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The Aesthetics of Human Rights

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The Aesthetics of Human Rights

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Human rights are up for debate. The sense of how many and what types of rights we have continually expands, and rights' cultural and political significances are diverse. As Michael Ignatieff (2000) has argued, human rights have undergone a "revolution" in the second half of the twentieth century. This entails human rights' growth from a limited concept pertaining to international institutions (specifically the UN and the state actors involved) to a broad social concept deployed by ranges of grassroots social movements and individual petitioners for rights. Human rights have become a "master term" in the late twentieth and early twenty-first centuries, as Arjun Appadurai (1990) phrased it – they have become "culturally dominant" in Fredric Jameson's (1991) sense of the term. Human rights are ingrained in national and international law. They are also ingrained in international political culture. However, the increase in rights' importance does not add to their intelligibility. Human rights are highly present in global cultural and political debate yet maintain an ambiguity. This is to the extent that rights are simultaneously self-evident and intensely criticized. In order to understand this, this issue of *Academic Quarter* takes up rights from the alternative perspective of aesthetics, representation and problems of socio-historical context.

This might be explained. Firstly, human rights gain life, or “animation,” via their articulation in political culture in part as art, advertising, written fiction, film, electronic media, the Internet, “lifestyle,” fashion and journalistic *reportage*. It is rare on a popular scale to read the Universal Declaration of Human Rights or the European Convention on Human Rights. Nonetheless, heard fragments from political speeches and movies, books and newspaper articles present us with a need to “know” rights. We encounter rights in discourse, articulated by politicians and the arts, “high” cultural artifacts and “low” culture as well. Human rights pervade “natural” senses of our everyday world. However, hardly ever do we take the time to think about fundamental questions about rights’ “staging”: what is at work in the presentation of human rights and why?

In the current themed issue, articles focus on the broad cultural and political significance of human rights and their aesthetic forms. By this we mean not the form of the human rights legislation, but the form of the discourses that both support and critique human rights. We focus on life stories that lie behind human rights law: tales of atrocity, witness and interpersonal and intercultural relations. We also focus on the discourses that modulate, explain, politicize or aestheticize such stories. We ask formal questions about presentation, enunciation and aestheticization of rights: who speaks how on behalf of whom? What is the relation between form and purpose in rights discourse? The aim is to rebuild a link often broken: the relation between the form and the content of human rights. The meaning of human rights is often assumed to be inherent. However, there is a need to articulate and represent rights in order to make them real.

As such, we would like to highlight a row of issues pervading the articles in this issue of *Academic Quarter*. What is the relation between the human and the “humanitarian,” or human and “humanitarian” stories? How do we transpose real-life stories into humanitarian discourses without losing the immediacy, trauma and subjectivity of subjective experience – i.e., not turning subjects into objects? In what form can human rights be enacted and how do we avoid the split between the rights of citizens (one’s ability to speak and be heard) and the rights of “man”: the universal being in his or her natural state? Such problematic splits lay at the core of Aristotle’s two concepts of *polis* (the distinction between the *polis* as inclu-

sive of all, citizens or not and the *polis* as purely citizens); they sit at the heart of the question of indigenous rights. The problem of rights' universality and particularity realize themselves in the French Declaration of the Rights of Man and Citizen, and as Hannah Arendt (1958) noted, such issues were radically actualized in the Holocaust and the totalitarian reduction of former citizens to "mere" human beings without any rights at all. Within the twentieth century's long history, after 1989, the world may have thought for a short instant that the tables might have turned: that is the possibility that global citizenry would be united in universal rights; Francis Fukuyama's (1992) "end of history" thesis suggested this possibility – a new, liberal world would grant people their rights. However, as Jacques Rancière (2004) has argued, this utopian moment was quickly surpassed; what we have seen in the new millennium is not the "return" of human rights, but the inculcation of the rights of the victim, the rights of the rightless, or as he phrases it, a shift from "Man" to "Humanity, and after that, a transition from "Humanity" to "Humanitarian." Have we lost the human essence, or recreated it at the end of the twentieth century and start of the twenty-first in a new, conceptual and institutional form?

This begs questions of representation, meanings for the relation between fact and fiction as well as interrogations into of style and genre. How do we handle fictional moments in otherwise realistic testimonies of human rights violations – violations of our "humanity" – and how do we span representational spaces in which rights are a matter of fiction (e.g., films, books, videogames), yet maintain references to "reality?" Holocaust researchers, for example, document that testimonies are never neutral; representation follow rules of "textual" engagement (LaCapra 1996). Joseph Slaughter (2007, 4-5) has similarly argued that human rights law and the *Bildungsroman* share a "deep narrative grammar": a specific form of "egalitarian imaginary." Nonetheless, reports and stories of evil often also carry the mark of silence and trauma and sometimes appear as incoherent or incomprehensible stories.

The question thus arises to whether, for instance, "atrocities tales" – stories of human rights violations – follow culturally-established forms or whether they breakdown normal pattern of narrative and aesthetic expectation. What is the truest form, if any, of representing human rights violations? This question becomes yet more acute

when we are second-hand witnesses, when we talk about abuses that have happened to others and we have heard about *through* those who have had first-hand experiences. How do we get close to their sufferings? How close should we try to get? Respect may demand distance. This is just as truthfulness may demand reflection rather than immediacy. The form of telling about and representing human rights violations nonetheless often takes the opposite form, using violence and pathos to enlarge sympathy with the victims. In some theories about posthistorical, “postmodernized” memory, it has been argued that violence is a necessary means of awakening historical consciousness in a forgetful culture (see Hirsch 2008).

How do we establish critical awareness of the vocabularies through which we speak rights, as well as the social imagery (if not “imaginary”) that backs up seemingly neutral rights claims? We need to discern problems of subjectivity (who talks in the name of who or what), problems of representation (reality versus fiction and style of address) and problems of culturo-historical context – how do specific actors in specific socio-political situations express their political ideas and how are those captured in the contexts of discourses on- and representations of rights? Our hope is that this issue of *Academic Quarter* helps further discussion on these topics.

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Human Rights Documentaries as Representational Practice

A Narrative and Aesthetic Critique

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In recent years, human rights film festivals have proliferated across the globe. Often co-sponsored by human rights organizations like Amnesty International or Human Rights Watch, annual festivals devoted to films that focus on human rights issues include the Movies That Matter Film Festival in The Hague, the Flashpoint Human Rights Film Festival in Mumbai and New Delhi, and the One World Film Festival in Prague. While human rights documentaries are not a widely identified subgenre of nonfiction film, they can be situated within a wider tradition of non-fiction filmmaking that engages in social and political issues, motivated by the underlying premise that films can effect change. Human rights documentary are often auto-denominations based on filmmaker intent, political engagement, or topical focus.

Human rights documentaries are part of a larger tradition of human rights work in which collecting and diffusing narratives and visual images occupies a key role. In his analysis of the relationship between human rights and storytelling, James Dawes (2007, 1) writes, “one of the most important premises of contemporary human rights work is that effective dissemination of information can change the world”. Film, one of the most popular global art forms, is a particularly useful tool in the effective dissemination of this information. As Meg McLagan (2006, 191) writes, “in today’s

globally mediated world, visual images play a central role in determining which violences are redeemed and which remain unrecognized. Northern human rights activists understand this fact and, in recent years, have built a formidable transnational communications infrastructure". Human rights documentaries and festivals form part of this infrastructure.

Sharon Sliwinski (2011) argues that this international third-party "spectatorship" is essential for the functioning of human rights in which distant audiences are made aware of faraway abuses through visual images. The spectatorship's visual experience drives the history of human rights because these representations form the basis upon which action is taken. Understanding how representations mobilize ethical appeals is consequently important to understanding how human rights work. In representing abuses, human rights documentaries have adopted a standardized aesthetic and narrative form. A fundamental tension results. Documentaries that expose abuses and confront viewers with injustice need to be morally upsetting in order to mobilize viewers into action. Although human rights documentaries should be disquieting, their aesthetic form ends up conforming to what I will show to be a problematic aesthetic and narrative template at odds with their aims. This article will offer a critique of this dominant representational style through analysis of *China Blue*. Directed by Micha Peled, *China Blue* won an award at the Amnesty International Film Festival in 2005 and screened as part of the prominent Independent Lens series on PBS in the United States in 2007. Elements of *China Blue*'s representational style can be found in other human rights documentaries such as *Anonymously Yours*, *Lost Boys of Sudan*, *Black Gold*, *Dying to Leave*, *Four Years in Hell*, *Sacrifice*, and *Facing Sudan*. *China Blue* will then be contrasted with *Last Train Home*, a 2009 film on the same topic, which adopts a representational style that contrasts sharply with *China Blue*.

My critique of this standard mode of aesthetic and narrative representation in human rights documentaries is based on three inter-related issues. First, although dedicated to a technology of representation that assumes a transparency of visual images, the imposition of external narrative structures results in works where images are forced to fit a pre-existing text rather than vice versa. Although images are meant to "speak for themselves," these films depend on

authoritative voice-over narration and intertitles to explain images. Second, although these documentaries are committed to an aesthetic discourse of visibility in which exposing abuses that are hidden or invisible is seen as a mode of political activism, I will argue that these films in representational terms reproduce inequalities by not revealing their own means of production.

Text over Images

One of the central premises of the use of video in human rights advocacy is that images substantiate human rights abuses. Underlying this premise is the idea that “seeing is believing.” As Meg McLagan writes, “this axiom underpins the reliance on a kind of documentary visuality that characterizes the new human rights communications infrastructure, with its emphasis on bringing that which is hidden into the light, and its realist insistence on the universal legibility of visual facts” (2006, 192). This “theory of truth and transmission that is premised on two things: *a*) the authenticity of experience (I was there, I witnessed it, therefore it is true, and *b*) a commitment of the gathering and display of visible evidence” (McLagan 2003, 67). The intent of many human rights documentaries is to confront viewers with evidence of abuses. *China Blue* has the explicit intent of exposing “twenty-first century slavery” – exploitation of workers in a Chinese factory producing blue jeans and, by doing so, force consumers to reflect upon their own buying habits. Yet *China Blue* does not provide any critical visual evidence of human rights violations. Instead, human rights violations are announced in intertitles. As one title reveals, “Workers at Lifeng work seven days a week for months at a time. They don’t receive overtime pay or the minimum wage required by law. Such abuses are common in export factories.” The film relies on such titles: “In China, a factory that allowed its workers adequate rest and paid minimum wage would not be able to compete.” Or “The major brands demand such low prices that factories are often forced to violate international labor standards.” When the film shows workers in the factory, they do not substantiate violations without accompanying explanation. In order to illustrate long working days, the film features a sequence of time-lapse factory line production and images of sleepy workers over mournful music.

Part of the challenge, undoubtedly, is how to depict human rights violations that are not based on overt violence but on structural violence and inequality. These invisible forms of violence are not easily amenable to visual documentation. However, in *China Blue*, images do not even always match the explanatory text. For example, as viewers are informed of the facts of rural migration in China, a montage of grainy video images depict Chinese people with luggage walking out of a train station. The text would have viewers believe these are migrant workers leaving rural areas heading to work in factories, but the images do not even match. Although informed migration is comprised mainly of women, accompanying images reveal a balanced gender mix. The prioritization of text over images is also evident in *China Blue's* extensive use of visual reconstructions. This is a common device in which interviews of victims of human rights violations are edited together with footage to illustrate what is being said. For example, in *China Blue*, the film's protagonist, a young migrant factory worker named Jasmine, recounts her life story directly to camera. Her interview is then intercut with the filmmaker's visual reconstruction of it. For example, when speaking of where she grew up, viewers see images of rural landscapes and green grazing land. If she speaks of taking a bus, viewers see a bus. When she describes how she was forced to leave home to go to work, the film opts for visual metaphors: birds are shown flying from a tree. When she says that China has stepped into a new era with "opportunities awaiting all of us," a bus passes through a tunnel and goes dark, informing viewers she is unaware of what "opportunities" await her.

Instead of presenting unscripted spontaneous footage, the construction of the film's "reality" depends on scripted text. Footage meant to "stand in" for text results in an aesthetically clumsy mix of reconstructions, stock footage, and visual metaphors. In non-fiction filmmaking, reconstructions and reenactments are extensively debated. Although discredited by proponents of observational cinema and cinema vérité in the 1960s, they have undergone a resurgence in recent years and are now "once again taken for granted" (Nichols 2008, 72). While reconstructions can be used for expressive or philosophical ends, this is not the case here. If the truth claims of the filmmakers are based on capturing what they themselves witnessed (human rights violations), such a device un-

dermines their claims. If the truth claims of the filmmakers lie in capturing the testimonies of the victims of human rights abuses, reconstructions are superfluous aesthetic adornment. At the same time, they invert the relationship between image and text and undermine the human rights axiom of “seeing is believing.” Images departing from text results in a strained effort to create a one-to-one visual relationship with words.

The Coming of Age Narrative

The goal of interview-based approaches is to create empathy for film subjects. Two assumptions underlie this approach: telling stories of victims of human rights abuse cultivates audience identification with victims and this identification leads viewers to embrace the film’s cause. As Richard Rorty (1991) argued, human rights work through the mobilization of empathetic appeals via “sad and sentimental stories.” Yet whose story is being told? The narrative in *China Blue* is more the product of the filmmaker’s concerns than that of the film’s subjects. In *China Blue*, Jasmine, the film’s protagonist, was chosen because she fit the filmmaker’s pre-existing narrative. To quote Peled, “My idea from the start was to feature a new worker, a girl who has just arrived from the village on her first day at work, as the protagonist. She’d be naïve, excited, and as clueless as the viewers regarding what’s about to unfold” (Independent Lens 2007). The character is conduit of the filmmaker’s concerns.

While documentaries have indexical relationships with the “truth,” rather than reveal or even construct truths, *China Blue*’s “truths” are built into its preexisting narrative structure. Like similar documentaries, *China Blue* uses an archetypal coming of age narrative, a “loss of innocence” charting the initiation of Jasmine into a system of exploitation. “You are new here. There is a lot you do not know,” she is told. While Jasmine is unaware of what awaits her, viewers are not. Peled’s claim that viewers are equally “clueless” as to what will unfold is a strange one. Little dramatic tension exists watching a film about sweatshops in China in “discovering” that factory workers are exploited. In any case, the film’s use of dramatic foreshadowing makes its position clear from the start by introducing the factory and its title credits (“*China Blue*”) with the closing of factory gates over ominous music: this factory is a prison. The audience’s starting point into the film’s narrative is the charac-

ter's end point. While viewers can easily foresee the film's narrative trajectory, Jasmine's discovery of what viewers already know mitigates the lack of dramatic tension. For viewers, any narrative satisfaction derived from the film is found how it confirms a pre-existing worldview of sweatshops as places of human misery.

This "loss of innocence" narrative is historically linked to human rights. As Joseph Slaughter (2007, 3) has shown, a close relationship exists between human rights and the *Bildungsroman*, the genre of coming-of-age novel that appeared at the end of the eighteenth century in (echoed in *China Blue*) "whose plot we could provisionally gloss as the didactic story of an individual who is socialized in the process of learning for oneself what everyone else (including the reader) presumably already knows." Although audiences are ostensibly meant to respond to *China Blue* with empathy, this dramatic structure makes empathy more difficult since it distances viewers from the characters by giving them knowledge that the characters lack. Rather than create a point of entry into the life worlds of the film's subjects, this dramatic structure creates cognitive distance more conducive to pity in which the film can be viewed from a safe and distant remove. This contradicts the film's explicit intent, which is to show how Western consumer habits are linked to systems of exploitation. This narrative structure represents what theorist and filmmaker David MacDougall (1998, 163) has called a "transmission of prior knowledge." Instead, he argues filmmakers "need to approach filming instead as a way of creating the circumstances in which new knowledge can take us by surprise." One of the ways in which MacDougall argues for this is through the use of self-reflexivity.

Lack of Reflexivity

Content is not unrelated to form. Films such as *China Blue* not only create distance through imposition of external narrative structures but through a filmmaking style in which the filmmaker's presence is unacknowledged by film subjects. This style aesthetically reproduces global inequalities that such films attempt to bridge. Spatial and temporal divisions between filmmakers and film subjects are specifically reinforced through a lack of reflexivity. Reflexivity here does not simply refer to inclusion of the filmmaker in the film but refers to the way in which the film reveals aspects of the film-

making process (how they captured what they captured) in the final product. As Jay Ruby (2000, 155) describes it, "To be reflexive is not only to be self-conscious but to be sufficiently self-conscious to know what aspects of the self must be revealed to an audience to enable them to understand the process employed as well as the resultant product."

A lack of reflexivity creates an intrinsic tension in films like *China Blue*. On one hand, they are committed to a discourse of visibility. They wish to render visible processes of exploitation that are largely hidden from the eyes of Western consumers when purchasing goods. Yet, at the same time, in terms of representation, these films reproduce what they critique by lacking transparency on their filmmaking processes. By not depicting relationships between filmmaker and filmed subjects, they hide their own mode of production. Filmmakers become phantom presences in films where all between filmmakers and film subjects are eliminated. Editing processes scrupulously remove all traces of them from final products. Questions that elicit interview responses are eliminated. Viewers see monologues instead of conversations. By not revealing their presence, as Elliot Weinberger (1994, 12) has observed, "the ideal, then, is either a dream of invisibility, or worse, the practice of the surveillance camera."

Although *China Blue* does not reveal its filmmaking process, its director has spoken at length in various interviews about making the film. Saying the hardest part was gaining access to a factory, he describes how he finally tricked a factory owner into by telling him he was making a film about first generation entrepreneurs in China (Independent Lens 2007). By using deceit, he filmed without government permits. This not only placed the factory owner at risk of being in trouble with authorities for cooperating with unauthorized foreign media but also the workers. He recounts how he initially filmed another young girl working at the factory (a further example how interchangeable the characters are within the filmmaker's pre-existing narrative template) before being caught by police while filming in her home village. His footage confiscated, he had to restart. Whether such methods are justified or not is not the only question. Since workers were instructed by an exploitative factory owner to cooperate with the filmmakers, how did they view the foreigners filming them? Not only were they presumably not remu-

nerated for their participation in the film, the filmmakers were likely perceived no differently from the factory owner (the film's buffoonish villain) who instructed their cooperation. The camera's invisible "fly on the wall" approach would make the filmmaking process indistinguishable from the factory's elaborate video surveillance system that the boss proudly shows off in the film to boast how he monitors his workers to keep them productive. Although the film's positive political intent ostensibly justify whatever measures taken to gain its footage, one can wonder if this is true if it includes possible risks to and exploitation of the film's already vulnerable subjects.

Failure to incorporate the filmmaking process into the film raises serious ethical questions in films about vulnerable populations. How did filmmakers gain access to their subjects? Under what conditions were the films made? Why should viewers assume filmmakers' relationship with their subjects is any less exploitative than the ones documented in their films? Even if exploitation should not be a concern since filmmakers' political allegiances lie with its subjects, a lack of reflexivity enhances distance between filmmakers and film subjects. They are once again not shown to occupy the same worlds.

Last Train Home

If *China Blue* represents a problematic representative style for human rights documentaries, *Last Train Home* is its counterpoint. Depicting the same topic, Chinese rural migrant laborers working in exploitative factories, *Last Train Home* avoids the representational problems identified above. While less explicitly concerned with human rights violations (the film's avowed purpose is not to expose human rights violations or change consumer habits), the film is an example of a representational style that, despite being consequently less didactic, is far more successful in achieving the aims of human rights storytelling: reducing distance between audience and film subject and constructing empathy with victims of abuses.

At an aesthetic level, *Last Train Home* features an extremely minimal use of titles and music, no voiceover narration, no "talking heads" interviews, and no authoritative explanations. Its use of titles is limited to its opening description of Chinese migrant laborers, "the largest human migration in the world." However, rather than images following text, *Last Train Home* forces viewers to piece together the narrative based on what they see: the daily lives of

husband and wife migrant workers and the family that they left behind. Rather than relying on intertitles, voice-over narration, or reconstructions, viewers enter the film through naturalistic interactions between film subjects. As a result, the narrative feels less shaped by the filmmaker's agenda and interventions than by the characters' concerns. For example, the film's opening shows a group of people eating. "There won't be any tickets at the station," one says. "Are you sure?" asks another. "Well, you might find standing room tickets." Viewers eventually understand that they are migrant workers speaking of the difficulty of finding train tickets during the country's busiest travel time, Chinese New Year. Rather than the filmmaker's concerns, the characters' concerns are central – their desire to go home during the holiday. The film's immediate narrative question – will they make it home or not? – is not one that viewers already know. However, the film eschews expectations as the *Last Train Home* shifts into a story of family disintegration. Audiences see the social consequence of migration's dislocated parenthood and the consequences of the pressures migrant workers put on their children to succeed at school so that they can break out of cycles of poverty. Parents work in exploitative factories in order for their children to have a better life only to find that their absence has triggered the breakdown of familial order.

If the film's narrative eschews expectations, its approach makes viewers work to construct meaning. The difference between *Last Train Home* and *China Blue* is, as Colin Young (2003, 103) observed about the difference between classical didactic educational films and the New Wave cinema of the 1960s, "the difference between TELLING a story and SHOWING us something." While classical didactic education films rely on explanatory texts, heavy-handed messages and authoritative voiceover to impart meaning, films like *Last Train Home* rely on images and on the audiences to construct meaning based on what they see. *Last Train Home* does not tell viewers its characters work in a sweatshop; the camera shows them working in a factory and then lingers on one box as workers haul them off to be shipped: "Made in China," it says. By forcing viewers to construct meaning, they become active participants in the film. What viewers see is not shown through the filmmaker's overt intervention or discernible agenda. Interviews are conversa-

tional – the interview subject is in the midst of their daily activities while speaking to the camera.

Last Train Home's lack of reflexivity would appear at first glance to make it indistinguishable from *China Blue*. The film uses the observational style pioneered by Frederick Wiseman that features neither commentary nor filmmaker interventions. The camera is an invisible presence; filmmakers are unacknowledged. However, as the film develops, overt reflexivity becomes unnecessary to reveal the relationship between filmmakers and subjects. The final product reveals traces of the filmmakers' intimate presence in the lives of the film's subjects in a way that is not evident in *China Blue*. One can easily observe that director Lixin Fan was able to gain access into the lives of this family. Without trust between filmmaker and subject, the film would not have been able to capture its intimate familial scenes. Only close participation between filmmaker and film subjects could lead to it documenting its small-scale human tragedy, less the agenda of the filmmakers but the concerns and daily life struggles of one family – their hopes and aspirations while living under exploitative conditions. As a result, unlike *China Blue*, the characters are not conduits of the filmmakers' agenda nor are they reduced to archetypes. The parents are loving but flawed – tragically so – as their passive aggressive parenthood backfires when their daughter leaves home to become a factory worker just like them. They work as migrant laborers so she can avoid their fate; however, a consequence of the separation that this requires is that she drops out of school and ends up following their path. In telling this story, viewers can relate to both characters and situations, thus creating ideal conditions for empathy.

More importantly, even if the film stays in observational mode, the camera acts as direct participant in the action. In the film's climactic sequence (one that lasts twelve minutes), parents attempt to return home with their errant daughter amid chaos at the train station caused by cancellations. The camera stays close to the family in the midst of a confused mob scene in the overcrowded station. The camera is in the middle of the action, not passively observing the scene from a safe distance. Jostled by the crowd and corralled by police and army attempting to maintain order, the camera is not a privileged distant observer. Subsequently, the audience is not as well. Following the film's narrative strategy, the audience does not

know what is happening and only are provided information as characters are. Audiences are no longer at a remove but up close with the family. In this sense, the film represents a triumph of the human rights documentary, one that is able to bring home the lived experience of human rights violations to its audience. If human rights documentaries are built around collapsing distances between people and in constructing empathy, *Last Train Home* provides a superior ethical and aesthetic representation. Human rights documentaries are still in their infancy. A problem is that many are committed to outmoded forms of non-fictional representation using a didactic educational mode that can work against the films' aims. Paradoxically, a film committed to a less interventionist, purely observational mode of filmmaking works better as a human rights documentary. If the human rights documentary is to achieve its goals, new forms of representation will need to be found that do not reinforce divisions between audiences and film subjects. *Last Train Home* is a step in that direction.

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James Gillray's *The Shrine at St Ann's Hill* and the Rights of Man

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James Gillray, *The Shrine at St Ann's Hill*, etching, 36 x 26 cm, published by Hannah Humphrey, Saint James, London, 26 May 1798.

The Shrine at St Ann's Hill

A formal and content-based analysis of Gillray's print can be the centre of circles that ripple out to contexts that throw light on both historical and modern attitudes to human rights. The methods of this analysis are selected with this aim in mind. They are from visual semiotics and traditional art history (Barthes, 1964; Christensen, 1991; Kristensen and Christensen, 1989, Arnheim, 1954/1974; Panofsky, 1939/1972).

First, a formal analysis of the visual language. The composition of the plate is surprisingly discordant as three compositional patterns are in conflict, and they interrupt one another. The image is divided by a vertical line running in the middle; but there is no symmetry, as the left half is dominated by a diagonal shape (the cloud) from the top left corner reaching only halfway down towards the bottom right corner. This diagonal is met by another conflicting diagonal shape (the kneeling figure) from the bottom left corner towards the top right corner.

The composition also has a horizontal form. Just as it was divided vertically, there is a semblance of a division two-thirds down (the horizontal lines of the altar), but again this is only at the left-hand side of the picture. The spatial organisation is also contradictory. Apparently, the room is created by linear perspective with orthogonal lines, which go into the background to meet in a vanishing point. These lines can be seen in the masonry and in the altar; but there is no consistent use of this method, and this formal disruption of space is answered by the floating heads in the cloud that do not seem to belong to the room itself, but to some other dimension. The cloud vision is also a light source that shines on the figures on the altar, but again this supernatural light source is responded or contradicted by another, the one shining on the right hand side of the kneeling figure. The overall scene itself is gloomy and sombre. Even the construction of the body language of they figure repeats this double system as it is seen from the side and from the back at the same time. The overall conclusion of the formal analysis is that the visual language in itself has connotations of conflicts and contradictions. When we turn to an analysis of the content of the image, we may wish to examine if these connotations are repeated in the denotative content.

The use of verbal language is prominent in the etching. Here Barthes' terms anchorage and relay (Barthes 1964) may be employed. Anchorage is a verbal text that is placed outside the picture frame and which the sender uses to anchor and control the audience's understanding of an image. Here it is "Shrine at St Ann's Hill", and to the contemporary reader of this anchoring caption it meant James Fox's house at St. Ann's Hill to which he retired during his retirement from Parliament 1794-1801 (Mitchell 1992). The verbal text inside the picture frame is in Barthes, terminology called relay. As such the relay text does not control the overall meaning of the image, but it is on the same level of significance as the other pictorial elements. The main part of relay text is found on the tablets on the altar, "DROITS DE L'HOMME" etc.; but there are also combinations of relay and anchorage as anchorage text inside the image becomes relay. This is the case with the name tags on the busts of Robespierre (sic.) and Napoleon Bonaparte (sic.), and on the book in Fox's pocket the title "New Constitution" can be seen. Gillray has chosen to anchor the two portrait busts, but not the six winged heads, and not

the kneeling James Fox, and this brings us to Panofsky's iconographic method, which basically is about identification of content of images. There are three steps in this method: the pre-iconographic, the iconographic and the iconological (Panofsky 1939/1972, 3-17). The first is about the recognition of the pure shapes and lines in an image as mimetical representations of objects and figures from reality, e.g., people or houses. The iconographic step in the reception of an image consists of combining these elements into a narrative, i.e. the subject of the image. The final step, the iconological one, is analytical and in it the specific designing of this narrative is interpreted. This also entails an analysis of the image's visual language and style so that this particular version of the subject is related to its historical and functional context and the values of this context, which Panofsky writes rest on "the political, poetical, religious, philosophical, and social tendencies of the personality, period or country under investigation" (Panofsky 1939/1972, 16). As it will appear below, in this case these represent Britain in the time of the French Revolution.

Now the pre-iconographic and the iconographic descriptions will be combined, as the pre-iconographic description basically is a verbalization of the subject of the image. Gillray's print "The Shrine at St Ann's Hill" depicts Charles James Fox in a stone crypt praying on his knees in front of an altar or shrine with emblems of revolutionary France. Fox was the radical supporter of the American and French Revolutions, the rival of Pitt the Younger, an outspoken opponent of George III, champion of liberty, and his last political achievement was the abolition of the slave trade in 1807. He was also at the receiving end of many satirical prints of Gillray's, easily recognizable with his opulence, his characteristic eyebrows, and his unshaven, swarthy complexion, the stock emblem of a Jacobin villain. The title of the print refers to his house at St. Ann's Hill. The altar in front of Fox is draped with a cloth on which are embroidered crossed daggers, possibly a reference to The Day of Daggers, an event during the Revolution in 1791 when the Marquis de Lafayette arrested 400 armed aristocrats at the Tuileries. As such the daggers are a parody of the fleur-de-lis, the heraldic emblem of the French monarchy. On the altar itself there are three pedestals. The one in the middle is with the revolutionary bonnet and its tricolor cockade. It is inscribed with EGALITE, and there is a skull at its base. The pedestal to the left has two hands nailed to its post and it supports a bust of

Robespierre, and the pedestal to the right supports a bust of Napoleon Bonaparte. At the back of the altar there is a large, blood-dripping guillotine, and from it are suspended two tablets, resembling those Moses brought down from the mountain, with the heading *Droits de l'homme*. However, just as the guillotine on the altar is at the traditional position of a crucifix, the Rights of Man have been supplanted with a parody of the Decalogue or the Commandments: "I. Right to Worship whom we please. II. Right to create & bow down to any thing we chuse to set up. III. Right to use in vain any Name we like. IV. Right to work Nine Days in the Week, & do what we please on the Tenth: V. Right to honor both Father & Mother, when we find it necessary. VI. Right to Kill. VII. Right to commit Adultery. VIII. Right to Plunder. IX. Right to bear what Witness we please. X. Right to covet our Neighbour[s] House & all that is his." From the top left corner of the image a shaft of celestial light and clouds descend, and inside it are the winged heads of six members of the Foxite opposition, the Duke of Norfolk, Lansdowne, Bedford, Tierney, Lauderdale and Nicholls, all with French, revolutionary bonnets.

A description of the stylistic features of the etching can be an entrance to an iconological contextualization that relates it to its specific historical period. As we have seen it in the analysis of the etching's visual language, there are also discordant features in its style. On the surface the situation depicted is a devotional one. A character is kneeling in a chapel in front of an altar with the Decalogue on Moses' stone tablets (Exodus 31:18), and the character's prayer has resulted in the miraculous appearance of a group of heavenly cherubim, which in traditional Christian iconography are shown as infants' heads with one set of wings. The daggers on the cloth may be a reference to the attribute of St. Lucy, who was martyred with this weapon. The anchorage caption of the etching establishes this early understanding of the image as a representation of a religious scene with the words "Shrine" and "St Ann", the latter being the mother of the Virgin Mary. The hanging drapery at the top of the image with its prominent tassel, however, belongs to another coding system than the religious, as this kind of draperies were a stable iconographic element in Baroque representational royal or noble portraits, and in this way there is a stylistic movement away from religion to power relations and politics. The location or room itself with

its crude masonry points to yet a third set of connotations as the gloomy room is dungeon-like. This stylistic confusion can be regarded as a kind of eye-opener to the audience of the etching in the form of an interpretational imperative, and this imperative is to understand it iconologically, i.e., in its contemporary political context and as satire. The visual language, the style and the iconographic content of the image are all dynamic and transgressive as they all move between different spheres without regard of their borders. The contradictions and conflicts both of the visual language and the iconographic setup of the print as well as the stylistic confusion are all instrumental in asserting that the French Rights of Man represent a danger to Britain.

In its initial movement the rhetorical argumentation of the print rests on the transference of the Rights of Man or *Droit de L'homme* from a political sphere into a religious one. The setting of the print is a shrine with an altar, as its anchoring caption says; Fox's body language is the one of prayer, and the members of the opposition are represented as cherubim in a revelation. The reformulation of the *Droit de L'homme* is double. First of all they are changed into the Ten Commandments, and then again into a travesty of them that says the exact opposite. In this way the French Revolution is described as Godless. The altar is a composite selection of what the British Loyalists abhorred. The next step in the rhetorical argument is also one of transference, in this case national as British politicians bow to the excesses of the French Revolution and France, with which Britain was at war. Fox and the opposition are in this way described as traitors to their nation. The sum of these two argumentative transferences is that The Rights of Man are discredited on two counts. They are unchristian, and they belong to the enemy France, only. Not to Britain or to the rest of the world.

The immediate context of the image is the British reaction to the French Revolution, and when this context is widened it becomes one that resonates today, i.e. the question whether human rights can be regarded as universal or not. The followings pages of the article will discuss these two contexts.

British Responses to the French Revolution

This part of the article will concentrate on the forms of expression that the British responses to the French Revolution took. Gillray's

etching is one of these responses. They must, however, be seen in conjunction with the debate already going on about constitutional reform, and obviously the American Revolution of 1776 played a role. It was primarily an extension of the franchise to Parliament that the demands for reform of the Whig constitution centred around, and this demand was not imported from revolutionary movements abroad, but it grew out of the socio-economic development of the Industrial Revolution in Britain itself with its new moneyed, commercial and industrial interests, as opposed to the Whig aristocrats of landed property that was in power (Cole 1938/1971, 110; Dickinson 1974, 146). When this demand was combined with the revolutionary thoughts as they, for instance, were expressed in the first article of Declaration of the Rights of Man: "Men are born and remain free and equal in rights", this demand soon became for universal suffrage, and sometimes this demand was not limited to universal male suffrage. Gillray's "The Shrine at St Ann's Hill" from as late as 1798 is a graphic response to the French Revolution and its Rights of Man, but as we shall see this satirical etching is just as much directed at the internal British political situation, and this combination is repeated again and again in the other political texts and documents of the period. There were the pamphlets for the French Revolution and for political reform in Britain, and extra-parliamentary publicness was founded in Corresponding Societies centred in London, Norwich, Sheffield and Manchester, which held meetings, corresponded with each other and with French revolutionaries, and published pamphlets and weekly newspapers. As it was in many other places, the most important pamphlet of these was also printed by the Sheffield Society. Here the first part of Thomas Paine's *Rights of Man* had 1,400 subscribers (Thompson 1963/1974, 164); but also more modest and less classical pamphlets were circulated. For instance *An Address to the Nation from the London Corresponding Society, on the Subject of a Thorough Parliamentary Reform* from 1793 demanded that "equal Representation obtained by Annual Elections and Universal Suffrage" was adopted (Reprinted in Dickinson 1974, 194-197).

The pamphlet warfare's perhaps most eloquent expression was opposed to constitutional reform and it abhorred revolution. On the surface Edmund Burke's *Reflections on the Revolution in France* from 1790 is a powerful collection of arguments against revolutions as



James Gillray, *Smelling out a Rat - or The Atheistical Revolutionary disturbed by his Midnight Calculations*, 36 x 26 cm, published by Hannah Humphrey, Saint James, London, 2 December 1791.

such and against the French in particular. Burke's ideology cannot simply be dubbed reactionary and stale. It must be remembered that Burke was a supporter of the American Revolution, initially also of the French, and his conservatism may as well have been directed against the modernity of the societal changes caused by the imminent Industrial Revolution with its liberalism as by the political changes of the French Revolution. When he writes that "the age of chivalry is gone" (Burke 1790/1973, 170) he does not only refer to the fall of the French monarchy with its feudal foundation and to the treatment of Marie Antoinette, but he continues in the next sentence: "that of sophisters, oeconomists, and calculators has succeeded".

Thomas Paine's *Rights of Man* was one of many replies to *Reflections on the Revolution in France*, which in itself was a reply to the dissenting minister Richard Price's "A Discourse on the Love of Our Country" (1790) with its praise of the French Revolution: "the dominion of kings changed for the dominion of laws, and the dominion of priests giving way to the dominion of reason and conscience", and its warning: "Tremble all ye oppressors of the world!" (in Dickinson 1974, 174-175).

Gillray's satirical print "Smelling out a Rat - or The Atheistical Revolutionary disturbed by his Midnight Calculations" shows Richard Price being caught red handed composing his revolutionary tract by an enormous Edmund Burke. On Price's wall there is a framed picture of the beheading of Charles I titled, "Death of Charles I, or the Glory of Great Britain." Here seven years before

“The Shrine at St Ann’s Hill” as in other of Gillray’s early prints with the French theme Gillray was more nuanced in his views, and as can be seen in “Smelling out a Rat” this print is as much an attack on Burke’s alarmism as on the revolutionary Price (Hill 1965, 41-43; Bindman 1989, 32). Draper Hill sums up the part of Gillray’s production that had France as its subject between the 20th of November and the 8th of April 1793, and ten of these were anti-Republican, two neutral and two criticized the British reaction (1965, 43-44).

In his *Rights of Man* Thomas Paine responded to Burke point by point, e.g.: “All hereditary government is in its nature tyranny” (Paine 1791-2/1969, 194). Paine reprinted the French Declaration of the Rights of Man and of the Citizen in his own similarly titled *Rights of Man*, adding some pages of commentary to them. Paine had to flee from England to France before publication, he was condemned for sedition in absentia, and effigies of him were burnt by Church and King Mobs in provincial towns. In 1791 Mary Wollstonecraft explicitly gendered the debate about the rights of “man” with her *Vindication of the Rights of Woman*. The boost which the constitution debate in Britain got from France spread from political discourses into literature, but government repression intensified culminating with Habeas Corpus being suspended in 1794, transportation sentences to Scottish radicals, and in the 1795 and 1796 two acts were passed, the Treasonable and Seditious Practices Act and the Seditious Meetings Acts. Radical writers became careful. William Wordsworth had been provoked by an attack on the French Revolution made by the Bishop of Llandaff. The bishop had referred to the guillotine as “the altar of Liberty... stained with the blood of the aged, of the innocent, of the defenceless sex, of the ministers of religion, and of the faithful adherents of a fallen monarch” (reprinted in Dickinson 1974, 216); but Wordsworth never published or sent the letter he had written in reply to the bishop. The guillotine as the blood-stained altar of the French Revolution is an emblem that is also used in Gillray’s etching. William Blake’s poem *The French Revolution* from 1791 cloaked or disguised the historical events in cosmic symbols, and he avoided prosecution. The weakening of radical support for the French Revolution in Britain was not only caused by repression. Much support was lost when war broke out between England and France in February 1793, and even more during the Reign of Ter-

ror from September 1793 to July 1794 with its thousands of guillotined victims. In the poem "Does Haughty Gaul Invasion Threat" from 1795 by Robert Burns the invasion threat puts a damper on his progressive views, but does not silence them, and he seeks to reconcile the revolutionary spirit, even though it is related to France, with his patriotism: "For never but by British hands, Maun British Wrangs be righted!" and "But while we sing 'God save the King', We'll ne'er forget THE PEOPLE" (reprinted in Dickinson 1974, 230-231). Burns' poem illustrates the challenge in this period in Britain of upholding demands for democracy and representation in conjunction with feelings of nationalism and patriotism.

An Aesthetic and Political Publicness

The forms of publicness about the French Revolution and the Rights of Man presented above are not alike despite shared content. There are discourses that are political in nature, and there are discourses that may be termed art and are of an aesthetic nature. Gillray's satirical etching combines these two discourses in form and content, and a look at a copy of *The Times* from Saturday, July 30, 1791 can illustrate how these forms of discourses co-existed in the British response. On the top of the front page there is an advertisement:

FRANCE IN AN UPROAR!

Mr. ASTLEY, Sen. being in Paris during the Attempt made by their MAJESTIES of FRANCE to escape, begs Leave to lay before the Public an entire new Sketch, consisting of Music and Dancing, called

The ROYAL FUGITIVES ;

Or, FRANCE in an UPROAR !

ROYAL GROVE,

ASTLEY'S AMPHITHEATRE,

WESTMINSTER-BRIDGE...

In the above Sketch will be comprised the following Incidents :

1. The Preparations for the Escape.
2. The Sentinel bribed, &c.
3. The Escape from the Thuilleries.
4. The Manner in which it was discovered.
5. General Alarm of the Citizens.

6. The Decree of the National Assembly proclaimed.
 7. Their Majesties known by the Post-Master.
 8. The Alarm given at Varennes.
 9. The Royal Carriage, &c. stopped at the Bridge.
 10. The Passport demanded by the Governor.
 11. The King discovers himself.
 12. The Messenger arrives at Paris with the News of their Majesties being taken.
 13. A View of the National Assembly.
- The whole forming a most interesting Spectacle, as Authentic as Striking.

On the second page there are news reports. One is about violent anti-revolutionary riots in Sheffield, which the dragoons had been unable to suppress, and there is a report from France describing the French as barbaric and savage atheists: "From being over-scrupulous in religion, they fell into an open and avowed contempt of all divinity... Atheists in their hearts, and rebels in their conduct." It may be mentioned that the same sentiment is found in Gillray's satirical print. A royal proclamation by George R. follows on the same page offering a substantial reward for information about the publishers of "a certain scandalous and seditious paper" that was printed in Birmingham. Interestingly, part of the paper is reprinted in the royal proclamation. It praises the French Revolution and argues that conditions in Britain are also ripe for revolution. On the third page there is a long and detailed report about the proceedings of the National Assembly only five days old.

Gillray etching is part of the on-going debate in Britain about the relationship between the interior constitutional debate and the link between the arch enemy France and the ideals of the rights of man. The etching is just one of the many satirical prints of the period. During the 1780s and 1790s the business of graphic caricature thrived as never before and never again (Donald 1996, 142), and one may suggest that they represent a form of publicness that combined political publicness with cultural publicness, so that artistic phenomena became political in the form of graphic caricature prints. This publicness was extra-parliamentary, and it was for and also by the un-franchised. The publicness outside Parliament was on the move, and in 1792 its voice was heard in the House of Commons

when Fox referred to it in a speech: "It is certainly right and prudent to consult the public opinion...one thing is most clear, that I ought to give the public the means of forming an opinion" (in Habermas 1962/2009, 65-66).

The satirical prints were one of the expressions of this public opinion. Public opinion now was a force to be reckoned with in Parliament. The number of satirical prints was so large (Donald 1996, i) that they were a mass medium, and because of their distribution and mass production they did not belong to the art institution, though they were sometimes exhibited in galleries. What the prints won in distribution and dissemination, and also in profits from their sales at home and abroad, they lost in artistic status. Caricature is not even mentioned in Joshua Reynolds' *Discourses on Art* (1769-91), whereas Reynolds places history painting at the top of the hierarchy of artistic genres. The turbulence of the political and cultural climate in Britain during the period of the French Revolution and the changes it produces are reflected stylistically, and also in the forms of publicness in which it was found. The florid and high rhetorical style of representative publicness is seen in Burke's *Reflections of the Revolution in France*, which in itself is the very eulogy of feudalism and its representative publicness. The style of the satirical prints is ironically related to this heroic, representative style in the way that it is mock-heroic and burlesque, and when Reynolds writes that the painter must improve on the appearance of his heroic subject: "The painter has no other means of giving an idea of the dignity of the mind, but by that external appearance which grandeur of thought does generally, though not always, impress on the countenance, and by that correspondence of figure to sentiment and situation which all men wish, but cannot command." (Reynolds 1997/1769-91, 60) The satirist on the other hand caricatures his characters through the ludicrous exaggeration and distortion of the characteristic features of a person while retaining a recognizable likeness, e.g., through the use of the so-called nut cracker profile with a hooked nose and a jutting chin that almost meet.

The publicness, which combined political matter with aesthetics, as it is found in the period and of which the many satirical prints are examples can be explained in several ways. One is specifically based in the political debate about parliamentary reform and the extension of the franchise. The factions of the bourgeoisie

of the period, which were not represented in Westminster, found other outlets than the purely parliamentary ones for political expressions, and the contemporary mass media were employed (Habermas 1962/2009, 65). In the history of the development of the public sphere this is, however, not unique, as political material in the form of news was turned into a commodity by early merchants (Habermas 1962/2009, 15). The important point is that the thriving caricature print business took the form of mass media so that we are actually dealing with an early form of mediated, political publicness here. Another, not conflicting, explanation is the political setup in Britain, in which the monarchy, Parliament and some fractions of the ruling classes, including landed and to some extent moneyed interests, were in some kind of a balanced relationship. In this system remnants of the old feudal representative publicness, which was just as aesthetic as political in its expressions of power relations (Habermas 1962/2009, 8-10, 36), may have influenced the fusion of the aesthetic with the political in a publicness that was bourgeois. As we have seen it above in the discussion of Reynolds's *Discourses on Art* there is the difference that the high style of traditional representative publicness in its bourgeois echoes is debased to caricature, and the members of the Royal Academy by and large avoid topicality and the French theme (Bindman 1989, 30-31). A more general explanation may be the overall development of the structure of publicnesses, in which a clear-cut division of discrete spheres is more an ideal than reality, and that in this historical period of European upheavals the political debate was so pervasive that it also took on aesthetic forms. In this connection it is of some significance that Habermas (1962/2009, 30) in his "blueprint of the bourgeois public sphere in the eighteenth century" in the field "Public sphere in the political realm" has both the "world of letters (clubs, press)" and the "market of culture products". This middle field which connected the civil society of the bourgeoisie with the state also connected politics and aesthetics in its commercialization of political texts as e.g., the Gillray caricature prints.

Prehistory of Human Rights: The French Revolution

The first article of the United Nations' Declaration of Human Rights from 1948 is "All human beings are born free and equal in dignity

and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The first article of Declaration of the Rights of Man and of the Citizen (*Déclaration des droits de l'homme et du citoyen*) is "Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good." Declaration of the Rights of Man and of the Citizen was adopted by the French National Constituent Assembly in 1789. The near identity of the wording of the two points to the connection between 20th century Human Rights and the 18th century Rights of Man adopted during the French Revolution. This article explores how the Rights of Man were received outside France, in Britain. As it has been seen in the article, already at this time the contradiction or at least debatable feature of human rights was apparent, namely the question whether they are universal or not. Today Human Rights may be regarded as a Western phenomenon that are imposed on the rest of the world in the same way that Western ideology and religion have been exported during the historical period of colonialism and imperialism: "the idea of universal human rights is Western in origin" (Hunt 1996, 3-4), and Hunt continues to state that this ideal did not arise only independently in the Enlightenment debate and out of questions about natural law, but it was a "reaction to contemporary political conflicts". Yet, Hunt emphasizes the universal applicability of human rights. In "Human Rights and a Post Secular Religion of Humanity," Daniel L. Malachuk summarizes the positions for or against the universalism of human rights, and he calls the advocates for the universalism of human rights "foundationalists for whom there are universal, rationalist foundation for human rights," and "the anti-foundationalists, who maintain that human rights are contingent, fluid and relative" (in Porsdam 2012, 3). His conclusion is that the anti-foundationalist group is the more influential of the two. This article aimed at illustrating how the Rights of Man may have arisen out of a foundationalist or universal position as a result of the general spirit of the Age of Enlightenment, but certainly also that the reception of them in Britain at the time was anti-foundationalist to use Malachuk's term, i.e. they were regarded as a French ideological weapon.

However, universalism is not the only problem of Rights of Man or human rights. Some other questions, primarily about who had the right to possess human rights or rights of man as they were

called gave rise to passionate debates: How about the poor and illiterate, how about women, how about black slaves, how about the relationship between the state and religion and how about members of other religions, in particular Jews, and curiously, how about executioners and actors? Many of these questions were answered in the negative. In America slavery persisted after the Declaration of Independence, and in France the adoption of the Declaration of the Rights of Man and of the Citizen in 1789 was only four years prior to the Reign of Terror. Gillray's etching and its context was viewed in the light of these contradictions, in particular it is apparent how the Declaration of the Rights of Man and of the Citizen was regarded as anything else than a principle of universal applicability in Britain. They were understood as a manifestation of belligerent and aggressive French revolutionary nationalism and foreign policy, and the rights of man were connected to revolutions, the American and the French, and to the violent overthrow of governments and monarchs. Samuel Moyn, in his *The Last Utopia. Human Rights in History*, distinguishes between modern Human Rights and what he calls "the construction of precursors after the fact" (Moyn 2010, 12), and by this construction he means the Greek and Roman Stoic thinkers, medieval natural law and the proclamations and documents of the American and French Revolutions. Moyn substantiates this argument stating that the precursors', e.g., the French Declaration of the Rights of Man and of the Citizen's, contemporary debate became "zones of struggle over the meaning of citizenship" (Moyn 2010, 13), whereas modern human rights were all inclusive in their universalism and utopian, transnational ideal. The contradictions mentioned above inherent in the Rights of Man and of the Citizen and in Human Rights are to some extent, but to some extent only, explained by Moyn, when he sees a transformation of eighteenth-century Rights of Man, which he subsumes under "revolutionary nationalism," into the universalism of modern Human Rights.

It is the French Declaration of the Rights of Man and of the Citizen that is in focus in this article, but the argumentation of the article also rest on the prehistory – or precursors - in a wide sense of human rights, which contains a combination of natural law, the social philosophy of John Locke, which could be used to combine natural law and rights with human rights, Enlightenment philosophy as it for instance was expressed in *Encyclopédie, ou dictionnaire raisonné des*

sciences, des arts et des métiers (1751-1772), the historical events of the American Revolution, and obviously of the French Revolution, but also further back in British history with the Magna Carta (1215) and The Bill of Rights (1689), and legal traditions established through the centuries. The obvious reason that the prehistory is in focus is that Gillray's etching is contemporary to the revolutions of the eighteenth century and that its context is also British history and society.

Conclusion: Universalism of Human Rights?

It follows from the argumentation described above in Gillray's satirical print from 1798 that the *Déclaration des droits de l'homme et du citoyen* or the Rights of Man are not regarded as universal. Present-day questions of the universalism of human rights are nothing new. Already the pre-history or pre-cursors of human rights were attacked for being manifestations of partisan ideological and even national interests. In this case they were regarded as purely French, or in other words even though the Rights of Man may have arisen out of a universal ideals from the Age of Enlightenment, they were soon regarded as relativist, i.e. a French ideological weapon as well as they were connected to the interior debate about constitutional reform in Britain. This conclusion was reached in the article by going through a contextualisation of Gillray's satirical print and by an analysis or close reading of the print's visual language, iconography and iconology and its rhetorical movement. A further point was made in the article with the contextualisation of the print within a form of publicness that combined political and cultural publicness. Not only the many contemporary satirical prints were instances of this combined publicness, but it was also seen in the article's example from *The Times* newspaper. In other words, there was an aesthetic quality to this publicness. In this way the article has positioned "The Shrine at St Ann's Hill" in the context of the eighteenth century debate about the Rights of Man and their reception, in the context of a publicness that combined aesthetics and politics, and in the wider context of the question of universalism of Human Right, a question that is of importance today in the age of globalisation.

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Beneath the Pretty Wrapping

Concealing and Revealing the Grim Reality of Incarceration

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Some have said the difference between art and life is that art, unlike life, must make sense. For those who suffer wrongful conviction, art becomes an avenue for exposing and exploring the incongruity of an injustice imposed by a system charged with meting out justice.

Consideration of wrongful convictions in the United States is more than an academic inquiry. Once rare, reports of wrongful convictions in a land that extolls “freedom and justice for all” have become remarkably common. The Innocence Project at the Cardozo School of Law has secured exonerations for 297 people. Of that number, seventeen had spent time on death row (Innocence Project 2012). The National Registry of Wrongful Convictions, a joint project sponsored by the law schools at the University of Michigan and Northwestern University documents 927 exonerations in a database that continues to grow (National Registry of Wrongful Convictions 2012). Extrapolations to the huge prison population in the United States—over 2.3 million inmates—indicate that 20,000 to 100,000 innocent people languish in U.S. prisons (Innocence Project 2012). One is Todd Newmiller, who, despite strong claims of innocence, is serving a thirty-one year prison sentence in Colorado.

Todd passes his time in the dull environment of the Arkansas Valley Correctional Facility on the plains of southeast Colorado where he reads, exercises, and listens to stories of other prisoners. Appear-

ances, however, can deceive; he has become a serious activist in his cause to pursue justice. In “I am Ahab,” a column for *Newspeak*, a monthly Colorado Springs periodical, he writes about a variety of justice issues related to his own experience. He reflects on the routine mishandling of evidence, the pressure on persecutors to broker quick deals, and ever-ubiquitous false witness and mistaken eyewitness identifications. And he creates art: stained glass sculpture.

His whimsical bees, tulips, masks and other imagery may seem far removed from justice issues that inform his writing, but they also appear in Pam Aloisa’s series of acrylic paintings that explore themes of injustice specific to his story. Aloisa posits her work firmly within the social realist style of modernist painting. Traditionally, this means the art is about or has subjects dealing with social issues, functioning primarily “as a resource with which to solve social and political problems; it is evaluated and justified in terms of utility” (Yúdice 2006, 151). Aloisa’s greatest challenge becomes how to create beautiful and important paintings that expose ugly truths; a common criticism is that social realist works become didactic and heavy-handed with the subject and the art suffers. Stylistically Aloisa’s works were inspired by those of Ben Shahn and Jacob Lawrence. Jacob Lawrence’s series, *The Migration of the Negro*, from the 1940s, inspired compositions that include stark geometric shapes and patterns and distorted abstract figures and subjects. Bright exuberant coloration belies the more serious undertones and sardonic wit of the works. Another source of inspiration for Aloisa is the strong figurative work of Ben Shahn, especially his painting, *The Passion of Sacco and Vanzetti*, which exposed corruption in the justice system in the early 1930s.

In content, the paintings are bound to the stained glass sculpture produced behind prison walls and to the circumstances of wrongful incarceration. Both the painting and sculpture challenge us to reconcile depiction and reality, to distinguish between container and content, packaging and package.

“All Wrapped Up” seems pleasant at first, showing pairs of hands gathered toward a central package wrapped in bright green-striped paper. They are hands of various types—female, male, black, brown, white—taping the package and tying a red ribbon around it. A closer look reveals a gift tag with the number of Todd Newmiller’s case on it. The tabletop has a checkerboard pattern and bright yellow dom-

inates the color scheme; on the table are shears that seem somewhat ominous in this setting. The roll of wrapping paper is readily positioned to wrap yet another present; it handily cuts a strong diagonal through the painting, leading eyes easily around the composition.



All Wrapped Up, Pam Aloisa, Acrylic, 2010

One might think that the sheer number of people involved in a conviction—judge, lawyers, jury, witnesses, police, forensic specialists—would improve the reliability of a verdict, but with an increased number of people comes a diffusion of responsibility. Social scientists have long known about “group think,” and the “risky shift” phenomenon. The packaging conceals the contents, making it all appear “nice and legal-like.” Subsequent to conviction, courts of appeal are loath to “disturb the verdict” and really look at what’s beneath the pretty wrapping.



Scales of Justice, Pam Aloisa, Acrylic, 2010

“Scales of Justice” reminds us that when one is wrongly convicted, the image of blind justice is especially disturbing. In 2009, the United States Supreme Court ruled in a five to four decision that prisoners don’t have a constitutional right to demand post-conviction testing of DNA evidence in police files, even if they are willing to pay for the tests. In Texas, Hank Skinner, on death row since his 1995 conviction for murder, argued for the testing of potentially exculpatory DNA evidence that had not been previously tested. The state of Texas, acting on the recommendation of Governor Rick Perry rejected Skinner’s request for DNA testing in 2010. In 2012, however, the state relented and has approved testing, which is yet to be done (Grissom 2012).

Todd Newmiller makes an appearance in this work, but we don’t see his face. He wears prison-issue clothing and sits shackled to a long bench. Justitia, the roman Goddess of justice, holds scales above him, but one scale is more heavily weighted and pours a

stream of blood down onto Todd; her spiked heel pierces his thigh. On the right side of the canvas a large STOP is depicted near a pencil with paper and a small tab that says "Sign Here." Negotiating justice often involves a misreading of the signs and evidence, deceitful interrogations, and unfair deals brokered via questionable procedures.



Clanging Gongs, Pam Aloisa, Acrylic, 2010

In "Clanging Gongs" cacophony begets cacophony as tongues resonate to confusing and puzzling legal proclamations. Legal precedent permits authorities to destroy potentially exculpatory evidence prior to trial. In 2009, the Supreme Court denied post-conviction DNA testing to an Alaskan convict, William Osborne, who sought testing to prove his innocence. In the words of the Innocence Project, "the Supreme Court ultimately decided that the finality of a conviction is more important than making sure the right person was convicted" (Innocence Project 2012).

The scene in “Clanging Gongs” could take place at any location in the U.S.. Dominating the upper right corner of the painting is a rendition of the Liberty Bell with its characteristic crack. Each figure, drawn with dark contour lines, has his or her mouth wide open and the gong of a bell clanging inside, imagery evoked in chapter thirteen of Paul’s First Epistle to the Corinthians in the New Testament. In that letter, Paul describes how useless works are without love. A justice system fraught with corruption cannot faithfully fulfill the noble intentions of a democratic people. The neoclassical architecture was based partly on Ben Shahn’s depictions in his trial series. A mass of red intersecting marks and lines crisscross repeatedly, creating a matrix over the image. The sound of clanging gongs cracks the picture’s landscape, making it impossible to hear Paul’s words resonate.



Cat in a Trap, Pam Aloisa, Acrylic, 2010

In “Cat in a Trap,” the left edge depicts a uniformed policeman with badge and gun; no head is included. The image alludes to police

activities: chasing and catching criminals, interrogating and obtaining information from those they take into custody, securing them away from the public, and otherwise enforcing the peace. Near the center of the painting is a cage with a gray-mottled cat, the focal point of the artwork. The cat's greenish-yellow eyes make direct contact with the viewer. The composition plays with the concepts of entrapment, lack of privacy, and the illusion of public safety fabricated in the seemingly organized and standardized structure of "law enforcement." The public always demands more cages, locks, and laws to protect them. Small arrows lead eyes around the "cage" of the painting as well, but the arrows make no sense and lead to nowhere and everywhere. In this system, a nice, white, pink-nosed rat is loose.

Prison cages more than the convicted. Todd has written about his niece's response after a troubling visit:

Since finding my way into this system that breaks every promise and principle of the American premise, the only thing that hasn't been successfully stripped away from me is the strength and support of my family, who have visited me often.

The last time they visited, the facility was staging 100% vehicle searches. This kind of authoritarian intimidation scares many families away from their visit, but not my family. After braving the indignities of the "security" process, my niece was unusually quiet except to say, "I love seeing Uncle Todd, but when we go there, I feel like a cat in a cage."

That incarceration punishes more than the prisoner and in ways that go beyond restriction of movement has been noted by many, among them Puerto Rican independence activist Elizam Escobar. He painted and created masks in prison until receiving clemency from President Bill Clinton in 1999. His incarceration led him to observe that prison "services are treated like 'privileges' that can be retained or lost.... Crime and punishment doesn't end with the conviction and sentence; they continue...." The consequence is what he calls "the 'aesthetics of wax': if the surface looks shiny...everything is beautiful, true, and good" (Escobar 1994, 42).



Justice Served, Pam Aloisa, Acrylic, 2010

“Justice Served” questions the character and motives of those expected to seek justice rather than simply win in the adversarial system that powers court proceedings. In 2009 a filing before the U.S. Supreme Court in the case of *Pottawattamie County v. McGhee*, attorneys representing Iowa prosecutors who had withheld exculpatory evidence asserted that there is “no freestanding constitutional right not to be framed.” Those suing the errant prosecutors were Terry Harrington and Curtis McGhee, who had served 25 years of a life sentence before the Iowa Supreme overturned their murder convictions. The prosecutors had withheld evidence that pointed to a suspect who happened to be the brother-in-law of the local fire chief. The case was settled out of court before the Supreme Court justices had a chance to rule on it (Washington Post 2009).

The sneer of the server in “Justice Served” belies his motives. He makes direct eye contact offering up a pot engraved “I.U.S.,” Latin for “justice.” His mouth is open, revealing large, menacing teeth.

Torn family photographs swirl around the pot in a greenish slime. Paint is applied directly, not modulated with additional layers of pigment, adding to the effect that the work was an immediate reaction, quickly painted, and close to raw emotion. Aesthetically, it serves as an example of expressionist art that provides catharsis, both for the maker and the viewer.



Only a Shadow, Pam Aloisa, Acrylic, 2010



Tulips, Todd Newmiller, Stained glass, 2010



Daisies, Todd Newmiller, Stained glass, 2010

Plato's Cave inspired the concept for Aloisa's "Only a Shadow," which depicts flower imagery drawn from the stained glass sculptures shown below the painting. The stained glass was created by Todd Newmiller in prison and directly influenced the subjects Aloisa painted. The stained glass sculpture "Tulips" is an early effort showing an interest in stained glass that is freestanding and more sculptural. The addition of honey bees in both "Tulips" and "Daisies" introduces a narrative quality that moves the work beyond ornamentation. The cartoonish quality of the freestanding daisies gains whimsy from the bee that joins the flowers. The cheerfulness of the daisies and the bee bring welcome relief from the dreariness of prison but also obscures the grim reality of living in prison.

In "Only a Shadow," two tulips stand upright on the floor in front of an open door that is outside the painting space; a heavily textured daisy fills the yellow bright light on the floor. Likewise, the thick, gray shadows of the flowers are the primary dynamic in this work, becoming more important than their sources. A bee painted on a scrap of paper hovers above a shadow on the floor. The shadows bridge distances from dark to light and inside to outside. The floor area is filled with a mottled greenish pattern like camouflage that makes it difficult to discern the "real" subjects depicted in the work.

Working with stained glass or other artistic endeavors offers therapeutic distraction for prisoners, a way to bring some color to otherwise colorless days. Under the terms of incarceration, what would normally be an artful hobby becomes a coping mechanism, a phenomenon noted by Elizam Escobar, who believes "art becomes a space of liberty that cannot be taken away" (Escobar 1994, 47). In his stained glass work, Todd engaged many experiments in three-dimensionality that provided engineering as well as aesthetic challenges. The appeal of working in three dimensions reflects the preference anyone would have for a full life outside the wire over the two-dimensional and shadowy world contained within the wire.

Aloisa's painting "Azzageddi" features artifacts of Todd's life—books, a sketch, a torn photo, a calendar page—marking places and time. The stained glass masks appearing below the painting arise from the pursuit of three dimensionality in stained glass design and inspiration from various literary sources, including the works of Herman Melville and Joseph Conrad, providing relief from the boredom of incarceration. In Melville's *Mardi*, the prophetic god-



Azzageddi, Pam Aloisa, Acrylic, 2010



Azzageddi,
Todd Newmiller,
stained glass, 2010



Seppuku,
Todd Newmiller,
stained glass, 2010



Demiurgus,
Todd Newmiller, stained glass, 2010

devil Azzageddi declares, “Many things I know, not good to tell; whence they call me Azzageddi” (Melville 2008) . Between them, Melville and Conrad published forty some books. Prison rules permit Todd to have no more than fourteen books. Those he has, he reads with an intensity that can be seen in his stained glass sculpture “Azzageddi.” In *Mardi*, Azzageddi is told to “wag your tongue without fear,” a statement that also becomes an imperative for an artist with concerns for human rights. Many of the details in this work come from common depiction of gods that share the traits of the dead – pronounced eyes, dangling tongues, and discoloration of the skin. The blue piece in the forehead is meant to imply the third eye.

“Seppuku” shares with the other three-dimensional masks a subtle facial asymmetry. With each of the masks, the right and left halves were designed separately, rather than creating a mirror-image. The intent was to give the impression of symmetry but to have a degree of asymmetry, as most faces do. The term “seppuku” refers to ritualistic Japanese suicide originally reserved for samurai, but the piece is inspired ironically by a passage from Joseph Conrad’s work *An Outpost of Progress*: “had they been of any other tribe they would have made up their minds to die--for nothing is easier to certain savages than suicide--and so have escaped from the puzzling difficulties of existence. But belonging, as they did, to a warlike tribe with filed teeth, they had more grit, and went on stupidly living through disease and sorrow” (Conrad 1897).

“Demiurgus” was inspired by “Gnostic Mythos in Moby-Dick” by Thomas Vargish (1966). In order to explain the existence of evil, the Gnostics taught that the creator, or Demiurge, was an inferior and imperfect being, and that evil was inherent in matter. Production of this piece was also motivated by the engineering challenge of making a curled ram’s horn. The features of the face are based loosely on those of the Hadza, one of the last remaining hunter-gatherer peoples featured in a December, 2009, National Geographic article. Each of the masks rests on a stand specially designed for the purpose. Each is unique.

“Choose Your Weapon” reveals the harshest weapon to which the incarcerated must submit: the lock. Many who have submitted to the lock are imprisoned wrongly. The Innocence Project (2009) at the Cardozo Law School has exonerated 297 individuals using



Choose Your Weapon, Pam Aloisa, Acrylic, 2010

DNA evidence. Henry David Thoreau once wrote, “under a government which imprisons any unjustly, the true place for a just man is also a prison” (Thoreau 2012). More appropriate for defending against the lock than the other weapons depicted in this painting, is the pen. But perhaps this series of paintings suggests that equally or more effective may be the brush.

While the form and style of Aloisa’s paintings clearly are indebted to early American modernist traditions, they also break free of the historic and aesthetic trappings of their sources and reflect the time and culture of the artist. Donald Kuspit, in *The End of Art*, describes the development and end to modern movements: “...an avant-garde enfant terrible becomes an academic elder statesman... socially assimilated and institutionally categorized almost as soon as it happens.” Modernism’s reliance on criteria of beauty based on autonomy and elitist, intensely private expression gave way to art

that meets the street. "The Street" is defined as a "space of social or public compliance." (Kuspit 2004, 182) B. Ruby Rich lauds post-modern art today as being "syncretic" work. "Work that marshals differing vernaculars under a sign of mutuality, work that can move beyond hybridity as an aesthetic to hybridity as a process...offering a model for strength and accommodation without assimilation." (Rich 1994, 239) The viewpoints expressed by William and Todd Newmiller and Pam Aloisa meet in the gallery but reflect the Street; the project is thoroughly a postmodern collaboration.

Human rights issues are increasingly common subjects for artists, translated in a variety of media and hybrid forms. Art is action; activism and social research are two terms that define the political field that has gained prominent status in the contemporary art scene. Can art effect change in our world? Do beauty and truth matter? Priscilla Coit Murphy, in 2007, wrote a book that renews hope: *What a Book Can Do: The Publication and Reception of "Silent Spring."* In this book, Murphy asserts that Carson's small, quiet book woke up the universe. Contemporary art follows this tradition by revealing contemporary issues such as the ugliness of human trafficking, child pornography, genocide, child soldiering, wrongful conviction, and inhumane incarceration. Artists around the globe are indeed spurring social change by movingly expressing these contemporary issues.

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Evil as an Aesthetic Concept

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Introduction

It should be quite easy to observe that there has been an overwhelming increase in popular usages of the concept of evil since events termed simply by the dual integers 9/11. The way the academic community has reacted to the (re)emergence of the signifier “evil” in public discourse can, I believe without cutting too many corners, be divided into three general trends. First there are the ethico-political discussions and investigations, which more or less take the concept at face value. Unsurprisingly quite a few commentators have embarked on this road. These jurists, philosophers, political scientists etc. all agree upon the notion that terrorism has emerged as the new (radical) evil, which liberal democracies are forced to take issue with and stern action against. A telling book title in this tradition is Michael Ignatieff’s *The Lesser Evil* (2005). Here, Ignatieff predictably argues that it is sometimes necessary to bend our attachment to fundamental human rights in order to prevent the greater evil of terrorism. Secondly there are the philosophical investigations into what the concept of evil could at all be taken to mean: “What is evil?” the philosophers ask. Richard Bernstein (2002), Susan Nieman (2004) are prominent representatives. As a very general rule, philosophers who take up this path tend to be weary of the very immediate understanding given to the concept of evil in most political discourse,

but rather than investigating the effects the frequent usage of the concept might have, they prefer to ask how we can be justified in calling things, actions, events or persons evil. Thirdly there are the more discourse-analytically inclined investigations into how human relations are structured by the usage of such morally defined signifiers. Joanna Zylińska (2005; 2006), Stephen Chan (2005) and Judith Butler (2004; 2005) represent this trend. Here the well-known argument goes as follows: By referring to your political, social or international adversary as evil, you immediately justify taking actions against him or her that you wouldn't normally condone.

What unites all of these approaches is the generally accepted idea that the concept "evil" is a moral or ethical one. The central point of this article is to challenge this idea. It will be argued that the crucial function, which the concept serves, is often aesthetic rather than ethical; what we end up saying, when we point out that someone is "evil", is not that the person is unjust or acting against certain fundamental moral principles; what we are saying is that the person pointed out is disgusting, degenerate, revolting or otherwise *aesthetically* unacceptable.

Evil and Human Rights

At first, however, I should like to make clear why an investigation of the specific scope of the concept of evil must be crucial for the understanding of human rights in the first place. It may not be immediately clear to the reader of juridical texts that the concept of evil is particularly pertinent. If one takes two of the most pertinent cases from the European Court of Human Rights concerning the issue of anti-terrorism legislation and the problems they pose for Human Rights, namely the cases of *A and Others vs. The United Kingdom* (ECHR Grand Chamber, 2009) and of *Gillian and Quinton vs. The United Kingdom* (ECHR Fourth Section, 2010), and carefully goes through the final verdicts, one will not see the concept of evil being used a single time.¹

It is not, however, as a specific juridical concept that evil is being considered in any case. Rather, in the approaches mentioned

1 In both cases the Court argued that the UK had gone too far in its counter-terrorism measures and that certain forms of policing and detaining suspects of terrorism would have to be changed. The finer details of the verdicts, however, are beyond the scope of the present paper.

above, evil is being viewed as a specific moral or ethical category, which can form part of the background of social, political and juridical interaction. In other words: if terrorism is being viewed as a great new evil, against which society allows itself to take extraordinary measures, then this particular notion of evil is bound to form some of the background against which judges make their decisions in human rights cases. One can argue that this is an entirely necessary tendency or one can argue that it is an extremely dangerous one, but as legal scholars such as Oren Gross, Fionnuala Ní Aoláin, William Stuntz and many others have argued it is a well proven fact of the sociology of law, that judges tend to “go to war” when society does (Gross and Ní Aoláin, 2006, 77).

One cannot read Fourth Amendment cases from the 1980s without sensing judicial attention to the pros and cons of the war on drugs – even when the cases did not involve drug crime. Crack dealers were the most salient crime problem a dozen years ago; now, terrorists occupy that place (Stuntz 2002, 77).

When concepts of new and great evils emerge and begin to play a dominant role in public discourse, it is bound to have some effect on the state of human rights. It is with this in mind that we should approach my argument that the functioning of the concept of evil in public discourse can often belong to the realm of aesthetics rather than ethics.

Ethical Violence

Since it is the *functioning* of the concept that is the target, it seems natural that the third group of theorists mentioned above will be in focus. The danger that is identified by discourse-analytical approaches to the proliferation of the concept of evil is that a moralization of discourse could lead to a kind of ethical violence. Closely related to this idea is of course the binary logic that those who are fighting the “evil” ones automatically posit themselves as good. Joanna Zylińska, author of the book *The Ethics of Cultural Studies* (2005) gives a paradigmatic example of how this approach argues:

[I]n the US as well as the UK '9/11' has played a symbolic role in founding a new moral sensibility. This political moralism has underpinned the all-encompassing 'war on terror' unequivocally championed by Bush and Blair and fought against an invisible enemy, 'terror' itself. And it is through recourse to moral rhetoric, a discourse of good and evil, that a difference between 'us' and 'them' has been established in this war [...] Positioning '9/11' as an extraordinary, apocalyptic event after which 'nothing will ever be the same' has been part of this moral agenda, which attempts to legitimate military intervention with references to transcendent concepts and values (Zylinska 2006, 72).

In this line of thought it would seem that "ethical violence" means the kind of violence that is made possible by the binary logic of a radical separation of "us" and "them". What is called "ethical violence" functions in virtue of some form of exclusion – it is a symbolic form of violence, which excludes by making ethical judgements (such as "A is evil"). Exactly how such exclusive practice is carried out is still a question to be answered though. As should be clear from the introduction, the present argument makes the point that the kind of exclusion, which takes place in relation to "ethical violence" is not really ethical at all, but rather aesthetic.

This could seem to be a hard claim to validate. A violence that is aimed at furthering "good" and eradicating "evil" would according to many be the very definition of "ethical violence". As a first step towards countering this intuition it will be spelled out in detail how such a notion of ethical violence should be understood. This will be done by taking up the notion, as it is being developed by Judith Butler in her *Giving an Account of Oneself* (2005). The reason for choosing Butler here is that her approach draws upon ideas which should be seen as crucial for any research project within what is rightly termed discourse analysis: crucially that the human subject cannot be seen as a fundamental and self-transparent essence; that it instead in some way or other is decentred, out of joint or inaccessible to itself.

Butler on Ethical Violence

What then is contained in Butler's notion of "ethical violence"? As the title of the book would suggest, Butler chooses a specific strategy for describing the fundamentally precarious character of the human subject in *Giving an Account of Oneself*. This strategy focuses on the issue of self-narration and the fundamental impossibility thereof. She makes two points that are crucial for us: "[T] here is (1) a non-narrativizable *exposure* that establishes my singularity" (Butler 2005, 39) and there is "the *structure of address* in which it takes place" (ibid).

By the "non-narrativizable exposure that establishes my singularity" Butler alludes to the duality of the self, revealed whenever I give a narration of myself. First there is the "I," being narrated, and secondly there is the "I" which emerges as the narrator of the story. The non-narrativizable exposure is that which occurs, when this second I realizes that it is impossible for it to narrate its own emergence within the confines of the first narration. Any attempt at such an inclusion of this second "I" in the narration would only lead to the emergence of a new (a third) "I" that would be narrating the inclusion of the second in the narrative of the first. This structural discrepancy within any narration of the self is a fundamental problematic, which no narrative practice will ever be able to overcome.

With the "structure of address," Butler argues that whatever we do, when we give an account of ourselves, it necessarily takes the form of an address. Every narration implicates the "you" to whom I am telling my story. This also means that every narration involves the exposure of myself to this "you". Given that every narration involves a necessary discrepancy at the very core of the narrating self, this means that I expose my very lack of transparency to "you" whenever I address myself to you. Building upon this idea Butler argues that ethics is possible within the structure of address, where I ask "Who are you?" while recognizing that the other, to whom I put my question, is conditioned by the very same inaccessibility to her own narrative, by which I am bound.

Butler's overall point regarding human relations therefore is that genuine ethics is possible not because human beings are self-transparent and therefore responsible entities, but exactly because the lack of self-transparency conditions us to understand ourselves through our exposure to the other. Ethics is that which takes place

between subjects who are unable to fully come to terms with their own being.²

What does all this have to do with the notion of ethical violence? The point is straightforward: if the basic condition of being a human subject is that one is in an opaque relation to oneself, and if ethics is that which occurs in the field where subjects do or do not recognize each other in terms of this basic condition, then ethical violence is that which takes place when subjects force transparency upon each other. If I cannot accept my own opacity, chances are that I will not be able to accept it in you. Butler formulates it in the following way: "Suspending the demand for self-identity or, more particularly, for complete coherence seems to me to counter a certain *ethical violence*, which demands that we manifest and maintain self-identity at all times and require that others do the same" (Butler 2005, 42). Butler continues on to say that this suspending is exactly what is meant by her founding the ethical relation in the question "Who are you?" The ethical way of asking this question is to insist upon asking it and never cede. The moment we stop asking that question is the moment we say "now I know who you are" (Butler 2005, 43). In other words the ethical way of dealing with the other is to follow (Butler's version of) the Lacanian dictum to never "cede upon your desire [for the other]" (ibid.), it means to insist that the question "Who are you?" can never be given a satisfying answer.

Butler expands upon the situation in which "I know who you are" by turning her attention to what she calls ethical judgment. The fundamental form of the judgment is "A is X". In a judgment we ascribe a property to someone or something – in some way or other we define, what it is. In a judgment we therefore draw a clear line of differentiation between the judge and the judged. Butler does not want to argue that we should suspend ethical judgment altogether, but she vehemently argues that any ethical judgment that we make are conditioned by a prior relation of recognition: "Prior to judging an other, we must be in some relation to him or her. This relation will ground and inform the ethical judgments we finally do make. We will, in some way, have to ask the question "Who are you?" (But-

² In this way Butler reveals herself to be a certain kind of Hegelian (Butler 2005, 41). That being said she is a reluctant one: "There is lots of light in the Hegelian room, and the mirrors have the happy coincidence of being windows as well" (ibid.).

ler 2005, 45). To Butler, ethical judgement is only truly ethical if it is made against the background of the original situation of mutual recognition of the impossibility of self-identity.

The form of ethical violence which is entailed in insisting upon understanding the other as a “whole” person – as someone who can be expected to be and to know what he is and what he wants – is not the only one however. This becomes clear in her discussion of condemnations. She writes: “[C]ondemnation is very often an act that not only “gives up on” the one condemned but seeks to inflict a violence upon the condemned in the name of “ethics”” (Butler 2005, 46). Here we should detect a certain shift in the meaning “ethical violence.” In the discussion above, ethical violence meant insisting that the other should uphold a kind of self-identity; here on the other hand ethical violence is what takes place where the condemned other is “given up upon”, i.e. precisely posited as something wholly other than the speaker. To be sure, we find the general form of judgement “A is X” at the bottom of each of these types of ethical violence. This makes impossible a genuine and continued questioning “who are you.” Nonetheless, the difference should be obvious.

In the first instance ethical violence is a kind of subjectivization; as the inclusion of the other into the community of self-identical subjects. In the second instance ethical violence is performed as a kind of exclusion. A condemnation draws a sharp line of distinction between the judge and the judged, where the judged is no longer allowed in the ethical community of the judge.

Having established this distinction, we can take the further step of distinguishing between the forms of violence that is entailed. When ethical violence is conducted in the form of subjectivization, the aim is to form human beings into a certain kind of ethical substance. Here we find the disciplinary, educational, pastoral, sexual etc... forms of violence discussed and investigated by Butler herself and of course by Michel Foucault (e.g., in 1991). However, when ethical violence is conducted in the form of condemnation, something quite different takes place. A person judged to be evil in this way is *exactly not* a possible target of disciplinary uses of force or violence, because there is nothing there to be disciplined. He or she is neither posited as a self-identical subject, nor recognized as standing in an opaque relation to him or herself. Instead, such a person is a possible target of exterminatory or rather cleansing uses of violence.

Kant and Aesthetic Judgement

At this point we should be able to make an argument for why what is often discussed as ethical violence could be better understood as aesthetic violence by taking up a famous distinction from Kant's *Critique of Judgment*. I think here of the distinction between the beautiful and the sublime.

A crucial point about the judgments about the sublime and the beautiful is that they are what Kant understood as reflective judgments. This means that they are not descriptive or determinate judgments about what an object is, but rather ways of reflecting upon the cognitive capacities we utilize in order to make judgments in the first place. In the determinate judgment "The rose is red" we subsume an object (the rose) to a concept (red), i.e., we move from the concept to the object. In the reflective judgement "the rose is beautiful," such a move is not possible because, so argues Kant, we do not have a determinate concept of the beautiful in the same way as we have a determinate concept of redness. This means that a different kind of necessity is at work in reflective judgments than is the case in determinate judgements. Kant calls it subjective necessity.

The subjective necessity involved in judgements of beauty is best understood through a specific kind of ought. To make the judgment that something is beautiful entails a commitment to the belief that everyone else ought to find the same thing beautiful (Kant 2001, 212). Upon the experience of something beautiful in nature, I feel that the beautiful object is formed in exactly such a way that it is *as if* it were teleologically suited to my specific cognitive capacities. In a reflective judgment we are judging upon the very feeling, which arises from the experience of some object. The "as if of the judgment is what corresponds to this very feeling. It is as if the rose was made exactly with me in mind, when I find it beautiful. Crucially however this very feeling that it is as if the rose was made with someone like me in mind, does not mean that the judgements of the beautiful are based upon the experience of a solipsistic subject detached from any kind of community. Exactly because of the feeling that it is as if the rose was made with me in mind, it is also as if it was made with everyone else in mind, who share my specific human capacities for judgement.

In the end that is what leads to the idea of a *sensus communis* (*Gemeinsinn*) in Kant's analysis of reflective judgment. Because the judgement of beauty commits me in the described way, I can get the feeling of belonging to the community of human beings, who have the same cognitive capacities as I do, through the experience of the beautiful thing (Kant 2001, 236ff.).

Where the beautiful gives us a feeling of teleologically belonging in the world, because it is as if the beautiful objects were made to suit our cognitive capacities, the exact opposite is the case with regard to the sublime. The feeling we experience when we experience the sublime is that it is as if it was made specifically with the *transgression* of our cognitive capacities in mind (Kant 2001, 246). The sublime is that which is large (the mathematically sublime) or powerful (the dynamically sublime) beyond measure. We simply cannot comprehend the magnitude and ferocity of the sublime. Indeed, as Kant puts it, "sublime is what even to be able to think proves that the mind has a power surpassing any standard of sense" (Kant 2001, 250).

How do these notions of the sublime and the beautiful fit with the normativity inherent in the types of ethical violence we extracted above? I believe that they can be shown to fit well.

Ethical violence in the sense of what we have described as Foucauldian subjectivization above could be translated into a form of aesthetic violence. Here, aesthetics is modelled upon the Kantian judgement of the beautiful. Such a translation would even refine our understanding of the violence entailed in the types of judgement that could be said to fit the knowledge "I know who you are" most prominently, i.e., "you are a woman," "you are a man," "you are normal," or "you are responsible." Judgements of this kind are not simply violent in the sense that they subsume a person to a given concept and directly impose a repressive structure. Rather their functioning could be illuminated as ways of reflecting upon the idea that it is as if everyone ought to agree to what is being said, but this form of "softer" or more "open" judgement should not trick us into thinking that what is going on is any less ideological.

Indeed, does not this description capture a crucial feature of contemporary ideology, which seems to have incorporated the poststructuralist critique of the '70s and '80s? We have in fact learned that 'woman' is not a determinate category that prescribes

a clearly defined set of rules of conduct, e.g., cleaning, cooking, breeding, but nevertheless we often seem to act *as if* we precisely had not learned this.

There is more to be said about this softer form of inclusive violence, but the crucial point has been made. What is described by Butler and many others as a certain kind of ethical violence can be translated into a no less violent, but perhaps more sinister form of aesthetic violence.

Even more crucial for my present purpose, however, is the fact that what has been defined as ethical violence in the form of condemnations above can be adequately understood as aesthetic violence, where aesthetics is modelled upon the Kantian notion of the sublime. As said above, condemnations, in the sense of “giving up upon” the other, precisely function in the way that they posit the other outside of the reach of disciplinary or even repressive violence. The condemned ones are not even *enemies* in the Schmittian sense of *political* enemies (Schmitt 2007a, 36-7). For Schmitt the political enemy is the one against whom one can go to war, but crucially he is also one with whom one can make peace. The political enemy is precisely not the one that is the target of extermination.

In the post-9/11 environment of counter-terrorism it has more than once been argued that the terrorist enemies of the west precisely are not considered to be enemies in the Schmittian sense. Rather, they are targets of extermination. It is at this point that the argument tends to turn “moral” or “ethical.” It is argued that it is because of the use of the concept ‘evil’ and the corresponding moral higher ground, which the speaker in question takes above the one’s, he is condemning, that violence takes this extreme form. Schmitt himself made the argument that it is precisely when the enemy becomes a moral enemy that he becomes the target of extermination (Schmitt 2007a, 36-7; see also 2007b). My point here is that the idea that this should be a moral or an ethical stance is weak. The very idea that taking a moral higher ground should result in the kind of absolute condemnation of the other, where he becomes the object of possible extermination, seems weak to me. To be on ethical higher ground means precisely to still recognise that the other is an ethical subject (regardless how one defines such a subject); the other may be less morally refined, but he counts as an ethical subject nonetheless. In the case of the absolute condemnation the other is no longer con-

sidered as a subject, but rather simply as an object: a disease, a pest and something to be destroyed rather than killed.

It is at this point that we encounter the Kantian sublime: the excessive externality which seems to be beyond the reach of our cognitive capacities is the sublime. It is that which I am incapable of understanding and which therefore leaves me with a feeling of wonder and fear. Like virus or bacteria we do not relate to the ones we call evil as subjects. We rather – and precisely – reflect on how they seem to be beyond the reach of our cognitive capacities. We ask in (forced) bewilderment “Why do they hate us so?” and like that we make a sublime evil out of them. The point is that this manoeuvre precisely is not ethical. It is rather an aesthetic one.

Conclusion

A decade after 9/11, one of the crucial political challenges facing world politics is the status of law and right and especially human rights. We have seen legal measures and forms of political repression emerge even in democratic states that have been severely criticised by the institutions of international human rights law (see, e.g., ECHR Fourth Section, 2010; ECHR Grand Chamber 2009). One could of course argue that the very fact that institutions such as the European Court of Human Rights are capable of intervening in this environment, and that they are actually doing it, should lead us to think that the system of international law is in fact working quite well. Conversely, it can certainly also be argued that the fact that it is at all necessary for the court to intervene against the legislation and the practices of the courts and the police in a legal state such as the United Kingdom, calls for a heightened attention by the academic community concerning the current state of affairs in relation to human rights.

As I have pointed out, the standard way for the academic community to respond to this challenge has been to adopt an overall moralistic or ethical framework. The argument I have put forward here seeks to show that it might be prudent to open up this framework in a direction that draws as much upon aesthetic theory as it does upon theories of ethics. In so many words we have many reasons to study closely the aesthetics of human rights.

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Exhibits from the Life of Bodies

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1278. An abbot returns to the village of Sedlec, Czechoslovakia from the Holy Land, bearing a handful of earth taken from Golgotha, the "Place of the Skull." On account of this pious deed, the burial plots around the Church of All Saints become prime real estate for noblemen wishing to jump queue at the resurrection. The cemetery is soon filled to bursting, and will continue to overflow into the ossuary until the 1870s, when the artist František Rint is commissioned to beautify the premises. Among his masterpieces are a chandelier said to feature every bone in the human body, and four pyramidal stacks of tiered remains. It is a true Golgotha in its own imposing right, and the perfection of the Medieval genre of *memento mori* - not to mention host to a constant procession of tourists. In 2005, an exhibition of dissected human bodies, posed and plastinated, opens in Tampa, Florida. Pitched as an educational opportunity, the procession encounters the usual opposition from religious groups, incensed at this blatant act of desecration, as well as an unexpected obstacle. The exhibition's eponymous bodies were, it seems, donated by the Chinese government, having no next of kin, nor any verificatory papers. Given the established link between the Chinese prison-industrial complex and the black market in body parts, this lack of due process is enough in itself to make anyone with the least imagination nauseous.

Human rights advocacy groups have hounded the exhibition in its travels from day one; and yet their vigorous defense of human dignity *qua* rights is not itself uncomplicated. For the legal terms by which one may reproach China, as a pertinent example, for violations of human rights require that China defer to international demands; consider how China's human rights record is more often than not called to account under the sign of free trade, as part of the imperative to ethical consumership in the West. To this end, China may be accountable to human rights only insofar as they are co-extensive with the demands placed upon the individual by Capital; the proper name for those networks which, in the case of Bodies, absolve the exhibitors of responsibility for the terms of the bodies' (or any indeed, resource's) extraction. In his Declaration of the Rights of Human Beings, Raoul Vaneigem describes the right to survival under such mercantile conditions as little more than a "stay of execution" in exchange for the reproduction of oneself as a commodity, an amnesty "granted to anyone who assumes it 'by the sweat of his brow'" (Vaneigem 2003, 2).

Does this not resonate with the teachings of Paul, in whom we may find the earliest articulation of a pan-cultural, universal law outstripping any local, political instantiation; like human rights, a dignity afforded to all regardless of social station? Yet salvation proceeds from a conscious affirmation of oneself as the subject of said grace; and then from the point - made emphatically by Paul, who cites his own toil amid the Thessalonians as an example - that heavenly salvation demands hard labour on the earth, in order that one may transcend this plane altogether. That one ought not to seek earthly fulfilment, rather purposing oneself at a world to come - this is a faith traces of which remain throughout the Sedlec Ossuary, where the temporal innovation of Christianity (which had earlier posited a free subject against the backdrop of extant determinist cosmologies) granted its dead antecedence over the merely punctual living. "For this we say to you by the word of the Lord, that we who are alive and remain until the coming of the Lord will by no means precede those who are asleep" (Thessalonians 4:15). A sixteenth-century edition of the woodcuts of Hans Holbein the Younger, whose depictions of the Dance of Death more or less codified the genre in the medievalist's imaginary, expands on this scripture accordingly: "As sleep does not extinguish man, but holds the body

in repose for a time; so Death does not destroy man, but deprives his body of its movements and operations" (Holbein 1971, 9).

But the Bodies exhibition, unlike the Sedlec Ossuary, does not depict such a suspension; it is a straightforward celebration of vivacity. Contorted into positions of play, the bodies on display are a depiction of the machine beneath the ephemeral rituals of life, and do not indicate any further horizon. Reconstructed bodies, denuded of their skin, are posed throughout as though playing basketball or football, riding a bicycle, even conducting an orchestra. One flensed specimen assumes the contemplative posture of Rodin's 'Le Penseur,' a properly philosophic corpse. The horror consists herein; that those whose bodies these once were are perhaps more alive in death than in life, which they may have endured in forced confinement, or worse. The supra-political, ultra-secular excuse for these grotesqueries is that, as Dylan Thomas put it, "after the first death, there is no other" (Thomas 2003, 106). For what further degradations can one suffer after death? It is written in the Gospel of Luke, "Be not afraid of them that kill the body, and after that have no more that they can do" (Luke 12:4). And yet in Tudor England, contrary to this wisdom, only the bodies of murderers and criminals could be used for scientific ends, for they were not among those to be resurrected at the Second Coming. But again, as Bodies supporters would say, this would be to miss the point. We are not awaiting the resurrection, and these people were already dead. So what constitutes complicity? (One may be reminded of the Buddhist view that it is permissible to eat meat only if it has not been slaughtered on one's behalf.)

That Bodies makes claims for itself as an educational tool, offering an illuminating glimpse of the body as it appears to the God's-eye-view of modern medicine, needn't undermine its theological suggestiveness. Žižek points out the underlying notion of *vanitas* present in the first media coverage of the technology of the X-ray; a technology which enables us "to see a person who is alive as if he were already dead, reduced to a mere skeleton;" an intimation of mortality shared by Hans Castorp in *The Magic Mountain*. Žižek cites Virilio, for whom the object becomes perceptible only when immobilized, and goes on to describe eighteenth-century tableaux vivantes, which can be "inserted into the long ideological tradition of conceiving of a statue as a frozen, immobilized living

body, a body whose movements are paralysed (usually by a kind of evil spell): the statue's immobility thus involves infinite pain ..." (Žižek 1997, 87).

It is this infinite pain we can observe in such an exhibition. The Bodies display does not function as a *danse macabre*; but what if this is because it does not, after the silence of the organizers becomes (in the imaginary) an admission of guilt, suitably address itself to the universal, instead referring to a particular atrocity, horrifying in its specificity and contemporaneity?

Perhaps this sense of being surrounded by thinly disguised atrocity, even in the modern world, is the elusive subject of Reggio's film *Naqoyqatsi*, the third installment in his heavy-handed triptych of non-narrative montage. From its opening shot, which pans across a derelict neo-classical edifice, to the three-dimensional computer imaging of the human body which recurs throughout, from CAT scans to stills from primitive VR, the film plumbs vast, uncanny valleys of body worship to present a cluttered but extensive co-theory of human and technological expansion. The Hobbesian connotation of its title ("Naqoyqatsi" is a Hopi word meaning roughly "life as war") is telling of its relentlessly, aimlessly pessimistic content. Power and resistance both find merely rote expression here. The images of atrocity that appear are simultaneous depictions of celebrity; infamous despots whose faces stand in for their crimes, or of bodies repetitively piled to the point of stylization; contorted glyphs of human suffering. In the vertiginous, high-speed world which the film seeks to depict, we cannot apprehend the object unless it is fixed to the spot. A lengthy, panoramic shot of famous faces from a wax museum illustrates this point precisely. One needs no reminder that the historical Madame Tussaud was a French noblewoman, tasked during the Revolution with casting the deathmasks of prominent society people who had fallen victim to the guillotine. Today, the wax museum that she founded in London includes the likenesses of living icons as disparate as Lady Gaga and Vladimir Putin.

Such figures are the inverse likeness of those on display in the Bodies exhibit. There we find actual bodies, meticulously reconstructed, that they may lay bare the ultimate sameness of the finely calibrated machines called human. The stark presence of each un-manned body is compounded by the troubling obscurity of the donors, who themselves may have been disappeared, reduced to

political and social non-entities. On the other hand, the wax mannequins displayed at Madame Tussaud's are not bodies, though they have bodily presence. They are mere façades of human identity, but each, for being the likeness of a celebrated person, has the aura of a singularity, even of historicity, which is precisely the quality that the Bodies exhibit denies its wares.

If, as Barthes remarks, the function of mythology is to immobilize the world, then the relation of celebrity to life is fundamentally antagonistic. In partaking of celebrity idolatry, the mythological likenesses in which we are so pruriently invested both feel and suffer on behalf of the passive viewer, a unilateral relationship made possible only by our sanitary distance from the object of idolization.

This relationship is troubled now by the vastly expanded territorial claims of the Spectacle, as popular culture explodes into billions of little self-employed pieces, but its highest expression may be preserved in the brilliant, ideographic portraits produced by Andy Warhol; celebrity likenesses haloed in colour, like Orthodox religious icons - an oft-cited resemblance, foregrounded in recent Warhol exhibits at the Byzantine and Christian Museum in Athens. But the 2-dimensionality of the icon in religious painting, before and contemporary with the Italian Renaissance, fulfilled its function of illustration without idolization, as contrasted with the Pagan tradition of sculpture. These likenesses were possessed of a symbolic power precisely because they were divested of any virtual function. And perspective arrived in painting with the discovery of a fixed point of view; therefrom, writes John Berger, "all reality (could be) mechanically measured by its materiality" (Berger 2008, 81). Berger's lapsarian account of art as a falling away from an unmediated reality begs the question, "What other measure is there?" but the answer may already lie within his formulation.

Peter Sloterdijk finds that "the philosophical basis of Renaissance painting was a radical shift in its truth model," as "the European West exchanged primal images for primal scenes" (Sloterdijk 2011, 156). In what he deems a semio-political decision, the Renaissance brought about a novelization of pictorial space, emphasizing the relation of subjects in the depth of a shared world, while the Eastern style of icon painting "continued to base its image concept on the statuesque elevation and immobilization of the ideas shining in" (Sloterdijk 2011, 156). The objectification of the world, that it may

straight-forwardly signify, depends upon the petrification of relations; thus every likeness gains a shadow, an uncanny social-empirical avatar. It is this virtual reality that precedes the electronic sequel; wherein our interaction with a lifeworld is belied by (or finds its meaning in) ruthless mathematization. Here too, the semio-political cleft occurs, between orders of exceptional and integrated signs. We can observe a similar succession between primitive, twentieth-century virtual realities, where, Eric McLuhan claims, soft-focus brings the viewer back to the sensory modes of the early middle ages, before the invention of pictorial space, and the lush, immersive 3-D of films like *Avatar*, where the eyes converge stereoscopically upon a vivid, involving landscape. Even today, one cannot help but wonder what will happen when these incipient technologies advance to the point where nothing would appear to be out of place, and one can relate to a programmed non-presence as they would an actual, bodily form. To this end, there have emerged entire edifying, heroic genres of science fiction based on the struggle of the individual against such a regime of inauthenticity.

Consider the pop-culture fascination which most resonates with the iconography of the *Bodies* exhibition, namely, zombie lore; the vision of one's neighbours reduced to ravenous, thoughtless automatons. Like the Medieval *danse macabre*, like the *Bodies* exhibit, these are the index and not the symbolization of death, a re-materialization of the folkloric figure of the "Undead." The Victorian ghost story, wherein a tormented soul survives its bodily prison and continues to rehearse its trauma in an endless repetition, is superseded by the more properly apocalyptic nightmare of an unfeeling, unthinking body, reduced to its basest appetites. If this fascination can be read as an unconscious response to the prevailing physicalist description of the human, one may readily apprehend how each campfire tale relates to the most chastening psychological model of its time. Sloterdijk suggests that the advent of dissection "brought forth a new conception of the human being as a wondrous manufacture of the organs," and how this new eye on the body created the effect that "humans, above all relationships to others of their kind, were firstly and ultimately single, unrelated bodies," only later sorted into social groups (Sloterdijk 2011, 126). The present-day vogue of the "living dead" speaks to exactly such a fanatical insistence on sovereignty and self-differentiation

against a homogenous mass; the survivor is not for life exactly, but she is certainly against death.

Foucault writes of how the emergence of a clinical pathology brought about the dispersal of death in time; how the study of disease altered our perception of death, from a simple end to life, which was reconfigured as a series of “separate, partial, progressive deaths” (Foucault 2003, 177) to a constant companion. Considered in this light, a whole genre of *memento mori* commences with an affront to religious superstition, and is itself of the Enlightenment. Pathology made of the body a kind of arrow in time, bisecting life and death. It is this object that is traced by the camera of Stan Brakhage in “The Act of Seeing With One’s Own Eyes,” a grimly silent film depicting numerous autopsies performed in a Pittsburgh morgue. “The Act ...” is, for its intense focus, its crucial sense of gradual revelation in time, its sustained interest, and its inquisitive, highly subjective camera work, a decidedly opposite film to the above mentioned *Naqoyqatsi* – an explosive barrage of images projected through the screen, as they are strewn through time and space. The collaged surface of the film stands in direct contrast to the ocular analogy of Brakhage’s camera work, as well as the sense of the title. (From the literal sense of the word “autopsy,” combining autos, self, and oopsis, sight.) *Naqoyqatsi* offers us a view from nowhere. Here, the film screen is a moral technology, and its subject is the same abstract human who is the subject of abstract “rights.” Brakhage, on the other hand, depicts, in many ways, the very suspension that Foucault describes when he writes that “the possibility of opening up corpses immediately, thus reducing to a minimum the latency period between death and the autopsy, made it possible for the last stage of pathological time and the first stage of cadaveric time almost to coincide.” And a moment later, that “death is now no more than the vertical, absolutely thin line that joins, in dividing them, the series of symptoms and the series of lesions” (Foucault 2003, 173).

Bodies would fast-forward this severing distinction; the element of the uncanny, the cognitive dissonance that cannot but creep in at the sight of the display, comes about as a result of the specimen’s having been reconstituted as its living likeness, reenacting the events of an idealized daily existence. The finality of death is inescapable in Brakhage’s autopsy film; the cause of each corpse’s death

is sometimes obscure, sometimes painfully, wincingly clear, but in each case the body is transformed, and in this new, inert phase of existence, that is, in death, it demands that reconceptualization which is so difficult for the living, and which ensures the poignancy of and perseverance of religious custom the world over.

Modern medical science, which surely is equipped with its own poignant and bizarre customs, has transformed our concept of the body totally. Today, we can treat its components separately, that we may selectively regard parts of the living subject as though already dead. And yet this map of organs without bodies, this materialist *méconnaissance*, is diagnostically invaluable, its description possessed of a truthfulness that cannot be evaded. This begs the question, where may we locate ourselves between the redoubtable veridicality of this description and its apparent insufficiency before even the first most obvious fact of our subjective experience? Perhaps it is strange that scientific materialism should remain a scourge of philosophy today, when a coherent alternative is scarcely conceivable. We are materialists by proxy, however uneasily we may sit with certain of this doctrine's implications. Along these lines, it is worth considering that, while religious dualism is held to be a wholly untenable position, and philosophers delight in sniffing out the cryptic religious kernel in every humanist prerogative, today we face down a technological morality that, even as it chides the believer for enforcing a separation of mind and matter, would separate the subject from the body to the fulfilment of political ends.

Implicit in the Dance of Death is a critique of class. From the labourer who works the field to the highest religious authority, every man is equal in death, which is to say before God. The synonymy of these terms is crucial to our formulation; as so much of the symbolism that pervades any discussion of death today was instated in the Middle Ages, and in the Middle Ages, death meant to stand in the presence of God.

The severe religious injunction that underlies each medieval depiction of death was meant as a corrective to earthly hubris, articulating a clear limit to human power and understanding. Yet a further implication of this radical equalization consists in the mantra that all things must pass, that life is toil and drudgery; chiefly, in the ingenious inversion of class consciousness, which insists that earthly injustice is moot even or especially from the standpoint of those who

suffer. The various scientific incarnations of the *danse macabre* embody opposite values, as the Bodies exhibit speaks to a perfectible understanding of the human; which is, with Vitruvian man as its emblem, the optimistic creed of the Enlightenment. Bodies presents to us an admirable human figure; equality in the guise of biological sameness, as it passes over questions of political and economic stratification which are raised not only by the ideological nature of the presentation, but the materials themselves, as its organizers engage a supply chain which may defile the “universal human” they would presume to represent. Agamben writes, in his theorization of bare life, of a “life exposed to death” (Agamben 1998, 81). If any such abject figure can be observed in the Bodies exhibition, it would be better described as death exposed to the glare of life.

It may be instructive to compare the strangely calming space of the Sedlec Ossuary to the brash, ahistorical transgressiveness of Bodies, as each of these arrangements would symbolize the unconditional terms of our lease on the earth and our own bodies - the historical field on the one hand, and biological determination on the other. But the Bodies exhibit would bracket one term unto the presentation of the other, even forcing an eclipse; it is biologism at its worst, addressed to an ossified social totality. Here as for Sloterdijk, the body as a closed system represents the isolation of people from one another, opening onto a dearth of co-recognition. Rather than abstract, infinite, social man, we are presented with a finite, machinic sociology; a description of the “living representation of perpetual motion” (La Mettrie 1994, 32) as a contradictorily staid emblem of dynamic processes. To this worldview, human potential exists not even as an abstract negative capacity, nor as the will to collectivity, but in strictly recombinatory terms, as combinations of parts.

The key distinction here, and an important point of divergence between the religious and scientific conceptions of death as the denominator of all life, is temporal. The cadaver-double who appears throughout the medieval corpus, satirizing the worldly vocation of a correspondent body, is not a spook, but represents the empty remnant of the life it haunts, ready to swap places with spirited flesh and desiccate while the soul ascends. This body is a divisor that indicates, importantly, the radical difference between mute body parts and personhood, only one of which is subject to putrefaction. Here the distinction is fine but important; the body is at-

temporal, but the spirit is timeless. In the present-day Dance of Death, we are each made contemporary of the body in all its mechanical signification, which is not an an-aesthetic object. We are that living thing already dead.

Yet this attempt to reduce the human to a catalogue of physical processes cannot forestall the element in which any attempt at such a description is already embedded. For this immobilizing comprehensiveness aspires to a state of atemporal perfection, in order that ideology may work upon our precise coordinates. Barthes describes mathematics, for example, as “a *finished* language, which derives its very perfection from (the) acceptance of death.” To this, he opposes Myth, not as an over-determined plurality of customs and beliefs, but as a concentrated form of signification which we may construe as the empty form of any discourse. And even this finished language may be repackaged by mythological means; Barthes refers to the manner in which a morsel such as “ $e=mc^2$ ” came to act as a metonym for physics in its entirety in the popular imagination. “Myth, on the contrary, is a language which does not want to die: it wrests from the meanings which give it its sustenance an insidious, degraded survival, it provokes in them an artificial reprieve in which it settles comfortably, it turns them into speaking corpses” (Barthes 1972, 133). Our propensity to myth makes of the human body a dense signifier, as glimpsed in the dazzlingly suggestive surfaces of the exhibits glossed above.

This is a formal feature that divergent religious and scientific conceptions of the body have in common. The semantic *gestalt* that one may read from the surface of the body is, whatever its content, a product of the mythographical impetus to overreach the object of the senses, and a certain insistence on the legibility of nature. However the body is to be read - as a stolid rejoinder to the metaphysician; as the ‘best picture of the human soul;’ as a debased automaton or an angelic unity - this quintessentially aesthetic information comprises the active part of its appearance.

This is a separate issue from the instrumental means of the natural sciences; and really has very little bearing on the actual physical determination of the natural world. For it seems foolhardy to object to the conception of the body as a “manufacture of the organs” on the charge of reductionism; we may be that very thing. But myth knows only artificial causality (Barthes 1971, 130); even to the extent that the

Bodies myth, as propagated by the exhibition under examination, may in every factual detail correspond to the findings of a responsible science, and yet this would remain utterly coincidental; its presentation nonetheless a mythical confabulation. (To this end, biologism is most threatening when the factual support for its ideological claims is verifiably true. Phrenology, for example, was never such a threat to human dignity as many a more innocuous Darwinism, because it could be falsified by ever more rigorous scientific research; hence the connection between allegedly disinterested science and dubious value claims, as though one followed naturally upon the other, is left intact, even strengthened, by the rejoinder. One may persist in believing that value claims are subject to falsification.) Ideology in this case functions by restoring magical properties to the object of science. The kind of metonymy whereby a single body may denote the unchecked claims of a vast discourse bears close relation to the manner in which, by Adorno and Horkheimer's account, magic and myth operate. "Magic implies specific representation. What is done to the spear, the hair, the name of the enemy, is also to befall his person" (Adorno 2008, 6). But in every such case, the singularity of the effigy produced a worldly remainder, in much the same manner that the Christian burial site represents the general equality of every man in death, as well as the specific memory of all interred therein. But the object of science is not a representation of anything; it is a self-same specimen. What then is there to say about an exhibition such as Bodies, except that it is haunted by its own undead remainder, semiotically religious although spiritually bereft; for it takes the specimen-object of science and imbues it with a mythic narrative of progress, even while exploiting a methodical separation from its social context, lest the imaginary causality of mythology open onto a new narrative dimension to the display; that of a torture gallery. And can we not find in this shared mythical structure a space for the assertion of rights?

For universal human rights are a semantic innovation on behalf of those who absolutely lack any affordance of health, safety, or self-determination. One can imagine the Chinese political prisoner shocked to discover that they had been the subject of rights throughout their torture and detainment; but paradoxically, this privation is a pre-requisite to the invocation of rights. This is a distinctly theological motif; the by-no-means demonstrable conviction that where

there is a body, there is a body of rights; and this positing of an indivisible integrity from which rights are derived, and to which rights are addressed, is nothing other than a contingent decision, one myth among many available to modern taste.

“In the camps,” Adorno writes, “specimens died rather than individuals,” depriving the interred of what “ultimate, minimal property had been his own” (Schweppenhäuser 2009, 67). It is, in the final, eschatological event, an assertion of exactly this “minimal property” belonging to the pre-modern subject that gave the Dance of Death its timeless meaning; likewise, before blind obeisance to work took over from its ritual function, it was the submersion of the individual in a corporealized social tableau allowed the ultimate, unsurpassable sacrifice to be enacted upon the living subject in advance of his or her obliteration. This ritual-aesthetic participation then comprises the basis for those rights that we may hold as unassailable, an extra-legal conductor between persons as though each were part of a larger body. It is in this spirit, I think, that Raoul Vaneigem proposes as his first, most basic, universal right, “the right to *become* human” (Vaneigem 2003 [my emphasis]). Any doctrine of rights that attempts to forego the processual nature of the positive appearance of its subject will always be capable only of administering to bodies, nothing more.

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The Community of Rights

Human Rights and the Concept of Nature in the Context of the French Revolution and the Terror

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In the twentieth century it became increasingly clear that the distinction between man and citizen in the *Déclaration des droits de l'homme et du citoyen* (1789) is a decisive one. Human rights seem to apply only to people living within a community that is able to enforce the rights of its members. In the words of Hannah Arendt, "we became aware of the existence of a right to have rights...and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation" (Arendt 1976, 296f.). According to Arendt, the rights of safety, freedom of speech, liberty, and so on are one thing, but a basic "right to have rights" is even more fundamental – and yet this basic right remains the privilege of only some. Werner Hamacher puts it this way:

In distinction to such rights [the human rights of the 1948-charter], the right to have rights is a *privi-legium* in the strictest sense, a prelegal premise, a protoright, in which it is left open, *what* a human may be, *who* a human may be, and which rights may be granted to him aside from this unique one of belonging to humanity and of formulating his rights correspondingly (Hamacher 2004, 353).

The crux of this quote is the way the question of what a human is or how the human is defined becomes directly related to having or not having human rights. In the twentieth century the nation-state has been the leading authority when it comes to determining who is included in and excluded from what I will call the community of rights. The nation-state, however, was only in its adolescence in the age of the French Revolution when the human rights were drafted for the first time, but the question of who had a right to have rights was nonetheless heavily debated inside and outside of the National Assembly. This article is about the negotiation of the limits of the community of rights in the age of the French Revolution and the Reign of Terror, and it has a special emphasis on the question of women's rights.

A crucial notion in the establishment of a legal and normative framework surrounding the community of rights in revolutionary France 1789-1794 is that of nature or the idea of the natural. Not least because of the huge influence of the nature-based writings of Rousseau, the ideas of nature and the natural gained enormous moral and rhetorical authority during the eighteenth century; however, these ideas were defined, understood and operationalized in exceedingly different ways. My claim is that in order to have rights it is vital to be and act in accordance with a concept of nature or an idea of the natural, a concept or an idea that is fundamentally unstable. I distinguish between i) the idea of *human nature* inherent in the Declaration of the Rights of Man and Citizen and ii) the *state of nature* important to the thinking of Maximilien de Robespierre (1758-1794) and the legality of the Reign of Terror. The former is an inclusive understanding of humanity in the sense that everyone, independent of sex, race, and religion, is as a matter of principle included in the human community of rights. To Robespierre, contrarily, humankind is a delimited group existing in a state of nature, implying that the Republic has a right to defend itself to the death against its enemies. It is an exclusive concept of man because it operates with the idea of an inside and an outside of the community of rights. Consequently, while sharing their nature-based argumentation, the Declaration of the Rights of Man and Citizen on the one hand and the law of the Terror on the other define and operationalize nature and the natural in different ways.

My starting point is the relatively unknown author and political activist Olympe de Gouges (1748-1793), who was born in the city of Montauban in southern France, the child of Anne-Olympe Mouisset and the butcher Pierre Gouze. Within the last twenty years she has gained some prominence especially in gender-oriented research on the French Revolution, primarily because of her pamphlet *Les droits de la femme* (1791), which includes a re-written version of the Declaration of the Rights of Man and Citizen, a contract proposal that equal men and women can sign when agreeing upon marriage and a critique of the handling of the slaves in the French colonies. Here is a radical voice that criticizes man – “the dumbest animal from Paris to Peru, from Japan to Rome” (de Gouges 1791, 5) – and that sees through the sexual and racial discrimination that the revolutionaries’ ideal of equality was unable to bring to an end. The fraternal equality of the revolutionaries was a challenge to the hierarchical and corporate state order of *l’ancien régime*, but women were not, as de Gouges points out, included in the revolutionary band of equals. Contrary to what these egalitarian impulses in her political thought might lead one to believe, her pamphlet also contains a respectful dedication to the queen Marie-Antoinette, who in September 1791 was less popular than ever because of her involvement in King Louis XVI’s flight from Paris to Varennes.¹ While de Gouges radicalizes the idea of equality in the Declaration of the Rights of Man and Citizen by including women and slaves in the community of rights, she also defends a patriarchal monarchy in which responsibility rests upon the shoulders of the citizens to help the king “as a father whose affairs have been thrown into disorder” (de Gouges 1993, [I] 41). During the stressful period of The French Revolution, this was no way to make friends.

The focus of this article will be the radical and egalitarian part of her thinking. Not because her royalist and even patriarchal writings are unimportant, but because her more radical reflections show some of the far-reaching consequences of declaring universal human rights on the basis of an inclusive idea of human nature. More-

1 See Hunt (1992, 89ff) for a historical account of the hatred towards Marie Antoinette culminating in her execution in 1793 but before that already manifest in pamphlets and pornographic material. See Cole (2011, 45ff) for a good description of just how problematical a dedication to Marie Antoinette would be conceived in Paris in September 1791.

over, these thoughts are based on a conception of nature that she brings to bear upon key issues of the revolutionary age such as the question of women and – when she was beheaded in 1793 – the law of the Terror. Her radical political writings, then, will be used as a way to interrogate the concept of nature and its key role in the establishment of the community of rights. Or, closer to the wording of Arendt and Hamacher, gaining a better understand of her nature-based argumentation is a way to interrogate the negotiation of *who* has the right to have rights in the age of the French Revolution.

The Political Operationalization of Human Nature

A recurring theme in the works of de Gouges is the illegitimate child, and because she consistently uses the term *enfant naturel*, I will consider this theme as a way of engaging with the idea of human nature.² It is evident already from the title of an article in the *Encyclopédie* – “Batard ou enfant naturel” (*Encyclopédie* 2,138) – that it is normal to speak of non-marital children in different ways in this period. Hence, in connection with horticulture, the bastard designates a kind of weed or a “wild plant that has not been grown” (*Encyclopédie* 2, 139), while her more positive term “natural child” has associations with someone untouched by civilization’s institutions or with an unspoiled example of the nature of man. Defending the rights of natural children might seem like an unambitious political agenda and given that de Gouges apparently considered herself to be the illegitimate child of the archbishop Jean Georges Lefranc de Pompignan, it might even be considered a selfish struggle for her own rights. Such a critique would, none the less, be mistaken because she manages to turn the natural child into explosive political material. In her pamphlet *Les droits de la femme*, she uses the defense of the natural child as an attack upon the most important document of the revolutionary republicans: the Declaration of the Rights of Man and Citizen.

In the original version of the *Declaration*, article XI is about freedom of speech: “The free communication of thoughts and opinions is one of the most precious of the rights of man. Every citizen may

2 The illegitimate child appears in the play *Zamore et Mirza* (1788) – which is the original title to the play *L’esclavage des noirs* – and in the epistolary novel *Mémoire de Madame de Valmont* (1788), in the pamphlet *Séance Royale. Motion de Mgr le duc d’Orléans, ou Les songes patriotiques* (1789) and in *Les droits de la femme* (1791).

therefore speak, write and print freely, if he accepts his own responsibility for any abuse of this liberty in the cases set by the law" (in Hunt 2008, 222). In de Gouges' version, article XI is still about freedom of speech; however, while she keeps the original rhetorical framing, her version uses a surprising, concrete example – the right of the mother to appoint the biological father of her child – to advocate freedom of speech:

The free communication of thoughts and opinions is one of the most precious rights of woman, because that liberty ensures the legitimacy of children with respect to their fathers. Therefore, without a barbarous prejudice forcing her to disguise the truth, every female Citizen may freely say, "I am the mother of a child who belongs to you", although she must answer for her abuses of this liberty in cases determined by the Law (de Gouges 1791, 9f [in Cole 2011, 33]).

These lines are de Gouges' way of pointing out that the abstract principles of equality and freedom of speech do not really apply to women. She argues that a "barbarous prejudice" or an implicit moral law has put up a barrier between equality in principle and equality in praxis, meaning that it is one thing to speak in favor of the idea of equality but a completely different thing to practice equality in everyday interactions between men and women. Her argument relies on a radical and inclusive idea of human nature and of universal human rights because only this universal idea makes the distinction between principle and praxis possible. Her version of article XI is explosive material not only because women revealing the infidelity of husbands would challenge the traditional orderliness of society's established gender roles, but also, and perhaps even more importantly, because it would have far-reaching effects on hereditary law if freedom of speech were used to loosen the tie between marriage and paternity.

In the perspective of the history of law, marriage law and the right to divorce only really became important issues in the National Assembly in 1792 and especially in the weeks leading up to 20 September, when both men and women got the right to dissolve a

marriage.³ But already before that – in August 1791, just before de Gouges published her pamphlet in September – the member of Parliament M. Bouehotte proposed a list of laws under the heading “On the Conditions of People”. He underscored that some of his proposals – regarding the relation between children and their parents – “do not seem to be anything but moral principles” but then adds the rhetorical question, “[S]houldn’t good morals form the foundation of laws?” (*Archives Parlementaires* 1867, [29] 220). What is interesting about his proposal is that it reveals some of the concrete hereditary consequences an attack such as de Gouges’s upon the institution of family would entail.

To Bouehotte, marriage is a natural moral alliance between a man and a woman. While repeating a formulation from the *Declaration of the Rights of Man and Citizen*, he writes, “no property, no profession, and no official standing or function can take away the natural and inalienable right [le droit naturel et inaliénable] of a citizen to engage in marriage” (*Archives Parlementaires* 1867, 219). He is also interested in equality, but by the fifth article of his proposal it becomes clear that the equality characterizing the natural condition of marriage is a questionable one. “In our laws the condition of women shall be equal to men’s as far as it is allowed by the difference between the sexes. The last part of the sentence is deemed necessary in order “not to disturb the natural law according to which the husband is the head of the family.” While de Gouges used the concept of nature as a way to recognize children born outside of marriage, Bouehotte uses it differently as a way to preserve the patriarchal institutionalization of marriage. When the natural can serve as part of the argument both for and against the preservation of the traditional marriage, it becomes apparent how “the natural” was operationalized politically in different ways in this period. In other words, here we begin to see how the idea of nature can function both as a principle of inclusion (women and illegitimate children should enter the community of rights) and of exclusion (in marriage, women should not disturb the natural authority of men). And it is no surprise that Bouehotte’s naturalization of marriage has consequences as to who is appointed father to the family’s children. He says, “the lawfully engaged

³ Cf. Cole (2011, 148).

marriages attest to who is the father of children brought to this world while the marriage exists.”

It is precisely this institutionalization of paternity that de Gouges attacks, because infidelity and sex before marriage is a fact that causes some women and children to be left without rights outside the natural family. Bouehotte draws the hereditary consequences of his proposal when he says, “the legitimate children are equal among them and the heritage of the father and the mother can only be distributed in different sizes according to the laws dealing with lapse of inheritance, marriage after widowhood, and marriage after divorce” (*Archives Parlementaires* 1867, [29] 220). Equality, then, is something existing between the “legitimate children” and it is *their* inheritance that is legally formalized.

The illegitimate or natural child, in the thought of de Gouges, serves the purpose of carrying through a change of political perspective from a perspective of social standing to one of gender. By addressing inequality through the lens of gender, she got enemies among the conservatives as well as among the revolutionaries of her time – a somewhat surprising fact that can be explained by understanding the French Revolution as a rebellion of brothers against the paternal authority of King Louis XVI.⁴ Obviously, there is a great difference between the revolutionary idea of equality on the one hand and the hierarchical structure of the monarchy on the other but no matter whether power lies among the brothers or with the father, the women and children are left outside. This exclusion of women from the political domain is what de Gouges sees and understands. With the idea of universal human rights as her point of departure, she tries to redirect the political discussion in such a way that the fronts are no longer between the *equality of brothers* and the *patriarchal authority*. Instead, there is a confrontation between men and women, those entitled to and those not entitled to inheritance, and in the end between those with the right to have rights and those without the right to have rights.

So far, de Gouges has been considered as a representative of the idea of universal human rights for everyone and not just for the rev-

4 In *The Family Romance of the French Revolution* Lynn Hunt uses Freud’s narrative from *Totem und Tabu* (1913) about the brothers killing the *Ur-father* in order to gain access to his privileges as a model for the French Revolution. Cf. especially Hunt (1992, 6ff).

olutionary brothers. The foundation for de Gouges and her demand to broaden out and include more people in the community of rights has been an idea of universal, individually based *natural* rights. But as Bouehotte's legal proposal demonstrated, the idea of the natural can be used differently to carry out other kinds of political and juridical arguments. In the following analysis of the trial and death sentencing of de Gouges this other kind of usage of a natural argumentation will take on further relevance as the idea of a *state of nature* and its importance to the legal thinking of Robespierre and the Reign of Terror takes centre stage. Here too, it will be an open question who has the right to have rights and who will be excluded from the community of rights.

The Terror Legislation and its Usage of the Concept of Nature

Olympe de Gouges was arrested in July 1793 primarily because of her pamphlet *Les trois urnes, ou le salut de la patrie, par un voyageur aérien*, which was published on July 19. In it, she rebuked the supposedly inevitable authority of the Republic by arguing that all domestic and foreign fighting should be brought to a halt for one month in order for the French people to decide whether they wanted a republic, federative or monarchic government (de Gouges, 1993, II: 247). There was a hearing on 1 November that year and she was executed two days later on 3 November.⁵ In March that very year the National Assembly had passed many of the laws that would legalize the most violent acts of terror in 1793-94. It is one of these laws that is used to pass sentence on de Gouges. "Whoever is convicted of having composed or printed works or writings which provoke the dissolution of the national representation, the reestablishment of royalty, or of any other power attacking the sovereignty of the people, will be brought before the Revolutionary Tribunal and punished by death" (in Levy et. al. 1979, 259). According to Pierre-Joseph Lamarque, who originally proposed this law on behalf of the General Safety Committee, the law was motivated by the growing amount of royal and anti-revolutionary printed matter, which he considered "the most dangerous weapon" in the hands of "suspect citizens" (*Archives Parlementaires* 1867, [29] 699).

⁵ I have only been able to locate the charge against de Gouges in an English translation. It is translated in Levy et. al. (1979, 254ff).

The legal problem in connection with passing this law is that freedom of speech and freedom of the press were inscribed in the *Declaration of the Rights of Man and Citizen*, which the members of the National Assembly under no circumstances wished to compromise even if they did not mind reinterpreting it along the lines of the interests of the Republic. In the discussions leading up to the execution of King Louis XVI in January 1793 some of the radical *jacobins* had realized, however, that certain criminals should not be sentenced by way of the existing positive law of society but instead according to the principles of natural law. In natural law, self-defence – even when it results in death – is a given. These criminals could be termed *ennemi du genre humain* or *hors la loi*, whereby they would be excluded from human society and its civil laws.⁶ Thus, the legal manoeuvre consisted in judging certain criminals according to the law of nature, a manoeuvre made possible by categorizing criminals as either enemies of mankind or, literally, *outlaws*. To be considered outside the law and regarded as an enemy of humanity equals an exclusion from the human community and the rules applying there.

To exclude someone from the community of rights is exactly what Robespierre proposed to do to certain criminals in his suggestion for an alternative Declaration of the Rights of Man and Citizen in 1793. He writes that “those conducting war on a people in order to stop the progress of liberty and in order to exterminate the human rights must be persecuted everywhere. Not as ordinary enemies but as murderers and as rebellious brigands” (Robespierre 1793, 7). In this version of natural law, the idea of a state of nature plays a central ideological part. Human rights have become something the Republic has to defend with violence against its enemies. It is because society is understood as a perpetual struggle between opposing interests that penalty of death comes to seem a just way of dealing with political adversaries. Contrary to Olympe de Gouges and her inclusive idea of a universal human nature, humanity here is a closed and exclusive community that has to fight off “murderers” and “rebellious brigands”. During the Reign of Terror, such a version of natural law was on the one hand turned into positive law – it could be used to convict felonies – and on the other hand, the

⁶ See Edelstein (2010/2009, especially 127ff) for a more thorough account of the natural rights theories that were developed during the trial against Louis XVI and that were brought to use repeatedly under the Terror.

Republic was included as a subject of natural rights because it was, obviously, the Republic that gained the right to defend itself, a euphemism for killing political adversaries.

When Lamarque proposed the law that would later be used to pass judgement on de Gouges, he carried out this exact manoeuvre.

On my own behalf, citizens, I declare loud and clear that I would consider myself guilty from the moment I should spare these terrible people that treat humanity as a herd of cattle only being held in order for them to consume it.

We must unite in a feeling of disgust for these tigers that do not deserve the name of men, in a feeling of loyalty among us and in sacrifice of all of our capacities in the fight to the death against them (*Archives Parlementaires* 1867, [29] 698).

The rhetoric of the quotation stems from a register of natural rights in which political opponents are reduced to something inhuman or, stronger put, to wild animals trying to consume all of mankind as if they were a herd of cattle. The death penalty is justified by categorizing felonies as enemies of humankind, enemies that everyone has an obligation to fight to the death. Here the concept of nature has an excluding function contrary to the inclusive idea of human nature in the radical thought of de Gouges. The state of nature is something dangerous that calls for extreme measures and something that necessitates a firm and deadly response to outside challenges. It is also, clearly, an understanding of nature that includes some in the community of rights while others are excluded.

The Lamarque-quotation is a concrete example of a policy that operationalizes natural rights and the idea of the natural in a specific way. With this lamarquian perspective as a point of departure, it is easy to criticize the natural rights tradition on which the Declaration of the Rights of Man and Citizen is founded. And in the light of historical developments it is just as easy to see the tragic element in the fact that exactly de Gouges wanted a law closer to nature and the principles of natural rights. But there is another argument too: Nature, natural law and human rights can be used to question some of the norms, structures and positive laws that are otherwise incredibly hard to get a grasp of. De Gouges's challenge to a normative understanding of sexual differences and her defense of wom-

en's and illegitimate children's rights are examples of how the rhetoric of human rights and the idea of the natural has been operationalized in a way that made it possible to see and criticize the fact that women were excluded from the political sphere as long as equality among brothers was the sole alternative to the paternal authority of the king.

De Gouges actualizes the tension between an excluding and an including political operationalization of the concept of nature, and her work raises the question of who is included in the community of rights. Hereby, she points towards a line drawn between those with and without the right to have rights, a line between those in accordance with and not in accordance with the concept of nature. In the eighteenth century, the idea of nature is characterized by its moral persuasiveness but also by its ambiguity, and the combination of these two features makes it a problematical but also privileged rhetorical means in the development and continued negotiation of a human community of rights. The concept of nature might not have the same rhetorical impact in today's political discourse, but the question of who have the right to have human rights is just as relevant today as it was in late eighteenth century France.

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Between Mimetic Exacerbation and Abstraction

Images of Atrocity in Contemporary Art

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It is by now a truism that pictures of atrocity play a major role in human rights campaigns. Images depicting acts of violence aim to provoke empathy and compassion for the others; they shock viewers in order to persuade them to take action against blatant human rights violations. Several historians have pointed out how in eighteenth century Europe the circulation of visual and literary testimonies of acts of torture was crucial to the formation of a culture of human rights and how, in turn, this culture influenced the first legislations aimed to fight slavery (Hunt 2007; Sliwinski 2011). While activist movements have continued to rely on the use of graphic images of atrocity, since the 1980s most contemporary artists engaged with the representation of human rights violations and using photography, film and video have refused to visualize violence and pain in a direct manner. Internationally renowned artists such as Walid Raad, Alfredo Jaar, Zarina Bhimji, Anne Ferran, Melik Ohanian, and Susan Hiller – to mention but a few – have addressed traumatic histories without exposing viewers to direct images of atrocities.

Consider the series *Let There Be Light: The Rwanda Project 1994-1998* of Chilean-born Alfredo Jaar, which for me exemplifies the way in which several contemporary artists deploy photographs of atrocities. In this series Jaar refuses to let his audience see the mutilated and massacred bodies of the victims of the Rwanda genocide.

Instead, he relies on captions and voiceovers to describe this human right catastrophe. As Abigail Solomon-Godeau has remarked, the artist “rejected the notion of a purely photographic content as adequate for political comprehension” and in his work “the obscenity of the [Rwanda] genocide is located off-scene” (Solomon-Godeau 2005, 40). Other contemporary artists have relied on anti-expressionistic strategies borrowed from the tradition of conceptual photography and its obsessive fascination with seriality and deadpan banality. The work of the Lebanese-born Walid Raad is emblematic of this tendency. The videos, films and photo-collages included in his project *The Atlas Group Archive* (1999-2004) describes the hallucinatory experience of living in Beirut during the Civil Wars (1975-1990) through the repetitive accumulation of banal images portraying dentist surgeries (*No, Illness is Neither Here Nor There*) or sunsets on the city boardwalk (*I Only Wish that I Could Weep*) (Magagnoli 2011). As photography historian Geoffrey Batchen has pointed out, works by contemporary artists convey the experience of violence less through the direct representation of bodies that have been subjected to torture, massacre, burning or desecration than through the fragment, the barely discernible trace, or absurd narratives such as those deployed by Raad. As a result, they “remain empty of significant or identifiable subject matter” and they “immerse us in a visual experience that is at once calm and implacable, empty of ‘content’ but all the more powerful for it” (Batchen 2012, 238). One of the reasons for the rise of this aesthetics of absence and mourning can be traced back to the radical critique of liberal documentary photography articulated, during the 1970s and 1980s, by writers such as Susan Sontag and John Berger. Shortly, this critique accused documentary photography to aestheticise viewers against the horror of mass deaths and sufferings, to depoliticize violence turning it into an universal human tragedy, and to exploit its victims by spectacularizing their pain (Sontag 1977; Barthes 1976; Berger 1972; Sekula 1981; Rosler, 1981).

In this essay, I want to look at a less discussed strand in contemporary art, which has taken an approach to the representation of human rights violations opposite to the one described above. I am referring to the work of artists and activists Thomas Hirschhorn and Paul Chan. In the works they produced in response to G. W. Bush’s War on Terror, Hirschhorn and Chan do not immerse us in a visual

experience that is calm and detached but expose the audience to crude images of massacred, kidnapped and maimed bodies, following a strategy that recalls Dada's "mimetic adaptation" or "mimetic exacerbation" (Foster 2003, 166).¹ Ultimately Chan and Hirschhorn's fascination with violence opens up serious questions regarding the use of images of physical abuse in order to garner interest in the politics of human rights. Is the depiction of violence necessary in order to provoke spectators and induce them to protest against human rights violations or, alternatively, is graphic violence always voyeuristic and a further degradation of the victim?

Paul Chan's "Trilogy of War"

The *Tin Drum Trilogy* (2002-2005), Paul Chan's series of video essays, explores three different moments of George W. Bush's war on terrorism: the US decision to invade Afghanistan (*Re: The Operation*, 2002), the life of Baghdad's citizens under Saddam's regime before the US occupation (*Baghdad in No Particular Order*, 2003), and the war at home dividing red (Republican) and blue (Democratic) states (*Now Promise Now Threat*, 2005). *Re: The Operation* is based on a fantasy concocted by Chan that requires us to imagine the members of the Bush cabinet as if they were GIs on the frontline in Afghanistan. The video is divided into chapters, each dedicated to one representative of the Bush administration. The chapters are introduced by animated drawings showing the severed head of the politician bandaged and bloodied, barely alive. *Baghdad in No Particular Order* was produced on the occasion of the artist's trip to Iraq in December 2002, a few months before the beginning of the US invasion, and it was commissioned by the pacifist group Voices in the Wilderness, an NGO protesting against the US-UN sanctions designed to topple the government of Saddam Hussein by denying food and medical supplies to the Iraqi people. *Baghdad in No Particular Order* does not indulge in a rhetoric of victimisation, nor does it provide viewers with detailed facts and meticulous statistics such as would be com-

1 Numerous images in Hirschhorn installations were downloaded from websites such as 'nowthatsfuckedup.com'. Shut down by US federal authorities in 2005, the website was used by American soldiers to post close-up shots of Iraqi insurgents and civilians with their heads blown off, intestines spilling from open wounds and mangled body parts as exchanged for porn images. On the circulation of images of violence and torture on the Internet see Edelstein (2006) and Zornick (2005).

mon in conventional human rights videos. Rather, the video comprises everyday, uneventful scenes: Iraqi families and children are shown merrily dancing, oblivious to the coming war; a young singer with a stunned look strives to improvise a song in front of a silent audience. *Now Promise Now Threat*, made two years later, conveys an image of the Republican midwestern states challenging the assumption that these states are home to religious fanatics and nationalist warmongers by showing nuances among their attitudes towards faith and patriotism. Interviews with the denizens of Omaha, Nebraska, and footage of forlorn suburban landscapes battered by gusty winds and churchgoers attending mass are interrupted by long clips from kidnapping and beheading videos. Downloaded by the artist from jihadi websites, the clips are transformed into fields of undulating colour and sometimes are juxtaposed with the voices of the interviewees.

While the three videos are supposed to offer a critique of the Bush administration's systematic use of violence and destruction, they also display a certain paradoxical attraction to them. The fragmentary form of the three videos, their digital distortions and degradations, together with the repeated references to death, torture and pain, betray an almost obsessive interest in the cultural and psychological effects of violence. In *Now Promise Now Threat* violence simmers below the surface of the dull Nebraska landscape: it emerges from the staged self-defence fights filling the airtime of local television; it impregnates the liturgy of the Evangelical church (Chan's camera focuses on glasses of red wine, symbols of the blood of Christ); it permeates the language of some of the prophetic intertitles ("The good cannot reign over all without an excess emerging whose fatal consequences are revealed to us in tragedy"). More significantly, violence haunts the viewer through the distorted clips of beheadings and kidnappings that are repeated throughout the works. Chan's manipulations have intrinsic beauty and, indeed, one feels mesmerised watching these abstract patches of whites, reds and yellows, nervously expanding and contracting on the screen. Violence also lurks under the apparently lighthearted and feisty atmosphere of Baghdad. In *Baghdad in No Particular Order* a group of middle-aged women brandish guns and sing patriotic songs in honour of Saddam Hussein; a quiet prayer in a cramped mosque steadily escalates into a trance-like noisy dance; the blurred pictures of Iraqi chil-

dren who died during a US bombing after the first Iraqi war remind us of the tragic recent history of the country. It is, however, on the website published alongside the video that Chan hints at the possible critical and redemptive value of destruction. In it a picture shows the terrifying picture of an Iraqi baby his face completely disfigured. The caption of the photograph, written by the artist, states that the baby was hit by a depleted uranium shell and concludes: "The hope is always that the pain inflicted upon the body will yield new insights and pleasures that will teach us to outgrow our madness" (Chan 2003). As the caption suggests, Chan seems to believe that violence could bring forth some kind of revelation. In one short essay, written for the collective exhibition *Greater New York* (2010) at MoMa PS1, he suggested that pain can have a positive and generative dimension by using the term *kairos* to describe his ideal notion of art (from the Greek *καιρος*, meaning the "propitious or supreme moment"). *Kairos* is "a vital or lethal place in the body ... where mortality resides," the artist wrote (Chan 2010, 84).

Violence is eroticised in *Re: The Operation*. In this fantasy of the Bush administration fighting in Afghanistan, references to forbidden sexual desires abound. "Who, besides men," asks Condoleezza Rice, "doesn't think that sex is a kind of low intensity warfare exercise?" The theme of a perverse fetishistic desire dominates George Bush's chapter. "I feel evil from the work and dirty from the pleasure of passivity that duty demands," reads Bush's letter to his wife, Laura, while low-resolution pixelated images of S&M practices appear on screen. In a nondescript living room, a woman wears leather clothes, her mouth gagged and her legs tied up; a man strokes his crotch while we hear creepy moans, screams and synthesised music. Numerous images of wounds, body parts and scars crop up throughout *Re: The Operation*, a veiled reference to the logic of sexual fetishism, as well as to the title of the work, evoking military action as well as surgery. This fascination for eroticised violence turns *Re: The Operation* into a remake of Pier Paolo Pasolini's notorious film *Salò o le 120 giornate di Sodoma* (*Salò, or the 120 Days of Sodom*, 1975). In *Re: The Operation* Cheney, Rumsfeld and other members of the Bush cabinet recall Pasolini's perverse libertines as they quote passages from Heidegger, Hegel others. Eroticised violence likewise appears in *Baghdad in No Particular Order*. The adolescent girls belly-dancing in front of the camera resemble *Salò's* adoles-

cents. Possibly soon-to-be victims of the imminent war, these teenagers look straight at us, inciting a certain voyeuristic pleasure on our part while also addressing our complicity, as media viewers, in the spectacularisation of war.

While, as we have seen, Chan addresses the problematic power relationships that characterise the consumption of images of violence, he also seems, perhaps dangerously, to argue in favour of a certain use of violence and destruction. In a conversation in 2005 with Martha Rosler, he passionately debated the benefit of watching Mel Gibson's *The Passion of the Christ* (2004), claiming that despite the director's conservative political agenda, the film was to be seen since its spectacle of cruelty provided a key to understand and deconstruct the ideology of the rightwing. "What's the point of making the audience suffer?" Rosler asked Chan. "I think it is another factor with which you provoke people," Chan replied, "boredom is one of them, and intense suffering that comes from bodily suffering could be another" (Chan and Rosler 2006, 20). In other words, for Chan, a certain use of violence can be welcome as the shock produced by it can activate the viewer's thought and political awareness.

Thomas Hirschhorn's "Superficial Engagement"

Somehow slightly contained in Chan's video trilogy, the sheer scale of the violence of the War on Terror is laid bare in Hirschhorn's installation *Superficial Engagement*. Exhibited in New York at Gladstone Gallery in 2006, it comprised a plurality of media and objects equally distributed on wooden risers and floats. Pictures of atrocities committed in Iraq and Afghanistan by US military, female shop manikins in torso or whole figure, studded with builder's nails as in the bogey man of Clive Barker's *Hellraiser*, facsimiles of the works of the visionary Swiss healer-and abstract painter Emma Kunz, images of African sacred objects, and headlines cut out from various newspapers appeared in the kaleidoscopic and claustrophobic installation.¹ Of various sizes and scotch-taped to old planks or scraps of carton everywhere in the exhibition, the gruesome photographs showed destroyed bodies, their faces burned, their heads severed, their bones tearing through flesh. Taped to the walls were seemingly endless Xeroxed and blown-up newspaper headlines such as: "No Place is Safe," "It Is Real," "Too Young To Die," "Hot Times,"

“Death Threat,” and “No Cause for Panic.” Scattered through the gallery were rough wooden posts into which the audience was invited to drill screws and hammer nails with an attached screw gun.

The floats almost completely filled the exhibition space, leaving only narrow passages for viewers to walk through. “Everything is in your face” (Saltz 2006). Critic Jerry Saltz remarked in a review of the show. Even more than in Chan’s works, in Hirschhorn’s confrontational installations viewers are assaulted by a multiplicity of images, texts, and other visual information (Lafuente 2005; Foster 2011). As Hirschhorn has declared, his installations do not offer a space “where one can stand back and maintain distance” (Buchloh 2005, 94). “I want people to be inside my work,” he has declared, “I want spectators to be a part of this world surrounding them in this moment. Then they have to deal with it” (Buchloh 2005, 95). Challenging Kantian notions of aesthetic experience as a sensory perception based on disinterestedness and critical detachment, his art follows the logic of total involvement of media spectacle. Nonetheless, Hirschhorn appropriates the strategies of the media in a hyperbolic manner subverting them through parody and excess. If violence is in your face in *Superficial Engagement* it is also grotesque.

The ironic dimension of the artist’s work exposes it to misunderstanding and, sometimes, harsh criticism. David Cohen of the *New York Sun* lambasted the show as an “adolescent crapfest” that evinces “a puerile addiction to the macabre and the scatological” (Cohen 2006). Other critics defined Hirschhorn’s *Superficial Engagement* as a “one-way abusive kind of theatre” that does not “cultivate the viewer’s perceptive and intellectual experience so much as bury her in a glut of globalized chaos” (Westcott 2007, 173). William Kaizen rebuked Hirschhorn’s work and defined it as “war porn,” a “colorful, playful celebration” of violence (Kaizen 2006). However, the artist’s head-on approach can be seen as a tactics through which he addresses our own complicity with war and our own indifference to its painful consequences. The wooden posts into which the audience were asked to hammer nails represented a device through which the installation subtly implicated the viewer. The nails were a reference to a practice popular in Germany during WWI whereby citizens “could pay money to pound a nail in a wooden figure, supporting the troops by building symbolic armor” (Scott 2006). Thus, by asking the audience to screw nails into these

posts Hirschhorn alluded to our cooperation to the war in Iraq as passive but nevertheless complicit spectators.

As in Chan's work, *Superficial Engagement* paired ghastly images of violence with geometric abstraction. Replicas of the drawings of Swiss-born outsider artist Emma Kunz were everywhere in the installation. Born at the end of the nineteenth century, Kunz is known for her abstract drawings based on the mystical symbolism of the pentagram and other star-shaped forms. Within the gruesome context of Hirschhorn's installation the drawings alluded to the destruction of human bodies. "The destroyed human body," the artist remarked, "reaches a degree of abstraction, beyond the imaginable" (Douglas 2007). Yet, in *Superficial Engagement* – as in Chan's work – abstraction is invested with contradictory meanings. On the hand it symbolized the extreme disintegration of the body, on the other it signified art as a healing and cathartic tool. Hirschhorn's appropriation of Kunz's pictures added another layer of meaning to abstraction. Kunz considered her drawings to be "cognitive mapping of energy fields from which she could formulate diagnoses for her patients" (De Zegher 2005, 29). She was not only an artist, but a healer who established a medical practice in her home village of Brittnau functioning "somewhere between a physician and a shaman" (Teicher 2005, 128). The ambivalent and somehow contradictory meanings of violence and abstraction in Hirschhorn's work truly marks the limit of his provocative practice. To his defence, Hirschhorn has declared that ambivalence is a way to avoid a didactic and journalistic approach (Buchloh 2005). However, we may wonder whether the task of the radical artist is not only to name the symptoms of violence's pervasive presence in contemporary societies but also that to illuminate its causes. As art historian Siona Wilson remarks, "the political work that the installation so firmly evokes can only suggest a completion by others and elsewhere. Political or analytical closure, Hirschhorn seems to suggest, is not the task of the work of art" (Wilson 2009, 137).

Let the Atrocious Images Haunt Us

A profound ambivalence characterizes Chan and Hirschhorn's similar approaches to the representation of violence. On the one hand, their works address and condemn the atrocities committed during the war on terror. On the other hand, they seem to indulge in the

spectacle of violence. Whilst they may be accused to aestheticise the pain of others, Hirschhorn and Chan's practices should not be dismissed so quickly. In my view, they demand critical attention since they prompt us to revise the common argument against the aestheticization of pain. In fact, what if the critique of 'aestheticizing violence' may end up serving the very power that demands immunity from human rights law?

Jacques Rancière has remarked that one of the problems of this argument against the representation of atrocities is that it betrays a patronizing attitude to the audience. As he points out, we need more rather than less images bearing witness to the horror of human rights violations. The "accusation of 'aestheticizing horror' is too convenient," Rancière explains, "[it] shows too much ignorance of the complex entanglement between the aesthetic intensity of the exceptional situation taken in by the gaze, and the ethical or political concern to bear witness to the horror of a reality nobody is bothering to see" (Rancière 2007, 79). Rancière's defence of the right to produce and circulate images of violence contains an implicit critique of the mass media. Contemporary news-media, Rancière suggests, without further elaborating his point, do not adequately represent historical events whereby human rights violations have been committed. Whilst not advocating for more sensationalism, Rancière suggests that an effective politics of human rights requires the "construction of a sensory arrangement that restores the powers of attention itself" (Rancière 2007, 76). Such a sensory arrangement is produced by Chan and Hirschhorn's installations. That is, these contemporary artists tap into the spectacular vocabulary of popular culture in order to draw critical attention to the human rights abuse perpetrated by the US military in Iraq. They use the language of spectacle to raise awareness of - and not indifference to - human rights violations.

Chan and Hirschhorn's visual strategies invite us to revise the critique of the aestheticization of violence and to adapt it to the current historical context. This critique emerged during the Vietnam War – one of the most photographed conflicts in history (Aulich and Walsh 1989). In fact, one of the post-Vietnam developments in the United States and Britain has been an astoundingly tight control over war coverage by governments and the military and, consequently, images of dead soldiers and civilians rarely appeared during

the Afghanistan and Iraq wars. The official excuse for this limited reporting has often been that graphic depictions of violence and death would hurt the audience and degrade the victims. It can be argued, then, that the media have appropriated the 1970s critique of the aestheticization of violence to justify a sanitized, partisan coverage of the war on terror. Hirschhorn and Chan's practices provocatively point a finger at the media censorship of the human rights violations perpetrated by the US military during this war. They try to achieve what Susan Sontag and Judith Butler, commenting on the scandal of the Abu Ghraib pictures, cried out for:² They let the images of the Iraq and Afghanistan Wars haunt us, warning against government censorship and political correctness.

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² Butler observed that, after their discovery, the circulation and re-framing of the Abu Ghraib pictures in magazine publications and museums meant that grief and outrage were scattered among the public with the result that the images from instruments of degradation were transformed into an indictment for the violation of human dignity. "The exhibition of the photographs," writes Butler, "with caption and commentary on the history of their publication and reception becomes a way of exposing and countering the closed circuit of triumphalist and sadistic exchange that formed the original scene of the photograph itself" (Butler 2007, 96). Likewise, in her latest work Susan Sontag revised her initial scepticism regarding photographs of pain and called for the circulation of images such as those of the tortured Iraqi prisoners (Sontag 2003). She wrote: "In our digital hall of mirrors, the pictures aren't going to go away. Yes, it seems that one picture is worth a thousand words. And even if our leaders choose not to look at them, there will be thousands more snapshots and videos" (Sontag 2004, 24).

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Posthuman Rights

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If the primary human rights preoccupation of mainstream film and television is the ethical status of the human, *Splice* (Vincenzo Natali, 2009) is far more interested in the ontological status of the human. This seems to me to reverse the human rights issue – rather than focus on which rights should be inherent to the human, *Splice* complicates matters by asking how the human is constituted and therefore which rights should be extended in liminal cases. In other words, if most recent catastrophe fictions express an anxiety over human descent into depravity and a loss of what makes us human, *Splice* asks the persistent question of what constitutes the “life” in the right to life. In the film we encounter the genetically-engineered Dren who is a human-animal-technology hybrid and through this hybrid, the film allows us to think about which rights Dren is entitled to. I argue that *Splice* makes us engage affectively with human rights through the radical uncertainty of the category of the human, arguing that exclusion from human rights is in itself highly problematic. I therefore conclude that rights run the risk of becoming an anthropological machine, as defined by Giorgio Agamben, by delimiting the human and thereby reinstating a kind of biopolitically racist, colonial discourse.

It is difficult, of course, to define what human rights are as there is always a tension between the universalist claims of the Universal

Declaration of Human Rights and the different national implementations. Such tension is not always an evil, as there must be room for cultural charters but inevitably such room also reduces the universal nature of human rights. For this reason, I wish to proceed from the idea that human rights belong to a distinctive episteme which makes them historical and changeable. This claim is uncontroversial, since the emergence of human rights in themselves draw on a rich historical tradition of philosophical and political work. What this epistemic understanding of human rights entails is, however, also the realization that the future of human rights will be different from what they are now. One way to think this future episteme would be to consider how rights might change in a different environment. Such an environment is established by *Splice* and thereby allows us to consider the challenges of human rights to come.

My purpose in discussing *Splice* is not so much to analyze the film from an aesthetic point of view but rather to think human rights through the film and its aesthetics, what Daniel Frampton, following Gilles Deleuze, calls “filmosophy” (Frampton 2006). As a phenomenological approach, I will argue that *Splice* creates a film-world (as opposed to a life-world) which allows us to think thoughts different from our own and direct our attention towards something which does not exist but still performs cultural work - in particular Dren. If we start with the fundamental issue at stake in *Splice* we find that genetic engineering is regarded as unproblematic and a benign science - the issue does not get muddled until human DNA is brought into the picture. Biomedica technology is good and the argument that we find in the film is that biomedica helps people and will be responsible for an increase in global health. The right to health is therefore an implicit reason for doing biomedica research. The two virtuoso scientist protagonists – Elsa and Clive – suggest that by adding human DNA to their experiments, they can help cure serious ailments ranging from Parkinson’s, Alzheimer’s and different forms of cancer. For Elsa and Clive, the right to health becomes a categorical imperative to perform their research; it is a necessary step to fulfill the right to health. While the company Elsa and Clive work for does not agree, citing the international ban on human cloning, we find here an issue of what Richard Falk refers to as the power of rights (Falk 2008, 35). The issue becomes whether the need for advancing medical research to provide better health

globally is more significant than the ban on employing human cloning and for Elsa and Clive, the right to health wins out.

Their argument for why what they are doing is the morally and ethically right thing to do is as Elsa says, that “Human cloning is illegal. This won’t be human. Not entirely.” We find here a zone of exclusion based on a form of impurity idealism – they are not breaking laws since they are technically not performing human cloning. We see here how the rights of humans become entangled with the ontological status of the human – Elsa and Clive insist on helping the human through a process of exclusion. Inevitably, the rest of the film becomes an investigation into the consequences of this exclusion and so helps us to see how both terms of human rights are inherently unstable.

It seems to me that we are faced here with one of the constitutive residual epistemic problems of human rights - since rights are historically based on the rights of individual, white men, how do we extend this presumed universality into an actual universality?¹ In this way I see the posthuman figure of Dren as a figuration of this epistemic anxiety, carried over into an ontological doubt over the category of the human thereby questioning the issue of what the future subaltern might be - might it be genetically modified clones? While the Universal Declaration has learned from the problems of the past and so has chosen the phrase “All human beings are born free and equal in dignity and rights” the question remains whether this phrase will be sufficient for the human rights to come. Of course, there is an implicit definition of the human in the Universal Declaration Article 1 which continues “They [human beings] are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This constitutes the human as not simply a sentient, reasoning being but (perhaps most significantly) a moral being.

If we are to understand the condition of the human in *Splice*, it seems to me that this revolves around Elsa’s statement of Dren being

1 In saying that human rights are historically based on the rights of individual, white men, I certainly do not wish to disparage the work done by a multitude of people for the building of human rights. Rather, I simply follow the argument put forth by Andrew Clapham that much of the discourse of human rights arose from a Western context, where rights (typically of man) were described as a universal. It is this conception of rights as universal and therefore inherently colonizing which I attempt to critique here.

“not entirely human.” Of course, living after what Bruno Latour has termed the Great Divides, it becomes difficult to entirely trust any division between the human and the nonhuman (Latour 1993). Instead it seems entirely possible that conscience will emerge as yet another breached dividing line separating humans from animals and plants, also considering of course Michel Foucault’s by now well-rehearsed argument that “[the hu]man is only a recent invention, a figure not yet two centuries old, a new wrinkle in our knowledge” (Foucault 1994, xxiii).² Indeed, when we investigate Dren’s actions and behavior it seems obvious that she is not only capable of reasoning but certainly also has a conscience alongside emotions.

Before we turn to these aspects of markers of a certain sense of the human, however, let me first address another potential protest against my argument that Dren is in fact as human as you and I: her birth and existence as a result of biotechnology. Such protest would then ignore or count as invalid arguments ranging from André Leroi-Gourhan (*Gesture and Speech* 1993) to Bernard Stiegler (*Technics and Time 1: The Fault of Epimetheus* 1998) and those who have followed them in pointing out that the constitution of the human is inevitably bound up with tools and technology. Therefore any protest that Dren’s being is too technologically mediated only casts the rest of humanity outside such naturalist definition of the human. In the end, and congruent with film phenomenological perspective, we are left with Dren’s actions rather than any *a priori* definitions or delimitations of the human. Our guiding question is instead how Dren behaves and how we may relate such behavior to a human framework.

If we look at the moment of Dren’s birth as an instance of over-coded significance, there are some aspects which are immediately telling, such as the grotesque technological womb from which Dren must be torn. The odd being which emerges from the metal womb is distinctively alien and in this moment we would never ascribe the status of human to this oddity. However, it turns out that what emerges is only the chrysalis for a different being entirely. The bodily metamorphosis which Dren undergoes here must remind us of similar metamorphoses, primarily the one found in *Alien* (Ridley

² I amend Foucault’s argument to explicitly include women, transgendered people etc, much like the Universal Declaration has done, in the spirit of human rights’ universality.

Scott 1979) and it is precisely with this juxtaposition that we find a difference which makes a difference. Although the chrysalis is as disturbing as the facehugger of Scott's film, what emerges in *Splice* is nowhere near as frightening as *Alien's* chestburster. Rather, the trepidatious creature ungainly wobbling around the lab might be more reminiscent of Bambi - a being with large eyes and spindly legs. As Dren grows older, she grows to resemble a human girl and woman, the primary difference being a stinger tail. This human identification also comes from Dren being dressed in a cute dress by Elsa as they play games, thereby establishing some degree of humanity to Dren. This degree of humanity is cemented for Elsa when Dren spells out "nerd" with Scrabble pieces as a recognition of the t-shirt Elsa wears - this act reveals that Dren can associate, thereby making her human. It is also this scene which names Dren, as Elsa is annoyed with Clive referring to her as "it." Instead, Elsa says that her name is Dren, reading "nerd" backwards and thereby making the moment of association what humanizes Dren - she can associate, she can spell, she obtains language to some degree and this for Elsa makes Dren human.

What makes Dren human for us as spectators is a little different, I believe, although the above scene is pivotal. However, it is also a matter of our growing sympathy for Dren. To outline this, I wish to turn to what Gilles Deleuze calls the affection-image, identified primarily as the close-up of a face (Deleuze 2005, 89). I believe that it is the close-ups of Dren which humanize her for us, which convinces us of her right to the status as human and thereby engages us affectively in what she is subjected to. Deleuze argues that the close-up directs our attention towards poles of admiration and desire, something we find to be true in *Splice* as well. The admiration for Dren comes in the sense of wonder we get as we gaze upon her face, the alien and the human blending seamlessly and casting us into the realization that Dren has emotions as human as our own.

When Dren has reached what appears to be her fully grown state, that of a young woman or teenager, she finds a box of toys including a klopotec and a plastic tiara. As she plays with these objects we see her reaction in a close-up and recognize the amazement and wonder she is filled with before this strange, fantastic world. Her engagement with these toys suggests an emotional range that we

find in ourselves – Dren behaves like a curious child and although her body appears older, we understand her reactions and feelings. Although not in a close-up, we find a similar emotional attachment a little later, when Dren has found a cat that she wishes to keep and play with. Her anguish at the cat being taken from her by Elsa reveals the inherent parent-child relationship between Elsa and Dren and also suggests that Dren is perfectly capable of forming emotional bonds, something we also see in the fact that she draws portraits of both Elsa and Clive, just as children will do.

The second significant close-up suggests far darker passions, though no less human. Clive dances with Dren in a moment of happiness and as they dance the camera circles around them, giving us a sequence of shot/reverse shot close-ups of both Dren and Clive. Dren is caught up in the moment, laughing and happy and we are positioned in Clive's point of view, with the speed of the film slowing slightly down, allowing for Clive's attention to Dren's face. As she gazes directly into our/Clive's eyes we see desire reflected back at us - Clive finds a desire for Dren, just as she finds a desire for him and we as spectators recognize this desire in both of them and we feel uneasy about this convergence of desire, not because Dren is alien but precisely because she is human and the desire therefore feels incestuous. This incestuous feeling is confirmed later on when Clive and Dren actually do have sex and Elsa discovers them; Clive has crossed an ethical boundary which of course mirrors Elsa's transgression of placing her own DNA in the experiment, thereby turning Dren into a partial clone of her.

My argument here is simply that we gain sympathy and understanding for Dren and that the repulsion we feel later on occurs because we, by this point, have already conferred human status on Dren. The affect which we feel for Dren thereby connect us to what happens to Dren and engages us in her life. Precisely through the affection-image we accept the blurred and distended boundary between Dren and the human; she is for all intents and purposes human because we identify her as human. Dren is therefore very far from the creature in *Alien* or even Sil in *Species* (Roger Donaldson 1995), both beings who are affectively engaging precisely due to their inherent inhumanity rather than humanity. With Dren, we care about her and by extension we care about which rights she is entitled to.

The first right we should examine, then, seems to me to be most logically the right to life. We know that this right in itself has been difficult and problematic to determine from a human rights perspective since there can be many different interpretations of when life begins.

In a recent case concerning a dispute between two estranged parents of frozen embryos, the European Court of Human Rights held that: “in the absence of any European consensus on the scientific and legal definition of the beginning of life, the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere (Clapham 2007, 47).

It seems no coincidence that Elsa and Clive also speak of Dren in terms of the beginning of life using words such as “going full-term,” indicating that Dren has in fact gone full term and that therefore, consistent with the human aspects they both attribute Dren, she must have right to life. Yet inevitably, this becomes exactly the point of contention alongside other concerns about how Dren can be treated. Here my argument intersects with that of Giovanna Borradori’s although from a slightly different angle. As we know, Borradori suggests that we may use atrocity photographs to read humanitarian concerns and the need for human rights (Borradori 2011, 158). While he works with images of actual events, I work with images of potential events but considering the affective states which we enter when regarding Dren as human, these cinematic images remain not only images of suffering but also images as “complex processes of public argument, deliberation, and exchange” (Borradori 2011, 166) and thereby engage with iterations of human rights. *Splice* may not be the unloading ramp at Auschwitz. However, its images of incarceration and torture connect it to issues of human rights in similar ways.

One of the clearest ways of seeing how human rights become figured in Dren is the fact that Dren remains incarcerated throughout the film. First she remains locked up in the lab but as this proves to be too risky, she is transferred to the barn of Elsa’s inherited home. Although Dren is not shackled or otherwise restrained it is clear that

she desires freedom, understood as the freedom to move around freely - the first thing she does when arriving at the farm is to run away to hunt and eat. It is this act which makes Elsa and Clive incarcerate Dren and deny her access to an outside. While at first there are no signs that Dren is mistreated or denied care while in the barn - she has toys, plenty of food, etc... - it is slowly revealed that she does feel detained and extremely unhappy about her current condition. Significantly, the most direct form this dissatisfaction takes is once again through Scrabble. Dren, when questioned about her unhappiness, writes out 'tedious' in Scrabble letter tiles, thereby opening up an unexpected avenue of the distinction of captivity.

Following Agamben and his idea of "the open," which he draws from Heidegger, we find that captivation is the essence of animality because animals are not able to open themselves to the world "Captivation appears here as a sort of fundamental *Stimmung* in which the animal does not open itself, as does Dasein, in a world, yet is nevertheless ecstatically drawn outside of itself in an exposure which disrupts it in its every fiber" (Agamben 2003, 62). Dren is, however, perfectly capable of opening herself towards the world, yearns for it, in fact, and so strains against the yoke of animality under which she is placed. She recognizes intuitively what every human would recognize - that being placed under animal captivity, denied access to an openness to the world is a forceful operation and that "the place of this operation—in which human openness in a world and animal openness toward its disinhibitor seem for a moment to meet—is boredom" (Agamben 2004, 62). Dren feeling this tediousness of captivity shows that she recognizes the animal conditions she is placed under; this animalization denies Dren her humanity and thereby justifies her captivity for Elsa and Clive. Yet at the same time it is because Dren recognizes her tedious captivity that we feel she is in fact human - she desires to seek out the openness of the world and the denial of this constitutes therefore a violation of her rights.

Agamben's complex concept of the open therefore not only reveals Dren to be human but also reveals a certain animality in Clive. Despite the taboo of incest, Clive is incapable of resisting Dren, much like the moth is incapable of resisting the flame. The human-animal binary is thereby broken down and we begin to see how many of our actions are done to suspend our animality, as Agamben

puts it: “The open is nothing but a grasping of the animal not-open. Man suspends his animality and, in this way, opens a “free and empty” zone in which life is captured and abandoned (ab-bando-nata) in a zone of exception” (Agamben 2003, 79). *Splice* reveals that everything about Dren works as an anthropological machine – creating her as a nonhuman, imprisoning her and torturing her all becomes part of making ourselves human in opposition to her. Our reach towards the open, our desire to move beyond animal captivity, however, is deconstructed at the same time, in the allure of Dren. The nonhuman Dren becomes attractive as she is revealed as more-than-human, which also makes her terrifying and hence Dren must be punished.

This brings us to the issue of proportionality and the discussion of whether there is some form of legitimacy for what Elsa and Clive are doing to Dren or not. They both seem somewhat concerned about the potential biohazard of letting Dren out of the lab at first, but it soon becomes evident that Dren does not pose a danger to anyone other than Elsa and Clive’s job security. If we apply the schema set forth by Clapham, we find that there is no legitimate aim to Dren’s detention, nor is her detention described by clear or accessible law and finally her detention does not seem proportionate to the aim (Clapham 2007, 100). Instead, the detention appears selfish and unnecessary, motivated by the personal aims of Elsa and Clive. What ends up happening because of Dren’s incarceration is, however, another matter which also speaks to the results of overstepping human rights. It is clear that Dren’s detention extends beyond simple matters of restrictions of space and movement; she is also denied her pet cat, food beyond the necessary sustenance and any other kind of engaging activity. When denied her cat, Dren is in fact denied companionship and emotional relations and when Elsa decides to give Dren her cat back, Dren reacts in an extreme but understandable way - she removes the emotional stranglehold which the cat represents and simply kills it. Of course, this act is enough for Elsa to subject Dren to cruel and unusual punishment, thereby creating the self-fulfilling condition that Dren is dangerous and must be constrained.

Dren’s punishment for killing the cat is to have her stinger tail cut off, while chained to the operating table. No anesthesia is used, nor does Elsa even wait to discuss the punishment with Clive. Every-

thing about the situation tells us that Dren deserves less respect than an animal and Elsa has no concerns about the age-old question “can they suffer?” It is necessary here to keep in mind the sympathy which has already been established for Dren in previous scenes in the film, alongside the fact that we see how the operation hurts her on both a physical level but also an emotional level as she does not understand her punishment in the first place nor why her parent would do something like this. For us, but not for Elsa, it is evident that Dren reacts, behaves and has feelings like a human. For Elsa, all that matters is the punishment which makes her act a clear example of what Falk calls the rights of power (Falk 2008, 27). The justification is inherent in the punishment as something which Elsa as maker is entitled to.

The torture and maiming of Dren therefore becomes a territorial struggle not so much over the rights of Dren but over her status as human or lab animal. Elsa never hesitates to question or consider if what she is doing is acceptable in relation to Dren and so Dren’s rights are erased, are never regarded as even a possibility. Elsa and Clive only discuss what they did as a mistake because they overstepped medical-ethical boundaries, never their treatment of Dren as problematic – Dren is outside the human, at times even outside the animal as a form of non-being. This is not the case for us as spectators; we are involved as much in Dren’s suffering as we are in Elsa and Clive’s. We therefore feel for the unjust treatment of Dren and while we never truly accept her reactions as ethical or justifiable, we do understand why Dren does what she does. Dren, for us, is human and she is placed under torture. This is the main point of the film, for by sympathizing and empathizing with Dren we constitute her as human and do not worry about her origins or ontological status as human; her emotions and feelings are enough for our recognition of the human Dren.

Interestingly, then, it is precisely the dehumanizing act of torture which for us turns Dren into a human – because she and we recognize those acts precisely as torture, as something which Dren suffers under, we understand that she is human. My closing argument will therefore be that human rights are what constitutes an anthropological machine in Agamben’s terminology. Agamben discusses this anthropological machine as a machine which produces man (ie.

the human) through a zone of exclusion and indeterminacy, a machine which can only function

by establishing a zone of indifference at their centers, within which—like a “missing link” which is always lacking because it is already virtually present—the articulation between human and animal, man and non-man, speaking being and living being, must take place. Like every space of exception, this zone is, in truth, perfectly empty, and the truly human being who should occur there is only the place of a ceaselessly updated decision in which the caesurae and their rearticulation are always dislocated and displaced anew (Agamben 2004, 37-38 [emphasis in original]).

Splice performs the same machinic function of creating a zone of exclusion – the genetically engineered human – in order to include the non-modified human, but at the same time the film also problematizes this exclusion precisely by insisting on human characteristics in Dren and the morally bankrupt mistreatment of her. Although *Splice* takes a speculative approach as befits its science fiction pedigree, the film does question this process of exclusion in a world where biotechnology and genetic engineering is fast becoming everyday practice. While human cloning remains some way off, issues such as tissue engineering, gene therapy and gene matching of children are present concerns which run the risk of reproducing distinctively racist and colonialist discourses, especially if the Universal Declaration remains vague and deferential about the meaning and beginning of human life as a matter for individual States.

Colonialist discourse seems especially prone to be reactivated, if only in reverse, when we consider the way biotech is currently conceived - as an invasion of the “pure” human body, even if it is for good. This is also what *Splice* suggests with its invasive, incestuous insemination of the human with the nonhuman. We are captivated and invaded but from the inside, by our own inventions - we shape our technologies and then they shape us. The familiar colonialist discourse is therefore continued and configured in new ways under a regime of biomedicine. The ontology of the human, in other words, depends on how we delimit our understanding of the human in

relation to biomedicine. As has been evident throughout human history, the category of the human has often been exclusive, although with the introduction of human rights this exclusivity has been extended to all humans, at least in principle. Yet there are certain instances where the status of the human is ambiguous, such as the beginning of life. Human rights, especially in an age of rights, inadvertently become an anthropological machine embedded in discourses of the human as much as the discourses of rights. Therefore it seems that the status of the human, as much as the status of rights, can become a territorial struggle and we do need to ask ourselves if the rights of the human trumps the rights *to be* human and what this will mean for the human rights to come.

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The Intersection between Art and Human Rights

A Poetics of Remembering and Memory

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Modern memory is, above all, archival. It relies entirely on the materiality of the trace, the immediacy of the recording, the visibility of the image.

Pierre Nora

For several decades, the primary focus of human rights has been limited to issues around politics without a concentrated focus on the human face of the victimized. What have the arts in general and literature in particular contributed to social justice and human rights? When literature specifically has been singled out for its contribution to the human rights theme, the discussion has generally centered on narrative and the didactic power of storytelling to give witness to the past, memorialize its victims, and rebuild a more just future. The current multidisciplinary focus on human rights seeks to broaden and strengthen the dialogue on the concept of human rights to include other literary genres. The humanities and social sciences have become an engaging dialogic encounter between political, historical, legal, and ethical discourses on human rights and cultural texts including literature (poetry, memoir, testimony, and its particular Latin American form – *testimonio* – as well as narrative), the visual and performing arts, film, and popular culture. Human rights issues have a primary relevance to literary studies

inasmuch as they capture and address significant human experience. But they also have a heightened relevance to the political and social conscience of literary studies, something inseparable from an aesthetic concern. In the most powerful literary pieces on human rights themes – neither their aesthetic appeal, nor their political urgency is imaginable without the other. In *Human Rights and Narrated Lives* (2004), Kay Schaeffer and Sidonie Smith refer to an “ethics of recognition” that the narratives enact not only through the recounting of suffering but also through powerful and empowering moments of self-assertion and implicit claims to human rights, thereby recognizing the victim’s humanity. In Kimberly Nance’s study *Can Literature Promote Justice? Trauma Narrative and Social Action in Latin American Testimonio* (2006), there is even the assertion that the *testimonio* does not simply give voice and a human face to the collective community through a representative individual. The genre is also a call to reader acknowledgement and subsequent action.

Over the years, scholars have explored the work of truth commissions, the effects of apologies, debates over reparations, and trials of individual perpetrators in a plethora of case studies. At the same time, there has been a burgeoning of studies about how past injustice is remembered (or forgotten) and memorialized. To what extent is historical justice predicated on particular memories, on particular forms of remembering or on the forgetting of a particular past? How do the more aesthetic forms of literary production impact on memory in societies striving for historical justice and the restoration of human rights? How does the artistry of a single poetic voice represent a silenced collective of voices by aesthetic form, function, and content and thus influence the contours of history in a healing, restorative way?

The Chilean-American poet and human rights activist Marjorie Agosín negates forgetfulness and oblivion and honors memory in her haunting lyrical works. Her heart-wrenching words call upon readers to remember the atrocities of Chile’s recent past and honor those who fought against them. A descendant of European Jews who escaped the Holocaust and settled in Chile in 1939, she was born in Bethesda, Maryland, and raised in Santiago, Chile. The family settled in Athens, Georgia, after fleeing Chile under Pinochet’s violent rise to power. Coming from a South American country and being Jewish, Agosín’s writings demonstrate a unique

blending of these cultures. She writes about the Holocaust as well as anti-Semitic events that occurred in her native land. Her poetry exemplifies poignancy as an immanent aesthetic around which to organize a concrete response to human suffering. It is a testimony to the deep affect needed to reorient human rights around human experience. Agosín's concept of reconciliation is dependent on a notion of loss that defies a temporal construct – it connects the past, the present, and the future. To that end, this essay will be concerned with emotional, spiritual, or physical loss in its many manifestations, particularly as it relates to time – ways the past and the future have a bearing on the direct present.

Collective Memory, Contested Histories: Historical Justice and Memory

"To be a member of any human community," wrote the historian Eric Hobsbawm, "is to situate oneself with regard to one's [its] past" (Hobsbawm 1997, 206). The suggestion is that individuals, and the communities in which they reside, come together as singular units under an overarching "past" that informs the essence of an internally exclusive, yet mutually constituted social identity. Implicit within Hobsbawm's statement is the idea that the "past" is somehow formalized – that is, people actively remember the past while simultaneously orienting themselves to the institutionalized and symbolic structures that bind the "community" together. Building the collective consciousness often requires memorializing the particular people and events that ostensibly constructed present social conditions. A sense of collective memory ultimately provides political, economic, and cultural institutions with legitimacy while containing the spread of dissent. But individual and collective consciousness operate both within and outside of these formalized and often prefabricated frameworks. As such, the political and economic issues surrounding the idea of collective memory are complicated by the discontinuities and silences that often characterize the construction and circulation of memory across space and time. Representing the past thus becomes a contested and dissonant process. The promotion of particular voices and stories within history in line with the simultaneous suppression of others is an action which is both directed by and influences the politics of identity. Alongside authoritative and officially endorsed versions of the past are instanc-

es of cultural resistance which seek to challenge the agreed conventions and fill silences, often giving voice to the voiceless in literary forms. Artistic reactions to dominant historical narratives endure the proverbial test of time due to their poignancy and aesthetic caliber. What is the legacy of such aesthetic productions? What are the boundaries and limitations of such literary pieces of other, resistant voices to authoritative versions of the past? Who are the audiences for these resistant voices and how are they received?

As a “guardian of memory” in this collective sense, Marjorie Agosín engages in the act of remembering as a sacred ritual in which the horrors of the past are infused with the courageous acts of the present. As the poem “Recordar” (“Remembering”) asserts, memory is far from a passive act. Memory is an active interaction with impressions left by external stimuli. Remembering historical acts of domination and abuse can therefore have a range of affective consequences on the individual and social consciousness, from trauma to shame to anger to cathartic self-recognition, even willful oblivion. Acts of remembering are most meaningful when they help those recalling such memories develop understanding of the process and consequences of the atrocity committed. At a pragmatic level, this is historical self-awareness. On a more affective level, such memories act as they would with any private trauma, to develop emotional, intellectual, and psychic control over oppressive memories, to preserve those memories, and to honor those remembered. Memory in history thus becomes part of a creative imagination, inscribing a memory of the past in the literary piece whether or not the characters are fictionalized or named at all. Memory in Agosín’s poetry has a specific role to play in preserving / manipulating, forming remembrances (collective memories), informing meta-narratives (cultural memory) through the retelling of personal stories (remembering). Such creative production and interpretation can also play a vital role in the practice of forgiveness—the surrendering of resentment toward another for a wrongdoing. This forgiveness is a healing measure without “closure” or forgetting, for it frees the victim to experience anew love, compassion, and sympathy unhindered by negative feelings of rancor and revenge. And the poetry of Marjorie Agosín presents us with such a healing aesthetic of politically oriented texts that coexist with “ethical” or thought-provoking poetry committed

to an examination of philosophical concerns. The poet remembers the human face of those victimized by a repressive dictatorship whose survival depended upon the obliteration from memory of its victims. It is a poetry that gives these victims voice and thus life while it restores hope, for it contributes to a human rights culture, a lived awareness of human rights principles in one's mind and heart, incorporated into one's everyday life.

Marjorie Agosín: The Aesthetics of Remembering, the Power of Memory

Is memory the key to deterrence? How is the lived traumatic experience transformed into memory? Who are its trustees? In what ways does a society forget and remember? In spite of all that has been written on the history of human rights, these questions remain an enigma. When we say a society "recalls," a past is actively transmitted to the current generation through the channels and repositories of memory and this transmitted past is received with a definite meaning. Consequently, a society "forgets" when the generation possessing that past does not transmit it to the next, or when the latter rejects what it has received, or when it ceases to transmit it in turn.

Marjorie Agosín's poetic volume *An Absence of Shadows* (1998), a collection of her best known works *Circles of Madness and Zones of Pain* (1988), is an act of deliberate memory. The collection enhances the very meaning of human rights by unveiling the emotive tracks left on the victims of human rights abuses and on the victims' relatives. "Disappearance" is one of the cruelest forms of murder, in which the victim has not even a tomb. This form of human rights abuse was widely practiced by police and the military in several Latin American countries (including Agosín's native Chile). Too often relatives and friends of the "disappeared" are left yearning for an impossible return. The tragedy of this "hopeless hope" outlines the enormity and absurdity of every disappearance. A heart-breaking depiction is given in Agosín's poem in memory of René Epelbaum, one of the founding members of the mothers of the Plaza de Mayo, the mothers of Argentina's "disappeared":

She just approaches
this photograph

and says that
she will take her for a walk.

They will gather chestnuts,
dead and living leaves,
and suddenly she will show her to others,
not to ask about her
but to say
that she was her daughter ... (Agosín 1998, 67)

This poem not only contains the texts of the aforementioned published volumes, but it also presents her new work, focusing on the preservation of the historical memory of a nation's painful past through the act of remembering the individual lives of its victimized citizens. In her preface, the poet explains that this book commemorates the fiftieth anniversary of the United Nations Declaration of Human Rights. She notes that poets "have become the voices that ask for compassion for voiceless victims. They see beauty amidst the horror and find the courage to speak against injustice" (1995, 11). The poems in this book exemplify this mission, including the most striking selections: "The Obedient Girl," about a girl who encounters the general who tortured her family; "The President," a bitter satire of military dictatorship; "El Salvador," the story of a Jewish woman from that troubled nation; and "Anne Frank and Us," in which the speaker notes that the iconic title figure "visits me often."

"One is born with human rights, thus one is sacredly connected to all living things," (1995, 11) writes Marjorie Agosín in the preface to this bilingual collection of eighty poems. This sense of sacred connection seeks to inspire compassion for victims of political oppression while, at the same time, creating solidarity with peaceful struggles against violence and injustice. Agosín underscores her passionate concern for the Other with the simple statement "when human rights are violated, so is the sacredness of the world" (1995, 11). For her, a poetry of witness "believes that memory, courage and the right to remember and give voice are also human rights" (1995, 13).

In the title poem of the volume, "An Absence of Shadows," Agosín grapples with our limited ability to capture the meaning of

painful and traumatic events—the absence of the disappeared. Using metaphors, she evokes feelings and images associated with the missing and with the torturous uncertainty surrounding the end of their lives. Her poem encourages recognition and communication with the disappeared, to bring them closer (if only in our thoughts). The poem struggles to find words where only fear, uncertainty, and anger exist, words that express the status of people neither dead nor alive. Words fill this empty space, to anchor this experience in our hearts, and, in a way, to reintroduce the disappeared back into our communities.

Beyond the shadows
where the wind dwells
among strangers,
in faraway kingdoms
clouded in fear,
the disappeared
are among the shadows
in the intervals of dream.

It's possible to hear them among
the dead branches,
they caress and recognize each other,
having left behind the burning
lights of the forest
and the tapers of dawn and love.

Beyond the province
there is an absence,
a presence of shadows
and histories.

Don't fear them,
approach them
with gentle peacefulness,
without vehemence and senseless rage.
Beyond the shadows
in the streaming gusts
of wind,

they and we dwell
in the kingdom of absences (Agosín 1998, 17-19).

Agosín's *An Absence of Shadows* responds to the most basic question concerning societies struggling with dictatorship, in the throes of democracy – how to respond to the lingering presence of the disappeared and the dead absent yet so very present among the living? Peace, love, recognition, warmth, thoughtful reflection, and above all, remembrance are the response. These poems were composed in the solitude of exile, a foreign land devoid of the language of the poet's homeland, distant from the violence of repression, absent from the horror stories of the voices they represent. Yet, they make the voices of others very much our own, thus rescuing the victims from the oblivion of forgetfulness and assuring the Mothers of the Disappeared that their voices will continue to be heard. The absence of fear and the presence of a steadfast mother's love prevail. Several themes coalesce from powerful depictions of women's agency and from illuminations of structural barriers. These include women's adept transformations of crises into redeeming opportunities.

Look,
these are the photographs
of my children;
this one here has an arm
I don't know if it's my son's,
but I think it might be
that this is his sweet little arm,
Look, here are the legs,
severed, cut
and torn
but they are his legs
or perhaps the legs of another.
Don't be afraid.
They are only photographs.
They say it is a form of identification
and if at best they show them
to you
you will be able to help me find him.

Look at these photographs
and record them in the albums of life (Agosín 1998, 81-82).

Chile, an isolated and remote country, once characterized as an exemplary Western democracy submerged in legality and respect for civil laws, collapsed into a society with a phantasmagorical atmosphere of fear and silence. How could this happen? But it is not this question that haunts Agosín's poetry, rather it is the voices of women muzzled in dark and silent torture chambers and those who desperately searched for them. In this sense, poetry becomes a vehicle of both giving voice to the voiceless and rescuing those same voices from oblivion, from forgetting, by reminding future generations of a deep and authentic human kinship with the displaced, the oppressed, the silenced of the past. The poet reminds us that remembrance and justice are intimately connected to lived experiences of individuals with whom the reader recipient feels a deeply felt human attachment devoid of abstract universalisms.

Polyphonic Memories and the Collective Imagination in Traumatic Experiences

Emblematic memories circulate in public or semi-public domains and offer broad frameworks into which individuals can inscribe their personal experiences. Such narrative schematics, which purport to capture essential truths about the collective experience of society, are broad and flexible enough to encompass an array of sufficiently differentiated, though generally related stories. They serve either as overarching scripts for writing history, or can be used as starting points for debates about the very construction of historical meaning. In contrast to emblematic memory, "loose" memory is lore that floats diffusely on the cultural scene and cannot be easily assimilated into any of the major emblematic frameworks. Ambiguous cases of narratives that rupture emblematic molds abound in post-traumatic scenarios where "radical evil" has occurred. What, for example, can be done with certain "gray" cases like those of former left-wing militants who collaborated under torture or who, under duress, were co-opted by the dictatorial state's bureaucratic apparatus? Where does the figure of the non-heroic, non-martyred victim fit into the "memory box" of Pinochet's Chile? Historian Steve J. Stern (2004) rightly notes that many uncomfortable and

bothersome “loose” memories such as these get silenced or pushed to the bottom of the box.¹ Stern’s theoretical model discusses the formation of “memory knots” on the social body. The metaphor of the “knot” is multifaceted: it refers to “sites of humanity, sites in time, and sites of physical matter or geography” that serve as detonators or conduits to facilitate the connection of loose lore to emblematic memory frames (Stern 2004, 121). Human beings who actively promote specific memory scripts, symbolic and controversial dates like September 11, unanticipated events like Pinochet’s London arrest, the creation of memorial spaces like the “Park for Peace” at Villa Grimaldi, or the re-naming of the Chilean Stadium after folk singer Víctor Jara (murdered by the military on that site in 1974), all serve as examples of knots that “[project] memory and polemics about memory into public space or imagination” (Stern 2004, 121). Identifying “memory knots” is precisely what allows us to isolate critically the moments and manners in which emblematic frames are made and unmade. Knots, in essence, are dynamic sites of change around which memories are both propagated and evolve. From the notion of memory knots, it becomes clear that the making of memory is an uneven process that unfolds “in fits and starts” (Stern 2004, 147). Sometimes when change is least expected, new memories can emerge onto the political and cultural scene, thus amending how the past is viewed in the present. And so, historian and poet alike Stern and Agosín surmise that it is their ethical responsibility to bear witness “by proxy” to the disappeared victims (and survivors) whose stories they recount. Both historian and poet find themselves playing the role of “empathic listener” (Laub 1992, 57-74) to those giving testimony to their personal remembrances, traumatic experiences of limitless grief.² Marjorie Agosín has provided us with a journey into the soul of victim and victimizer alike for whom she is a willing and

1 Stern identifies four major emblematic memory scripts in Chile prior to Pinochet’s arrest: memory as “salvation,” memory as “unresolved rupture,” memory as “persecution and awakening,” and memory as a “closed box.”

2 Pumla Gobodo-Madikizela served on the South African Truth and Reconciliation Commission as coordinator of victims’ public hearings in the Western Cape. Her role was to participate in and facilitate encounters between family members of gross human rights and perpetrators responsible for these human rights abuses. She shares the phrase “empathic repair” with Stern when discussing the themes of remorse and forgiveness. Her book *A Human Being Died that Night: A South Africa Story of Forgiveness* deals with history, memory, reconciliation and empathic repair.

empathic listener. Just as the historian Stern uses a “hearts and minds” approach to his recounting of Chilean history, Marjorie Agosín gives voice to the dead and the living, uniting the spirit with the mind in a “thinking heart” – a heightened consciousness, a demand that we take notice – in her poetic reflections on the past, drawing people together in remembrance into a public domain.

Some Final Thoughts on Reconciliation, Memory and the Broader Dialogue: An Aesthetics of Human Rights

In Jill Scott’s *A Poetics of Forgiveness. Cultural Responses to Loss and Wrongdoing* (2010), she identifies three essential components of the poetic: ambiguity, creativity, and aesthetic qualities. A humanist perspective on the topic of memory is particularly valuable because memory is a way of processing and conveying the human experience, and memory reaches beyond printed records and dated documents. The humanities are interested in the significance of how and what people remember, even when memory is sometimes unconsciously flawed, or in cases where people have different or conflicting memories of the same event. What matters most is how events and their consequences have impacted personal individual or collective lives—the basis of aesthetic experience. Poems and plays, films and artwork, are all unique receptacles of personal and collective cultural memory. Personal and collective memories are inseparably intertwined with each other, and the study of aesthetics offers a unique perspective on this complex entanglement. The poignancy of Marjorie Agosín’s poetry contributes to the long and varied legacy of the aesthetics of human rights. Its pervasive questions resonate with critical awareness, as she asks how she can find comfort for the dead (and the living) with a poet’s voice. How, she ponders, is one able to utter that which is far too painful to speak? How is it possible to break the silence of forgetting within the context of unspeakable criminal acts against humanity? And, ultimately, how can the deep sensitivity of poetic language reconstruct the memory of the vanished with a lexicon that is both consoling and socially committed? Restoration and a healing of memory are arguably the self-appointed tasks of Marjorie Agosín and her generation of Chilean writers, so the voices of the voiceless (disappeared and deceased) may be heard, so that their lives have a wider meaning.

The ways in which people choose to memorialize hardship offer illuminating insights into the human psyche and post-conflict justice and also provide valuable information about a society, government or culture. Humanists are most likely to be interested in memory as a document of culture, especially the way such documents form the basis of aesthetic experience. Poems and plays, films and artwork, are all unique receptacles of personal and collective cultural memory. Personal and collective memories are inseparably intertwined with each other, and the study of aesthetics offers a unique perspective on this complex entanglement. While the humanities and social sciences approach the topic of “memory” differently, a humanist perspective is valuable because memory becomes a way of processing and conveying the human experience, reaching beyond printed records and dated documents. Additionally, literature and the arts explore how and what people remember, even when memory is sometimes unconsciously flawed, or in cases where people have different or conflicting memories of the same event. And the poetry of Marjorie Agosín gives voice to the dead and the living, an aesthetics of memory and memorialization, returning us to what is profoundly human: art.

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Manners, Social Behavior and Freedom of Speech

From Henry James to the European Convention on Human Rights¹

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Manners, Social Behavior and Freedom of Speech

Freedom of speech is often viewed as one of the most important human rights. Yet, in the European context, it is not seen as an absolute right. Europeans tend to think that though it is a fundamental right, it is not an unlimited one (see Kock 2009). The belief that freedom of speech is relative and must be balanced against other rights – that there are things you should not be able to say publicly about other people – is reflected in Article 10 of the European Convention on Human Rights (ECHR) which first mentions “the right to freedom of expression,” but then immediately narrows this right:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclo-

¹ in Andersen, et. al. (2011) .

sure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Circumstances matter, that is. Freedom of speech is not a right that automatically trumps all other rights. While protecting, on the one hand, the right of each individual to say what (s)he wants, the European Convention and the constitutions of some European countries also protect, on the other, “the right of each person to be spared certain utterances by others. This is a reflection of public care, and the protection is dependent on the utterance in question – that is, certain utterances can be illegal/punishable. In such cases, the focus is on the individual as a (potential) victim, on his/her feelings, that is” (Koch 2009, 324).²

What is at stake, argues Danish legal scholar Henning Koch, is a European wish (and will) to honor the public or social peace – cf. Art. 10, ECHR, which uses the words “the prevention of disorder or crime” (Koch 2009, 326). Freedom of speech for each individual person is important, but not if it threatens the public safety and/or is used at the cost of other people. This is especially important in our increasingly global societies. The less homogenous we become, the more reason there is to guard against hateful remarks which may cause public sentiment to run high against – and may in the end even result in the persecution of – a particular person or groups of people (Koch 2009, 327).

It was this necessity to guard against hateful remarks that also preoccupied the American writer Henry James (1843-1916). Freedom of speech may not be the first thing that comes to mind when one thinks of James, but what I hope to show in the following, by taking a closer look at his essays on gender and the American social scene, is that he believed in the power of language, civility and manners as an antidote to violence.³ In much the same way as Carol Gilligan later would, James grappled with the possibility of sub-

² This and the following quotations from Henning Koch are my own translations from the Danish.

³ It was in *The American Scene* (1907) that James most explicitly documented his experiences with a multi-ethnic America. Apart from a couple of references at the end of my article, I have decided not to talk much about *The American Scene* in this article, but instead to focus on the three essays on the manners and speech of American women as these have not been as extensively written about as James’ 1907 travelogue.

stituting an ethic of care for the ethic of aggressiveness and competitiveness that reigned supreme in the U.S. of the early 1900s.⁴

Coming back for a visit after having spent many years in Europe, James was struck with the changes that had taken place. The U.S. he had left had been an uneventful, provincial place. The U.S. of the early 1900s that he would write about in *The American Scene* was teeming with life, and he was not quite sure what to make of this multicultural, competitive and capitalistic place. When he described his meeting with immigrants in New York or when he lectured about the speech and manners of American women, he was concerned about the future of the American democracy. A pluralistic U.S. could only become a decent place to live in for everybody – regardless of class, race and gender – if or when people learned how to relate to one another in a civilized manner. Room for difference had to be created – but not necessarily by means of a noisy and self-assertive ‘pursuit of happiness.’

James did not specifically address legislation or judiciary issues. Speech and manners were for him a civil and interpersonal matter more than a matter of regulating freedom of speech. Even so, he voiced a concern with social behavior - with how people relate to each other socially - that is similar to the European position on freedom of speech. Taking James as my main (aesthetic) example, I do hope to offer a different angle on and thereby add to our understanding of the important link between freedom of speech and social behavior.

Henry James and the American Social Scene

Of the degree in which a society is civilized the vocal form, the vocal tone, the personal, social accent and sound of its intercourse, have always been held to give a direct reflection. That sound, that vocal form, the touchstone of manners, is the note, the representative note – representative of its having... achieved civilization.

This is Henry James addressing the graduating class at Bryn Mawr College in June 1905 – at much the same time, that is, that he was

⁴ I am referring here primarily to Carol Gilligan’s by now classical study *In a Different Voice: Psychological Theory and Women’s Development* from 1982.

writing *The American Scene*. “Judged in this light,” he drily went on, “it must frankly be said, our civilization remains strikingly unachieved...” (James, “The Question of Our Speech,” in Walker 1999, 44-45).

We do not know what effect this talk had on its audience, but my guess would be that the young women listening to James may at times have found it somewhat hard to follow and understand him. This is probably the reason why he seems at times to have stopped short and elaborated in a (fairly) pedagogical way on his main point. “I am asking you to take it from me, as the very moral of these remarks,” he said mid-way through his talk, for example, “that the way we say a thing, or fail to say it, fail to learn to say it, has an importance in life that it is impossible to overstate – a far-reaching importance, as the very hinge of the relation of man to man.” And a little further on, James prepared his audience for another important point that he definitely did not want them to miss: “... it is *manners themselves*, or something like a sketchy approach to a dim gregarious conception of them, that we shall... begin to work round to the notion of” (James, “The Question of Our Speech,” in Walker 1999, 47, 52).

To this particular audience James did not spell out in so many words exactly how he saw the relationship between speech and manners. For a further exploration of the topic, these young women would have to wait for his two long essays, “The Speech of American Women” and “The Manners of American Women,” that were serialized in *Harper’s Bazar* from November 1906 until February 1907. “The interest of tone is the interest of manners,” he wrote in the former, “and the interest of manners is the interest of morals, and the interest of morals is the interest of civilization” (James, “The Speech of American Women,” in Walker, 1999, p. 78). James pretended to be deep in discussion with a young woman on the importance of speech here, and when she was puzzled about the dependence of speech on the number of syllables, James answered that “the vast majority of our occasions of intercourse... depend, for diminishing the friction of life, and for keeping up the sense of life instead of letting it drop, on the quality of our speech; which depends again on the quality of our sounds; which depends in its turn on the integrity of our syllables...” (James, “The Speech of American Women,” in Walker 1999, 76, 77).

“Diminishing the friction of life” – this is what it was all about for James: how the new multicultural U.S. could learn successfully to diminish the friction of life which was bound to be the result of the major wave of immigration around the turn of the century. People from all over the world were thrown together and if they were not encouraged to speak and deal with each other in a considerate manner – with awareness of the concerns of others – chaos and disorder would erupt. “Again and again,” James wrote in “The Manners of American Women,” “it had been written clear that the habits of address of one set of persons largely determines and shapes the habits of address of another; and on the American scene nothing could well be more striking than the intensification of this effect by the fact that there immeasurably more than elsewhere sets of persons are intermixed and confounded” (James, “The Manners of American Women,” in Walker 1999, 87).

In the America he had left many years before, it had been the women who had cultivated the forms of civil intercourse and had made sure that their children would be raised with a concern for others. It would typically be aunts and mothers, James remembered, who would “utter... for the benefit of their juniors their disapproval, for instance, of the unchallenged practice, by the visitor or the chance acquaintance, of a free and familiar egotism, of that sign of the want of breeding that consisted in an immediate and continuous descant of the speaker’s own affairs and concerns, without reference or deference to those of others...” (James, “The Manners of American Women,” in Walker 1999, 90). When it came to the rules of social intercourse, the men did not have much influence – lost as they were in their own world of public affairs or business. James observed this was till the case in the U.S. of the early 1900s. The men were interested mainly in their own affairs – and indeed, with business and its perceived importance looming ever larger, American businessmen had neither the time nor the inclination to be interested in social manners and speech.

Even more so than when James was young, men had abdicated all responsibility for the social sphere to the women. And this might not have been so bad if it had not been for the fact that the American women themselves no longer seemed willing to take it upon themselves to educate others about civilized manners. What

seemed to have happened during James' long absence from his native country was that emancipation had hit. Young women had by now become just as rude and as inconsiderate of the needs of others as the men.

The consequence? Well, wrote, James, "it is in the manners of the women that the social record writes itself, if not largest, then at least finest; since by an ineradicable instinct, it is of them we expect most," and since women could no longer be bothered with something as old-fashioned as manners, the nation at large no longer seemed to have any approach to manners. "What was plainer than that, as civility begets civility and appeal begets response, so rudeness communicates rudeness and indifference to every grace makes everything *but* indifference impossible?" (James, "The Manners of American Women," in Walker 1999, 88, 95)

Having travelled extensively in his native country, James had come to the conclusion that there was no longer any social air in which "the *explicit* of civility" could flourish, and "the great truth stood out that it was an order in which, among a hundred things that had never been formulated, the idea of manners as the law of social life was the one that most recorded this omission." The greatest loss of all was the loss of "the great feminine collectivity asserting itself as against all interference and so quite effectually balancing against any discipline of friction within the herd" (James, "The Manners of American Women," in Walker 1999, 92-93, 109).

We can choose to be insulted about the way in which James wrote about women – and various critics have over the years been insulted – but we can also choose to see the points he makes as leading to an analysis of complex American social and gender relations. What James was getting at was that a democratic public life requires responsible people who understand the importance of "balancing against any discipline of friction within the herd." Highly conscious of the fact that he was addressing an all-female audience, James was in fact delivering what amounted to a call to arms: it would be up to these young women to change matters for the better – nobody else could do so.

When addressing the lack of cultural exchange between men and women in the U.S., James never displayed any of the ambiguity with which he addressed certain other issues, political, social or cul-

tural. While observing immigrants in New York enjoying a kind of freedom they had never known before and recognizing freedom from oppression as an inevitable and desirable result of American democracy, he did not find all of democracy's consequences positive. But he knew exactly what to think about the failure of cultural exchange between men and women. This failure was a catastrophe, and James wondered throughout his essays what role it would play in the shaping of American society.

By never letting his readers forget this failure, James tried to teach us the importance of manners and speech as tools in the service of defusing violently tense political and social situations. As he saw it, communicative and social skills could lead the way toward a stable, multicultural democracy and provide the necessary cultural glue at a time when immigrants of various ethnic and social origins – and women – were entering the American body politic to assert new and different political claims. Gert Buelens once very perceptively put it in this way:

James' reflections on the American scene (and his work in general) may well suggest that democracy cannot dispense with manners. It is manners... that stand between us and the more "obvious," vulgarly literal and violent ways of possessing the scene. Manners, in the sense of the roles we play in different situations, moreover, resist any belief in a fully self-possessed ego and imply instead an alertness "to the agitation of otherness, of the alien" ... (Buelens 2002, 45).

Concluding Remarks

This takes us back to the issue of freedom of speech and its importance for democracy. The European view of freedom of speech as a relative right – relative in relation to social peace – must be seen against the background of especially the Second World War and the Holocaust. Henry James died during the First World War and was thus spared the news of all the terrible events of the next World War. In his case, it was the encounter with all the new immigrants, who had arrived on the east coast of the U.S. around the turn of the century in search of a better life, which made him reflect upon the importance of manners, social behavior and speech. In the streets of

New York, he and his fellow Americans could meet people from all over the world, and this made James ponder what he called "the great 'ethnic' question": "What meaning, in the presence of such impressions, can continue to attach to such a term as the 'American' character? – what type, as the result of such a prodigious amalgam, such a hotch-potch of racial ingredients, is to be conceived as shaping itself?" (James 1968, 120-21)

As James saw and experienced it, all these immigrants were integrating reasonably well, were creating for themselves liveable presents. "The case was, unmistakably, universally, of the common, the very common man, the very common woman and the very common child; but all enjoying what I have called their promotion, their rise in the social scale" (James 1968, 179). If not always in cultural terms, that is, the U.S. seemed to be "working" in political and social terms. It was indeed possible, James thought, that polyglot, multicultural America was what was in store for the rest of the world. He was not always sure where all this would lead, but he knew that he was witnessing something new and different:

The accent of the very ultimate future, in the States, may be destined to become the most beautiful on the globe and the very music of humanity (here the "ethnic" synthesis shrouds itself thicker than ever); but whatever we shall know it for, certainly, we shall not know it for English – in any sense for which there is an existing literary measure (James 1968, 139).

James has often been accused of being an aloof aesthete. There are certainly passages in his essays on politics and the American social scene that are awkward, even downright embarrassing, to read today. However, using these passages to dismiss him altogether as an elitist snob misses the point. The importance that he attached to "speech" and "manners" did not only have to do with a (bourgeois) concern for teaching good behavior. As James saw it, a first show of respect for other people and their different backgrounds and outlooks on life is to speak to them in a polite way. It is important – especially in a multi-ethnic context – to pay close attention to how people relate with and speak to each other, and some variations or kinds of speech are detrimental to the development of modern

democracies. Speech conveys perceptions and feelings that may eventually become issues of manners, morals, and eventually of civilization. Respectful speech, in other words, is a first step toward honoring the social peace – that same social peace to which Article 10 of the ECHR would later relate.

James is not the only great author to have been interested in how we behave toward each other. World literature is full of discussions and philosophical analyses of human behavior – of manners and speech. This may be one of the best reasons for lawyers and legal scholars to take interest in law and literature.

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Making it Work

Aesthetics and Affect in Dave Eggers's *What is the What*

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This article explores the role of aesthetics and affect in the broader human rights claim that Dave Eggers's *What is the What: The Autobiography of Valentino Achak Deng, a Novel* (2006) wants to make. The book describes the life of this Sudanese "Lost Boy" who has to flee his nation's second civil war, spending decades in refugee camps in Ethiopia and Kenya before being brought to the U.S. in 2001 through a UNHCR resettlement program.¹ Raising awareness and resources for the Valentino Achak Deng (VAD) Foundation, which was founded after (and thanks to) the publication of the book and seeks to give aid in South Sudan, emerges as the book's main objective.² I consider *What is the What* as a cultural translation of a spe-

1 This name was given to the approximately 20,000 boys who walked across the border with Ethiopia and on to Kenyan refugee camps during the Second Sudanese Civil War (1983-2005). Many of them resettled in the U.S. with the help of the UNCHR and local Lost Boys Foundations. Numerous (American) publications describe the experiences of these war victims in the form of novels, memoirs, documentaries and historical accounts.

2 In the book's preface, Deng writes that he and Eggers agreed that "the author's proceeds from the book would be mine and would be used to improve the lives of Sudanese in Sudan and elsewhere." In the short biographies at the end of the book and on the back cover, it is again explained that "all of the author's proceeds from the book will go to the Valentino Achak Deng Foundation, which distributes funds to Sudanese refugees in America; to rebuilding southern Sudan, beginning with Marial Bai; to organizations working for peace and humanitarian relief in Darfur; and to the college education of Valentino Achak

cific, local human rights violation into the dominant, Western discourse of human rights, and include the collaboration between an established American author and a Sudanese refugee, fictionalization and the categorization of the book as a novel (rather than a memoir or autobiography), and the de-contextualization of a specific experience as relevant issues in this discussion.³

I argue that Eggers makes aesthetics and affect work to increase the effect of the book's human rights claim. He consciously operates within the conventions of human rights, and strategically uses genre categorization to avoid controversy over notions of truthfulness and authorship. Aesthetics here pertains to all formal categories of a text, including style, structure, and genre, and specifically refers to the idea that a work of art is "pleasurable" to experience because of an appreciation of these "packaging materials." Affect concerns affective, emotional reader response and involvement in a narrative. Pertinent issues such as power relations, cultural platform, facticity, authority, and the way in which the story and its subject, Valentino Achak Deng, cross the cultural bridge between the Sudan and the U.S. are thus compromised for the story's effect. What counts most for Eggers and Deng is the potential to elicit (a call to) action within the dominant human rights discourse.

It is not new to argue for the relevance of storytelling or to claim that our understanding of and empathy toward others can increase with the reading of novels, even, or especially, within a human rights context (Rorty 1993; Nussbaum 1997; Scarry 1999). In her book on the history of human rights, Hunt likewise (2007, 39) stresses the importance of novel reading for the development of a human

Deng." Interestingly, Eggers's bio does not list his work as an author but only his publishing and humanitarian initiatives, one of which is the Voice of Witness series, "a series of books that use oral history to illuminate human rights crises around the world."

- 3 To analyze the transfer of stories from one culture to the other I draw on the theoretical concept of cultural translation, which has been elaborated on by Homi K. Bhabha and later Judith Butler, who sees in it the negotiation of and struggle between local and universal, or dominant and subordinated meanings and cultural languages and differences. The risk of this process lies in the existent power structures, through which the process of cultural translation can become "the instrument through which dominant values are transposed into the language of the subordinated, and the subordinated run the risk of coming to know and understand them as token of their 'liberation.'" See Butler in Stanton (2012, 75). As this article makes clear, this "risk" is curiously under-acknowledged in Deng and Eggers's discussion of their collaboration.

rights “sensibility,” arguing that “reading novels created a sense of equality and empathy through passionate involvement in the narrative.” Rather than explicit moralizing, this form of empathy is achieved through the employment of novelistic devices such as plot, structure, and style. Because of the reciprocal relationship between fiction and reality in the broader project of *What is the What*, encompassing the production and publication of the book as well as the human rights work of the VAD foundation—which built the first secondary school in the Marial Bai region, “attracting praise from across the country” (Morrison 2010), the whole project of *What is the What* provides a curious case study of human rights as discourse and practice. That Deng has recently been approached by the new South Sudanese government to take on “a more national role” (Morrison 2010), further elevates the relevance of the study.

To analyze *What is the What* within the context of human rights, I first discuss how Eggers fictionalizes and aestheticizes the story and at the same time preempts criticism on issues of truthfulness and authorship. His main strategies are an explicit openness about the collaboration between himself and the book’s subject, and the categorization of the book as a novel. I then analyze the translation of the story into the dominant culture of human rights, the representational function Deng comes to fulfill, and the consequences of this for the foundation’s human rights work in South Sudan. Finally, I look at the reception of the book, and briefly touch upon its relationship to a certain cultural hunger for stories of suffering overcome and to a form of “privileged guilt” on the part of the author.

Open Collaboration and “Strategic” Novelization

What is the What is a collaboration between a popular, youthful, white American author with a wide societal reach and a poorer ethnic immigrant with less power and no cultural platform. In various interviews and articles the book’s author and its protagonist stress that it was Deng who started the testimonial process. Having been an organizer in the Kenyan Kakuma refugee camp and later a spokesperson for the Lost Boys Foundation in Atlanta, he wanted to have his story heard by a broader audience. The rest seems simple and straightforward: the founder of the Lost Boy Foundation, Mary Williams, “didn’t know Dave Eggers, but she’d happened to pick up his memoir (*A Heartbreaking Work of Stagger-*

ing *Genius*, 2000) once when she needed airport reading," Thompson explains (2006). Eggers was approached and flown into Atlanta to talk to Deng, where, as the latter declares, "they became friends that first weekend" (NPR 2006).

In most interviews and other publications about the book and the writing process Eggers gives the floor, and the credits for the work, to Deng. He further declares that he "airbrushed" himself out of the book in order to approximate Deng's voice as much as possible (*One Book One Marin*, 2009). The book's author makes a conscious decision to place Deng in the spotlight, while minimizing his own involvement in the production. In fact, he says he was merely "hired" by Deng, who needed a writer because he was still "taking classes in basic writing at Georgia Perimeter College" (NPR 2006). Of course, it is unlikely that Deng would have written the book himself had he finished his classes, yet the power/knowledge structures involved in the production and publication of the book are never touched upon. Rather, certain issues and obstacles in the writing-process (such as genre, truthfulness, and the translation of the story into American conceptual frameworks) were responded to in a pragmatic way, always keeping in mind the desired effect of the book. In fact, Eggers says both he and Deng define self-worth and success by measuring their ability to place action over debate. Responding to the success of the school in Marial Bai, Eggers says: "I think it comes down to the fact that both of us are more bricks-and-mortar people than theory people" (Morrison 2010).

Still, in content, structure, and style, the story of this Sudanese refugee has been altered, supplemented, and "flavored" by Eggers. In terms of content, Eggers broadened Deng's story with information from Human Rights Reports, historical documents, and testimonies from other refugees. He transformed these bits of information into events occurring in the book, complete with characters, description, and emotion:

I made up many scenes that were necessary to describe the whole sweep of those 20 years or so that the book covers. Sometimes I'd read a human rights report about a certain incident during the civil war, and would ask Val [Deng] if he knew someone who had experienced that incident, or something like it. Sometimes he did know

someone, and we could go from there, but other times I had to imagine it on my own (NPR 2006).

Eggers thus supplements factual information with fictional strategies. In an interview (*One Book One Marin*, 2009), he explains his struggle with the form of the book: "I wondered if I could just call it a novel and be able to have these little bridges here and there, make it come alive, or create a scene with dialogue ... or describe a man's face that Valentino can't remember right now." In addition to these fictional constructions, Eggers also enriched the style of the original testimony. Considering a few passages from the book shows the result of these stylistic alterations:

I moved only in shadows, for I knew if I were caught all would be lost, and I would lose all my benefits, such as they were, as a refugee. I darted from bush to bus, ditch to ditch, crawling and scraping and breathing too loudly, as I had when I first ran from my home. Each exhalation was a falling tree and my mind went mad with the noise of it all, but I deserved the turmoil. I deserved nothing better, I wanted to be alone with my stupidity, which I cursed in three languages and with all my spleen (407-8).

The first three lines read like a poem, and the self-pity of the latter half can deepen readers' respect of this upright and unselfish human. Criticism of this form of "prettifying" has come from just one reviewer, Lee Siegel (2007), who argues that the book reads like a type of "fairy tale." According to him, these poetic passages and grammatically-correct subjunctives (such as the one in the first line here) only make the violence more remote. But unlike Siegel, who believes that all of this makes readers "come away from this wrenching book without any urgent sense of human misery in Sudan at all," Eggers clearly believes his aesthetic enhancements will "[t]ranscend the Human Rights Reports that were already out there" (Eggers in Cooke 2010).

Increasing the book's capacity to elicit affective audience responses is a love story between Deng and Tabitha, which runs through the book like a true romance of longing and loss. Here, Deng's poetic reflections on love do well to intoxicate readers: "If ever I love again,

I will not wait to love as best as I can. We thought we were young and that there would be time to love well sometime in the future. This is a terrible way to think. It is no way to live, to wait to love" (353). Using motifs like this and poetic phrases such as "the collapsible space between us" (535), Eggers transforms the incomplete testimony of Deng into a captivating, aesthetically appealing *literary* story about the second civil war in Sudan.

All of this finds its origins in the desire to make the book have a particular effect: the foundational story is novelized and broadened to make it compelling, comprehensible, and accessible to a wide audience. Curiously, this is explained (away) as being part of Eggers's job: "I wanted this to have a deeper, wider scope, and I really wanted it to bring the country, and the town, and Valentino and his family, to life ... He [Deng] is not a writer, I was. If he wanted a film, he'd hire a filmmaker" (*One Book One Marin*). Since giving the story aesthetic appeal is considered part of Eggers's job, it seems to demand no further discussion, and it is indeed never further complicated by either one of them. There is openness about the collaboration between Eggers and Deng, but it never touches on sensitive issues. Rather, it serves to forestall criticism of truthfulness and authority. As Brouillette (2003) argues, Eggers has employed this strategy throughout his literary and publishing career. He shows himself to be so open and aware about the production processes because "disclosure (...) serves very explicit purposes, in that it allows Eggers to pretend to a kind of *honesty* about the writing process through which he pre-empts critique" (emphasis mine). Thus, despite simplifying the collaborative process, the openness of the collaboration shuns criticism on factual inaccuracies while it allows for a "believing" reader response of the book as a whole.

For the sake of effect, Eggers then adds a narrative framework that brings the African story closer to its American audience, both geographically as well as mentally. This framework also illuminates the harshness and difficulties of the immigrant experience. The book opens in Atlanta, where robbers tie up Deng in his apartment and keep him there for hours. Lying on the floor, he starts to silently tell his story, explaining that "you would not add to my suffering if you knew what I have seen" (29). In addition to reducing the conceptual barrier between the book's audience and the distant and past events of Deng's youth, this framework undermines the possi-

bility of redemption and denies to end the process of suffering for this Sudanese civil war victim. Peek (2012) argues that this illustrates how *What is the What* deconstructs the “dominant developmental narrative of progress” that still characterizes much of the human rights project, and which has been associated with the sovereign citizen of the European enlightenment and the racism and paternalism of nineteenth century European imperialism, as well as with the persistent binary between the U.S. (as developed, independent, enlightened) and Africa (as undeveloped/primitive, dependent, dark, and in need of saving). The Atlanta framework, and the several scenes addressing UN relief work in African refugee camps, shed a critical light on the story of American progress and the promise of human rights, as they “foreground limitations of humanitarian narrative and activism by implicating humanitarian aid and U.S. hospitality in racial and colonizing histories” (122). Nevertheless, as Peek then adds, and Nance (2006, 106) further explains, this continuation of suffering and abuse into the present can also have a motivating effect on the reader, as “the forms of discourse that enable the achievement of closure...will often for that very reason minimize productive tension in the reader...readers will not feel called upon to expend precious energy on a project that is already finished.” If Eggers wants to add a critical note to the project of human rights, he at the same time appeals to its promises and ideals. Much in the same vein as Deng’s preface, the book ends with a plea to a common humanity and a belief in the importance of storytelling for a relief of suffering worldwide.

What is the What’s lack of a redemptive ending and its categorization as a novel set it apart from popular mass-marketed memoirs of childhood experience in war-torn African countries, a prominent example of which is Ismael Beah’s 2007 memoir *A Long Way Gone: Memoirs of a Boy Soldier*—which Oprah promoted like President Obama supported *What is the What*, placing it on the White House aids’ reading list. Genre categorization is also how *What is the What* differs from the main characteristic of the Latin American *testimonio*, popularized in the U.S. after the publication of *I, Rigoberta Menchù: An Indian Woman in Guatamala* (1984). These testimonios, and Beah’s memoir, are presented as non-fictional stories told by the victims themselves. In her book on the genre of the *testimonio*, Nance (2006, 7) defines it as:

The body of works in which the speaking subjects who present themselves as somehow 'ordinary' represent a personal experience of injustice, whether directly to the reader or through the offices of a collaborating writer, with the goal of inducing readers to participate in a project of social justice.

What is the What shares most of these defining characteristics, yet reverses the structure: now it is the "collaborating" author whose name appears on the book, and the victim who writes a nonfictional preface to it. *I, Rigoberta Menchù*, opens with a preface written by Elisabeth Burgos-Debray, the writer of the book. She stresses the agency of Menchù and her own effort to "airbrush" herself out of the story: "I allowed her to speak and then became her instrument, her double, by allowing her to make the transition from the spoken to the written word" (1984, xxii). Everything seems to be the same in these testimonial projects, yet, strikingly, Menchù's book sparked great controversy over issues of truthfulness and the under-acknowledged role of Burgos-Debray, which is something the publication and reception of *What is the What* has not seen at all. To explain this difference in reception, Phillipe Lejeune (in Peek 2012) argues that the categorization of a book works as a kind of contract. This contract, he says, governs the expectations and attitude of the reader: with fiction, "the reader will attempt to establish resemblances in spite of the author," whereas with autobiography, "the reader will want to look for differences (errors, deformations, etc...)."

Instead of a factual account, readers of *What is the What* expect a compelling story that gives insight into the feelings and thoughts of its characters, informing and enriching a narrative that they still accept to be true, or "truthful." While the truth-based origin of the story "elicit[s] a more believing reader response," as Peek (2012) points out, a re-negotiation of the constraints of autobiography, "allow Eggers and Deng to turn potentially skeptical readers into advocates and donors." Those critical of factual accounts might thus fall for this hybrid novel/autobiography. All in all, despite Deng writing that the book is "the soulful account of my life, I told Dave what I knew and what I could remember, and from that material he created this work of art," thus stressing that the book is no longer his life story but a *work of art* (xiii-xiv), the book's main objective is no

different from that of *I, Rigoberta Menchù*, or from that of any other testimonio. Brian Yost (2011, 149) here notes that, “although marketed as a novel and titled an autobiography, [*What is the What*] more closely resembles a testimony narrative.” That Eggers’s name features so prominently on the cover and in the copyright section (copyright © Dave Eggers), can be better explained from a marketing perspective: as Jones (2007) rightly points out, “Eggers’s name sells books, and selling more books raises awareness of and more funds for the causes that matter most to Achak.” This strategic marketing underlines Hamilton’s conclusion (2010, 10) that Eggers “has demonstrated the possibility that celebrity and sincerity need not be perceived as mutually exclusive.” Here, platform and cultural reach appear dominant factors in considerations on the form of the book.

Cultural Translation and Critical Reception

The fictionalization and broadening of Deng’s incomplete memory of his childhood years has profoundly influenced his identity and role in the broader human rights project. Even though Deng claims that his collaboration with Eggers was so intense that the latter could almost read his mind—“It was very strange how he envisioned events through my eyes. Because we had spent so much time together by that time, it is not surprising that he could guess my thoughts” (NPR)—it cannot be stressed enough that Eggers did not just document a life but construct a story. A part of this story, Deng’s fictional persona becomes the vehicle or representational character for the many Lost Boys and other victims of the Sudanese civil war. In *What is the What* (21), he tells readers that Lost Boys are willing to confirm to their audiences’ expectations:

[T]he tales of the Lost Boys have become remarkably similar over the years...But we did not all see the same things...But now, sponsors and newspaper reporters and the like expect the stories to have certain elements, and the Lost Boys have been consistent in their willingness to oblige. Survivors tell the stories the sympathetic want, and that means making them as shocking as possible. My own story includes enough small embellishments that I cannot criticize the accounts of others.

This proves that the reception of a human rights narrative such as *What is the What* is conditioned by the (enabling and constraining) conventions of the genre.⁴ Pointing out these “embellishments,” Eggers implicitly acknowledges that he wants to speak within the established conceptual frameworks, despite his awareness of their limitations, but ultimately focusing on reaching and appealing to his Western-based audience. As Peek (2012, 122) observes, this strategic appeal to a targeted audience “erases individuated human experience and vulnerability for the sake of a more compelling story—a story that reveals more about readerly expectations than it does about the actual experience of the vast majority of Sudanese.” Tying into these expectations, Deng comes to represent, for most readers of the book, all the Lost Boys of Sudan, and maybe even the entire suffering part of the country’s population.

Interestingly, it is in this representational function that Deng starts to carry out the human rights work for the VAD foundation. In his hometown of Marial Bai, where the foundation built a secondary school, he was initially approached with skepticism by the local community, as if he were an outsider. Other outsiders had not kept their promises, so the community’s first response was to “wait and see” (*One Book One Marin*, 2009). This outsider’s position is somewhat affirmed when, during fundraisers, Deng speaks from within Western frameworks of reference, explaining that “they [the farmers in Marial Bai] still use traditional methods of farming” (*One Book One Marin*, 2009). He talks about his native community in the third person, and contrasts their farming methods with the “modern” methods of the Western world.

⁴ Here, I categorize *What is the What* as a human rights narrative to align it with other publications, fiction and non-fiction, that seek to address an absence or violation of human rights, and, through their narrative, want to create awareness and actively call for action, intervention, or retribution. Many but not all of these texts adopt the legal language of human rights. The conventions of this genre of writing and human rights activism are enabling, in that they create awareness and potential change for un- or underrepresented injustices and marginalities, and constraining, in that they are tied to the underlying premises and dominant language of the international human rights regime, which has been subject to criticism characterizing its whole “universal” enterprise as cloaking Western neo-imperialism, maintaining structural imbalances, and offering an exclusionary model of individual progress which runs along the lines of the Enlightenment *Bildungsroman*. For a discussion of the similarities between the *Bildungsroman* and human rights law, see Slaughter (2007).

Deng has come to occupy a discursive and cultural space in-between Sudan and the U.S. His fictional representation minimizes the bridge to Sudan for Western readers, and his constructed public persona forms the link between his local community in South Sudan and the VAD foundation, which finds its origin and resources in the Western world. Clearly, his perspective and cultural vocabulary changed when he moved to the U.S. As Smith and Schaffer (2004, 19) point out, “displaced, migrant, and diasporic people arrive at destinations where different discursive fields and different histories of activism offer new terms and storytelling modes...through which they might remember, interpret, understand, reconstruct and come to terms with a complex past.” It is with the expectations of the audience and the goals of his human rights project in mind, and through a geographical and cultural replacement—which affects both memory of past events and perceptions of what is “good” for the local community—that Deng operates within the broader human rights project of *What is the What*, and as such his identity is formed (by himself and by cultural expectations) and performed (at fundraisers, lectures, and in his work for the VAD foundation).

A striking example of an appeal to and speaking from within the dominant cultural lexicon of human rights is the book’s frequent reference to the human and to a “common humanity.” As Cheah (2006, 3) argues, our human rights discourse draws in many ways on the idea of a global humanity. Against forces that instrumentalize and objectify the human, human rights discourse seeks to conceive of “the global as the human.” That *What is the What* functions within these conceptual categories can be seen in the book’s preface, where Deng describes his earlier self as a “helpless human,” and on its final page (535), where his fictional character says that to stop telling these stories (of suffering), “would be something less than human.” Peek (2012, 116) argues that “such nods to the human can...be read as instances of an enduring belief in and longing for the concept of a universal humanity that connects us across geopolitical and cultural divides.” Criticism on the colonial and patronizing history of this notion of a global humanity aside, the human still forms the premise of current human rights discourse and consciousness, and *What is the What* consciously employs this motif. When critics subsequently point out that “[h]umanitarianism becomes *human* in Deng’s prescient voice, and narrative begets character in Eggers’s deft hands”

(Maker 2007, emphasis mine), one can understand Eggers's eagerness to "transcend" human rights reports, as something that is *human* seems to resonate with his audiences in a deeper and more meaningful way than something that is merely *humanitarian*.

The book also adopts conventional human rights strategies in its creation of feelings of guilt and shame for the readers, thereby working like the method of naming and shaming, used by NGOs, news media, and international organizations alike. As Eaglestone (2008) argues, the book functions alongside the common trope of "allegories of failed understanding."⁵ The Atlanta robbery framework, for example, points out to readers that they have previously been mis- or uninformed about the "real" state of the world. Feelings of guilt and shame are triggered when Deng tells his robbers, and by extension his readers, that they would act differently if they would know his whole story. The historical and meta-textual information (a map of Sudan) that the book contains also make clear that the (urgent) goal is to inform readers about an unknown or unfamiliar situation.

Analyzing the reception of the book one strikingly notes that few reviewers discuss cultural translation, or grapple with the categorization of the book as a novel. Some words are spent on the subject, but no relevance is attributed to it. As Prose put it in the *New York Times* (2006): "novel, autobiography, whatever." With a slightly patronizing tone, she applauds the didactic effect of the book: "Eggers's large and youthful fan base... will be able to visualize the geographical positions of Sudan, Ethiopia and Kenya with a clarity surpassing the possibly hazy recall of anything they might have memorized for a World Civilization class." In *USA Today* (2006), Donahue writes that "[a]s weird as this hybrid novel/ autobiography sounds, it works ... It is not some James Frey-esque truthiness scam." Recalling the scandal and media frenzy over Frey's memoir *A Million Little Pieces* (2003), Donahue now has no problems with issues of veracity. What matters is that it "works." Several critics even speak of *What is the What* as a "lightly fictionalized version" of Deng's life story (Amsden, 2006; Graff,

⁵ Eaglestone argues that a common trope in Holocaust literature can also be found in many African trauma narratives. In these allegories of failed understanding, "figures not involved in the traumatic events are shown in their misreading or incomprehension of the events involved." See Eaglestone (2008).

2006; Grossman, 2006; Henriksen, 2006), thus undermining, or ignoring, Eggers's considerable creative contribution.

It was Lee Siegel (2007) who wrote one of the few very critical reviews of *What is the What*, going so far as to argue that the book's "innocent expropriation of another man's identity is a post-colonial arrogance—the most socially acceptable instance of Orientalism you are likely to encounter." He scorns Eggers's decision to fictionalize and aestheticize Deng's story, saying that "the eerie, slightly sickening quality about *What is the What* is that Deng's personhood has been displaced by someone else's style and sensibility—by someone else's story." Siegel believes that Eggers completely eliminated Deng's identity by taking his story and making it his own. Moreover, he laments that when such a book "works," when "a writer can find a way to represent evil," then "his motivation is about as relevant to his achievement as his blood type." This implicit critique of the book's (critical) reception nevertheless reveals Siegel's own idealism. According to him, when Eggers would have told the "unadorned story, the true story humbly recorded and presented," it would have had enough force. For Siegel it is only on the basis of this true story, the authenticity of the testimony, the presence of the survivors, and on their memory and a general belief in the "sanctity of truth" that justice can be achieved. Yet, Eggers's book can be seen as undermining this admirable concept of a system of human rights and retribution in which aesthetics and fictionalization hold no currency. The broader cultural discourse of human rights, as Eggers's book demonstrates, is a curious "juggling act" of fact and fiction, testimony and storytelling. The platform and wide reach of this work, along with the concrete results it has on the ground in Sudan (through the work done by the VAD Foundation) illustrate how fiction operates in the broader field of human rights.

Ideally no one should harbor illusions concerning objectivity, decades after the linguistic turn, yet the reception of *What is the What* makes clear that it is still desirable that a "truthiness scam" be avoided. Whereas genre boundaries may seem like medieval concepts to a postmodern author like Eggers, his decision to label the book as a novel minimizes the risk of it stirring up controversy. Bringing up the cliché that, sometimes, "fiction takes you closer to the truth" (Eggers in Freeman [2007]), it becomes clear that truth has to do more with *effect* than with truthfulness. Donahue's claim

that *What is the What* “works” means just that. When Prose talks about the clarity with which readers will be able to visualize the situation she is also talking about the book’s effect, which is boosted by the book’s aesthetics. Still, whereas it succeeds to avoid the pitfalls of the memoir or autobiography through acknowledged fictionalization, the book’s desired effect is by no means different from that of a memoir, autobiography, or testimonio that aims to call its readers to action.

Conclusion: Stories of Suffering

Stories of suffering such as *What is the What* perform an important role in our Western culture. Our age, which Slaughter (2007, 2) calls the “Age of Human Rights,” has also seen a surge of memoirs and other forms of life writing. Part of this is a “sudden burst of distressing and traumatic narratives from Africa” (Eaglestone, 2008). In most of these narratives, the dominant theme is (personal) struggle and suffering (overcome). As Smith and Schaffer (2004, 25) argue, there seems to be an insatiable desire for stories of “individualist triumph over adversity, of the ‘little person’ achieving fame, of people struggling to survive illness, catastrophe, or violence.” It is no surprise that Deng’s strength, resilience, unwavering faith and admirable character are admired most by readers and critics, in both his fictional character and his public persona.

This hunger for such stories of suffering can be aligned with Eggers’s own apparent feelings of guilt. As Sarah Brouillette (2003) argues in an analysis of Eggers’s second novel, *You Shall Know Our Velocity* (2002)—which she reads as thematizing a fear of “selling out” in a corporate literary marketplace—there exists a form of “privileged” guilt on the part of Eggers, as the novel “expresses an anxiety about the proper social acquisition and distribution of general wealth.” In this novel, two young Americans become wealthy in an instant. Feeling “guilty just by the fact of cultural privilege,” they desperately attempt to get rid of the money, traveling to foreign countries to give it to the less fortunate. Brouillette points out that, through this novel, “Eggers’ usual aversion to admitting to financial motivation is given a rationale that extends beyond the literary field and into his guilty feelings about his privileged status as a white American...” For her, this indicates that Eggers’s “play” with form and his unease with his wealth and privilege demonstrate a “sincere

form of social responsibility motivated by general cultural guilt and humanitarian sympathies.” In *You Shall Know Our Velocity*, the protagonists feel extremely uncomfortable in the face of real poverty and suffering, which results in many desperate and clumsy attempts to donate their money, always shunning meeting the “victims” face-to-face and finding safe, mediated forms to reach them. Likewise, *What is the What* offers readers a relatively simple and practical way to (feel that they) contribute to human progress and fulfill the promise of human rights.

Whether or not Eggers or his readers are (consciously) motivated by a form of guilt, or driven by an awareness of broader structural inequalities, remains elusive. Yet, it cannot be denied that Eggers and Deng know well that they are writing (and speaking) within the dominant discourse of human rights. In fact, they effectively *use* its conventions as strategies to appeal to a “human-rights educated audience” (Moynagh 2011, 46). Despite the book’s renegotiation of a linear process of redemption through intervention from international aid organizations, it should not be forgotten that stories like this risk “confer[ring] humanity not on the passive people in distress but on the spectators pitying them, who assert themselves as enlightened individuals by having big feelings” (Solomon 2006, 1591). The book may resonate stronger with and touch a broader audience through its careful fictionalization and stylistic strength, yet the decontextualization of the story’s subject also cause the real story to suffer in its cultural translation and appropriation across the Atlantic Ocean. By understanding how exactly this cultural translation takes place and by grasping the functioning of genre categorization, fictionalization, and the openness of collaboration in this case study of a human rights narrative, it becomes even clearer that “human rights work is, at its heart, a matter of storytelling” (Dawes 2009, 394.) Also, as Smith and Schaffer argue (2004, 1), it once more affirms that one should always “understand ‘the political’ as inclusive of the moral, aesthetic, and ethical aspects of culture.” Knowing this, Eggers cleverly uses all his skill as a writer, the codes of storytelling and the conventions of Western human rights culture to reach his and Deng’s humanitarian objectives.

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A Human Rights Life-World?

Politics, Society and Representation at the Start of the Twenty-First Century

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Introduction

Human rights are a pressing issue for global society at the start of the twenty-first century. Gaining increasing popularity since the foundation of the United Nations (1945; hereafter UN), “rights” – human rights – have gained increasing appeal not only to state actors, but NGOs, social activists, the media, academics and “everyday” members of global society as well. 1989 was a watershed year. While rights concepts were marginalized under the Cold War, the victory of liberal capitalism opened the door for raised expectations concerning global adherence to rights standards. Samuel Huntington (1996, 193) argues that “the transition and collapse of the Soviet Union [and satellite states] generated...the belief that a global democratic revolution was underway and that in short order Western concepts of human rights and...forms of political democracy would prevail throughout the world.” Huntington is correct. While Marxist political-economy contributed to the history of human rights via welfare and social rights, human rights’ intellectual roots lay in liberal-democratic traditions dating to the eighteenth century.

Growing literatures (e.g., Slaughter 2007; Madison 2011; Borradori 2012) acknowledge human rights as greater than political philosophy. Rights address conceptions of the self – modern, “centered” concepts of subjectivity (see Slaughter 1994, 411) – ideas of

political utopia (Moyn 2010) and narrative structures binding human origins with human ends (Dorfman 2012). The contemporary social subject is constantly confronted with images and ideas denoting rights. We are also confronted with the the articulation of rights on all levels of the social power scale – “hi” to “low.” Given this, there is a need for an analysis of the rights “environment” at the start of the twenty-first century. I.e., how, precisely, are we confronted with rights ideas and images such that they appear “natural” – universal, “human” and ineluctably a part of the “age” (Bobbio 1996) in which we find ourselves?

At least a partial answer to this might be the concept of a human rights “life-world.” “Life-world” (*Lebenswelt*) is borrowed from phenomenological philosophy – specifically from Edmund Husserl (1983; 1970). The life-world involves everything “taken for granted” in human life (Husserl 1970, 123); the life-world encompasses sets of presumptions built-up over historical time. Life-worlds never *appear* as presumptions, or “life-world,” however. This is an important point. Life-world appears as what is “simply there” (*einfach da*) (Husserl 1983, 51). Life-world appears as things registering as “literal” (*wörtlich*) as well as “figurative” (*bildlich*). I.e., representing concepts such as human rights, or providing senses that rights are simply “there,” involves ensconcing social subjects in rights’ literal and figurative representation. This is how rights confront us. In the twenty-first century, rights pertain to the “real.” Rights pertain to the empirical. Rights pertain to “true” historical events – the terrain of the “literal.” However, rights also pertain to entertainment, “virtuality,” commercialism, advertisement and fantasy simulation – movies, video games and fashion. This will be posed as rights “figuration” – a semi-fictionalization, or “fantasticalization,” of rights. Thinking about literality and figuration in a spectrum, what emerges is a liminal effect. Engaging social spaces of fact or fiction, entertainment or “serious” politics, rights “appear” for us. We can’t “avoid” rights, as Kenneth Cmiel (2004, 117) argues. Popular and commercial cultures of rights confront us, as do serious political cultures of rights. In terms of two essential modes of representation – “literality” and “figuration” – rights become an ineludible concept within the confines of contemporary political society and ideas.

In terms of a rights life-world, however, fact and fiction is not the end of the story. Rights representation demands reference to

history. I.e., rights confront us as a matter of not only how they look (are they “entertainment” or “fact?”), but who, socially, speaks rights. Who on the global stage invokes rights ideas? Who claims human rights as important? What are the social positions from which rights are either articulated or advocated? A full understanding of a rights life-world involves not only understanding representations of rights – i.e., problematizing if rights are represented “factually” or “fictionally” – but historiographical arguments contextualizing rights in the political evolution of the twentieth and twenty-first centuries. The point here is to blend phenomenology and historiography to create images of broad-scale tactile and socio-historical spaces in which rights confront us. These are, it will be argued, left-right axes of fact and fiction and up-down axes of social advantage and disadvantage – i.e., rights as spoken from the social “centers” and “margins,” as sociological vocabularies would have it¹. The point here, albeit in broad strokes, is to outline how rights are on either “side” of us in terms of modes of historical and social representation, as well as “above” and “below” us in terms of who speaks rights, or the locales of ideological articulation brought by degrees of social privilege, or the lack thereof.

The first part of this paper will engage rights “factuality” and “fictionality,” or “literality” and “figuration.” The second part of the paper will engage the historiography of rights from the mid-to late twentieth century in the context of the evolution of global politics.

Rights on “Either Side of Us”: Modes of Rights Representation

We invoke Husserl’s notion of “literal” and “figurative” representation because of the role of literality and figuration, or reality and “phantasy,” as Husserl (1983, 101) phrased it, in world-constitution. The point for Husserl – as well as ranges of his followers (e.g., Gadamer 1998; Schütz 1967) – was that the world always presents itself as a whole. The life-world, one’s “surrounding world” (Husserl 1983, 51), is simply “where I find myself.” This is in all the ways in

¹ At work here is blend of Wallersteinian world-system theory and Pierre Bourdieu’s notion of social capital – i.e., that social power ultimately involves economic accumulation, yet prestige may be an equally important factor in that process to material accumulation and monetary wealth. See Wallerstein (1974); Bourdieu (1984).

which the world presents itself, or the modalities through which one perceives the world. Here, one is disallowed the ability to separate out fact and fiction. Though one might fantasize – have dreams, make “false” or “pretend” representations of a thing, or create “fictions” (*Fiktionen*) of a particular concept (Husserl 1983, 101) – “fictions” are nonetheless real. Fictions “hover before one.” Fictions reflect the modes via which concepts confront us. One might imagine the historical past or present. However, one’s imaginations, or understandings, of the world by which one is confronted involve particular interplays between senses of what is “real” and what is “not.” Fact and fiction, history and imagination, true and fabricated – at least under the Husserlian rubric – function on a continuum. The continuum of fact and fiction – what I am calling the “left-right axis” of fact and fiction, or rights on “either side of us,” provides the swath of modalities via which one relates to particular concepts. This includes ephemeral (and political) concepts such as human rights.

Discussing rights in this way is complex. This is due to confusion over what human rights are. Are rights philosophical expressions about the nature of the individual – that he or she (the individual) is born into “reason and conscience,” as the Universal Declaration of Human Rights (UDHR; United Nations 1948) puts it, or are rights a specific set of protections and obligations accorded to groups and individuals (such as the right to recognition as a person before the law, as the UDHR also states, or the right to a standard of living “adequate for the health and well-being of himself and of his family” [United Nations 1948])? Answers are nebulous. Some see rights as a transcendental assertion about the universality of human individuality (e.g., Morsink 2009). Others see rights as a matter of concrete legal implementation, and politico-administrative orders through which law is enacted (see Weissbrodt and de la Vega 2007). We maintain neither of these understandings of human rights. Rights represent vague, general references to notions of human freedom, individuality, social justice, liberation, resistance to oppression, economic development and idealistic views of international relations. Human rights are a discourse – a term or phrase one uses. Rights discourse nonetheless reflects general, or perhaps vague, awareness that rights regimes (institutions, laws, etc...) exist. The point of departure for this paper is nonetheless that, for most members of the

social body, rights are conceived of in *Gestalt* form. Rights are simply thought of as “there,” intuitively maintained and that, in a general sense, we can all be sure that the ethics and morality to which rights representations refer could be universally maintained.

One might identify two kinds of rights representations: representations comprehended, or classifiable, as involving “truthful,” “concrete” or “historically accurate” references to rights events, or at least truthful representations of rights situations (conflicts, social turmoil, legal institutions, environmental disaster, etc...), and representations of rights or, again, at least rights “situations,” blending fictional elements with varying degrees of “truth.”. While space limits our full exploration of the idea, this in some ways reflects the notion of historical fiction as developed by Georgy Lukács (1962) – i.e., that the use of “real” events helps accentuate the doings of fictional characters by according them levels recognizability (grounding them in areal a social real world). This is where-as the dramatization of “real” events via fictional characterization underscores the importance and gravity of “true” historical events by disembodiment from their native contexts, thus highlighting them in bas relief. Representations of human rights occur with varying levels of fictionalization. Some, e.g., the 2005 film *The Interpreter*, manufacture entire civil conflicts with recognizable yet nonetheless fully fabricated plot lines. The civil strife referred to in a film like *The Interpreter* draws from ranges of post-colonial, sub-Saharan African social conflicts (e.g., the Congo, Zimbabwe and Uganda). Human rights – events such as genocide and political oppression – are “represented” in the form of discussion of an African state which does not exist (“Matobo”). However, representation also refers “reality” – something “literal.” This is the general phenomenon of civil strife in sub-Saharan Africa, problems of decolonization and issues of democracy and recognition in countries recognizable from the African map, yes, but also the role of international institutions such as the UN such conflicts (the UN being the seat of much of the film’s action). Blending these real and fictional elements, *The Interpreter* is historical fiction *par excellence*.

Especially in a short paper, it’s impossible to refer to all the examples of rights representations invoking varieties of literal and figurative, or “factual” and “fictional,” rights representation as they’re posed here. It’s moreover difficult to point to the *number* of repre-

sentations with which members of global society are confronted, or the multiple media channels through which rights representation takes place. Intertextuality also plays a role. By way of example, one may read, in novel form, John LeCarré's *The Constant Gardner*, dealing with African health, development and the role of private companies in such rights issues (though in a fictional, spy novel context). After reading the novel, however, one might then see the film and watch previews or trailers for the film on the Internet. Regardless of intertextuality, however, we may refer to the multiple *varieties* of representation involving blends of fact and fiction, and the blending of rights "fantasy" with rights "reality." The following are but examples:

- MTV produces an online videogame entitled *Darfur is Dying*. This is based on the 2003-11 Darfur Crisis in which hundreds of thousands were killed and displaced due to civil war in Sudan's Darfur region. In addition to executions, displacement and *ad hoc* killings, human rights violations in this conflict included famine, ethnic discrimination and religious conflict. In MTV's game, one adopts a character attempting to survive in a refugee camp. One's "life" is measured in access to water, the "threat" level one is under, food supply, the general health of the camp and number of days in the camp (measured in cartoon bars and statistics). Obviously, the game involves the adoption of fictional characters and cartoonish depictions of "general" events involved in the crisis (attacks by the Janjaweed militia, foraging for water, dealing with contaminated water, etc...).
- Benetton clothing long ran series of controversial advertisements based on pleas for social reconciliation and justice, yet promoting its clothing brand. Most controversial was the "We, on Death Row" campaign (2001). Here, as a matter of protest against the death penalty – a controversial point under international human rights law (disallowed, e.g., under the European Convention on Human Rights [European Council 2010]; provided for but frowned upon in the International Covenant on Civil and Political Rights [United Nations 1966]) – Benetton provided humanizing portraits of twenty-six death row killers in the United States, suggesting that their humanity demanded recognition as much

as anyone else's under the UDHR's assertion that "everyone has the right to life" (United Nations 1948). This isn't fiction. However, it's rights in the context of appeals to popular consumption and mass cultural commercialization.

- In addition to popular films such as *The Interpreter* – thematizing the UN and its relations with fictional civil strife in "Matobo" – films such as *Blood Diamond* (2006) and *Hotel Rwanda* (2004) achieved extensive box office and critical success based on varying levels of dramatization of civil conflicts in Sierra Leone and Rwanda. This includes accurate, moment to moment accounts such as *Hotel Rwanda* – yet nonetheless featuring Hollywood stars and dramatic background music – as well as accounts featuring fully fictional characters such as those central to *Blood Diamond* (a fictional mercenary and Mende fisherman, played by Leonardo di Caprio and Djimon Hounsou).
- Apple Computers marketed its brand in the late 1990s via a campaign based on free speech imagery – the "Think Different" campaign. Here, rights "heroes" such as Martin Luther King and Gandhi were portrayed with the Apple logo. This suggested that either Apple computers embodied the free spirit of rights activists such as King and Gandhi, or that figures such as King and Gandhi might have approved of the intellectual non-conformity supposedly promoted by Apple's brand (neither Gandhi nor King, of course, had anything to do with high technology, let alone Apple).
- The *Kony 2012* film was an Internet sensation. As of the composition of this article (August 2012), the video had been viewed over 92 million times on the video outlet YouTube. *Kony* is, as are films like *Blood Diamond* or *Hotel Rwanda* – or, indeed, campaigns like Benetton's – a variety of rights "fact." *Kony* refers to a true conflict – the Lord's Resistance Army's (LRA) in the Congo and Uganda. However, *Kony* "spices up" events, interspersing the narrative of LRA and its war criminal leader with the personal ambitions of the video's producer, and the entire creation's presentation with extremely high production values and extensive special effects.

These are but a sample of rights' fictional representation. Readers might be able to generate dozens if not hundreds more examples of portrayals of human rights like those above. Is *Schindler's List*, e.g., a human rights film in its portrayal of the Holocaust? *Rendition*, a successful 2007 film, also picked-up on rights issues depicting the extraordinary rendition of a fictional U.S. resident under new anti-terrorism laws. Videogame production company Serious Games produces "Global Conflicts," dropping players into multiple fictional situations and stories in developing global regions (e.g., Latin America). The point is twofold. First, in terms of broader pictures, one need not be reminded of the multiplicitous "literal" rights representations with which members of contemporary global society are continually confronted; CNN, BBC, national news outlets, major dailies from *The New York Times* to *Frankfurter Allgemeine* and all manner of Internet news outlets and NGOs carry dozens, if not hundreds or thousands of stories on human rights on daily bases. These fit with descriptions of "true" historical information as relying on claims to "having been there" (Barthes 1989, 147) – either witnessing events, or the compilation of documentary evidence so irrefutable that the event in question must have taken place. Undoubtedly, such events are "real": the truth of thousands dying in civil conflict, the denial of civil rights, unjust executions, irregular processes of law and denials of basic health care, housing and education happen. This doesn't prevent "happening" from being a register of experience, however – a mode of expression by which we recognize something as true, or "having been." "Reality" is a mode, or way, of being confronted by the world.

Rights imaginations – and certainly representations – extend beyond "factual" and "historically true" ("literal") reporting, however. This is the second point. Representations of rights delve into fantasy and the *jouissance* of marketing – things for which we "weren't" there, or are taken out of context. Human rights concern Leonardo di Caprio and Djimon Hounsou in *Blood Diamond* bonding across racial and class differences in the midst of a high speed chase through the mountains and jungles of Sierra Leone. Human rights are part of the excitement of choosing a computer or clothing brand, as in the Apple and Benetton campaigns. One can simulate the Darfur crisis – and do so at any computer with an Internet connection. The conflict in Darfur is available in cartoon form. The imagery of

“serious” rights organizations from the UN to Amnesty International to Human Rights Watch is interpolated with the adventure of films and novels and the thrill of “smart” consumerism. We might note that this isn’t to human rights’ disadvantage. Via fiction and marketing, it becomes possible to reach broad audiences with rights messages. This furthers the spread of rights ideas, and broadening beliefs in rights-based society. Aesthetically, however, we gain an image of rights “messages” sitting on all “sides” of us. To our left, we see attempts to tell rights “truths.” These are the “literal” rights reporting of news agencies and serious rights organizations. To the right, truth thins out. Rights simultaneously maintain and lose their gravity. Advertising and at least partially fictional films draw from general senses of the existence of rights events. These are presented in “fantastic” form, however. This includes production values and dramas in rights events which oriented at least as much towards entertainment and consumption as attempts to disseminate the “truth” of rights. Collectively, “literal” and “figurative” rights representations coalesce to form an atmosphere, or “world,” of rights. Looking at the world through any of its essential representational modes – fact or fiction – we see human rights. These form a horizon, or set of expectations, for contemporary political beliefs and imaginations. This is that rights form our world – they are “happening” – yet that they are also our drama, or the stuff of our imaginations.

Rights Historiography and the “Age” of Rights

Here, readers should be encouraged to evoke their experiences and reflect on the multiple ways in which human rights messages enter everyday spaces. Again, this is through “literal” rights reporting: factual information about rights events and issues. Rights factuality slides into rights fiction, however – the dramatization of rights events, and their resetting, or reframing, into fictional and “fantastic” contexts. This includes the realms of rights as entertainment, and rights as a mode of popular, consumer-based advertising.

Such issues, however, beg historiographical questions. Why this late twentieth, early twenty-first century preoccupation with rights? To what mechanisms does the spectrum of rights “literality and figuration” respond? If there is a socio-historical question concerning the prevalence of rights ideas, does this provide us with further means of comprehending the multiplicitous nature of the

locales from which we hear “rights,” or are confronted with human rights concepts as standards for social justice, freedom, personal liberation and the obligations of states to their populations, if not international society at-large?

Answers lie in rough understandings had about human rights history in the literature on human rights’ mid- and late-twentieth century evolution. Human rights maintain deep historical roots. Paul Gordon Lauren (2011, 6) posits that any religious, ethical or philosophical system speaking to “the issue of human responsibility to others” contributes to the legacy of human rights. Here, the start of human rights comes with the consideration of any level of legal justice or ethical human behavior – be it Platonic philosophy, Judeo-Christian ethics or primeval law codes, such as Hammurabi’s. In the literature, it is also the case that human rights are sometimes linked to the evolution of international law. Anthony Pagden (2003) suggests that natural rationalizations of international conquest in the early modern period (the age of European expansion) are the start of international perspectives on legality – that law might have a global reach. Most usual (Hunt 2007; Hunt 1996; Israel 2011) is to equate human rights with the democratic revolutions of the late eighteenth century. This is a powerful move. Modern rights declarations such as the UDHR often take key wordings directly from such movements. That we have “equal and inalienable rights,” as the UDHR phrases it, and that all human beings are “born free and equal in dignity and rights” (as the UDHR also phrases it), directly echoes claims that all men are “endowed by their Creator with certain unalienable rights” – an argument of the American Declaration of Independence (1776) – and that men are “born and remain free and equal in rights,” as the French Declaration of the Rights of Man and Citizen phrases it (1789). As Lynn Hunt (2007, 153) asserts, such documents give us the roots of human rights’ “abstract universality.”

Two points are salient. Firstly, as Samuel Moyn (2010) points out, though claiming abstract universality, late eighteenth century and nineteenth century rights claims were generally nationalistic. Eighteenth and nineteenth century rights claims concerned state formation. Eighteenth and nineteenth century rights claims concerned the formation of citizenries. These claims also concerned state sovereignty – the creation of distinctly governed national communities.

Herein, human rights become distinct from the “rights of man,” as Moyn (2010, 26) poses eighteenth and nineteenth century rights claims. *Human* rights are intended to be just that – global visions of ethical, legal and welfare standards to which the *international* community should conform. This is as opposed to rights formulated on behalf of the nation-state alone.

Moyn’s distinction gives way to complex views of human rights’ evolution in the second half of the twentieth century – largely from 1945 to 1989. In the wake of the Second World War, most Western powers, as well as emerging global regions such as Latin America, maintained vested interests in promoting rights. Certainly, this concerned reaction to the Holocaust – the demand that ethnically-based genocide should happen “never again” (Ishay 2004, 218). However, the emergence of rights also connected to the publicized goals of the Allied powers and their justifications for war. As advanced in documents such as the Atlantic Charter and Franklin Roosevelt’s famous “Four Freedoms” speech, the goals of the Allies largely concerned political freedom on individual, national as well as cultural scales (see Ishay 2004, 213). Herein, though the precise politics concerning the introduction of human rights into the UN are complex (see Mor-sink 1999; Waltz 2001; Waltz 2002; Normand and Zaidi 2008), it was very much at the insistence of marginalized peoples, represented by “small states” (such as those in Latin America), liberal elements within the American State Department and the activism of NGOs and global rights leaders such as Gandhi, Kwame Nkrumah, Eleanor Roosevelt and (at the time) Ho Chi Minh that human rights emerged as a central part of the new international order. The capstone to this was the publication of the UDHR in 1948.

1948 to 1989, or at least 1975, were nonetheless difficult years for human rights. Cold War ideology was a major factor; political “utopia,” as Moyn (2010) has phrased it, was posed in terms of either socialist collectivism or liberal, democratic-capitalist individualism. As Micheline R. Ishay (2004) notes, both ideologies have a role in human rights. This is via the notion of civil and political rights versus economic, social and cultural rights (i.e., rights defending the individual from the state as well as rights outlining the obligations of the state, or at least society, towards the individual). Civil and political rights and economic, social and cultural rights form the touchstones of international human rights law (see Weissbrodt and

de la Vega 2007). “Human rights” were nonetheless a rare vocabulary to hear under the Cold War. A variety of reasons account for this: Soviet and American interventions in the Third World, suppression of dissent within the United States and Soviet Union (be it in the form of ethnic minorities or free speech dissidents) and the general conduct of *Realpolitik* from South America to the Middle East to Sub-Saharan Africa. I.e., both major Cold War powers were involved ranges of both domestic and foreign human rights violations. This led some, like American diplomat George Kennan, to assert human rights as an “unreal” foreign policy objective. “We need not deceive ourselves that we can afford today the luxury of altruism and world-benefaction,” wrote Kennan in a 1948 State Department document (in Ishay 2004, 227). The point was hard-nosed approaches to containing the advance of world communism (from the capitalist perspective) or spreading socialist practice as an antidote to capitalist exploitation (the socialist perspective).

This leads to two phenomena. Firstly, advocates of human rights tended to come from the social margins as opposed to the halls of global political power. The anti-Apartheid movement, American civil rights movement, dissident voices such as Andrei Sakharov other Soviet free speech dissidents, movements such as Amnesty – originally a prisoners of conscience movement – the women’s liberation movement and ethnic liberation movements were primary advocates of human rights (see Quataert 2009). Human rights were not a “mainstream” discourse. Rights, or human rights claims on a global scale, were counter-cultural. They connected themselves to systemic critiques of American, Soviet, white, male and global power.

Second, until 1989, the rough exception in terms of acknowledging human rights came with the 1975 Helsinki Accords. The Helsinki Accords traded human rights monitoring in the Eastern Bloc for recognition of East German territorial sovereignty. This deepened the global institutionalization of human rights as ranges of human rights “watch” organizations (beginning with Helsinki Watch) sprung up throughout the Soviet Union and its satellite states. In 1989, these would coalesce into Human Rights Watch – along with Amnesty, one of the world’s two major human rights NGOs. Still, as the Reagan administration reinvoked old-school Cold War policies and the Soviet Union alternated between liberalization and reaction-

ary crackdowns, human rights were very much left in the sphere of NGOs and the socially marginalized (see Shestack 1989). At the very least, rights' invocation came as a matter of accusations and counter-accusations in forums such as the UN about the rectitude of the American versus the Soviet systems.

Noticeable in human rights historiography, at least as concerns the mid- to late-twentieth century, is how different the situation was surrounding human rights and their social articulation than it is today. Obviously, as Huntington indicates, 1989-91 were watershed years. Though having socialist outgrowths, human rights maintain intellectually liberal roots. Liberalism's post-1989 global victory was a boon for rights. Increased global democratic practice brought increased rights expectations. This was especially in relation to free speech and political representation. Freedom of movement, representation before the law, the right to property and the right to free expression, all enshrined in the UDHR, were now global expectations. Rights were a transcendent vocabulary. Rights encompassed and were brought within the new global atmosphere of political and economic liberalization.

Human rights nonetheless trumped liberalism in a particular way. While liberalism's victory in the Cold War provided for a singular ideology in the new global cultural economy – that of liberal capitalism – the general lack of alternative ideologies (the traditional role of socialism) allowed for a forgetting of ideology itself. Slavoj Žižek (1989, 153) argues that ideology is about “splits” – ideas in opposition. He may be correct. Without an ideological threat – encroaching communism or, alternatively, capitalist imperialism – it becomes possible to point towards base concepts which are supposed to transcend ideology. Herein, hegemonic ideologies might be equated with a supposed non-ideological “defense of individual people,” as Sakharov put it (in Moyn 2010, 139), or basic ethical visions of the “good” society. Both politically and socially, or within institutions, on the part of specific, central global political actors as well as in everyday discourse and among advocates of the globally disadvantaged, “human rights” became, or at least could become, an amorphous conceptual reference point for individual liberation. “Human rights” might be the catchword for social protection, justice and freedom of mind. Human rights might resonate in the space of those denied them. However, they might also resonate in

the spaces of those who have the power to grant them (rights), or at least institutionalize their (rights') existence.

In terms of a human rights life-world, engagement with the historiography of human rights in the mid- and late-twentieth century yields two results. Firstly, while it may resonate that human rights – representations of justice, liberation, fairness, human ethics and concepts of universal humanity – gain both “literal” and “figurative” representations, or that we find ourselves confronted by both “factual” and “fictional” human rights representations, that is but a part of the broader picture of the manner in which we come into contact with rights ideals, or rights “discourses.” We won’t here venture into discourse theory. However, NGOs, protest groups (see Madison 2011) and the globally marginalized continue to invoke human rights discourses. This is how it has always been. Human rights are “counter-hegemonic” (see, e.g., Ishay 2004, 343), or strikes against overweening uses of institutionalized (state) or social majority power (e.g., legal, ethnic, gender or economic oppression). However, human rights are part of the panoply of vocabularies invoked by “hegemons” – those sitting in the most powerful of global socio-political locales. This trend began almost immediately with the end of the Cold War. In his famous speech on the “new world order” (1991), George H.W. Bush asked if ours wouldn’t be a world where “the United Nations, free from Cold War stalemate” would “fulfill the historic mission of its founders.” Would this not be, Bush asked, a world in which “freedom and respect for human rights” would “find a home among all nations” (Miller Center 2012)? Such vocabularies continued into the 1990s and the early twenty-first century. NGOs, activist groups met with world leaders in 1993 at the World Conference on Human Rights to reaffirm global commitments to human rights in the wake of the Cold War. Human rights fit centrally on agendas for meetings between the two *new* global superpowers – China and the U.S. (see, e.g., Liang-Fenton 2004; Meys 2009). Human rights are debated between “legitimate” states (such as the U.S.) and “rogue” states (such as Iran) in terms of who has the better human rights record (e.g., Hunter, 2010) (Ahmed Ahmadinejad famously declared in an interview with the Internet broadcaster Democracy Now that he thought Iran’s human rights record compared favorably with that of the U.S.). From campaigns such as NATO’s bombing of Kosovo (1999) to the UN sanc-

tioned of bombing in Libya (2011), significant international institutions are making increased numbers of foreign interventions in the name of human rights (see United Nations Security Council 2011). Using a socio-historical vocabulary, human rights continue to be spoken “below” us – by the socially marginalized and politically disadvantaged. However, perhaps more than ever before, they – “human rights” – are spoken by those “above” us as well. This includes the globally powerful, and those who sit at the center of significant political, economic and social decision making processes.

Conclusion: A Human Rights Life-World?

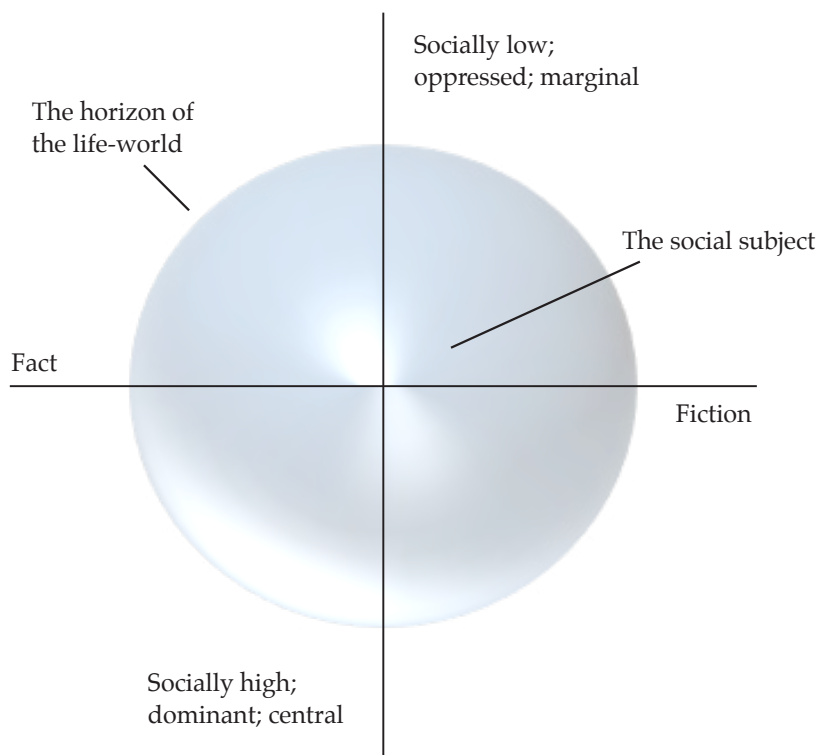
What has been presented here is, by some standards, an unusual mode of life-world analysis. Though the life-world, and our “world-horizons” – our perceptive spaces – are undoubtedly described as “literal” and “figurative” in the work of Husserl, the emphasis by phenomenologists tends to be on fundamental questions. How do we perceive? How do we know that others are around us? What is the character of the material world – the “objects” – which surrounds us? Are there connections between the nature of consciousness and the perception of others and things that demonstrates a universal nature to subjectivity? How do social bonds, if they exist at all, become formed? Is there a way to see past the presumptions of the life-world so that its basic “structure” becomes revealed (Husserl 1970, 139)?

We have partially deployed such levels of life-world analysis. That we have emphasized the “literality” and “figuration,” or at least “literality” and “figuration” in human rights representation, is true to phenomenological pursuits. Such emphases accentuate the subjectivity of perception – that “we” (social subjects) see wide ranges of things in our daily lives. What we “see” occupies multiple modalities – everything from “fact” to fictional “fantasies.” However, the analysis has here been specific. We have concerned ourselves with relations to a single concept: human rights. That has moreover been in a vague sense. I.e., we have worked on the idea that we may have specific senses that rights laws and institutions exist. However, for most of us, our relations with rights ideas are more intuitive. Rights represent vague senses of the self, ambitions for political liberation and multiplicitous notions of individual “freedom.” We get these, or are least communicated these, through factual and fictional content.

This paper has also taken a historical approach. About the historian, Husserl (1970, 147) wrote that his or her task was to “reconstruct the changing, surrounding life-worlds of the peoples and periods with which they deal.” This is complex. This is because reconstruction involves departing from the life-world in which one finds oneself and using one’s own presumptions in order to describe them (one’s own presumptions). This gives way to a kind of *Gestalt* picture of global cultural life – how do we view our times? History becomes a kind of artistic endeavor in self-reflection.

We have accepted the charge that historians work in “broad strokes” and the painting of *Gestalt* pictures is their goal. This paper has approached the life-world as something real – a “surrounding” environment. However, we have also used “life-world” metaphorically – when we think about a concept such as human rights, where do we find ourselves? How do we have such concepts “at hand,” and what are the ways in which the presentation of rights ideas is so rich – “thick” might be another term – that it seems natural they’re there?

I proffer the following model:



Intended here is a broad sense of where stand, or “find ourselves,” in relation to human rights – how, in our “times,” we gain sense of human rights as part of a necessary historical condition in which we find ourselves. À la the notion of life-world, the idea is outlining a conceptual and tactile space in which human rights appear “everywhere.” Human rights sit to the left and right of us, occupying the sinews of fact and fiction. Human rights come into a “halo” of reality in which fact and fiction merge, and concepts are tied to both modes of representation – historically “true” and not, or at least “less” than true (commercialized and fictionalized). Human rights occupy also the vocabularies of the socially most powerful, and the least as well. This is the life-world’s “above and below” – discursive locales from which articulation of rights emerge, and we orient ourselves towards the social body. This is a sociological point. However, it’s also a historical point to the extent that it’s comprehensible via longer term histories of rights – the constitution of rights in ancient or early modern history, yes, but also via the concrete institution of human rights vocabularies in the 1940s. Human rights were once an inclusive discourse, spoken by the powerful and the not. The “inclusiveness” of rights dissipated in the mid-twentieth century, however. Here, capitalism and communism vied to occupy the seat of the “end” of politics, or its final “utopia.” In the late twentieth and early twenty-first century, however, the situation has changed. Rights permeate us on all sides – the claims of the powerful, the petitions of the not, and the multiple representational channels and modes through which those claims are made and rights ideas disseminated, often intentionally and sometimes not. It’s in this way, claims this paper, that human rights become something one can’t “avoid.” Rights are borne by our essential modes of world constitution – fact and fiction – and become a social concept difficult to see beyond as there are few who don’t speak their vocabulary. It’s in this way that we might argue we live in a “life-world” of rights – an age of rights in which rights, *human* rights, are ineluctably ours and become difficult to see past, or “avoid.”

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