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# A Disappearance and the Harms Commission

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## Abstract

Enforced disappearances from South Africa's apartheid era have had the effect of a recurring coming into being of a countertime. Such an emergence can be understood through an examination of the Harms Commission of Inquiry into Certain Alleged Murders that took place in 1990. This article offers a detailed reading of its findings on allegations regarding the disappearance of Sizwe Kondile and underscores a political technology that came to mark enforced disappearance as 'accidental'. What follows here is an attempt at a serious examination of an apparatus that served to legitimise apartheid power that has too easily been dismissed as 'the lying commission'.

## Keywords

Disappearances, Harms Commission of Inquiry, apartheid, countertime, history, Sizwe Kondile

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## Introduction: 'The Lying Commission'

Appointed on 2 February 1990 by former South African state president F. W. de Klerk, the Harms Commission of Inquiry into Certain Alleged Murders (hereafter Harms Commission) conducted its hearings over a period of eight months.[1] The commission was chaired by Justice Louis Harms. The appointment of the Harms Commission came about largely in response to the widely publicised allegations of state-sanctioned killings, as claimed by Dirk Coetzee, a former captain in the South African Police (SAP) and self-confessed leader of a hit squad that conducted those killings. Coetzee attempted to verify his claims during four days of presenting evidence and cross-examination, which generated over 1000 pages of transcript. Coetzee's allegations included operations by security forces into neighbouring countries, murders, car thefts, abductions and disappearances. Included in his evidence were the details about the disappearance of Sizwe Kondile.

At the end of the Commission's hearings, in September 1990, Harms submitted a 201-page report to De Klerk. Apart from the allegations of Coetzee, Harms also investigated the activities of the Civil Co-operation Bureau (CCB) as a covert organisation operating under the auspices of the Special Forces of the South African Defence Force. The longest section of the Report, 'C-Vlakplaats [sic]', was where Harms presented his findings on Coetzee's allegations and this included a sub-section, 'DISAPPEARANCES', where Harms presented his findings on the disappearances of Sizwe Kondile. In line with his mandate, if Harms had believed that he had uncovered sufficient and reliable evidence against individuals alleged to have committed murder or other illegal acts, he would have been required to pass that evidence on to the relevant authorities, such as the South African Police or the Attorney-General, which would then lead to a criminal investigation and possibly a criminal trial.[2] Although some of Coetzee's allegations were at times corroborated, most were dismissed by Harms as improbable and unverifiable, and this included the disappearance of Sizwe Kondile.

Harms concluded in his report that, 'in the course of the Commission it … appeared that although allegations and accusations are rife as to who did what and why, there is a basic lack of evidential material that might put some flesh on the bones'.[3] This distasteful idiom was expressed seemingly in response to De Klerk's promise that the Harms Commission would get 'to the bone' of the alleged extrajudicial activities, as had been alleged by Coetzee.[4] As the Commission unfolded, it came to be referred to as 'the lying commission' and the 'toothless commission' for having 'missing

1 This article emerges from a chapter of my PhD thesis. See: R. Moosage, 'Missing-ness, History and Apartheid-era Disappearances: The Figuring of Siphiwo Mthimkulu, Tobekile "Topsy" Madaka and Sizwe Kondile as missing dead persons', (Unpublished PhD dissertation, Vrije Universiteit Amsterdam and the University of the Western Cape, 2019).

2 See 'The Honourable Mr Justice L. T. C. Harms, "REPORT", Commission of Inquiry into Certain Alleged Murders presented to The State President (September 1990)'. Hereafter 'Harms Report'.

3 'Harms Report', 196.

4 Weekly Mail Reporter, "Narrow brief limits the scope of Harms inquiry," *Weekly Mail*, March 9, 1990, https://mg.co.za/article/1990-03-09-00-narrow-brief-limits-the-scope-of-harms-inquiry/

witnesses, missing documents, missing investigations and missing teeth.'[5] And these characterisations have persisted. In response to the Harms Report, the Independent Board of Inquiry into Informal Repression (IBIIR), whose representatives appeared at the Harms Commission and briefed some of the legal teams there, prepared a discussion document entitled 'Who Lied?' This was widely circulated and was critical of the findings of the Harms Commission, particularly those into the disappearances that Coetzee alleged were the consequences of the hit-squad activities of the security police.[6]

A few months after Harms submitted his Report that refuted the allegations by Coetzee, a civil suit was lodged against the *Vrye Weekblad* and the *Weekly Mail* by Lieutenant General Lothar Neethling. This was because Neethling denied the allegation published in those newspapers by Coetzee that in three of the disappearance cases, including that of Sizwe Kondile, he had obtained poison and 'knock-out drops' from Neethling. However, Justice Johann Kriegler, who heard the case, found Coetzee's allegations 'not only plausible, but probable'. In his judgement, Kriegler found that Neethling had misled Harms through his testimony.[7] However, Neethling lodged an appeal against the judgement and Justice G.G. Hoexter of the Appellate Division of the Supreme Court found in favour of Neethling. In his judgement, Hoexter affirmed the centrality of Coetzee as a witness, but found him to be unreliable, one with insufficient evidence and whose testimony he found wanting. Hoexter referred to the Harms Commission and its proceedings and overwhelmingly agreed with its findings.[8] During the TRC's process and through its reports, Coetzee's allegations, specifically those regarding disappearances, were found overwhelmingly as verifiable.

In the rendering of judgements and the presentation of findings in all four forums, what appears to have been central was the question of 'who lied'? To abide by this question, however, cannot be an adequate means of engaging the implications of the Harms Commission's refutation of the allegations made by Coetzee and of Coetzee himself. Here therefore, I have chosen to focus on thinking through what it means to pose a question about disappearance rather than one that seeks the recovery of some truth, legal or otherwise. In examining apartheid-era enforced disappearances, one can easily be confronted with ready-made answers to ready-made questions, if the desire is to produce a counter-narrative to the violence of the apartheid state.[9] But to understand how a certain kind of truth about the disappearance of Sizwe Kondile was constructed is to have a glimpse of the discursive formations of apartheid power

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5 J. Gordin, "Harms spectre looms large in Hefer probe," 13 November 2003, https://www.iol.co.za/news/politics/harms-spectre-looms-large-in-hefer-probe-116913

6 Independent Board of Inquiry into Informal Repression, 'Who Lied? A Discussion on the Findings of the Harms Commission of Inquiry', Independent Board of Inquiry into Informal Repression, c. 1991.

7 Independent Board of Inquiry, 34.

8 Neethling V. Du Preez and Others, Neethling v Weekly Mail and Others (184/91, 401/91) [1993] ZASCA 203;1994 (1) SA 708 (AD); [1994] 3 ALL SA 479 (AD), 2 December 1993, https://www.saflii.org/za/cases/ZASCA/1993/203.html

9 See S. Pillay, 'The Partisan's Violence, Law and Apartheid: The Assassination of Mathew Goniwe and the Cradock Four' (Unpublished PhD Dissertation: Columbia University, 2011) and N. Rousseau, 'Eastern Cape Bloodlines 1: Assembling the Human', *Parallax*, 22, 2, 2016, 203-218.

that the Harms Commission gave expression to. I am, in other words, interested in the work that the act of enforced disappearances does and what it allows one to say about the workings of the apartheid state.[10]

Allen Feldman has suggested that enforced disappearances should be thought of as 'sustaining a metaphysics of executive power'.[11] This means not reckoning with enforced disappearances as an 'extrinsic mishap that befalls the otherwise normal proceduralism of the state and the law and which can be rectified by the rehabilitation of the latter'. Rather, Feldman has argued that we pay attention to the ways in which enforced disappearances disrupt temporalities when considering the time during which such acts occurred, which he suggested was part of (but not limited to) a 'time of wartime as a largely unwitnessable time out of time, as a fall out of conventional time that fractures any idea of progress and political achievement.' Using the Derridian concept of the contretemps (accident; countertime, the accidentalisation of the accident), Feldman demonstrated how 'accidentalised disappearance' operated as a 'mediology of counterinsurgent rule under which *jus ad bellum* no longer fulfils the normative tasks that have been historically assigned to it'.[12] Adhering to the right to wage war as counterinsurgency enabled a certain kind of indemnification for crimes such as collateral damage and enforced disappearance that manifested a disappearance of disappearance. Feldman argued that 'accidentalised disappearances [are] structured around a political ellipsis that informs the act, its aftermath, and cultural memory of the latter'.[13] I suggest that Feldman's theorising of disappearances as accidentalised can productively be thought through the political-bureaucratic apparatus of the commission of inquiry.

In what follows, I argue that a coming into being of a contretemps as accidentalised disappearance can be discerned in the Harms Commission and its report. Understanding how the Harms Commission found Coetzee's allegations about disappearances as not only improbable but false, requires one to think about the condition of possibility for sustaining disappearance as such. Here, I contend that it is the apparatus of the commission of inquiry itself that warrants examining as that which both enabled and mediated disappearance as accidentalised. In doing so, I reflect on the 'appearance under erasure' of the disappeared. This will enable us to move away from impossible attempts at historicising enforced disappearances that elides its very violence and instead abides by its ongoing historicities.

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10 Scholarly work on enforced disappearances began to emerge in the late 1980s following the aftermath of Latin American authoritarian rule (especially Argentina and Chile and later many other authoritarian and totalitarian regimes) during which enforced disappearances were state strategies of political repression. Among others, scholars have written on how the categories of disappearance and enforced disappearance emerged, its impact on discourses of international law, transitional justice and human rights, and the emergence of a forensic turn through the search for bodies – exhumations and identifications leading to re-burial- of the disappeared.

11 A. Feldman, 'Appearing Under Erasure: Of War, Disappearance, and the Contretemps', in P. Goodrich and M. Rosenfield (eds) *Administering Interpretation: Derrida, Agamben, and The Political Theology of War* (New York: Fordham University Press, 2019), 316. See also A. Feldman, 'War Under Erasure: Contretemps, Disappearance, Anthropophagy, Survivance', *Theory and Event*, 22, 1, 2019, 175–203.

12 A. Feldman, 'Appearing under Erasure', 294.

13 A. Feldman, 'Appearing under Erasure', 301.

## The disappearance problem/question

As a form and forum that was part of the infrastructure of political representation of an authorising power, the Harms Commission sought to de-legitimise any notion of a supposed truth about disappearances being state-sponsored. It did this by re-enforcing an idea of a state grounded in the rule of law, except for a context of the exceptional, of *jus ad bellum*. Adam Ashforth has pointed out that commissions of inquiry were 'schemes of legitimation' that sought to provide a name to a problem affecting the 'common good'. In naming the problem, it was understood that a commission would undertake a search for causes to that problem and in so doing, would offer rational solutions. In this way, a 'truth' of state came to be produced. A key aspect of this process of a commission, Ashforth has argued, is an articulation of the question that elaborates, '"[r]easons *of* state" [that] allow authorities to speak properly of the name, accurately of the cause (or of the collated causes), and responsibly of the solution to *The Problem*'.[14] The task then is to identify a problem and turn it into a question.

Dirk Coetzee's allegations about disappearances in his presentation to the Harms Commission saw the creation of a question of disappearance that at the same time constituted the very problem for which a solution had to be found. In other words, the problem that needed articulating was also the solution to a question of judicial and juridical accountability for persons disappeared. However, the disavowel of disappearance, following Allen Feldman, registered itself as an 'operative vacancy within a discursive practice'.[15] This practice was constituted by a judicial historiography and, as Shahid Amin has reminded us, its 'premium on deliberation' with prose necessarily marked by a judicial discourse [was] then seemingly presented 'as self-contained and internally consistent'.[16] Herein, the instability of law and non-law, between legitimate killing and extrajudicial killing was revealed and the articulation of disappearance as a particular kind of category, problem and question could not but renounce itself.

In the section of the Harms Report dealing with Coetzee and his allegations, 'C-Vlakplaats', the Commission began by stressing the importance of assessing the credibility of both accusers and accused, and it was this that guided its approach to the rules of evidence in order to arrive at its findings. Justice Harms cited an argument presented by Lawyers for Human Rights, who had briefed Coetzee's legal team, that he 'not analyse the evidence in any detail' and that the Commission 'should be satisfied in general that members of the SAP probably would commit violent crime for political ends'. However, Harms continued, '*the problem* is that specific members of the SAP were accused of specific acts' and 'if the Commission does not address itself to *the detail of the allegation*, the impression will be created that the Commission regards those specific allegations as proved'.[17] Harms drew attention to the argument

14 A. Ashforth, 'Reckoning Schemes of Legitimation: On Commissions of Inquiry as Power/Knowledge Forms', *Journal of Historical Sociology*, 3, 1, 1990, 7.
15 A. Feldman, 'Appearing under Erasure', 297.
16 S. Amin, *Event Metaphor, Memory: Chauri Chaura 1922-1992* (Berkley: University of California Press, 1995), 82.
17 'Harms Report',72. My emphasis.

presented that it would be 'naïve' to believe that the police could not lie, and that 'in an atmosphere of a so-called total onslaught members of the police were likely to fight back with gloves off. This is all the more so because conventional police methods were inadequate in the circumstances and members of the police would have taken drastic action out of necessity.' For Harms, this was corroborated by the following submitted statement:

> [T]he South African set-up, in particular, lends itself to political foul play – to people doing morally repugnant things in secret – to achieve their political ends. Because there are such directly conflicting interests, almost every interest group at some stage or other thinks its continued existence is threatened and that it must therefore take drastic measures to defend itself. It is then very easy to do things in a spirit of 'necessity knows no law' that would normally offend against all civilised norms.[18]

Thus, Harms continued, 'from this follows the probability that the allegations by Coetzee and others are true and that the denial by the police is false'.[19]

In contrast, however, Harms pointed out that while not all members of the SAP were 'angels', it would be equally 'naïve' to accept that all members were 'devils'. Harms conceded that there is a "*general* probability' that members of the SAP could commit violent crime for political ends, given the general security situation' in the country and that this 'probability increases if it is taken into account that the ANC and PAC have declared war on the SAP and the SADF and that their members have been identified as legitimate targets in the armed struggle'.[20] To drive this point further, Harms emphasised that 'in this struggle scores of members of the SAP have lost their lives or property'. However, and this appears to be the crux of Harms' rationale, 'general probability does not … found any probability that a particular policeman committed a particular crime of violence for a particular purpose'.[21]

Harms emphasised several points to explain what needed to be considered in weighing the evidence of all witnesses, including the accused and the accuser and to consider their possible motives. He emphasised the pitfalls of memory. There was a lack of documentation and where these did exist, they could not be trusted, according to Coetzee's testimony about security police having forged documents. Importantly, according to Harms, 'if allegations about persons are based on the evidence of untrustworthy witnesses, the correct approach that has to be followed', following precedent, was 'to accept the evidence of such a witness "only where it is shown by reliable evidence or the surrounding circumstances to be probably true"'.[22] There was 'in general, no reason for a person to incriminate himself or implicate himself in a crime'. A preponderance of evidence was the standard of proof followed in Harms' evaluation

18 Harms Report', Footnote 3: (Heyns, 'Vuilspel en skynheiligheid', *Insig*, May 1990, 50), 75.
19 'Harms Report', 76.
20 'Harms Report', 76. My emphasis.
21 'Harms Report', 76.
22 'Harms Report', 77-79. See footnote 4 for precedent reference, 79.

of Coetzee's evidence and testimony, his reliability and trustworthiness as a witness and his establishment of a possible motive. Coetzee was discredited as an unreliable witness and Harms argued that due to Coetzee's 'impulsive and irrational nature', his self-incrimination matched his personality traits.[23]

The operation of the Harms Commission involved gathering evidence relevant to Coetzee's allegations, whether culpatory or exculpatory, and followed both inquisitorial and accusatorial procedures.[24] Harms' evaluation and assessment of evidence and testimony abided by 'those rules of evidence based on logic and the experience of judges over the ages'.[25] It is this juridical logic and Harms' experience that was applied to the detail of allegations of disappearances.

Moving through section 'C-Vlakplaats' of the Harms Report, one arrives at a subsection titled, 'DISAPPEARANCES':

> *A number of members or former members of the ANC disappeared* during 1981 and 1982. According to Coetzee, they were killed by the Security Police and he usually had a hand in the incident. The persons referred to are:
> Nkosinathi Peter Dhlamini
> Vuyani Mavuso (Vusi)
> Isaac Moema
> Ginisizwe Kondile
> Siphiwo Maxwell Mtimkulu.[26]

Harms offered his first observation:

> What strikes one immediately is that all these people were members of the ANC, were connected with the Security Police and disappeared during the period August 1981 to April 1982. Since then not one of them has been heard of by either his family or the police. This therefore leads to the submission that Coetzee's evidence that these people were killed by the Security Police is probably true. However, a factor that detracts from the strength of this argument is the fact that, with the possible exception of Mtimkulu, these people fall into a category of persons who had to be eliminated in accordance with ANC policy. As traitors they would have been marked men, and the policy was that traitors and informers had to be killed. So-called official ANC publications from time to time actually claimed responsibility for the death of several alleged informers and traitors.[27]

23 'Harms Report', 84-87.
24 'Harms Report', 21.
25 'Harms Report', 21.
26 'Harms Report',110. My emphasis.
27 'Harms Report', 111–112.

The persons listed as disappeared were immediately named by Harms as 'legitimate targets' through their political or 'terrorist' identities as being linked to the ANC. That they were connected with the security police is justified by brief police accounts, but not elaborated at this point, and we might assume one of three things: their connection was linked to being informers for the Security Police (as was the case of Dhlamini and Moema); they were held in custody by the security police (Mavuso, Kondile and Mthimkulu); or that they were held in custody before becoming informers (as was suggested about Kondile). For a moment, Harms appeared to be open to the possibility that Coetzee's allegation of their disappearance as caused by the security police might have had some veracity. But Harms immediately detracted from that possibility by re-emphasising the connection between the ANC and those listed as disappeared as its members or former members. Possibility turned to probability, and that the ANC was seen as more than capable of committing such a crime. This was perhaps not as striking as Harms seemed to suggest.

We should recall that Harms chose to include the argument of Lawyers for Human Rights about the context of a supposed total onslaught and a counterinsurgency or a total strategy, and so the context of 'war' and a concept of 'enemy', or supposedly 'legitimate targets' were readily available to him. This might be substantiated by Harms' rationale that evidence of an untrustworthy witness should only be accepted where it can be justified by the 'surrounding circumstances as probably true'. Indeed, in the conclusion to his report, Harms stated that 'unrest-related violence, thuggery and political motivated crime (sic) [were] becoming increasingly blurred'. A consequence of this, according to Harms, was a mounting 'psychosis of fear '. This meant that [t]he misadventures of those who are possible targets for political violence are automatically attributed to political or State action. If the State can be linked to an act of violence, it leads to the inference that the State is or may be responsible for all other acts of violence.[28]

Harms worked hard to rectify this inference by disavowing any possibility that disappearances were conducted at the hands of the security police. Here one could consider the way Carlo Ginzburg admonished judges for engaging 'an abuse of contextual proof', albeit in cases of criminal trials where rules of evidence were more stringent. It is certainly possible, even probable, that it was 'a process of contextual proofing', a 'slipping tacitly (and illicitly) from the plane of mere possibility to the level of asserting a fact; from the conditional to the indicative' leading to a 'logical error, paradoxically based on an abuse of so-called "logical proof"'"[29] that enabled Harms to narrate a probability of events that never happened. The event here, understood as culpability for disappearances, saw Harms set out to provide a seemingly plausible alternative to Coetzee's allegations. This was an almost deliberate narrative strategy by Harms to marshal our reading of the Commission Report.

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28 'Harms Report', 195.

29 C. Ginzburg, *The Judge and The Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice*, trans. by A. Shugaar (New York: Verso, 1999), 118–119.

However, if the point of my reading of the Harms Report is merely to highlight textual inconsistencies and contradictions in order to offer an alternative reading of Coetzee's allegations about disappearances, we would find ourselves at an interpretive impasse beyond a hermeneutics of suspicion. The 'abuse of contextual proof' would be used to account for the judge's 'fears and apprehensions' where the 'contextual proof' comes to serve as the very evidence used to construct the 'fears and apprehensions' of the judge.[30] While an examination of Harms' reading of Coetzee's testimony and evidence may be necessary, here I argue that this would be insufficient. It may be necessary but is insufficient to account for a worldview constructed through an examination of the deployment of an 'abuse of contextual proof', 'fears and apprehensions' that enabled the refutation of Coetzee's allegations. This would be tantamount to asking the limited question of 'who lied?', the juridical logic within which Harms understood and carried out his mandate. Limiting ourselves to this question cannot enable us adequately to engage with the implications of Harms' dismissal of Coetzee's reliability and therefore of his allegations.

It is only a reckoning, understood as a critical reflection and inquiry into the scheme of legitimation that the Harms Commission gave expression to, that will enable a consideration of the disappearance problem and question as constituting what David Scott terms a problem-space.[31] This is a space of radical refashioning where it is not adequate to provide answers to ready-made questions. Instead, here enquires can be made into the conditions of possibility that enabled these problems and questions to emerge in the first place. In this space, the possibility for new questions to emerge is more probable. This is not to seek refuge from the problematic, but to inhabit and endure the problem-space. I suggest therefore that consideration be given to understanding how disappearances could not be adequately addressed by Harms through the apparatus of the commission of inquiry because of the temporal dislocation that disappearances give rise to.

To understand disappearance as 'accidentalised', according to Feldman, is to recognise disappearance as a deliberate strategy of state power. This is when states respond to allegations of disappearances by articulating the act as random, unintentional, accidental, and not as a strategy of control, coercion and war. In doing so, a self-legitimating indemnification for the 'accident' is self-justified. Feldman has pointed to the 'essential contretemps', the 'non-accidental' accident, the time of war time, manifested as the programmed 'accidentalisation of the accident'. This, according to Feldman, 'refers not to war as inconvenienced by mishaps but to political mobilisation of the *accidentalised as war by other means*.'[32] It is characterised by an inhibiting of political and legal witnessing in an attempt to obscure causality. As I elaborate below, the 'essential contretemps' as 'accidentalised disappearance' exists outside any notion of finite time and persists in a state of temporal ambiguity. This is because, while it is necessary, context is inadequate to explain the event of

30 See D. Reid, 'The Historian and the Judges', *Radical History Review*, 80, 2001, 135–148.
31 D. Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham, N.C.: Duke University Press, 2004), 4.
32 A. Feldman, 'Appearing under Erasure', 296.

disappearance nor the underlying mechanisms of disappearance, which render an opaqueness to historical presentation. This is what Feldman called 'appearing under erasure' and is evident through a reading of Harms' anatomisation of the disappearance of Sizwe Kondile.

## A disappearance

The first time that the name Sizwe Kondile was written in the Harms Report was in a Chronology, a sub-section of 'C Vlakplaats'. It preceded the 'DISAPPEARANCES' sub-section and appeared immediately after Harms' finding of Coetzee as an unreliable witness. The chronology was a list of all the extrajudicial events that Coetzee alleged so as 'to place the events in perspective'.[33] Here a date was listed in connection with Kondile: '10 August 1981: Release of Kondile (Bloemfontein)'.[34]

Within a grammatology of enforced disappearance, this first appearance of a name without name in the Harms Report, signalled not the enforced disappearance of Sizwe Kondile, but the date on which, according to police records, Harms accepted as credible and reliable that he had been 'officially' released from security police custody after detention under the Terrorism Act. There was no indication that Kondile, to use the transitive sense of the word, was *disappeared*. The entry affirmed, as Feldman would put it, a 'regime of vanishment stubbornly resis[ting] such qualifying supplements as 'enforced' and 'involuntary'". A documented and 'fictive' release was recited as a means to 'exonerate custodial responsibility'.[35] Kondile was obscured from both legal and political recognition by Harms' anatomisation. This strategy was elaborated upon after the stark observation by Harms of those listed as disappeared having been members of the ANC.

It is worthwhile citing in full how Harms anatomised the disappearance of Sizwe Kondile. Doing so enables us to demarcate a narrative strategy on the part of the Commission, wherein the missing became anonymised through a dephenomenalisation of the disappearance. This was done through the creation of a public secret, whose power lies in political and epistemological removal. We can discern a bureaucratic suppression of the disappearance and a systemic erasure of the missing that includes the offering of an alibi, a seemingly rational alternative narrative to account for the disappearance. Identifying these characteristics in the narrative structure of Harms' account is to abide by the 'detail of the allegation'. It is also to illustrate how, following Feldman, 'both the vanished and the act of vanishment are literally placed under erasure (*sous rature*)' through a 'sequence of retraction, demanifestation and disavowal'. This reflects the seeming randomising and silencing as disappearance, which is 'rendered unmotivated and acausal'.[36]

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33 'Harms Report', 94.
34 'Harms Report', 94.
35 A. Feldman, 'Appearing under Erasure', 302.
36 A. Feldman, 'Appearing under Erasure Chapter', 301. Feldman cites Giorgio Agamben to stress that, "nondescript is the figure of pure singularity…has no identity, is not determined in relation to a concept…the nondescript is a singularity plus an empty space." 293.

In the Harms Report, the sequence is as follows:

allegation
Harms began by providing Coetzee's version:

> Kondile was detained by the Security Police. During his detention he received brain damage when he fell through a window. A plan was made to release him, kidnap him and then kill him. The plan was executed and, after being given a sopoforic, Kondile was shot and burnt.
>
> During or on approximately 13 to 14 September he had seen Kondile in detention at Jeffery's Bay. He was told that Kondile had brain damage and could therefore not be released. He was told about the plan to let Kondile go free and then to kidnap him. After the killing of Dhlamini and Mavuso (in other words after 18 October 1981) Kondile was taken from the Eastern Cape to Komatipoort. For the purpose of killing him, two senior officers of the Security Police travelled from the Eastern Cape to Komatipoort; Coetzee and others travelled from Pretoria with a soporific to be administered before the killing; and the local members of the Security Police turned up as spectators and co-perpetrators. An unknown member of the Security Police then shot Kondile and the corpse was burnt. The group spent the whole night sitting around the fire.[37]

retraction - demanifestation - disavowel
Harms then provided a 'probable sequence of events', with 'the evidence not always easy to follow' [security police version]:

> Kondile was arrested by the Security Police on 26 June 1981 and detained at Bloemfontein. He was in possession of Chris Hani's [the (then) present leader of Umkhonto we Sizwe] car. He had come by this vehicle before that in Lesotho. He did not cross the border at the border post. According to the police, Kondile was caught on his way back to Lesotho, but according to argument on behalf of Kondile's family, the police abducted Kondile in Lesotho. Kondile was transferred to the Eastern Cape and detained there. During his detention he helped to identify ANC infiltrators, among others, and passed important information on to the police, particularly about Hani and the ANC in general. However, the ANC members pointed out by him escaped the police. Meanwhile, the car has been kept hidden in Bloemfontein. According to the police documents and police evidence Kondile undertook to become a police informer and was brought back to

37 'Harms Report', 117-120.

> Bloemfontein from the Eastern Cape, the car was returned to him, and he was allowed to go free. This happened on 10 August 1981. Since then nothing has been heard of him. His disappearance caused a sensation and questions were, for example, raised in Parliament about his detention and release. There were also numerous press reports about these events.[38]

demanifestion – retraction – disavowel
Then Harms offered his rationale:

> There is no corroboration whatever for any of Coetzee's allegations. The basic fact of Kondile's disappearance was common knowledge. Other information was obtained by Coetzee after November 1989 from the ANC. Coetzee's version is also inherently improbable and riddled with contradiction. Some aspects that strike one immediately are the following:
>
> -Coetzee testified that he saw Kondile's car at Jeffreys Bay. In his Mauritius statement, however, he said that he did not see the vehicle.
> -According to his testimony the brain damage occurred before 10 August 1981, and Kondile was kidnapped on 10 August 1981. If the Security Police were worried about Kondile dying in detention as a result of his injuries, surely they would not have detained him for a further two months, and then in a place where he was literally accessible to the public.
> -It is also inconceivable that they would have returned a car to a man with a serious brain injury for him to drive, and then to kidnap him afterwards.
> -No plausible reason was given why Coetzee specially had to convey a soporific from Pretoria to Komatipoort for administration before the murder.
> -No plausible reason was given why Kondile has to be taken from the Eastern Cape to Komatipoort to be shot by an unknown person. Coetzee said that the reason for this was that Kondile's car was to be left in Swaziland. That motive does not hold water. There was no reason for taking Kondile to Komatipoort. In any case Komatipoort is rather far from the nearest entry to Swaziland for people travelling from the Eastern Cape.
> -The place and the manner of the burning are also inherently improbable.[39]

allegation – disavowel
And thus, Harms found that:

> Kondile's actions would have qualified him as a traitor in the eyes of the ANC. He had disappeared with Hani's car, had identified ANC members and after a period of complete absence suddenly reappeared. It is not for

38 'Harms Report', 117-120.
39 'Harms Report', 117-120.

> the Commission to establish or to speculate upon what became of Kondile, but only to determine whether the Security Police killed him as alleged by Coetzee. It is certain that Coetzee's version is false.[40]

The certainty expressed by Harms that 'Coetzee's version is false' explicitly exonerated the security police and Coetzee from possible prosecution. This was not only because of his self-incriminating testimony, but because the aporia of the disappearance problem could not be adequately articulated by reason *of* state. Harms did 'speculate upon what became of Kondile' by stating that 'after a period of complete absence [he] suddenly reappeared'. He suggested that someone, such as the ANC, knew where he was. Kondile may well have been missing, but he was possibly alive. However, by repeatedly inferring from 'ANC policy' that Kondile would have been regarded as a traitor, and as an informer, and was most likely killed by the ANC, Harms suggested that Kondile was responsible not only for his own disappearance but also for his own death. Kondile would have been exonerated from being accused and categorised as a traitor, according to the testimony of Coetzee. Yet through Harms' doubting of Coetzee by refuting his version and this self-implication, Kondile was thus re-accused of being a traitor and thus rendered suitable for elimination by the ANC. Kondile was not merely missing because of the act of vanishment, but by implication, it was his corpse that was also missing. Kondile's disappearance appears under erasure, he is 'disappeared outside [his] disappearance', he is both collateral damage and disappeared.[41]

Sizwe Kondile went missing, but the non-eventfulness of this was produced as disappeared through a discursive process whose juridical historiography figured him as nondescript. Such is a logic of a contretemps, there can be 'no political appearance without political disappearance'. It is 'to let appear and *to make disappear*'.[42] Such biopolitical and necropolitical imperatives, I suggest, is precisely that which is discerned when state sponsored disappearance is filtered through the apparatus of the commission of inquiry.[43] Here then is an accidentalised disappearance, an 'essential contretemps [that is] a self-cancellation of a force caught by and between its own violence, that turns against its own violence with violence … a self-effacing retroaction'. For Feldman, this is a 'condition of possibility for indemnifying war crimes such as collateral damage and enforced disappearance'.[44] In other words, disappearance as 'accidentalised accident mediates such indemnification through errant recursions that disperses repetition as a future present, as the transmission of the same'.[45] This can be made clearer by returning to the question of the inability of the Harms Commission to pose the problem/question that disappearances activate. To do so is to consider the ways in which disciplinary apparatuses, such as the colonial archive and other instru-

40 'Harms Report', 117-120.
41 A. Feldman, 'Appearing under Erasure', 307.
42 A. Feldman, 'Appearing under Erasure', 312-313.
43 See A. Mbembe, *Necropolitics* (Duke University Press, 2019).
44 A. Feldman, 'Appearing under Erasure', 291.
45 A. Feldman, 'Appearing under Erasure', 293.

ments such as commissions of inquiry, have influenced our reading of postapartheid histories to such an extent that certain continuities of ordering our readings thereof are apparent.

## 'Incomplete repetitions and insufficient differences'

What Adam Sitze termed Tumult Commissions were generally appointed following or during violent state repression of uprisings or disturbances.[46] Following a genealogical account of such commissions, Sitze argued that these form a 'loose yet coherent unity', a 'loose but internally consistent genre' that were concurrent with what Ashforth called the 'Grand Tradition' of the 'Native Question'. These were Commissions of Inquiry that sought 'to understand race relations in South Africa to avoid "racial strife"'.[47] Tumult Commissions, however, studied race relations when it 'was already too late to avoid racial strife, where racial strife already had manifested itself in violence and repression, and where the aim of the Commission of Inquiry was consequently to present remedies for avoiding the recurrence of racial strife (or, at least – and indeed more often – the avoidance of its expression in the form of violence).'[48] These commissions shared some remarkable features, that instead of securing public confidence, they were largely viewed as a 'whitewashing machine'. Colonial Tumult Commissions displayed a 'carefully calibrated "evenhandedness" [that] would become so formal and regular, would become such a hallmark of the Tumult Commissions' epistemic field, that it would even determine the grammar of certain Tumult Commission reports'.[49] This grammar was often presented through a discernible narrative strategy of historiographical modes of accuse, exonerate and mourn, through tragic and lamentable narration, which was deployed through their reports and that also served to reinforce the indemnity features of such commissions.

Sitze argues that apartheid's Tumult Commissions inherited these historiographical modes that were intimately connected to indemnity jurisprudence as it evolved in South Africa. They inherited these, he further suggested, in varying iterations and calibrations but with incomplete repetitions and insufficient differences.[50] As apartheid neared its legal and political dissolution as a system of governance, its Tumult Commissions were now 'governmental techniques for the management of populations' – in other words, apparatuses of both biopolitical and necropolitical power.[51] They also continued to illustrate the usual 'self-criticism of state violence [that] happened to justify the "lamentable necessity" or "necessary evil" of violent state action'. They stressed how the 'individual police officer was unfairly at risk of becoming figured as a scapegoat, a flawed hero in whom collective guilt could be concentrated and

46 A. Sitze, *The Impossible Machine: A Genealogy of South Africa's Truth and Reconciliation Commission* (Ann Arbor: The University of Michigan Press, 2013), 15, 160.
47 A. Ashforth, *On the Native Question: A Reading of the Grand Tradition of Commissions of Inquiry into the Native Question in Twentieth-Century South Africa* (Oxford: Oxford University Press, 1987).
48 A. Sitze, *The Impossible Machine*, 161.
49 A. Sitze, *The Impossible Machine*, 164.
50 A. Sitze, *The Impossible Machine*, 72-97; 98-130.
51 A. Mbembe, *Necropolitics*.

at whose expense the public could absolve its own conscience'.[52] As such, they now had become 'little more than an empty ritual, a legal husk that continued to repeat colonial truths under postcolonial conditions, conditions in which those truths openly appeared as untruths.'[53]

It is not a stretch of the imagination to suggest that the Harms Commission should be considered part of the Tumult Commission tradition. Many of the characteristics that Sitze pointed to were evident, as discerned from a reading of the Harms Commission Report, particularly the historiographical modes of accusations and exonerations. This is even more convincing when one considers Sitze's argument that the 'TRC Report is best read as a disjunctive synthesis of incomplete repetitions and insufficient differences, as an unstable composite of incommensurable epistemic demands, where competing juridical forms coincide without synthesis'.[54] It is thus possible to consider the Harms Commission and the TRC as moments in which disappearance as accidentalised ushered a coming into being of a contretemps that also disrupts our reading of an archive of disappearances.

The interplay of allegations, accusations and exonerations, as expressed through the 'sequence of redaction, demanifestation and disavowal', was reiterated in the proceedings of the TRC's Human Rights Violations (HRV) Committee as well as in the TRC's Amnesty hearings and findings, that followed a script that was similar to that of the Harms Report. Dirk Coetzee applied for amnesty for 23 separate incidents, and in each instance, this was granted. This included amnesty for the abduction, murder, administration of poison and assault of Sizwe Kondile.[55] While the Kondile family opposed the amnesty application of Coetzee, he appeared as a witness for the family in their opposition to the amnesty applications of Du Plessis, Van Rensburg, Raath and Erasmus, with the aim of seeking 'the truth' of what had happened. These were the same individuals accused and implicated by Coetzee at the Harms Commission but whose names did not appear in its Report, presumably due to the legal rights of the accused.

Inasmuch as Harms could state that Sizwe Kondile 'fell into a category of persons who had to be eliminated in accordance with ANC policy', Kondile was also conscripted into that very same category at the TRC Amnesty hearings, according to which he had to be eliminated. He was once again accused of being an informer and a double agent for the security police and this was the 'alleged' reason for him being killed. It was claimed further that the motive for killing Kondile was a note found in the cell where he had been held which indicated that he maintained loyalty

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52 A. Sitze, *The Impossible Machine*, 173. A good example of this is the Cillié Commission of Inquiry into the Soweto Uprising (P.M. Cillié, 'Report of the Commission of Inquiry into the Riots at Soweto and elsewhere from June 16, 1976 to February 28, 1977' (1980).

53 A. Sitze, *The Impossible Machine*, 187.

54 A. Sitze, *The Impossible Machine*, 17.

55 See Truth and Reconciliation Commission: Amnesty Committee Decision AC/2001/279, http://www.justice.gov.za/Trc/decisions/2001/ac21279.htm
Nicolaas Janse van Rensburg, Hermanus Barend du Plessis, Johannes Gottfried Raath and Gerrit Nicholas Erasmus also applied for and were granted amnesty for the Kondile 'incident'. See Truth and Reconciliation Commission: Amnesty Committee Decision AC/99/0037. Nicholaas Janse van Rensburg (AM 3919/96), Hermanus Barend Du Plessis (AM 4384/96), Johannes Gottfried Raath (AM 4397/96) and Gerrit Nicholas Erasmus (AM 4134/96), http://www.justice.gov.za/Trc/decisions/1999/99_van%20rensburg.html

to the ANC. Sensitive information regarding activities of the security police within Lesotho had been given to Kondile and it was feared that this information would find its way to the ANC through Kondile. After Du Plessis consulted with Van Rensburg and Erasmus, it was agreed that Kondile would have to be killed. Coetzee was called in to assist with the killing and the obliteration of the body with the assistance of Raath.[56] The Amnesty Committee accepted this version of the motive for the killing and not Coetzee's version that Kondile had been killed because the security police feared another 'Biko case'.[57] In the TRC Reports, both versions were presented.[58] Here then was an amplification of a self-division between what happened as 'fact' and the prosecutory force of the 'executive power', as evident at the Harms Commission. In other words, this was indemnity as amnesty, an 'action of a nonaction'.[59]

Sitze argued that the TRC inherited some of the 'innermost poetics' of Tumult Commissions, but these occurred 'under new conditions, in a way that made "the tragic" signify the very opposite of what it signified for the Tumult Commission'. There 'the tragic' was put to work by expressing 'the necessary evil', the 'lamentable necessity', a juridical poetics of violent state action that legitimated indemnification. The TRC, Sitze convincingly argued, operated within that same discourse – indemnity through amnesty – but in 'signifying emancipation from a repressive state' claimed to 'produce "historical catharsis"'.[60] At the TRC though, as this relates to Sizwe Kondile as disappeared, the questions of mourning, tragedy and consolation were not only expressed as a narrative strategy through its reports but also structured its HRV hearings.

The hearing of Mrs Charity Kondile, mother of Sizwe Kondile, was the moment where the TRC, following Mark Sanders, stood in as proxy for the perpetrator and was approached by the victim because 'mourning would make good for the violations of the apartheid era [and] where apartheid would be undone through condolence'.[61] It appears as if it was the way TRC Commissioner Dumisa Ntzebeza led Mrs Kondile's testimony that was the factor that exonerated Kondile from the accusations that he was a traitor. In so doing, Ntsebeza continuously referred to Coetzee's 'revelations' as that which enabled exoneration.[62] The question of 'consolation that at least from the revelations of Coetzee' Kondile was not a 'traitor', was arguably both adequate and inadequate for Mrs Kondile. It was adequate only in that from the 'revelations' by Coetzee, she had come to know that her son was dead, had been abducted by the security police, had been poisoned, shot and killed and his remains had been burnt. However, it was inadequate because it was more a question of public acknowledg-

56 See Amnesty Hearing transcript for Du Plessis (9-11 February 1998),
http://www.justice.gov.za/Trc/amntrans/capetown/capetown_1kond1.htm
http://www.justice.gov.za/Trc/amntrans/capetown/capetown_1kond2.htm
http://www.justice.gov.za/Trc/amntrans/capetown/capetown_1kond3.htm
57 See Amnesty Committee Decision AC/99/0037,
http://www.justice.gov.za/Trc/decisions/1999/99_van%20rensburg.html
58 See TRC Report Volume 2, 234–236 and Volume 3, 72–73.
59 See A. Feldman, 'Appearing under Erasure', 292.
60 A. Sitze, *The Impossible Machine*, 17.
61 M. Sanders, *Ambiguities of Witnessing*, 49.
62 Kondile HRVC Hearing,
https://www.justice.gov.za/trc/hrvtrans/hrvel1/kondile.htm

ment from the ANC that Kondile was never a traitor, that Mrs. Kondile sought.[63] There was an empty space left for mourning and condolence.[64]

The tragic, according to Sitze, is 'understood as a genre of narration in which everyone and no one was to blame'. It can also be considered as both 'juridical logic – a way of speaking about legal aporias where guilt and innocence seemed to coincide and coexist in one and the same person' and 'juridical poetics – a discourse on the lamentable, regrettable, and unfortunate by unavoidable and, indeed, "necessary" status of illegal state killing'.[65] While it could be argued that Harms might have alluded to a juridical poetics of tragedy when he noted the lives and property of SAP and SADF members lost, as it relates to problem of the disappeared, both articulations of the tragic could not be deployed as a narrative strategy through the Harms Report. As I have attempted to show, this was an impossibility because it could not "pose the question of its own juridical impasse" based on a balance of probabilities. This very impasse, I suggest, also beset the TRC.

Feldman argues that a contretemps cannot be undone. This is because 'irrespective of its structural indifference, institutional mechanisms, and designed acausality, the regime of vanishment requires human cogs of inhumanity to advance its procedural voracity for names, bodies, and disposability'.[66] In the case of indemnity and amnesty, or indemnity as amnesty, the recursions linger in the impossible attempt at historicising, at assuming a reckoning with disappearance as an 'extrinsic mishap that befalls the otherwise normal proceduralism of the state and the law and which can be rectified by the rehabilitation of the latter'.[67] Disappearance understood as 'accidentalised' was expressed through the Harms Commission Report as an account rendered by an asymmetrical sequence of 'retraction, demanifestation and disavowal' and re-presented at the TRC coupled with the narrative strategy of accuse, exonerate and mourn. The very instability of disappearance as a problem/question was reaffirmed.

What it means to pose a question of disappearance and to name disappearance as a problem, is to make visible the discursive formations of apartheid power. However, it is also to risk further disappearing, in this instance, Sizwe Kondile. Yet, disappearance understood as the 'essential contretemps' and thus 'accidentalised' enables both a temporal disruption and temporal displacement because any notion of justice is irreducible to political, legal and historical discourses with its incomplete repetitions and insufficient differences. He, Sizwe Kondile, 'persists outside finite time'.

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63 In her testimony, Mrs Kondile recalled how she had telephoned Chris Hani a few months before his assassination and he had acknowledged that Kondile was not a traitor. If there was to be 'consolation' about the exoneration of her son, it seems, that 'consolation' came not from the 'revelations' of Coetzee, but from Chris Hani who had accepted those 'revelations' and who had 'accepted the truth'. Kondile HRVC Hearing. See also 'Affidavit of Martin Thembisile Hani (popularly known as Chris Hani) signed on the 21 June 1990' in B181-B184, Box 4(4) – IBIIR Collection.

64 See R. Moosage, 'Missing-ness, History and Apartheid-era Disappearances'. See also J. Dlamini, *Dying for Freedom: Political Martyrdom in South Africa* (Cambridge: Polity Press, 2024).

65 A. Sitze, *The Impossible Machine*, 172.

66 A. Feldman, 'Appearing under Erasure', 307.

67 A. Feldman, 'Appearing under Erasure', 300.

## Conclusion

The Harms Commission as a particular apparatus was the silent trace upon which the aporia of a disappearance problem/question emerged. Understanding enforced disappearance through the lens of a contretemps enables us to reveal the political as inherently indeterminate insofar as its 'schematised categories' are exposed as unstable. The commission of inquiry as an apparatus of executive power both enables and is caught within the 'accidentalised accident' that disappearances engender and through which historicity and witnessing are remediated. Any presumed contemporaneity and synchrony of a notion of the present, or presence, is interrupted. Posing the problem/question of disappearance is thus a recursive endeavour. However, it would be a mistake, I suggest, to understand this as a negative. What is enabled, rather, is an understanding of a complex mechanism that 'disperses repetition' and challenges established power structures through temporal disruptions of disappearances.

An examination into the authorising technologies of war that enable crimes such as disappearance to be indemnified and thus legitimised in the very act of disavowal disappears Kondile once again. It does this by naming that which is unnameable, and by untethering the legal and political binds that structure the enabling of disappearance as accidentalised. But this is a risk that anatomies of disappearances engender. In cutting, dissecting, disarticulating, rearticulating that which are reminders, remainders and an injunction (in a Derridian sense), in seeking whatever it is that is being sought, the question of apartheid as vanishing power, as violence, permeates. Disappearances are such that abiding by the problems they pose and seeking to articulate those problems is hopefully to arrive at more salient questions. This can be possible as we expose more of the limits of that which structures our knowing and thus, the unknowability that a disappearance problem/question lends itself to.