards the exit, the workers seemed to have walked right into a police trap'[660] thereby preserving the decorum of the debate and his ethos. He maintained this approach throughout his speech as he opted not to accuse directly but used phrases in a manner that his assertion was clearly understood. Mr Holomisa's deliberative solutions was prefaced by a forensic analysis of conditions that would have exacerbated the killings such as 'the deployment of people with no professional police backgrounds to senior SAPS levels' and 'the proximity of certain trade unions to the governing party, and the deployment of governing party senior individuals to the private sector'.[661] This logical analysis was consistent with his parliamentary oversight and deliberative role. Mr Holomisa appealed to ethos when he epideictically described the poverty and shocking living conditions of the miners noting that it was 'ironic to see that the people responsible for extracting our country's mineral wealth live in conditions of squalor' and appealed to the Black Economic Empowerment (BEE)[662] mine owners who had 'impeccable struggle credentials' to remedy this situation.[663] This statement can be understood in the context that one of the BEE partners, Mr Ramaphosa, was a senior ANC member who would become the Deputy President of the organisation by the end of 2012. Mr Holomisa's respectful approach in keeping the decorum while raising concerns of the workers was a combination of logos and ethos that considered the wider audience that needed to make sense of the killings.

[658] Ibid 1551.
[659] Ibid 1552.
[660] Ibid.
[661] Ibid.
[662] The state's BEE policy was designed to change the racially skewed ownership of private enterprises through partnership arrangements, employment and training.
[663] Hansard 2012 op cit 1553.

For Mr Ndlovu of the IFP and Dr Mulder of the FF+, while they expressed sympathy and concern, this was a labour matter that should have been resolved in the private sector. Appealing to logos, Mr Ndlovu's forensically identified the key protagonists who he blamed equally as '[T]he triangle, which is made up of the employer, employee and employee representative'[664] before providing an analysis that established stasis by questioning the way each group had contributed to the events that took place. He appealed to ethos when he addressed how the workers themselves were responsible by speaking in the indigenous Zulu language possibly to address those workers in his mother tongue to emphasise the seriousness of his sentiments. Even though the killings were at the hands of the police, he did not include the state in this analysis. His forensic evaluation of the police's involvement developed the quality stasis about their role in a labour issue as he questioned 'Why were the police called to disperse the crowd? Is it not the duty of the employers to negotiate with employees at the workplace?'.[665] His view of the police was as an agency of force, – 'Management knew full well that the police are trained to do a certain job'[666] – which contrasted with Mr Lekota who understood the constitutional provision of the police providing a service and to Ms Mazibuko who expected the police to provide protection. While Mr Ndlovu chose to ignore the state's responsibility, including when he mentioned 'these types of massacres, which happened in 1960, in 1976', he used the opportunity to epideictically imply that the blame for the 'culture of violence' rested with the ANC who 'brought in the idea of making South Africa ungovernable'.[667] Both the armed struggle and making the country ungovernable were approaches that the ANC had adopted during the anti-apartheid struggle.

Although Dr Pieter Mulder of the FF+ held the position of Deputy Minister of Agriculture, Forestry, and Fisheries at the time of the debate, his contribution remained independent of the position in government. He introduced his speech by appealing to ethos and logos as he provided an epideictic perspective about how extreme one death would be in the context of a labour dispute, not to mention over forty deaths as he noted 'no one is supposed to die. When one person dies, it is abnormal and a crisis. When more than 40 people die, it is a massacre of unthinkable proportions, a catastrophe'.[668] This appeal to logos was maintained throughout his speech in which he established definitional stasis about the police's actions.

[664] Ibid 1545.
[665] Ibid 1547.
[666] Ibid.
[667] Ibid 1548.
[668] Ibid 1564.

While he took a non-partisan view by holding all the parties responsible and enumerating ways in which they contributed to the violence and the deaths, like Mr Ndlovu, he pointed to the violent nature of South African society, specifically by trade unions by citing examples of other instances of violence and deaths.[669] However, when he addressed the role of government, it was not because it was responsible for the police action but rather because it had failed to keep unions accountable and prevent intimidation. He provided proof of this failing by forensically recounting other violent strike action in the past and concluding that these were the result of a lack of action by unions and government.[670] The fact that Dr Mulder perceived the actions of workers as a failing of government rather than as criminal acts revealed either an ignorance of the rights-based legislative framework of the South African state or that he was advocating for such interference by the state. To support his claim, he quoted a journalist from the *Sunday Times* newspaper who also questioned the violence in society, and he invoked the ethos of Nelson Mandela by quoting his statement at the time of the ANC-IFP violence in Kwa-Zulu-Natal in 1990.[671] While Dr Mulder expressed concern and blamed various role-players, he did not propose any deliberative action to establish cohesion other than the proposal in the Mandela quote and his conclusion that 'the unions, the police, the employers and government must act to ensure that this never, ever happens again'.[672]

Rev Meshoe of the ACDP introduced his speech forensically by appealing to logos as he indicated that he had been part of the delegation of political leaders who had visited Marikana the day before. He appeared defiant as he announced that he was assigning blame despite the call by the Chief Whip not to do so.[673] His epideictic expression of condolences to the families all 44 people who were killed and to all those injured appealed to pathos as he used graphic descriptions such as 'died in the hail of bullets', 'were hacked to death', 'burnt in their patrol car', and 'wounded during the violent confrontation with the police'.[674] These descriptions functioned to communicate the extent of the atrocities. When he enumerated how the blame should be apportioned in a combination of epideictic and forensic approaches, he used logos to explain how each group was at fault using information from his visit. His inclusion of the role of the sangomas that had not been mentioned previously was deliberatively concluded with the statement 'South Africans must be warned against sangomas that exploit

[669] Ibid 1565-6.
[670] Ibid.
[671] Ibid 1567.
[672] Ibid 1568.
[673] Ibid.
[674] Ibid.

their fears and make money out of their ignorance while promising them impossible things'.[675] The only other speaker that mentioned the sangoma is the Minister of Police in his closing remarks. A sangoma is a traditional healer and it would later emerge that the miners had consulted one with the hopes that he would provide them with special powers and protection during the strike.[676] It is apt that Meshoe would condemn this practice, not only as the sangoma was purported to have charged an exorbitant amount for performing the ritual but as it was a traditional practice that was counter to the Christian values that Rev Meshoe upheld. When epideictically blaming the police, Rev Meshoe, like Dr James of the DA, expressed concern about miners that had been shot in the back and appealed to logos as he questioned why live ammunition was used by referring to a memorandum that had been released the previous December prohibiting such action. This argument was consistent with his oversight role as a member of Parliament. Like Mr Holomisa and Dr James, Rev Meshoe based his claims on the 'first-hand account' that he had received but opted not to support any group.

Mr McGluwa of the Independent Democrats (ID)[677] combined forensic and epideictic approaches as he appealed to pathos and logos when he attempted 'make sense of what is a complex issue' in his introduction. His identification of the 'human dimension' used pathos to appeal to the audience who had been affected, as he forensically described the 'woman with the baby on her back, searching desperately for her husband who never returned home'.[678] Using this emotional appeal he identified the killing as an event that affected the nation and the state as he epideictically noted that 'this is not only a national disaster but a national embarrassment to our new democratic order'.[679] To emphasise this point, Mr McGluwa repeated it to his audience in Afrikaans. The word 'embarrassment' in this context of sorrow was somewhat strange as it implies a mistake or dishonour.

His use of collective personal pronouns indicated that his speech was not about political criticism as he epideictically suggested '[O]ur collective psyche has been wounded and we must use this as an opportunity to ask some hard questions about *our* society as a whole'.[680] Like the IFP speaker, Mr McGluwa established definitional stasis to forensically raise concerns about the violence, the killings, and the breakdown in discussions. His substitution of the

[675] Ibid 1569-70.
[676] Marinovich op cit ch 9.
[677] The ID was established in 2003 by Patricia de Lille, a former PAC member with the aim of opposing corruption in the state.
[678] Hansard 2012 op cit 1549.
[679] Ibid 1550.
[680] Ibid.

collective to the personal in in his conclusion when he epideictically expressed condolences to the families extended his appeal to ethos.

Mr McGluwa, like Mr Ndlovu also did not discuss the role of the state and nor did he refer to the actions of the mining houses. While he expressed sympathy with the miners, his epideictic blame was assigned to the trade unions and the police only.

Mr Bhoola of the MF's epideictic speech appealed to ethos as he focussed on peace, despite the misquotes and confusing phrases. He followed his introduction that expressed condolences with quotes by Nelson Mandela and Mahatma Gandhi about the importance of peace. Both quotes were so badly misquoted that the original was barely discernible.[681] This malapropism was evident in his argument as he assumed a link between the absence of the dispute resolution process and the loss of life and fallacious statements such as the police 'become trigger-happy when the interests of business are at stake' and '[A]re the lives of our people *still* being controlled by capitalism?'.[682] Other perplexing statements include the denial 'We distance ourselves from any insinuation and allegation that we are operating in the predemocracy and deny such allegation', '[W]hen dealing with the poor and destitute it's better to let the mind work before the tongue', and his conclusion '[T]he challenge that we currently face in our country is the only fight that we fight for peace. And peace will always prevail over evil'.[683] Despite these strange expressions and reasoning, it was evident that Mr Bhoola was attempting to express concern about the events and that his message was a call for peace at all costs. This was very similar to the appeal by the Chief Whip and as noted in the previous chapter, the MF maintained a working relationship with the ANC, which could account for his approach.

Mr Mfundisi of the UCDP introduced his speech epideictically by appealing to pathos and ethos as he expressed condolences to the family and friends of those that had died and described the sacrifice made by the miners. Although he ethically stated that '[T]his, of course, is neither the time for pointing fingers and allocating blame, nor the time to be defensive'[684] in his introductory remarks, he assigned blame in the latter part of his speech. Using an explanation of the cultural convention that required an honest account of the deaths from a family member, he outlined the reasons that he held 'the Minister of Police responsible'.[685]

[681] Ibid 1584.
[682] Ibid.
[683] Ibid 1584-5.
[684] Ibid 1575.
[685] Ibid 1576.

This cultural invocation allowed Mr Mfundisi to formulate his epideictic appeal based on the values of accountability and honesty beyond the political space. While he did not assume the role of a family member, he used logos to forensically analyse the events that led to the deaths and to then epideictically assign blame. To emphasise the responsibility of the Minister of Police, he reminded the audience that 'South Africans are still reeling to come to terms with the Andries Tatane issue'.[686] He was one of three speakers to use Andries Tatane's death as evidence of police brutality. To support his claim, he continued his appeal to logos as he epideictically quoted the constitutional section about the responsibilities and accountability of members of the Cabinet.[687] To illustrate the magnitude of the killings in relation to these responsibilities, he contrasted it with an example of the British Secretary for Education who resigned because A-level papers were not marked properly.

Mr Mfundisi echoed the concern raised by Mr Ndlovu and Dr Mulder about the violence in the country and, like Rev Meshoe, he expressed concern about the miners who transgressed the law by carrying weapons in public This non-partisan epideictic approach appealed to ethos and logos as he pointed out transgressions by both the miners and the governing party. As an indication of the intensity of his outrage, he reluctantly quoted the South African Communist Party (SACP) who had criticised the 'indecisiveness by the leadership in government' and by stating that he was 'not a fan of the SACP' as he concluded his speech.[688]

Political parties such as the PAC, Azapo and the African People's Convention (APC),[689] which were established based on socialist left-wing principles, used the debate to suggest that the flaws in the capitalist system were the underlying cause of the deaths. Mr Mphahlele of the PAC delivered a speech that was a combination of epideictic and forensic approaches, which appealed to ethos, as he stated that 'Marikana is a sad reminder that economic justice cannot co-exist with democracy'.[690] The PAC's ideology is based on a return of the land and the wealth of the country to the people of the country. Like the Leader of the Opposition, he took collective responsibility when he stated, 'we are all to blame for the Marikana massacre'[691] and supported this by quoting a journalist from *The Star* newspaper who expressed the same sentiment. This ethical appeal, supported by his affirmation of his party's

[686] Ibid.
[687] Ibid.
[688] Ibid 1577.
[689] The APC was formed by Mr Godi of the PAC in 2007 with similar principles.
[690] Hansard 2012 op cit 1581.
[691] Ibid.

principles in his introduction, allowed him to epideictically accuse under the guise of raising lessons. This was combined with a forensic approach, illustrated by statements such as 'the negotiated political settlement hailed locally and internationally as a miracle is fundamentally flawed', '[W]hat the police did in Marikana exposed them as untrained or ill-trained in dealing with volatile situations', and, in relation to the trade unions, '[T]hese class traitors are secretly plotting with the mine bosses against the exploited workers'.[692] He reiterated his initial claim about collective responsibility as he concluded by pointing out that Parliament was 'passive as the clouds of discontent were threateningly gathering over Marikana' and that '[W]e are fast becoming a reactionary Parliament'. These epideictic statements amplified the values he aimed to encourage in his immediate audience as he concluded by calling on MPs to restore the integrity of Parliament and noted that 'Marikana could have been avoided if this Parliament was living up to its calling'.[693] While his speech ethically championed the poor and exploited members of society, his comments about Parliament may have been aimed at the ANC who described themselves as an activist Parliament during this period.[694]

Mr Dikobo of Azapo delivered an epideictic speech, which appealed to logos, as he questioned the actions of the various parties involved in the incident. His introduction conformed to display oratory as he described the coverage as 'a horror movie that should not be watched by people younger than 18 years or by sensitive viewers' and expressed the extent of his shock as 'the understatement of the decade'.[695] His choice of words, while designed to indicate his level of distress, may have been inappropriate in the circumstances. This was in contrast to the restrained approach he used when speaking about the commission of inquiry where he used expressions like '[T]he nation may want to understand', 'allegations', and 'perception'.[696] Despite acknowledging the police's role, Mr Dikobo expressed empathy as he described them as working 'in the valley of the shadow of death'.[697] He used a biblical reference in his conclusion as well, as he expressed sympathy with the those who lost loved ones and called for the continent and the country to be blessed. This consideration of the working conditions of the police was likely to refer to the lower-ranking members who would form part of Azapo's support base. Mr Dikobo was consistent in his appeal to logos as he

[692] Ibid 1582.
[693] Ibid 1583.
[694] Yunus Carrim 'Towards a more activist parliament more engaged with civil society' (2012) 16 *Law, Democracy & Development* Forum Contribution.
[695] Hansard 2012 op cit 1585.
[696] Ibid 1586.
[697] Ibid.

echoed Messrs Lekota and Mcgluwa in questioning why rubber bullets had not been used by pointing out that it would have resulted only in 'miners with sore buttocks'.[698] Using similar logical arguments, he pointed out that the miners were a distance away from the plant and therefore not a threat to the mine, and that Minister for Mineral Resources' reason for not meeting AMCU was flawed as it would only be valid if she were engaged in collective bargaining.

Mr Godi of the APC also represented the interests of the working classes and appealed to pathos as he epideictically explained that '[T]he police officers, security guards and miners who died are all children of the working class, who should be in the same trenches fighting the system that exploits, brutalises and dehumanises them and their communities'.[699] Considering his ideology, it can be assumed he was referring to the capitalist system when he said '[T]he illusion that the co-option of a few amongst us into the vampirish system will buy everlasting peace must be laid to rest'.[700] In this respect, Mr Godi tended to be forensic as he judged the impact that the system had on the poor, as he noted that 'The mine bosses and their greed have seen the superexploitation of mineworkers from the advent of mining in our country to date'.[701] His conclusion that explained the relationship between his party, AMCU, and mineworkers confirmed his allegiance to the workers as he announced 'a mining summit for the marginalised communities', which was planned 'to unite the wretched of the earth, to fight this tripartite alliance of traditional leaders, corrupt leaders and mine bosses'.[702]

The deaths of 44 people in one geographical area in the period of four days in a democratic period where the leaders of the governing party had been on the receiving end of similar incidents during apartheid should have shocked everyone. The fact that 34 were shot to death and another 78 injured in the one afternoon by the police should have resulted in outrage. There was no doubt that it was the police that shot at these citizens. There was also no disputing that while the miners were armed on 16 August 2012, their weapons provided no defence against the police's guns. It was also evident that despite the aggression that the miners displayed, the police had other less lethal ways of dealing with the situation. At the time of this debate, all these facts were known.

[698] Ibid 1587.
[699] Ibid 1589.
[700] Ibid 1588.
[701] Ibid 1589.
[702] Ibid 1589-90.

This debate was a motion to express condolences and, in that respect, the primary audience beyond the debating chamber were the family and friends of those killed and injured. The secondary audience was the South Africa citizenry who would have been trying to make sense of what had happened. As noted, debates of this sort tend to be epideictic by focusing on the present and attempting to unite the audience around a value that seeks to praise or to blame. While the majority of speakers expressed sympathy, the glaring absence of calls to come together speaks to a deeply fractured society. Of the speakers, it was Ms Mazibuko of the DA who attempted to unify the audience and take collective responsibility. Although Ms Van Wyk of the ANC made a strong appeal in this regard, her ethos was negated by the party that she represented and by her concluding comments that responded to previous speakers. While there were other speakers that took collective responsibility, their ethos was compromised as they used the opportunity to either attack the ANC or to promote their party's principles. Mr Holomisa of the UDM was able to maintain his ethos throughout his speech, but he did very little to promote unity. One must wonder whether the less than strident response in a debate within a week of the deaths relates to the social standing of the men, who were only poor miners, policemen or security guards, and to their race. Would the response have been the same if these men were white or of a different social and economic class?

Considering the short time since the killings, it was apparent that the participants in the debate did not have all the details of what took place during the period of violence at Marikana. Much of the information was revealed in the media in the following weeks and much later by witnesses to the Farlam Commission of Inquiry.

Although the ANC's approach was to categorise the killings as a mining matter, the inclusion of the Minister of Police and the chairperson of the police parliamentary committee acknowledged the role of the Police. However, the sheer number of citizens killed by the state should have prompted the President or Deputy President to participate in the debate if only to reassure the nation. The common thread of the ANC's argument was a focus on the legal framework and the importance of maintaining peace. This addressed not only the audience directly affected nor the South African nation, but a wider investor audience crucial for ensuring that the country's already strained economy was not damaged further by withdrawing their funds because of the incident. As representatives of the people, the expressions by the ANC should have comprehended and relayed the pain of its audience and, as leaders, they should have found commonplace forms of healing. As the governing party, it was expected that

they be defensive but as a party that had, as Ms Shabangu pointed out, 'stood on the side of natural justice'[703] it appeared that they had betrayed their own supporters.

5.2. Mineral Resources Budget debate – 28 May 2013

As the Farlam Commission of Inquiry was established a week after the Marikana deaths, it functioned to reduce any oversight that Parliament would conduct as it would simply replicate what was already taking place. The issue would not be debated directly until after the general national elections in 2014 that saw a new political party, the Economic Freedom Fighters, take up seats in Parliament. Until the debate (analysed below) that called for the establishment of a committee to enquire into the working conditions of miners, most references to Marikana were when members included it as an example in statements or questions rather than to address it specifically. The debate on the budget of the Mineral Resources government department was the first comprehensive debate after the tragedy that provided the platform to discuss the incident as it related directly to the work of this government department. It is important to note that despite the actions by the police on the day, it was not a feature of that department's budget debate.[704]

Of the 14 speeches in this debate, six referred to Marikana either in passing or simply to use the event to make political accusations. When the Minister of Mineral Resources introduced her speech, she epideictically expressed condolences for the deaths of 'all mineworkers who passed away during the past year'[705] without acknowledging the 40[706] conspicuous deaths of miners in a single area the previous year. In keeping with the deliberative nature of budget debates that account for spending and government plans, the Minister explained how 'calm and confidence' would be restored in the sector through partnerships with leaders in the industry. To reinforce the government's determination, the Minister stated,

> Whilst we respect workers' inalienable right to strike and the right to freedom of association, as enshrined in our Constitution, we will not tolerate anarchy, violence, intimidation and illegal

[703] Ibid 1555.
[704] The Minister of Finance tables an Appropriation Bill in terms of the Constitution on an annual basis that appropriates funds from the National Revenue Fund for the functioning on government. This Bill comprises of individual budget votes that correspond to the number of existing government department. Each parliamentary committee debates and approves the budgets of the government department that they monitor as part of the process of passing the Bill.
[705] *Debates of the National Assembly of 2013* Vol 5 28 May to 11 June 8 (Hansard 2013 hereafter).
[706] Although 44 people died, four were police and security personnel.

> strikes, which threaten not just our democratic freedom, but also the sustainable growth and employment in a sector.[707]

When she did mention Marikana, it was as she deliberatively explained how transformation in the sector would be managed through an amended Mining Charter. Here she stated that '[T]he social problem that was accentuated by the unfortunate developments at Marikana in 2012, as well as several other related occurrences, reflects that there have been glaring lapses in the implementation of our transformation tool'.[708] While it was true that the violence emanated from what started as an illegal strike for higher wages, this was not the cause of the number of deaths that she refers to as 'unfortunate developments'. To confirm this implication, she epideictically recognised the work of the Farlam Commission of Inquiry with the expectation that 'we are confident that it will be able to emerge with recommendations, which will strengthen our resolve to improve the lives of mineworkers and their immediate communities'.[709] This appeal to ethos was undermined by her misrepresentation of its mandate by conflating it with transformation. While this reference to the Farlam Commission allowed the Minister to abdicate her responsibility in the sector, the lack of refutation by other MPs indicated that this held true for Parliament as well, and that the references to the Farlam Commission's work had been reduced to platitudes.

The two other ANC speakers that briefly mentioned the Marikana massacre took very different approaches. While the Minister had referred to it as an 'unfortunate development', Mr Mohai established ethos by epideictically recognising that the 'Budget Vote policy statement takes place at a time when memories of the Lonmin Platinum Mine tragedy at Marikana are still fresh in the minds of many South Africans'.[710] Ms Ngele, however, chose a blithe, epideictic approach to suggest that there were different perspectives as she criticised opposition parties for referring to Marikana. She appealed to pathos as she contrasted two imaginary media reports to imply that the opposition parties were presenting information that was in dispute. The imaginary scenarios presented extreme scenarios with 'heavy fighting in Marikana, so much so that wherever one goes one trips on dead bodies strewn all around' being contrasted with 'it is so nice in Marikana, with people having a *braai* (barbeque) everywhere' to indicate the level of divergence.[711] As this debate took place less than a year after the deaths, this light-

[707] Hansard 2013 op cit 9.
[708] Ibid 16.
[709] Ibid 16-17.
[710] Ibid 38.
[711] Ibid 64-5.

hearted approach to 'bodies strewn all around' and having a barbeque was callous and lacked ethos.

Ms Carter of Cope of used the Marikana massacre to epideictically blame the government for the fact that the mining industry was shrinking by criticising its alliance with Cosatu who she accused of colluding with the mining companies. Appealing to logos, she established stasis to illustrate how ANC actions resulted in the contraction. Her question '[C]ould the answer lie in the severe labour unrest in this country?' functioned to remind the audience of Marikana. By stating that '[*R*]*umours* accuse the ANC's deputy president, Cyril Ramaphosa, of being the Dr Evil behind labour brokerage and the Marikana Massacre' and '[I]t is *alleged* that Ramaphosa's labour brokerage takes as much as 50%',[712] she was able to indict by implication and protect her ethos from accusations that the information was false. As the ANC's national conference the preceding December had elected Mr Ramaphosa as Deputy President of the organisation, it provided the opportunity to include him in the criticism by implying that he was responsible for the massacre as well. The ethos that should have emanated from her logical questions about the force that the police used on the Marikana miners and the interests that government was protecting was negated by her political attack.

Mr Hlengwa of the IFP was also concerned about the decline in the mining industry, and the effect of the Marikana massacre on 'an already beleaguered mining industry, particularly its platinum sector', as he epideictically stressed that it 'should never happen again'.[713] This ethos was established in his introduction when he stated '[T]his Budget Vote takes place after the recent tragic loss of life at the Lonmin Marikana mines, where we witnessed unprecedented police brutality in a free and democratic South Africa' and he offered the IFP's 'most heartfelt and sincere condolences to the families and friends'.[714] His reference to a free and democratic South Africa illustrated the extraordinary nature of the number of deaths. Although he appealed to logos as he conceded that while 'the issues emanating from Marikana relate to labour matters, the Department of Mineral Resources has a direct responsibility to ensure that all labour matters and the wellbeing of workers within its scope are better handled',[715] he remained more compassionate than Ms Carter who had expressed a similar view, thereby appealing to ethos.

[712] Ibid 32.
[713] Ibid 35.
[714] Ibid 34.
[715] Ibid.

Adv Schmidt of the DA, unlike other speakers who mentioned it in passing, devoted his entire speech to the impact of the Marikana events. Using a combination of forensic and deliberative approaches in which he was both critical and proposed solutions to the problems that arose in Marikana, he attempted to balance concerns for the well-being of the miners with that of the mining industry. His main concern, however, was the mining industry, which was aligned to the free market policies of his party, as was evident from his introduction that stated, '[C]hairperson, the Marikana tragedy in August last year undisputedly blemished South Africa's mining industry'.[716] His proof for this statement was a quote from an unnamed ANC supporter about the ANC attacking its own people, and how it had caused AMCU to threaten the economy. This focus on the economy was reinforced when he added that this 'contributed to the rand sliding to a four-year low against the dollar, which could trigger another downgrade of South Africa's ratings'.[717] While the logic of these statements was true and apt in a budget debate, his ethos was diminished as he measured the lives against the effect on the economy. Like Ms Carter of Cope, he criticised the relationship between Cosatu and government and, as proof, quoted the secretary-general of NUM who exonerated its members, and referred a similar statement by the Minister of Mineral Resources echoing that sentiment. Though the aim of these quotes was to illustrate the ANC's apathy to the people that died, Adv Schmidt equally displayed indifference by using the deaths for his own political ends. Although his deliberative statements about improving the living conditions of miners appealed to logos, his ethos was diminished as the proof, which was a statement by the Minister of Finance about the decline in the mining industry, related to statistics about the economy rather than the welfare of the people. This was illustrated again when he argued for a social compact 'that encourages transparency and accountability, better governance and a shared understanding of the *role and value of business* in society'.[718] Equally, when he suggested that '[W]e should address the problem of being the most unequal society', his proposals were related to growing and improving the industry with only two of the eight proposals relating to the working and living conditions of the miners. While the focus on improving the state of the mining industry in a budget debate of the Mineral Resources government department was rational, Adv Schmidt's reference to Marikana and his apparent concern for the well-being of the miners was opportunistic and lacking in ethos. It was his concluding remark that 'the future of South Africa's mining is on the brink of another crisis without definitive steps to resolve the

[716] Ibid 71.
[717] Ibid.
[718] Ibid 74.

underlying issues, which contributed to the Marikana tragedy'[719] that confirmed his view that the Marikana deaths were an obstacle to the industry rather than a human rights disaster.

While this was not a debate about Marikana directly, it should have received greater consideration, as a government department's budget vote is the platform to assess the functioning of that department and the extent to which it meets its mandate. Here, as in the previous debate, it was apparent that this matter was one where the loss of lives was discounted for political gain. While it was true that the Farlam Commission had not completed its work at that stage, this did not prevent Members of Parliament from remembering and recognising the significance of the high number of deaths as a shared national experience without it being a political tool.

5.3. Motion on conditions of mineworkers – 4 September 2014

The debate on the conditions of mineworkers took place in the first quarter after the 2014 national elections that saw the newly-formed Economic Freedom Fighters gaining 1% of all the votes nationally. The former ANC Youth League members took a strong anti-capitalist approach that consciously appealed to the poor and working class. In keeping with this principle, the EFF identified the Marikana massacre and the working conditions of the miners as a campaign tool.

This debate that was proposed by the leader of the EFF, Mr Julius Malema, must be understood in the context of the strong anti-ANC sentiment by the EFF, and the intentionally provocative statements on which they had campaigned before the elections. This was evident in the manner that Mr Malema phrased this motion, which was his first in Parliament. He prefaced it by noting the deaths of the miners two years before, and using the fact that they were involved in a strike for higher wages to call for a parliamentary committee to investigate the working conditions of the miners. By referring only to the '34 mineworkers [that] were killed by police in Marikana'[720] in his motion and not all of those that died in the preceding days, Mr Malema reminded the audience only of the action of the state without mentioning the deaths that were alleged to have to have been caused by the miners. This claim was made more directly in Mr Malema's concluding speech in an epideictic form when he criticised the governing party by stating 'we are mentioning Marikana because people were killed there. We mention it deliberately because it pains you. We are going to mention it until you become red,

[719] Ibid 75.
[720] *Minutes of Proceedings of National Assembly* 4 September 2014 No 15 122.

because you don't want to hear it!'.[721] While the miners' working conditions was a matter of serious concern that the public representatives should have been debating, it was apparent that Mr Malema had chosen to use the deaths as a political tool.

The inclusion of the Marikana massacre in the motion resulted in epideictic and forensic references where nine of the 15 speakers mentioned it directly and the remainder debated the conditions that had led to the labour strike, which had preceded the killings. The Deputy Minister of Science and Technology, Ms Magwasa-Msibi of the National Freedom Party (NFP) stated that 'failure to reach a concrete agreement through a collective bargaining process during the Marikana tragedy is a clear indication of serious flaws in the current labour laws'.[722] This appeal to logos implied that the deaths were simply the natural extension of a labour relations process, which could be remedied through law. The NFP gained six seats in the 2014 elections and, like the EFF, was a new parliamentary political party, having been established in 2011 from former members of the Inkatha Freedom Party, (IFP). Like the IFP, its support base was concentrated largely in the KwaZulu-Natal province. As this was one of the areas in the country where many of the migrant miners hailed from, one would have expected more sympathy from her.

Mr Galo of the African Independent Congress, a small new party appealed to ethos and pathos as he used the Marikana massacre as proof of his epideictic argument that blamed the 'transactional' leaders for the 'appalling and unacceptable conditions'[723] of miners, and by pointing out that it could have been avoided.

Mr Mphethi of the PAC also took an epideictic approach by condemning the killings not only at Marikana but also 'in the Burgersfort area because it reminds us of the Sharpeville Massacre of March 21, 1960, and the Soweto Uprising in 1976'.[724] This condemnation that appeared in the middle of his short speech was unrelated to the concerns about land ownership that preceded it and the wage demands that followed it and thus served simply as an emotive reminder of the massacre and its similarity to apartheid killings. The connection with killings in the Burgersfort area was not explained and may have been an incident at that time that related

[721] https://www.parliament.gov.za/hansard-papers?queries[search]=-HAN-NA-2014&sorts[date]=-1&page=109&offset=1080 130. (As the Parliament of South Africa stopped publishing the Hansards from 2014, these footnotes refer to the Word document downloaded from its website. Hansard 2014 hereafter).
[722] Ibid 101.
[723] Ibid 112.
[724] Ibid 121.

to a particular set of supporters, which meant that the Marikana deaths were being used for political gain.

Mr Maimane, the Leader of the Opposition also used the massacre as proof to support his epideictic argument that the governing party and the President had failed 'to improve the lives of the mineworkers'.[725] Mr Maimane's call was not for justice but for a logical balance between social and economic considerations as he stated, 'Two years after the atrocities of Marikana, we are neither closer to more dignified lives for the mineworkers, nor are we any closer to rebuilding a vibrant mining sector that creates jobs and grows the economy'.[726] When he switched to the indigenous Setswana, his criticism appealed to pathos as he empathised with the plight of the miners and blamed the ANC directly. His statement, 'I was in Marikana and I saw the poor conditions our people are living in. I saw how the ANC had failed to build schools and clinics for our people' diminished his ethos because, as the leader of the second largest party in the country, he was aware of the difficulties being experienced in poverty-stricken areas throughout South Africa, yet he chose to make an expedient statement related to Marikana. The ethical appeal in Mr Maimane's epideictic conclusion was more compelling as he claimed that 'we must admit the failings at Marikana, and show the rightful respect to those who lost their sons, fathers, uncles, cousins and brothers. We must admit these failings, and deal with them'.[727]

The ACDP's, Ms Dudley, erroneously cautioned against discussing the topic as '[I]n our opinion the Marikana Commission is dealing with these issues'.[728] Her indifference was displayed not only by the incorrect assumption about the terms of reference but by not bothering to have the correct name of the commission of inquiry. This was further displayed as she epideictically expressed gratitude that she did not have 'to consider mining as a career' in the context where for many of those miners it was not a chosen career but the only available work. Considering her party's Christian principles, it may be possible that she took a conscious decision not to use the Marikana deaths for political gain.

The two ANC speakers' reluctance to address the topic could be attributed the fact that they were the governing party whose police service was responsible for the killings. The first ANC speaker, Ms Mafolo indicated that she was 'feeling somewhat nervous as the Farlam

[725] Ibid 91.
[726] Ibid.
[727] Ibid 95.
[728] Ibid 108.

Commission is still in the process of dealing with these and related matters'.[729] Like Ms Dudley, Ms Mafolo appeared not to be familiar with the commission's terms of reference yet used it as an excuse to not address the Marikana deaths. Her epideictic statements '[T]he ANC is not only visible when people are in mourning' and '[A]s the ANC we do not parade our colours to buy favour, but we know and identify with all the workers in our country',[730] which appealed to ethos, echoed statements made by the Minister for Mineral Resources during the condolence debate in 2012 when she praised the ANC for its unbiased support, which implied that other parties did not provide it. To illustrate the ANC's impartiality, she deliberatively made the extraordinary argument that 'People should not be selective in helping the surviving widows of Marikana. There are men and children who have also lost their loved ones and, if the support was real, it would be unbiased'.[731] Although her speech focussed on the safety of women in mines, she concluded by pleading for peace between different labour unions, in an appeal to ethos, as she deliberatively urged members to 'play a unifying role for the workers in the promotion of mutual relationships among workers affiliated to various trade workers' unions.'.[732]

Although Ms Mafolo attempted to take an ethically conciliatory approach, the Deputy Minister of Mineral Resources, Mr Oliphant, who was the other ANC speaker took a somewhat dismissive approach. To prove that mining had improved in general, he epideictically stated that 'Marikana is not the only place where mining is taking place in this country. There are over 1 700 mines in this country; Marikana is just one of them'.[733] While his statement made a cogent logical argument, his ethical position was diminished as the memories of the deaths in Marikana were still fresh and related directly to the working conditions at mines.

At the conclusion of the debate the DA proposed a different wording to the motion that captured their political concerns and both motions were put to a vote and failed to pass.[734] At this point the Farlam Commission had not tabled its report yet, which may account for some of the reticence being displayed. However, the details of what took place in Marikana had become public knowledge through media reports, and testimony to the commission. One would have expected this information to have influenced the debate that took place to a greater extent.

[729] Hansard 2014 op cit 86.
[730] Ibid.
[731] Ibid.
[732] Ibid 89.
[733] Ibid 128.
[734] Minutes 2014 op cit 1124-8.

While it made sense not to replicate the work of the Farlam Commission, as the representatives of the people, it was concerning that Parliament chose not to perform any oversight over the consequences. Even after the release of the report, those elected to represent the interests of the public have not held those in government responsible.

5.4. Conclusion

These three debates as well as the lack of references to Marikana in Parliament illustrated that the political parties and their members appear oblivious to the concerns of those that they represent. The deaths of 34 miners should have held their attention for much longer as they performed oversight over the state that caused the deaths. Although the primary audience beyond the chamber, was the families of those that died, the actual audience should have been the South African nation. In mourning these deaths, it provided an ideal, albeit unfortunate, event around which to encourage social cohesion as the country would not only recognise the harsh reality of the lives that support the economy but that these differences were empathetically understood. This experience was an opportunity to remind the audience of the values that underpinned the nation by recognising the avoidable circumstances that led to the deaths and defending an audience that was indisputably vulnerable.

For the governing party it presented an opportunity to indicate to the electorate that they remained important and that the policies of the government remained focussed on the poor, as was captured in their initial manifesto of creating a better life for all. Although the condolence motion aimed to communicate these values, the two main political parties at the time tended to balance it with the damage that the deaths caused to the economy. This value appeared to be the same in the subsequent debates. Under these circumstances, as the component of the state that represented the interests of the people of the country, Parliament should have acted as the guardians of morality. While the Chief Whip's statements in the 2012 debate about black lives being cheap was convenient at the time, the subsequent actions, including the lack thereof, of all the parties in Parliament prove this to be true.

Chapter Six – Conclusion

6.1. Introduction

This thesis aimed to investigate whether parliamentary rhetoric during the first four terms of the democratic South Africa had missed an opportunity to create social cohesion and contribute to nation building. It did this by identifying debates during periods of crisis under the three Presidents that served during this period as responses to crises indicate whether parliamentarians display the character needed to encourage cohesion. The crises selected were the TRC process under the Mandela presidency, the government's response to the HIV epidemic under the Mbeki presidency, and the state killing of miners at Marikana during the Zuma presidency.

To provide context to the cohesion required, in addition to outlining the focal question and the context of the material, Chapter One traced the historical factors that contributed to divisions in the country. As the thesis analyses how rhetoric would impact on social cohesion, Chapter Two outlines how identity, cohesion, nation building, and reconciliation may be understood. It also discusses the rhetorical tools that would be relevant to the speeches in the selected debates. Chapters Three, Four and Five analyses the three debates per crisis and draws conclusions in each case.

6.2. Summary of the South African Context – Divisions and Reconciliation

The deeply fractured South African society in 1994 was characterised not only by imposed race categories, some of which were further split along ethnic lines,[735] but by deep distrust between these groups because of colonialism and apartheid. If one takes the understanding of a single humanity, these differences were based on skin colour, at a superficial level,[736] and supported by cultural differences to provide a deeper distinction. When South Africa declared itself a separate country in 1910 after combining the four territories, there were two crude and inconsistent legal race divisions, i.e., white and native, which was later extended to include the category 'coloured'.[737] The basis for racial discrimination was ultimately to secure the country's resources for the white minority while excluding the black majority.

[735] These division existed not only in the indigenous population but was and remained prevalent among other race categories often related to stories of origin.
[736] Deborah Posel 'Race as Common Sense: Racial Classification in Twentieth-Century South Africa' (2001) 44(2) *African Studies Review* 87-113.
[737] Ibid 90.

While the legal framework was held in place by punitive measures, it was sustained by those being classified, who asserted the assigned identity through language and culture as one that provided a sense of social recognition and heritage. The effects of the Population Registration Act[738] that constructed socially diverse 'imagined communities', coupled with misinformation sowed by the state to ensure that order was maintained, served to alienate citizens from each other. This was exacerbated by the violence perpetrated by the state and liberation organisations in the three decades before negotiations commenced and by the lack of shared experiences.

Notwithstanding the imagined nor adaptive nature of these communities, which were reinforced by the state, its assertion by individuals and groups as primordial identities was real and would remain so within the democratic context. These identities must be understood in the context where the racial bias and exclusionary policies of colonisers resulted in the indigenous and slave population being treated as 'at best, as children and, at worst, as savages'[739]. This exclusion from the privileges of sovereignty and belonging was reinforced by the apartheid state's policies that equally treated all blacks as minors.

Reconciliation through negotiation was initiated rhetorically between the apartheid state and the ANC in the late 1980s at a time when violence by the state was becoming unsustainable. The ANC, equally, found itself in a position where it faced the possibility of inheriting a ravaged country if it continued, and its traditional support from Eastern Bloc countries was ending. Rhetoric in this case was employed through letters between the state and the imprisoned ANC leader, Nelson Mandela, as well as through a series of meetings with the ANC in exile. While Mandela was released and organisations unbanned in early 1990, the final agreement for a reconciled South Africa was negotiated rhetorically, before it was adopted in November 1993. This paved the way for the first democratic national elections in 1994.

6.3. Summary of Concepts for a Cohesive Nation

If one understands society as composed of diverse identities that arises naturally where coherence is based on the unique aspects of a shared history, culture or experience, the South African society was purposefully damaged in the manner that differences were accentuated rather than mitigated or negotiated. Considering the Durkheimian notion of the role of the state, the apartheid government acted against any possible *sui generis* formation of a South African

[738] See Note 1 supra.
[739] Vale op cit 27.

society. The state's use of the law to secularise morality was further inverted by the apartheid state that manipulated and engineered it to subjugate the inhabitants of the country.

Although the country's democratic motto, Diverse People Unite, reflects the unity that was required, how a national identity would be fostered was unclear beyond the establishment of the TRC. The ANC's historical understanding of a nation, beyond the geographical space and borders, would require understanding this identity differently in the context of the enforced diversity. Although its African Claims and Freedom Charter values for a good society was designed to bridge the gaps and reverse the material and social disadvantages created by colonial and apartheid policies, these proposals were developed in the period before the apartheid state had degenerated from policy to covert manipulation and increased emphasis on cultural differences. Accepting diversity and conflict as a natural part of society as it adapts to changing conditions, building a coherent South African society would need strong state institutions built on trust so that members of society develop the tolerance required to sacrifice in the short term for the greater good.

Within the South African context, while the process of reconciliation included the conversion of the state from a divisive one to a constitutionally guaranteed, rights-based democracy, it did not include coherent internal identity creation from among the disparate identities. Although the new state installed the symbolic aspects of a nation such as the recognition of borders, adopting a flag and anthem, this did not automatically create the nation nor a sense of national identity.[740] The challenge of uniting diverse groups to create the coherence of a nation remained. Although reconciliation in South Africa meant agreeing to end the violence and negotiating a peaceful settlement, in the absence of any form of previous coherence, it assumed that the negotiated agreement on reconciliation in the Interim Constitution would bridge the interpersonal distrust.

The TRC that was established to give legal effect to the constitutional provision for reconciliation was limited by both the provisions of its founding legislation and the extent of the issue that it was mandated to resolve. Balancing the legitimate appeals for justice for past transgressions and violence with the need to build a new society where the perceptions of previous enemies had to be reconfigured into fellow compatriots resulted in the TRC not meeting the expectations of both the previous governing party and the former liberation movements. Its work was further hampered by blanket amnesties granted during the negotiation

[740] Chidester, Hadland & Prosalendis op cit 307.

period and a lack of co-operation. This resulted in a level of impunity for offenders as the TRC could not uncover the full truth nor propose prosecution under those circumstances. Notwithstanding these impediments, the TRC provided some closure and a measure of catharsis during its period of operation. It could not, however, resolve the distrust ingrained over decades.

6.4. Rhetorical Analysis Summary

This thesis uses Doxtader's contention that the difficulty of defining reconciliation, understood as the balance between the opposing rationales for recognition and the need to negate identity in the interest of creating something new, can best be addressed through rhetoric. The use of rhetoric to foster reconciliation can be traced from the mid-1980s when *The Kairos Document* proposed the device of naming and opposing oppression to the later tentative discussions by the state with the imprisoned Nelson Mandela and the ANC in exile. The negotiation period, between the unbanning of organisations and the release of prisoners in 1990 to the democratic election in 1994, confirmed the importance of rhetoric for South Africa if it was to move beyond the past.

Reconciliation, in this case, was not about bringing together what was divided but about moving from the past to the future. In this sense, rhetoric would be responsible for constituting cohesion and a sense of nationhood. The rhetorical situations that crises present to Parliament were therefore apt tools to analyse whether the country's leaders and representatives of the people understood the requirement to enact *krisis* as they met this responsibility.

If one accepts that parliamentary debates are display oratory, not in the sense of epideictic rhetoric but that the speeches are designed not to persuade other speakers but to demonstrate the views of the orator or their party to the public, by the time that a debate takes place, the decisions about the issues raised will have been made either in a parliamentary committee or a party caucus meeting. It is the public that requires confirmation that the party that they elected are representing the views of their stated manifestos or alternatively be persuaded that another party may be a better choice. Within the South African context, this becomes more complex as MPs are appointed based on political party lists rather than through direct constituency representation. A cynical view would be that loyalty to the interests of the party comes before the public, however, the democratic process assumes that the ruling party represents the interest of the majority of the electorate. As the objective is thus to address the audience beyond the chamber, how unity is represented and displayed becomes crucial.

During the 1995 TRC debate, while speakers may not have agreed to the compromises that were reached, in accepting the importance of reconciliation, they acceded to the decisions of their parties. At this stage, speakers from the two largest parties, the ANC and the NP/NNP epideictically appealed to pathos to illustrate their sacrifice and as a call for recognition of their identities. The Durkheimian notion of shared values and ideas around which society can cohere was not evident, although parties accepted the idea of a national identity. In this sense, the legal framework that rested on a constitutional democracy met the requirement for the state to uphold common morality in the civil law tradition. The public was called on to trust the TRC as an institution to sacrifice for the greater good.

By 1997, although trust in each other and in the TRC had begun to wane, the need for truth was pitted against the need for the NP to be recognised. This debate was characterised by pathos, which varied from eliciting sympathy for the effects of past atrocities to anger and sarcasm. This debate was characterised by divisions along party lines rather than any attempt to recognise the other. As the past began to intrude on the present, the notion of collective attachments on which to base reconciliation seemed tenuous. Although the debate was forward-looking in terms of its aim, the orators asserted their identities of the past.

This assertion of identity was intensified in the 1999 debate, at a point where trust in the TRC process had been broken and the realities of the apartheid past laid bare. For the ANC, it was a call for recognition of sacrifice while the NNP used the debate to distance itself from the past through deliberative proposals or by defending previous actions. Although this debate provided an ideal opportunity for speakers across the political spectrum to voice shared values and to recognise each other's identities to create a bridge from the past to a shared future, it was characterised by acrimony and recriminations. For the public, the divisions that had been there in 1994 were displayed again despite the legislated process to foster reconciliation. The use of pathos is indicative of the attempt to hold onto the past more than to use it to step into a different future.

The analysis of the three TRC debates indicates a progression that reinforced previous attitudes on both sides of the divide as orators asserted identities rather than displaying and expressing shared values. The challenge of the diversity of the universal audience, and the exposure of past atrocities combined with the distrust of the TRC findings, resulted in the past intruding on the possible future. While reconciliation remained legislated, orators appealed to particular audiences at the expense of recognising the other. The bridge between the past and

the future, and dissent and consensus remained incomplete as the distrust consolidated attitudes rather than setting aside self-interest for altruism.

When debating the effects of HIV, the 1999 debate did not display the acrimony of subsequent debates, although its oratory nonetheless appealed to partisan positions. The deliberative views presented by the Democratic Party, who led the debate, supported by smaller parties, expressed dissent with the aim of building consensus based on logos, while the divisions in the ANC were revealed through its approaches that varied from epideictically praising government and criticising the opposition parties to deliberatively advocating change without addressing the President's stance.

By 2000, this difference between the ruling ANC and the DP had deteriorated as they appealed to their particular audiences using logos. This may have been a consequence of growing frustration by opposition parties or a stronger appeal to the electorate in the context of an impending election. The epideictic speeches in the debate that either defended the President or criticised him indicated an increasing disregard for the audience who needed deliberative solutions and a stronger obedience to party positions.

The challenge of the 2001 debate that combined both poverty and HIV was that the assumed link constrained orators to addressing both to maintain their ethos. Although the link was used by the opposition to epideictically criticise the ANC for failing to address poverty, it provided the ANC with the device to change the emphasis from HIV to poverty as a reminder that the lives of the majority was determined by the apartheid past, thus appealing to that identity as a defence.

While the rhetoric employed during the TRC debates overwhelmingly appealed to ethos and pathos, the debates on the HIV crisis tended to be based on logos. While ANC members asserted past identities as victims as it epideictically defended government and the President, opposition parties, particularly the DP/DA, combined epideictic and deliberative approaches to criticise the state. The consequence of the ANC's position meant that its ethos was constrained by that of the President while it ignored the electorate by not acting in the best interests of the country. This lack of *phronesis* caused the ANC to neglect an opportunity to change attitudes and to articulate values to uphold the morality of society.

Notwithstanding the ANC's indifference to the people that it served, the largest opposition party, the DP, similarly disregarded those suffering as its dissent degenerated into offense rather than using the opportunity to illustrate ethos by building consensus. Their

indecorous behaviour served instead to alienate those that may have considered them as an alternative party to the ANC. Although many of the smaller opposition parties maintained their decorum, despite dissenting, their appeals, which were directed at their support base, tended to be more conscious of the audience.

The divisions that existed prior to the negotiation period and had been underscored during the first Parliament when the TRC held its hearings, appeared to give way to divisions along party political lines. At this stage, although it was changing, these divisions still reflected the race divisions of the past. As HIV was largely prevalent in poor, black communities, this health crisis presented an ideal opportunity for these political leaders to display the values around which society could begin to cohere. As many speakers pointed out, despite its prevalence in certain groupings, it transcended race and class divisions so that it could be classified as a collective shared experience.

Not only did the leaders in government fail in their duty to ensure that the law upheld the morality of caring for the vulnerable, but this deficit was also defended by its party representatives in Parliament, who should have prioritised the interest of the electorate. Expressing opposition so that it persuades would have required that they operate as Ivie's rhetorical trickster, where the metaphors used as they dissented are able to reframe opinions without indicating intolerance. Using Aristotle's calculative imagination, MPs, regardless of their political affiliation, who were responsible for representing the people should, in this case, have persuaded the state. These debates that were forensic and characterised by appeals to logos and ethos may have been better served by the epideictic use of pathos to evoke the required sympathy.

The opportunity to unite South Africans under the unfortunate circumstances that the deaths at Marikana presented was similarly missed as the political parties displayed a disregard for the audience. The audience for the 2012 condolence motion was primarily the family and friends of those killed and injured, followed by the South Africa citizenry who had witnessed a mass killing by the state. In keeping with the epideictic nature of such a debate, while the speakers expressed sympathy, the opportunity to foster cohesion based on values was missed. While Ms Mazibuko of the DA and Ms Van Wyk of the ANC attempted to unify the audience and take collective responsibility, the ethos of other leaders was diminished as they used the opportunity to attack the ANC or to promote their party's principles.

The ANC, whose epideictic approach categorised the killings as a mining matter in its resolution but included the police, appeared conflicted about how to address the matter. They reverted to asserting a previous identity by reminding the audience of apartheid that required recognition of the sacrifices made. This identity formed the basis of their appeals to ethos. This was balanced by appeals to logos as the party focussed on the legal framework and the importance of maintaining peace. Although this reminder about the legislative framework underpinning the state was aimed at an investor audience, the irony of the state who was responsible for protecting its citizens and for upholding morality was missed.

Although the subsequent debates in 2013 and 2014 did not address the deaths in Marikana directly, it should have received greater consideration as these were platforms to constitute a cohesive society by reiterating the enormity of the state's actions towards its citizens. Instead, MPs expressed trepidation about the issue as the judicial commission established to investigate it had not finalised its work. In those instances that it was mentioned, it was specifically to epideictically criticise the state. As representatives of the people elected to protect their interests, the absence of debate and accountability for the deaths that were indisputably caused by the state, is an indictment on Parliament.

6.5. Recommendation

Although there is no denying the existence of a South Africa state that includes all the trappings of nationhood, whether a South African nation exists is not clear. This is further complicated as notion of a nation itself may be in flux in the context where global and technological changes allow inhabitants of geographical spaces to transcend these, without leaving the space, by adopting transnational identities in terms of shared culture or philosophy. The notion of being part of a nation is further challenged by the migration of people across borders to occupy different geographical spaces to their historical and cultural origins.

A historical deconstruction of the understanding of a nation with primordial culture and heritage exposes the flaws as countries have been constituted from separate components at some point in time. This is often illustrated by the story that there are no ethnic Italians in Italy, and when the country originated in its current form, Italians had to be created from the heterogenous polities that previously existed.[741]

If, however, we accept a nation as those inhabitants, regardless of how diverse in terms of language, culture, or heritage, within a defined space, who contribute to and share the

[741] Wilmsen op cit 21.

resources of the state that administers within that space, one should assume a sense of shared commitment, which would form the basis of cohesion. The Durkheimian understanding of the state, chosen by these inhabitants, has the responsibility to reciprocate by upholding shared values and using the law to maintain morality. The question that arises is what causes these inhabitants to cohere and to express commitment.

The South African nation that was negotiated and created in the early 1990s was, and remains, comprised of people with diverse cultural and historical identities. The difference, however, was that, although this diversity, as elsewhere in the world, may through historical circumstances have come together naturally, its previously enforced imposition gave rise to rigid adherence to identities. These internal identities became set not only intrinsically but by being in opposition to other identities. Although this was recognised by the parties that agreed to a single state, and expressed through its motto, Diverse People Unite, while the state recognises diversity it may not have created the bridges through values to foster unity.

In giving effect to the Constitution, the state in practice implicitly upheld the divisions of the past as it focussed on diversity over unity. When reporting about how they have transformed the racial composition of labour to reverse the past injustices, companies are expected to use apartheid race categories. This absurdity is a stretch, as South Africans, including those born in the democratic era are expected to self-classify as the state no longer does. Like the apartheid state, it elevated English as the language of government, again excluding the majority who may speak one of the other eleven constitutionally recognised languages.[742] The more contentious provision, however, was the inclusion and subsequent establishment of the Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities in the Constitution during the negotiating period to accede to the Afrikaners' call for the protection of their group based on cultural, religious and linguistic rights.[743] While it sets out to promote 'peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association',[744] its mandate inadvertently advances apartheid-style group rights.

The fundamental challenge for the state related to how the balance between mutual recognition and reconciliation was portrayed, both in the actions of the state and through the

[742] Chidester, Hadland & Prosalendis op cit 303.
[743] Alexander op cit 82.
[744] The Constitution of the Republic of South Africa, 1996 s185(1)(b).

rhetoric of its leaders as an ongoing construct to build unity. While the establishment of the TRC gave legal effect to the condition of reconciliation agreed to during the negotiation period, this process had limits. Reconciliation requires a strong state and trusted institutions to ensure that the diverse identities are not in contradiction to each other and are not used as the basis for the mobilisation of group interests.[745] Any resolution of previous fractures must address the role of the people and their relationship with each other[746] and must be effected among the people and not just the leaders based on shared experiences and values.[747] Reconciliation for the South African state required dealing with the past as a balance between forgetting and remembering in a manner that was ultimately forward-looking.[748]

For people of diverse culture and heritage to develop the relationships of mutual recognition and respect, it would be important that they engage with each other through daily experiences. Rituals and symbols of state are meaningless unless it is assigned meaning by those who are called on to express loyalty to it. This talks to Arendt's notion of 'banal nationalism' and Billig's distinction between the flag being waved and the one hanging unnoticed.[749] Being able to engage in shared experiences and spaces will only be possible if the material conditions of people change so that class divisions that remain aligned to the remnants of race divisions are overcome.

Developing unity from diversity will not be achieved through an event but through the understanding that it would always be open to contestation as antagonisms arise as part of the democratic process. Using rhetoric to mediate these antagonisms and develop consensus should be based on the acknowledgement of difference without division, and recognition without assimilation. South Africans need to enter a symbolic social contract that respects the rights of all without sacrificing identity. To conceptualise identity formation in the post-apartheid environment, there must be an acceptance of the contextual conditions and an understanding that it cannot be started anew. Identities must not be ignored or denied but should be allowed to be contested, reconstituted, and should be recognised by its fluidity in different contexts.

Using the country's recent past of negotiating an end to apartheid and transcending violence through rhetoric requires that its citizens talk about the past so that it forms the basis of a reconfigured future. This thesis illustrates the increasing indifference between politicians

[745] Alexander op cit 99.
[746] Sarkin & Daly op cit 688.
[747] Ibid 697.
[748] Ibid 706.
[749] Kersting op cit 9.

chosen through party structures and the electorate who rely on them for representation. Under these circumstances, and until the electoral system adapts to ensure that representatives are directly accountable to the people, inhabitants must transcend past identities of exclusion to take responsibility for their country rather than placing its faith in leaders who are caught up in party political battles. While there has been an increase in the number of non-governmental organisations, civic organisations, and organisations protecting civic rights, it requires citizens to actively protect their hard-won democracy. An instance where a local government used funds allocated to mitigate the effects of the Covid-19 pandemic to buy the mayor a car should have received greater attention from affected citizens. Instead, it was reported a year later by the Auditor-General in her report to Parliament[750].

This does not require a reversion to violence but that citizens take responsibility using what Ivie describes as a humanising style of democratic dissent.[751] While Ivie suggests that 'democratic rhetoric is quintessentially a discourse of dissent rather than a discourse of governance',[752] I want to suggest that, in South Africa, governance structures are utilised to rhetorically register dissent. While the local government system allows for direct representation, and provincial and national governments are elected on a proportional party list basis and, thus, not directly by the people, the Constitution compels Parliament and the provincial legislatures to consult the public.[753] Chapter Three and section 55 of the Constitution combines to create a state that is collectively responsible to the people and a Parliament that is expected to safeguard the interests of the people through its accountability mechanisms.

This potential to express themselves beyond the five-year election cycles should form the basis of the democracy. This capacity to intervene cannot be ignored once instigated and had been successfully challenged in the past.[754] Citizens should use these constitutional provisions that provide them with a voice to not only respond to calls for input but to constitute a public that rhetorically expresses dissent when leaders act contrary to the interests of the country and its people. While this may not change the way Parliament and the state behaves, it

[750] https://ewn.co.za/2021/06/23/ec-municipality-used-covid-19-relief-funds-to-buy-car-ag-tells-mps. Accessed on 24 June 2021.
[751] Robert Ivie 'Towards a Humanising Style of Democratic Dissent' (2008) 11(3) *Rhetoric and Public Affairs* 454-458.
[752] Ibid 456.
[753] The Constitution s59, 72 &118.
[754] *Doctors for Life International v Speaker of the National Assembly 7 others* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) http://hdl.handle.net/20.500.12144/2265. Accessed on 15 January 2022.

will rhetorically create publics of interest in a manner that encourages shared experience as it counterbalances the power of the institution.

The value of democracy, which had been at the root of liberation struggles, must remain the basis of rhetoric that bridges the diversity and the gap between the past and the future. South Africans need to remind each other about the value of *Ubuntu* and the past if they are to welcome newcomers into the country. While strong institutions encourage social cohesion, the converse is true as a cohesive society will insist on a better functioning system of democracy.

Doxtader suggests an understanding of reconciliation as a 'form of potential, a form of transitional power that may or may not come to be (actualised)'[755]. His warning sounded through Franz Fanon, 'not to mistake a relational good for either a stable product or a fanciful dream' confirms the open-ended transitional nature of the potential to be and to create.[756] The following quote from Nelson Mandela's speech during the 1999 TRC debate is apt in this regard,

> It would be well to underline at the outset that reconciliation touches upon virtually every facet of our life as a nation.
>
> The TRC is an important component in that process, and its work is a critical milestone in a journey that has just started. We say this advisedly. For South Africans cannot abdicate their responsibility for reconciliation by shifting it to the TRC, or gloating at its perceived weaknesses. Nor can the task of reconciliation be confined to narrow legalese.
>
> Long after the Commission has folded and its offices closed, political leaders and all of us in business, the trade union movement, religious bodies, professionals and communities in general shall have to remain seized with the matters that the TRC process brought to the fore. In as much as reconciliation touches on every aspect of our lives, it is our nation's life-line.[757]

[755] Doxtader op cit *xi*.
[756] Ibid *xii*.
[757] Hansard 1999 op cit 34-5.

Bibliography

Primary Sources

Debates of the National Assembly of 1995 Vols 5 and 6 23 January to 11 October Cols 1339-1442.

Debates of the National Assembly of 1997 Vols 13, 14 and 15 6 February to 25 November Cols 3196-3240.

Debates of the Joint Sitting of Both Houses of Parliament of 1999 Vol 1 5 February to 26 March Cols 33-182.

Debates of the National Assembly of 1999 Vols 28 and 29 14 June to 18 November Cols 475-502.

Debates of the National Assembly of 2000 Vol 33 4 April to 26 May Cols 2752-92.

Debates of the National Assembly of 2001 Vol 6 8 to 11 May Cols 2612-2646.

Debates of the National Assembly of 2012 Vol 5 30 May to 21 August Cols 1525-1602.

Debates of the National Assembly of 2013 Vol 5 28 May to 11 June Cols 1-92.

https://www.parliament.gov.za/hansard-papers?queries[search]=-HAN-NA-2014&sorts[date]=-1&page=109&offset=1080.

Secondary Sources

Books

Alexander, Neville *An Ordinary Country: Issues in the Transition from Apartheid to Democracy in South Africa* (2002) University of Natal Press, Pietermaritzburg.

Arendt, Hannah *The Origins of Totalitarianism (*new ed. with added prefaces) (1973) Harcourt Brace Jovanovich, New York.

Calhoun, Craig J Introduction: Habermas and the Public Sphere in Calhoun, Craig J (ed) *Habermas and the Public Sphere* (1992) Cambridge, Mass: MIT Press.

Cloete, J J N *Parliaments of South Africa* (1985) J.L. van Schaik, Pretoria.

Chidester, David Phillip Dexter & Wilmot G James *What Hold[s] Us Together: Social Cohesion in South Africa* (2003) HSRC Press, Cape Town.

De Vos, Pierre and Warren Freedman (eds) *South African Constitutional Law in Context*. 2nd ed (2021) Oxford University Press Southern Africa, Cape Town Ch 1.

Doxtader, Erik *With Faith in the Works of Words: The Beginnings of Reconciliation in South Africa, 1985-1995* (2009) David Philip, Claremont, South Africa.

Doxtader, Erik, and Philippe-Joseph Salazar *Truth and Reconciliation in South Africa: The Fundamental Documents* (2007) New Africa Books, Claremont.

Doxtader, Erik and Charles Villa-Vicencio (eds) *To Repair the Irreparable: Reparation and Reconstruction in South Africa* (2004) David Philip, Claremont Ch 4.

Duesberg, Peter *Inventing the AIDS Virus* (1996) Regnery. Washington, D.C.

Friedman, Steven & Doreen. Atkinson (eds) *South African Review 7, The Small Miracle* (1994) Ravan Press, Johannesburg.

Giddens, Anthony *Capitalism and Modern Social Theory; an Analysis of the Writings of Marx, Durkheim and Max Weber* (1971) Cambridge University Press, Cambridge.

Giliomee, Hermann & Bernard Mbenga *New History of South Africa* (2007) Tafelberg, Cape Town.

Jika, Thanduxolo, & Lucas Ledwaba (et al) *We Are Going to Kill Each Other Today: The Marikana Story* (2013) Tafelberg, Cape Town.

Marinovich, Greg *Murder at Small Koppie: The Real Story of the Marikana Massacre* (2016) Penguin Random House, Cape Town.

Posel, Deborah & Graeme Simpson (eds) *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission* (2002) Witwatersrand University Press, Johannesburg.

Roux, Edward *Time Longer Than Rope: A History of the Black Man's Struggle for Freedom in South Africa* 2ed (1964) University of Wisconsin Press Madison.

Russell, Penny, and Nigel Worden (eds) *Honourable Intentions?: Violence and Virtue in Australian and Cape Colonies, c. 1750 to 1850* (2016) Routledge, Abingdon, Oxon.

Rybacki, Karyn C & Donald J Rybacki Advocacy and opposition: An Introduction to Argumentation 5ed (2004) Pearson Education, Inc, Boston.

Salazar, Philippe-Joseph *An African Athens: Rhetoric and the Shaping of Democracy in South Africa* (2002) Lawrence Erlbaum Associates, Inc, Mahwah, NJ.

Spitz, Richard & Matthew Chaskalson *The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement* (2000) Hart Publishing, Oxford.

Tutu, Desmond *No Future Without Forgiveness* (1999) Random House, London.

Webster, Eddie & Karin Pampallis *The Unresolved National Question: Left Thought Under Apartheid* (2017) Wits University Press, Johannesburg.

Welsh, David *The Rise and Fall of Apartheid* (2009) Jonathan Ball Publishers, Jeppestown, South Africa.

Wilmsen, Edwin N & Patrick McAllister *The Politics of Difference: Ethnic Premises in a World of Power* (1996) University of Chicago Press, Chicago.

Ziegler, Katja S, Denis Baranger & Anthony W. Bradley *Constitutionalism and the Role of Parliaments* (2007) Hart, Oxford Ch 1.

Articles - Electronic

Abe, Toshihiro 'Reconciliation as Process or Catalyst: Understanding the Concept in a Post-Conflict Society' (2012) 11(6) *Comparative Sociology* 785.

Alexander, Peter 'Marikana Commission of Inquiry: From Narratives Towards History' (2016) 42(5) *Journal of Southern African Studies* 815.

Asen, Robert 'Imagining in the Public Sphere' (2002) 35(4) *Philosophy & Rhetoric* 345.

Baleta, Adele 'South Africa's AIDS Care Thrown into Confusion' (1999) 354(9191) *The Lancet (British edition)* 1711.

Bitzer, Lloyd F 'The Rhetorical Situation' (1992) 25(4) *Philosophy & Rhetoric* 1.

Bizzell, Patricia 'Editing the Rhetorical Tradition' (2003) 36(2) *Philosophy & Rhetoric* 109.

Bruggemans, Cees 'Economic Policy and Democracy in South Africa' (2004) 23(3) *Politeia* 60.

Brunne, Viviane 'Public-Private Partnerships as a Strategy Against HIV/AIDS in South Africa: The Influence of Historical Legacies' (2009) 8(3) *African Journal of AIDS Research* 339.

Burke, Kenneth & James Philip Zappen 'On Persuasion, Identification, and Dialectical Symmetry' (2006) 39(4) *Philosophy & Rhetoric* 333.

Carrim, Yunus 'Towards a More Activist Parliament More Engaged with Civil Society' (2012) 16(1) *Law, Democracy & Development* 1.

Charland, Maurice 'The Constitution of Rhetoric's Tradition' (2003) 36(2) *Philosophy & Rhetoric* 119.

Chun, Allen 'On the Geopolitics of Identity' (2009) 9(3) *Anthropological Theory* 331.

Clagett, Arthur F 'Theoretical Continuities in Conceptual Formulations of Social Cohesion and Control in Social Relations' (1967) 8(2) *International Journal of Comparative Sociology* 224.

Clayton, Edward W 'The Audience for Aristotle's Rhetoric' (2004) 22(2) *Rhetorica* 183.

Cohen, Stanley 'State Crimes of Previous Regimes: Knowledge, Accountability, and the Policing of the Past' (1995) 20(1) Law & *Social Inquiry* 7.

Donovan, Tim 'Community, Assimilation, and the Unfamiliar (2002) 35(3) *Philosophy & Rhetoric* 244.

Doxtader, Erik '[Introduction]: For Today, There Will Be a Speech (and a Song) Tomorrow' (2008) 41(4) *Philosophy & Rhetoric* 311.

Doxtader, Erik 'Between the Signs of Transition's Justice' (2011) 2(1) *African Yearbook of Rhetoric* 21.

Doxtader, Erik 'Characters in the Middle of Public Life: Consensus, Dissent, and Ethos' (2000) 33(4) *Philosophy & Rhetoric* 336.

Doxtader, Erik 'Making Rhetorical History in a Time of Transition: The Occasion, Constitution, and Representation of South African Reconciliation' (2001) 4(2) *Rhetoric & Public Affairs* 223.

Doxtader, Erik 'Reconciliation-a Rhetorical Concept/ion' (2003) 89(4) *The Quarterly Journal of Speech* 267.

Doxtader, Erik 'The Faith and Struggle of Beginning (with) Words: On the Turn Between Reconciliation and Recognition' (2007) 40(1) *Philosophy & Rhetoric* 119.

Doxtader, Erik 'The Potential of Reconciliation's Beginning: A Reply' (2004) 7(3) *Rhetoric & Public Affairs* 378.

Du Toit, André 'Experiments with Truth and Justice in South Africa: Stockenström, Gandhi and the TRC' (2005) 31(2) *Journal of Southern African Studies* 419.

Easterly, William, Jozef Ritzen & Michael Woolcock 'Social Cohesion, Institutions, and Growth' (2006) 18(2) *Economics and Politics* 103.

Engels, Jeremy 'Friend or Foe?: Naming the Enemy' (2009) 12(1) *Rhetoric & Public Affairs* 37.

Farrell, Thomas B 'Practicing the Arts of Rhetoric: Tradition and Invention' (1991) 24(3) *Philosophy & Rhetoric* 183.

Farrell, Thomas B 'Rhetoric in History as Theory and Praxis: A Blast from the Past' (2008) 41(4) *Philosophy & Rhetoric* 323.

Farrell, Thomas B 'The Weight of Rhetoric: Studies in Cultural Delirium' (2008) 41(4) *Philosophy & Rhetoric* 467.

Fassin, Didier 'The Politics of Conspiracy Theories: On AIDS in South Africa and a Few Other Global Plots' (2011) 17(2) *The Brown Journal of World Affairs* 39.

Fedderke, Johannes & Pirouz 'The Role of Mining in the South African Economy' (2002) 5(1) *South African Journal of Economic and Management Sciences* 1.

Follert, Michael 'Contractual Thought and Durkheim's Theory of the Social: A Reappraisal' (2020) 20(3) *Journal of Classical Sociology* 167.

Frank, David & Michelle Bolduc 'From Vita Contemplativa to Vita Activa: Chaïm Perelman and Lucie Olbrechts-Tyteca's Rhetorical Turn' (2004) 7(1) *Advances in the History of Rhetoric* 65.

Friedkin, Noah E 'Social Cohesion' (2004) 309(1) *Annual Review of Sociology* 409.

Garver, Eugene 'Aristotle on the Kinds of Rhetoric' (2009) 27(1) *Rhetorica* 1.

Graff, Richard & Wendy Winn 'Presencing 'Communion' in Chaïm Perelman's New Rhetoric (2006) 39(1) *Philosophy & Rhetoric* 45.

Grant-Davie, Keith 'Rhetorical Situations and Their Constituents' (1997) 15(2) *Rhetoric Review* 264.

Gross, Alan 'A Theory of the Rhetorical Audience: Reflections on Chaim Perelman' (1999) 85(2) *The Quarterly Journal of Speech* 203.

Hatch, John B 'The Hope of Reconciliation: Continuing the Conversation' (2006) 9(2) *Rhetoric & Public Affairs* 259.

Hauser, Gerard A & Chantal Benoit-Barné 'Reflections on Rhetoric, Deliberative Democracy, Civil Society, and Trust' (2002) 5(2) *Rhetoric & Public Affairs* 261.

Hicks, Darrin 'The Promise(s) of Deliberative Democracy' (2002) 5(2) *Rhetoric & Public Affairs* 223.

Hogan, J. Michael & Dave Tell 'Demagoguery and Democratic Deliberation: The Search for Rules of Discursive Engagement' (2006) 9(3) *Rhetoric & Public Affairs* 479.

Ivie, Robert L 'Enabling Democratic Dissent' (2015) 101(1) *The Quarterly Journal of Speech* 46.

Ivie, Robert L 'Fighting Terror by Rite of Redemption and Reconciliation' (2007) 10(2) *Rhetoric & Public Affair* 221.

Ivie, Robert L 'Rhetorical Deliberation and Democratic Politics in the Here and Now' (2002) 5(2) *Rhetoric & Public Affairs* 277.

Ivie, Robert L 'Toward a Humanizing Style of Democratic Dissent' (2008) 11(3) *Rhetoric & Public Affairs* 454.

Johnson, Phil, Michael Brookes & Geoffrey Wood (et al) 'Legal Origin and Social Solidarity: The Continued Relevance of Durkheim to Comparative Institutional Analysis' (2017) 51(3) Sociology 646.

Jordan, Pallo 'ABC's on What the National Question Entails' (2019) 46 *Umrabulo* 10.

Kaplan, Michael A 'The Rhetoric of Hegemony: Laclau, Radical Democracy, and the Rule of Tropes' (2010) 43(3) *Philosophy & Rhetoric* 253.

Kersting, Norbert 'New Nationalism and Xenophobia in Africa – A New Inclination?' (2009) 44(1) Afrikaspectrum 7.

Leff, Michael C 'Tradition and Agency in Humanistic Rhetoric' (2012) 45(2) *Philosophy & Rhetoric* 213.

Lenta, Patrick 'AZAPO, the TRC and Restorative Justice: A Retrospect' (2005) 20(2) *SA Publiekreg* 335.

Lodge, Tom ‘How the South African Electoral System Was Negotiated’ (2003) 2(1) *Journal of African Elections* 71.

Madeleine Fullard & Nicky Rousseau ‘Uncertain Borders: The TRC and the (un)making of Public Myths’ (2008) 34(1) *Kronos* (Bellville, South Africa) 181.

Malan, Mia ‘Exposing AIDS: Media’s Impact in South Africa’ (2006) 7(1) *Georgetown Journal of International Affairs* 41.

Maluleke, Tinyiko Sam ‘Truth, National Unity and Reconciliation in South Africa: Aspects of an Emerging Agenda’ (1997) 25(1) *Missionalia* 59.

Mamdani, Mahmood ‘Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)’ (2002) 32(3/4) *Diacritics* 33.

Maré, Gerhard ‘Race, Nation, Democracy: Questioning Patriotism in the New South Africa’ (2005) 72(3) *Social Research* 501.

McCormick, Samuel ‘The Political Identity of the Philosopher: Resistance, Relative Power, and the Endurance of Potential’ (2009) 42(1) *Philosophy & Rhetoric* 72.

Merchant, Jamie ‘Immanence, Governmentality, Critique: Toward a Recovery of Totality in Rhetorical Theory’ (2014) 47(3) *Philosophy & Rhetoric* 227.

Merkel, Wolfgang & Brigitte Weiffen ‘Does Heterogeneity Hinder Democracy?’ (2012) 11(3) *Comparative Sociology* 387.

Misztal, Barbara A ‘Durkheim on Collective Memory’ (2003) 3(2) Journal *of Classical Sociology* 123.

Nattrass, Nicoli & Jeremy Seekings ‘‘Two Nations’? Race and Economic Inequality in South Africa Today’ (2001) 130(1) *Daedalus (Cambridge, Mass.)* 45.

Nattrass, Nicoli ‘Aids and the Scientific Governance of Medicine in Post-Apartheid South Africa’ (2008) 107(427) African *Affairs* 157.

Nattrass, Nicoli ‘Antiretroviral Treatment and the Problem of Political Will in South Africa: Impact of HIV’ (2006) 23 *Southern African Journal of HIV Medicine* 29.

Norval, Aletta J ‘‘No Reconciliation Without Redress’: Articulating Political Demands in Post-Transitional South Africa’ (2009) 6(4) *Critical Discourse Studies* 311.

Osman, Fatima 'The Third Time a Charm? Traditional Courts Bill 2017' (2018) 64 *SA Crime Quarterly* 45.

Padayachee, Vishnu, Imraan Valodia & Thokozani Xaba 'Reflections on Post-Mandela Era' (1999) 34(32) *Economic and Political Weekly* 2223.

Paroske, Marcus 'Deliberating International Science Policy Controversies: Uncertainty and AIDS in South Africa' (2009) 95(2) *The Quarterly Journal of Speech* 148.

Perelman, Chaim, James Winchester & Molly Black Verene 'Rhetoric and Politics' (1984) 17(3) *Philosophy & Rhetoric* 129.

Pfau, Michael William 'Who's Afraid of Fear Appeals? Contingency, Courage, and Deliberation in Rhetorical Theory and Practice' (2007) 40(2) *Philosophy & Rhetoric* 216.

Phillips, Howard 'AIDS in the Context of South Africa's Epidemic History: Preliminary Historical Thoughts' (2001) 45(1) *South African Historical Journal* 11.

Phillips, Kendall R 'Rhetorical Maneuvers: Subjectivity, Power, and Resistance' (2006) 39(4) *Philosophy & Rhetoric* 310.

Phillips, Kendall R 'Spaces of Invention: Dissension, Freedom, and Thought in Foucault' (2002) 35(4) *Philosophy & Rhetoric* 328.

Phillips, Kendall R 'The Event of Dissension: Reconsidering the Possibilities of Dissent' (2015) 101(1) *The Quarterly Journal of Speech* 60.

Pienaar, Kiran '(Re)reading the political conflict over HIV in South Africa (1999–2008): A new materialist analysis' (2014) 12 *Social Theory & Health* 179.

Polletta, Francesca & John Lee 'Is Telling Stories Good for Democracy? Rhetoric in Public Deliberation after 9/11' (2006) 71(5) *American Sociological Review* 699.

Porter, James E 'Intertextuality and the Discourse Community' (1986) 5(1) *Rhetoric Review* 34.

Posel, Deborah 'Race as Common Sense: Racial Classification in Twentieth-Century South Africa' (2001) 44(2) *African Studies Review* 87.

Pullman, George L 'Deliberative Rhetoric and Forensic Stasis: Reconsidering the Scope and Function of an Ancient Rhetorical Heuristic in the Aftermath of the Thomas/Hill Controversy' (1995) 25(1-4) *Rhetoric Society Quarterly* 223.

Saayman, Willem ‘‘The Sky Is Red, so We Are Going to Have Fine Weather’. The Kairos Document and the Signs of the Times, Then and Now’ (2008) 36(1) *Missionalia* 16.

Sarkin, Jeremy, and Erin Daly ‘Too Many Questions, Too Few Answers: Reconciliation in Transitional Societies’ (2004) 35(3) *Columbia Human Rights Law Review* 66.

Schneider, Helen & Joanne Stein ‘Implementing AIDS Policy in Post-Apartheid South Africa’ (2001) 52(5) *Social Science & Medicine* 723.

Schoor, Carola ‘Political Metaphor, a Matter of Purposeful Style: On the Rational, Emotional and Strategic Purposes of Political Metaphor’ (2015) 5(1) *Metaphor and the Social World* 82.

Schulz, David P & G. Mitchell Reyes ‘Ward Churchill and the Politics of Public Memory’ (2008) 11(4) Rhetoric & *Public Affairs* 631.

Sheckels, Theodore F ‘The Rhetoric of Thabo Mbeki on HIV/AIDS: Strategic Scapegoating?’ (2004) 15(2) *The Howard Journal of Communications* 69.

Simelela, N P & W D F Venter ‘A Brief History of South Africa’s Response to AIDS’ (2014) 104(3) Suppl 1 *South African Medical Journal* 249.

Simelela, Nono, W. D. Francois Venter & Yogan Pillay (et al) ‘A Political and Social History of HIV in South Africa’ (2015) 12(2) *Current HIV/AIDS Reports* 256.

Smith, Kimberly K ‘Mere Nostalgia: Notes on a Progressive Paratheory’ (2000) 3(4) *Rhetoric & Public Affairs* 505.

Sparks, Holloway ‘Quarreling with Rancière: Race, Gender, and the Politics of Democratic Disruption’ (2016) 49(4) *Philosophy & Rhetoric* 420.

Steinberg, Jonny ‘An Eerie Silence’ (2011) 186 *Foreign policy* 85.

Stoneman, Ethan ‘Appropriate Indecorum Rhetoric and Aesthetics in the Political Theory of Jacques Rancière’ (2011) 44(2) *Philosophy & Rhetoric* 129.

Stuckey, Mary E & Frederick J Antczak ‘The Battle of Issues and Images: Establishing Interpretive Dominance’ (1994) 42(2) *Communication Quarterly* 120.

Sullivan, Dale L ‘The Ethos of Epideictic Encounter’ (1993) 26(2) *Philosophy & Rhetoric* 113.

Talentino, Andrea Kathryn ‘The Two Faces of Nation-Building: Developing Function and Identity’ (2004) 17(3) *Cambridge Review of International Affairs* 557.

Thompson, Leonard 'Mbeki's Uphill Challenge' (1999) 78(6) *Foreign Affairs (New York, N.Y.)* 83.

Tindale, Christopher W 'Rhetorical Argumentation and the Nature of Audience: Toward an Understanding of Audience - Issues in Argumentation' (2013) 46(4) *Philosophy & Rhetoric* 508.

Tonnard, Y 'Comments on 'Strategic Maneuvering in Political Argumentation'' (2008) 22(3) *Argumentation* 331.

Upton, Maureen T 'Global Public Health Trumps the Nation-State' (2004) 21(3) *World Policy Journal* 73.

Van Niekerk, Robert Revisiting History: The Creation of Provinces and the Politics of Social Policy in a Democratic South Africa' (2012) 46(6) *Social Policy & Administration* 619.

Van Rijn, Kiran 'The Politics of Uncertainty: The AIDS Debate, Thabo Mbeki and the South African Government Response' (2006) 19(3) *Social History of Medicine* 521.

Vivian, Bradford 'Neoliberal Epideictic: Rhetorical Form and Commemorative Politics on September 11, 2002' (2006) 92(1) *The Quarterly Journal of Speech* 1.

Vivian, Bradford 'Times of Violence' (2013) 99(2) *The Quarterly Journal of Speech* 209.

Welsh, Scott 'Deliberative Democracy and the Rhetorical Production of Political Culture' (2002) 5(4) *Rhetoric & Public Affairs* 679.

Wilson, Kirt H 'Is There Interest in Reconciliation?' (2004) 7(3) *Rhetoric & Public Affairs* 367.

Zagacki, Kenneth S 'Rhetoric, Dialogue, and Performance in Nelson Mandela's 'Televised Address on the Assassination of Chris Hani'' (2003) 6(4) *Rhetoric & Public Affairs* 709.

Reports

'"They Have Robbed Me of My Life" Xenophobic Violence Against Non-Nationals in South Africa' (2020) *Human Rights Watch* https://www.hrw.org/re port/2020/09/17/they-have-robbed-me-my-life/xenophobic-violence-against-non-nationals-south Accessed on 31 May 2021.

‘Citizenship, Violence and Xenophobia in South Africa: Perceptions from South African Communities’ (2008) Democracy and Governance Programme *Human Sciences Research Council*, Cape Town

‘Contribution Of Industrial Minerals to South Africa’s Economic Growth’ Report R121/2017 (2017) *Department of Mineral Resources.*

https://www.dmr.gov.za/LinkClick.aspx?fileticket=j01VskVV2o8%3D&portalid=0 Accessed on 15 January 2021.

‘Global Parliamentary Report: The Changing Nature of Parliamentary Representation’ (2012) *United Nations Development Programme and Interparliamentary Union.* http://archive.ipu.org/pdf/publications/gpr2012-full-e.pdf Accessed on 13 February 2020.

‘Report on Matters of Public, National and International Concern Arising out of the Tragic Incidents at the Lonmin Mine in Marikana, in the North West Province’ (2015) *Marikana Commission of Inquiry*. https://www.gov.za/documents/report-judicial-commission-inquiry-events-imarikana-mine-rustenburg-25-jun-2015-0000 Accessed on 21 February 2021.

‘Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals’ (2010) *South African Human Rights Commission.*
https://www.sahrc.org.za/home/21/files/Report%20on%20the%20SAHRC%20Investigation%20into%20Issues%20of%20Rule%20of%20Law,%20Justice%20and%20Impunity%20arising%20out%20of%20the%202008%20Public%20Violence%20against%20Non-Nationals.pdf Accessed on 23 February 2021.

Statutes

Constitution of the Republic of South Africa Act 200 of 1993.

Constitution of the Republic of South Africa Act 108 of 1996.

Promotion of National Unity and Reconciliation Act 34 of 1995.

Statement

Appointment of Judicial Commission of Inquiry on the Marikana tragedy https://www.gov.za/appointment-judicial-commission-inquiry-marikana-tragedy.

Online Resources

https://hansard.parliament.uk/about Accessed on 1 March 2018.

https://www.parliament.gov.za/hansard?sorts[date]=-1 Accessed on 1 March 2018.

http://www.anc.org.za/content/address-nelson-r-mandela-plenary-session-multi-party-negotiations-process Accessed on 10 February 2021.

https://www.concourttrust.org.za/uploads/files/Background_to_Multi-party_Negotiations.pdf Accessed on 6 January 2022.

https://www.justice.gov.za/trc/media/1996/9609/s960930b.htm Accessed on 16 August 2021.

https://wid.world/news-article/2020-regional-updates/ Accessed on 28 December 2021.

https://collections.concourt.org.za/bitstream/handle/20.500.12144/2014/02Founding%20Affidavit.pdf?sequence=10&isAllowed=y Accessed on 10 January 2022.

https://www.justice.gov.za/trc/hrvtrans/submit/np2.htm Accessed on 13 January 2022.

https://mg.co.za/article/1998-09-21-brawling-mps-suspended/ Accessed on 31 January 2021.

https://www.justice.gov.za/trc/report/finalreport/vol6_s5.pdf. Accessed 31 January 2021.

https://www.justice.gov.za/trc/media/1997/9707/s970714g.htm Access on 31 March 2020.

http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS176 Accessed on 16 January 2022.

https://www.nelsonmandela.org/omalley/index.php/ Accessed 27 September 2017.

https://plato.stanford.edu/entries/galileo/#4 Accessed on 27 May 2020.

http://www.msf.org/en/article/south-africa-big-pharma-backs-down. Accessed on 28 January 2018.

https://www.nytimes.com/1996/10/08/world/south-africa-scandal-over-sarafina-spotlights-corruption-in-the-anc.html. Accessed on 27 September 2017.

Crime Reporter and Sapa '18 shot in 'battle of Marikana' The Citizen 17 August 2012 at 3.

Jorge Maia 'The interface between mining and manufacturing' (2013) Industrial Development Corporation of South Africa 1 https://www.idc.co.za/wp-content/uploads/2018/11/IDC_research_report_Interface_between_Mining_and_Manufacturing.pdf. Accessed on 21 February 2022.

http://www.thepresidency.gov.za/content/president-zuma-declares-period-mourning-and-appoints-coordinating-ministerial-committee Accessed on 13 March 2020.

https://www.dailymail.co.uk/debate/article-2190989/The-South-African-miners-massacre-raises-ghosts-apartheid--fears-South-Africas-future.html. Accessed on 31 January 2022.

https://www.news24.com/News24/Khutsong-Lekota-faces-uproar-20060305. Accessed on 13 March 2020.

https://www.news24.com/SouthAfrica/Local/South-Coast-Fever/days-of-quality-radio-good-music-gone-forever-vusi-mthalane-20161012 . Accessed on 20 March 2020.

https://ewn.co.za/2021/06/23/ec-municipality-used-covid-19-relief-funds-to-buy-car-ag-tells-mps. Accessed on 24 June 2021.

Doctors for Life International v Speaker of the National Assembly 7 others [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) http://hdl.handle.net/20.500.12144/2265. Accessed on 15 January 2022.