The article compares law’s time and its effects on how we understand and approach law and legal interpretation, to other concepts of time. It explores two trends: one, asking for a disruption of a chronological and a linear conception of time that could contribute to an acceptance of the notion of multiple truths and fluidity of meanings and the other, supporting the notion of slowness, where difference and particularity can be explored and recognised in contrast to law’s speed, universalisation and generalisation. It contemplates how events and interpretations of art can illustrate a way of disrupting chronological time, and by lingering, of showing greater attentiveness. The article investigates and tentatively suggests other ways of or attitudes to legal reading and interpretation, always keeping the limits and the violence of the law in mind. Artist William Kentridge’s observation that ‘[t]he more general it becomes, the less it works’ stands central to the concern with particularity.

Milan Kundera, in contemplating a question asked by his wife, namely, why people have no fear when they are behind the wheel, responds as follows:

Maybe this: the man hunched over his motorcycle can focus only on the present instant of his flight; he is caught in a fragment of time cut off from both the past and the future; he is wrenched from the continuity of time; he is outside time; in other words he is in a state of ecstasy. In that state he is unaware of his age, his children, his worries, and he has no fear, because the source of his fear is in the future, and a person freed of the future has nothing to fear.

He continues by naming speed as the form of ecstasy of the technical revolution and compares a technical, non-corporeal relation with speed to the corporeal, embodied experience of a runner and her or his relation to speed. Kundera then asks rather nostalgically: ‘Why has the pleasure of slowness disappeared? Where have they gone, the amblers of yesteryear?’ Is the author mourning the loss of a world, of an era, in which people consciously interacted with time, past and future, in which they were concerned with memory and imagination?

In another context Kundera writes on ‘the appeal of time’ in the novel as addressing not merely ‘personal memory’ but broadening the idea of
memory to become the 'enigma of collective time'. He fears that the novel as art form will disappear in future because the world has 'grown alien to it'. Other appeals made by the novel, in addition to the appeal of time, are ‘the appeal of play’, ‘the appeal of dream’ and the ‘the appeal of thought’. For Kundera the spirit of the novel is the spirit of complexity and the spirit of continuity. It is the spirit of complexity because the novel tells us that ‘things are not as simple as you think’. It is the spirit of continuity, because each work answers preceding ones, maintaining a relationship between past, present and future. However, for Kundera the spirit of our time is alien to both these images. It regards the difficulty of knowing and the elusiveness of truth inherent in the novel’s spirit of complexity as cumbersome and useless. It rejects the spirit of continuity, because ‘the spirit of our time is firmly focused on a present that is so expansive and profuse that it shoves the past off our horizon and reduces time to the present moment only’.

Kundera also responds to an alliance only to the future and says: 'Once upon a time I too thought that the future was the only competent judge of our works and actions. Later on I understood that chasing after the future is the worse conformism of all, a craven flattery of the mighty'. Then, to the question, what he is attached to if not the present or the future, he answers 'I am attached to nothing but the depreciated legacy of Cervantes'.

I INTRODUCTION

Kundera’s reflection on time and his praise of slowness and memory provide a good starting place for my own contemplation on the law and legal interpretation and their relation with time. Like Kundera I experience a discomfort with what Drucilla Cornell calls a ‘privileging of the present’ and support visions of a future, a not-yetness that is never present, always postponed. But, again like Kundera, I believe that if the

4 Kundera (note 1 above) 18.
5 Ibid 19-20.
6 Ibid 20.
7 My gratitude to Bert van Roermund and Johan van der Walt for expressing their views on the term ‘slowness’ as an accurate translation of Kundera and their suggestions of ‘lingering’ or ‘dwelling’ as alternatives. The term ‘dwelling’ can of course also refer to a place of dwelling, a domicile, but in this context it indicates an attitude of lingering, of keeping one’s attention fixed on a subject. In a later research project I shall make the link between slowness and the notion of attention or attentiveness as developed by Simone Weil explicit, but I allude to the connection already in this article. An attitude of slowness or lingering could enable law and legal procedure to be more attentive to particular circumstances, less rule-bound. This is elaborated on in IV below. See also note 11 below.
future is significant in the process of de-privileging the present, the past is as significant. Kundera’s support of slowness or lingering is not only a support of imagination and the vision of the future. It is also a support of memory, a support of an embodied and embedded recollection impossible in the flight of speed. Memory, of course, like imagination is a construction and in this sense the traditional concepts of linear and chronological time are disrupted. Drucilla Cornell illustrates this paradox when she refers to Charles Peirce’s concern with law and its relation with the past and the future.9 Because we employ our past experiences when we imagine and our imagination when we remember, the paradox of imagining the past and remembering the future is created. Time, memory and imagination accordingly become part of a more complex configuration than a mere linear or chronological remembering or projection. Cornell translates this paradox in the context of legal interpretation to ‘legal interpretation as recollective imagination’.10

If notions of the future and the past are important in our reflections on the relationship between law and time, another aspect that is as significant and that flows right through our recollections and imaginings, is that which happens in a moment, the particularity of an event that can so easily be ignored or forgotten. In the same way that the law fails truly to recognise a remembering and imagining of the past and future that challenges its institutional structure, it fails to pay attention to and to recognise the particularity of an event and reverts to generalisation and universal time. The concept of slowness comes into play here also, because an attitude of slowness or lingering is required to appreciate the particularity of an event.

In this article I compare law’s time and its effects on how we understand and approach law and legal interpretation, to another concept of time. I explore two trends, one asking for a disruption of a chronological and linear conception of time that could contribute to an acceptance of the notion of multiple truths and fluidity of meanings and the other supporting the notion of slowness, where difference and particularity can be explored and recognised in contrast to law’s speed, universalisation and generalisation.11

9 D Cornell Transformations (1993) 23-44. See also generally Cornell The Philosophy of the Limit (note 8 above).
10 Cornell (note 9 above) 23.
I shall contemplate how events and interpretations of art can illustrate a way of disrupting chronological time, and by lingering, showing greater attentiveness. By supporting a disruption of chronological time and by suggesting an approach of slowness that could involve greater attentiveness I am not advancing a new ‘method’ of legal interpretation. I am investigating and tentatively suggesting other ways of or attitudes to legal reading and interpretation, always keeping the limits and the violence of the law in mind: The limits of the law refer to law’s incapacity to encompass politics, ethics and justice. The violence (and reductive nature) refers to law’s tendency to make the particular general and the concrete abstract. Law, because of its rule-bound nature, and judgements, because of their over-emphasis on calculation, exclude the needs of the particular and following Douzinas and Warrington’s employment of Kafka, ‘close[s] the door of the law’. After briefly revisiting the TRC as an example of law’s incapacities in relation to time, I turn to events in art that involved a remembrance of the past and future. In these art events

12 Simone Weil argued for attention as a moral value. Ethics of care feminists, like Joan Tronto, have followed Weil’s argument by developing the notion of attentiveness further. See J Tronto Moral Boundaries. A Political Argument for an Ethic of Care (1993). My gratitude to Emilios Christodoulidis and Zenon Bankowski for directing me to Weil’s work and for pointing out the link between my use of slowness and the notion of attention. Weil’s work on attention has been compared to Hannah Arendt, Martha Nussbaum and Iris Murdoch. In current research I take the notion of attentiveness further and also compare it to the work of poet and author, Antjie Krog and artist, William Kentridge.

13 Alan Hunt, explained his favouring of the notion of an approach rather than a method as follows: ‘It should be noted that I employ the idea of “approach” rather than “method” because the latter carries with it the implication that it is both possible and desirable to stipulate general procedural rules for the conduct of inquiries. The search for an “approach” is intentionally agnostic concerning the possibility and desirability of prescriptive methodologies’. A Hunt ‘The Critique of Law: What is “Critical” about Critical Legal Theory?’ in P Fitzpatrick & A Hunt (eds) Critical Legal Studies (1987) 13.

14 Douzinas & Warrington (1995) (note 11 above) 223. ‘But in immediately identifying justice with court procedure, the Court like Kafka’s doorkeeper shuts the door’. ‘Before the door stands a door-keeper. A man from the country comes up to this door-keeper and begs for admission to the Law. But the door-keeper tells him that he cannot grant him admission now. The man ponders this and then asks if he will be allowed to enter later. “Possibly” the door-keeper says, “but not now”. After the man waited for many years he asks the doorkeeper why no one else has asked to enter and the door-keeper says to him: “No one else could gain admission here, because this door was intended only for you. I shall now go and close it”‘.

and the comments on them we find a notion of attentiveness that I want
to translate to an approach to be considered for the purposes of law and
legal interpretation. I argue for an approach towards legal interpretation
that could embrace a slowness, or what Samuel Ijisseling calls ‘a strategy
of delay’. My support for the notion of delay when interpreting is an
attempt to escape some of the reductive and limited features of the law as
referred to above. It is a call for a greater attentiveness in the face of the
violence that is brought into institutionalised legal readings and
interpretations. Antjie Krog’s telling of the shepherd Lekotse’s tale and
how the TRC’s institutionalised process of interrogation failed to address
his concerns as well as the case of the Tamil asylum seekers, which I turn
to at the end, show the limits of speedy institutionalised and legalised
processes. It shows that for justice we shall have to wait, that the search
and concern with justice needs a slowness, an approach of attentiveness.

The concern with slowness and attentiveness as a way of taking greater
care with particularity, of trying to widen the limits of law’s generality,
should not be seen as another attempt to deny or negate the violence of
the law, to forget its force, as Douzinas and Warrington claim the ‘recent
turn to hermeneutics, semiotics and literary theory’ has done. The brief
turn to the TRC and the recalling of the story of the shepherd are
eamples illustrating the limits of the law and the postponement of
justice. The turn to the art events illustrates how art could be more
‘successful’ in its interaction with memory, reconciliation and transfor-
mation and reconstruction. The search for a slowness, or a delay in
interpretation does not claim to find a final and encompassing justice.
Realising that law is not law because it is just, but that it is just because it
is the law highlights our ethical responsibility: ‘Without the safe
anchorage of a concept and without law, postmodern ethics is left with
responsibility. Indeed with a responsibility for the responsibility created
by the suffering of my neighbour’.19

II LAW’S LIMITS

In this section I briefly revisit the event of the TRC to show the gap
between law (and legal institutions) and politics, reconciliation and
ultimately justice as put forward also by Antjie Krog and Emilios
Christodouidis. A paradox of the tension between failure and success is
raised – in its failure to reconcile a nation, the Commission perhaps,
albeit unintentionally, highlighted the critical insight of law’s limits.

18 Ibid 198.
19 Ibid 204.
As part of South Africa’s negotiated settlement parties agreed on the institution of a Truth and Reconciliation Commission. The post-amble of the interim Constitution laid the foundations of the TRC:

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 vengeance, a need for reparation but not retaliation, a need for ubuntu but not for victimization.  

As Antjie Krog notes, these words, which aim to formulate a vision of justice for South Africa, stand in contrast to the following paragraph in which the amnesty process, one of the institutional outcomes of the TRC, is envisioned:

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut off date (which shall be a date after October 8, 1990 and before 6 December 1993) and providing for mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

Krog criticises the amnesty process for its overemphasis on judicialised procedures and particularly for the fact that judicialised outcomes were favoured above ‘moral’ or ‘political’ outcomes. For her the main problem lies in the character of the amnesty committee and the legislation establishing it. The members of the amnesty committee were never part of the TRC and accordingly were never part of the general ‘life and times’ of the Commission. They did not share in any of the decision-making, were not present at TRC meetings and were not part of debates and arguments. As amnesty committee they had to be completely ‘independent’. The legalised and judicialised nature of the amnesty committee prevented it from focussing on the goals of reconciliation and healing. An obvious feature of the amnesty process involving time is that certain fixed time frames were created and if an individual’s case fell outside the scope of the time frame, there was no institutional path to follow. This indicates the obsession with linear and chronological time and accordingly a rigid approach to the events and more importantly to the various versions, particular experiences and tellings of the events.

22 Post-amble of the interim Constitution.
23 Similarly the reconstruction that is aimed at by the Commission for the Restitution of Land Rights is bound by a certain fixed time frame.
Even though the human rights violation hearings, one of the other institutional legs of the TRC, can also be criticised on many levels, for some individuals the simple process of telling their stories and finding out what happened to loved ones provided momentary relief after years of suffering and not knowing, quite apart from any clear, judicialised outcome. Commenting on the limits of the law, Christodoulidis argues that the TRC failed in its attempt to ‘reconcile within itself its dual nature as legal tribunal and public confessional’. He continues that, ‘law in every dimension always-already defines away the risk that is at the heart of reconciliation’. Law and legal systems are too limited to realise the ideal of reconciliation. In the South African context, he argues the TRC put reconciliation and restoration in a paradox, ‘at once “not-yet” and yet “always-already”’. The legalised nature of the TRC had the effect of reduction instead of reflexivity, of relying on a legal a priori instead of taking a risk. He also notes that the TRC failed to ‘re-cast’ the past in view of a ‘re-orientation’ to a future community and to establish a common ‘we’. It failed to ‘re-write collected memories as collective memory’.

This failure to my mind could also be read, quite paradoxically, as a positive outcome of the TRC. In this failure the TRC succeeded in exposing the plurality and multiplicity of stories, memories and imaginations, of pasts and futures. Another successful outcome of the TRC is its quite unintended re-exposure of the limits of the law, of law’s incapacity to contain politics, the ethical and justice. Its very failure to adequately take account of politics, the ethical and justice effectively exposed the inability of law and any legal institutional to do so.

III ART’S POSSIBILITIES

In this section a few events in art are highlighted. My intention is not to enter into an indepth analysis of the art images themselves, but to contrast them to the limits and reductions encountered in law in general and also in the proceedings of the TRC as discussed above. First, we turn to an example of an archeological investigation in which two contrasting approaches to time and memory, but also to life are described. The one approach is abstract and occupied with chronological and linear approaches to time and memory. The other approach is concerned with material objects and a materialist approach to memory in which linear and chronological time are not significant. The latter is an approach that I perceive to be connected with slowness, lingering and greater attention. Secondly, a short story, in which the main character followed an

embedded approach to time and particularity is recalled and contrasted to law’s belief that such particularity is irrelevant to the fulfilment of its instrumental task. Thirdly and finally, the portrayal of memory in an animated film and how it disrupts and problematises conventional approaches and how in this instance the artist himself resists easy, quick solutions and interpretations of his work is looked at.

In an article on ‘archeology as memory’ Martin Hall captures two accounts of memory, one in which memory is merely reflected in language and one in which memory is interconnected with the material world. He focuses on philologist William Bleek, who was preoccupied with the ‘Bushman’ languages of southern Africa and who believed that ‘language was the key to all human history and society’. The context of Hall’s investigation was a 1996 exhibition called ‘Miscast’ that re-opened the themes of the recreation of memory, of new ‘imagined communities’ and of how words and objects come to mean such different things to different people. Hall notes the difference between Bleek and Kabbo, a Bushman captured by Bleek as informant, in their relations to language. For Bleek language is everything, but for Kabbo the material elements of the everyday world cannot be reduced to language alone. Against this background Hall imagines the different reactions by Bleek and Kabbo to the concept of monument: For Bleek a monument, like language, will signify timelessness, the eternalisation of a moment, to hold time still. Kabbo, because of his material culture, will accept that things can mean different things to different people at the same time, similar to the meanings of words that are also negotiated as a part of a process.

Two ways of contemplating time and memory come to the fore from this example, one in which ‘time lies in memory’ and one in which ‘memory is constituted in time’. In the former, objects themselves constitute time and as a result the distinction between subject and object becomes blurred. In the latter, time is measured on a calibrated scale of days, months and years: monuments claim eternity by seizing moments and holding them still and this claim of timelessness permits the fantasy of eternal repetition and distinguishes between subject and object.

A similar distinction is made regarding landscape. On the one hand landscape is ‘a way of seeing’, in which individuals have ‘represented to themselves and the others the world about them and their relationship with it’. On the other hand ‘material objects can be seen as both within, and defining time and space, and as playing between past and present,

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29 Ibid183.
30 Ibid 189.
31 Ibid193.
constantly defining and redefining memory’. Hall notes that recent theories on landscape have also highlighted its contingency – landscape viewed as constructed rather than as universal:

Kabbo can be seen to have constructed landscape within a different cosmology – a non-Albertinian system of time and space that nevertheless evokes memory by assembling objects which have multiplicities of meanings and associations.

A distinction made by Barbara Bender between capitalist and non-capitalist notions of landscape is recalled: Bender contrasts the capitalist understanding of ‘landscapes of memory’ (social and cultural relations are read as inscriptions) and the non-capitalist understanding of ‘landscapes as memory’ (social and cultural processes are made visual as they are enacted). Hall describes the aim of the ‘Miscast’ exhibition as to prevent closure on a chapter of history and to contest the way in which mainstream institutions tend to forget the iniquities of the past. In this sense this exhibition, in its relationship to memory and recollection, was more true to the notion of risk and more open to the possibility of reflexive politics. The centrality of materiality in the construction of memory and the act of recollection connects with Kundera’s comments on the motorcyclist – he who tries to escape the materiality, the embodiedness and embeddedness of time and reconciliation. My argument is that with a material recollection goes a greater openness towards the particular and that this is necessarily associated with slowness – it takes more time to reflect on and be attentive to material circumstances than to merely follow or apply a rule, or consider an issue in a linear chronological, abstract and mostly predictable manner.

The same notion of material recollection plays out elsewhere. In a short story by Paul Auster one of the characters, Auggie Wren, shows the photos that he had been taking for the past twelve years every day on the same street corner at precisely seven o’clock of precisely the same view to the author. At first the author finds the project odd. He pages rather hurriedly through the album until Auggie tells him, ‘You’re going too fast. You’ll never get it if you don’t slow down’. The author then realises, ‘If you don’t take time to look, you’ll never manage to see anything’. As he continues to page through the albums he starts to pay closer attention to details, taking note of the changes in the weather, the changing angles

32 Ibid.
33 Ibid 195.
35 P Auster ‘Auggie Wren’s Christmas Story’ in P Auster Smoke and Blue in the Face: Two Films (1995) 151-56. Auster comments as follows on a compilation of stories edited by him that came about through the National Story Project. People were invited to contribute stories about their lives and experiences: ‘People would be exploring their lives and experiences, but at the same time they would be part of a collective effort, something bigger than just themselves. With their help, I said, I was hoping to put together an archive of facts, a museum of American reality’. P Auster (ed) True Tales of American Life (2001) xvi.
of light as the seasons advanced, the subtle differences in the flow of
traffic, the changing rhythm of the different days. He starts recognising
the faces of the people, ‘the same people in the same spot every morning,
living an instant of their lives in the field of Auggie’s camera’.36 The
author then realises that Auggie is ‘photographing time . . . both natural
time and human time’.37 This theme is also found in one of Auster’s
novels, *Leviathan*, where he bases one of his characters on the life of
French photographer Sophie Calle, who in her work focuses on the
particular moments and events of daily life.38

The attention to detail and focus evident in Auster’s work stands in
contrast to how law addresses individual life and accordingly, time. As
Oliver Wendel Holmes wrote:

> The process is one, from a lawyer’s statement of a case, eliminating as it does all the
dramatic elements with which his client’s story has clothed it, and retaining only the facts
of legal import, up to the final analyses and abstract universals of theoretic jurisprudence.
The reason why a lawyer does not mention that his client wore a white hat when he made
a contract, while Mrs Quickly would be sure to dwell upon it along with the parcel gilt
goblet and the sea coal fire, is that he foresees that the public force will act in the same
way whatever his client had upon his head.39

In Holmes’ vision, law, in contrast to the art discussed above, consciously
refrains from considering detail and particularity.

Another example of art in which a negotiation of time and memory is
to be found is the animated film by William Kentridge, *History of the
Main Complaint*, in which the body of the protagonist is the vehicle of
memory. Michael Godby notes how historians in recent years have begun
to use the literary form of multiple narratives to present a narrative
fragment instead of a single authoritative point of view. The medium of
film is a particularly good way to relativise past experiences by, for
example, flashbacks and cross-cutting and to deconstruct notions of
objectivity and truth.40 Godby notes that ‘history is committed to the
past and all the new rhetorical devices are focused on it’ but that in an
artwork these strategies are turned on the spectator, with the effect that
history need not be understood for its own sake – rather the relationship
between the individual and the past is what matters.41 According to him,
in an artwork like a film, the spectator can become part of the text in a
way that is not possible with a historical text, and quite obviously with a
legal text or with any legalised form of inquiry. Where the idea of truth in
history or law will always remain attached to the object of study, in a film

36 Ibid 152.
37 Ibid.
39 Holmes (note 27 above) 991.
40 M Godby ‘Memory and History in William Kentridge’s *History of the Main Complaint*’ in
Nuttal & Coetzee (note 28 above) 100-11.
41 Ibid.
like the one by Kentridge, the film itself becomes the medium of memory that connects the spectator to the past.

Godby highlights how the conception of time is problematised in *History of the Main Complaint*. The fracturing of time in the film can be seen as a representation of 'subjective experience and the uneven process of memory' in contrast to a 'shared sense of reality' proposed by the TRC, for example. The wide use of fantasy gives space to the spectator's imagination and contributes to the notion of fluidity and contingency. The film calls for memory in contrast to forgetting because it is through memory that an individual can acknowledge her part or involvement in the past. Memory in this instance is not a forced, fixed and closed construction imposed from the ideal of creating a new community.

At the end of the article the author comes to the conclusion that Kentridge's representation of memory 'allows, or rather demands, that each person acknowledge his or her involvement in the violence of the past' and that 'the mundane image of the car journey represents the collective experience of apartheid'; 'the representation of injury in the mute form of the driver's body allows each witness gradually to discover the extent of his or her own hurt'. To my mind this might be a somewhat moralising and too fixed interpretation that goes against the author's own initial analysis of the medium of film. We turn to art in order to 'escape' the limits of the law and its inability to deal with trauma, 'contestation', 'risk', and the ethical. Art constructs, reconstructs and deconstructs simultaneously and continuously for this context, because it disrupts time and imposed forms of reconciliation created by law and legal institutions. JM Coetzee describes the Kentridge film series as a constitution of a 'yet-to-be-completed investigation into the troubled, amnesiac white South African psyche'. For Coetzee the full meaning of *History of the Main Complaint* only emerges in the context of the whole Soho Eckstein series of which it is a part. He refers, for example, to *Felix in Exile*, of which the conceptual basis is 'an analogy between landscape and mind . . . . Landscape hides its historical past from the eye; similarly, the mind projects its equanimity by forgetting or repressing what it does not wish to remember'. Coetzee notes that the exploration of memory that Soho has undertaken is incomplete and false and has not revealed any truth about his complaint. Explorations will have to continue.

Kentridge himself has said: 'I hate the idea that my work has a clear, moral high ground from which it judges and surveys. To put it blandly, my work is about a process of drawing that tries to find a way through the space between what we know and what we see'.

42 Ibid 111.
44 Ibid 84.
46 Ibid 33.
To summarise the argument so far: law, in its relation to time, to the past, the future and the particularity of the moment or the event, fails to follow an approach other than that which its own institutional form necessitates. The TRC is one example of an event that exposed these limits and failures. The examples of art and their relation to and interaction with time, memory and the imagination show a more open and fluid way of contemplating time and show the significance of slowness as a way of interaction with daily life, past, present and future. We shall now consider possible implications of these ways for reconfiguring legal interpretation.

IV LEGAL INTERPRETATION AS A STRATEGY OF DELAY AND JUSTICE AS LIMIT

Following from the contemplations on time, memory and particularity above I support a deconstructive approach to interpreting legal texts. My aim here is not to elaborate on the philosophy of deconstruction, but to highlight the time aspect inherent in deconstruction and to show how a deconstructive approach to legal interpretation can follow (in a similar way as in the readings of the art events above) a more open and fluid reading that is attentive to difference and particularity. A deconstructive approach embraces both a disruption of chronological time – and accordingly multiple notions of truth and fluidity of meanings – and a slowness or dwelling (strategy of delay). The ethical aim of such an approach is not to deny the reductiveness and the limits of the law, but rather to expose the violence inherent in institutional and legalistic approaches.

For Samuel Ijsseling, deconstruction draws our attention to the ‘unsaid’, to the open spaces in a text. It also problematises context in the sense that context can never be comprehended fully, or closed off. Related to context is the notion of the ambiguity and fluidity of meaning. Words have different meanings in different contexts. Not only that: Differences themselves and differential treatment also have different meanings and effects in various contexts. To give attention to these differences, deconstruction thus presupposes a delay in reading a text, a delay that highlights the ethical imperative of deconstruction. To interpret a text means to judge. Inherent to judging is responsibility. Responsibility is captured by an inescapable double-bind: Although we know that we must interpret the text, we realise the impossibility of full


48 See also M Minow & E Spellman ‘In Context’ (1990) 63 Southern California LR 1597.
comprehension or final interpretation. A strategy of delay takes notice of that which cannot be known, that which escapes interpretation. It focuses on that which cannot be systematised, predicted and foreseen.

Cornell\textsuperscript{49} renames deconstruction as ‘the philosophy of the limit’. The significance of this renaming is to emphasise the understanding of justice as the limit to any system of positive law. In other words, that it is impossible to capture justice within a system. John Caputo,\textsuperscript{50} repeating the words of Aristotle that ‘life is hard’ pleads for a reading of life that could restore difficulty. The essence of reading and interpretation must be to create an opening, not to find a resolution. This, however, is not an exercise in nihilism. A deconstructive reading, by following a strategy of delay, exposes the difficulty of interpretation, but does not make it impossible. It exposes the limit of justice, but does not deny justice. On the contrary deconstruction insists on the ideal of justice.

Derrida\textsuperscript{51} distinguishes between law and justice by applying the possibility of deconstruction – where justice is undeconstructable, the law can always be deconstructed. For Derrida, justice is more than distributive justice or having respect for the other as human subject in the traditional sense of the word. Justice is the experience of the other as \textit{other}. Derrida observes that the law can always be improved: Laws can be replaced by better ones, constitutions can be written and institutions created. Each time one legal system is replaced by another, it is a kind of deconstruction. The fact that the law can be deconstructed is a condition for historicity, revolution, morals, ethics and progress. Justice is what gives the impulse and the movement to improve the law. The law can be calculated – for example, a judge can see whether a person has obeyed a certain rule or not. Justice is not only a matter of knowledge or theoretical judgement. A judge must calculate, but a judge must also reinvent and not simply apply the law as a coded programme or test to a given case. However, the call for justice is never fully answered. A deconstructive reading, interpretation and approach exposes that there is a point, a limit beyond which calculation must fail. In other words, a deconstructive approach exposes the limits of the law. However, by following a deconstructive approach (as Ijsseling will have it, a strategy of delay) or in my formulation a slowness, attention to particularity, a certain ethical recognition is given.

\textsuperscript{49} See, in general, the works of Cornell cited in notes 8-9 above.
\textsuperscript{50} J Caputo \textit{Radical Hermeneutics} (1987) 1.
V Two Examples

In this section I recall a specific example from the TRC process recounted by Antjie Krog where the legally institutionalised manner of the process failed to address, to listen and to be open to the story itself but also to the way of recalling of the shepherd, Lekotse. Another example is taken from Douzinas and Warrington’s reflection on a case of Tamils seeking asylum in Britain in which the ‘door of the law’ was literally and figuratively closed for the refugees by the House of Lord’s emphasis on ‘objectivity’. 52

By repeating the tale of Lekotse the shepherd, Antjie Krog 53 exposes the failure of the institutionalised process followed by the TRC to recognise a construction of memory other than a simplified chronological linear recollection. Lekotse attempted to tell the TRC how his family was affected since the day when the police came to his house, broke down the door and violated the privacy of their home:

Lekotse: My family was affected since that day. Now my life was affected since that day. It was at night.
Ilan Lax: I want to know about your children first.
Lekotse: I have ten children, two have passed away. Now on the day of the assault, I was with three children at home.
Lax: Can you tell us about the incident that happened. Was it in May 1993?
Lekotse: Maybe you’re right you know my problem is, I was a shepherd. I cannot write and forget all these days. Now listen very carefully, because I’m telling you the story now. They were [at my home] you know, it’s a pity I don’t have a stepladder. I will take you to my home to investigate.
Lax: You indicate that you injured your shoulder. Did you sustain any other injuries?
Lekotse: I was not injured anywhere else.
Lax: In your statement you mentioned you were injured in your ribs? I’m just helping you to remember.
Lekotse: Are you not aware that the shoulder is related to the ribs sir?
Lax: Did you or your son ever make a case against the police?
Lekotse: We never took any initiative to report this matter to the police, because how can you report policemen to policemen? 54

Krog notes how Ilan Lax, the leader of testimony at the hearing, continually interrupted Lekotse at the beginning of his story. He did this because of a specific technique employed by the TRC when testimony was given. Krog explains that the leader of a testimony had a twofold task. First, she or he had to steer the testimony in a direction that would yield enough facts of use to the Commission and second, she or he had to let the testimony unfold as ‘spontaneously’ as possible so that there could be ‘healing’ and ‘renewed self-respect’. This is why Lax started off on a personal note by asking Lekotse about his children. But, as Krog observes, this technique made the shepherd impatient. He wanted to

53 Krog (note 16 above) 210-20.
54 Ibid 210-16.
continue with his story about the event that affected his and his family’s life forever. Lax kept on interrupting him and at a certain stage the shepherd spoke too close to the microphone so that Lax had to ask him to speak more softly. Then Lax asked the date:

This throws the narrator off course again. Surely the precise date on which your life was destroyed is irrelevant? It could have been any day, the important thing is that it happened.55

Lekotse hesitated for a moment and said that being a shepherd he cannot write and cannot remember dates:

But he is a hardened survivor, and he rightly gets firm with Lax: ‘Now listen very carefully, because I’m telling you the story now.’ He starts with a contradiction: ‘On that day, it was night.’ And this introduces the ambiguity that is maintained throughout the story, not only in the facts of the testimony but in the symbols used: day and night, white and black, life and death, educated and illiterate.56

Lekotse gave attention to details in his story: The police broke the door out of the door frame, stormed into the house with dogs, insulted the occupants, opened the closets and threw the contents on the floor. In the tradition of a shepherd he made the comment that not even a jackal, when it gets in among the sheep, behaves like this:

They were worse than jackals, says Lekotse. And since the jackal is the shepherd’s greatest enemy, a threat to the flock night and day, he means that the security police exceeded his worse expectations of evil.57

This story illustrates something significant about the limits inherent in any legal process. The TRC, as an institutionalised process and space, aimed to take account of difference. Yet, it failed. It failed to accept the diversity, the otherness of Lekotse’s life world. This failure might not be because of lack of good intention. The TRC could not address the shepherd’s difference fully because it was hampered by its own rational beliefs and rational life world and by following a specific technique when leading a testimony. It was hampered by its own institutionality and legality. This illustrates the inability of law to regard difference without reducing it to something that we know.

Douzinas and Warrington discuss the case of a number of Tamils seeking asylum in Britain.58 The reasons for the Tamils fleeing Sri Lanka was because the majority Sinhalese government and the Indian army lodged an offensive against the guerilla Tamil forces in the north of the islands. The applicants were refused asylum by the immigration authorities and challenged the refusal by way of judicial review. The

55 Ibid 217.
56 Ibid.
57 Ibid 218.
sole point for consideration was the interpretation of the phrase ‘well-grounded fear of persecution’ as found in the definition of a refugee under art 1 of the UN Convention on the Status of Refugees. The Court of Appeal held that the test for a ‘well-founded fear of persecution’ was qualifiedly subjective and that it would be satisfied if a person showed actual fear and good reason for this fear. The House of Lords, however, held that a genuine fear of persecution is not enough. The fears should have an ‘objective basis’ which could be ‘objectively determined’. The decision of the immigration authorities was re-instated and the refugees sent back to Sri Lanka. The authors note the injustice of this decision, how the fear and the particularity of the refugees were made abstract and generalised by the legal proceedings and by the ‘justice of a straightforward rule-application’. 59 ‘In the idiom of cognition, fear is either reasonable and can be understood by the judge, or is unreasonable and therefore non-existent’. 60

Would it have been to the benefit of Lekotse if the TRC interrogator was more attentive, took more time, shifted from a strict technique aimed at getting chronological and objective determined facts, accepted a more fluid approach, recognised the open spaces in the text? Or would it have been to the benefit of the Tamil asylum seekers if the immigration authorities and the court were more attentive, more willing to accept a subjective ground for fear than an objectively determined one? Would we move closer to the ever unreachable aim of justice if we are less rule bound, less predictable, less caught up in the speed of technical administration? Of course I am not arguing that it would have led to justice or would have taken away the violence that Lekotse and the Tamil refugees had suffered. However, by following an approach of slowness, greater attentiveness with the plight of the victims rather than interrogating, the stories told could have been heard in a more just, less rule-bound manner.

As said above, I am not suggesting a new method of law and legal interpretation to be followed, but rather an approach, which if embraced by legal scholars, lawyers and judges could have an effect on how we understand and do law in the long run. If a court procedure, for example, follows the suggested approach of slowness, of accepting the possibility of multiple truths, the disruption of chronological time and the idea of justice as the limit of the law and institutionalised legal procedures, then the justification that is provided, the reasons given for a decision might be richer, more reflexive and more reflective of the open and democratic society that we strive for. As Kentridge observes: ‘The more general it becomes, the less it works’. 61

59 Ibid 214.
60 Ibid 208.
61 Cameron; Christov-Bakargiev & Coetzee (note 34 above) 34.
VI CONCLUDING REMARKS

To end this piece we return to the beginning but it could also be that we begin by turning to the end. We recall Kundera’s call for slowness, joined explicitly by Auster’s character, Auggie. But implicitly the interpretation of art entails a certain slowness, to read and reread, interpret and re-interpret without hastening to a final end. The time that is followed by the law and legal institutions is a time that generalises and universalises and fails to embrace particularity and difference. Therefore, the law will always attempt to create false new communities, urge us to forget, or at least construct memory in a way that forces us to negate all risk. Such an institutional approach, because of its limits, will strive for speed and closure. An approach of slowness and delay reflects another relationship between law and time and another approach to law and legal interpretation.

An attitude of slowness and attentiveness when approaching life and when interpreting and negotiating the past, present and future is open to the various traces that occur and reoccur. We become aware of these traces when we listen to narratives, interpret art and the law. For Kabbo, certain traces, material elements of his life that cannot be reduced to language or static monuments, run right through his experiences and memories. The recollection of materiality, embodiedness and embeddedness assists in the struggle against the violence and reduction inherent in universalisation, generalisation and closure. Similarly, Auggie’s photographing of natural and human time and Sophie Calle’s attention to seeming trivialities allows the occurrence and reoccurrence of traces. An inherent part of Kentridge’s technique of charcoal drawings is to allow for various traces to haunt the viewer. He comments as follows:

I believe that in the indeterminacy of drawing, the contingent way that images arrive in the work, lies some kind of model of how we live our lives. The activity of drawing is a way of trying to understand who we are or how we operate in the world. It is in the strangeness of the activity itself that can be detected judgement, ethics and morality. Trains of thought that seem to be going somewhere but can’t quite be brought to a conclusion. If there were to be a very clear, ethical or moral summing up in my work, it would have a false authority.62

In following an approach of slowness to law and legal interpretation, an openness for traces and for other ways of remembering, imagining and justifying could come to the fore. A way in which justice (although it can neither be done nor seen to be done) and our responsibility to act justly can be reflected on in ways that are different from mere rule-bound justice, and the suffering of the other can become more prominent. ‘The Other persecutes me, puts me in passivity, asks me for sanctuary as (s)he persistently refuses it to me. And if this is the law of ethics, does the law heed its call?’63

62 Ibid 43 (own emphasis).