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Civil Society or Bourgeois Society? An Alternative Account from Hegel to Losurdo

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Abstract: This article offers an alternative account of the nature of civil society. As a preliminary step, it traces a terminological shift in German, from *bürgerliche Gesellschaft* (used by Hegel, Marx and Engels) to *Zivilgesellschaft*, which was a back-translation from English into German and popularised during the struggles in Eastern Europe in the 1980s. Given that earlier usage deployed *bürgerliche Gesellschaft*, 'bourgeois society', I use this term in my analysis, not least because it reveals the distinct history and class basis of the term. Thus, in the first section on Hegel we find that *bürgerliche Gesellschaft* is a specific product of modern, liberal society and a capitalist market economy, a product that is riven with a basic alienation between being a citizen and a private individual. The next section deals with Marx and Engels, based on their insight in *The German Ideology*: 'The term "*bürgerliche Gesellschaft*" emerged in the eighteenth century when property relations had already extricated themselves from the ancient and medieval community. *Bürgerliche Gesellschaft* as such only develops with the bourgeoisie.' The third section draws upon Domenico Losurdo's double approach, which turns on the distinction between the self-government of *bürgerliche Gesellschaft* and its governance by the state. While the former finds its true expression in the lynch mob, the latter – now using Losurdo's Italian as *società civile* – may be seen as a theoretical precursor to the socialist state.

Proponents of civil society would have us believe that it is benign zone of human endeavour, somewhat outside the clutches of 'the state', where human beings may freely express political opinions, form new associations, even launch movements that may modify elements of the current political and social framework. Who would not want to support such a worthwhile project? This article begs to differ. It does so by outlin-

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ing an alternative history of the concept and reality of what is really *bürgerliche Gesellschaft*, bourgeois society. This account has three steps. First, I explore Hegel's arguments concerning *bürgerliche Gesellschaft*, which was produced as part of the modern European bourgeois state. The reason I go back to Hegel is that he was the first to attempt a definition of the modern reality of *bürgerliche Gesellschaft*, which he sees as a zone of individuality, a war of all again all, riven with a basic alienation between citizen of the state and private individual. Second, I focus on the work of Marx and Engels, especially their primary focus on the specific history of *bürgerliche Gesellschaft*, which arose only in the European eighteenth century with the rise of the bourgeoisie to dominance. Marx particularly seeks to exacerbate the tensions already identified by Hegel, for which the only solution would be revolution. I also note a minor dimension of their work, in which *bürgerliche Gesellschaft* becomes a generic term for 'intercourse and production', found throughout history (with the result that they soon dropped the term as inadequate for such a reality). Third, I deal with Domenico Losurdo's approach, in which the ultimate or true form of *bürgerliche Gesellschaft* is the lynch mob. This happens when *bürgerliche Gesellschaft*, led by the wealthy bourgeoisie who were usually slave owners, seeks self-government, out of the clutches of 'despotic' states. However, Losurdo seeks to retrieve another sense of what may now be called *società civile*. He does so through a reading of Hegel, now focusing on Hegel's many efforts to ameliorate the tensions with which I began. The key in this case is that the state itself, through its institutions, actively governs this *società civile*. I conclude by reflecting on the implications of Losurdo's analysis.[2]

A word is needed concerning my use of *bürgerliche Gesellschaft* rather than the common usage of 'civil society'. It begins with the observation that the term used by Hegel and indeed all German material until relatively recently was precisely *bürgerliche Gesellschaft*, which is better

2 This article develops further some of the initial observations found in Roland Boer, 'Is a Socialist Civil Society Possible?' *Berlin Journal of Critical Theory* 2.1 (2018): 61-82.

translated as bourgeois society (a *Bürger* is literally a town-dweller, the classic location from which the European bourgeoisie arose). However, in the 1980s some of the Eastern European liberal 'dissenters' – such as Václav Havel, Bronislaw Geremek and György Konrád – to the communist governments began advocating typical liberal slogans, such as freedom, pluralism and social autonomy. They saw these as opposed to the 'authoritarianism' and 'dictatorship' of the aforesaid governments. And they began to deploy the English term, 'civil society', as the focus of their endeavours. The problem they faced was that the German term in use, *bürgerliche Gesellschaft*, would betray all too clearly the source of their ideas and indeed the agenda itself. So they began using a back-translation from English, *Zivilgesellschaft*. Conveniently, the class connections with the bourgeoisie were thereby concealed, so that 'civil society' could become a benign, classless and well-nigh universal term, outside control of the state.[3] Further terminological shifts have sought to enhance the apparent neutrality of the term, particularly in terms of 'the public sphere' and 'the public square' – invoking the metaphor of the village square or market where one could freely express ideas on all manner of topics. Who would not want such a place, whether literally or figuratively? The apparent neutrality of *Zivilgesellschaft* has also enabled its universalisation: all social formations in time and place have 'civil societies'. As for the present context of the bourgeois state, the value of 'civil society' remains unchallenged, with efforts focused on perceived and relatively minor shortcomings so as to reshape and strengthen 'civil society', or

3 Jürgen Kocha, 'Civil Society from a Historical Perspective', *European Review* 12.1 (2004):65-79 (67). This shift has made it easier for left-leaning activists and thinkers to join the liberal project, for now they are able to champion 'civil society' as a way to foster progressive causes. An example may be found in debates over global environment regulation via a global 'civil society'. See Mustapha Kamal Pasha and David Blaney, 'Elusive Paradise: The Promise and Peril of Global Civil Society', *Alternatives: Global, Local, Political* 23.4 (1998):417-50; Ronaldo Munck, 'Global Civil Society: Royal Road or Slippery Path?' *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17.4 (2006):325-32.

Zivilgesellschaft.[4] As a form of resistance to this move, I consistently use *bürgerliche Gesellschaft* throughout my analysis, in order to keep in mind its origins and distinct class nature.

Hegel: The Production of an Alienated *bürgerliche Gesellschaft*

> *Bürgerliche Gesellschaft* affords a spectacle of extravagance and misery as well as of the physical and ethical corruption [*Verderbens*] common to both.[5]

The first step in reconsidering the narrative of *bürgerliche Gesellschaft* entails going back to Hegel, for his reformulation of the concept and reality is still largely pertinent: a modern society is split between the state and *bürgerliche Gesellschaft*.[6] Caught in between is the individual, who must

4 Jürgen Habermas, *Between Facts and Norms: Contribution to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: MIT, 1996), 110; *Religion and Rationality: Essays on Reason, God and Modernity* (Cambridge: MIT, 2002); *The Future of Human Nature* (Cambridge: Polity, 2003), 101-15; *Between Naturalism and Religion*, trans. Ciaran Cronin (Cambridge: Polity, 2008); David Herbert, *Religion and Civil Society: Rethinking Public Religion in the Contemporary World* (Farnham: Ashgate, 2003); Mark Juergensmeyer, *Religion in Global Civil Society* (Oxford: Oxford University Press, 2005); Helen James, *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion* (London: Routledge, 2007); Joep de Hart, Paul Dekker and Loek Halman, *Religion and Civil Society in Europe* (Dordrecht: Springer, 2013); Judith Butler, Jürgen Habermas, Charles Taylor and Cornell West, *The Power of Religion in the Public Sphere*, eds. Eduardo Mendietta and Jonathan Vanantwerpen (New York: Columbia University Press, 2011). Occasionally one encounters some questioning concerning bourgeois society itself, in light of its implicit ethnocentrism and its tendency to foster conflicts and war, but these do not explore the internal dynamic of bourgeois society: Ireneusz Karolewski, 'Civil Society and its Discontents', *Polish Sociological Review* 154 (2006):167-85.

5 G.W.F. Hegel, *Elements of the Philosophy of Right*, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1820 [1991]), §185. *Grundlinien der Philosophie des Rechts*, Vol. 7, *Werke* (Frankfurt am Main: Suhrkamp, 1820 [1970]), §185.

6 The following focuses on Hegel's *Grundlinien der Philosophie des Rechts*, translated as *Elements of the Philosophy of Right* (see previous footnote). The best studies of Hegel's political and social thought are: Shlomo Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972); Domenico Losurdo, *Hegel and the Freedom of the Moderns*, trans. Marella Mor-

negotiate the tension between being an individual in association with other individuals (*bürgerliche Gesellschaft*) and an individual subject to a given entity (the state). For Hegel, the state is an ancient and self-sufficient reality. Indeed, the state pre-exists its historical appearance, being nothing less than the Idea itself and embodiment of reason. Even really existing bad states still partake of the ideal and abstract state. Thus, it is the rational destiny of human beings to live within the state; we are citizens of a state by default and not of our own choosing or by contractual arrangement.[7]

By contrast, *bürgerliche Gesellschaft* is a modern invention, emerging with the bourgeois state and a capitalist market economy (and entailing a sharp separation between state and society).[8] It involves economics, voluntary associations, religion, education, health, the law and even the police. Hegel defines *bürgerliche Gesellschaft* as 'an association of mem-

ris and Jon Morris (Durham: Duke University Press, 2004). On the latter, see more below. Well worth consulting on the alienating dimension of *bürgerliche Gesellschaft* in Hegel's thought is Anders Bartonek, 'Labour Against Capitalism? Hegel's Concept of Labour in Between Civil Society and the State', *Culture Unbound: Journal of Current Cultural Research* 6 (2014): 113-24 (115-19). Some other texts may be read with benefit, such as Charles Taylor, *Hegel and Modern Society* (Cambridge: Cambridge University Press, 1979); Zbigniew Pelczynski (ed.), *The State and Civil Society: Studies in Hegel' s Political Philosophy* (Cambridge: Cambridge University Press, 1984); Ian McNeely, 'Hegel's Württemberg Commentary: Intellectuals and the Construction of Civil Society in Revolutionary-Napoleonic Germany', *Central European History* 37.3 (2010): 354-64; Jeffrey Church, 'The Freedom of Desire: Hegel's Response to Rousseau on the Problem of Civil Society', *American Journal of Political Science* 54.1 (2010): 125-39. But it is best to avoid those that see Hegel as a champion of liberal 'freedom', such as Peter Stillman, 'Hegel's Civil Society: A Locus of Freedom', *Polity* 12.4 (1980):622-46; Frederick Neuhouser, 'Hegel's Social Philosophy', in *The Cambridge Companion to Hegel and Nineteenth-Century Philosophy*, ed. Frederick Beiser (Cambridge: Cambridge University Press, 2008), 204-29.

7 Hegel clearly goes against a contractarian notion of the state, which he argues applies only to bourgeois society.

8 The ancient Greek and Latin terms, *koinonia politike* and *societas civilis* had a quite different sense, designating the life of the polis or republic. See Kocha, 'Civil Society from a Historical Perspective'.

bers *as self-sufficient individuals* [*Einzelner*]'.[9] The individual is the key, so that the association of individuals in a wider body becomes the problem. With this problem, Hegel is in his favoured mode, now in terms of the contradiction between particular and universal. He attempts to overcome this tension by borrowing a proposal popularised by the consummate mythmaker, Adam Smith.[10] Individual persons relate to others as individuals, but they do so only to further their own interests, which function in a way to further the interests of the whole – for which Smith's infamous 'invisible hand' has become the slogan.[11] In other words, the actualisation of particular selfishness produces through that selfishness the universal of mutual dependence. Yet, Hegel betrays an awareness that this argument is somewhat dubious, for he struggles to find other ways to overcome the dangers of an alienated condition in *bürgerliche Gesellschaft*.[12] Initially, he falls back on repeating ad nauseam the same argument from the classical economists concerning the beneficence of selfishness, particularly in the treatment of economics as the satisfaction of needs, in terms of the 'estates' of agriculture, of trade and industry which take the particular form of corporations, and of the civil service which he calls the 'universal' estate.[13] He then explores at length the

9 Hegel, *Philosophy of Right*, §157; *Philosophie des Rechts*, §157.

10 Roland Boer and Christina Petterson, *Idols of Nations: Biblical Myth at the Origins of Capitalism* (Minneapolis: Fortress, 2014).

11 Hegel, *Philosophy of Right*, §84; *Philosophie des Rechts*, §84; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Oxford: Oxford University Press, 1776 [1979]), IV.ii.9.

12 Here we encounter the two fears that Hegel sought to overcome by means of his dialectic: first, he constantly fears alienation, which must be overcome without falling into the trap of unity; second, he fears unity and thereby revolution, which he designates as a 'negative freedom' that leads to the fanaticism of destruction (as in the unity of individual and state in 'The Terror'). This 'negative freedom' or 'freedom of the void' becomes 'in the realm of politics and religion the fanaticism of destruction'. Hegel, *Philosophy of Right*, §5; *Philosophie des Rechts*, §5. The best study of Hegel's apprehension of revolution is by Rebecca Comay, *Mourning Sickness: Hegel and the French Revolution* (Stanford: Stanford University Press, 2011).

13 For Hegel, 'political economy' is the study of this dimension of bourgeois society, specifically what such economists were already and rather wishfully

legal system, the police and education, mentioning even health care and religion.[14]

Yet, I would like to dwell on that initial insight concerning the alienated nature of *bürgerliche Gesellschaft*. The key to this alienation is that 'individuals, as citizens [*Bürger*] of this state, are *private persons* who have their own interest as their end [*eigenes Interesse zu ihrem Zwecke haben*]'.[15] While the state is a given entity, of which we are citizens by default, *bürgerliche Gesellschaft* is an association of private individuals, who relate to one another through self-interest. Thus, the individual is torn between being a citizen and a private individual, with the state pulling one way and private concerns in another. On a number of occasions, Hegel returns to this underlying theme, especially while elaborating on his various proposals to overcome such alienation. For instance, in his treatment of law, he writes: 'In the administration of justice, *bürgerliche Gesellschaft*, in which the Idea has lost itself in particularity and split up into the division between inward and outward, returns to its *concept*, to the unity of the universal which has being in itself with subjective particularity'.[16] Once again, the apprehension concerning extreme particularity leads him to urge an underlying unity in the very exercise of particularity. But I am interested in the phrase, 'split up into the division between inward and outward *[die Trennung des Inneren und Äußeren auseinandergegangen ist*]', for this is precisely the perpetual problem of *bürgerliche Gesellschaft* in which the 'Idea' has lost itself. In other words, the threat to Hegel's Idea is that it will be swallowed up in the basic alienation of *bürgerliche Gesellschaft*.

The most significant manifestation of this alienation appears with the family. Hegel precedes his treatment of *bürgerliche Gesellschaft* with the argument that the family provides a primary form of social co-

calling the 'free market' in which the state 'intervenes' from time to time. See further Boer and Petterson, *Idols of Nations*.

14 Hegel, *Philosophy of Right*, §§188-256; *Philosophie des Rechts*, §§188-256.

15 Hegel, *Philosophy of Right*, §187; *Philosophie des Rechts*, §187.

16 Hegel, *Philosophy of Right*, §229; *Philosophie des Rechts*, §229.

hesion, historically and logically prior to *bürgerliche Gesellschaft* and its various mediatory mechanisms. Yet the family fares ill before the onslaught of *bürgerliche Gesellschaft*, for it 'disintegrates' into 'the *world appearance* of the ethical, i.e., *bürgerliche Gesellschaft*'.[17] Or in more frightening detail:

> But *bürgerliche Gesellschaft* tears the individual [*Individuum*] away from family ties, alienates the members of the family from one another, and recognizes them as self-sufficient persons. Furthermore, it substitutes its own soil for the external inorganic nature and paternal soil from which the individual [*der Einzelne*] gained his livelihood, and subjects the existence [*Bestehen*] of the whole family itself to dependence on *bürgerliche Gesellschaft* and to contingency.[18]

What is to be done? Perhaps the corporation – in the realm of 'business'[19] – is able to come to the rescue. Indeed, what the family is to the state, so the corporation may be to *bürgerliche Gesellschaft*, to the extent that he hopes the corporation may become the second 'ethical root' of the state, just as the family is the first such root.[20] Sensing that this proposal might not be enough, he adds that estates may also be able to complement the social needs of individuals, for the state has become aloof from the everyday lives of its citizens.[21] Corporations and estates seem to provide a surrogate for the family, which has disintegrated into the dog-eat-dog world of *bürgerliche Gesellschaft*, if not for the state which has become ever more aloof from everyday concerns.

Ultimately, these proposals for the amelioration of the war of all against all in *bürgerliche Gesellschaft*, which includes economic relations,

17 Hegel, *Philosophy of Right*, §181; *Philosophie des Rechts*, §181.

18 Hegel, *Philosophy of Right*, §238; *Philosophie des Rechts*, §238.

19 The in-between nature of Hegel's thought shows up here, as in many places. He partly has in mind the guild structure, but sees its dissolution into the early forms of business corporations.

20 Hegel, *Philosophy of Right*, §255; *Philosophie des Rechts*, §255.

21 Hegel, *Philosophy of Right*, §255; *Philosophie des Rechts*, §255.

are not strong enough. So Hegel resorts to the rational universal of the state as the solution to the tension between individuation and sociality.

> The state is the actuality of the substantial *will*, an actuality which it possesses in the particular *self-consciousness* when this has been raised to its universality; as such, it is the rational in and for itself. This substantial unity is an absolute and unmoved end in itself, and in it, freedom enters into its highest right, just as this ultimate end possesses the highest right in relation to individuals [*die Einzelnen*], whose *highest duty* is to be members of the state.[22]

Again, we can see Hegel's concern over the alienation inherent in *bürgerliche Gesellschaft*. His solution is that it may be overcome through the state, which constitutes the crucial category of universality: it is the actuality of substantial will, the universality of particular self-consciousness, rationality in and for itself, unity as an absolute and unmoved end. For Hegel, the state *must* overcome the inherent dangers of *bürgerliche Gesellschaft* and achieve what the family and the corporations are ultimately unable to do – unite a people in response to the individual self-interest and struggle he sees emerging everywhere around him. How the state does so reveals the half-way house in which Hegel found himself – the fledgling forms of a bourgeois state espied elsewhere and the present reality of the absolutist 'Christian state' in his Prussian home. So we find treatments of not merely the constitution, political life, bureaucracy, and the mediating role of political and social estates, but also sovereignty (which belongs to an individual and not the people), primogeniture (as the social necessity of the family at the highest level) and even of the vital role of the monarch's will as the expression of the will of the people. Nonetheless, these are the mere mechanisms for achieving his assertion that union within the state is the content, end and unavoidable destiny of individuals.[23] It matters not how bad or good the state might be, for the 'state consists in the march of God in the world, and its basis is the power

22 Hegel, *Philosophy of Right*, §258; *Philosophie des Rechts*, §258.

23 Hegel, *Philosophy of Right*, §258; *Philosophie des Rechts*, §258.

of reason actualizing itself as will'.[24]

Let me close this discussion of Hegel with two points. First, he is quite clear that *bürgerliche Gesellschaft* is a relatively new reality. The state may be a universal ideal, and its historical appearance is ancient, but *bürgerliche Gesellschaft* is a new creation, emerging only with the bourgeois state and a capitalist market economy. In other words, *bürgerliche Gesellschaft* is not a universal space that happens to open up between the private individual and the state; rather it is a distinct product of the new world order he sees emerging around him. Second, Hegel's formulations warn us to be wary of seeing *bürgerliche Gesellschaft* as the space for freedom of expression and association, if not for liberal democracy itself. Without what is now called 'civil' society ('public sphere' or 'public square' in American parlance), it is believed that people would not be able to give voice to contrary opinions, develop alternative politics, criticise the state and so on. Yet, Hegel reminds us that *bürgerliche Gesellschaft* is not only the distinctly modern product, but it is also an inescapably alienated reality, torn between the demands of the private individual and the separated and abstract entity known as the bourgeois state.

Marx and Engels: From All-Out War to Irresolvable Alienation

> *Bürgerliche Gesellschaft* as such only develops with the bourgeoisie [*Die bü*rgerliche *Gesellschaft als solche entwickelt sich erst mit der Bourgeoisie*]'.[25]

I now turn to the engagement with Hegel by Marx and Engels. Careful attention to their work concerning *bürgerliche Gesellschaft* reveals a prima-

24 Hegel, *Philosophy of Right*, §258; *Philosophie des Rechts*, §258.

25 Karl Marx and Friedrich Engels, *The German Ideology: Critique of Modern German Philosophy According to Its Representatives Feuerbach, B. Bauer and Stirner, and of German Socialism According to Its Various Prophets*, in *Marx and Engels Collected Works*, Vol. 5 (Moscow: Progress Publishers, 1845-46 [1976]), 19-539 (89); Karl Marx and Friedrich Engels, *Die deutsche Ideologie. Kritik der neuesten deutschen Philosophie in ihren Repräsentanten Feuerbach, B. Bauer und Stirner und des deutschen Sozialismus in seinen verschiedenen Propheten*, in *Marx Engels Werke*, Vol. 3 (Berlin: Dietz, 1845-46 [1973]), 9-530 (36).

ry emphasis and a secondary one. While the former has a specific historical focus, the latter is more generic, yet both seek to exacerbate the tensions identified by Hegel. I focus on three works, the critique of Hegel, 'On the Jewish Question' and especially *The German Ideology*. Indeed, in the last of these works we find the insight that frames my analysis. Here Marx and Engels write:

> *Bürgerliche Gesellschaft* embraces the whole material intercourse of individuals [*materiellen Verkehr der Individuen*] within a definite stage of the development of productive forces. It embraces the whole commercial and industrial life of a given stage and, insofar, transcends the state and the nation [*Nation*], though, on the other hand again, it must assert itself in its external relations as nationality [*Nationalität*] and internally must organise itself as state. The term '*bürgerliche Gesellschaft*' emerged in the eighteenth century when property relations had already extricated themselves from the ancient and medieval community. *Bürgerliche Gesellschaft* as such only develops with the bourgeoisie [*Die bürgerliche Gesellschaft als solche entwickelt sich erst mit der Bourgeoisie*]; the social organisation [*gesellschaftliche Organisation*] evolving directly out of production and intercourse, which in all ages forms the basis of the state and of the rest of the idealistic superstructure [*idealistischen Superstruktur*], has, however, always been designated by the same name.[26]

A number of points arise from this important passage. To begin with, economic realities are not merely part of civil society, but fundamental to it. Well after Marx and Engels, economic realities would be detached from what came to be called 'civil society', which suited both the myth of a distinct entity designated 'the economy' (for which a field of study was needed) and the desire to turn 'civil society' into a zone for political and civil activity, where one could conveniently locate the Euro-American tradition of 'human rights'. The outcome was that such rights fo-

26 Marx and Engels, *The German Ideology*, 89; *Die deutsche Ideologie*, 36.

cused only on civil and political rights and left out the crucial role of economic rights (such as the right to economic wellbeing and development). Second, this *bürgerliche Gesellschaft* is clearly the basis of the state, a point elaborated in 'Contribution to the Critique of Hegel's Philosophy of Law'.[27] Out of 'intercourse and production' arises the 'idealistic superstructure', including the state which is separated from *bürgerliche Gesellschaft*. This point is reasonably well-known, but what is often forgotten is the third point. While the state may always have been known by the same name, this is not the case with *bürgerliche Gesellschaft*. Instead, it is a relatively recent phenomenon, arising at a definite stage in the development of productive forces. More to the point, it is only when property relations and commerce as such had been extracted from their feudal forms, when 'feudal society passes into its *bürgerliche* form'.[28] Marx and Engels later elaborate in some detail on this point,[29] where it becomes clear they mean the commercial and political activities of the bourgeoisie, which – in a distinctly European form – emerged in the towns. Only then does *bürgerliche Gesellschaft* arise, in the eighteenth century. And it cannot exist without the bourgeoisie: '*Bürgerliche Gesellschaft* as such only develops with the bourgeoisie'. To make sure we have not missed the point, at times they use *Bourgeoisgesellschaft* as the equivalent.[30]

27 This point appears repeatedly: Karl Marx, 'Contribution to the Critique of Hegel's Philosophy of Law', in *Marx and Engels Collected Works*, vol. 3 (Moscow: Progress Publishers, 1843 [1975]), 3-129 (9, 23-24, 39-40, 79, 87, 90-91, 116); Karl Marx, 'Zur Kritik der Hegelschen Rechtsphilosophie', in *Marx Engels Gesamtausgabe*, vol. I.2 (Berlin: Dietz, 1843 [1982]), 3-137 (9, 24-25, 43-44, 88, 96, 99-100, 125-26). It is also mentioned in Karl Marx and Friedrich Engels, *The Holy Family, or Critique of Critical Criticism*, in *Marx and Engels Collected Works*, vol. 4, 5-211. (Moscow: Progress Publishers, 1845 [1975]), 5-211 (113); Karl Mark and Friedrich Engels, *Die heilige Familie oder Kritik der kritischen Kritik*, in *Marx Engels Werke*, vol. 2 (Berlin: Dietz, 1845 [1974]), 3-223 (120).

28 Marx and Engels, *The German Ideology*, 363; *Die deutsche Ideologie*, 346. Translation modified.

29 Marx and Engels, *The German Ideology*, 348-76; *Die deutsche Ideologie*, 331-60. It is also the assumed position throughout most of the 'Contribution to the Critique of Hegel's Philosophy of Law'.

30 Marx and Engels, *The German Ideology*, 213, 250; *Die deutsche Ideologie*, 194, 233.

The insights drawn from Hegel should be clear, as also the challenges to Hegel's formulations of state and *bürgerliche Gesellschaft*,[31] but I stress here the specificity and historical emergence of *bürgerliche Gesellschaft*. Given its dependence on the bourgeoisie, it can only be described as 'bourgeois society'.[32] Indeed, in a whole chapter devoted to the topic, '*Die Gesellschaft als bürgerliche Gesellschaft*', this sense of the term is elaborated in some detail.[33] At the same time, in the notes that were later collated and became *The German Ideology*, Marx and Engels sometimes suggest that *bürgerliche Gesellschaft* has a somewhat longer history. This sense of the term is enabled by its repeated definition as commerce and industry, production and intercourse, which would come to mean the material means of production.[34] In this light, one can see how they could make the move to propose that all the various historical forms of such intercourse and production constitute the 'true focus and theatre of all history'.[35] How are we to square this observation with my earlier focus on the specific production of *bürgerliche Gesellschaft* in the eighteenth century and with the rise to prominence of the bourgeoisie? One answer would be that Marx and Engels were not necessarily consistent, especially if we remember that the text itself is really a collection of notes and observations. On this matter, it is worth noting an editorial difference between MEW and MECW. The former ensures that the text concerning the appearance of *bürgerliche Gesellschaft* in the eighteenth century immediately follows the one I have been discussing

31 See also the 9th and 10th theses on Feuerbach: Karl Marx, 'Theses on Feuerbach [original version]', in *Marx and Engels Collected Works*, Vol. 5 (Moscow: Progress Publishers, 1845 [1976]), 3-5 (5); Karl Marx, 'Thesen über Feuerbach [original version]'. In *Marx Engels Werke*, Vol. 3 (Berlin: Dietz, 1845 [1973]), 5-7.

32 The majority of references assume a similar specific historical emergence: Marx and Engels, *The German Ideology*, 90, 181, 241, 284, 402, 415-16, 430, 512; *Die deutsche Ideologie*, 62, 164, 223, 265, 386, 400-1, 415, 501.

33 Marx and Engels, *The German Ideology*, 348-76; *Die deutsche Ideologie*, 331-60.

34 Marx and Engels, *The German Ideology*, 42; *Die deutsche Ideologie*, 28.

35 Marx and Engels, *The German Ideology*, 50; *Die deutsche Ideologie*, 36. A few other uses of *bürgerliche Gesellschaft* assume such a longer perspective: Marx and Engels, *The German Ideology*, 42, 53, 342; *Die deutsche Ideologie*, 28, 36, 325.

(where a longer history emerges and the term seems to be broadened). It is as though the editors sought through this arrangement to clarify the term in its specificity. By contrast, MECW separates the two paragraphs by almost 40 pages. Even more, MECW inconsistently translates *bürgerliche Gesellschaft* as 'bourgeois society' when the specific historical sense is supposed to be meant, and as 'civil society' when the longer historical meaning appears. I write 'inconsistent', since in the clearest statement of the specific emergence of *bürgerliche Gesellschaft* in the eighteenth century, MECW translates the term as 'civil society'. I suggest this less a mistake than an implicit awareness that the specific sense dominates.

However, I would go a step further and point out that Marx and Engels are struggling with the terminology of *bürgerliche Gesellschaft* itself. They drew the term from Hegel, for whom it is clear that *bürgerliche Gesellschaft* is a distinctly new product with the rise of the bourgeois state and a capitalist market economy. But Marx and Engels are already beginning to develop the rough outlines of dialectical and historical materialism, with its focus on 'intercourse and production' as the main focus of analysis. For now, *bürgerliche Gesellschaft* has to serve as the term to describe this reality, but it will soon enough turn out to be inadequate. In making this point, I go against a tendency to favour the more general meaning, which then enables one to chart a path all the way to *Capital*, which becomes an implicit analysis of *bürgerliche Gesellschaft*. The risk of such a move is to provide the term with a more neutral sense, enabling one to universalise it and feed into current liberal usage of 'civil society'.

Let us remain with the specificity of *bürgerliche Gesellschaft* and ask how Marx and Engels understand the term. Here I turn to focus on the critique of Hegel[36] and 'On the Jewish Question', where Marx in particular sharpens Hegel's focus on the inherent alienation of *bürgerliche Gesellschaft*. Thus, it is constituted by a *bellum omnium contra omnes*, in

36 The best critical assessment of Marx's intense engagement with Hegel is by David Leopold, *The Young Karl Marx: German Philosophy, Modern Politics, and Human Flourishing* (Cambridge: Cambridge University Press, 2007) 17-99. For a useful study of Marx's theoretical path to the study on Hegel, Andrew Chitty, 'The Basis of the State in the Marx of 1842', in *The New Hegelians: Pol-*

which individuals are driven by egoism, pursuing their own interests at the expense of all others.[37] As Marx puts it in relation to religion in the bourgeois state, which he saw emerging already in the United States: 'Religion has become the spirit of *bürgerlichen Gesellschaft*, of the sphere of egoism, of *bellum omnium contra omnes*. It is no longer the essence of *community*, but the essence of *difference*'.[38] Hegel had already made an allusion to this phrase, *bellum omnium contra omnes*, with his 'field of conflict in which the private interest of each individual comes up against that of everyone else'.[39] It had been made famous by Hobbes, albeit with one crucial difference. For Hobbes, this war of all against all was characteristic of the 'state of nature', before civilisation and the state.[40] Crucially, Hegel appropriated the term to speak not of the state of nature but of *bürgerliche Gesellschaft*. As we saw earlier, this is precisely what concerned Hegel so much about the new developments in the bourgeois state, even though in many respects he was describing a reality that was still to come, caught as he was in the ambivalent situation of the late Prussian absolutist state.[41] Yet, Hegel explored all manner of paths in order to ameliorate this agenda for mutual destruction, settling in the end on the universal of the state as the guarantee and agent of cohesion and order. At this point in his work, Marx pursues another angle: in his decisive shift of focus to *bürgerliche Gesellschaft* he seeks to enhance the contradictions and antagonisms.

In the midst of this all-out war, one alienation, one antagonistic contra-

itics and Philosophy in the Hegelian School, ed. Douglas Moggach (Cambridge: Cambridge University Press, 2006), 220-41.

37 Marx, 'Contribution to the Critique of Hegel's Philosophy of Law', 42; 'Zur Kritik der Hegelschen Rechtsphilosophie', 45.

38 Karl Marx, 'On the Jewish Question'. in *Marx and Engels Collected Works*, vol. 3 (Moscow: Progress Publishers, 1844 [1975]), 146-74 (155); Karl Marx, 'Zur Judenfrage', in *Marx Engels Gesamtausgabe*, vol. I. 2 (Berlin: Dietz, 1844 [1982]), 138-69 (150).

39 Hegel, *Philosophy of Right*, §289; *Philosophie des Rechts*, §289.

40 Thomas Hobbes, *Leviathan* (Indianapolis: Hackett, 1651 [1994]), 77.

41 Marx makes exactly this point: 'Contribution to the Critique of Hegel's Philosophy of Law', 95; 'Zur Kritik der Hegelschen Rechtsphilosophie', 105.

diction stands out: the internal split between the private individual and the citizen of the state. Given my discussion of Hegel's identification of this alienation, it should be no surprise that Marx deals with the same question in his critique of Hegel's *Philosophy of Right*. But Marx's enhances the contradiction: state and *bürgerliche Gesellschaft* are two hostile armies, with the former being the ultimate collective entity, of which one is a citizen, while the latter is the realm of pure individual egoism. The individual is thereby split between being a *Staatsbürger* and a *Privatmann*, a citizen of a particular state and a private individual.[42] For Marx, Hegel's attempted resolution through the abstract and ideal state is no solution at all, for the basic alienation is exacerbated. The same alienation appears in 'On the Jewish Question', where Marx responds to Bruno Bauer's suggestion that political emancipation would be possible only if everyone gave up their specific religious identity (for such identity constitutes a false universal). Marx argues that this type of emancipation only exacerbates the primary alienation of citizen and individual, of the 'division of the human being into a *private person* and a *public person* [*öffentlichen und in den Privatmenschen*]'.[43] Although Marx would propose the somewhat utopian image of overcoming such alienation through real political emancipation, the point I stress here is the profound split between the private, individualistic bourgeois and the abstract moral *Staatsbürger*.[44] Under the dispensation of *bürgerliche Gesellschaft* in its hostile opposition to the bourgeois state, this alienation, this antagonistic contradiction, is irresolvable.

Marx and Engels have certainly raised the stakes concerning *bürgerliche Gesellschaft*. Despite an occasional tendency to generalise the term before they move away from it for a focus on economic and social realities, their emphasis is on the specificity of the term in relation to the rise of the bourgeoisie and capitalist market economies. In this situation, Marx in particular stresses two features: the war of all against all, based on

42 Marx, 'Contribution to the Critique of Hegel's Philosophy of Law', 77-78; 'Zur Kritik der Hegelschen Rechtsphilosophie', 86-87.

43 Marx, 'On the Jewish Question', 155; 'Zur Judenfrage', 150.

44 Marx, 'On the Jewish Question', 167-68; 'Zur Judenfrage', 161-63.

the pure egoism of *bürgerliche Gesellschaft*; the contradiction between the citizen of a state and the private individual, which is exacerbated under the conditions of the bourgeois state. Rather than seeking to ameliorate the tensions Marx (and Engels) inherited from Hegel, they push them even further. This emphasis would lead to an emphasis on class struggle, as well as the inherent contradictions between means and relations of production, which can be resolved only through revolution. As far as *bürgerliche Gesellschaft* is concerned, it has become a zone that is even more conflicted, threatening at any moment to tear itself apart.

Losurdo: Between Lynch Mob and Progressive State

The third step of my argument turns to Domenico Losurdo, particularly two works, one on Hegel and the other on liberalism.[45] These works evince an intriguing bifurcation of paths concerning *bürgerliche Gesellschaft*, which is '*società civile*' in the original Italian and consistently translated in the English text as 'civil society'. The first path follows Marx's exacerbation of the antagonistic contradictions at the heart of *bürgerliche Gesellschaft*, for which the necessary outcome is the lynch mob. The second emphasises the many ways in which Hegel seeks to ameliorate the tensions of *bürgerliche Gesellschaft*, so much so that at times the 'ethical community' found therein may be seen in some ways as progressive. While the second may be somewhat of a surprise, coming from this resolute critic of liberalism and the bourgeois state (although it makes sense of his defence of Hegel), it turns on a crucial distinction: the lynch mob appears when *bürgerliche Gesellschaft* takes governance into its own hands, becoming the 'self-governance of civil society'; but when this *società civile* is subject to the universal of the state, one may well find that its more progressive dimensions come to the fore. I examine both tendencies in what follows, closing by asking what type of state Lorsurdo may mean. To indicate the differences between the two understandings, I use *bürgerliche Gesellschaft* for the first sense and *società civile* for the second.

45 Losurdo, *Hegel and the Freedom of the Moderns*; Domenico Losurdo, *Liberalism: A Counter-History*, trans. Gregory Elliott (London: Verso, 2011).

The key to the self-governance of *bürgerliche Gesellschaft* is the development of the category of state 'interference' within the ideology and practice and liberalism. But what type of 'interference'? Those who first developed this category were slave-owners, who were not only the most eloquent champions of liberalism but also those who resisted most strongly state measures to limit their excesses. Indeed, the prime ideologues of liberalism were found in the context of three revolutions: the revolution of the Dutch against Philip II of Spain (1655-1648), the Glorious Revolution in England (1688) and the American Revolution (1765-83). In a Dutch context, Hugo Grotius suggested that the exercise of liberty entailed the right, by a man of good learning and culture, to exercise power over ourselves or over others, as in the case of a father over his children or a lord over his slave.[46] Indeed, a person could freely and rationally choose to give up this liberty and become a slave, for slavery was no great burden.[47] In England, John Stuart Mill opined in *On Liberty* that 'despotism is a legitimate mode of government in dealing with barbarians', for liberty is only for 'human beings in the maturity of their faculties'.[48] Not to be outdone, John Locke stated that in a colony such as Carolina every free man should have 'absolute power and authority over his negro slaves, of what opinion or religion soever',[49] for slaves 'cannot … be considered as any part of civil society, the chief end whereof is the preservation of property'.[50] Further, the statement in the American declaration of independence that 'all men are created equal' was written by a slave-owner, as also was the constitution of the United States. Thus, 'all men' was an exclusive universal, in which slaves and 'inferior folk' did

46 Hugo Grotius, *The Rights of War and Peace*, trans. John Clarke, ed. Richard Tuck, 3 vols (Indianapolis: Liberty Fund, 1625 [2005]), I.1.5.

47 Grotius, *The Rights of War and Peace*, I.3.8.

48 John Stuart Mill, 'On Liberty', in *The Collected Works of John Stuart Mill*, vol. 18, (Toronto: University of Toronto Press, 1859 [1977]), 213-30 (224).

49 John Locke, *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 180.

50 John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven: Yale University Press, 1691 [2003]), 136.

not count.[51] These ideologues regarded a liberal and tolerant society as 'the community of the free and its dictatorship over peoples unworthy of liberty'.[52] But they were adamant that such liberalism excluded the slavery abolitionists, who were invariably found in governments that sought to 'interfere' in the exercise of this 'liberty'.

The ideal form for such liberals was self-governance, after throwing off the annoyance of state and indeed church, which were denounced – without any irony – as 'despotism'.[53] What was the outcome of this desire for and enactment of the self-government of 'the community of free'? It was nothing less than the lynch mob, which included violence and threats of violence against anyone who entertained opposition to slavery.[54] Here the hegemony exercised by the bourgeois and liberal slave owners filtered throughout society. Lynching gangs began to appear in the 1820s and 1830s, which may be seen not so much as forerunners of the typical drug gangs of cities in the United States, but as analogous to the pogroms enacted by the 'Black One Hundreds' of Tsarist Russia or the 'Blackshirts' of Italian fascism and 'Brownshirts' of German Nazism. Lynching may have appeared regularly when the southern states actually had some power, but it became even more ferocious after their defeat. The guerrilla warfare of the Ku Klux Clan and its systemic lynchings rose to a new height precisely after 1865, defining the dis-emancipation of liberalism for almost a century.[55] To capture the sheer brutality of this self-government of *bürgerliche Gesellschaft*, Losurdo quotes the following description:

51 Or, as Hegel already put it somewhat earlier. 'The expression "the many" (*oi polloi*) denotes empirical universality more accurately than the usual term "all." For if it is said to be obvious that the term "all" excludes from the start at least children, women, etc., it is by the same token even more obvious that the entirely specific expression "all" ought not to be used with reference to something else which is entirely unspecific'. Hegel, *Philosophy of Right*, §301; *Philosophie des Rechts*, §301.

52 Losurdo, *Liberalism*, 248.

53 Losurdo, *Liberalism*, 39.

54 Losurdo, *Liberalism*, 102, 146.

55 Losurdo, *Liberalism*, 341-42.

> Notices of lynchings were printed in local papers, and extra cars added to trains for spectators from miles around, sometimes thousands of them. Schoolchildren might get a day off school to attend the lynching. The spectacle could include castration, skinning, roasting, hanging, and shooting. Souvenirs for purchasers might include fingers, toes, teeth and bones, even genitals of the victim, as well as picture postcards of the event.[56]

The dispossession, if not attempted genocide, of indigenous peoples in North America was equally brutal.[57] Indeed, the mythical image of the 'Wild West', which forms a constitutive feature of United States culture, may be seen as the utopian and paradisal expression of this self-government. Here the term *bürgerliche Gesellschaft* is entirely apposite, for it is the exercise of the champions of liberalism, who were nothing less than the 'urbane' big property owners. They were more than keen to set aside the 'interference' of the state, which they saw as 'despotism', so they could assert their untrammelled freedom. Or, as Losurdo puts it, the 'self-government of civil society' is 'hegemonized by the bourgeoisie'.[58]

At the same time, Losurdo reveals another dimension of what I will call – now using his Italian terminology – *società civile*. The championing of *società civile* can also, argues Losurdo, have a distinctly revolutionary edge, leading to the constitutional state and the liberal rule of law (even after the Glorious Revolution in England and American independence). Here is a tension between emancipation and dis-emancipation, even if these movements came down decisively on the latter.[59] This small window opens out to a somewhat different view of *società civile*, now embodied in the treatment of Hegel.

I focus on three aspects that indicate Losurdo's distinct emphasis. To begin with, Hegel suggests that in *società civile* the 'inalienable rights' that

56 Losurdo, *Liberalism*, 337-38, quoting C. vann Woodward.

57 Losurdo, *Liberalism*, 39-40.

58 Losurdo, *Liberalism*, 279.

59 Losurdo, *Liberalism*, 308-9.

one finds in the state of nature are not extinguished.[60] Hegel, argues Losurdo, is somewhat torn: true, the state of nature entails *bellum omnium contra omnes*, but it also means that in *società civile* we find the right to life, to work and to well-being, so much so that a poor person has the right to seek alleviation from poverty, even if Hegel later realises that 'civil-bourgeois society', that is *bürgerliche Gesellschaft*, is unable to provide such rights.[61]

Further, Losurdo makes a virtue out of the varying mediating institutions, as well as the 'ethical communities', which facilitate intersections and interactions between the state and *società civile*. The necessary bureaucracy is the most obvious example, but he stresses the role of a parliament (especially the Lower House) as the place where the various trade guilds, community organisations and all forms of 'corporations' can find expression within the mechanisms of the state.[62] Even more, he reads the role of 'intellectual-philosophers' not so much as state functionaries but as engaged intellectuals, who not only draw nigh to the plyers of crafts, but are also far from the aloof 'monks' who look with disdain on the world around them.[63]

The most telling example – and one to which Losurdo devotes considerable attention – concerns compulsory education, which Hegel frames in terms of the 'right' and 'duty' of *società civile* that parents be obliged to send their children to school.[64] Against the opposition of the churches, who saw here a loss of their feudal monopoly, as well as liberal capitalists who insisted on the 'freedom' of parents to decide whether or not their children should be educated or sent to factories, the point here is that compulsory education, including the duty of parents, is sanctioned by a state. Education is, of course, a crucial socialising mechanism in which children learn to become part of social life, the professional community and political life.

60 Losurdo, *Hegel and the Freedom of the Moderns*, 62, 186.

61 Losurdo, *Hegel and the Freedom of the Moderns*, 132-33, 160, 166, 177-78.

62 Losurdo, *Hegel and the Freedom of the Moderns*, 143.

63 Losurdo, *Hegel and the Freedom of the Moderns*, 140, 143-44.

64 Losurdo, *Hegel and the Freedom of the Moderns*, 72-75, 205-22.

What are to make of this apparent bifurcation in Losurdo's treatment? He is under no illusion that Hegel speaks of a bourgeois state formation, with its attendant *bürgerliche Gesellschaft*. Yet, Hegel is not a liberal of the sort we met earlier, those who sought all manner of means to dispense with state 'intervention' and foster the self-government of *bürgerliche Gesellschaft*. Nor is Hegel one who longs nostalgically for a lost golden age that exists only in the mythical imagination. This 'development of particularity' is absolutely necessary,[65] revealing the socio-economic conditions that produce exploitation, wealth and poverty – a point that would be taken up by Marx and Engels in their own way. In fact, this line of Losurdo's thought may be seen as an effort to develop the more general (and minor) sense of *bürgerliche Gesellschaft* found in the work of Marx and Engels.[66] As 'intercourse and production', this form becomes the site of class struggle and eventual communist revolution. The largely unanswered question – apart from a few brief and rather utopian images – in Marx and Engels is what happens after a revolution, when one actually has power and needs to begin the construction of socialism?

For Losurdo, Hegel may well provide part of an answer, although the answer needs to be mediated through a revolutionary experience. In short, a *società civile* that meets Hegel's demands is one that is not under self-government, but one under the governance of the state. Here crucial rights can be guaranteed, especially the right to economic wellbeing; here institutions can facilitate manifold connections between state and *società civile*; here engaged intellectuals can ply worthwhile trades; and here crucial programs such as universal literacy and education, let alone minority nationalities policies and poverty alleviation, can be enacted. Losurdo does not have in mind Hegel's idealised or abstract state, for which Marx's criticisms are entirely apposite, but rather the centrality of progressive political institutions under a rather different state formation.

65 Losurdo, *Hegel and the Freedom of the Moderns*, 148, 157-58, 188-89.

66 Losurdo, *Liberalism*, 320-22.

Conclusion: State and Civil Society?

Is Losurdo's potential solution through the second meaning of *società civile* workable? Let me first retrace briefly the steps of my argument. I began by stressing the alienated condition of *bürgerliche Gesellschaft* in Hegel's work, for which all efforts at amelioration run the risk of failure, so much so that the state becomes the bulwark of social cohesion. In Marx and Engels, we found a double approach to *bürgerliche Gesellschaft*. The major position focused in the specific historical emergence of *bürgerliche Gesellschaft* in the eighteenth century, concomitant with the rise to dominance of the bourgeoisie. The minor position generalised the term in light of a resolute focus on 'intercourse and production', so much so that the term *bürgerliche Gesellschaft* became inadequate for their later work. Both, however, led to an exacerbation of antagonistic contradictions, which would need a communist revolution to overcome. With Losurdo, the bifurcation opened up even further, between what I have called *bürgerliche Gesellschaft* and *società civile*. This distinction is most clearly revealed in the opposition between the self-government of *bürgerliche Gesellschaft* (embodied above all in liberalism and its necessary other of slavery) and the governance of *società civile* by the state. For the latter, Losurdo seeks a reading of Hegel that espies the contours of how such governance of *società civile* may work. However, I suggest that in the same way Hegel wrote of a form of the state that was not yet fully in existence (especially in Prussia), Losurdo writes of a form of the state that is still unfolding (not in Italy but for a time in the Soviet Union and now in China). In other words, he wishes to recalibrate the relations between state and *società civile* in light of the socialist state in the transition period of socialism, which is a necessarily long stage in the process of socialist construction.[67] The question that remains, for me at least, is whether the very distinction itself is workable in such a context, for the way the socialist state has de-

67 Although at times the picture that emerges from his reading of Hegel looks more like a social democratic approach that has made its peace with capitalist market economy.

veloped is through a thorough enmeshment of state and society so that it is difficult to speak of a separation at all. In this situation, any notion even of a *società civile* withers away.

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Disputing Law: Lyotard in our Time: A Forgotten Critic Bears Witness to Unresolvable Injustices[1]

David Ingram[2]

Abstract: This paper retrieves the critical insights of Jean-François Lyotard's late masterpiece, *The Differend* (1983), in diagnosing unresolvable conflicts between some of the competing legal paradigms that dominate the constitutional landscapes of today's liberal democracies. The paper illustrates its argument by examining several seminal cases that were decided before the US Supreme Court within the last decade, *Citizens United v. FEC* (2010) and *Boumediene v. Bush* (2010). Although these cases addressed the scope and meaning of very different constitutional rights—to *habeas corpus* relief and freedom of political speech—they both sought to mediate the tense relationship between individual freedom and equal protection. The indeterminacy of addressor, addressee, meaning and reference that emerges from a close reading of the exchanges contained in these texts underscores two disturbing tendencies: totalitarian collapse of legal paradigms, on one side, economistic colonization of legal paradigms, on the other. From a Lyotardian perspective, the indeterminacy of constitutional democratic discourse cannot foreclose what, to many, are the palpable political injustices generated by these tendencies. At best, one can hope for methods of constitutional adjudication that, in the spirit of legal realism, seek to balance conflicting interpretations in a way that inflicts the least harm on the most vulnerable rights claimants.

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Two decades ago critical theory lost the voice of one of its most trenchant interlocutors. When I was studying with Jean-François Lyotard in the mid-eighties he was known as the *bête noir* of critical theory, the antagonist of modernism. Nowadays his name seems to have been largely forgotten.[3] In our personal conversations Lyotard displayed a certain fondness for Herbert Marcuse, who had been my mentor at the University of California at San Diego. Lyotard liked Marcuse but he felt a special kinship with Marcuse's colleague in the Frankfurt School, Theodor Adorno. (Marcuse and Adorno, you will recall, were famous for developing a conception of aesthetic rationality as a critical cipher for utopia.) We also talked about Jürgen Habermas, about whom I had written a book. Habermas had found it necessary to defend modernity against its postmodern opponents, including Lyotard, the most famous expositor of postmodernism, all of whom he somewhat cavalierly dismissed as "young conservatives."[4] As you can well imagine, this did not go over well with Lyotard. Anyway, I assured him that I was not an apologist for Habermas and actually sympathized with postmodern thought. More importantly, I appreciated the common point of departure in Wittgenstein's philosophy of language that he and Habermas shared but appropriated for vastly different purposes.

This takes me to the topic of my paper. Lyotard's novel synthesis of linguistic pragmatics and literary criticism articulated in his late mas-

3 Despite the fact that my own work has taken me in the direction of empirical social science and, more specifically, development theory, I continue to draw from Lyotard's analysis of the unresolvable conflicts inherent in political discourse and their challenge to the cosmopolitan democratic solidarity that I believe is essential for the international human rights order. See p.320n9 of my *World Crisis and Underdevelopment* (2018), where I discuss the unresolvable tension between nationalism and cosmopolitanism within the international legal order. Examples of recent scholarship on Lyotard's thought are Kiff Bamford, *Jean-François Lyotard:Critical Lives* (2017); Claire Nouvet (ed.) *Traversals of Affect: On Jean-François Lyotard* (2016); and Margaret Grebowicz (ed.) *Gender After Lyotard* (2007).

4 Habermas, 1987, xix; 1980/91, 342,354

terpiece, *The Differend* (1983/88), elaborates a novel idea of injustice that should resonate with critical theorists today who are trying to understand the disjointed nature of contemporary political discourse. This book's discussion of the suppression of voices within the language game of legal disputation turns out to have universal application to all the ways in which we respond to others. The injustice in question—what Lyotard calls a *differend* but which I shall call an unresolvable dispute—addresses the unavoidable linking of incommensurable language games, or to use Lyotard's expression, genres of discourse. Among the most diametrically opposed of these genres are those he classifies as mythic narration and democratic deliberation. I maintain that both of these genres are relevant to critical theorists today because, in spite of its having been surpassed in modernity, the mythic genre embodies a dangerous totalitarian logic that continues to seep into legal and political discourse. In this connection, Lyotard warns us of another discourse whose hegemonic imposition by government elites in thrall to the grand narrative of neo-liberalism threatens democratic speech, the economistic genre of exchange. Needless to say, suppression of speech also occurs in the mundane imperatives of action and their normative authorization. For, moral command and its argumentative justification are distinct genres of speech that are guided toward different ends and make use of logically distinct types of phrases—such as descriptions and prescriptions—in mutually incompatible ways.

To take a recent example from a slice of life neglected by mainstream critical theory,[5] let us imagine a conversation between John, an American military veteran, and Colin Kaepernick, the former African-American quarterback of the San Francisco Forty-Niners football team and leader of the NFL players Black Lives Matter movement. Our veteran commands Kaepernick to stand when the American National Anthem is played be-

5 My own application of critical theory to problems of race, gender, group identity and discrimination may be found in Ingram (2000;2004, 2006, 2010, 2018). For recent discussions concerning epistemic and ontological injustices developed by theorists of philosophical hermeneutics and recognition theory see Medina (2012; Fricker (2009; and Honneth (2007).

fore a game: When Kaepernick asks "Why?" our surprised veteran finds himself compelled to enter a new genre of discourse, that of justification. He responds that as a matter of general principle all Americans should respect the anthem and what it stands for. At this point Kaepernick can request further justification for this general principle. Or, he can say that he respects the principle but that kneeling eyes downcast instead of reverently standing is an appropriate application of it in protesting police violence against Blacks. In the latter case, Kaepernick is challenging the veteran's understanding of what patriotism means. He is now switching the conversation away from moral justification to interpretation. So the veteran's attempt to provide deeper justification for a general duty to stand when the anthem is playing will take him beyond moral justification to factual description about what it means to be an American. He could of course respond with ***silence.*** Kaepernick would then be left to ponder the meaning of this negative phrase.[6] Is the veteran's silence

6 Lyotard , 2001. In *The Differend* Lyotard discusses silence as a negative phrase that awaits further articulation. However, in a later supplement he discusses a different kind of silence under the rubric of "affect-phrase." According to Lyotard the "affect-phrase" (or phrase-affect) that is announced by silence can also announce the impossibility of further articulation. The silence occasioned by the affect-phrase: a. suspends or interrupts communication (linkages between phrases), b. injures or damages the rules of a genre of discourse that demand llnkage, and c. for this reason constitutes a differend, or unresolvable injustice. The affect-phrase is thus unlike any other phrase in that it does not articulate a phrasal universe consisting of what Lyotard regards as the four transcendental conditions (instances) essential to communication, which he divides into a pragmatic axis of destination (addressor-addressee) and a semantic-referential axis of signification (sense and reference). This kind of silence voices a feeling of pleasure or pain outside of language, so that the injustice occasioned or expressed by it is precisely nothing other than the impossibility of articulation. Lyotard notes that silence can express anxiety in the face of the urgent need to respond and not being able to. Such anxiety can be triggered by a feeling of being swallowed up by an abyss of non-sense or by a feeling of repugnance to the thought of entering a discourse that one finds threatening to one's sense of self (or identity). In my opinion, something similar to this kind of anxiety or repugnance can come into play when a (gender-marked, race-marked, religion-marked, or nationality-marked) Other speaks to us in a language or idiolect that is not our own and resists our efforts to discursively engage. This fear of being "unjustly"

mute testimony to Kaepernick's suppression of *his* voice? Or is it testimony to the suppression of *Kaepernick's* voice, his reasonable and rightful request for justification, to paraphrase Rainer Forst.[7]

Here, it seems, we have an unresolvable dispute. One reason why it is unresolvable is that the idea that is rigidly designated by the name "American" signifies different things in the discursive universes referred to by Kaepernick and the veteran: equal citizenship, on one side, loyalty to those who have died for the country, on the other. In this respect "American" is like the place rigidly designated by the name "Auschwitz." To the holocaust denier it can only signify an historical event of extermination which, if true, must be verified in accordance with the discursive rules governing the giving of eye witness testimony. To the camp survivor, by contrast, it signifies an existential trauma of infinite and unspeakable magnitude— something on the order of a theological event outside of time and space. Here the only appropriate, non-self-defeating response the camp survivor can give to the Holocaust denier is silence.

Lyotard mentions other cases in which one and the same being, rigidly designated by a name understandable by everyone, functions as a kind of common reference point to which different universes of discourse with their different stakes lay claim. Thus, the activity of producing something may be claimed as abstract labor power within the contractual language of capital or as human expressive power within the ethical language of class struggle. Or the territory rigidly designated as 'Wounded Knee" may function as common referent for both property entitlements and sacred place for spirits of the dead.

In sum, names, phrasal regimes, and discursive genres constitute the linguistic sutures linking incommensurable universes of address and signification. *And this underdetermination in the signification of names*

reduced to silence by the identity-threatening discourse of the other might well explain xenophobic fears of foreigners, immigrants, women, and minorities. I thank Claire Nouvet for clarifying the Lacanian psychodynamic subtext of Lyotard's affect-phrase in "The Silences of the Differend," an oral presentation delivered at the Lyotard Symposium cited above.

7 Forst, 2012.

and the linkage of phrases opens a space for freely changing the terms of discussion, and by so doing, the very stakes of the language game. Herein lies the inevitability of injustice. To quote Lyotard, as distinguished from a litigation,

> A differend would be a conflict, between at least two parties, that cannot be equitably resolved for lack of a common rule of judgment applicable to both arguments. One side's legitimacy does not imply the other's lack of legitimacy. However, applying a single rule of judgment to both in order to settle their [dispute] as though it were merely a litigation would wrong (at least) one of them and (and both of them if neither side admits this rule).[8]

My paper shall bear witness to the inevitable injustices that inform the highest tribunal for litigating injustices: the law. The silencing of one legal paradigm by another, ostensibly incommensurable paradigm has been the subject of debate among Anglo-American and European legal scholars for well over a century. The attack on a unified view of law of the sort advocated by legal formalists in the nineteenth century already found a sympathetic voice in the writings of Karl Marx[9] and later in the American school of legal realism initiated by Oliver Wendell Holmes Jr.[10] Today, thanks in no small part to the Anglo-American reception of late twentieth century French philosophy, critical legal theorists, many of whom are influenced by the law and literature movement, have taken

8 Lyotard 1988, xi.

9 Marx, 1843/1994; 1875/1994; Ingram, 1988. Marx's radical critique of the rights of man and of citizen in "On the Jewish Question" presages a similar criticism developed by contemporary critical legal scholars, like Delgado (see below), who emphasize a fundamental tension between civil rights law (the law guaranteeing equal democratic inclusion and collective empowerment, in Hannah Arendt's civic republican sense of the term) and civil liberties law (the law guaranteeing individual privacy and freedom from constraint, whether by democratic majorities or by private citizens, in J.S. Mill's liberal sense of the term).

10 Ingram, 2002a.

this line of radical criticism to new heights. In Europe, legal theorists influenced by systems theory, such as Niklas Luhmann, Guenther Teubner, and Martti Koskenneimi, have expounded a similar account of legal fragmentation and conflict.[11]

The radical implication of this line of legal criticism provokes a question that forms the heart of my presentation: Can we continue to speak of a rule of law that is distinct from political domination? Many are the voices that say 'no.' It is true that idealists cling to the belief that law possesses a rational core grounded in universal interests. Among the current generation of legal theorists working within the Frankfurt School tradition of critical theory there remains the conviction that democracy, rightly understood and realized as a procedure of rational deliberation, could in principle generate laws that deserve the consent of all who are bound by them.[12] For these idealists, legal human rights embody universal human aspirations, and so possess a very high degree of rational legitimacy. Admittedly public policies aimed at furthering specific domestic goals seldom achieve this level of legitimacy. Still, many legal theorists think that litigation over such policies could be resolved by appeal to the proper experts. These days, however, expertise is itself a fraught idea and no fine line separates human rights from public policy. So merely adhering to legal procedures that embody deliberative ethical ideals does not promise to reduce legal disputes to manageable litigations.

By contrast, realists like Lyotard believe that there is no rational core to law that redeems its claim to impartial rule. Demonstrating this fact leaves him and us with the difficult job of deciding how to respond to law as a whole. What does it mean for us, as legal subjects, to resist the idea that law is a unified whole? Should we challenge its dominant paradigm(s)? Should we dissent from all or only some of its interventions? Perhaps we should selectively engage in civil disobedience, but in the name of what? Or perhaps jurists should infuse the law with new, hybrid paradigms that liberate new voices and generate new rights.

11 Luhmann, 1992; Teubner, 2010; Koskenneimmi, 2007

12 Habermas, 1996.

Adopting either Lyotard's or the idealists' thinking about law will likely be seen by some legal subjects as unfairly rigging the game against their own claims to have been denied just ground for complaint. I don't propose to resolve this dispute. Instead, I offer a kind of consolation. I begin with discussing a view that might at first appear as mediating realism and idealism: the idea of an overlapping consensus that John Rawls invokes in explaining how incommensurable worldviews and genres of thought might converge in legitimating very abstract principles of justice.[13] After I show why Rawls's solution fails, I discuss several landmark cases drawn from American constitutional law that illustrate unresolvable disputes. I conclude that Lyotard's insistence on the inevitability of unresolvable disputes poses a dilemma for us. Lyotard's postmodernism seems perfectly suited to our post-Trumpean world in which the alt-right can claim with equal justice that its alternative facts only serve the noble end of exploding the totalizing hegemony of cosmopolitan modernity. But the Right's attack on human rights must be resisted by anyone who advocates on behalf of women and the racially and religiously marginalized, which is what Lyotard, I think, endorsed, despite his critique of neo-liberal globalization. Reconciling ourselves to the unresolvable nature of the law should enjoin jurists to follow the pragmatic wisdom of realists who sought to balance the conflicting ends of law by inflicting the least harm.

Now, a Rawlsian might wonder why two comprehensive belief systems — or, to use Lyotard's expression, grand historical narratives— can't overlap in endorsing, for radically incommensurable reasons, authorizing principles of a more abstract nature. Doesn't this overlapping consensus suffice to legitimate political order? So long as the disputants frame their arguments in terms of this consensus and the indisputable facts of science, their efforts at mutual persuasion should be diverted from the illiberal goal of winning the argument by silencing the opposition. In other words, it should impose civility and reasonableness on the otherwise agonal struggle that the former Nazi legal theorist Carl

13 Rawls, 1994.

Schmitt thought was inevitable in any democracy that rules in the name of a sovereign majority.[14]

A quick glance at any political exchange between a left-wing social democrat, a right-wing nationalist, and a libertarian, shows why this reasonable convergence of civil citizens is unlikely. Lyotard himself acutely diagnoses the dilemma. Within the process of deliberation as it moves from public sphere to government, these partisans will frame the identity of the nation — the question regarding who we are and want to be — in radically opposing ways. Freedom, equality, solidarity, toleration, and justice will be interpreted by each in terms of its own peculiar grand narrative. From here, the next question to be resolved: "What should we do" will magnify the fragmentation further. Within each ideological camp, agreement on who we are and want to be will still leave undetermined what should be done. From a factual assertion about identity no general norm follows. A nationalist could just as readily reject racial and religious exclusions as endorse them.

Here we note that the *addressor* and *addressee* of these games of deliberation shift in ways that render the entire process paradoxical, if not incoherent. The person who asks the question is in important respects not the person who answers it. The "we" who asks "what should we be?" could be the founders of the Republic, future generations of non-citizens who will become citizens, or a current subset of citizens who may lose their citizenship tomorrow, if another subset who gains power decides to deprive them of it. So, the "we" that is addressed by this question is not the we who asks the question. As Lyotard wryly observes, the "we" in "we the people" announced in the French Declaration of the Rights of Man and of Citizen conflates different senses of "we," leaving the next question "What ought we to do?" perilously open-ended. We French as generic "man" declare Europe and humanity as our own to liberate, but we French as "the French people" also declare future Muslims as outsiders without full citizenship rights unless they give up their Muslim identity and become purely French.[15]

14 Schmitt, 1988.

15 Lyotard, 2002; Ingram, 200b. Marx addressed this contradiction of identity in

In sum, Rawls's appeal to an abstract norm of liberal democratic citizenship as a common legitimating ground of political reason radically under-determines the way in which different ideological narratives will interpret, or link up to, this norm. It subsequently leaves unresolved the particular prescriptions for policy implementation—legislation, adjudication, and execution—that follow from it. Even Habermas's proceduralist grounding of the democratic political process seems sensitive to the potential for fragmentation and ideological capture. On his account of legitimate constitutional procedure, popular inputs of discontent are condensed, filtered, and altered by mass media and public opinion polling, then hammered into partisan compromises by legislators. From here they are translated into specific legal codes. Judges then interpret these codes in terms of one or more conflicting paradigms. These paradigms exclusively highlight only one of many competing values, the most familiar being: the classical liberal value of individual freedom from constraint; the classical civic republican value of democratic solidarity and community; and the modern egalitarian value of welfare. Courts apply these paradigms in ways that supposedly "balance" their respective "stakes" but which in fact invariably favor one over the other.[16]

Examples of such injustices abound in the context of American jurisprudence. A particularly illustrative one comes from a string of supreme court rulings regarding the status of enemy (or unlawful) combatants detained at the Guantanamo Bay Naval Station. The very category of enemy combatant, which traces its lineage to a case (*Ex parte Quirin*) that was decided in 1942, collapses two different paradigms: that of soldier and criminal.[17] Being neither criminal nor soldier, an enemy combatant

"On the Jewish Question." The contradiction was later taken up by Jean-Paul Sartre in *Anti-Semite and Jew*.

16 Habermas, 1996, 195-286, 388-446.; Ingram 2010, 193-220.

17 Extra-judicial assassination by drones plays on the same ambiguity. The presumption that those who targeted for assassination are warriors based on classified intelligence is deeply question-begging, quite apart from the collateral damage inflicted on civilians. In criticizing the crime/war hybrid, David Luban (2002) notes that people have been targeted for punishment

has none of their rights. Like a soldier the enemy combatant can be imprisoned without trial until the cessation of hostilities, which can never happen in the war on terror.[18] Like a criminal the enemy combatant can be interrogated and treated harshly.

The history of recent U.S. Supreme Court rulings has shown that judges feel uncomfortable with the contradictions and potential injustices that attend the mixing of war and crime paradigms.[19] They are therefore inclined to identify enemy combatants as either defendants who merit a day in criminal court or as soldiers who do not. But neither of these efforts succeeds in capturing the fact that the status of suspected enemy combatants is entirely hybrid and overdetermined in its signification, yielding undetermined responses. The American Constitution and international law only specify rights of criminals and soldiers taken as distinct categories of persons. It was therefore not accidental that the U.S. Supreme Court in the landmark decision of *Boumediene v. Bush* (2010) deciding the fate of enemy combatants had recourse to earlier opinions in interpreting that law. The court turned to one case in particular that appeared to be analogous to that of the Guantanamo detainees. This case involved German soldiers who were accused of aiding Japanese occupying forces in China after Germany had formally surrendered—a viola-

(imprisonment or killing) without having been observed doing anything criminal at all or having been observed urging resistance to foreign occupying forces. Although Luban notes that punishing people for their presumed intentions and not for their actions is only legally permissible in the case of uniformed enemy soldiers, not in the case of suspected criminals, the law governing criminal attempts shows that this is not the case (Ingram 2006, R.A Duff 1997)

18 Art 1, para.9, sec. 2 of the American Constitution asserts that "the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." The exemption clause presumes that the scope of the Writ is domestic. The issue before the court was whether a territory outside of the sovereign boundaries of the United States but under its de facto control could be considered domestic in an extended (albeit non-de jure) sense of the term.

19 See *Hamdi v. Rumsfeld* 542 U.S. 507 (2004); *Hamdan v. Rumsfeld* 548 U.S. 557 (2006).

tion that was classified by the U.S. military commission as a war crime. In *Johnson v. Eisentrager* (1950) the court ruled against extending *habeas corpus* relief to these soldiers that would have granted them a regular court trial. It did so on the grounds that, among other things, Landsberg Prison in which they were being held was under the *de facto* jurisdiction of several allied occupying forces and that the cost and practical difficulties associated with gathering witnesses made a civilian-styled criminal trial impossible.

From Lyotard's perspective the disagreement among the justices on how to interpret this case illustrates how a prior judgment can be construed as a *prescription* or a *norm*, or in the terminology of Anglo-American law, as *dictum* or *holding*. Justice Kennedy argued that the *Eisentrager* ruling should be understood as prescribing an action confined to just this single instance.[20] Arguing that the conditions determinative for *Eisentrager* did not apply to Guantanamo prison, he rejected *Eisentrag*er as holding precedent for the Guantanamo case. In other words, he denied that *Eisentrager* was sufficiently analogous to any other case to constitute a norm for us today, rather than a prescription addressed to singular persons in the past. Dissenting, Justice Antonin Scalia insisted that *Eisentrager* did hold for us today, and therefore concluded that Guantanamo detainees had no right to *habeas corpu*s relief.

The disagreement between Kennedy and Scalia is fundamental. It hinges on whether a particular judgment from the past furnishes a link to a concrete prescription or a general norm. This textual indeterminacy also plagues constitutional interpretation. Indeed it recalls the famous debate between Ronald Dworkin and H.L.A. Hart in the seventies over whether law comprises only a loose collection of posited rules specifying precisely determined applications or whether it also contains un-posited,

20 Kennedy noted that the issues at stake were the citizenship and status of the detainees; the issue of location; and the practical obstacles to obtaining the writ of *habeas corpus* for the detainees. The court in *Eisentrager* was "concerned with the objective degree of control that the United States asserted over [Landsberger Prison] in fashioning its understanding of sovereignty. (Part C).

open-ended normative principles essential to its very interpretation as a unified historical narrative with a progressive plot.[21] In fact, the disagreement between Kennedy and Scalia turns on whether the pronouncements in the constitution are interpreted as inflexible rules, or prescriptions, or as flexible moral norms. Here, Kennedy and Scalia each reversed their strategy; in contrast to his narrow reading of *Eisentrager*, Kennedy prefaced his opinion with an expansive reading of the constitution as continuous tradition of moral principle dating back to the Magna Carta, while Scalia, rejecting this approach, strictly constructed the constitution as a collection of fixed rules. This difference in interpretative strategy, or linkage of norm and prescription, informs their different interpretations of the separation of powers doctrine and the relative independence of the executive branch to secure national security against terrorist threats without judicial interference.

I conclude with another unresolvable disagreement that directly concerns the silencing of voices: the dilemma in American constitutional law

21 In *Law's Empire* Dworkin cites both Habermas and Gadamer in support for his view of law as interpretation. The early Habermas whom he cites (along with Gadamer [1992]) endorses a Gadamerian principle of narrative coherence and perfectibility (*Vollkommenhei*t). However, as is well known, Habermas parted ways with Gadamer over the role of tradition, or effective history (*Wirkungsgeschichte*), in guiding historical narrative. Instead, he proposed the need to reconstruct a universal history of emancipation as the proper frame for critically interpreting and re-appropriating rationally "enlightened" tradition. For his part, Dworkin follows Habermas in proposing to interpret American Constitutional law as a historical narrative anticipating ideal emancipation, or (in Dworkin's words) the full social democratic realization of egalitarian respect and concern for each individual. By the early nineties, Habermas himself criticized Dworkin's overly rationalistic (and harmonistic) legal hermeneutics. In particular, he rejected the idea that law was a unified whole that could retain its substantive integrity in the course of historical change (Habermas, 1996, 206-19; Ingram, 2010, 211-15). In voicing this un-Gadamerian thought, Habermas endorsed the tension between competing liberal and welfare legal paradigms, and offered only the modest consolation of a possible procedural (or dialogical) mediation of them. However, even this project of mediation is called into question by Lyotard's emphatic insistence on the inevitable tensions (and corresponding injustices) within legal discourse that render a charitable interpretation of law as a legitimate normative and imperative authority problematic.

posed by the tension between the First Amendment right to free speech and the competing Fourteenth Amendment principle of equal protection. Pornography and hate speech are familiar sites for disputing these legal principles but recent supreme court decisions regarding the regulation of electoral campaign speech especially highlight what, for Lyotard, is a particularly sinister possibility, the hegemonic capture of the deliberative political genre of discourse by the economistic, neo-liberal discourse of capital. First, a few remarks about hate speech. The civil libertarian paradigm that prevails in First Amendment jurisprudence permits hate speech and pornography so long as they don't pose a clear and present danger to a specific person (as per prior holdings going back to Justice Holmes's famous opinion in *Schenk v. United States* [1919]). The civil rights paradigm, which is rooted in civic republican and welfare values, disagrees. It endorses the suppression of hate speech and pornography as violations of the rights of women and minorities to speak and live as equals. Each conflicting paradigm defines freedom, equality, speech and welfare in incommensurable terms. They define risk and harm differently as well, with the liberal paradigm assigning responsibility for risk to the individual and the welfare and civic republican paradigms assigning responsibility for risk to society. Consequently, they prescribe legal remedies that appear freedom enhancing from one perspective and freedom denying from the opposite perspective.[22]

22 Delgado 2004; MacKinnon C. 1989. An antipornography ordinance designed by Catherine MacKinnon and Andrea Dworkin for Indianapolis that would have enabled plaintiffs to enjoin and sue producers, distributors, and consumers of pornography for harms related to pornography was struck by the Seventh Circuit Federal Court of Appeals in 1985 for being overly broad in its definition of pornography and overly restrictive of speech (*American Booksellers Association v. Hudnut*). Federal court decisions also invalidated college hate speech ordinances (see *UWM Post, Inc. v. Bd of Regents of the Univ. of Wisconsin System* (1991), *Doe v. Univ. of Michigan* (1989) and *Corry v. Stanford University* (1995). Those who defend antiracism and antipornography statutes point out that civil liberties and civil rights are rooted in competing constitutional paradigms. The paradigm of public law upholds values of equal treatment and non-discrimination for marginalized groups in the name of lofty democratic and social welfare ideals; the paradigm of private law upholds values of individual freedom and privacy in the name of capi-

This disagreement has only become more complicated with the supreme court's decisions in *Citizens United v. Federal Election Commission*, which showed just how far the discourse of capitalism has come to capture the civil libertarian paradigm of free speech.[23] *Citizens United* overturned provisions of the Bipartisan Campaign Reform Act limiting unions' and corporations' independent political spending and time restrictions on political broadcasting, announcing that corporations are entitled to First Amendment rights to speech equal to those enjoyed by individuals.[24]

Writing for the majority in *Citizens United*, Justice Anthony Kennedy decried the preferential treatment hitherto accorded media corporations, which had robust rights to influence public opinion that other for-profit and non-profit corporations did not. But his decision went further by

talist ideals. During times of war, values associated with democratic solidarity are reinforced and oppressed groups achieve civil rights gains, often at the expense of individuals' civil rights. During times of peace the opposite dynamic is at play: the promotion of economic growth through unregulated markets correlates with the contraction of government paternalism and the expansion of individual civil and economic liberties. Richard Delgado notes that, although civil liberties and civil rights can coexist and sometimes even complement each other, they are "no more compatible than a private system of competitive free market economics that coexists with a public law system based on radical democracy and equal participation" (Delgado, 2004, 15). Thus, although precedents exist within public law regarding the regulation of discrimination, violent and defamatory language, and so on, defenders of hate speech regulation must fight an uphill battle against the prevailing juridical sentiments in favor of private freedom and civil liberty, with little likelihood that their respective constitutional paradigms will be fairly balanced, or at least balanced in favor of the most vulnerable party.

23 Brown, 2017.

24 *Citizens United*, 558 U.S., Justice Anthony Kennedy at 334-36. Four years later in 2014 *McCutcheo*n overturned limits on what any individual contributor could make over a two-year period to any national party (the limit had been $123,000) and retained a $5,200 limit on the amount that a contributor could give to the campaign of any single candidate (to avoid the corruption associated with *quid pro quo*). The result is that donors can now write a multi-million dollar check to a single political party or "joint fundraising committee" supporting many candidates without having to funnel contributions to super PACs.

linking, in true Millian fashion, political speech to a marketplace of ideas. Citing an earlier landmark decision, *Buckley v. Valeo (*1976), Kennedy drew two momentous conclusions from this assimilation of democracy to economics. First, he repeated *Buckley's* rejection of the idea that government has any proper interest "in equalizing the relative ability of individuals and groups" in equalizing the outcome of elections. He further denied that the First Amendment protects the speaker's "financial ability to engage in public discussion."[25] Second, he reduced the singular value of political speech to the civil libertarian aim of enriching diversity of opinion. Corporations, he argued, have been wrongly censored simply because of the self-promotional nature of their speech, but this, he observed, misconstrues the nature of democratic politics: "It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes that the supporter favors. Democracy is responsiveness."[26] Kennedy then

25 *Citizens United* 558, at 313.

26 Kennedy, *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003) at 297; *Citizens United* 558, at 359. Kennedy's economistic portrayal of representative democracy as a market mechanism was brilliantly foreshadowed in Joseph Schumpeter's classic study, *Capitalism, Socialism, and Democracy* (1942). According to Schumpeter's realistic analysis, democracy is not properly described as rule by the people, who are assumed to be guided by a rational interest in the common good. Rather, democracy is best described as rule by political elites, who are mainly motivated by the monetary rewards of career rather than the implementation of political ideals. These elites compete for votes in exchange for granting political favors to particular constituents who are chiefly responsible for getting them elected, with the latter's demand for public goods largely being manipulated by corporate shaping of public opinion. Schumpeter's recognition of the "creative destruction" of entrepreneurial innovation, which he believed conflicts with the anti-competitive tendencies of "corporatist" monopoly capitalism, led him to distinguish capitalism from entrepreneurship. As an increasingly educated, middle class citizenry becomes democratically empowered, it will support social democratic parties that seek to regulate both of these tendencies—dynamic (but destructive) growth and ossifying concentration of wealth thereby leading to a gradual transition to socialism (and the end of market-based economic expansion) (Schumpeter, 1942, Chs 21-23). For a critique of the neoclassical opposition between market competition and innovation, on one side, and

concluded that conceiving democracy on the model of market supply and demand did not amount to endorsing bribery and corruption since the use of money to influence voters to advance private interests favorable to corporations was not strictly speaking *quid pro quo* and would be funneled toward Political Action Committees that were required by law to not coordinate their advertising with the promotional campaign of any candidate.[27]

Since the election of Donald Trump the reduction of politics to the art of making a deal no longer seems shocking, As Lyotard points out, capital as genre reduces all use values to exchange values. It reduces all political interests and speech acts to a single common denominator: votes, or a certain quantity of reciprocated monetary favors. In his opinion, the hegemony of this neo-liberal discourse over the civic republican discourse of deliberative democracy can certainly be given an "ethical justification" in terms of a grand historical narrative, namely the one that declares that what we ought to be is rich in all assets, including information. But, to quote Lyotard:

> This ethical question is not asked . . . in the economic genre. . . . [This] genre in no way requires the deliberative political concatenation, which admits the heterogeneity of genres of discourse. To the contrary, it requires the suppression of that heterogeneity. It only tolerates it to the degree that the social bond is not (yet) entirely assimilated to the economic phrase alone. If this is one day the case, political institutions will be superfluous. . . .[28]

democratic socialism, on the other, see Ingram, 2018, 212-18.

27 *Citizens United* 558, at 360. As Wendy Brown notes, "Quid pro quo corruption marks a contractual arrangement through which a political representative would be paid to serve the interests of a particular individual or group rather than its whole constituency. [A] version of quid pro quo is actually how Justice Kennedy believes all political representation works, because, for him, there is no politics outside the model of economization" (Brown 2017, 115n37). Indeed, in Brown's reading of Kennedy's hermeneutical insensitivity to the corruption of democracy and correlative suppression of minority speech, the "the undoing of res publica by private interests . . . . is literally unintelligible to neo-liberal reasoning."

28 Lyotard,1988, para 253.

In his stinging dissent to Kennedy's opinion, Justice John Paul Stevens echoed these very same sentiments: "A democracy cannot function effectively when its constituent members believe laws are bought and sold."[29] In particular, he noted that for-profit corporations were unlike media corporations and private individuals, in that their use of public speech was "more transactional than ideological," aiming to promote private economic interests and avoid liability, not to engage broader ethical questions concerning what "We the people" ought to be and do. He also decried the levelling of public political discourse to the model of private markets, noting that the domination of capital in both economic and political realms effectively stifles competition, excluding those without sufficient funds from purchasing time on the airwaves.[30] The majority's dismissal of over a century of anti-corruption law not only ignored overwhelming public opinion about the corrosive effect of corporate influence on politics but also changed the very meaning of the Bipartisan Campaign Reform Act, which did not intend to censure the free expression of ideas but to regulate the disproportionate influence of corporations in shaping public opinion.

What would Lyotard say today about the cases I have enumerated above? We have seen three possible outcomes for disputing law. First, one can save the rule of law by seeking to mediate conflicting legal paradigm in the way suggested by Habermas. But seeking some kind of higher synthesis is not the sort of novel rights idiom that Lyotard would

29 Justice Stevens (dissenting opinion), *Citizens United* 558, at 441,446, 469-70.

30 Once democracy has been reduced to an economic market, we are then but a short step away from eliminating it altogether as a less efficient market. Public choice economists, inspired by Nobel laureate James McGill Buchanan, essentially make this argument. Democratic politics, as they see it, is a form of "rent seeking" on the part of politicians and interest groups whose "tax and spend" policies coercively restrain the truly efficient, vastly freer, economic market. Their acolytes accordingly propose curbing the power of an irresponsible electorate through restrictive voting laws and other procedural changes. For an example of this libertarian strand of pro-market, anti-democracy thinking, see Jason Brennan (2016). For a critical expose of Buchanan and the libertarian think-tanks he founded, see MacLean (2017).

endorse, and for good reason. If the law governing enemy combatants teaches us anything it is that mediation is just as likely to result in a retrograde synthesis of which fascism is but the most recent and edifying example. By mediating rather than holding in tension the legal paradigms of crime and war, this legal myth dangerously inclines toward a totalitarian solution in which individuals have no rights of their own to contest the absolute right of sovereign states. Second, one can save the rule of law by reducing legal reasoning to economic reasoning, as the law and economics school of jurisprudence recommends. As we have seen, the neoliberal reconstruction of the First Amendment's civil libertarian guarantee of free speech, as well as of the Fourteenth Amendment's equal protection and due process clauses, resolves the tension between these principles. However, it does so only at the risk of eviscerating the rules of the game governing deliberative democratic politics as it has hitherto been played, the stakes of which include, if not the perfectibility of justice, then at least the mitigation of injustice. The third option is to embrace political contradiction as an unavoidable possibility within law. By preserving the tension between legal paradigms what remains to be adjudicated is the judicious balancing of irreducibly opposed political ends. Compromises almost always favor the powerful. But when genuinely struck they protect the rightful freedom to dissent, which almost always favors the weak. They thereby indict any compromise that would dare lay exclusive claim to the mantle of justice.

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Relearning Liberation: Critical Methodologies for the General Crisis

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Abstract: How can critical theory help us to articulate the nature of social suffering in twenty-first century capitalism, and to expand our horizons of possibility for liberation and alternative futures at a moment of apparent impasse? In this essay, we explore how critical theorists across three generations in the European Frankfurt School tradition articulated the 'struggles and wishes' of their age and place, and reflect on the contextual limits and enduring relevance of their negative, utopian, democratic and ethical methods. We then turn to developments of this work in the Latin American tradition, particularly as elaborated by feminists,

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which articulate critical theorizing as a transformative praxis within the material construction of dignified communitarian life. In the final part of the paper, we consider what we might learn about how to theorize our own dominations and liberations through this critical methodology.

Introduction

It is a difficult time to be working for radical social change or theorizing its possible trajectories. Many struggles for basic human dignity and alternative futures have recently emerged within what Nancy Fraser[3] calls a 'general crisis complex' as simultaneous crises in social reproduction and care, economic distribution, ecological sustainability and political authority 'intersect with and exacerbate one another'. As the human and ecological ravages of financialized capitalism intensify around the world, people are struggling to find respite from and alternatives to conflict, destitution and hopelessness. Faith in the basic institutions of liberal democracy, where they were functional, has shattered as militarism, xenophobia and racism have resurfaced as political virtues. At the same time, people's capacities for economic self-determination and self-realization have been eroded by the expansion of multinational capital into social institutions and everyday life. The reproduction of life itself – already so precarious in many parts of the world – has become more uncertain even in nations with substantial material resources and wealth. The severity and complexity of these crises thus demand new political narratives with which to name and theorize the causes of social suffering at this historical conjuncture.[4]

We thus begin this paper by asking: to what extent do the categories used by US and European critical theorists actually articulate diverse political aspirations or express the nature of social suffering today? We

3 Nancy Fraser, 'Democracy's crisis' lecture given at Erasmus University (Rotterdam, 2014) (accessed at http://www.publicseminar.org/2014/11/democracys-crisis/#.WcUatMiGOHs). See also Fraser's article 'Contradictions of capital and care,' *New Left Review*, 2016, 100 (accessed at https://newleftreview.org/II/100/nancy-fraser-contradictions-of-capital-and-care).

4 Fraser, "Democracy's crisis".

suggest that the political ideals of liberation, democracy, equality and dignity which have oriented movements for social change since the nineteenth century cannot on their own guide us toward emancipatory possibilities. First, while these terms still often appear as universal ideals in progressive political discourse, they emerged from local histories of struggle and hope. Each offers a different analysis of the forms and causes of social domination, immiseration and injustice; each prioritizes different political values and objectives; each opens onto a different horizon of possibility; and each has itself been implicated in oppressions. Second, given the ongoing dismantling of liberal democratic sensibilities and institutions by marketisation, the growing instability of wage-based livelihoods and the dispossession of communal means of production, the fragmentation of organized labor, the weakening of international infrastructures for protecting human and environmental rights, and the institutionalization of authoritarian power at all levels of political decision-making in formerly democratic societies, these terms no longer name easily imaginable futures. Finally, these modern concepts and ideals, like other 'new identities, rights, laws and institutions of modernity such as nation-states, citizenship and democracy were formed in a process of colonial interaction with, and domination/exploitation of, non-Western people'.[5] For these reasons, the categories of analysis that have historically oriented critical theorists do not adequately capture the nature, scope, complexity, intensity, variety or unequal distribution of twenty-first century domination.

However, these terms do continue to play an important role in our thinking. Understanding how their meaning has shifted in time and place through different projects to clarify the 'struggles and wishes of the age'[6] can therefore help us to understand how new vocabularies of

5 Ramon Grosfoguel, 'Decolonizing post-colonial studies and paradigms of political-economy: transmodernity, decolonial thinking, and global coloniality,' *Transmodernity: Journal of Peripheral Cultural Production of the Ludo-Hispanic World*, 2011, 1(1): 12. Accessed: http://escholarship.org/uc/item/21k6t3fq.

6 Karl Marx, 'Letter to A. Ruge, September 1843,' in *Karl Marx: Early Writings*, trans. Rodney Livingstone and Gregor Benton (New York: Vintage Books,

emancipation have emerged at the intersections of theory and practice. In this paper, we explore how three 'generations' of critical theorists conceptualized social emancipation in historically and geographically specific ways. We take critical theory as our starting point because while no intellectual tradition can claim a monopoly on theorizing responses to domination, critical theory's historical commitment to identifying social contradictions, naming forms of domination and illuminating latent potentials for emancipation makes it a fruitful ground for this investigation. Starting from the notion of liberation as 'negation' that is associated with the Frankfurt school, we map the shift toward an interest in liberal and social democracy in the postwar period and then, given the limitations of this strategy, towards a reconsideration of the foundations of social justice in everyday life and the ontological and ethical politics of recognition and respect. We also explore the resignification of dignity as a practice of liberation by some critical theorists in both the global South and the global North, while noting concerns which have been raised about depoliticized notions of dignity within the 'ethical turn' in European social thought. In the final part of the paper, we propose that the contextualization of such key terms and their critical appropriation into new thinking is a method that might allow us to reopen emancipatory possibility within critical theory. Our hope is that this investigation will contribute to 'imagining this form of life differently by disclosing other possible ways of carrying it forward, other ways of "going on"'.[7]

Liberation as negation

For the early Frankfurt School theorists, both capitalism and fascism barbarized dignity, destroying the moral and political fabric of human relations. The multiple and interwoven forms of domination that surfaced in Germany during the period of National Socialism thus begged a more

1975), 209. Quoted in Nancy Fraser, 'What's critical about critical theory? The case of Habermas and gender,' *New German Critique*, 1985, 35: 97.

7 Nicholas Kompridis, *Critique and Disclosure: Critical Theory between Past and Future* (Cambridge, MA: MIT Press, 2006), 254.

comprehensive theory of liberation than either the critique of capitalist social relations or the psychological and cultural distortions of authoritarianism could provide. The depth and scale of destruction wrought by industrialized war and genocide, combined with the absence of any conceivable possibilities for redemption within modern economic and political institutions, gave rise to definitions of liberation as the triumph over 'negative ontology' where, in Karl Marx's words, 'Man exists as a degraded, exploited, debased, forsaken and enslaved being. [8] In this context, liberation was thus defined as a negation of that which negates and denies humanity and its creative potentials. Seeking to understand why and how people 'by their own toil keep in existence a reality which enslaves them in ever greater degree',[9] Max Horkheimer and Theodor Adorno[10] located the source of domination in Enlightenment reason itself. They argued that instrumental rationality was evidenced in every dimension of modern-day domination –extermination camps, mass mobilizations, psychological repression, anti-Semitism, total administration and the culture industry – and this had dangerous consequences for critique. For if reason was being re-mythologized in Aryan nationalist propaganda and the technological marvel of the death camps; if its instrumentalization was not only necessary for capitalist production but also generative of genocide and torture, then the most important function critique could play would be a negative one – to negate 'realities' that are presented as rational. Axel Honneth[11] later argued that Horkheimer and Adorno's *Dialectic of Enlightenment* offered a form of 'world-disclosing' critique, in

8 Werner Bonefeld, 'Negative dialectics and the critique of economic objectivity,' *History of the Human Sciences*, 2014, 29(2): 71, has argued that Marx's critique of political economy was a 'negative ontology'. Here, we acknowledge the influence of this argument on first-generation critical theorizations of society and extend it to the concepts of reason and liberation.

9 Max Horkheimer, 'Traditional and critical theory,' *Critical Theory* (New York: Seabury Press, [1937]1972), 213.

10 Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment* (New York: Continuum, [1944] 1997).

11 Axel Honneth, 'The possibility of a disclosing critique of society: the *Dialectic of Enlightenment* in light of current debates in social criticism,' *Constellations*,

which contradictions revealed through dialectical analysis did not point affirmatively toward a reality or truth behind appearances, but rather disclosed possible worlds both realized and unrealized in their historical configuration. We further read the *Dialectic* as an emancipatory act in its own right, asserting – albeit imperfectly and individualistically – an autonomy of thought and undistorted human subjectivity that the authors believed were on the verge of being entirely liquidated. However, like the high modernist art that Adorno valorized as a rare space of modern freedom, this critique was radical resistance in a vacuum as it was detached from the practices of any concrete social base or community of struggle. In this context, where there seemed so little possibility of translating the spirit of critique into practice without annihilating it, then critique, like art, 'must remain alienation'.[12] Thus was alienation from reality, wrought through actively negating reality, conceptualized as a liberatory activity.

The revelatory power of negative critique became less compelling, however, in the postwar period amidst the material conveniences of consumer capitalism and construction of welfare state democracy. Writing in the United States during the 1960s and 1970s, for example, Herbert Marcuse proposed a conception of liberation that had a more affirmative character, as the criterion for social action that 'would conform with the very *logos* of life, with the essential possibilities of a human existence, not only mentally, not only intellectually, but also organically'.[13] This 'pacified existence'[14] would entail a reduction of power and of overproduction, less television, and the practice of a meaningful politics in which people actually direct the social institutions that structure their lives. Yet while Marcuse found more hope for the possibility of praxis, his critique

7(1).

12 Herbert Marcuse, 'Art and revolution' in *Counterrevolution and Revolt* (Boston: Beacon Press, 1972), 103.

13 Herbert Marcuse, 'Liberation from the affluent society' (1967). Accessed: http://www.marcuse.org/herbert/pubs/60spubs/67dialecticlib/67LibFromAfflSociety.htm.

14 Herbert Marcuse, *One-Dimensional Man* (Boston: Beacon Press, 1964).

also remained essentially negative as he found few resources to enact such liberation within either capitalism or communism. Instead, both liberal and collectivized freedoms had become institutionalized, one-dimensional and repressive, preserving only the illusion of freedom within different types of totalitarian social relations. Liberation had therefore to proceed dialectically towards the 'definite negation' of the system through a 'total mobilization' that mirrored the mobilization of the dominant policies of the day. This, however, not only had to work with evident and lived social contradictions, but also to 'activate the repressed and manipulated contradiction' through new forms of art and education that 'involve the mind and the body, reason and imagination, the intellectual and the instinctual need, because our entire existence has become the subject/object of politics, of social engineering'.[15]

From liberation to social democracy

Where the first-generation Frankfurt School theorized emancipation in response to fascism and the holocaust, the next generation responded to its aftermath. John Abromeit[16] sees Jürgen Habermas' project, for example, as having been consistent with the need of the postwar German state to reconstruct its ties to liberal democratic traditions after fascism, and it was hardly a unique case. After the revolutionary eruptions of 1968 in Europe, there was a palpable shift in the types of justice claims being made by social movements across the continent, and an 'ethical turn' in social and political thought more generally in which there was less talk of 'liberation'. Vazquez-Arroyo argues that from the 1980s, Anglo-European societies underwent processes of depoliticization during which all radical political projects – represented in the 20th century by both fascism and Marxism – were cast as unreasonable, unethical and at odds with the ideal of a victorious individual humanism. The consequent 'aspira-

15 Marcuse, 'Liberation from the affluent society'.

16 John Abromeit, 'Right-wing populism and the limits of normative critical theory,' *Logos: A journal of modern society and culture*, 2017, 16(1-2). Accessed: http://logosjournal.com/.

tion to find normative principles outside the political realm'[17] marked a retreat from programmatic politics by altering not only definitions of liberation but the very relationship between liberation and time.[18] Rather than striving to imagine and actualize radically alternative futures – activities that were argued to be courting disaster – critical thought and practice were channeled into redeeming and preventing the repetition of past catastrophe through strengthening democratic culture and humanitarian politics.

'Democracy' rather than 'liberation' – or more accurately, liberation *through* democracy – was promoted as both the frame and the aim of critical theory that was allied to many social movements at this time. In the US, for example, much feminist theorizing turned away from grand narratives of liberation towards concrete struggles for democratic rights, social and economic inclusion, and redistributive power for women and minority populations. This shift is clearly reflected in the change in nomenclature from 'women's liberation' to the 'women's rights' movement. Habermas' conceptualization of democratic politics as the realization of reasoned, egalitarian, discursive deliberation oriented towards systemic social change was influential in this shift. So too was the work of Nancy Fraser, who in 1985 wrote that the struggle for women's autonomy was one for 'a measure of collective control over the means of interpretation and communication sufficient to permit us to participate on a par with men in all types of social interaction, including political deliberation and decision-making'.[19] Yet Fraser and other feminist critical theorists recognized that inclusion and 'participatory parity' were not panaceas. Capitalist workplaces, the public sphere and social movements were rife with informal exclusions and abuses that no discourse ethics could ameliorate. Pushback against struggles for liberation within patriarchal and

17 Antonio Vázquez-Arroyo, *Political Responsibility: Responding to Predicaments of Power* (New York: Columbia University Press, 2016), 25.

18 Jacques Rancière, 'The ethical turn of aesthetics and politics,' in *Aesthetics and its Discontents* (Cambridge and Malden, MA: Polity, 2009). 119.

19 Fraser, 'What's critical about critical theory? The case of Habermas and gender,'128.

capitalist institutions therefore occasioned explorations into the deeper ontological and epistemological violence that is inflicted by the denial of human recognition. Some theorists, such as Axel Honneth,[20] defined this primarily as a problem of ethical politics, of how to ensure that all 'subjects are able to experience intersubjective recognition not only of their personal autonomy, but also of their specific needs and their particular capabilities' in society, and thus secure adequate conditions for identity-formation, self-realization, and the good life. Fraser[21] centered political demands for participatory parity and the equitable distribution of material resources and recognition as key conditions for enabling people regardless of individual or group identity to be 'full partners in social interaction'.

As claims for both recognition and redistribution became established in the Eurowestern grammar of social justice by the late twentieth century, they remained rooted in and bounded by liberal assumptions of equality and justice. Yet 'recognition' is often not desirable where it requires or confers visibility and viability within a logic of domination, a point neglected in theories of recognition produced from positions of racial, class, gender and geopolitical privilege. As bell hooks pointedly wrote, 'women in lower-class and poor groups, particularly those who are non-white, would not have defined women's liberation as women gaining social equality with men […] Knowing that men in their groups do not have social, political, and economic power, they would not deem it liberatory to share their social status'.[22] Further, following Silvia Federici, any 'logic of an analysis that sees women's oppression as caused by their exclusion from capitalist relations inevitably results in a strategy for us to enter these relations rather than destroy them'[23] – which is rather

20 Axel Honneth, 'Recognition and justice: outline of a plural theory of justice,' *Acta Sociologica*, 2004, 47: 363.

21 Nancy Fraser, 'Recognition without ethics,' *Theory, Culture & Society*, 2001, 18(2-3): 24.

22 bell hooks, 'Feminism: a movement to end sexist oppression' in *Feminist Theory from Margin to Center* (New York and Boston: South End Press, 1984), 19.

23 Silvia Federici, 'Counterplanning from the kitchen (1975)' in *Revolution at*

the point. Conversely, not all experiences of 'misrecognition' are necessarily forms of injustice. When engaged as a pedagogical site, according to Nicholas Kompirids, as 'the occasion of a transformative and critical encounter with another', certain forms of misrecognition can open up 'a decentered space in which to learn about identities, problems and possibilities that are not legible (i.e., cannot be recognized) within the dominant grammars and frames of power.[24] Moreover, 'hidden or disguised processes' and 'new or unnoticed possibilities' for radical alterity may be revealed through such encounters.[25]

Given these complexities, articulating injustice primarily in terms of intersubjective misrecognition reflects a narrow view of the aim of critical theory to serve the 'minimization of relations of domination, not a social world without or beyond power relations'.[26] Yet since the end of the twentieth century, there have been growing criticisms of the desire for recognition or participatory parity within hegemonic social and conceptual systems, and more efforts to understand how we can create knowledge, live, and practice autonomy and justice in everyday life outside these grammars of power. As John Holloway writes, the demand now is 'not for "more democracy" but for a radical reorganisation of our daily activity, without which the call for "more democracy" means nothing at all'.[27]

Grounding liberation in dignity and social reproduction

Situating the theorization of liberation within the everyday problem of how to create, sustain and reproduce life demands engagement with 'a

Point Zero: Housework, Reproduction and Feminist Struggle (Oakland, CA: PM Press, 2012), 29.

24 Nicholas Kompridis, 'Struggling over the meaning of recognition: a matter of identity, justice or freedom?' *European Journal of Political Theory*, 2007, 6(3): 283.

25 Nicholas Kompridis, 'From reason to self-realisation? Axel Honneth and the "ethical turn" in critical theory,' *Critical Horizons*, 2004, 5(1): 351.

26 Amy Allen, *The End of Progress: Decolonizing the Normative Foundations of Critical Theory* (New York: Columbia University Press, 2016), xiv.

27 John Holloway, *Crack Capitalism* (New York: Pluto Press, 2010), 86.

politics of knowledge that is both ingrained in the body and in local histories'.[28] It also therefore requires that we disentangle theories of liberation from assumptions about the primacy (or possibility) of rationalist, individualist and institution-based approaches to social justice and pay more attention to intergenerational and ecological ethics, collective and communal care, and co-operative labor in which democracy is a means rather than an end. This approach departs from Enlightenment ideals such as achieving liberal representative democratic consensus, as was so important for Habermas in postwar Germany, and signals not a retreat from democratic politics but a more inclusive and materially grounded commitment to democracy's democratization.

This mode of critique has recently been advanced in the global periphery[29] and spaces of 'structural exile' throughout the capitalist world system.[30] While it engages with classical critical theories of domination, it stretches beyond the Eurocentric horizons of the Frankfurt School, which Enrique Dussel argues 'ceased to be truly critical' in its second generation.[31] In his view, while critical theory had once accounted for the com-

28 Walter Mignolo, 'Geopolitics of sensing and knowing on (de)coloniality, border thinking, and epistemic disobedience,' *Transversal* (2011). Accessed: http://eipcp.net/transversal/0112/mignolo/en.

29 Enrique Dussel, 'From critical theory to the philosophy of liberation: some themes for dialogue', *Transmodernity: Journal of Peripheral Cultural Production of the Luso-Hispanic World*, 2011, 1(2). Accessed http://escholarship.org/uc/item/59m869d2. Dussel defines the contemporary global periphery as that which is 'identified with those oppressed by or simply excluded from the world system' in *Ethics of Liberation In the Age of Globalization and Exclusion (*Durham and London: Duke University Press, 2013), 47.

30 Andre Grubačic and Denis O'Hearn, *Living at the Edges of Capitalism*: *Adventures in Exile and Mutual Aid* (Oakland: University of California Press, 2016), 250. 'Structural exile' is a term used to describe nonstate spaces in which, 'although people work, produce, and trade in the capitalist economy, they also do activities that are not fully incorporated into the structures of capitalist accumulation' and live in a contradictory relationship to the state and the capitalist system; see Andre Grubačic and Denis O'Hearn, 'Capitalism, mutual aid, and material life: understanding exilic spaces,' *Capital & Class*, 2016, 40(1): 152.

31 Dussel, *Ethics of Liberation In the Age of Globalization and Exclusion*, 208.

plex dynamics of dehumanization in the domains of 'will, affectivity and emotions, unconscious drives, and economic requirements' in its time and place, the later discursive and pragmatic turns in critical theory neglected the experiences and needs of 'victims of social evil' throughout the world who face nothing less than the need of constructing a 'new, postcolonial, postcapitalist and transmodern social order'.[32] Dussel thus proposes a praxis of liberation which is based not upon the development of autonomous reason or the 'liberation of inherent possibilities' within existing social systems, but upon ethical commitments to the defense of life, social consensus with respect to decisions affecting collectives, and non-domination in all proposals or courses of collective social action.

Today's feminist critical theorists go further to argue that knowledge and practice of liberation is rooted not only in the defense of life but in its creation, through 'processes and human activities that favor the dignified reproduction of life, even amidst the devastation imposed by capitalism'.[33] In these emerging traditions, it is the human 'capacity of giving form',[34] that is, of choosing and shaping our own sociality and future, that is the starting point and source of critical understanding. When people, overwhelmingly women, create and sustain life within systems of life-threatening oppression, they create counter-realities and concrete utopias that attest to the possibility of alternative realities, even when they are met with forms of violence which negate their legitimacy. Rather than focusing on the negative critique of capitalism's totalitarian logic, these theorists articulate and affirm the different kinds of knowledge that are needed to 'self-determine the goals, rhythms and forms

32 Dussel, 'From critical theory to the philosophy of liberation: some themes for dialogue,' 17, 24.

33 Raquel Gutiérrez-Aguilar, Mina Lorena Navarro Trujillo, and Lucia Linsalata, 'Producing the common and reproducing life: keys towards rethinking the political' in Ana C. Dinerstein (ed). *Social Sciences for An Other Politics: Women Theorising without Parachutes* (New York: Palgrave Macmillan, 2017). 80.

34 Bolivar Echeverría, 'El "valor de uso": ontología y semiótica in Bolivar Echeverría, *Valor de uso y utopia* (México: Siglo XXI, 1998).

of everyday life' that exist within, despite and in defiance of capitalist, patriarchal and racist-colonial oppressions. This knowledge is not produced in order to advance academic debates or to inform imagined political subjects and institutions, but created in collaboration, alliance and solidarity with embodied communities of struggle as part of the 'real insurrection of women' against heteropatriarchal capitalism across the world today.[35] This mode of critique as affirmative praxis 'negates by means of affirming life in, against and beyond capital'. As Ana Dinerstein explains, 'while negative praxis ignores the tensions and contradictions that exist between the compulsion to reproduce life through money and the need to destroy value-money in order to live, affirmative praxis navigates those contradictions encountered in the process of venturing beyond capital'.[36] Today, this form of critique is being developed by feminist scholar-activists working in Latin and South America, but it resonates with women's resistance movements and commoning practices across the globe. The critique of heteropatriarchal capitalism emerges through the socialization of childcare and domestic labour, the reclamation of land for subsistence farming, and the collective organization of the defense of life against physical and emotional violence, the rise of popular feminisms[37] and above all, the 'active cultivation and nurturing of relations among those who are part of a communitarian weaving, and of relations of protection and healing between that communitarian weav-

35 Raquel Gutiérrez, 'Because we want ourselves alive, together we are disrupting everything: notes for thinking about the paths of social transformation today', *Viewpoint Magazine*, 7 March 2018. Accessed: https://www.viewpointmag.com/2018/03/07/want-alive-together-disrupting-everything-notes-thinking-paths-social-transformation-today/.

36 Ana Dinerstein, 'Concrete utopia: (re)producing life in, against and beyond the open veins of capital,' *Public Seminar*, December 7, 2017. Accessed: http://www.publicseminar.org/2017/12/concrete-utopia/.

37 See Silvia Federici, 'Feminism and the politics of the commons,' *The Commoner* (2011). Accessed: http://www.commoner.org.uk/wp-content/uploads/2011/01/federici-feminism-and-the-politics-of-commons.pdf. and Gutiérrez, 'Because we want ourselves alive, together we are disrupting everything: notes for thinking about the paths of social transformation today'.

ing and it surroundings'.[38] The promise of this critique is not that we can refuse the social totality or refine democratic processes and sensibilities, but that it places the collective reproduction of dignified life at the heart of emancipatory knowledge production. It assumes that liberation requires negation (of that which negates life), but also nurtures an affirmative drive towards social reproduction that habilitates life beyond and against capital (which uses life as a means for its own reproduction).

Relearning liberation

> 'Dignity, for me, is always the starting point for political and moral autonomy; […] dignity is always necessary, but not sufficient for the unfolding of struggles for social and political transformation. The *"what else is needed?"* constitutes, I think, the heart of the contemporary militant political debate.'[39]

This brief reflection on how critical theorists have attempted to articulate the 'struggles and wishes' of their age and place illustrates that creating adequate understandings of liberation is a temporally and spatially contextualised activity that is interwoven with shifting relationships to different forms of reason. It proceeds not only by adapting existing categories and methods of analysis to new situations, but also as individuals with complex positionalities create new concepts in dialectical encounters between theory and practice in everyday life. The difficulty of this work is now felt acutely in places where the ongoing 'crisis complex' of capitalism has left not only the organization of society but also previous imaginaries of its liberation in shambles.

In the global North, just as traditional mechanisms of democratic power have been eviscerated and new ones have not yet emerged, so theo-

38 Gutiérrez, Linsalata, and Navarro, 'Producing the common and reproducing life'.

39 Gutiérrez, in Veronica Gago, 'Rebuilding a dissident common sense: an interview with Raquel Gutérrez', translated by L. Mason-Deese, "Making Worlds: A Commons Coalition" (2013). Accessed: http://www.makingworlds.org/rebuilding-a-dissident-common-sense-an-interview-with-raquel-gutierrez/.

retical capacities are under strain and new political narratives have not yet come into being. Here, capital has become such a strong 'organising principle of society' that it governs 'not only human powers but also the institutions through which human life is dominated' and the concepts through which we form our understandings of them.[40] A particular difficulty in the theorization of contemporary liberation here is that many critical theorists working within modernist rationalities and institutions struggle to conceive of a world-making agent that is genuinely collective or communal rather than individual or institutional, and in which dispossession by state or market power might be countered with self-reproductive activities. This is not simply a problem of positionality or a deficit of reason; within advanced capitalist societies, political subjects are individualized, divided and fragmented, and they often do not share material such as land held or worked in common, or live in self-organizing communities, which offer spaces for realizing and creating theory in practice. We thus cannot appropriate the theories of our colleagues in the global south, as we do not share the experience of the material production of life from within which these are emerging. Yet we can, and indeed must, follow their method of disembedding concepts of liberation from their universalist assumptions and asking if they might be put back together in an emancipatory form more fitting for our time and place, developing new critical tools as needed.

We can also learn from the radical critiques of domination, the radical theorizations of liberation that are happening every day. As racist violence, austerity politics, ecological destruction and the marketisation of social institutions intensify, people across the global North are struggling to proliferate possibilities for liberation; to understand how to effectively affirm and defend the dignity of life, community and social reproduction. We can see 'the production and circulation of relatively au-

40 Ana C. Dinerstein and Michael Neary, 'Anti-value in motion: Labour, real subsumption and the struggles against capitalism,' in Ana C. Dinerstein and Michael Neary (eds) *The Labour Debate: An Investigation into the Theory and Reality of Capitalist Work (*Aldershot-Burlington: Ashgate, 2002). 207.

tonomous and partially incorporated exilic spaces and practices' in localized struggles for food sovereignty, public and common space, housing, education and health within what Andre Grubačic and Denis O'Hearn call the 'infra-politics of the world economy', where people are slowly building new foundations for militantly dignified thinking, acting and learning.[41] The Spanish *indignados* (M-15) mobilizations saw alienated, disposable and discarded workers embodying dignity by rejecting government-imposed economic 'austerity' (deprivation and dispossession) and demanding decent conditions for livelihood, labour, housing, education and political participation. In the US, Black Lives Matter and the #SayHerName campaign have revolutionized the collective defence and affirmation of Black life, dignity and justice by articulating the struggle against racial violence, genocide and dictatorship and asserting the right to a safe, just and dignified human existence.[42] Revolutionary energies are not 'exhausted' in the North, even within the general crisis complex of financialized capitalism. On the contrary, there is a palpable hunger; a felt 'lack of something and also escape from this lack', which – according to Ernst Bloch – signals 'the beginning of every movement towards something'.[43]

41 Andre Grubačic and Denis O'Hearn, 'Capitalism, mutual aid, and material life: understanding exilic spaces,' *Capital & Class*, 2016, 40(1): 160.

42 #BlackLivesMatter is described by Alicia Garza (who co-founded it with Patrisse Cullors and Opal Tometi) as an 'ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise' and an 'affirmation of Black folks' contributions to this society, our humanity, and our resilience in the face of deadly oppression'. The women founded it as a 'call to action for Black people after 17-year-old Trayvon Martin was post-humously placed on trial for his own murder and the killer, George Zimmerman, was not held accountable for the crime he committed. It was a response to the anti-Black racism that permeates our society and also, unfortunately, our movements'. For more information about the herstory, principles and activities of the movement, see 'About' Black Lives Matter (2017): http://blacklivesmatter.com/who-we-are/.

43 Ernst Bloch, *The Principle of Hope* (Cambridge: MIT Press, 1959/1995). 306.

Within this movement for twenty-first century liberation, however, it is important to critically theorize the conceptual repertoires with which we are working. This cannot be a case of merely applying existing critique in order to reveal the distance between our ideal of a liberating society and its instantiation. This dissonance is already clear. Nor can it be only a matter of seeking to further democratise liberal democracy, because it is hard to know what democracy *can* mean in a context of corporatized institutions, or how it is relevant to struggles for the basic dignity within formally democratic societies. Noting the exhaustion of utopian energies in the early 'aughts', Kompridis asked: once we have used theory to critique everything to death, including critique itself, what do we take forward from the tradition and what must we leave behind?[44] In response to Fraser's call for new political narratives, we return to the core concern of critical social theory from its inception – to give voice to and ease social suffering – and seek paths towards liberation from there.

As economic and political conditions in the US and Europe deteriorate, the contours of possible futures become visible in the suffering of those who live on the outermost edges of this system, who suffer its ravages without being pacified through reaping its privileges. If existing theories of democratic deficits, denials of dignity and inequality cannot adequately communicate and explain the nature and diversity of social suffering in our time, then we need to find new words that do. These words must enable us to both articulate and hear suffering caused by impediments to individual autonomy, self-realization or social recognition, as well as the reality of people's struggles to ensure their own survival and face challenges to a liveable life; that is, to living a viable life with others. Theories of community, connectedness and collectivity are needed to balance the more structural theories of class and status, race and gender that on one hand provide insight into the dynamics of social groups and capitalist social relations, but on the other also legitimize our separations. We are also reminded here of something Susan Sontag wrote about liberation in the 1970s: that sexual liberation wasn't about women *having more sex*, but

44 Kompridis, *Critique and Disclosure: Critical Theory between Past and Future*.

about *what kind of* sex women were being liberated to enjoy.[45] Similarly, the task of critical theory today is not only to assess possibilities for more equality, democracy or dignity, but to again strive to articulate the kind of life we want to be liberated to live. Neither 'liberation from the affluent society' nor liberation from immiseration can be accomplished through sheer negation or refusal; today, as ever, liberation advances also through the recognition and affirmation of possibility.

Two moves at least are required to make room for this work. One is to decentre the intellectual gravity of Europe and the US in critical theory to make conceptual space for alternative epistemologies to become visible. For example, 'identity' might be experienced as a 'mutual belonging (cobelonging) to a common world' rather than 'a relation among similar beings';[46] the 'human' might be understood as a historically specific and dynamic collectivity that decentres the European notion of 'man' as autonomous individual;[47] and 'commoning' can refer to the ongoing activity of producing our social lives in common, that at the same time produces ourselves as a common subject.[48] Another is to learn from existing but repressed or devalued imaginaries that are part of our own historical-theoretical repertoire. This includes art, which once had a very central place in critical theory. Adorno wrote eloquently and often about how and why art expresses suffering. If connecting deeply with social suffering rather than simply analysing it is part of liberatory theory, then art is a potential resource for that understanding, whether because it 'opens the established reality to another dimension: that of liberation'[49] or it aims to repair the bonds of community, as does the range of art practices identified with the recent 'ethical turn'. These lessons are hard, for

45 Susan Sontag, 'The third world of women,' *Partisan Review*, 1973, 40.

46 Achille Mbembe, *Critique of Black Reason* (Durham: Duke University Press, 2017). 1.

47 Sylvia Wynter, 'Unsettling the coloniality of being/power/truth/freedom: Toward the human, after man, its overrepresentation – an argument,' *CR: The New Centennial Review,* 2003, 3(3): 257–337.

48 Federici, 'Counterplanning from the kitchen (1975),' 145.

49 Marcuse, 'Art and revolution,' 87.

just as Eurocentrism in critical social theory has invisiblized the knowledges and experiences of those in the global south, so too have we have cut ourselves off from critical aesthetic experiences of the world. Yet it is clear that at this critical conjuncture, new methods of theorizing liberation are needed. We still agree, as Horkheimer claimed in 1937, this 'will not take place via solidly established practice and fixed ways of acting, but via a concern for social transformation'.[50]

* *The authors wish to thank Claire Anderson for her assistance in preparing this paper for publication.*

50 Horkheimer, 'Traditional and critical theory,' 241.

Technique of Nearness[1]

Howard Eiland[2]

Abstract: Integral to practical memory, the technique of nearness serves in the reading of the past—the past as a function of now-time. At issue is the studied sudden concentration and encapsulation of historical time through the dialectical image, that which, looking backward and forward simultaneously, occasions a spatiotemporal nearness in distance. In this precipitous philosophical-historical actualization, the historical object is constellated as a field of interactions between past and present moments, what Walter Benjamin calls a time differential. One awakens *from* the dream of the past only by waking *to* it—in its objective interpretation. Having virtually shattered the homogeneous linear and causal continuum of scientific historicism, the historian as dream interpreter, as collector and flâneur, presides over—that is, constantly rediscovers—the manifold thick transparency of an historical *discontinuum*. Entering and traversing the abyss of the past in the interests of historical awakening presupposes, along with the dialectic of attention, a critical anamnesis attuned to the crisis of the present.

In a note dating from the late Twenties and now forming part of what we call the *Passagenwerk* or Arcades Project, Walter Benjamin refers to the "technique of nearness" as something appertaining to the role of the anecdotal in materialist historiography.[3] This unique and perhaps

1 Originally presented as a paper for the conference "Demonic Technologies" at the Mahindra Humanities Center, Harvard University, April 28, 2012.

2 Howard Eiland recently retired from MIT, where he taught literature for thirty years. He is co-author, with Michael W. Jennings, of *Walter Benjamin: A Critical Life* (Harvard, 2014) and co-editor of vols. 2-4 of the Benjamin *Selected Writings* (Harvard, 1999-2003). He has also contributed to the translation of Benjamin works such as *The Arcades Project* (1999), *Berlin Childhood around 1900* (2006), *On Hashish* (2006), *Early Writings: 1910-1917* (2011), and *Origin of the German Trauerspiel* (forthcoming 2018). He has published articles on modern literature and philosophy, as well as on film and jazz, in journals such as *boundary 2*, *Telos*, *Salmagundi*, *The Kenyon Review*, *Philosophy and Literature*, and *Shuffle Boil*.

3 Walter Benjamin, *The Arcades Project (*Das Passagen-*Werk*, 1927-1940), trans. Howard Eiland and Kevin McLaughlin (Cambridge, Mass.: Harvard University Press, 1999), p. 846 (I°,2; see also the revision of this passage in S1a,3).

provocative term, *Technik der Nähe*, has a characteristically dialectical cast. On the one hand, it establishes communication between antithetical things: a catchword of modern scientific and artistic civilization is joined to an archaic leitmotif of biblical and pietist theological traditions. On the other hand, there is a paradoxical deployment of subjective *and* objective genitive in this expression; what is at issue for Benjamin is at once reception and construction of nearness. A certain distance, therefore, is instrumental in the profane manifestation of nearness; these states of being are not simply opposed to each other, as is usually the case. Witness the Benjaminian categories of the trace (the appearance of a nearness, however far removed the thing that left it behind) and the aura (the appearance of a distance, however close the thing that calls it forth).[4] Ultimately at stake in this spatial and temporal polarity—I shall return to the question of *Technik*, of technique and technology—is what Benjamin terms a differential in historical experience.

The integration of nearness and distance is vital, then, to the working of the anecdote, which brings distant things near insofar as they are essentially contracted, given summary configuration and illuminated, in the transformative space of recollection. No doubt every story, every reminiscence, interweaves the near and the far in some way. The anecdote, Benjamin writes, "brings things near to us spatially [*rückt uns die Dinge räumlich heran*], lets them enter our life…. We don't displace our being into theirs: they step into our life."[5] The association of the anecdotal with the familiar, or with the familiarization of the remote in space or time, is noteworthy in view of the derivation of the term "anecdote," *Anekdote*, from a Greek word meaning "unpublished items" and, in effect, the *un*familiar. The word "anecdote" originally signified private or secret details, undivulged particulars, of history or biography, such as could be found

Abbreviated below in notes as AP. Reference is to particular folder or "convolute" ("S") and entry ("1a,3"). The abbreviation SW, in subsequent notes, refers to Benjamin, *Selected Writings*, 4 vols., ed. Michael W. Jennings et al. (Cambridge, Mass.: Harvard University Press, 1996-2003).

4 See AP: M16a,4.

5 AP: I°,2; cf. H2,3

in the *Anekdota* of Procopius, the celebrated Secret History (*Historia Arcana*) of the court of the Emperor Justinian and Empress Theodora. Thus, in Chapter Eight of Part Three of *Gulliver's Travels*, with contemporary examples of the genre presumably uppermost in his mind, Swift refers to "the Roguery and Ignorance of those who pretend to write *Anecdotes*, or secret History." Whether or not Benjamin was aware of this etymology, it was precisely a species of secret history, a congeries of the *inédits* and arcana of historical remembrance, that he was pursuing, boldly and in some respects subversively, with his endlessly ramifying researches into the arcades and their milieux.[6] Such half-forgotten uncanonized material makes up the underside, the shadow world of traditional historiography, with its emphasis on "great men" and famous events. By a displacement in the angle of vision, the "detritus of history"—another, and better known, provocative term[7]—now becomes the primary object of research and the most telling register of historical reality.

If what Benjamin names "the constructions of history" are comparable to "military orders that discipline the true life and confine it to barracks," then the anecdote is more like an uprising of the disenfranchised and recessed strata, a "street insurgence" of that truer life.[8] In opposition to

6 In *The Arcades Project*, Benjamin several times uses the term "secret affinities" (*geheime Affinitäten*), possibly an adaptation of Baudelaire's phrase, "les rapports intimes et secrets des choses" (cited in J31a,5), but he does not use the term "secret history." The latter appears in a letter of March 3, 1934, to Gershom Scholem: "In these times, when my imagination is preoccupied with the most unworthy problems between sunrise and sunset, I experience at night, more and more often, its emancipation in dreams, which nearly always have a political subject. I would really like to be in a position to tell you about them someday. They represent a pictorial atlas of the secret history of National Socialism [*einen Bilderatlas zur geheimen Geschichte des Nationalsozialismus*]." *The Correspondence of Walter Benjamin and Gershom Scholem, 1932-1940*, trans. Gary Smith and Andre Lefevere (New York: Schocken, 1989), p. 100.

7 The term derives from Rémy de Gourmont: "Créer de l'histoire avec les détritus meme de l'histoire" (cited AP: S1a,1 and as an epigraph to Convolute S). On the "displacement of the angle of vision" (of cultural history), such as to initiate an "historical apocatastasis," see N1a,3.

8 AP: S1a,3.

both Hegelian and Rankean philosophies of history, the "mediating construction from out of 'large contexts'" no less than the empirically-oriented "empathy" with the past epoch "as it really was," Benjamin stresses the pointed realism—the articulated singularity and concreteness—of the anecdotal. In place of the historicist empathy that, treating all epochs equally, "makes everything abstract," and that requires the historian to look away from his or her own present day, the anecdote, as illustrative tale, instances a method of actualization (*Vergegenwärtigung*), through which a set of past events is recognized as speaking to our own concerns and through which we in turn can recognize ourselves as afterlife—and that means transformation—of what has been. Rather than regimenting historical happening into causal chains within a homogeneous continuum, a line of "development," the anecdote brings to light moments, situations, and larger historical constellations in a pregnant implosion of history. It breaks up the spatial-temporal continuum while deepening historical connectedness.[9] In this way the theory of the anecdote overlaps with that of montage, which of course was in its heyday in the 1920s. The adoption of montage techniques in Benjamin, beginning with *One-Way Street* in the mid-Twenties, always bespeaks a nonclassical metaphysics, an experience of time and history that will have worked its way through the reigning linear-atomistic logic to arrive at a dynamic monadological conception, such as Benjamin derives in large measure from the early Romantic appropriation of Leibniz, and at various junctures attributes to Baudelaire, and which he characterizes at one point by citing Proust's representation of the Baudelairean world as "a strange sectioning of time" (*sectionnement du temps*).[10] Through the strategic and multi-angled assemblage of its materials, the simultaneous isolation and constellation of particulars (each intervening cut a threshold), the montage attains its distinctive dialectical form, its discontinuous immediacy and its uncanny action at a distance.

9 The artistic and philosophic possibilities of the anecdote are wittily brought to light in the story of a poster advertising "Bullrich Salt," in AP: G1a,4.

10 AP: J44,5

The Arcades Project associates the peculiar focusing power of the anecdote with other "profane manifestations of 'nearness,'"[11] above all with the perceptual experience of the collector and the flâneur, the two primary nineteenth-century types Benjamin studies—and also, one may say, appropriates as models for his own anamnestic practice—in *The Arcades*. In an early draft for the project, he had written:

Collecting is a form of practical memory [*praktischen Erinnerns*], and of all the profane manifestations of the penetration of "what has been" [*Durchdringung des "Gewesenen"*] (of all the profane manifestations of "nearness") it is the most binding.[12]

This makes it evident that Benjamin conceives the technique of nearness in temporal as well as spatial terms. In the allegorical perception of the collector (the subject of Convolute H in *The Arcades*), each item in his collection becomes a "magic encyclopedia" of the historical period in which it was produced and acquired. In fact, the item's entire past, as a digest of the encompassing world itself, is monadologically concentrated there in the hermetic confines of the collector's showcase: "for the collector, the world is present, and indeed ordered, in each of his objects," and this is "a world order whose outline [*Abriß*] is the *fate* of his object…. No sooner does he hold [these objects] in his hand than he appears inspired by them and seems to look through them into their distance, like an augur."[13] We can see that there is an elaborate Benjaminian metaphorics of the spatiotemporal monad: the collector's object is a dense "compendium" of its times; it forms a "magic circle" of associations; it rises out of the sea of sensation like an "island;" and so on. It is axiomatic for the whole serendipitous undertaking that the consciousness of the collector/historian is *expanded* in proportion as a historical process is *encapsulated* in the object of study, the object that has been "blasted out of the continu-

11 AP: H1a,2.

12 AP: h°,3. Benjamin uses the term *Nähe* both with and without quotation marks; in either case, he patently plays off the theological concept of nearness.

13 AP: H2,7; H2a,1.

um of historical succession"[14] to become a charged nucleus of time, what Benjamin calls a dialectical image.

There is a similarly intimate historical saturation of perception in the experiential world of the flâneur, the urban stroller whom Baudelaire likened to "a kaleidoscope endowed with consciousness,"[15] and whom Benjamin again appropriates as model in his peripatetic exposition of the arcades, not to mention his own obsessive wanderings through Berlin, Paris, and other cities north and south. What is determinative for the experience of flânerie (the subject of Convolute M in *The Arcades*) is that "far-off times and places interpenetrate the landscape and the present moment."[16] Accordingly, the near and familiar wear the face of the historically and sometimes geographically remote; the past is superimposed on the present, as the flâneur, his gaze no less "tactile"—we could say, no less cinematic—than that of the collector, sees the ghosts of former events, former venues, haunting specific metropolitan locales. It is a phantasmagorical and quixotic *Maskenfest des Raumes*, a masquerade of space in which "masks of architecture" figure as well.[17] This, the flâneur's basic experience, Benjamin characterizes in terms of the "colportage phenomenon of space," since the space of flânerie tells exciting tales, as it were, and peddles inspiration.[18] Where the flâneur walks, his steps awaken a material resonance; the "mere intimate nearness" of a locality gives

14 AP: N10,3; cf. N11,5.

15 Cited AP: M14a,1.

16 AP: M2,4.

17 AP: M1a,4 and F1a,1. A spatial masquerade is likewise disclosed through Benjamin's analysis of the nineteenth-century bourgeois interior in Convolute I.

18 AP: M1a,3. Benjamin encountered the figure of the *colporteur* often enough in his researches for *The Arcades*, but there may also be an echo here of Nietzsche's conception of *Kolportage-Psychologie*, which, in *Twilight of the Idols*, is condemned with a peculiar suggestiveness: "What happens when…, in the manner of the Parisian novelists, one goes in for colportage psychology and deals in gossip, wholesale and retail. Then one lies in wait for reality, as it were, and every evening brings home a handful of curiosities. But note what finally comes of all this: a heap of splotches, a mosaic at best…" (trans. Walter Kaufmann in *The Portable Nietzsche* [New York: Viking, 1954], p. 517 [trans. slightly modified]).

him hints and instructions, for he is priest of the genius loci.[19] Thus, "the street conducts the flâneur into a vanished time,"[20] just as a cherished object draws the collector into historical reverie, or historical augury. Both flâneur and collector practice a technique of nearness for the penetration of what has been. In both cases this involves—as in Proust—a peculiarly bodily apperception and remembrance (of the flâneur it is said that his very soles remember). And, in both cases, experience of the world discloses not a progress but an interpenetrating and superposed transparency (*Durchdringungs- und Überdeckungstransparenz*)[21]—which is an apt formula for expressing what the reader encounters in the textual medium of the arcades project itself, with its "perspectival plasticity"[22] and its composite presentation of the anecdotal, all those precisely extracted and highlighted micro-histories now become, like Proustian "gossip," emblems of the everyday of a former age. "The deepest truths," remarks Benjamin at one point in this text, have the power of adapting "to the dull and commonplace—indeed, of mirroring themselves…in irresponsible dreams."[23] The true life must be unearthed, reclaimed from the dead and the reified. That is, the commonplace aspect of the commonplace must be dispelled, its utilitarian function suspended, if it is to become historically transparent. Both flânerie and collection—revealing as they do (and as the movie camera does) normally inconspicuous facets of the ordinary—entail "the liberation of things from the drudgery of being useful."[24] This

19 AP: M1,1; SW2, 264.

20 AP: M1,2.

21 AP: S2,1.

22 The phrase *perspektivische Plastik* comes from Benjamin's friend and editor Willy Haas; it is quoted in a methodological context in Benjamin's review essay of 1931, "Theological Criticism" (SW2, 431).

23 AP: S1a,5.

24 AP: H3a,1. Concerning the "prismatic work" of film and the discovery of "unexpected stations" in a given milieu, see SW2, 17-18 ("Reply to Oscar A. H. Schmitz" [1927]). There is a connection here with Benjamin's experiments with hashish and opium; compare, for example, AP: M1a,1 and P1a,2. See also Howard Eiland, "On Benjamin's Theory of Film" The Promise of Cinema. 10-102016. http://www.thepromiseofcinema.com/index.php/on-benjamins-theory-of-film/.

is because they are both forms of study and play, studious play, in the realm of practical memory.

Among the earliest notations in the arcades complex is a summary reflection on the relation of what we call the nineteenth century to the author's present day, and on this theme of study as it concerns the dialectic of nearness and distance and, above all, as it concerns the determination of "what is nearest." Since the passage is not so well known as others in this book, let me quote it in full. I believe it is pertinent to our own relationship with the previous century.

Energies of repose (of tradition) which carry over [*hinüberwirken*] from the nineteenth century. Transposed historical energies of tradition [*Verstellte historische Traditionskräfte*]. What would the nineteenth century be to us if we were bound to it by tradition? How would it look as religion or mythology? We have no tactile relation to it [*kein taktisches Verhältnis zu ihm*]. That is, we are trained to view things, in the historical sphere, from a romantic distance. To account for the directly transmitted inheritance [*unmittelbar überkommenen Erbe*] is important. But it is still too early, for example, to form a collection. Concrete, materialist deliberation [*Besinnung*] on what is nearest is required. "Mythology," as Aragon says, drives things back into the distance. Only the presentation of what is related to us, what conditions us, is important. The nineteenth century—to borrow the Surrealists' terms—is the set of noises that invades our dream, and that we interpret on awaking.[25]

At issue here is the transmission and attendant displacement, disguise, suppression of energies of tradition, specifically, energies of repose (*Kräfte der Ruhe*). It is difficult to receive such historical energies directly as they have come down—or, in the German idiom, "come over"—to us, because a mythicizing tendency in remembrance, in the language of remembrance, drives historical events as such into "the distance." Study is needed to follow the surviving traces and thereby in some measure to realize the amorphous consolidation of historical concreteness. By illuminating

25 AP: C°,5.

and rearticulating the kaleidoscopic factical manifold,[26] study militates against the reduction that inevitably creeps into historical construction—and that helps prepare the ground for what Benjamin designates "latent 'mythology,'" the cultural-political manifestations of which he discerns above all in architecture, but also in advertising, fashion, décor, and other forms of exhibition within the self-fetishizing commodity culture of high capitalism. As the Hebrew prophets railed against the creeping paganism of the people, exhorting them to remember the nearness of the word and to expect the nearness of the coming time, so Benjamin rather less thunderously calls for recollection and divination of energies inconspicuously near, invoking an opening of the self-secure. A certain "pathos of nearness" is identified as the signature of that historical skepticism which sees through the abstract configuration of history in its "epochs." In the programmatic passage I've just cited from early on in the composition of the *Arcades*, Benjamin evidently understands "the nearest" in terms of historical relevance and historical immediacy, however mediated and indirect.[27] For his study he will take not just any given past, as a leveling historicism would do, but the particular past that addresses his concerns, and in confrontation with which he discovers his unique inheritance and task. To awaken *from* "that dream we name the past"[28] is thus to waken

26 The Benjaminian *Konstruktion aus Fakten* in *The Arcades Project* (O°,73; compare N2a,4 and K1,2) should be distinguished from the inventory of reified and homogenized "facts" enshrined in the conventional "History of Civilization" (AP: Exposé of 1939, Introduction). Concerning "latent 'mythology,'" discussed directly below, see AP: D°,7.

27 Compare the contemporaneous notation on "the intimate connection…between the intention making for the nearest nearness [*Intention auf die nächste Nähe*] and the intensive utilization of refuse [*Abfall*: scraps, detritus]—a connection in fact exhibited in montage" (AP: O°,37). In "The Storyteller" (1936), the concept of the nearest (*das Nächste*) is associated with the flat domain of information, as distinguished from the amplitude of the narrative tidings that "come from afar" (SW3, 147). Earlier, in a set of fragmentary observations from 1922-1923, "the nearest" is expounded in a carnal-erotic context, where nearness connotes "spell" and "abyss," as opposed to the freedom conferred by distance (SW1, 398, 400).

28 AP: K1,3.

to it and to process its range of "noises" or dream energies. The dialectic of awakening is for Benjamin fundamental to thinking: "all insight to be grasped according to the schema of awakening."[29]

In accordance with this dialectical schematism, historical insight presupposes a "now of recognizability," takes the form of an encapsulated history[30] in which the self-construction of the new always unfolds in the medium of what has been, or—put differently—in which the defining interests of the historical investigation are seen to lie preformed (*präformiert*) in the historical object. Rather than fixed lines of development, one traces emergent historical constellations and what Benjamin terms "differentials of time."[31] As historical force field and critical encounter, the dialectical image manifests the time differential (*Zeitdifferential*) through which real time (*die reale Zeit*), divested of its natural magnitude, shrinks—in a process of condensation and distillation—to its smallest gestalt.[32] History, in this sense, becomes itself a constellation of dangers which the dialectician is always on the point of averting. This navigation of the precipitous—to which is necessarily allied an appreciation of the "eternal transience" of things—is something intrinsic to "dialectical experience" in the modern world.[33]

Although Benjamin doesn't explicitly say so, we must assume that a dynamic interrelation of nearness and distance, a dialectic of attention,

29 AP: Materials for the Exposé of 1935, No. 8. Compare Convolute N4,4: "The realization [*Verwertung*] of dream elements in the course of waking up is the canon of dialectics. It is paradigmatic for the thinker and binding for the historian."

30 See Jacob Taubes, "Walter Benjamin: Geschichtsphilosophische Thesen (Seminar—Wintersemester 1984/1985)," in Taubes, *Der Preis des Messianismus*, ed. Elettra Stimilli (Würzburg: Königshausen & Neumann, 2006), p. 87 (*geballte Geschichte*).

31 AP: N1,2.

32 AP: Q°, 21 and D°,6.

33 Concerning "dialectical experience," see AP: N9,5. On the concept of eternal transience (*ewige Vergängnis*), see AP: J67,4; SW1, 281 ("Imagination" [1920-1921]); SW3, 306 ("Theological-Political Fragment" [probably 1920-1921]); and SW4, 407 ("Paralipomena to 'On the Concept of History'" [1940]).

is integral to what is called dialectical experience.[34] Now, *The Arcades Project* refers to various kinds of dialectic, in addition to that of historical awakening: a dialectic of fashion, a dialectic of flânerie, a dialectic of commodity production, and of urban space, a dialectic of the example, of the gate, of the museum, of sentimentality, and there are others. There is also a reference to "the dialectical essence of technology," where what is at issue is a twofold relation to nature: technology both derives, and emancipates itself, from nature—and this means, in the first instance, from empirical space and time.[35] Relations of near and far, as everyone knows, are radically transformed in the network of technologies, so that technology is ever and again revealing nature from a new perspective. But in this distantiation of the technological from the matrix of the natural there remain correspondences between "the archaic symbol-world of mythology," with its basis in the cyclical rhythms of the cosmos, and "the world of modern technology," with its basis in the principle of simultaneity; such correspondences, observes Benjamin, are evident particularly to children.[36]

In light of the subtle creaturely persistence of "mythology" and "dream" in modern technological-mediatic and bureaucratic regimens (something Kafka well understood), we might ask: in what sense exactly is the technique of nearness a *technique*—a teachable method, mechanism of knowledge, or provision? There are as many techniques under consideration in *The Arcades Project* as there are kinds of dialectic; references range from architectural to photographic and exhibition techniques, from the technique of composition in Baudelaire to the technique of street warfare in nineteenth-century Paris and the Parisians' technique of *inhabiting* the street as interior. There is even a brief speculation on card games as a pejoration of divinatory technique. Benjamin quotes a

34 Compare Werner Hamacher, *Minima Philologica*, trans. Catharine Diehl and Jason Groves (New York: Fordham University Press, 2015), pp. 84 ("Ninety-Five Theses on Philology," thesis 78) and 121, 145 ("For—Philology"), on "far-nearness" (*Fernähe*) as the spacetime (*Zeitraum*) of philology.

35 AP: K3a,2. See further K2a,1.

36 AP: N2a,1; K3,2.

contemporary French critic (Henri Focillon, of whom he is not otherwise uncritical) on *technique* "as a whole poetry of action and…as the means for attaining metamorphoses," and this broadened understanding of the term may have some bearing on his own "experiment in the technique of awakening."[37] The experience of the fluctuating interpenetration of the spatiotemporally near and remote requires of thinking a concentration and provisional "integration" of reality, an exercise whereby figure and concept marry in the medium of the *Denkbild* (thought image).[38] This is—if not exactly hands-on technical know-how—a form of craft, *technē*, disengaged from the classical paradigm of substance and causality, with its property-centered socio-economic corollaries. Technique disengaged from teleology.

37 AP: N19a,2; K1,1.

38 The word *Denkbild* was used by the poet Stefan George before Benjamin seized on it. See Theodor W. Adorno, "Benjamin's *Einbahnstrasse*" (1955), in *Notes to Literature*, vol. 2, trans. Shierry Weber Nicholsen (New York: Columbia University Press, 1992), pp. 322-323. Concerning the "concentration (integration) of reality" in the dialectical actualization out of former contexts, that is, in now-being, see AP: K2,3; compare the beginning of Benjamin's essay of 1914-1915, "The Life of Students," translated by Rodney Livingstone in *Early Writings: 1910-1917* (Cambridge, Mass.: Harvard University Press, 2011), pp. 197-198, on history "concentrated, as in a focal point [*Brennpunkt*]."

Books and Toys: Walter Benjamin

Christopher Norris[1]

> I have made my most memorable purchases on trips, as a transient. Property and possession belong to the tactical sphere. Collectors are people with a tactical instinct . . . . How many cities have revealed themselves to me in the marches I undertook in the pursuit of books.
>
> Walter Benjamin, *Unpacking My Books*

> The particular style and beauty of toys of the older kind can be understood only if we realize that toys used to be a by-product of the many handicrafts that were all subject to the rules and regulations of the guilds.
>
> Benjamin, *The Cultural History of Toys*

> Toy is hand-tool, not artwork
>
> Benjamin, Note in *Benjamin Archive*

1 Christopher Norris is Emeritus Professor in Philosophy at the University of Cardiff. In his early career he taught English Literature, then moved to Philosophy via literary theory, and has now moved back in the direction of creative writing. He has published widely on the topic of deconstruction and is the author of more than thirty books on aspects of philosophy, literature, the history of ideas, and music. More recently he has turned to writing poetry in various genres, including – unusually – that of the philosophical verse-essay. He has published several collections of poems, including The Winnowing Fan and For the Tempus-Fugitives, and is now working on a further volume. He has lectured and held visiting posts at universities around the world, and his books have been translated into many languages.

They ask me: have you read them, read all these
Much cherished books of yours? My answer: no,
Not all by any means, but then, if you'd
The good luck to acquire a perfect set

Of Sèvres porcelain, would you – to please
Some clueless guest – declare 'it's not for show
By aesthetes or collectors: it's for food
So grab a plate', then eat and see them fret?

Of course there's always the desire to tease
Those earnest types, my scholar-friends, who'll go
Such lengthy ways around just to conclude
That they and I must owe a common debt

To some obscure source-text, or that the key's
Their having read so deeply and with so
Well-tuned an ear that surely they've construed
My every thought like Adam's alphabet.

Yes, I'm a reader, one who's most at ease
With books, texts, commentaries, the kind of slow
Close reading that betrays an attitude
To this extent most like the one we met

In those who think it their main task to squeeze
From books all that it's possible to know
Once every volume, page and word's been viewed
For fear that some fine thought will slip the net.

Yet still I say: why buy the line that he's
The horse's mouth, the guy who wants a blow-

By-blow account of all that we've accrued
By minute scrutiny, like teacher's pet,

Or thinks it wrong to cut down all those trees
That feed the paper-mills if books bestow
No higher wisdom than this doubtless shrewd
Advice: grab all the rare ones you can get!

It's the collector in me wants to seize
On just that well-worn charge and simply throw
It back at them, the ostentatious brood
Of print-consumers who find books that stay

Unread a source of guilt they can appease
Only by reading shelf-loads, row by row,
Till there's no bookish content they've not chewed
Often and hard enough to lift the threat.

Unpacking books: another pleasure I'd
Not willingly give up, although God knows
I've had my fill of house-moves, some to suit
My shifting needs or interests, but of late

More often seeking out some place to hide
From Hitler's roving axe-men, or from those
Who dog my steps at every point *en route*
Where I unpack, then soon repack each crate.

That's when the book-consumers ask me: why'd
A man like me seek solace for such woes
In books as mere possessions; as the fruit
Of whatsoever windfalls chance or fate

Might send my way when it was my chief pride,
As scholar-critic, so to read the prose
Of some few precious spirits that no brute
Effect of circumstance could abrogate

Their power to set all obstacles aside,
Such as the sundry perils that arose
From my forced exile or from books left mute
By physical destruction. Yet I wait

As keenly for those much-loved volumes spied
Amongst the straw as what they may disclose
When read again with senses more acute
For having once more seen that precious freight

Fetch up at my address. Here I'll reside
Perhaps a month or two, this place I chose
Partly in hopes it might thereby confute
My own declining life-chance estimate,

But also with the thought of how I'd slide
The crate-lids off and unconceal the rows
Of hallowed fonts and bindings. 'So astute',
They'll say, 'so highly gifted, such a great

Diviner of text-secrets, yet belied
His genius by a childlike trait that owes
Less to communing with the Absolute
Than to the wish that he might supplicate

The gods of hazard, those he'd long defied
By doing things that kept him on his toes,
Whether one step beyond the Nazi boot
Or, like his Angel, forced to contemplate

The pile-up of catastrophes that bear
The name of "history"'. 'Childlike', you say,
These curious ways of mine, and I can see
Just what you mean although, at times, the child

May have some valuable things to share,
Such as how toys, like books, can let us play
At other-world games maximally free
Of this-world penalties or charges filed

Against all revolutionaries who dare
To think they might just live to see the day
When wishful thought becomes reality
And so redeems the human wreckage piled

Behind them. Histories unpacked with care,
Again like books, may suddenly convey
A message written there, in the debris
Of wasted lives, as if the facts (so styled

By dogged chroniclers) should now declare
It time at last for us to buck the sway
Of all the victors throughout history
Whose glorious tale has us, the mob, reviled

The more for every increment to their
Triumphal stock. Toys figure here since they,
Pure playthings, might put us in mind that we
Once stood to objects not, as now, beguiled

By the fake gloss or fetishistic glare
Of play commodified, but by the way
Those toys, hand-crafted, yet in some degree
Communal artefacts, thus reconciled

The two dimensions split beyond repair
(Or so it seemed) by every hour that's prey
To capital's four-centuries-long spree
At our expense. Perhaps it's those exiled,

Like me, from home and language who most care
For toys of that sort, playthings that betray
No trace of yearning, like the bourgeoisie,
For times long past or workshops undefiled

By humdrum tasks to which all flesh is heir
Once set to work. Forget those Fabergé-
Bejewelled gold eggs, created just to be
The toys of Russian royalty as it whiled

Its last few years away. If toys are here
Our theme, along with books and all things fit
To unpack or collect, then think instead
Of toys as nascent hand-tools, like those fine

Examples – also Russian – that appear,
If you're in luck, with other sorts of kit
At village sales, turned up in someone's shed
And (luck again) without the ersatz shine

Acquired when some officious auctioneer
Lays hands on them and has their spell submit
To bourgeois norms. That's what collectors dread,
The art-restorer's touch that makes a shrine

Of every toy-museum where the gear
That first gives kids a feel for brace-and-bit
Construction or for needle matched to thread
Becomes aestheticized as one more sign

Of high-class taste. This bids the viewer steer
Far wide of any evidence that it,
The toy in question, might be one that fed
An engineer's or craftsman's future line

Of work, and not the artist-type's career
Spent trying to remove workaday grit
From cultivated pearls. It's what I said
About art's aura and its quick decline

Once reproduction enters its old sphere
Of privilege and copies are legit
For anyone save old-school critics wed
To old-style art and dealers apt to dine

Out every auction-night on what they'd clear
In a good day. No longer 'counterfeit',
Those copies, as rich customers are led
To think, but reproduced where arts combine

With new technology and dealers fear
To tread while artists have no cause to quit
Since, though the great work's aura may have fled,
Still it's their role to bring out what's benign

About these replicas. For why revere
A cult of aura that, like Holy Writ,
Declares art the preserve of those well-bred,
Well-off, or well-connected who'll divine

The work's authentic essence while the rest,
Those not thus singled out, must satisfy
Themselves with copies which, as they attain
Technical near-perfection, yet augment

The aura-stock by messages addressed
To adepts only. 'These may multiply',
It says, 'until they fill the art-domain
With simulacra; yet, to the extent

That aura still continues to invest
The masterwork, it meets your practised eye
In such a manner as to ascertain
Both its and your good claim to represent

Not just an angle but a viewpoint blessed
With all it takes for you few to descry
What must elude the many'. Once again
I think of certain toys, how far they went

To challenge the idea of art as quest
For that which, properly, should occupy
Some small class-fraction while the rest remain
In thrall, like those who'd made their dark descent

To Plato's cave and never thought to test
Its flickering light against the common sky
Of a real world where objects stand out plain
In sunlit forms. Perhaps that myth's what lent

My book and toy collecting special zest,
The sense (quite contrary to all that I
Said just a moment back) of some arcane
Or occult revelation, some event

Vouchsafed to me alone, or else expressed
Through allegories that spring to life through my
(Let's say) odd knack for such against-the-grain
Close readings. Maybe it's this native bent

For all that's slant, oblique, or second-guessed
That leaves a sense of something gone awry
Between that occult, Talmud-nurtured strain
Of textual brooding that Bert Brecht once spent

Such efforts to dispel and what, in jest,
He called my *'plumpes Denken'*. Then I'd try
To discipline my image-teeming brain
By thoughts, like his, that made me soon repent

The slide from a materialist regard
For plain home-truths plus thinking soundly based
In Marxist dialectic to the sort
Of reverie that had no proper role,

He said, in writers' work when times were hard
And subtle disquisitions went to waste
For lack of readers. So I'd end up caught
In a self-justifying rigmarole,

As when Klee's image catches me off-guard,
His great 'Angelus Novus', always placed
Just within view so as to bring up short
Not only the idea that I'm a prole

At heart, a long frustrated communard,
But also any hope that my old taste
For image-led *pèlerinages* of thought
Might serve, despite Brecht's teaching, to console

My growing sense of new escape-routes barred
Each day as further nations rush to paste
Their colours on the map. Maybe I bought
That monoprint because it filled a hole

Amongst the books and toys, or seemed ill-starred
Enough for my dark temperament, or faced
Up retrospectively to things I'd sought
To wipe from memory. But perhaps my goal,

Like that of the *flâneurs* who promenade
Those Paris shopping-malls that I showcased,
Had more to do with what Klee's image brought
By way of chances to reduce the toll

Of inner conflict. Take my own case: card-
Carrying Marxist *versus* one who traced
Fine textual details that would soon distort
And fade if *plumpes Denken* took control,

Or sounds of discord too distinctly jarred
On nerves fine-tuned. Klee's 'Angelus' erased
One conflict-point at least, the drive to thwart
Whatever hours of reverie I stole

From Brecht's imperative, as if they marred
My activist commitment or disgraced
My project by such culpable resort
To art's old tricks with millions on the dole

And war just round the corner. What it showed,
That image, is how politics may take
Forms more oblique, less overt, more inclined
To parable or allegory than meets

The doctrinaire demand that lines be toed,
That art explicitly declare its stake
In that which looks ahead or lags behind,
As gauged in terms of triumphs and defeats

Or progress hastened *versus* progress slowed
By Brechtian lights. Don't get me wrong: I make
No bones about it; unless humankind
Soon gets the Marxist message Brecht repeats

With undiminished passion, then the road
To peace, truth, and equality will break
Up right beneath their feet and time rewind
Till history's savage irony completes

Its counterflow. So if I've seemed to load
The Klee with implications fit to shake
The angel's fragile wings, or sought to find
In it some occult sense beyond what greets

The viewer's eye, then think how it bestowed,
As with the books and toys, a means to slake
My thirst for suchlike hybrids. They combined
Art's aura with a snub to the elites

Of art-world taste whose operative code
Allowed the labels 'genuine' or 'fake'
With room for no expansion-slot assigned
To items that the auction-listing treats

As not quite fitting any proper mode
Of art-production. Caught in aura's wake
Klee's monoprint goes part-way to unbind
Itself from such propriety, yet cheats

The death-of-art brigade by debts still owed
To craft, technique, and formal traits opaque
Yet luminous enough to yield the kind
Of allegory that keeps the exegetes

In business. So, if aura should erode
To zero, still the Angel's double-take
On art and history may leave enshrined,
In multiples, an art to grace the streets.

The lively voice of Critical Theory

Berlin Journal of Critical Theory (BJCT) is a peer-reviewed journal which is published in both electronic and print formats by Xenomoi Verlag in Berlin. The goal is to focus on the critical theory of the first generation of the Frankfurt School and to extend their theories to our age. Unfortunately, it seems that most of the concerns and theories of the first generation of the Frankfurt School are neglected in its second and third generations.

We believe that the theories of the first generation of the Frankfurt School are still capable of explaining many social, cultural, and political problems of our time. However, in some cases, we need to revise those theories. For example, the culture industry in our time can also work with a different mechanism from that described by Adorno and Horkheimer. In our age, the majorities can access the media and even respond to the messages which they receive – this is something which was not possible in Adorno and Horkheimer's time. But this doesn't mean that the culture industry's domination is over. Thus, we may need to revise the theory of the culture industry to explain the new forms of cultural domination in our age.

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