



These queer gardens: a South African story

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First submission: 30 April 2014

Acceptance: 19 August 2014

Two white male Afrikaans gay academics decide to respond to a call for papers to be presented at a conference with the theme “Gardens of justice” in Stockholm, Sweden in 2012. In the course of their attempt to co-author an academic paper on the history of the struggle for sexual minority freedom in South Africa, they are confronted by their own histories, contradictions, literary influences and context – confrontations that ultimately mirror the instability of subjectivity and the valences of a critically queer positionality in post-apartheid South Africa.

To reach, not the point where one no longer says I, but the point where it is no longer of any importance whether one says I. We are no longer ourselves. We have been aided, inspired, multiplied (Deleuze & Guattari 2007: 3-4).

This story is fiction. Those who recognise themselves in it are probably right.

1. Of a veld and a garden of delight

It was on his return from a year of study in the United States – after the man had broken up with his Dutch girlfriend and was ‘safely’ back in South Africa – that he first read the story in Koos Prinsloo’s (2008: 195–318) *Slagplaas*. The ANC had been unbanned and Nelson Mandela had been released from prison two years previously, but negotiations between the apartheid regime and the liberation movement to draft a new Constitution that would ring in democracy in South Africa was not going well.

The man read *Slagplaas* lounging on his bed in his room in a commune in the student suburb of Observatory, the door shut and locked. No one, he thought, must know that he was reading this volume of short stories about Aids, sex, loneliness, the oppressive workings of heterosexual, white power in apartheid South Africa, and the struggle with the real and symbolic father. But there was one story – “Belowe jy sal vir niemand sê nie” – to which he returned several times over the next few weeks (Prinsloo 2008: 285–93).¹ The story appears to be a jumble of events and snippets of gossip put together in a haphazard manner to depict the sexual awakening of the (gay, white) narrator in apartheid South Africa. The narrator – now 16 years old – takes his dog for a walk in the open veld behind the swimming pool of the small mining town in the Eastern part of South Africa where he lives with his parents.

A man in khaki pants and shirt walked some distance ahead of me. I did not take much notice of him until I came upon him in a ditch where he was lying behind a mound of earth. His pants were unbuttoned and when he saw me he immediately stopped masturbating. I walked towards him. I was breathing faster now. ‘Sawubona,’ I greeted while he jumped to his feet. He wants to take a bath, he said, pointing in the direction of the dam. We both looked at each other for a while. His muscled diaphragm urgently moved up and down. Then I said, ‘I want your thing.’ I pointed towards his pants. No, he does not have any money, Boss, he answered, clearly flustered. I turned around fast and rushed back

¹ Translation: “Promise you will not tell anyone”.

into the veld [...] When I finally turned around and looked back in the direction of the dam, I immediately spotted him. He was standing on top of a mound of earth. Above his head his khaki shirt was wildly fluttering above his head. Without looking back again, I walked along the fence in the direction of home.²

Months after the successful election in 1994, with a new Constitution prohibiting discrimination on the basis of sexual orientation safely in place, the man found himself kissing a young man outside *The Bronx*, at that time the only gay bar in Cape Town, situated in a precinct that would soon be referred to in certain gay circles as the garden of delight. The young man he was kissing had stuck his hands into the back of the co-author's pants and was massaging his bum. What was his name again? Bongani, perhaps – there had been so many guys in the previous year. Or was his name Lonwabo who, later, after a wild sex session in the man's bed in his apartment in Cape Town's upmarket Tamboerskloof – used condoms strewn like wilted rose petals on the floor – whispered that he was a Sangoma and, while caressing the man's hair and fondling his penis, said that he could sense intimacy issues?

Now, as they were kissing outside *The Bronx*, a police van stopped in the street next to them. "Any trouble here?", the white policeman asked, eyeing Bongani's – or was it Lonwabo's – hands stuck down the back of the man's pants. No trouble, the man said, smiling at the young Afrikaner policeman in his blue uniform. Go away. This is the new South Africa and we are free to do what we want.

2. Tale of a tree

It was only in those weeks before the conference with the solicitous theme, "Gardens of justice", that I suddenly remembered the tree. It was not that there was not, before then, ample opportunity to remember the tree. I was, after all, the one who boldly published the South African Constitutional Court logo (depicting the notion of justice under a tree) on the cover of my course outlines of that year, in an attempt to make my students more alive to the transformative imagery of post-apartheid jurisdiction as rooted in the African practice of dispensing justice under a tree.

² Translations are the authors' from the original Afrikaans.



Logo of the Constitutional Court of South Africa³

The tree I remembered was a tall, lone-standing, old jacaranda tree at the edge of the vast rugby fields of the high school that I attended during 1996. For some reason someone had, once upon a time, thought that it was a good idea to plant a tree on this out-of-place spot. Later, someone thought it would be nice if there were to be a small bench underneath the now grown tree.

I was sixteen at the time and a pupil and boarder at that horrible school in that horrible town that they called Brits. For me, as for most teenagers in their sixteenth year, everything was horrible and bitter – never mind ‘sweet’ sixteen. Whoever came up with that expression had forgotten what it was like to be sixteen. In fact, there was only one thing that year that was not horrible – the only thing that was not horrible was the tree. To be honest, to me the tree was beautiful. That summer it stood there in full purple bloom. In hindsight one could say, I guess, that it was an exemplar of all the jacaranda trees that, to this day, envelop the streets of Pretoria – that city, not very far from Brits, whence South Africa’s own version of the banality of evil was administered.

Now, as I was remembering the tree, I also remembered all the folklore about the jacaranda trees of Pretoria. Of course, Wikipedia can aid one’s memory here. As it proclaims:

³ <<http://www.constitutionalcourt.org.za/site/images/contcourtlogo.tif>>

Pretoria in South Africa is popularly known as The Jacaranda City due to the enormous number of Jacaranda trees planted as street trees and in parks and gardens. In flowering time the city appears blue/purple in colour when seen from the nearby hills because of all the Jacaranda trees. The time of year the Jacarandas bloom in Pretoria coincides with the year-end exams at the University of Pretoria and legend has it that if a flower from the Jacaranda tree drops on your head, you will pass all your exams.⁴

But at the time that the lone Jacaranda tree in Brits became beautiful to me, I had known nothing about the legendary status of its blossoms in Pretoria as a symbol of good luck to university students. Nor was I particularly aware that for many people in South Africa the jacaranda tree represented the cruel commanding heights of apartheid. After all, even though it was 1996 and apartheid had formally come to an end, I did not live in the world's most enlightened town by any means. It also has to be said that that year was a year of wallowing in complacency: everyone in the right-wing Afrikaner town of Brits pretended that apartheid was not really over and that year I was not interested in what was going on in the world outside Brits – it was an interim year, after all. I was in Standard 9. That summer, I simply did not care what was going on in the world outside my immediate surroundings, because that summer the tree became beautiful to me for reasons that remain particular to that time, to that place and to myself. In short, I can say that the tree became beautiful because of J.

J was part of the 'in' crowd, popular with the girls and buddies with the macho group of bullies that ruled the pupils of our school like a wayward band of Jacobins. They had particular knives out for those of us who were regarded as the school nerds – the ones whom everyone hated, though we had given them no reason, done them no harm. The ones whom everyone liked to pick on and call *moffie* – the Afrikaans equivalent of 'faggot' – only that the physical pain, psychological destruction and remnant scars that lie locked inside that little word, never do translate. The *moffies* were the ones who were different, who hid in the school library during break because the Difference they carried with them made of them a danger to themselves. If they were to walk around freely among the general school crowd during break, their Difference would get them into trouble. Difference was dangerous in Brits – it could even be a cause of death. If we could only get rid of the Difference, we would not have to live always in fear that our persecutors (who were laying down the law in the thick shrubbery at the edge of the school gardens where no one could see them) would one day also come for us. They were always promising us that they would.

4 <<http://en.wikipedia.org/wiki/Jacaranda>>

The meetings always took place in the dark. Just after 20:00, just after study hour in boarding school, in the half-hour break before it was shower time and lights out. The meetings always took place on the bench under the old jacaranda tree. Who remembers today whether it was J or I who suggested this as a meeting place? Who remembers today how it came about that we started talking to each other? Maybe we passed each other one evening in a lonely corridor of the boarding house, looked each other in the eye, understood. It was only much later in life that I encountered the thought of Hegel and understood that what happened between me and J was something called 'mutual recognition'. At the time, I recognised only that J was different from the others, that it was a difference that mattered to me, that it was a difference that mattered to him and a difference he recognised also in me.

We would sit on the small bench under the tree, almost enveloped by its enormous canopy. We would talk about the day in class, about our classmates, about what to do once we were finished with school and we would now and again even talk about our dreams, of who and what we wanted to become once we had left Brits, once we were finally done.

J would furtively smoke a Chesterfield Blue cigarette and blow perfect smoke rings into the still night sky. I would sit close to J, my right arm touching his left. I would watch his perfect lips forming the smoke rings and, as he released them, look as they drifted in the direction of the noisy boarding school, lost their perfect form and eventually disappeared. I thought of the smoke rings as reluctant, faint signals disclosing the location of these strange, fleeting meetings.

In time, I realised, of course, that I was in love with J. But it never occurred to me, at the time, to think of myself as homosexual or gay, or even as a *moffie*, although I was constantly being told that I am one. I would only years later learn from my friend, the gay academic, that one calls this kind of compromise or denial 'internalised homophobia'. As far as I was concerned, I simply loved J. Such was my adolescent, hopelessly romantic affection that I even secretly carved out the cryptic message, J ☺ J, in the trunk of the old jacaranda tree, as if that engraving could and would somehow magically bring about the relationship I dreamt of with J. Because even if I didn't know at the time what it meant, I did dream of a relationship, of the closeness of J, of some sort of permanence ...

But it was 1995 in post-apartheid South Africa in a town called Brits, considered to be one of the strongholds of the ultra-right-wing Afrikaner Weerstandsbeweging (AWB) movement. In Brits, apartheid was alive and it was well – its ideologies firmly and terrifyingly hammered and drilled into the susceptible minds of young schoolboys who were supposed to, but did not know better, or simply chose not to – many of us were not brave. THAT you could see on the stricken indoctrinated faces in the group photos taken in

the school garden every year, to remind you, in years to come, that, indeed, once you had been there.

Little did I (nor J, for that matter) know that there was now such a thing as a Constitutional Court and that that court would soon, in the spirit of justice under a tree, rule that the unnameable desire I had felt for J was no longer criminal. Not that I (nor, for that matter, J) knew at the time that the desire I felt for J was prohibited by the law of the land. We knew something much more terrifying and much more upsetting: we knew that those meetings under the tree could not last, could not develop, that the desire under that tree was Against the Bible, that it was Wrong, that it was a symptom of a dreadful illness from which one could die, that if discovered, it would be the end of one's life.

Such were the things we were taught as Afrikaans schoolboys. That was the way it was. That was the only law we knew and that was the only law that it was imperative to obey. Never mind Constitutions and judgements and abolitions of crimes in relation to male sodomy. That was not our world. That was not our life. In our world, the only beautiful, unblemished, unthreatening thing was the old jacaranda tree and the small bench at 20:00 on a midsummer's night. That was all we could have had, that was all we could have wished for. Never mind justice under a tree ...

The co-author finished reading his colleague's contribution to their narrative. He stumbled through the dark passage of his apartment to the kitchen and poured himself a big glass of red wine, hoping that it would help to drown out the voices of his own past. Usually, Google also helps for this, so he opens his laptop and begins to type. On the website of the Project for Public Space, he finds the following description of South Africa's Constitutional Court building, which he reads aloud, his voice competing with the husky tones of Adele coming from the docking station in the corner, assuring a former lover that she wished nothing but the best for him:

The Constitutional Court of South Africa is a new kind of court house: one that has become an inclusive public space and civic center. Built within a paradigm of place with the leadership of Justice Albie Sachs and enriched by the contributions of local artists, the court honors the site's and the nation's history and integrates the building into the neighborhood's present. It balances the needs of security and transparency and shows that courts can and should be town squares: public places of learning and exchange.

As Sachs explains in *Art and justice*, "the unifying theme of this building is the traditional form of participatory and transparent justice under a tree,"

a symbol which encapsulates much of South Africa's history and traditions (Law-Viljoen 2009: 17). "In traditional African society, disputes are often settled by the elders of the community who gather under a tree for this purpose. The limitations of the old patriarchal structures in many African societies notwithstanding, this way of solving problems is transparent and community oriented" (Sachs). Justice Sachs goes on to explain that

something like art in a building seems a very small thing, but it obviously touches something quite deep. We incorporated the pain of the past in the court building. An original prison staircase is in the foyer. The bricks of a demolished prison now clad the court chamber. The building speaks the story. When you come into our court, it involves millions of people who struggled. We bring forth the suppressed voices of the past. We bring in history in such a way that we can transcend our past. This story is not about the triumph of one group over another. This story is told both unconsciously and consciously – we transform negative energy into positivity, by engaging with the past, not denying it.

3. Beasts and sovereigns

Sunday 2 September 2012 14:45

To: Pierre.DeVos@uct.ac.za

From: aj.barnard-naudé@uct.ac.za

Subject: Koos Prinsloo and queer gardens

Message:

I took those stories by Koos Prinsloo collected in *Verhale* (2008) with me to a sunny Clifton Third Beach today which was surprisingly busy given the still somewhat chilly early Spring weather, but I guess that, after the long winter, the queens are tired of the clubs and couldn't wait to start mincing and cruising in nature again ...

Anyway, mindful of the upcoming conference (and that we don't have a paper yet!) I deliberately looked for references to animals, nature and gardens in those Prinsloo stories. You will be amazed! I am convinced that the idea of a queer garden (ie a garden or gardened space in which everything is not quite right, in which things become "ungardened") runs like a golden thread through the stories. The very first story, "By die skryf van aantekeninge oor 'n reis" (Prinsloo 2008: 11-8) ("On writing' notes about a journey"), opens with a scene of a young man returning to his family home from a journey, opening the garden gate himself and noticing that the honeysuckle hedge had been chopped out. The gate was new

and the wire fence around the garden painted silver. There is a dog in the garden chewing on a daffodil, trying to wag its tail. At the end of the story, the young man reads his notes about his journey to his family. And what he reads is simply the opening words of the story: the young man returned home from his journey. He opened the gate himself. He saw that the honeysuckle hedge had been chopped out. The gate was new and the wire fence painted silver. The garden looked like a new world, he thought. As if nothing else mattered. As if opening the gate to a new garden himself was the only thing that mattered.

What does this mean, I ask you? You who talk about the queer subject's struggle with real and paternal authority? You know, the reference to the hedge that had been chopped out reminded me of Hannah Arendt's observation in *The Human Condition* (Arendt 1998: 63) that the Greek word for 'law', *nomos*, means hedge. Does the chopped out hedge in the story somehow signify transformation, openness, disorder, a new beginning, the dawning of self-acceptance and the birth, perhaps, of a queer subjectivity on the part of the narrator? An "ungardening" through which the heteronormativity of the law is challenged and called to respond to what lies beyond it as alterity? You also came back from a journey once. Are we to understand this ungarded space in Prinsloo then as a metaphor of transgression, disruption, displacement and revolt against paternal heterosexual monogamous authority, represented as it is by the house that he comes home to? Or is it that the new and transformed, ungarded garden anticipates the South African transition? And the narrator opening the gate *himself*? Are we to read a certain coming of age here? No one opens the gate for him (anymore). Is there a certain taking up of responsibility here? A certain becoming host of him who has always been an unwelcome guest?

See also, for instance, the story "Haasjag" (Prinsloo 2008: 361-3) ("Hare hunt"? How on earth do you translate this reference to queers as hares?). Maybe you can tell us a story about that? One of the characters picks up a man in the park at the art gallery and takes him home. It turns out that the man is a queer bashing policeman accompanied by his cronies. They take the character called "Ander Man" (Other Man) to the police station where they physically and verbally assault him throughout the night. So, in Prinsloo, the park, the garden is also a place of danger, because it amounts to a lawless (shall we say queer) space where prohibited desire both finds temporary refuge and must, precisely because of this, risk exposure and therefore danger or even simply (heteronormative) discipline. Are these ungarded spaces, these queer gardens, good or bad then, or are they in fact beyond good and evil?

PS. See also the stories "Die Wildbewaarder" (Prinsloo 2008: 357-60) ("The Game Warden") in which the heterosexual adultery takes place explicitly (and

I think intentionally) again in the ungardened space of the Wildtuin which translates literally as game garden or wild garden, although in English we call it a game reserve; and also the very queer role that the unruly pink Pride of India tree plays in the story “Oog vir ‘n oog” (Prinsloo 2008: 69–74) (“Eye for an eye”), ending up being compared to an illness by one of the characters. Almost as if the tree becomes a metonymy for queer subjectivity during apartheid South Africa ...

J

Addendum

A phrase from Derrida’s (2011: 54) *The beast and the sovereign*, 2: “and if there were homosexual desire, it would go, symbolically and symptomatically, via the symbolics of young slaves and beasts”. He makes this statement in the context of a discussion of Defoe’s *Robinson Crusoe* and particularly in the context of an observation that there are no women on Crusoe’s island, that Woman is singularly and absolutely absent. And he says that if there were women, there would be a desire “to come and limit sovereignty”.

So, at least in *Robinson Crusoe*, according to Derrida, even if there were homosexual desire, it would be the desire of “slaves and beasts” – it would still correspond perfectly to “solitary and exceptional sovereignty”. Thus sovereignty remains perfectly intact where there is homosexual desire. Why? Precisely because the sovereign’s desire, the hero’s desire, the king’s desire (and shall we then also say the law’s desire?) is not and can never be homosexual – homosexual desire would mark a lapsed subjectivity, the failure of sovereignty – bestiality. Where there is sovereignty, homosexual desire (as Lacan’s desire of the Other) is excluded in advance. The great threat to sovereignty is not homosexual desire – it is the possibility of heterosexual desire that would “come and limit” it.

Homosexual desire is the desire of slaves and animals, or as Derrida says, of “the beasts you eat or that constantly threaten to eat you”. The desire of the men, the properly sovereign men, cannot be homosexual – the men of the novel are, in fact, without desire, without sexual difference. That is why the novel attracts and attaches readers the world over, “readers become children again, as if, like in Paradise, sexual difference had not yet taken place or no longer had any reason for being”, except, of course, when you are a beast (Derrida 2011: 54).

And is that not precisely what Prinsloo keeps telling us in these stories? That from the point of view of the law, the queer subject, queer desire, is always bestial, animalistic, slavish. Literally, the queer subject in the ungardened garden is animalised in that story called “Haasjag”, rendered a hare in a park. The queer

is the beast, the not human, always doomed to proceed “via the symbolics of young slaves and beasts”, at least but not only from the point of view of the law. The queer cannot touch the law; she cannot limit its sovereignty, because the law is always above her. In the story “Die plaas se naam was Jakkalsdraai” (Prinsloo 2008: 75–80) (“The name of the farm was Jakkalsdraai”), this is further extended: the two children (or shall we say young slaves, in keeping with the idiom?), boy and girl, play hide and seek in the garden and end up showing each other their genitals. The mother-sovereign/phallic mother discovers them and hits them, banishes them back to civilisation. And let us be sure that, by virtue of their legal status, the boy and the girl occupy the symbolic space of homosexual desire; they are, symbolically, in a position no different from Derrida’s “beasts and slaves” – from the point of view of the law, a homosexual couple who have transgressed the Law. As so consistently in Prinsloo, the homosexual relation is depicted here as never far away from death, never far away from being put to death or at least, from being subjected.

And yet. I want to say and yet ...

No, but let me tell you another story. But whether it will answer your questions is, of course, another matter. Remember the time back in 2006 when we went to Parliament to make oral representations in front of the Home Affairs Portfolio Committee?⁵ In response to the Constitutional Court judgement in the same-sex marriage case of *Minister of Home Affairs v Fourie*, the Department had drafted a Civil Union Bill which would have extended partnership rights to same-sex couples without granting full marriage rights and we went there to tell them straight that their Bill would not comply with the Constitutional Court judgement. We even wrote a series of journal articles about our experience.

Remember our argument beforehand about the inherently heteronormative character of marriage and about whether we were acquiescing in our own oppression by trying to get a law passed that would extend marriage rights to some, while excluding those who were not in nuclear family-like relationships? Remember how I dared the chairperson of that Committee that I would give him one year of my salary if their Bill were found to pass constitutional muster, if he promised to give me one year of his salary if it did not; how I spoke about my mother and all the other mothers dreaming only that their gay sons and lesbian daughters could get married so that the wedding pictures could be placed – among those of the other children – on the emoya display cabinet among the porcelain dogs and the commemorative plates of the Centenary Celebration of the

5 The experience is accounted for in academic terms in Barnard & De Vos 2007.

Kranskop Dutch Reformed Church? Ha, when we were done, we knew that they would change the Bill to include the marriage option for everyone!

But what I never told you, my dear friend, is this: after our seemingly triumphant performance in Parliament and the celebratory coffee at Fayeza's coffee shop in Plein Street afterwards, I did not go back to work as I told you I would. I passed by my home to get rid of the horrid, respectable suit and tie, before driving to Sandy Bay. As I usually did in those days, I parked my car in the parking lot at the top of the makeshift steps and walked down to get to the footpath that would take me to the delights of Sandy Bay. It was a sunny day, but it was not warm and I only met one or two other bathers coming back from an excursion to the nudist beach at the end of the path. It's a beautiful, very Capetonian walk (have you ever been?) with the Twelve Apostles mountain jutting up from the ocean on one's left and the waves crashing over the huge rocks on the right. There was the distinct herbal smell of fynbos in the air. By the way, I have never understood why conservationists got so excited by those ugly looking and unruly knee-high bushes. Who cares if a few of them become extinct? I always preferred the alien wattle bushes which grew behind the rocks as you approached Sandy Beach proper because those bushes could hide things: that is where the action was. Now most of those wattle bushes have been chopped down by the Work for Water crews – ostensibly to get rid of the alien plants endangering the fynbos of the area and providing short-term jobs for unskilled labourers, but I always suspected it was to stop the rampant cruising that went down in those bushes.

At the usual spot I ducked under the branches of the wattle trees – after looking over my shoulder to check that the odd respectable nudist would not see me – and entered the garden of delight, with its narrow footpaths and its secret private alcoves. A naked fat man (maybe it was a druid?) stood at the first fork in the path, furiously masturbating his semi-erect cock while looking eagerly, what I thought almost pathetically, down at my unresponsive crotch. Out of respect, I averted my eyes from this apparition and headed deeper into the bushes in search of more promising pleasure seekers. It was only after about half an hour of wandering about that I spotted the young man with the dark eyelashes, olive skin, curly hair and a small scar over his left cheek, leaning against a tree.

He was smoking, dressed only in a black speedo and Havaianas, his cigarettes with lighter and bottle of poppers, I was later to discover, propped inside the cigarette packet which was tucked into his speedo, a small square silhouette on his hip. He followed me deeper into the maze until we arrived at the small clearing at the end of a path, the overhanging branches creating a roof of sorts, our own private cathedral of desire. When he kissed me, I could taste the cigarette on his breath. Later, as he penetrated me, my legs hooked over his shoulders, he bit my

ear before whispering urgently in Afrikaans that it was the first time that he was fucking a white man. "Donovan," he said. "My name is Donovan. Say it. Please." Afterwards, our naked bodies entwined awkwardly on my green kikoy bought on a trip to Kenya (what a cliché!), he lit two cigarettes, one for him and one for me. "Isn't this the best?" he said, before blowing smoke rings into my face and kissing me again on the lips. "I could never do this with my girlfriend." I smiled. "Yes," I said. "Yes, it is the best, Donovan." A triumph, even I thought, without saying it out loud. But then a sudden memory of a passage by Judith Butler I had recently read turned my thoughts in another direction and the moment was disturbed by me worrying what this interaction actually *meant*. Was this a queer interaction, subversive to the core, or was I being far too fanciful and self-important? What is that passage in Butler again?

If a regime of sexuality mandates a compulsory performance of sex, then it may be only through that performance that binary systems of gender and the binary system of sex come to have intelligibility at all. It may be that the very categories of sex, of sexual identity, of gender are produced or maintained in the effects of this compulsory performance, effects which are disingenuously renamed as causes, origins, disingenuously lined up within a causal or expressive sequence that the heterosexual norm produces to legitimate itself as the origin of all sex (Butler 1991: 29).

My dear co-author, I could, of course take this story into another direction. I could say that Donovan and I did not use a condom that day. I could say that the idyllic moment under the branches of the wattle trees had irrevocable consequences. I could pretend that it was on that day, under those bushes, with that beautiful olive-skinned youth that I contracted the HI virus that I now keep at bay with my daily dose of anti-retroviral drugs. But that is not what happened. On that day, we did use a condom. In fact, even the second time we made love, after he told me that the scar on his cheek was caused by a fellow gang member who had stabbed him with a broken beer bottle after a disagreement about money and after sniffing some of his poppers, I insisted on the condom. It was only two years later that I contracted the virus in another, rather less idyllic, setting. But that, my dear co-author, is a story for another day.

4. Leaving the garden gate ajar

I remember that day in Parliament and I remember how outraged I was every time the chairperson of the parliamentary committee generously indulged homophobic arguments in the presence of LGBTI activists – those arguments that homosexuality is against the Bible or that marriage is an "inherently" procreative

institution and, therefore, that same-sex relationships are, by definition, excluded from its ambit. Those arguments that homosexuality is not African, the arguments that legalising same-sex marriage would be the beginning of a slippery slope that would lead to the legalisation of bestiality and necrophilia. Afterwards, I did go home and I told my partner that I had that day lost ten years of my life, but that it was worth it, because, as you say, we won the day and the Civil Union Act was passed, legalising same-sex marriage for the first time in Africa.

Do you remember that day, about a year later, in September 2007, in the garden of a farm in the Overberg district? I am talking, of course, about my wedding day. Of course, that garden wedding in September was preceded by a short and rather mundane ceremony in the Cape Town Magistrate's Court the week before. It had to be done that way, because marriage officers under the new Act were hard to come by then and, in any event, we did not, on our 'real' wedding day, want to be married by an impersonal officer of the law. Again, here we have the double bind, I suppose, between the legal and the ethical: legally, we were married by a stranger magistrate in Cape Town on 25 September 2007 – that's what the piece of paper says. But ethically, we were married by two female friends (friends, you could say, who have always represented another Law, since they happened to be feminist legal academics) on that chilly spring afternoon of 29 September 2007 in grandmother Nan's garden when we exchanged vows that I had written on the basis of Derrida's idea of the double yes:

When I say "yes" to the other in the form of a promise or an agreement or an oath, the "yes" must be absolutely inaugural. Inauguration is a "yes", I say "yes" as a starting point, nothing precedes the yes, the yes is the moment of the institution, the origin; it is absolutely originary. But when you say "yes", if you don't imply that the moment after that you will have to confirm the "yes" by a second "yes" – when I say "yes", I immediately say "yes, yes" – I commit myself to confirm my commitment in the next second, and tomorrow and after tomorrow and so on, which means that the "yes" immediately duplicates itself, doubles itself. You cannot say "yes" without saying "yes, yes", which implies memory in the promise; I promise to keep the memory of the first yes and when you, in a wedding, in a performative, in a promise, when you say "yes, I agree, I will" you imply, "I will say 'I will' tomorrow and I will confirm my promise", otherwise there is no promise. Which means that the "yes" keeps in advance the memory of its own beginning. That's the way it's a different word. If tomorrow you don't confirm that you have founded today your program you will not have any relation to this yes (Derrida 1994).

In a sense, I guess, we could say that for me and for the man I love and share my life with, that garden on that day did represent a garden of justice, but not a triumphant, arrived and final justice, but rather a modest, fragile, emerging, singular and even commemorative justice, but a justice nevertheless that is always on its way, arriving, promising, rather like a summer garden in spring time. And, ultimately, an ethico-political act. That is what the double "yes" implies, is it not? I must say "yes" tomorrow because I have said "yes" today.

Almost two years have passed since we delivered this paper at the conference in Stockholm. These two years have brought few answers. Questions abound. For instance: Is the justice I write about above possible only on condition of the law that came before it in the form of the Civil Union Act? Further, can the double "yes" be guaranteed, safeguarded, by this law? Rendered more probable? Does the law make it easier to affirm the double "yes"? I think so and I do not think so. But I remember the many happy smiles and tears of joy on the faces of that couple from the Garden Route who were the first to get married in the Magistrate's Court in Knysna, hours after the Civil Union Act was signed into law.

Does it matter that that couple is now, like many others, no longer married? Does the law, not equally and simultaneously, have something to say about the "no" that emerges here? To say "yes" implies the dangerous possibility that there may come a day on which either, or both of the promises will say "no". You know, Derrida (2005: 703) once said that "to be is to be queer". So equality, then, as we have written before, means also that your "yes", like the "yes" of those who always could legally say "yes", dwells with the possibility of the "no" (Barnard & De Vos 2007: 811-3). So is it then not also the case that there remains the question of another "yes", an other "yes"? A queer "yes"?

You know what I want to say here. It concerns the hotly debated question in queer theory that the actor James Franco articulates forcefully in his recent queer documentary *Interior. Leather Bar* (Franco 2013):

We like to think that we should have equal rights for everyone [...] but one thing that it's doing [...] is normalising [...] a queer lifestyle that actually is incredibly valuable and then [...] if it becomes legal nationally, what will happen is that pressure will be put on anybody that's [...] living a gay lifestyle to get married [...] you're gonna be expected to get married just like straight people.

What does it mean to say "yes" to this question? And the justice of another "yes" – a "yes" that is not yet and as yet (at least legally) impossible, even if one has said "yes" to its "yes"? What is a queer marriage, if there is such a thing?

One day I will write a story. It will begin like this: "The man returned from his journey. He opened the gate himself. He saw that the honeysuckle hedge had become unkempt, its sweet, heady scent on the breath of the wind. The gate was dilapidated and the wire fence unpainted, full of holes. The garden looked like a new world, he thought. He went into the house. A gentle breeze blew the squeaky garden gate ajar ..."

Bibliography

- ANON (S A) JACARANDA. *Wikipedia*. <<http://en.wikipedia.org/wiki/Jacaranda>>.
- BARNARD J & P DE VOS (2007) Same-sex marriage, civil unions and domestic partnerships in South Africa: critical reflections on an ongoing saga. *The South African Law Journal* 124(4): 795-826.
- BUTLER J (1991) Imitation and gender insubordination. In: Fuss D (ed) *Inside/Out: lesbian theories, gay theories*. Routledge: New York, pp. 13-31.
- DELEUZE G & F GUATTARI (2007) *A thousand plateaus: capitalism and schizophrenia*. Transl B Massumi. London: Continuum.
- DERRIDA J (1994) Villanova conversations. <<http://www.egs.edu/faculty/jacques-derrida/articles/villanova-conversations>>.
- DERRIDA J (2005) Justices. *Critical Inquiry* 31(3): 689-721.
- DERRIDA J (2011) *The beast and the sovereign*, 2. Transl G Bennington. Chicago: The University of Chicago Press.
- FRANCO J & T MATHEWS (2013) *Interior*. Leather Bar. Culver City, CA: Strand Releasing.
- LAW-VILJOEN B (ED) (2009) *Art and justice: the art of the Constitutional Court of South Africa*. Johannesburg: David Krut Publishing.
- MINISTER OF HOME AFFAIRS AND ANOTHER v FOURIE AND ANOTHER 2006 (1) SA 524 (CC).
- PRINSLOO K (2008) *Verhale*. Cape Town: Human & Rousseau.